TABLE OF CHAPTERS

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CHAPTER 30
DECEDENTS' ESTATES; PROTECTION OF PERSONS AND PROPERTY

ARTICLE 2
WILLS

30-201 Act, how cited; terms, defined.

Sections 30-201 to 30-209 shall be known and may be cited as the Uniform Wills Recognition Act (1977).

In the Uniform Wills Recognition Act (1977):

(1) International will means a will executed in conformity with sections 30-202 to 30-205; and

(2) Authorized person and person authorized to act in connection with international wills mean a person who by section 30-209, or by the laws of the United States including members of the diplomatic and consular service of the United States designated by Foreign Service Regulations, is empowered to supervise the execution of international wills.

Source: Laws 2020, LB966, § 1.

30-202 International will; validity.

(a) A will is valid as regards form, irrespective particularly of the place where it is made, of the location of the assets, and of the nationality, domicile, or residence of the testator, if it is made in the form of an international will complying with the requirements of the Uniform Wills Recognition Act (1977).

(b) The invalidity of the will as an international will shall not affect its formal validity as a will of another kind.

(c) The Uniform Wills Recognition Act (1977) shall not apply to the form of testamentary dispositions made by two or more persons in one instrument.

Source: Laws 2020, LB966, § 2.

30-203 International will; requirements.

(a) The will shall be made in writing. It need not be written by the testator personally. It may be written in any language, by hand or by any other means.

(b) The testator shall declare in the presence of two witnesses and of a person authorized to act in connection with international wills that the document is the testator's will and that the testator knows the contents thereof. The testator need not inform the witnesses, or the authorized person, of the contents of the will.

(c) In the presence of the witnesses, and of the authorized person, the testator shall sign the will or, if the testator has previously signed it, shall acknowledge the testator's signature.

(d) When the testator is unable to sign, the absence of the testator's signature does not affect the validity of the international will if the testator indicates the reason for the testator's inability to sign and the authorized person makes note thereof on the will. In these cases, it is permissible for any other person present, including the authorized person or one of the witnesses, at the direction of the testator, to sign the testator's name for the testator, if the authorized person makes note of this also on the will, but it is not required that any person sign the testator's name for the testator.

(e) The witnesses and the authorized person shall there and then attest the will by signing in the presence of the testator.

Source: Laws 2020, LB966, § 3.

30-204 International will; other points of form.

(a) The signatures shall be placed at the end of the will. If the will consists of several sheets, each sheet will be signed by the testator or, if the testator is unable to sign, by the person signing on the testator's behalf or, if there is no such person, by the authorized person. In addition, each sheet shall be numbered.

(b) The date of the will shall be the date of its signature by the authorized person. That date shall be noted at the end of the will by the authorized person.

(c) The authorized person shall ask the testator whether the testator wishes to make a declaration concerning the safekeeping of the testator's will. If so and at the express request of the testator, the place where the testator intends to have the testator's will kept shall be mentioned in the certificate provided for in section 30-205.

(d) A will executed in compliance with section 30-203 is not invalid merely because it does not comply with this section.

Source: Laws 2020, LB966, § 4.

30-205 International will; certificate.

The authorized person shall attach to the will a certificate to be signed by the authorized person establishing that the requirements of the Uniform Wills Recognition Act (1977) for valid execution of an international will have been complied with. The authorized person shall keep a copy of the certificate and deliver another to the testator. The certificate shall be substantially in the following form:

CERTIFICATE

(Convention of October 26, 1973)

1. I, ... (name, address, and capacity), a person authorized to act in connection with international wills

2. Certify that on . . . . . (date) at . . . . . (place)

3. (testator) . . . . . (name, address, date, and place of birth) in my presence and that of the witnesses

4. (a) . . . . . (name, address, date, and place of birth)

(b) . . . . . (name, address, date, and place of birth)

has declared that the attached document is the testator's will and that the testator knows the contents thereof.

5. I furthermore certify that:

6. (a) in my presence and in that of the witnesses

(1) the testator has signed the will or has acknowledged the testator's signature previously affixed.

*(2) following a declaration of the testator stating that the testator was unable to sign the testator's will for the following reason . . . . . , and I have mentioned this declaration on the will

*and the signature has been affixed by . . . . . (name, address)

7. (b) the witnesses and I have signed the will;

8. *(c) each page of the will has been signed by . . . . . and numbered;

9. (d) I have satisfied myself as to the identity of the testator and of the witnesses as designated above;

10. (e) the witnesses met the conditions requisite to act as such according to the law under which I am acting;

11. *(f) the testator has requested me to include the following statement concerning the safekeeping of the testator's will:

. . . . . .

12. PLACE . . . . . .

13. DATE . . . . . .

14. SIGNATURE . . . . . .

and, if necessary, SEAL

*to be completed if appropriate

Source: Laws 2020, LB966, § 5.

30-206 International will; effect of certificate.

In the absence of evidence to the contrary, the certificate of the authorized person shall be conclusive of the formal validity of the instrument as a will under the Uniform Wills Recognition Act (1977). The absence or irregularity of a certificate shall not affect the formal validity of a will under the act.

Source: Laws 2020, LB966, § 6.

30-207 International will; revocation.

The international will shall be subject to the ordinary rules of revocation of wills.

Source: Laws 2020, LB966, § 7.

30-208 Source and construction.

Sections 30-201 to 30-207 derive from Annex to Convention of October 26, 1973, Providing a Uniform Law on the Form of an International Will. In interpreting and applying the Uniform Wills Recognition Act (1977), regard shall be had to its international origin and to the need for uniformity in its interpretation.

Source: Laws 2020, LB966, § 8.

30-209 Persons authorized to act in relation to international will; eligibility; recognition by authorizing agency.

Individuals who have been admitted to practice law before the courts of this state and who are in good standing as active law practitioners in this state, are hereby declared to be authorized persons in relation to international wills.

Source: Laws 2020, LB966, § 9.

30-241 Repealed. Laws 2024, LB998, § 13.
Operative date July 1, 2025.

30-242 Repealed. Laws 2024, LB998, § 13.
Operative date July 1, 2025.

30-243 Repealed. Laws 2024, LB998, § 13.
Operative date July 1, 2025.

ARTICLE 6

HEALTH CARE SURROGACY ACT

Section
30-601. Act, how cited.
30-602. Legislative intent; act, how construed.
30-603. Terms, defined.
30-604. Surrogate; powers; designation of surrogate; priorities; consensus; meeting; continuation of authority; disqualification of surrogate.
30-605. Persons disqualified to serve as surrogate.
30-606. Incapability; determination; documentation.
30-607. Notice.
30-608. County court procedure; petition; guardian ad litem; hearing.
30-609. Surrogate; powers; objection to surrogate decision; how treated.
30-610. Surrogate; duties.
30-611. Primary health care provider; duties.
30-612. Petition; purposes; filed with county court.
30-613. Person eligible to file petition.
30-614. Liability for criminal offense; civil liability; violation of professional oath or code of ethics.
30-615. Individual's rights.
30-616. Health care provider; exercise medical judgment.
30-617. Health care facility; rights; health care provider; rights.
30-618. Attempted suicide; how construed.
30-619. Prohibited acts; penalties.

30-601 Act, how cited.

Sections 30-601 to 30-619 shall be known and may be cited as the Health Care Surrogacy Act.

Source: Laws 2018, LB104, § 1.

30-602 Legislative intent; act, how construed.

(1) It is the intent of the Legislature to establish a process for the designation of a person to make a health care decision for an adult or an emancipated minor who becomes incapable of making such a decision in the absence of a guardian or an advance health care directive.

(2) The Legislature does not intend to encourage or discourage any particular health care decision or to create any new right or alter any existing right of competent adults or emancipated minors to make such decisions, but the Legislature does intend through the Health Care Surrogacy Act to allow an adult or an emancipated minor to exercise rights he or she already possesses by means of health care decisions made on his or her behalf by a qualified surrogate.

(3) The Health Care Surrogacy Act shall not confer any new rights regarding the provision or rejection of any specific medical treatment and shall not alter any existing law concerning homicide, suicide, or assisted suicide. Nothing in the Health Care Surrogacy Act shall be construed to condone, authorize, or approve purposefully causing, or assisting in causing, the death of any individual, such as by homicide, suicide, or assisted suicide.

Source: Laws 2018, LB104, § 2.

30-603 Terms, defined.

For purposes of the Health Care Surrogacy Act:

(1) Adult means an individual who is nineteen years of age or older;

(2) Advance health care directive means an individual instruction under the Health Care Surrogacy Act, a declaration executed in accordance with the Rights of the Terminally Ill Act, or a power of attorney for health care;

(3) Agent means a natural person designated in a power of attorney for health care to make a health care decision on behalf of the natural person granting the power;

(4) Capable means (a) able to understand and appreciate the nature and consequences of a proposed health care decision, including the benefits of, risks of, and alternatives to any proposed health care, and (b) able to communicate in any manner such health care decision;

(5) Emancipated minor means a minor who is emancipated pursuant to the law of this state or another state, including section 43-2101;

(6) Guardian means a judicially appointed guardian or conservator having authority to make a health care decision for a natural person;

(7) Health care means any care, treatment, service, procedure, or intervention to maintain, diagnose, cure, care for, treat, or otherwise affect an individual's physical or mental condition;

(8)(a) Health care decision means a decision made by an individual or the individual's agent, guardian, or surrogate regarding the individual's health

care, including consent, refusal of consent, or withdrawal of consent to health care; and

(b) Health care decision includes:

(i) Selection and discharge of health care providers, health care facilities, and health care services;

(ii) Approval or disapproval of diagnostic tests, surgical procedures, programs of medication, and orders not to resuscitate; and

(iii) Directions to provide nutrition, hydration, and all other forms of health care;

(9) Health care facility means a facility licensed under the Health Care Facility Licensure Act or permitted by law to provide health care in the ordinary course of business;

(10) Health care provider means a natural person credentialed under the Uniform Credentialing Act or permitted by law to provide health care in the ordinary course of business or practice of a profession;

(11) Health care service means an adult day service, a home health agency, a hospice or hospice service, a respite care service, or a children's day health service licensed under the Health Care Facility Licensure Act or permitted by law to provide health care in the ordinary course of business. Health care service does not include an in-home personal services agency as defined in section 71-6501;

(12) Incapable means lacking the ability to understand and appreciate the nature and consequences of a proposed health care decision, including the benefits of, risks of, and alternatives to any proposed health care, or lacking the ability to communicate in any manner such health care decision;

(13) Individual means an adult or an emancipated minor for whom a health care decision is to be made;

(14) Individual instruction means an individual's direction concerning a health care decision for the individual;

(15) Life-sustaining procedure means any medical procedure, treatment, or intervention that (a) uses mechanical or other artificial means to sustain, restore, or supplant a spontaneous vital function and (b) when applied to a person who is in a terminal condition or who is in a persistent vegetative state, serves only to prolong the dying process. Life-sustaining procedure does not include routine care necessary to maintain patient comfort or the usual and typical provision of nutrition and hydration;

(16) Persistent vegetative state means a medical condition that, to a reasonable degree of medical certainty as determined in accordance with then current accepted medical standards, is characterized by a total and irreversible loss of consciousness and capacity for cognitive interaction with the environment and no reasonable hope of improvement;

(17) Physician means a natural person licensed to practice medicine and surgery or osteopathic medicine under the Uniform Credentialing Act;

(18) Power of attorney for health care means the designation of an agent under sections 30-3401 to 30-3432 or a similar law of another state to make health care decisions for the principal;

(19) Primary health care provider means (a) a physician designated by an individual or the individual's agent, guardian, or surrogate to have primary

responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes the responsibility or (b) if there is no such primary physician or such primary physician is not reasonably available, the health care provider who has undertaken primary responsibility for an individual's health care;

(20) Principal means a natural person who, when competent, confers upon another natural person a power of attorney for health care;

(21) Reasonably available means readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of an individual's health care needs;

(22) State means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States;

(23) Surrogate means a natural person who is authorized under section 30-604 to make a health care decision on behalf of an individual when a guardian or an agent under a power of attorney for health care has not been appointed or otherwise designated for such individual;

(24) Terminal condition means a medical condition caused by injury, disease, or physical illness which, to a reasonable degree of medical certainty, will result in death within six months regardless of the continued application of medical treatment, including life-sustaining procedures; and

(25) Usual and typical provision of nutrition and hydration means delivery of food and fluids orally, including by cup, eating utensil, bottle, or drinking straw.

Source: Laws 2018, LB104, § 3.

Cross References

Health Care Facility Licensure Act, see section 71-401.
Rights of the Terminally Ill Act, see section 20-401.
Uniform Credentialing Act, see section 38-101.

30-604 Surrogate; powers; designation of surrogate; priorities; consensus; meeting; continuation of authority; disqualification of surrogate.

(1) A surrogate may make a health care decision for an individual if the individual has been determined to be incapable by the primary health care provider and no agent or guardian has been appointed for the individual. A determination that an individual is incapable of making a health care decision shall not be construed as a finding that the individual is incapable for any other purpose.

(2)(a) An individual may designate a natural person to act as surrogate for the individual by personally informing the primary health care provider.

(b) If an individual has not designated a surrogate and there is no power of attorney for health care or court-appointed guardian for the individual, any member of the following classes of natural persons, in the following order of priority, may act as surrogate for the individual if such person is reasonably available at the time the health care decision is to be made on behalf of the individual and if such person has not been disqualified under the Health Care Surrogacy Act:

(i) The individual's spouse unless legally separated from the individual or unless proceedings are pending for divorce, annulment, or legal separation between the individual and his or her spouse;

(ii) A child of the individual who is an adult or an emancipated minor;

(iii) A parent of the individual; or

(iv) A brother or sister of the individual who is an adult or an emancipated minor.

(c) A person in a class with greater priority to serve as a surrogate may decline to serve as surrogate by informing the primary health care provider of that fact. Such fact shall be noted in the individual's medical record.

(d) The primary health care provider may use discretion to disqualify a person who would otherwise be eligible to act as a surrogate based on the priority listed in subdivision (b) of this subsection if the provider has documented or otherwise clear and convincing evidence of an abusive relationship or documented or otherwise clear and convincing evidence of another basis for finding that the potential surrogate is not acting on behalf of or in the best interests of the individual. Any evidence so used to disqualify a person from acting as a surrogate shall be documented in full in the individual's medical record.

(3) A person who has exhibited special care and concern for the individual, who is familiar with the individual's personal values, and who is reasonably available to act as a surrogate is eligible to act as a surrogate under subsection (2) of this section.

(4) A surrogate shall communicate his or her assumption of authority as promptly as possible to the members of the individual's family specified in subsection (2) of this section who can be readily contacted.

(5)(a) If more than one member of a class having priority has authority to act as an individual's surrogate, such persons may act as the individual's surrogate and any of such persons may be identified as one of the individual's surrogates by the primary health care provider within the individual's medical record, so long as such persons are in agreement about the health care decision to be made on behalf of the individual and attest to such agreement in a writing signed and dated by all persons claiming the authority and provided to the primary health care provider for inclusion with the individual's medical record.

(b)(i) If two or more members of a class having the same priority claim authority to act as an individual's surrogate and such persons are not in agreement about one or more health care decisions to be made on the individual's behalf, the persons claiming authority shall confer with each other for purposes of arriving at consensus regarding the health care decision to be made in light of the individual's known desires about health care, the individual's personal values, the individual's religious or moral beliefs, and the individual's best interests. Each person claiming authority to act as an individual's surrogate shall inform the primary health care provider about his or her claim and priority under the Health Care Surrogacy Act, the claim of any other person within the same class, the nature of the disagreement regarding the health care decision, and the efforts made by such person to reach agreement between and among other persons claiming authority to act as the individual's surrogate.

(ii) To the extent possible, the primary health care provider shall seek a consensus of the persons claiming authority to act as the individual's surrogate. The primary health care provider may convene a meeting of such persons with the primary health care provider and, as available and appropriate, other health care personnel involved in the individual's care for purposes of reviewing and discussing the individual's condition, prognosis, and options for treatment, the risks, benefits, or burdens of such options, the individual's known desires about health care, the individual's personal values, the individual's religious or moral beliefs, and the individual's best interests. If reasonably available, the primary health care provider may include members of other classes of priority in such meeting to hear and participate in the discussion.

(iii) The primary health care provider, in his or her discretion or at the request of the persons claiming authority as the individual's surrogate, may also seek the assistance of other health care providers or the ethics committee or ethics consultation process of the health care facility or another health care entity to facilitate the meeting.

(iv) If a consensus about the health care decisions to be made on behalf of the individual cannot be attained between the persons of the same class of priority claiming authority to act as the individual's surrogate to enable a timely decision to be made on behalf of the individual, then such persons shall be deemed disqualified to make health care decisions on behalf of the individual. The primary health care provider may then confer with other persons in the same class or within the other classes of lower priority consistent with subsection (2) of this section who may be reasonably available to make health care decisions on behalf of the individual.

(v) If no other person is reasonably available to act as a surrogate on behalf of the individual, then the primary health care provider may, consistent with the Health Care Surrogacy Act, take actions or decline to take actions determined by the primary health care provider to be appropriate, to be in accordance with the individual's personal values, if known, and moral and religious beliefs, if known, and to be in the best interests of the individual.

(6) A surrogate's authority shall continue in effect until the earlier of any of the following:

(a) A guardian is appointed for the individual;

(b) The primary health care provider determines that the individual is capable of making his or her own health care decision;

(c) A person with higher priority to act as a surrogate under subsection (2) of this section becomes reasonably available;

(d) The individual is transferred to another health care facility; or

(e) The death of the individual.

(7)(a) An individual, if able to communicate the same, may disqualify another person from serving as the individual's surrogate, including a member of the individual's family, by a signed and dated writing or by personally informing the primary health care provider and a witness of the disqualification. In order to be a witness under this subdivision, a person shall be an adult or emancipated minor who is not among the persons who may serve as a surrogate under subsection (2) of this section.

(b) When the existence of a disqualification under this subsection becomes known, it shall be made a part of the individual's medical record at the health

care facility in which the individual is a patient or resides. The disqualification of a person to serve as a surrogate shall not revoke or terminate the authority as to a surrogate who acts in good faith under the surrogacy and without actual knowledge of the disqualification. An action taken in good faith and without actual knowledge of the disqualification of a person to serve as the individual's surrogate under this subsection, unless the action is otherwise invalid or unenforceable, shall bind the individual and his or her heirs, devisees, and personal representatives.

(8) A primary health care provider may require a person claiming the right to act as surrogate for an individual to provide a written declaration under penalty of perjury stating facts and circumstances reasonably sufficient to establish that person's claimed authority.

(9) The authority of a surrogate shall not supersede any other advance health care directive.

Source: Laws 2018, LB104, § 4.

30-605 Persons disqualified to serve as surrogate.

Unless related to the individual by blood, marriage, or adoption, a surrogate may not be an owner, operator, or employee of a health care facility at which the individual is residing or receiving health care or a facility or an institution of the Department of Correctional Services or the Department of Health and Human Services to which the individual has been committed.

Source: Laws 2018, LB104, § 5.

30-606 Incapability; determination; documentation.

(1) A determination that an individual is incapable of making a health care decision shall be made in writing by the primary health care provider and any physician consulted with respect to such determination, and the physician or physicians shall document the cause and nature of the individual's incapability. The determination shall be included in the individual's medical record with the primary health care provider and, when applicable, with the consulting physician and the health care facility in which the individual is a patient or resides. When a surrogate has been designated or determined pursuant to section 30-604, the surrogate shall be included in the individual's medical record.

(2) A physician who has been designated an individual's surrogate shall not make the determination that the individual is incapable of making health care decisions.

Source: Laws 2018, LB104, § 6.

30-607 Notice.

Notice of a determination that an individual is incapable of making health care decisions shall be given by the primary health care provider (1) to the individual when there is any indication of the individual's ability to comprehend such notice, (2) to the surrogate, and (3) to the health care facility.

Source: Laws 2018, LB104, § 7.

30-608 County court procedure; petition; guardian ad litem; hearing.

If a dispute arises as to whether the individual is incapable, a petition may be filed with the county court in the county in which the individual resides or is located requesting the court's determination as to whether the individual is incapable of making health care decisions. If such a petition is filed, the court shall appoint a guardian ad litem to represent the individual. The court shall conduct a hearing on the petition within seven days after the court's receipt of the petition. Within seven days after the hearing, the court shall issue its determination. If the court determines that the individual is incapable, the authority, rights, and responsibilities of the individual's surrogate shall become effective. If the court determines that the individual is capable, the authority, rights, and responsibilities of the surrogate shall not become effective.

Source: Laws 2018, LB104, § 8.

30-609 Surrogate; powers; objection to surrogate decision; how treated.

(1) When the authority conferred on a surrogate under the Health Care Surrogacy Act has commenced, the surrogate, subject to any individual instructions, shall make health care decisions on the individual's behalf, except that the surrogate shall not have authority (a) to consent to any act or omission to which the individual could not consent under law, (b) to make any decision when the individual is known to be pregnant that will result in the death of the individual's unborn child if it is probable that the unborn child will develop to the point of live birth with continued application of health care, or (c) to make decisions regarding withholding or withdrawing a life-sustaining procedure or withholding or withdrawing artificially administered nutrition or hydration except as provided under section 30-610.

(2) If no agent or guardian has been appointed for the individual, the surrogate shall have priority over any person other than the individual to act for the individual in all health care decisions, except that the surrogate shall not have the authority to make any health care decision unless and until the individual has been determined to be incapable of making health care decisions pursuant to section 30-606.

(3) A person who would not otherwise be personally responsible for the cost of health care provided to the individual shall not become personally responsible for such cost because he or she has acted as the individual's surrogate.

(4) Except to the extent that the right is limited by the individual, a surrogate shall have the same right as the individual to receive information regarding the proposed health care, to receive and review medical and clinical records, and to consent to the disclosures of such records, except that the right to access such records shall not be a waiver of any evidentiary privilege.

(5) Notwithstanding a determination pursuant to section 30-606 that the individual is incapable of making health care decisions, when the individual objects to the determination or to a health care decision made by a surrogate, the individual's objection or decision shall prevail unless the individual is determined by a county court to be incapable of making health care decisions.

Source: Laws 2018, LB104, § 9.

30-610 Surrogate; duties.

(1) In exercising authority under the Health Care Surrogacy Act, a surrogate shall have a duty to consult with medical personnel, including the primary

health care provider, and thereupon to make health care decisions (a) in accordance with the individual instructions or the individual's wishes as otherwise made known to the surrogate or (b) if the individual's wishes are not reasonably known and cannot with reasonable diligence be ascertained, in accordance with the individual's best interests, with due regard for the individual's religious and moral beliefs if known.

(2) Notwithstanding subdivision (1)(b) of this section, the surrogate shall not have the authority to consent to the withholding or withdrawing of a life-sustaining procedure or artificially administered nutrition or hydration unless (a) the individual is suffering from a terminal condition or is in a persistent vegetative state and such procedure or care would be an extraordinary or disproportionate means of medical treatment to the individual and (b) the individual explicitly grants such authority to the surrogate and the intent of the individual to have life-sustaining procedures or artificially administered nutrition or hydration withheld or withdrawn under such circumstances is established by clear and convincing evidence.

(3) In exercising any decision, the surrogate shall have no authority to withhold or withdraw consent to routine care necessary to maintain patient comfort or the usual and typical provision of nutrition and hydration.

Source: Laws 2018, LB104, § 10.

30-611 Primary health care provider; duties.

Before acting upon a health care decision made by a surrogate, other than those decisions made at or about the time of the initial determination of incapacity, the primary health care provider shall confirm that the individual continues to be incapable. The confirmation shall be stated in writing and shall be included in the individual's medical records. The notice requirements set forth in section 30-607 shall not apply to the confirmation required by this section.

Source: Laws 2018, LB104, § 11.

30-612 Petition; purposes; filed with county court.

(1) A petition may be filed for any one or more of the following purposes:

(a) To determine whether the authority of a surrogate under the Health Care Surrogacy Act is in effect or has been revoked or terminated;

(b) To determine whether the acts or proposed acts of a surrogate are consistent with the individual instruction or the individual's wishes as expressed or otherwise established by clear and convincing evidence or, when the wishes of the individual are unknown, whether the acts or proposed acts of the surrogate are clearly contrary to the best interests of the individual;

(c) To declare that the authority of a surrogate is revoked upon a determination by the court that the surrogate made or proposed to make a health care decision for the individual that authorized an illegal act or omission; or

(d) To declare that the authority of a surrogate is revoked upon a determination by the court of both of the following: (i) That the surrogate has violated, failed to perform, or is unable to perform the duty to act in a manner consistent with the individual instruction or the wishes of the individual or, when the desires of the individual are unknown, to act in a manner that is in the best interests of the individual; and (ii) that at the time of the determination by the

court, the individual is unable to disqualify the surrogate as provided in subsection (7) of section 30-604.

(2) A petition under this section shall be filed with the county court of the county in which the individual resides or is located.

Source: Laws 2018, LB104, § 12.

30-613 Person eligible to file petition.

A petition under section 30-608 or 30-612 may be filed by any of the following:

(1) The individual;

(2) The surrogate;

(3) The spouse, parent, sibling, or child of the individual who is an adult or an emancipated minor;

(4) A close friend of the individual who is an adult or an emancipated minor;

(5) The primary health care provider or another health care provider; or

(6) Any other interested party.

Source: Laws 2018, LB104, § 13.

30-614 Liability for criminal offense; civil liability; violation of professional oath or code of ethics.

(1) A surrogate shall not be guilty of any criminal offense, subject to any civil liability, or in violation of any professional oath or code of ethics or conduct for any action taken in good faith pursuant to the Health Care Surrogacy Act.

(2) No primary health care provider, other health care provider, or health care facility shall be subject to criminal prosecution, civil liability, or professional disciplinary action for acting or declining to act in reliance upon the decision made by a person whom the primary health care provider or other health care provider in good faith believes is the surrogate. This subsection does not limit the liability of a primary health care provider, other health care provider, or health care facility for a negligent act or omission in connection with the medical diagnosis, treatment, or care of the individual.

Source: Laws 2018, LB104, § 14.

30-615 Individual's rights.

The existence of a surrogate for an individual under the Health Care Surrogacy Act does not waive the right of the individual to routine hygiene, nursing, and comfort care and the usual and typical provision of nutrition and hydration.

Source: Laws 2018, LB104, § 15.

30-616 Health care provider; exercise medical judgment.

In following the decision of a surrogate, a health care provider shall exercise the same independent medical judgment that the health care provider would exercise in following the decision of the individual if the individual were not incapable.

Source: Laws 2018, LB104, § 16.

30-617 Health care facility; rights; health care provider; rights.

(1) Nothing in the Health Care Surrogacy Act obligates a health care facility to honor a health care decision by a surrogate that the health care facility would not honor if the decision had been made by the individual because the decision is contrary to a formally adopted policy of the health care facility that is expressly based on religious beliefs or sincerely held ethical or moral convictions central to the operating principles of the health care facility. The health care facility may refuse to honor the decision whether made by the individual or by the surrogate if the health care facility has informed the individual or the surrogate of such policy, if reasonably possible. If the surrogate is unable or unwilling to arrange a transfer to another health care facility, the health care facility refusing to honor the decision may intervene to facilitate such a transfer.

(2) Nothing in the Health Care Surrogacy Act obligates a health care provider to honor or cooperate with a health care decision by a surrogate that the health care provider would not honor or cooperate with if the decision had been made by the individual because the decision is contrary to the health care provider's religious beliefs or sincerely held moral or ethical convictions. The health care provider shall promptly inform the surrogate and the health care facility of his or her refusal to honor or cooperate with the decision of the surrogate. In such event, the health care facility shall promptly assist in the transfer of the individual to a health care provider selected by the individual or the surrogate.

Source: Laws 2018, LB104, § 17.

30-618 Attempted suicide; how construed.

For purposes of making health care decisions, an attempted suicide by an individual shall not be construed as any indication of his or her wishes with regard to health care.

Source: Laws 2018, LB104, § 18.

30-619 Prohibited acts; penalties.

(1) It shall be a Class II felony for a person to willfully conceal or destroy evidence of any person's disqualification as a surrogate under the Health Care Surrogacy Act with the intent and effect of causing the withholding or withdrawing of life-sustaining procedures or artificially administered nutrition or hydration which hastens the death of the individual.

(2) It shall be a Class I misdemeanor for a person without the authorization of the individual to willfully alter, forge, conceal, or destroy evidence of an advance health care directive, appointment of a guardian, appointment of an agent for the individual under a power of attorney for health care, or evidence of disqualification of any person as a surrogate under the Health Care Surrogacy Act.

(3) A physician or other health care provider who willfully prevents the transfer of an individual in accordance with section 30-617 with the intention of avoiding the provisions of the Health Care Surrogacy Act shall be guilty of a Class I misdemeanor.

Source: Laws 2018, LB104, § 19.

ARTICLE 7
FAMILY VISITATION

Section
30-701. Terms, defined.
30-702. Legislative intent.
30-703. Petition to compel visitation; court findings; factors.
30-704. Emergency hearing; temporary orders.
30-705. Costs and attorney's fees; remedies.
30-706. Petition; contents; confidential; stay; when.
30-707. Simultaneous proceedings; how treated.
30-708. Appointment of guardian ad litem or visitor.
30-709. Jurisdiction; venue; court rules; notice; appeal; retention of jurisdiction.
30-710. Order; appeal.
30-711. Court; examine evidence; issue discovery orders.
30-712. Visitation schedule; civil contempt; remedies.
30-713. Burden of proof.

30-701 Terms, defined.

For purposes of sections 30-701 to 30-713:

(1) Adult child means an individual who is at least nineteen years of age and who is related to a resident biologically, through adoption, through the marriage or former marriage of the resident to the biological parent of the adult child, or by a judgment of parentage entered by a court of competent jurisdiction;

(2) Caregiver means a guardian, a designee under a power of attorney for health care, or another person or entity denying visitation access between a family member petitioner and a resident;

(3) Family member petitioner means the spouse, adult child, adult grandchild, parent, grandparent, sibling, aunt, uncle, niece, nephew, cousin, or domestic partner of a resident;

(4) Guardian ad litem has the definition found in section 30-2601;

(5) Isolation has the definition found in section 28-358.01;

(6) Resident means an adult resident of:

(a) A health care facility as defined in section 71-413; or

(b) Any home or other residential dwelling in which the resident is receiving care and services from any person;

(7) Visitation means an in-person meeting or any telephonic, written, or electronic communication; and

(8) Visitor means a person appointed pursuant to section 30-2619.01.

Source: Laws 2017, LB122, § 1; R.S.Supp.,2017, § 42-1301; Laws 2018, LB845, § 1.

30-702 Legislative intent.

It is the intent of the Legislature that, in order to allow family member petitioners to remain connected, a caregiver may not arbitrarily deny visitation to a family member petitioner of a resident, whether or not the caregiver is

related to such family member petitioner, unless such action is authorized by a nursing home administrator pursuant to section 71-6021.

Source: Laws 2017, LB122, § 2; R.S.Supp.,2017, § 42-1302; Laws 2018, LB845, § 2.

30-703 Petition to compel visitation; court findings; factors.

(1) If a family member petitioner is being denied visitation with a resident, the family member petitioner may petition the county court to compel visitation with the resident. If a guardian has been appointed for the resident under the jurisdiction of a county court, the petition shall be filed in the county court having such jurisdiction. If there is no such guardianship, the petition shall be filed in the county court for the county in which the resident resides. The court may not issue an order compelling visitation if the court finds any of the following:

(a) The resident, while having the capacity to evaluate and communicate decisions regarding visitation, expresses a desire to not have visitation with the family member petitioner; or

(b) Visitation between the family member petitioner and the resident is not in the best interests of the resident.

(2) In determining whether visitation between the family member petitioner and the resident has been arbitrarily denied, the court may consider factors including, but not limited to:

(a) The nature of relationship of the family member petitioner and the resident;

(b) The place where visitation rights will be exercised;

(c) The frequency and duration of the visits;

(d) The likely effect of visitation on the resident; and

(e) The likelihood of onerously disrupting established lifestyle of the resident.

Source: Laws 2018, LB845, § 3.

30-704 Emergency hearing; temporary orders.

If the petition filed pursuant to section 30-703 states that the resident's health is in significant decline or that the resident's death may be imminent, the court shall conduct an emergency hearing on the petition as soon as practicable and in no case later than ten days after the date the petition is served upon the resident and the caregiver. Each party to a contested proceeding for an emergency order relating to visitation under this section shall offer a verified information affidavit as an exhibit at the hearing before the court. If the allegations made under this section to request an emergency hearing are not made with probable cause, the court may order appropriate remedies under section 30-705. Temporary orders may be issued in the same manner as provided for guardianships. Temporary orders shall expire ninety days after the entry of the temporary order unless good cause is shown for continuation.

Source: Laws 2017, LB122, § 3; R.S.Supp.,2017, § 42-1303; Laws 2018, LB845, § 4.

30-705 Costs and attorney's fees; remedies.

(1) Upon a motion by a party or upon the court's own motion, if the court finds during a hearing pursuant to section 30-704 that a person is knowingly isolating the resident from visitation by a family member petitioner, the court may order such person to pay court costs and reasonable attorney's fees of the family member petitioner and may order other appropriate remedies.

(2) No costs, fees, or other sanctions may be paid from the resident's finances or estate.

(3) If the court determines that the family member petitioner did not have probable cause for filing the petition, the court may order the family member petitioner to pay court costs and reasonable attorney's fees of the other parties and may order other appropriate remedies.

(4) Remedies may include the payment of the fees and costs of a visitor or a guardian ad litem.

(5) An order may be entered prohibiting the family member petitioner from filing another petition under sections 30-701 to 30-713 in any court in this state for any period of time determined appropriate by the court for up to one year.

Source: Laws 2017, LB122, § 4; R.S.Supp.,2017, § 42-1304; Laws 2018, LB845, § 5.

30-706 Petition; contents; confidential; stay; when.

(1) Any action under sections 30-701 to 30-713 shall be commenced by filing in the county court a verified petition described in section 30-703. The family member petitioner shall include, if reasonably ascertainable under oath, the places where the resident has resided and the names and present addresses of the persons with whom the resident has lived during the previous five years. The petition shall include a statement under oath identifying whether:

(a) The family member petitioner has participated as a party, as a witness, or in any other capacity or in any other proceeding concerning custody or visitation with the resident and if so, identify the court, the case number, and the date of any order which may affect visitation;

(b) The family member petitioner knows of any proceeding that could affect the current proceeding relating to domestic violence, a protective order, termination of parental rights, adoption, guardianship, conservatorship, or habeas corpus or any other civil or criminal proceeding, and if so, identify the court, the case number, and the date of any order which may affect visitation;

(c) The family member petitioner knows the name and address of any person not a party to the proceeding who has physical custody of, is residing with, or is providing residential services to the resident and if so, the name and address of such person;

(d) The resident needs a guardian ad litem or a visitor appointed;

(e) Any other state would have jurisdiction under the Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act;

(f) A bond or probation condition exists which would affect the case; and

(g) The family member petitioner has filed petitions under section 30-703 within the preceding five years and if so, the court, the case number, and the date of any order resolving the prior petitions.

(2) Any matters which may be confidential under court rule or statute shall be filed as a confidential document for review by the court as to whether such matters shall remain filed as confidential matters.

(3) If the information required by subsection (1) of this section is not furnished, the court, upon the motion of a party or its own motion, may stay the proceeding until the information is furnished.

Source: Laws 2018, LB845, § 6.

Cross References

Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, see section 30-3901.

30-707 Simultaneous proceedings; how treated.

Any proceeding involving a guardianship, conservatorship, power of attorney for health care decisions, or power of attorney granted by the resident may continue in the trial court while an appeal is pending from an order granted under sections 30-701 to 30-713.

Source: Laws 2018, LB845, § 7.

30-708 Appointment of guardian ad litem or visitor.

At any point in a proceeding under sections 30-701 to 30-713, the court may appoint a guardian ad litem or a visitor.

Source: Laws 2018, LB845, § 8.

30-709 Jurisdiction; venue; court rules; notice; appeal; retention of jurisdiction.

(1) Jurisdiction under sections 30-701 to 30-713 applies to any resident who is in this state or for whom the provisions of the Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act vests authority over such resident in the courts of this state in a guardianship.

(2) Venue shall be determined pursuant to sections 30-703 and 30-2212.

(3) The Supreme Court shall have the authority pursuant to section 30-2213 to establish rules to carry into effect the provisions of sections 30-701 to 30-713.

(4) The notice provisions of section 30-2220 shall apply to a proceeding under sections 30-701 to 30-713.

(5) When final orders relating to proceedings under sections 30-701 to 30-713 are on appeal and such appeal is pending, the court that issued such orders shall retain jurisdiction to provide for such orders regarding visitation or other access or to prevent irreparable harm during the pendency of such appeal or other appropriate orders in aid of the appeal process. Such orders shall not be construed to prejudice any party on appeal.

Source: Laws 2018, LB845, § 9.

Cross References

Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, see section 30-3901.

30-710 Order; appeal.

Any order that is not intended as interlocutory or temporary under sections 30-701 to 30-713 shall be a final, appealable order. Such order may be appealed to the Court of Appeals in the same manner as an appeal from the

district court directly to the Court of Appeals. The Court of Appeals shall conduct its review in an expedited manner and shall render its judgment and write its opinion, if any, as speedily as possible. The court may modify an existing order granting such visitation upon a showing that there has been a material change in circumstances which justifies such modification and that the modification would serve the best interests of the resident.

Source: Laws 2018, LB845, § 10.

30-711 Court; examine evidence; issue discovery orders.

In a proceeding under sections 30-701 to 30-713, the court may examine any medical evidence in camera or issue any protective discovery orders needed to comply with the provisions of the federal Health Insurance Portability and Accountability Act of 1996, any regulations promulgated under such federal act, or any other provision of law.

Source: Laws 2018, LB845, § 11.

30-712 Visitation schedule; civil contempt; remedies.

If the court enters a visitation order in a proceeding under sections 30-701 to 30-713, it may set out a visitation schedule including the time, place, and manner of visitation. Failure to comply with the order may be the subject of a civil contempt proceeding and may be subject to remedies under section 30-705. The court may provide for an expiration date or a review date in its order, and such a provision does not affect the appealability of an order under section 30-710.

Source: Laws 2018, LB845, § 12.

30-713 Burden of proof.

In a proceeding under sections 30-701 to 30-712, the burden of proof is upon the family member petitioner to establish his or her case by a preponderance of the evidence.

Source: Laws 2018, LB845, § 13.

ARTICLE 9

BANKING TRANSACTIONS INVOLVING TRUST OR ESTATE ASSETS

Section
30-901. Copersonal representatives, cotrustees, coguardians, or coconservators; authority to act.

30-901 Copersonal representatives, cotrustees, coguardians, or coconservators; authority to act.

On and after January 1, 2020, in any case in which copersonal representatives, cotrustees, coguardians, or coconservators have been appointed, unless specifically restricted in a will, a trust, or an order of appointment, such copersonal representatives, cotrustees, coguardians, or coconservators shall have the authority to act independently with respect to, and shall not be required to act in concert with respect to, banking transactions involving trust or estate assets.

Source: Laws 2019, LB55, § 2.

ARTICLE 16
APPEALS IN PROBATE MATTERS

30-1601 Appeal; procedure; operate as supersedeas; when; appellant; pay costs; when.

(1) In all matters arising under the Nebraska Probate Code, in all matters in county court arising under the Nebraska Uniform Trust Code, and in all matters in county court arising under the Health Care Surrogacy Act, appeals may be taken to the Court of Appeals in the same manner as an appeal from district court to the Court of Appeals.

(2) An appeal may be taken by any party and may also be taken by any person against whom the final judgment or final order may be made or who may be affected thereby.

(3) When the appeal is by someone other than a personal representative, conservator, trustee, guardian, guardian ad litem, or surrogate pursuant to the Health Care Surrogacy Act the appealing party shall, within thirty days after the entry of the judgment or final order complained of, deposit with the clerk of the county court a supersedeas bond or undertaking in such sum as the court shall direct, with at least one good and sufficient surety approved by the court, conditioned that the appellant will satisfy any judgment and costs that may be adjudged against him or her, including costs under subsection (6) of this section, unless the court directs that no bond or undertaking need be deposited. If an appellant fails to comply with this subsection, the Court of Appeals on motion and notice may take such action, including dismissal of the appeal, as is just.

(4) The appeal shall be a supersedeas for the matter from which the appeal is specifically taken, but not for any other matter. In appeals pursuant to sections 30-2601 to 30-2661, upon motion of any party to the action, the county court may remove the supersedeas or require the appealing party to deposit with the clerk of the county court a bond or other security approved by the court in an amount and conditioned in accordance with sections 30-2640 and 30-2641. Once the appeal is perfected, the court having jurisdiction over the appeal may, upon motion of any party to the action, reimpose or remove the supersedeas or require the appealing party to deposit with the clerk of the court a bond or other security approved by the court in an amount and conditioned in accordance with sections 30-2640 and 30-2641. Upon motion of any interested person or upon the court's own motion, the county court may appoint a special guardian or conservator pending appeal despite any supersedeas order.

(5) The judgment of the Court of Appeals shall not vacate the judgment in the county court. The judgment of the Court of Appeals shall be certified without cost to the county court for further proceedings consistent with the determination of the Court of Appeals.

(6) If it appears to the Court of Appeals that an appeal was taken vexatiously or for delay, the court shall adjudge that the appellant shall pay the cost thereof, including an attorney's fee, to the adverse party in an amount fixed by the Court of Appeals, and any bond required under subsection (3) of this section

shall be liable for the costs. In a proceeding under sections 30-701 to 30-713, the Court of Appeals may also order remedies under section 30-705.

Source: Laws 1881, c. 47, § 1, p. 227; R.S.1913, § 1526; C.S.1922, § 1471; C.S.1929, § 30-1601; R.S.1943, § 30-1601; Laws 1975, LB 481, § 14; Laws 1981, LB 42, § 17; Laws 1995, LB 538, § 7; Laws 1997, LB 466, § 1; Laws 1999, LB 43, § 18; Laws 2003, LB 130, § 119; Laws 2011, LB157, § 4; Laws 2018, LB104, § 21; Laws 2018, LB845, § 14.

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.

ARTICLE 22

PROBATE JURISDICTION

PART 1
SHORT TITLE, CONSTRUCTION, GENERAL PROVISIONS

Section
30-2201. Short title.

PART 1

SHORT TITLE, CONSTRUCTION, GENERAL PROVISIONS

30-2201 Short title.

Sections 30-401 to 30-406, 30-701 to 30-713, 30-2201 to 30-2902, 30-3901 to 30-3923, 30-4001 to 30-4045, and 30-4201 to 30-4210 and the Public Guardianship Act shall be known and may be cited as the Nebraska Probate Code.

Source: Laws 1974, LB 354, § 1, UPC § 1-101; Laws 1985, LB 292, § 1; Laws 1993, LB 250, § 33; Laws 1993, LB 782, § 2; Laws 1997, LB 466, § 2; Laws 1999, LB 100, § 1; Laws 2010, LB758, § 1; Laws 2011, LB157, § 28; Laws 2012, LB1113, § 46; Laws 2014, LB788, § 8; Laws 2014, LB920, § 19; Laws 2014, LB998, § 7; Laws 2015, LB43, § 1; Laws 2015, LB422, § 1; Laws 2016, LB934, § 13; Laws 2018, LB845, § 15; Laws 2020, LB966, § 10.

Cross References

Public Guardianship Act, see section 30-4101.

ARTICLE 23

INTESTATE SUCCESSION AND WILLS

PART 1
INTESTATE SUCCESSION

Section
30-2312. Alienage; conditions.
30-2312.01. Related by two lines of relationship; single share.
30-2312.02. Termination of parental rights; effect.

PART 2
ELECTIVE SHARE OF SURVIVING SPOUSE

30-2316. Waiver of right to elect and of other rights; enforceability.

PART 5
WILLS

PART 8
GENERAL PROVISIONS

PART 1

INTESTATE SUCCESSION

30-2312 Alienage; conditions.

No person is disqualified to take as an heir because he or she or a person through whom he or she claims is or has been an alien except as provided in section 4-107 and under the Foreign-owned Real Estate National Security Act.

Source: Laws 1974, LB 354, § 34, UPC § 2-112; Laws 2024, LB1301, § 3.
Operative date January 1, 2025.

Cross References

Foreign-owned Real Estate National Security Act, see section 76-3701.

30-2312.01 Related by two lines of relationship; single share.

An individual who is related to the decedent through two lines of relationship is entitled to only a single share based on the relationship that would entitle the individual to the larger share.

Source: Laws 2020, LB966, § 11.

30-2312.02 Termination of parental rights; effect.

(a) A parent is barred from inheriting from or through a child of the parent if the parent's parental rights were terminated and the parent-child relationship was not judicially reestablished.

(b) For the purpose of intestate succession from or through the deceased child, a parent who is barred from inheriting under this section is treated as if the parent predeceased the child.

Source: Laws 2020, LB966, § 12.

PART 2

ELECTIVE SHARE OF SURVIVING SPOUSE

30-2316 Waiver of right to elect and of other rights; enforceability.

(a) The right of election of a surviving spouse and the rights of the surviving spouse to homestead allowance, exempt property, and family allowance, or any of them, may be waived, wholly or partially, before or after marriage, by a written contract, agreement, or waiver signed by the surviving spouse.

(b) A surviving spouse's waiver is not enforceable if the surviving spouse proves that:

(1) he or she did not execute the waiver voluntarily; or

(2) the waiver was unconscionable when it was executed and, before execution of the waiver, he or she:

(i) was not provided a fair and reasonable disclosure of the property or financial obligations of the decedent;

(ii) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the decedent beyond the disclosure provided; and

(iii) did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the decedent.

(c) An issue of unconscionability of a waiver is for decision by the court as a matter of law.

(d) Unless it provides to the contrary, a waiver of ''all rights'', or equivalent language, in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation, divorce, or annulment is a waiver of all rights to elective share, homestead allowance, exempt property, and family allowance by each spouse in the property of the other and a renunciation by each of all benefits that would otherwise pass to him or her from the other by intestate succession or by virtue of any will executed before the waiver or property settlement.

Source: Laws 1974, LB 354, § 38, UPC § 2-204; Laws 1994, LB 202, § 12; Laws 2018, LB847, § 1.

PART 5

WILLS

30-2333 Revocation by divorce or annulment; no revocation by other changes of circumstances.

(a) For purposes of this section:

(1) Beneficiary, as it relates to a trust beneficiary, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer; as it relates to a charitable trust, includes any person entitled to enforce the trust; and as it relates to a beneficiary of a beneficiary designation, refers to a beneficiary of an insurance or annuity policy, of an account with POD designation as defined in section 30-2716, of a security registered in beneficiary form, of a pension, profit-sharing, retirement, or similar benefit plan, or of any other nonprobate transfer at death;

(2) Beneficiary designated in a governing instrument includes a grantee of a deed, a beneficiary of a transfer on death deed, a transfer-on-death beneficiary, a beneficiary of a POD designation, a devisee, a trust beneficiary, a beneficiary of a beneficiary designation, a donee, appointee, or taker in default of a power of appointment, and a person in whose favor a power of attorney or a power held in any individual, fiduciary, or representative capacity is exercised;

(3) Disposition or appointment of property includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument;

(4) Divorce or annulment means any divorce or annulment, or any dissolution or declaration of invalidity of a marriage, that would exclude the spouse as a surviving spouse within the meaning of section 30-2353. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of this section;

(5) Divorced individual includes an individual whose marriage has been annulled;

(6) Governing instrument means a deed, a will, a trust, an insurance or annuity policy, an account with POD designation, a security registered in beneficiary form, a transfer on death deed, a pension, profit-sharing, retirement, or similar benefit plan, an instrument creating or exercising a power of appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of any similar type, which is executed by the divorced individual before the divorce or annulment of his or her marriage to his or her former spouse;

(7) Joint tenants with the right of survivorship and community property with the right of survivorship includes co-owners of property held under circumstances that entitle one or more to the whole of the property on the death of the other or others, but excludes forms of co-ownership registration in which the underlying ownership of each party is in proportion to that party's contribution;

(8) Payor means a trustee, an insurer, a business entity, an employer, a government, a governmental agency or subdivision, or any other person authorized or obligated by law or a governing instrument to make payments;

(9) Relative of the divorced individual's former spouse means an individual who is related to the divorced individual's former spouse by blood, adoption, or affinity and who, after the divorce or annulment, is not related to the divorced individual by blood, adoption, or affinity; and

(10) Revocable, with respect to a disposition, appointment, provision, or nomination, means one under which the divorced individual, at the time of the divorce or annulment, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of his or her former spouse or former spouse's relative, whether or not the divorced individual was then empowered to designate himself or herself in place of his or her former spouse or in place of his or her former spouse's relative and whether or not the divorced individual then had the capacity to exercise the power.

(b) For purposes of this section, subject to subsection (c) of this section, a person has knowledge of a fact if the person:

(1) Has actual knowledge of it;

(2) Has received a notice or notification of it; or

(3) From all the facts and circumstances known to the person at the time in question, has reason to know it.

(c) An organization that conducts activities through employees has notice or knowledge of a fact only from the time the information was received by an employee having responsibility to act for the organization, or would have been brought to the employee's attention if the organization had exercised reasonable diligence. An organization exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the employee having responsibility to act for the organization and there is reasonable compli-

ance with the routines. Reasonable diligence does not require an employee of the organization to communicate information unless the communication is part of the individual's regular duties or the individual knows a matter involving the organization would be materially affected by the information.

(d) Except as provided by the express terms of a governing instrument, a court order, or a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce, or annulment, the divorce or annulment of a marriage:

(1) Revokes any revocable

(A) disposition or appointment of property made by a divorced individual to his or her former spouse in a governing instrument and any disposition or appointment created by law or in a governing instrument to a relative of the divorced individual's former spouse;

(B) provision in a governing instrument conferring a general or nongeneral power of appointment on the divorced individual's former spouse or on a relative of the divorced individual's former spouse; and

(C) nomination in a governing instrument, nominating a divorced individual's former spouse or a relative of the divorced individual's former spouse to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, conservator, agent, or guardian; and

(2) Severs the interests of the former spouses in property held by them at the time of the divorce or annulment as joint tenants with the right of survivorship, transforming the interests of the former spouses into equal tenancies in common.

(e) A severance under subdivision (d)(2) of this section does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the survivor of the former spouses unless a writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind and location of the property which are relied upon, in the ordinary course of transactions involving such property, as evidence of ownership.

(f) Provisions of a governing instrument are given effect as if the former spouse and relatives of the former spouse disclaimed all provisions revoked by this section or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the former spouse and relatives of the divorced individual's former spouse died immediately before the divorce or annulment.

(g) Provisions revoked solely by this section are revived by the divorced individual's remarriage to the former spouse or by a nullification of the divorce or annulment.

(h) No change of circumstances other than as described in this section and section 30-2354 effects a revocation.

(i)(1)(A) Except as provided in subdivision (i)(1)(B) of this section, a payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by a divorce, annulment, or remarriage, or for having taken any other action in good faith reliance on the validity of the governing instrument, before the payor or other third party received written notice of or has knowledge of the divorce, annulment, or remarriage.

(B) Liability of a payor or other third party which is a financial institution making payment on a jointly owned account or to a beneficiary pursuant to the terms of a governing instrument on an account with a POD designation shall be governed by section 30-2732.

(C) A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed forfeiture, severance, or revocation under this section.

(2) Written notice of the divorce, annulment, or remarriage under subdivision (i)(1)(A) of this section must be mailed to the payor's or other third party's main office or home, be personally delivered to the payor or other third party, or, in the case of written notice to a person other than a financial institution, be delivered by such other means which establish that the person has knowledge of the divorce, annulment, or remarriage. Written notice to a financial institution with respect to a jointly owned account or an account with a POD designation shall be governed by section 30-2732.

(3) Upon receipt of written notice of the divorce, annulment, or remarriage, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court that has jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court that has jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement or transfer in accordance with the determination. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

(j)(1) A person who purchases property from a former spouse, a relative of a former spouse, or any other person for value and without notice, or who receives from a former spouse, a relative of a former spouse, or any other person a payment or other item of property in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, item of property, or benefit nor is liable under this section for the amount of the payment or the value of the item of property or benefit. But a former spouse, relative of a former spouse, or other person who, not for value, received a payment, an item of property, or any other benefit to which that person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

(2) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a former spouse, a relative of a former spouse, or any other person who, not for value, received a payment, an item of property, or any other benefit to which that person is not entitled under this section is obligated to return that payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

(k) If a former spouse has notice of the fact that he or she is a former spouse, then any receipt of property or money to which this section applies is received by the former spouse as a trustee for the person or persons who would be entitled to that property under this section.

Source: Laws 1974, LB 354, § 55, UPC § 2-508; Laws 2017, LB517, § 1.

30-2336 Property owned at death and acquired by estate.

A will may provide for the passage of all property the testator owns at death and all property acquired by the estate after the testator's death.

Source: Laws 2020, LB966, § 13.

PART 8

GENERAL PROVISIONS

30-2353 Effect of divorce, annulment, and decree of separation.

(a) An individual who is divorced from the decedent or whose marriage to the decedent has been dissolved or annulled by a decree that has become final is not a surviving spouse unless, by virtue of a subsequent marriage, he or she is married to the decedent at the time of death. A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section.

(b) For purposes of parts 1, 2, 3, and 4 of this article and of section 30-2412, a surviving spouse does not include:

(1) an individual who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment or dissolution of their marriage, which decree or judgment is not recognized as valid in this state, unless they subsequently participate in a marriage ceremony purporting to marry each to the other, or subsequently live together as man and wife;

(2) an individual who, following an invalid decree or judgment of divorce or annulment or dissolution of marriage obtained by the decedent, participates in a marriage ceremony with a third individual; or

(3) an individual who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights against the decedent.

Source: Laws 1974, LB 354, § 75, UPC § 2-802; Laws 2017, LB517, § 2.

ARTICLE 24

PROBATE OF WILLS AND ADMINISTRATION

PART 3

INFORMAL PROBATE AND APPOINTMENT PROCEEDINGS

PART 4

FORMAL TESTACY AND APPOINTMENT PROCEEDINGS

PART 6

PERSONAL REPRESENTATIVE; APPOINTMENT, CONTROL, AND TERMINATION OF AUTHORITY

PART 7
DUTIES AND POWERS OF PERSONAL REPRESENTATIVES

PART 8
CREDITORS' CLAIMS

PART 12
COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT AND SUMMARY ADMINISTRATION PROCEDURE FOR SMALL ESTATES

PART 13
SUCCESSION TO REAL PROPERTY BY AFFIDAVIT FOR SMALL ESTATES

PART 3

INFORMAL PROBATE AND APPOINTMENT PROCEEDINGS

30-2414 Informal probate or appointment proceedings; application; contents.

Applications for informal probate or informal appointment shall be directed to the registrar and verified by the applicant to be accurate and complete to the best of the applicant's knowledge and belief as to the following information:

(1) Every application for informal probate of a will or for informal appointment of a personal representative, other than a special or successor representative, shall contain the following:

(i) a statement of the interest of the applicant;

(ii) the name and date of death of the decedent, the decedent's age, and the county and state of domicile at the time of death, and the names and addresses of the spouse, children, heirs and devisees and the ages of any who are minors so far as known or ascertainable with reasonable diligence by the applicant;

(iii) if the decedent was not domiciled in the state at the time of death, a statement showing venue;

(iv) a statement identifying and indicating the address of any personal representative of the decedent appointed in this state or elsewhere whose appointment has not been terminated;

(v) a statement indicating whether the applicant has received a demand for notice or is aware of any demand for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere.

(2) An application for informal probate of a will shall state the following in addition to the statements required by subdivision (1) of this section:

(i) that the original of the decedent's last will or an authenticated copy of a will probated in another jurisdiction:

(A) is in the possession of the court;

(B) accompanies the application; or

(C) is in the possession of the applicant, that the applicant will deliver such original or authenticated copy to the court within ten days after the filing of the application, and that a true and accurate copy of such original or authenticated copy accompanies the application;

(ii) that the applicant, to the best of the applicant's knowledge, believes the will to have been validly executed; and

(iii) that after the exercise of reasonable diligence the applicant is unaware of any instrument revoking the will, and that the applicant believes that the instrument which is the subject of the application is the decedent's last will.

(3) An application for informal appointment of a personal representative to administer an estate under a will shall describe the will by date of execution and state the time and place of probate or the pending application or petition for probate. The application for appointment shall adopt the statements in the application or petition for probate and state the name, address and priority for appointment of the person whose appointment is sought.

(4) An application for informal appointment of an administrator in intestacy shall state, in addition to the statements required by subdivision (1) of this section:

(i) that after the exercise of reasonable diligence the applicant is unaware of any unrevoked testamentary instrument relating to property having a situs in this state under section 30-2210, or a statement why any such instrument of which the applicant may be aware is not being probated;

(ii) the priority of the person whose appointment is sought and the names of any other persons having a prior or equal right to the appointment under section 30-2412.

(5) An application for appointment of a personal representative to succeed a personal representative appointed under a different testacy status shall refer to the order in the most recent testacy proceeding, state the name and address of the person whose appointment is sought and of the person whose appointment will be terminated if the application is granted, and describe the priority of the applicant.

(6) An application for appointment of a personal representative to succeed a personal representative who has tendered a resignation as provided in subsection (c) of section 30-2453, or whose appointment has been terminated by death or removal, shall adopt the statements in the application or petition which led to the appointment of the person being succeeded except as specifically changed or corrected, state the name and address of the person who seeks appointment as successor, and describe the priority of the applicant.

Source: Laws 1974, LB 354, § 92, UPC § 3-301; Laws 1978, LB 650, § 9; Laws 2020, LB966, § 14.

30-2416 Informal probate; proof and findings required.

(a) In an informal proceeding for original probate of a will, the registrar shall determine whether:

(1) the application is complete;

(2) the applicant has made oath or affirmation that the statements contained in the application are true to the best of the applicant's knowledge and belief;

(3) the applicant appears from the application to be an interested person as defined in subdivision (21) of section 30-2209;

(4) on the basis of the statements in the application, venue is proper;

(5) either:

(i) an original, duly executed, and apparently unrevoked will is in the registrar's possession; or

(ii) the applicant has represented that an original, duly executed, and apparently unrevoked will is in the applicant's possession, the applicant has provided a true and accurate copy of such original will with the application, and the applicant has represented that the original, duly executed, and apparently unrevoked will will be delivered to the court within ten days after the filing of the application; and

(6) any notice required by section 30-2413 has been given and that the application is not within section 30-2417.

(b) The application shall be denied if it indicates that a personal representative has been appointed in another county of this state or, except as provided in subsection (d) of this section, if it appears that this or another will of the decedent has been the subject of a previous probate order.

(c) A will which appears to have the required signatures and which contains an attestation clause showing that requirements of execution under section 30-2327, 30-2328, or 30-2331 have been met shall be probated without further proof. In other cases, the registrar may assume execution if the will appears to have been properly executed, or the registrar may accept a sworn statement or affidavit of any person having knowledge of the circumstances of execution, whether or not the person was a witness to the will.

(d) Informal probate of a will which has been previously probated elsewhere may be granted at any time upon written application by any interested person, together with deposit of an authenticated copy of the will and of the statement probating it from the office or court where it was first probated.

(e) A will from a place which does not provide for probate of a will after death and which is not eligible for probate under subsection (a) of this section may be probated in this state upon receipt by the registrar of a duly authenticated copy of the will and a duly authenticated certificate of its legal custodian that the copy filed is a true copy and that the will has become operative under the law of the other place.

Source: Laws 1974, LB 354, § 94, UPC § 3-303; Laws 1978, LB 650, § 10; Laws 2020, LB966, § 15.

PART 4

FORMAL TESTACY AND APPOINTMENT PROCEEDINGS

30-2426 Formal testacy or appointment proceedings; petition; contents.

(a) Petitions for formal probate of a will, or for adjudication of intestacy with or without request for appointment of a personal representative, must be directed to the court, request a judicial order after notice and hearing and contain further statements as indicated in this section. A petition for formal probate of a will

(1) requests an order as to the testacy of the decedent in relation to a particular instrument which may or may not have been informally probated and determining the heirs,

(2) contains the statements required for informal applications as stated in subdivisions (1)(i) through (v) of section 30-2414, the statements required by subdivisions (2)(ii) and (iii) of section 30-2414, and

(3) states whether the original of the last will of the decedent is in the possession of the court, accompanies the petition, or has been filed electronically and will be delivered to the court within ten days after the filing of the application.

The petition also must state the contents of the will and indicate that it is lost, destroyed, or otherwise unavailable if the original will or an authenticated copy of the will probated in another jurisdiction:

(i) is not in the possession of the court;

(ii) did not accompany the application; and

(iii) has not been filed electronically, subject to delivery within ten days after the filing of the application.

(b) A petition for adjudication of intestacy and appointment of an administrator in intestacy must request a judicial finding and order that the decedent left no will and determining the heirs, contain the statements required by subdivisions (1) and (4) of section 30-2414 and indicate whether supervised administration is sought. A petition may request an order determining intestacy and heirs without requesting the appointment of an administrator, in which case the statements required by subdivision (4)(ii) of section 30-2414 may be omitted.

Source: Laws 1974, LB 354, § 104, UPC § 3-402; Laws 2020, LB966, § 16.

30-2429.01 Formal testacy proceedings; objection; informal probate; petition to set aside; transfer to district court; procedure; fees.

(1) If there is an objection to probate of a will or if a petition is filed to set aside an informal probate of a will or to prevent informal probate of a will which is the subject of a pending application, the county court shall continue the originally scheduled hearing for at least fourteen days from the date of the hearing. At any time prior to the continued hearing date any party may transfer the proceeding to determine whether the decedent left a valid will to the district court by filing with the county court a notice of transfer, depositing with the clerk of the county court a docket fee of the district court for cases originally commenced in district court, and paying to the clerk of the county court a fee of twenty dollars.

(2) Within ten days of the completion of the requirements of subsection (1) of this section, the clerk of the county court shall transmit to the clerk of the district court a certification of the case file and docket fee.

(3) Upon the filing of the certification as provided in subsection (2) of this section in the district court, such court shall have jurisdiction over the proceeding on the contest. Within thirty days of the filing of such certification, any party may file additional objections.

(4) The district court may order such additional pleadings as necessary and shall thereafter determine whether the decedent left a valid will. Trial shall be to a jury unless a jury is waived by all parties who have filed pleadings in the matter.

(5) The final decision and judgment in the matter transferred shall be certified to the county court, and proceedings shall be had thereon necessary to carry the final decision and judgment into execution.

Source: Laws 1981, LB 42, § 18; Laws 1985, LB 293, § 3; Laws 1992, LB 999, § 1; Laws 2018, LB193, § 64.

PART 6

PERSONAL REPRESENTATIVE; APPOINTMENT, CONTROL, AND TERMINATION OF AUTHORITY

30-2446 Bond required; exceptions; when court may require; required when value of estate will not permit summary procedures.

(1) A bond shall be required of a personal representative unless: (a) The will expressly waives the bond, expressly requests that there be no bond, or waives the requirement of a surety thereon other than the personal representative; (b) all of the heirs, if no will has been probated, or all of the devisees under a will which does not provide for relieving the personal representative of bond in accordance with subdivision (1)(a) of this section, file with the court a written waiver of the bond requirement; (c) a duly appointed guardian or conservator waives bond on behalf of a ward or protected person unless the guardian or conservator is the personal representative; (d) a person eighteen years of age or older waives bond on the person's own behalf; (e) the personal representative is a national banking association, a holder of a banking permit under the laws of this state, or a trust company holding a certificate to engage in trust business from the Department of Banking and Finance; or (f) the petition for formal or informal appointment alleges that the probable value of the entire estate will permit summary procedures under section 30-24,127.

(2) In any case when bond is not required under subsection (1) of this section, the court may, upon petition of any interested person and upon reasonable proof that the interest of the petitioning person is in danger of being lost because of the administration of the estate, require a bond in such amount as the court may direct in order to protect the interest of the petitioner or of the petitioner and others. An heir or devisee who initially waived bond may be a petitioner under this subsection.

(3) If a bond is not initially required because the petition for appointment alleges that the probable value of the entire estate will permit summary procedures under section 30-24,127, and it later appears from the inventory and appraisal that the value of the estate will not permit use of such procedures, then the personal representative shall promptly file a bond unless one is not required for some other reason under subsection (1) of this section.

Source: Laws 1974, LB 354, § 124, UPC § 3-603; Laws 1975, LB 500, § 1; Laws 2024, LB1195, § 3.
Effective date July 19, 2024.

PART 7

DUTIES AND POWERS OF PERSONAL REPRESENTATIVES

30-2478 Corepresentatives; when joint action required.

If two or more persons are appointed corepresentatives and unless the will provides otherwise, the concurrence of all is required on all acts connected with the administration and distribution of the estate. This restriction does not apply when any corepresentative receives and receipts for property due the estate, when the concurrence of all cannot readily be obtained in the time reasonably available for emergency action necessary to preserve the estate, when a corepresentative has been delegated to act for the others, or as provided in section 30-901. Persons dealing with a corepresentative, if actually unaware that another has been appointed to serve with him or her or if advised by the personal representative with whom they deal that he or she has authority to act alone for any of the reasons mentioned herein, are as fully protected as if the person with whom they dealt had been the sole personal representative.

Source: Laws 1974, LB 354, § 156, UPC § 3-717; Laws 2019, LB55, § 1.

PART 8

CREDITORS' CLAIMS

30-2483 Notice to creditors.

(a) Unless notice has already been given under this article and except when an appointment of a personal representative is made pursuant to subdivision (4) of section 30-2408, the clerk of the court upon the appointment of a personal representative shall publish a notice once a week for three successive weeks in a newspaper of general circulation in the county announcing the appointment and the address of the personal representative, and notifying creditors of the estate to present their claims within two months after the date of the first publication of the notice or be forever barred. The first publication shall be made within thirty days after the appointment. The party instituting or maintaining the proceeding or his or her attorney is required to mail the published notice and give proof thereof in accordance with section 25-520.01.

(b) If the decedent was fifty-five years of age or older or resided in a medical institution as defined in subsection (1) of section 68-919, the notice shall also be provided to the Department of Health and Human Services with the decedent's social security number and, if the decedent was predeceased by a spouse, the name and social security number of such spouse. The notice shall be provided to the department in a delivery manner and at an address designated by the department, which manner may include email. The department shall post the acceptable manner of delivering notice on its website. Any notice that fails to conform with such manner is void.

Source: Laws 1974, LB 354, § 161, UPC § 3-801; Laws 1978, LB 650, § 18; Laws 2008, LB928, § 1; Laws 2017, LB268, § 3; Laws 2019, LB593, § 1.

30-2488 Allowance of claims; transfer of certain claims; procedures.

(a) As to claims presented in the manner described in section 30-2486 within the time limit prescribed in section 30-2485, the personal representative may

mail a notice to any claimant stating that the claim has been disallowed. If, after allowing or disallowing a claim, the personal representative changes his or her decision concerning the claim, he or she shall notify the claimant. The personal representative may not change a disallowance of a claim after the time for the claimant to file a petition for allowance or to commence a proceeding on the claim has run and the claim has been barred. Every claim which is disallowed in whole or in part by the personal representative is barred so far as not allowed unless the claimant files a petition for allowance in the court or commences a proceeding against the personal representative not later than sixty days after the mailing of the notice of disallowance or partial allowance if the notice warns the claimant of the impending bar. Failure of the personal representative to mail notice to a claimant of action on his or her claim for sixty days after the time for original presentation of the claim has expired has the effect of a notice of allowance.

(b) At any time within fourteen days of the filing of a petition for allowance of a claim, the personal representative may transfer the claim to the regular docket of the county court by filing with the court a notice of transfer. The county court shall hear and determine the claim in the same manner as actions originally filed in the county court on the regular docket. The county court may order such additional pleadings as are necessary. If the claim is greater than the jurisdictional amount in subdivision (5) of section 24-517 and the personal representative requests transfer of the claim to the district court, upon payment by the personal representative to the clerk of the district court of a docket fee of the district court, the county court shall transfer the claim to the district court as provided in section 25-2706. If the claim is transferred to the district court, a jury trial is allowed unless waived by the parties as provided under section 25-1104.

(c) Upon the petition of the personal representative or of a claimant in a proceeding for the purpose, the court may allow in whole or in part any claim or claims filed with the clerk of the court in due time and not barred by subsection (a) of this section. Notice in this proceeding shall be given to the claimant, the personal representative, and those other persons interested in the estate as the court may direct by order entered at the time the proceeding is commenced.

(d) A final judgment in a proceeding in any court against a personal representative to enforce a claim against a decedent's estate is an allowance of the claim.

(e) Unless otherwise provided in any final judgment in any court entered against the personal representative, allowed claims bear interest at the legal rate for the period commencing sixty days after the time for original presentation of the claim has expired unless based on a contract making a provision for interest, in which case they bear interest in accordance with that provision.

Source: Laws 1974, LB 354, § 166, UPC § 3-806; Laws 1981, LB 42, § 21; Laws 1983, LB 137, § 4; Laws 1991, LB 422, § 4; Laws 2001, LB 269, § 3; Laws 2018, LB193, § 65.

PART 12

COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT AND SUMMARY ADMINISTRATION PROCEDURE FOR SMALL ESTATES

30-24,125 Collection of personal property by affidavit.

(a) Thirty days after the death of a decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action to a person claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor stating:

(1) the value of all of the personal property in the decedent's estate, wherever located, less liens and encumbrances, does not exceed one hundred thousand dollars;

(2) thirty days have elapsed since the death of the decedent as shown in a certified or authenticated copy of the decedent's death certificate attached to the affidavit;

(3) the claiming successor's relationship to the decedent or, if there is no relationship, the basis of the successor's claim to the personal property;

(4) the person or persons claiming as successors under the affidavit swear or affirm that all statements in the affidavit are true and material and further acknowledge that any false statement may subject the person or persons to penalties relating to perjury under section 28-915;

(5) no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and

(6) the claiming successor is entitled to payment or delivery of the property.

(b) A transfer agent of any security shall change the registered ownership on the books of a corporation from the decedent to the successor or successors upon the presentation of an affidavit as provided in subsection (a).

(c) Upon the presentation of an affidavit as provided in subsection (a), the claiming successor may endorse or negotiate any instrument evidencing a debt belonging to the decedent that is a check, draft, or other negotiable instrument that is payable to the decedent or the decedent's estate. Notwithstanding the provisions of section 3-403, 3-417, or 3-420, Uniform Commercial Code, a financial institution accepting such a check, draft, or other negotiable instrument presented for deposit in such manner is discharged from all claims for the amount accepted.

(d)(1) Except as provided in subdivision (d)(2), in addition to compliance with the requirements of subsection (a), a person seeking a transfer of a certificate of title to a motor vehicle, motorboat, all-terrain vehicle, utility-type vehicle, or minibike shall be required to furnish to the Department of Motor Vehicles an affidavit showing applicability of this section and compliance with the requirements of this section to authorize the department to issue a new certificate of title.

(2) After ten years have elapsed since the estate has closed, the Department of Motor Vehicles shall waive the requirements of subdivision (a)(5) if the person seeking a transfer of a certificate of title provides evidence that the estate has closed and a certified authenticated copy of the decedent's death certificate.

Source: Laws 1974, LB 354, § 203, UPC § 3-1201; Laws 1996, LB 909, § 1; Laws 1999, LB 100, § 4; Laws 1999, LB 141, § 6; Laws 2004, LB 560, § 2; Laws 2009, LB35, § 22; Laws 2010, LB650,

§ 2; Laws 2022, LB1124, § 1; Laws 2023, LB157, § 8; Laws 2024, LB1200, § 2.
Operative date April 16, 2024.

PART 13

SUCCESSION TO REAL PROPERTY BY AFFIDAVIT FOR SMALL ESTATES

30-24,129 Succession to real property by affidavit.

(a) Thirty days after the death of a decedent, any person claiming as successor to the decedent's interest in real property in this state may file or cause to be filed on his or her behalf, with the register of deeds office of a county in which the real property of the decedent that is the subject of the affidavit is located, an affidavit describing the real property owned by the decedent and the interest of the decedent in the property. The affidavit shall be signed by all persons claiming as successors or by parties legally acting on their behalf and shall be prima facie evidence of the facts stated in the affidavit. The affidavit shall state:

(1) the value of the decedent's interest in all real property in the decedent's estate located in this state does not exceed one hundred thousand dollars. The value of the decedent's interest shall be determined from the value of the property shown on the assessment rolls for the year in which the decedent died less real estate taxes and interest thereon if any is due at the time of death;

(2) thirty days have elapsed since the death of the decedent as shown in a certified or authenticated copy of the decedent's death certificate attached to the affidavit;

(3) no application or petition for the appointment of a personal representative is pending or has been granted in the State of Nebraska;

(4) the claiming successor is entitled to the real property either by reason of the homestead allowance, exempt property allowance, or family allowance, by intestate succession, or by devise under the will of the decedent. If claiming by devise under the will of the decedent, a copy of such will shall be attached to the affidavit;

(5) the claiming successor has made an investigation and has been unable to determine any subsequent will;

(6) no other person has a right to the interest of the decedent in the described property;

(7) the claiming successor's relationship to the decedent and the value of the entire estate of the decedent subject to probate; and

(8) the person or persons claiming as successors under the affidavit swear or affirm that all statements in the affidavit are true and material and further acknowledge that any false statement may subject the person or persons to penalties relating to perjury under section 28-915.

(b) The recorded affidavit and certified or authenticated copy of the decedent's death certificate shall also be recorded by the claiming successor in any other county in this state in which the real property of the decedent that is the subject of the affidavit is located.

Source: Laws 1999, LB 100, § 2; Laws 2009, LB35, § 23; Laws 2014, LB693, § 1; Laws 2021, LB501, § 62; Laws 2024, LB1195, § 4. Effective date July 19, 2024.

ARTICLE 26

PROTECTION OF PERSONS UNDER DISABILITY AND THEIR PROPERTY

PART 1
GENERAL PROVISIONS

PART 2
GUARDIANS OF MINORS

PART 3
GUARDIANS OF INCAPACITATED PERSONS

PART 4
PROTECTION OF PROPERTY OF PERSONS UNDER DISABILITY AND MINORS

PART 1

GENERAL PROVISIONS

30-2602.02 Guardian or conservator; national criminal history record check; report; waiver by court.

(1) A person, except for a financial institution as that term is defined in section 8-101.03 or its officers, directors, employees, or agents or a trust company, who has been nominated for appointment as a guardian or conservator shall obtain a national criminal history record check through a process approved by the State Court Administrator and a report of the results and file such report with the court at least ten days prior to the appointment hearing date, unless waived or modified by the court (a) for good cause shown by affidavit filed simultaneously with the petition for appointment or (b) in the event the protected person requests an expedited hearing under section 30-2630.01.

(2) An order appointing a guardian or conservator shall not be signed by the judge until such report has been filed with the court and reviewed by the judge. Such report, or the lack thereof, shall be certified either by affidavit or by obtaining a certified copy of the report. No report or national criminal history record check shall be required by the court upon the application of a petitioner for an emergency temporary guardianship or emergency temporary conservatorship. The court may waive the requirements of this section for good cause shown.

Source: Laws 2011, LB157, § 34; Laws 2017, LB140, § 151.

30-2603 Payment or delivery to minor.

Any person under a duty to pay or deliver money or personal property to a minor may perform this duty, in amounts not exceeding forty thousand dollars per annum, by paying or delivering the money or property to:

(1) The minor, if he or she has attained the age of eighteen years or is married;

(2) Any person having the care and custody of the minor with whom the minor resides;

(3) A guardian of the minor; or

(4) A financial institution incident to a deposit in a federally insured savings account in the sole name of the minor and giving notice of the deposit to the minor.

This section does not apply if the person making payment or delivery has actual knowledge that a conservator has been appointed or proceedings for appointment of a conservator of the estate of the minor are pending. The persons, other than the minor or any financial institution under subdivision (4) of this section, receiving money or property for a minor are obligated to apply the money to the support and education of the minor but may not pay themselves except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the minor's support. Any excess sums shall be preserved for future support of the minor, and any balance not so used and any property received for the minor must be turned over to the minor when he or she attains majority. Persons who pay or deliver in accordance with provisions of this section are not responsible for the proper application thereof.

Source: Laws 1974, LB 354, § 221, UPC § 5-103; Laws 1992, LB 1000, § 1; Laws 2006, LB 1115, § 27; Laws 2024, LB1195, § 5. Effective date July 19, 2024.

PART 2

GUARDIANS OF MINORS

30-2608 Natural guardians; court appointment of guardian of minor; stand-by guardian; conditions for appointment; child born out of wedlock; additional considerations; filings.

(a) The father and mother are the natural guardians of their minor children and are duly entitled to their custody and to direct their education, being themselves competent to transact their own business and not otherwise unsuitable. If either dies or is disqualified for acting, or has abandoned his or her family, the guardianship devolves upon the other except as otherwise provided in this section.

(b) In the appointment of a parent as a guardian when the other parent has died and the child was born out of wedlock, the court shall consider the wishes of the deceased parent as expressed in a valid will executed by the deceased parent. If in such valid will the deceased parent designates someone other than the other natural parent as guardian for the minor children, the court shall take into consideration the designation by the deceased parent. In determining whether or not the natural parent should be given priority in awarding custody, the court shall also consider the natural parent's acknowledgment of paternity, payment of child support, and whether the natural parent is a fit, proper, and suitable custodial parent for the child.

(c) The court may appoint a standby guardian for a minor whose parent is chronically ill or near death. The appointment of a guardian under this subsection does not suspend or terminate the parent's parental rights of custody to the minor. The standby guardian's authority would take effect, if the minor is left without a remaining parent, upon (1) the death of the parent, (2) the mental incapacity of the parent, or (3) the physical debilitation and consent of the parent.

(d) The court may appoint a guardian for a minor if all parental rights of custody have been terminated or suspended by prior or current circumstances or prior court order. The juvenile court may appoint a guardian for a child adjudicated to be under subdivision (3)(a) of section 43-247 as provided in section 43-1312.01. A guardian appointed by will as provided in section 30-2606 whose appointment has not been prevented or nullified under section 30-2607 has priority over any guardian who may be appointed by the court, but the court may proceed with an appointment upon a finding that the testamentary guardian has failed to accept the testamentary appointment within thirty days after notice of the guardianship proceeding.

(e) The petition and all other court filings for a guardianship proceeding shall be filed with the clerk of the county court. The party shall state in the petition whether such party requests that the proceeding be heard by the county court or, in cases in which a separate juvenile court already has jurisdiction over the child in need of a guardian under the Nebraska Juvenile Code, such separate juvenile court. Such proceeding is considered a county court proceeding even if heard by a separate juvenile court judge, and an order of the separate juvenile court in such guardianship proceeding has the force and effect of a county court order. The testimony in a guardianship proceeding heard before a separate juvenile court judge shall be preserved as in any other separate juvenile court proceeding.

Source: Laws 1974, LB 354, § 226, UPC § 5-204; Laws 1995, LB 712, § 18; Laws 1998, LB 1041, § 4; Laws 1999, LB 375, § 1; Laws 2014, LB908, § 1; Laws 2018, LB193, § 66.

Cross References

Nebraska Juvenile Code, see section 43-2,129.

PART 3

GUARDIANS OF INCAPACITATED PERSONS

30-2626 Temporary guardians; limited temporary guardians; power of court.

(a)(1) If a person alleged to be incapacitated has no guardian and an emergency exists, the court may, pending notice and hearing, exercise the power of a guardian or enter an ex parte order appointing a temporary guardian to address the emergency. The order and letters of temporary guardianship shall specify the powers and duties of the temporary guardian, limiting the powers and duties to those necessary to address the emergency.

(2)(i) For purposes of this subdivision (a)(2):

(A) Benefits means private or government benefits to which a person alleged to be incapacitated may be entitled; and

(B) Covered county means a county containing a city of the metropolitan class or a city of the primary class.

(ii) Subject to subsection (k) of this section, if a person alleged to be incapacitated has no guardian and an emergency exists, the court in a covered county may, pending notice and hearing, enter an ex parte order appointing a temporary guardian for the limited purpose of assisting the person in applying for, validating, and facilitating eligibility for benefits.

(iii) The limited temporary guardian may access personal and financial records of such person as necessary to apply for, validate, and facilitate eligibility for benefits. The order and letters of limited temporary guardianship shall limit the powers and duties to those necessary to carry out this subdivision (a)(2).

(iv) Third parties, including, but not limited to, financial institutions, in possession of such person's financial and personal records related to eligibility for benefits shall provide the limited temporary guardian access to such records. Records to which a limited temporary guardian may be entitled include, but are not limited to, records relating to: Checking, savings, or other bank accounts; household expenses; health, life, or other insurance; wages; pensions; annuities; real property; trusts; burial plans; retirement accounts; stocks and bonds; farm and business equipment; motor vehicles, boats, and motor homes; immigration status; land contracts; promissory notes and loans; social security benefits; credit cards; taxes; or any other asset.

(b) When the court takes action to exercise the powers of a guardian or to appoint a temporary guardian under subsection (a) of this section, an expedited hearing shall be held if requested by the person alleged to be incapacitated, or by any interested person, if the request is filed more than ten business days prior to the date set for the hearing on the petition for appointment of the guardian. If an expedited hearing is to be held, the hearing shall be held within ten business days after the request is received. At the hearing on the temporary appointment, the petitioner shall have the burden of showing by a preponderance of the evidence that temporary guardianship continues to be necessary to address the emergency situation. Unless the person alleged to be incapacitated has counsel of his or her own choice, the court may appoint an attorney to represent the person alleged to be incapacitated at the hearing as provided in section 30-2619.

(c) If an expedited hearing is requested, notice shall be served as provided in section 30-2625. The notice shall specify that a temporary guardian has been appointed and shall be given at least twenty-four hours prior to the expedited hearing.

(d) At the expedited hearing, the court may render a judgment authorizing the temporary guardianship to continue beyond the original ten-day period. The judgment shall prescribe the specific powers and duties of the temporary guardian in the letters of temporary guardianship and shall be effective for a single ninety-day period. For good cause shown, the court may extend the temporary guardianship for successive ninety-day periods.

(e)(1) The temporary guardianship shall terminate at the end of the ninety-day period in which the temporary guardianship is valid or at any time prior thereto if the court deems the circumstances leading to the order for temporary guardianship no longer exist or if an order has been entered as a result of a hearing pursuant to section 30-2619 which has been held during the ninety-day period.

(2) When the duties of a limited temporary guardian appointed pursuant to subdivision (a)(2) of this section have not been completed within ninety days, the court shall accept notification by such guardian as good cause for extending the limited temporary guardianship for an additional ninety days.

(f) If the court denies the request for the ex parte order, the court may, in its discretion, enter an order for an expedited hearing pursuant to subsections (b) through (e) of this section.

(g) If the petitioner requests the entry of an order of temporary guardianship pursuant to subsection (a) of this section without requesting an ex parte order, the court may hold an expedited hearing pursuant to subsections (b) through (e) of this section.

(h) If an appointed guardian is not effectively performing his or her duties and the court further finds that the welfare of the incapacitated person requires immediate action, it may, pending notice and hearing in accordance with section 30-2220, appoint a temporary guardian for the incapacitated person for a specified period not to exceed ninety days. For good cause shown, the court may extend the temporary guardianship for successive ninety-day periods. A temporary guardian appointed pursuant to this subsection has only the powers and duties specified in the previously appointed guardian's letters of guardianship, and the authority of any permanent guardian previously appointed by the court is suspended so long as a temporary guardian has authority.

(i) A temporary guardian may be removed at any time. A temporary guardian shall make any report the court requires, except that a temporary guardian shall not be required to provide the check or report under section 30-2602.02. In other respects the provisions of the Nebraska Probate Code concerning guardians apply to temporary guardians.

(j) The court may appoint the Public Guardian as the temporary guardian pursuant to the Public Guardianship Act.

(k)(1) If the Public Guardian is unable to accept appointment as a limited temporary guardian for the purposes described in subdivision (a)(2) of this section because the Public Guardian has exceeded the average ratio described in subsection (2) of section 30-4115, the court shall appoint an individual to serve as a limited temporary guardian. Appointments of such limited temporary guardians shall be subject to the availability of funds appropriated as described in section 81-3141. When such funds have been exhausted in a fiscal year, no further appointments shall be made.

(2) An individual appointed as a limited temporary guardian pursuant to subdivision (a)(2) of this section shall apply to the court for expenses and fees for services performed. The court, upon hearing the application, shall fix reasonable expenses and fees, and the county board shall pay such guardian in the full amount determined by the court. The court shall set such expenses and fees at levels that: (i) Are similar to expenses and fees paid to guardians and guardians ad litem for comparable work in other legal proceedings in the county; and (ii) are intended to incentivize qualified individuals to provide high-quality services as limited temporary guardians.

(3) A county that has paid expenses and fees as provided in subdivision (k)(2) of this section may apply under section 81-3141 for reimbursement.

Source: Laws 1974, LB 354, § 244, UPC § 5-310; Laws 1978, LB 650, § 22; Laws 1993, LB 782, § 9; Laws 1997, LB 466, § 9; Laws 2011, LB157, § 38; Laws 2014, LB920, § 22; Laws 2023, LB157, § 9.

Cross References

Limited Temporary Guardian Aid Program, see section 81-3141.
Public Guardianship Act, see section 30-4101.

PART 4

PROTECTION OF PROPERTY OF PERSONS UNDER DISABILITY AND MINORS

30-2640 Bond.

For estates with a net value of more than ten thousand dollars, the bond for a conservator shall be in the amount of the aggregate capital value of the personal property of the estate in the conservator's control plus one year's estimated income from all sources minus the value of securities and other assets deposited under arrangements requiring an order of the court for their removal. The bond of the conservator shall be conditioned upon the faithful discharge of all duties of the trust according to law, with sureties as the court shall specify. The court, in lieu of sureties on a bond, may accept other security for the performance of the bond, including a pledge of securities or a mortgage of land owned by the conservator. For good cause shown, the court may eliminate the requirement of a bond or decrease or increase the required amount of any such bond previously furnished. The court shall not require a bond if the protected person executed a written, valid power of attorney that specifically nominates a guardian or conservator and specifically does not require a bond. The court shall consider as one of the factors of good cause, when determining whether a bond should be required and the amount thereof, the protected person's choice of any attorney in fact or alternative attorney in fact. No bond shall be required of any financial institution, as that term is defined in section 8-101.03, or any officer, director, employee, or agent of the financial institution serving as a conservator, or any trust company serving as a conservator. The Public Guardian shall not be required to post bond.

Source: Laws 1974, LB 354, § 258, UPC § 5-411; Laws 1985, LB 292, § 4; Laws 2011, LB157, § 43; Laws 2014, LB920, § 26; Laws 2017, LB140, § 152.

ARTICLE 27

NONPROBATE TRANSFERS

PART 1
PROVISIONS RELATING TO EFFECT OF DEATH

Section
30-2715. Nonprobate transfers on death.
30-2715.01. Vehicle or motorboat; transfer on death; certificate of title.

PART 2
MULTIPLE–PERSON ACCOUNTS

SUBPART B
OWNERSHIP AS BETWEEN PARTIES AND OTHERS

30-2723. Rights at death.

PART 3
UNIFORM TOD SECURITY REGISTRATION

30-2734. Definitions.
30-2742. Nontestamentary transfer on death.

PART 1

PROVISIONS RELATING TO EFFECT OF DEATH

30-2715 Nonprobate transfers on death.

(a) Subject to sections 30-2333 and 30-2354, a provision for a nonprobate transfer on death in an insurance policy, contract of employment, bond, mortgage, promissory note, certificated or uncertificated security, account agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust, marital property agreement, certificate of title, or other written instrument of a similar nature is nontestamentary. This subsection includes a written provision that:

(1) money or other benefits due to, controlled by, or owned by a decedent before death must be paid after the decedent's death to a person whom the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument, or later;

(2) money due or to become due under the instrument ceases to be payable in the event of death of the promisee or the promisor before payment or demand; or

(3) any property controlled by or owned by the decedent before death which is the subject of the instrument passes to a person the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument, or later.

(b) This section does not limit rights of creditors under other laws of this state.

Source: Laws 1993, LB 250, § 1; Laws 2010, LB712, § 24; Laws 2017, LB517, § 3.

30-2715.01 Vehicle or motorboat; transfer on death; certificate of title.

(1) Subject to section 30-2333, a person who owns any of the following for which a certificate of title may be issued pursuant to the Motor Vehicle Certificate of Title Act or the State Boat Act may use a transfer-on-death certificate of title as prescribed in this section: A vehicle or a motorboat. Such person may provide for the transfer of such property upon his or her death or the death of the last survivor of a joint tenancy with right of survivorship by including in the certificate of title a designation of beneficiary or beneficiaries to whom such property will be transferred on the death of the owner or the last survivor, subject to the rights of all lienholders, whether created before, simultaneously with, or after the creation of the transfer-on-death interest. A trust may be the beneficiary of a transfer-on-death certificate of title. The certificate of title shall include the name of the owner, the name of any tenant-in-common owner or the name of any joint-tenant-with-right-of-survivorship owner, followed in substance by the words transfer on death to (name of beneficiary or beneficiaries or name of trustee if a trust is to be the beneficiary). The abbreviation TOD may be used instead of the words transfer on death to.

(2) A transfer-on-death beneficiary shall have no interest in such property until the death of the owner or the last survivor of the joint-tenant-with-right-of-survivorship owners. A beneficiary designation may be changed at any time by the owner or by the joint-tenant-with-right-of-survivorship owners then surviv-

ing without the consent of any beneficiary by filing an application for a subsequent certificate of title.

(3) Ownership of property which has a designation of beneficiary as provided in subsection (1) of this section and for which an application for a subsequent certificate of title has not been filed shall vest in the designated beneficiary or beneficiaries on the death of the owner or the last of the joint-tenant-with-right-of-survivorship owners, subject to the rights of all lienholders.

Source: Laws 2010, LB712, § 23; Laws 2017, LB517, § 4; Laws 2022, LB750, § 1.

Cross References

Motor Vehicle Certificate of Title Act, see section 60-101.
State Boat Act, see section 37-1201.

PART 2

MULTIPLE-PERSON ACCOUNTS

SUBPART B

OWNERSHIP AS BETWEEN PARTIES AND OTHERS

30-2723 Rights at death.

(a) Except as otherwise provided in sections 30-2716 to 30-2733, on death of a party sums on deposit in a multiple-party account belong to the surviving party or parties. If two or more parties survive and one is the surviving spouse of the decedent, the amount to which the decedent, immediately before death, was beneficially entitled under section 30-2722 belongs to the surviving spouse. If two or more parties survive and none is the surviving spouse of the decedent, the amount to which the decedent, immediately before death, was beneficially entitled under such section belongs to the surviving parties in equal shares, and augments the proportion to which each survivor, immediately before the decedent's death, was beneficially entitled under section 30-2722, and the right of survivorship continues between the surviving parties.

(b) In an account with a POD designation:

(1) On death of one of two or more parties, the rights in sums on deposit are governed by subsection (a) of this section.

(2)(A) On death of the sole party or the last survivor of two or more parties, sums on deposit belong to the surviving beneficiary or beneficiaries. If two or more beneficiaries survive, sums on deposit belong to them in such proportions as specified in the POD designation or, if the POD designation does not specify different proportions, in equal and undivided shares, and there is no right of survivorship in the event of death of a beneficiary thereafter. If no beneficiary survives, sums on deposit belong to the estate of the last surviving party.

(B) Except as otherwise specified in the POD designation, if there are two or more beneficiaries, and if any beneficiary fails to survive the sole party or the last survivor of two or more parties, sums on deposit belong to the surviving beneficiaries in proportion to their respective interests as beneficiaries under subdivision (2)(A) of this subsection.

(c) Sums on deposit in a single-party account without a POD designation, or in a multiple-party account that, by the terms of the account, is without right of survivorship, are not affected by death of a party, but the amount to which the

decedent, immediately before death, was beneficially entitled under section 30-2722 is transferred as part of the decedent's estate. A POD designation in a multiple-party account without right of survivorship is ineffective. For purposes of this section, designation of an account as a tenancy in common establishes that the account is without right of survivorship.

(d) The ownership right of a surviving party or beneficiary, or of the decedent's estate, in sums on deposit is subject to requests for payment made by a party before the party's death, whether paid by the financial institution before or after death, or unpaid. The surviving party or beneficiary, or the decedent's estate, is liable to the payee of an unpaid request for payment. The liability is limited to a proportionate share of the amount transferred under this section, to the extent necessary to discharge the request for payment.

Source: Laws 1993, LB 250, § 9; Laws 2019, LB55, § 3.

PART 3

UNIFORM TOD SECURITY REGISTRATION

30-2734 Definitions.

In sections 30-2734 to 30-2745:

(1) Beneficiary form means a registration of a security which indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner.

(2) Business means a corporation, partnership, limited liability company, limited partnership, limited liability partnership, or any other legal or commercial entity.

(3) Register, including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.

(4) Registering entity means a person who originates or transfers a security title by registration, and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

(5) Security means a share, participation, or other interest in property, in a business, or in an obligation of an enterprise or other issuer, and includes a certificated security, an uncertificated security, and a security account.

(6) Security account means (i) a reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner's death, (ii) an investment management or custody account with a trust company or a trust department of a bank with trust powers, including the securities in the account, a cash balance in the account, and cash, cash equivalents, interest, earnings, or dividends earned or declared on a security in the account, whether or not credited to the account before the owner's death, or (iii) a cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.

(7) The words transfer on death or the abbreviation TOD and the words pay on death or the abbreviation POD are used without regard for whether the

subject is a money claim against an insurer, such as its own note or bond for money loaned, or is a claim to securities evidenced by conventional title documentation.

Source: Laws 1993, LB 250, § 20; Laws 2004, LB 999, § 23; Laws 2017, LB138, § 1.

30-2742 Nontestamentary transfer on death.

(a) Subject to section 30-2333, a transfer on death resulting from a registration in beneficiary form is effective by reason of the contract regarding the registration between the owner and the registering entity and sections 30-2734 to 30-2745 and is not testamentary.

(b) Sections 30-2734 to 30-2745 do not limit the rights of creditors of security owners against beneficiaries and other transferees under other laws of this state.

Source: Laws 1993, LB 250, § 28; Laws 2017, LB517, § 5.

ARTICLE 32

FIDUCIARIES

Section

30-3205 Fiduciary; interests in private investment fund, investment company, or investment trust; investments authorized; bank or trust company; investments authorized.

(1) Notwithstanding the prohibition on investments in section 8-224.01, a fiduciary holding funds for investment may invest such funds in securities of, or other interests in, a private investment fund or any open-end or closed-end management-type investment company or investment trust registered or exempt from registration under the federal Investment Company Act of 1940, as amended, if a court order, will, agreement, or other instrument creating or defining the investment powers of the fiduciary directs, requires, authorizes, or permits the investment of such funds in any of the following:

(a) Such investments as the fiduciary may, in his or her discretion, select;

(b) Investments generally, other than those in which fiduciaries are by law authorized to invest trust funds; and

(c) United States Government obligations if the portfolio of such investment company or investment trust is limited to United States Government obligations and to repurchase agreements fully collateralized by such obligations and if such investment company or investment trust takes delivery of the collateral, either directly or through an authorized custodian.

(2)(a) Notwithstanding the prohibition on investments in section 8-224.01, a bank or trust company acting as a fiduciary, agent, or otherwise may, in the exercise of its investment discretion or at the direction of another person authorized to direct investment of funds held by the bank or trust company as a fiduciary, invest and reinvest interests in the securities of a private investment fund or an open-end or closed-end management-type investment company or investment trust registered or exempt from registration under the federal

Investment Company Act of 1940, as amended, or may retain, sell, or exchange such interests so long as the portfolio of the investment company or investment trust as an entity consists substantially of investments not prohibited by the instrument governing the fiduciary relationship.

(b) The fact that the bank or trust company or an affiliate of the bank or trust company provides services to the investment company, investment trust, or private investment fund, such as that of an investment advisor, custodian, transfer agent, registrar, sponsor, distributor, manager, or otherwise, and is receiving reasonable compensation for the services shall not preclude the bank or trust company from investing, reinvesting, retaining, or exchanging any interest held by the trust estate in the securities of a private investment fund or any open-end or closed-end management-type investment company or investment trust registered or exempt from registration under the federal Investment Company Act of 1940, as amended.

Source: Laws 1987, LB 576, § 1; R.S.Supp.,1988, § 24-638; Laws 1993, LB 91, § 1; Laws 2000, LB 932, § 28; Laws 2003, LB 130, § 135; Laws 2020, LB909, § 22.

ARTICLE 34

HEALTH CARE POWER OF ATTORNEY

Section
30-3402. Terms, defined.
30-3405. Witness; disqualification; declaration.
30-3406. Attorney in fact; disqualification.
30-3408. Power of attorney; form; validity.
30-3423. Attorney in fact; attending physician; health care provider; immunity.

30-3402 Terms, defined.

For purposes of sections 30-3401 to 30-3432:

(1) Adult shall mean any person who is eighteen years of age or older or is not a minor;

(2) Attending physician shall mean the physician, selected by or assigned to a principal, who has primary responsibility for the care and treatment of such principal;

(3) Attorney in fact shall mean an adult properly designated and authorized under sections 30-3401 to 30-3432 to make health care decisions for a principal pursuant to a power of attorney for health care and shall include a successor attorney in fact;

(4) Health care shall mean any treatment, procedure, or intervention to diagnose, cure, care for, or treat the effects of disease, injury, and degenerative conditions. Health care shall include mental health care;

(5) Health care decision shall include consent, refusal of consent, or withdrawal of consent to health care. Health care decision shall not include (a) the withdrawal or withholding of routine care necessary to maintain patient comfort, (b) the withdrawal or withholding of the usual and typical provision of nutrition and hydration, or (c) the withdrawal or withholding of life-sustaining procedures or of artificially administered nutrition or hydration, except as provided by sections 30-3401 to 30-3432;

(6) Health care provider shall mean an individual or facility licensed, certified, or otherwise authorized or permitted by law to administer health care in

the ordinary course of business or professional practice and shall include all facilities defined in the Health Care Facility Licensure Act;

(7) Except as otherwise provided in section 30-4404 for an advance mental health care directive, incapable shall mean the inability to understand and appreciate the nature and consequences of health care decisions, including the benefits of, risks of, and alternatives to any proposed health care or the inability to communicate in any manner an informed health care decision;

(8) Life-sustaining procedure shall mean any medical procedure, treatment, or intervention that (a) uses mechanical or other artificial means to sustain, restore, or supplant a spontaneous vital function and (b) when applied to a person suffering from a terminal condition or who is in a persistent vegetative state, serves only to prolong the dying process. Life-sustaining procedure shall not include routine care necessary to maintain patient comfort or the usual and typical provision of nutrition and hydration;

(9) Mental health care shall include, but not be limited to, mental health care and treatment expressly provided for in the Advance Mental Health Care Directives Act;

(10) Persistent vegetative state shall mean a medical condition that, to a reasonable degree of medical certainty as determined in accordance with currently accepted medical standards, is characterized by a total and irreversible loss of consciousness and capacity for cognitive interaction with the environment and no reasonable hope of improvement;

(11) Power of attorney for health care shall mean a power of attorney executed in accordance with sections 30-3401 to 30-3432 which authorizes a designated attorney in fact to make health care decisions for the principal when the principal is incapable;

(12) Principal shall mean an adult who, when competent, confers upon another adult a power of attorney for health care;

(13) Reasonably available shall mean that a person can be contacted with reasonable efforts by an attending physician or another person acting on behalf of the attending physician;

(14) Terminal condition shall mean an incurable and irreversible medical condition caused by injury, disease, or physical illness which, to a reasonable degree of medical certainty, will result in death regardless of the continued application of medical treatment including life-sustaining procedures; and

(15) Usual and typical provision of nutrition and hydration shall mean delivery of food and fluids orally, including by cup, eating utensil, bottle, or drinking straw.

Source: Laws 1992, LB 696, § 2; Laws 2000, LB 819, § 66; Laws 2020, LB247, § 16; Laws 2024, LB1195, § 6.
Effective date July 19, 2024.

Cross References

Advance Mental Health Care Directives Act, see section 30-4401.
Health Care Facility Licensure Act, see section 71-401.

30-3405 Witness; disqualification; declaration.

(1)(a) The following shall not qualify to witness a power of attorney for health care: Any person who at the time of witnessing is the principal's spouse, parent, child, grandchild, sibling, presumptive heir, known devisee, attending physi-

cian, mental health treatment team member, romantic or dating partner, or attorney in fact; or an employee of a life or health insurance provider for the principal.

(b) No more than one witness may be an administrator or employee of a health care provider who is caring for or treating the principal.

(2) Each witness shall make the written declaration in substantially the form prescribed in section 30-3408.

Source: Laws 1992, LB 696, § 5; Laws 2020, LB247, § 17.

30-3406 Attorney in fact; disqualification.

None of the following may serve as an attorney in fact:

(1) The attending physician or a member of the mental health treatment team of the principal;

(2) An employee of the attending physician or a member of the mental health treatment team of the principal who is unrelated to the principal by blood, marriage, or adoption;

(3) A person unrelated to the principal by blood, marriage, or adoption who is an owner, operator, or employee of a health care provider in or of which the principal is a patient or resident; and

(4) A person unrelated to the principal by blood, marriage, or adoption if, at the time of the proposed designation, he or she is presently serving as an attorney in fact for ten or more principals.

Source: Laws 1992, LB 696, § 6; Laws 2020, LB247, § 18.

30-3408 Power of attorney; form; validity.

(1) A power of attorney for health care executed on or after September 9, 1993, shall be in a form which complies with sections 30-3401 to 30-3432 and may be in the form provided in this subsection.

POWER OF ATTORNEY FOR HEALTH CARE

I appoint _____, whose address is _____, and whose telephone number is _____, as my attorney in fact for health care. I appoint _____, whose address is _____, and whose telephone number is _____, as my successor attorney in fact for health care. I authorize my attorney in fact appointed by this document to make health care decisions for me when I am determined to be incapable of making my own health care decisions. I have read the warning which accompanies this document and understand the consequences of executing a power of attorney for health care.

I direct that my attorney in fact comply with the following instructions or limitations: _____

I direct that my attorney in fact comply with the following instructions on life-sustaining treatment: (optional) _____

I direct that my attorney in fact comply with the following instructions on artificially administered nutrition and hydration: (optional) _____

I HAVE READ THIS POWER OF ATTORNEY FOR HEALTH CARE. I UNDERSTAND THAT IT ALLOWS ANOTHER PERSON TO MAKE LIFE AND

DEATH DECISIONS FOR ME IF I AM INCAPABLE OF MAKING SUCH DECISIONS. I ALSO UNDERSTAND THAT I CAN REVOKE THIS POWER OF ATTORNEY FOR HEALTH CARE AT ANY TIME BY NOTIFYING MY ATTORNEY IN FACT, MY PHYSICIAN, OR THE FACILITY IN WHICH I AM A PATIENT OR RESIDENT. I ALSO UNDERSTAND THAT I CAN REQUIRE IN THIS POWER OF ATTORNEY FOR HEALTH CARE THAT THE FACT OF MY INCAPACITY IN THE FUTURE BE CONFIRMED BY A SECOND PHYSICIAN.

_____

(Signature of person making designation/date)

DECLARATION OF WITNESSES

We declare that the principal is personally known to us, that the principal signed or acknowledged his or her signature on this power of attorney for health care in our presence, that the principal appears to be of sound mind and not under duress or undue influence, and that neither of us nor the principal's attending physician is the person appointed as attorney in fact by this document.

Witnessed By:

_____ _____

(Signature of Witness/Date) (Printed Name of Witness)

_____ _____

(Signature of Witness/Date) (Printed Name of Witness)

OR

State of Nebraska,)

)ss.

County of _____)

On this _____ day of _____ 20, before me, _____, a notary public in and for _____ County, personally came _____, personally to me known to be the identical person whose name is affixed to the above power of attorney for health care as principal, and I declare that he or she appears in sound mind and not under duress or undue influence, that he or she acknowledges the execution of the same to be his or her voluntary act and deed, and that I am not the attorney in fact or successor attorney in fact designated by this power of attorney for health care.

Witness my hand and notarial seal at _____ in such county the day and year last above written.

_____

Seal Signature of Notary Public

(2) A power of attorney for health care may be included in a durable power of attorney drafted under the Nebraska Uniform Power of Attorney Act or in any other form if the power of attorney for health care included in such durable

power of attorney or any other form fully complies with the terms of section 30-3404.

(3) A power of attorney for health care executed prior to January 1, 1993, shall be effective if it fully complies with the terms of section 30-3404.

(4) A power of attorney for health care which is executed in another state and is valid under the laws of that state shall be valid according to its terms.

(5) A power of attorney for health care may include an advance mental health care directive under the Advance Mental Health Care Directives Act.

Source: Laws 1992, LB 696, § 8; Laws 1993, LB 782, § 22; Laws 2004, LB 813, § 11; Laws 2012, LB1113, § 47; Laws 2020, LB247, § 19.

Cross References

Advance Mental Health Care Directives Act, see section 30-4401.
Nebraska Uniform Power of Attorney Act, see section 30-4001.

30-3423 Attorney in fact; attending physician; health care provider; immunity.

(1) An attorney in fact shall not be guilty of any criminal offense, subject to any civil liability, or in violation of any professional oath or code of ethics or conduct for any action taken in good faith pursuant to a power of attorney for health care or an advance mental health care directive under the Advance Mental Health Care Directives Act.

(2) No attending physician or health care provider acting or declining to act in reliance upon the decision made by a person whom the attending physician or health care provider in good faith believes is the attorney in fact for health care shall be subject to criminal prosecution, civil liability, or professional disciplinary action. Nothing in sections 30-3401 to 30-3432, however, shall limit the liability of an attending physician or health care provider for a negligent act or omission in connection with the medical diagnosis, treatment, or care of the principal.

Source: Laws 1992, LB 696, § 23; Laws 1993, LB 782, § 27; Laws 2020, LB247, § 20.

Cross References

Advance Mental Health Care Directives Act, see section 30-4401.

ARTICLE 38

NEBRASKA UNIFORM TRUST CODE

PART 1
GENERAL PROVISIONS AND DEFINITIONS

PART 2
JUDICIAL PROCEEDINGS AND REGISTRATION WITH COURT

PART 4
CREATION, VALIDITY, MODIFICATION, AND TERMINATION OF TRUST

Section

PART 1

GENERAL PROVISIONS AND DEFINITIONS

30-3801 (UTC 101) Code, how cited.

(UTC 101) Sections 30-3801 to 30-38,115 shall be known and may be cited as the Nebraska Uniform Trust Code.

Source: Laws 2003, LB 130, § 1; Laws 2024, LB1074, § 74.
Operative date July 19, 2024.

30-3805 (UTC 105) Default and mandatory rules.

(UTC 105) (a) Except as otherwise provided in the terms of the trust, the Nebraska Uniform Trust Code governs the duties and powers of a trustee, relations among trustees, and the rights and interests of a beneficiary.

(b) The terms of a trust prevail over any provision of the code except:

(1) the requirements for creating a trust;

(2) subject to sections 30-4309, 30-4311, and 30-4312, the duty of a trustee to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries;

(3) the requirement that a trust and its terms be for the benefit of its beneficiaries, and that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve;

(4) the power of the court to modify or terminate a trust under sections 30-3836 to 30-3842;

(5) the effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in sections 30-3846 to 30-3852;

(6) the power of the court under section 30-3858 to require, dispense with, or modify or terminate a bond;

(7) the power of the court under subsection (b) of section 30-3864 to adjust a trustee's compensation specified in the terms of the trust;

(8) the duty under subsection (a) of section 30-3878 to keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests, and to respond to the request of a qualified beneficiary of an irrevocable trust for trustee's reports and other information reasonably related to the administration of a trust;

(9) the effect of an exculpatory term under section 30-3897;

(10) the rights under sections 30-3899 to 30-38,107 of a person other than a trustee or beneficiary;

(11) periods of limitation for commencing a judicial proceeding;

(12) the power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice;

(13) the subject matter jurisdiction of the court and venue for commencing a proceeding as provided in sections 30-3814 and 30-3815;

(14) the power of a court under subdivision (a)(1) of section 30-3807; and

(15) the power of a court to review the action or the proposed action of the trustee for an abuse of discretion.

Source: Laws 2003, LB 130, § 5; Laws 2005, LB 533, § 37; Laws 2007, LB124, § 22; Laws 2019, LB536, § 20.

30-3808 (UTC 108) Principal place of administration.

(UTC 108) (a) Without precluding other means for establishing a sufficient connection with the designated jurisdiction, terms of a trust designating the principal place of administration are valid and controlling if:

(1) a trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction;

(2) all or part of the administration occurs in the designated jurisdiction; or

(3) a trust director's principal place of business is located in or a trust director is a resident of the designated jurisdiction.

(b) A trustee is under a continuing duty to administer the trust at a place appropriate to its purposes, its administration, and the interests of the beneficiaries.

(c) Without precluding the right of the court to order, approve, or disapprove a transfer, the trustee, in furtherance of the duty prescribed by subsection (b) of this section, may transfer the trust's principal place of administration to another state or to a jurisdiction outside of the United States.

(d) The trustee shall notify the qualified beneficiaries of a proposed transfer of a trust's principal place of administration not less than sixty days before initiating the transfer. The notice of proposed transfer must include:

(1) the name of the jurisdiction to which the principal place of administration is to be transferred;

(2) the address and telephone number at the new location at which the trustee can be contacted;

(3) an explanation of the reasons for the proposed transfer;

(4) the date on which the proposed transfer is anticipated to occur; and

(5) the date, not less than sixty days after the giving of the notice, by which the qualified beneficiary must notify the trustee of an objection to the proposed transfer.

(e) The authority of a trustee under this section to transfer a trust's principal place of administration terminates if a qualified beneficiary notifies the trustee of an objection to the proposed transfer on or before the date specified in the notice.

(f) In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed pursuant to section 30-3860.

Source: Laws 2003, LB 130, § 8; Laws 2019, LB536, § 21.

PART 2

JUDICIAL PROCEEDINGS AND REGISTRATION WITH COURT

30-3816 Duty to register trusts.

(1) The trustee of a trust having its principal place of administration in this state may register the trust in the county court of this state at the principal place of administration. Unless otherwise designated in the trust instrument, the principal place of administration of a trust is the trustee's usual place of business where the records pertaining to the trust are kept, or at the trustee's residence if he or she has no such place of business.

(2) In the case of cotrustees, the principal place of administration, if not otherwise designated in the trust instrument, is (a) the usual place of business of the corporate trustee if there is one corporate cotrustee, (b) the usual place of business or residence of the individual trustee who is a professional fiduciary if there is one such person and no corporate cotrustee, and (c) the usual place of business or residence of any of the cotrustees as agreed upon by such cotrustees.

(3) If there is more than one trustee, any trustee may register the trust in the county in which the principal place of administration is located under subsection (2). If the principal place of administration is determined under subdivision (2)(c) and the cotrustees cannot agree on the principal place of administration, a proceeding may be filed under section 30-3812 by any interested person to determine the principal place of administration.

(4) The right to register under sections 30-3816 to 30-3820 does not apply to the trustee of a trust if registration would be inconsistent with the retained jurisdiction of a foreign court from which the trustee cannot obtain release.

(5) No one other than a trustee shall register a trust. Registration of a trust is not required in order for a court to exercise jurisdiction over a trust, a trustee, or the beneficiaries.

Source: Laws 1974, LB 354, § 296, UPC § 7-101; R.S.1943, (1995), § 30-2801; Laws 2003, LB 130, § 16; Laws 2024, LB1195, § 7. Effective date July 19, 2024.

PART 4

CREATION, VALIDITY, MODIFICATION, AND TERMINATION OF TRUST

30-3828 (UTC 402) Requirements for creation.

(UTC 402) (a) A trust is created only if:

(1) the settlor has capacity to create a trust and meets one of the following requirements:

(A) the settlor is eighteen years of age or older; or

(B) the settlor is not a minor;

(2) the settlor indicates an intention to create the trust;

(3) the trust has a definite beneficiary or is:

(A) a charitable trust;

(B) a trust for the care of an animal, as provided in section 30-3834; or

(C) a trust for a noncharitable purpose, as provided in section 30-3835;

(4) the trustee has duties to perform; and

(5) the same person is not the sole trustee and sole beneficiary.

(b) A beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.

(c) A power in a trustee to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails and the property subject to the power passes to the persons who would have taken the property had the power not been conferred.

Source: Laws 2003, LB 130, § 28; Laws 2024, LB1195, § 8.
Effective date July 19, 2024.

PART 5

CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS

30-3850 (UTC 505) Creditor's claim against settlor.

(UTC 505) (a) Whether or not the terms of a trust contain a spendthrift provision, the following rules apply:

(1) During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.

(2) With respect to an irrevocable trust:

(A) A creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

(B) A trustee's discretionary authority to pay directly to the taxing authorities or to reimburse the settlor for any tax on trust income or principal, that is payable by the settlor under the law imposing the tax, shall not be considered to be an amount that can be distributed to or for the settlor's benefit, and a creditor or assignee of the settlor shall not be entitled to reach any amount solely by reason of this discretionary authority.

(C) Anything in the Nebraska Uniform Trust Code to the contrary notwithstanding, the settlor shall not be considered to be a beneficiary of an irrevocable trust solely by reason of the trustee's authority to pay directly to the taxing authorities or to reimburse the settlor for any tax on trust income or principal that is payable by the settlor under the law imposing the tax, whether such authority arises pursuant to subsection (b) of section 30-3881 or the terms of the trust.

(3) After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that was revocable at the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances. A proceeding to assert the liability for claims against the estate and statutory allowances may not be commenced unless the personal representative has received a written demand by the surviving spouse, a creditor, a child, or a person acting for a child of the decedent. The proceeding must be commenced within one year after the death of the decedent. Sums recovered by the personal representative of the settlor's estate must be administered as part of the decedent's estate. The liability created by this subdivision shall not apply to any assets to the extent that such assets are otherwise exempt under the laws of this state or under federal law.

(4) A beneficiary of a trust subject to subdivision (a)(3) of this section who receives one or more distributions from the trust after the death of the settlor against whom a proceeding to account is brought may join as a party to the proceeding any other beneficiary who has received a distribution from that trust or any other trust subject to subdivision (a)(3) of this section, any surviving owner or beneficiary under sections 30-2734 to 30-2745 of any other security or securities account of the decedent or proceeds thereof, or a surviving party or beneficiary of any account under sections 30-2716 to 30-2733.

(5) Unless a written notice asserting that a decedent's probate estate is insufficient to pay allowed claims and statutory allowances has been received from the decedent's personal representative before the distribution, a trustee is released from liability under this section on any assets distributed to the trust's beneficiaries.

(b) For purposes of this section:

(1) during the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a revocable trust to the extent of the property subject to the power; and

(2) upon the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in section 2041(b)(2), 2503(b), or 2514(e) of the Internal Revenue Code as defined in section 49-801.01.

Source: Laws 2003, LB 130, § 50; Laws 2022, LB707, § 32.

PART 6

REVOCABLE TRUSTS

30-3854 (UTC 602) Revocation or amendment of revocable trust.

(UTC 602) (a) Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. This subsection does not apply to a trust created under an instrument executed before January 1, 2005.

(b) If a revocable trust is created or funded by more than one settlor:

(1) to the extent the trust consists of community property, the trust may be revoked by either spouse acting alone but may be amended only by joint action of both spouses;

(2) to the extent the trust consists of property other than community property, each settlor may revoke or amend the trust with regard to the portion of the trust property attributable to that settlor's contribution; and

(3) upon the revocation or amendment of the trust by fewer than all of the settlors, the trustee shall promptly notify the other settlors of the revocation or amendment.

(c) The settlor may revoke or amend a written revocable trust:

(1) by substantial compliance with a method provided in the terms of the trust; or

(2) if the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by:

(A) a later will or codicil that expressly refers to the trust or specifically devises property that would otherwise have passed according to the terms of the trust; or

(B) an instrument evidencing an intent to amend or revoke the trust signed by the settlor, or in the settlor's name by some other individual in the presence of and by the direction of the settlor. The instrument must have an indication of the date of the writing or signing and, in the absence of such indication of the date, be the only such writing or contain no inconsistency with any other like writing or permit determination of such date of writing or signing from the content of such writing, from extrinsic circumstances, or from any other evidence.

(d) Upon revocation of a revocable trust, the trustee shall deliver the trust property as the settlor directs.

(e) A settlor's powers with respect to revocation, amendment, or distribution of trust property may be exercised by an agent under a power of attorney only to the extent expressly authorized by the terms of the trust or the power.

(f) A conservator of the settlor or, if no conservator has been appointed, a guardian of the settlor may exercise a settlor's powers with respect to revocation, amendment, or distribution of trust property only with the approval of the court supervising the conservatorship or guardianship.

(g) A trustee who does not know that a trust has been revoked or amended is not liable to the settlor or settlor's successors in interest for distributions made and other actions taken in reliance on the terms of the trust.

(h) The revocation, amendment, and distribution of trust property of a trust pursuant to this section is subject to section 30-2333.

Source: Laws 2003, LB 130, § 54; Laws 2004, LB 999, § 26; Laws 2017, LB517, § 6.

30-3855 (UTC 603) Rights and duties.

(UTC 603) (a) To the extent a trust is revocable by a settlor, a trustee may follow a direction of the settlor that is contrary to the terms of the trust. To the extent a trust is revocable by a settlor in conjunction with a person other than a trustee or person holding an adverse interest, the trustee may follow a direction from the settlor and the other person holding the power to revoke even if the direction is contrary to the terms of the trust.

(b) While a trust is revocable, rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor.

(c) While the trust is irrevocable and during the period the power may be exercised, the holder of a power of withdrawal has the rights of a settlor of a revocable trust under this section and the duties of the trustee are owed exclusively to the holder of the power to the extent of the property subject to the power.

(d) While the trust is irrevocable and during the period the interest of any beneficiary not having a present interest may be terminated by the exercise of a power of appointment or other power, the duties of the trustee are owed exclusively to the holder of the power to the extent of the property subject to the power.

Source: Laws 2003, LB 130, § 55; Laws 2004, LB 999, § 27; Laws 2005, LB 533, § 43; Laws 2013, LB38, § 2; Laws 2019, LB536, § 22.

PART 7

OFFICE OF TRUSTEE

30-3859 (UTC 703) Cotrustees.

(UTC 703) (a) Cotrustees who are unable to reach a unanimous decision may act by majority decision, except that any cotrustee may act independently as provided in section 30-901.

(b) If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust.

(c) Subject to section 30-4312, a cotrustee must participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification under other law, or other temporary incapacity or the cotrustee has properly delegated the performance of the function to another trustee.

(d) If a cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law, or other temporary incapacity, and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

(e) A trustee may not delegate to a cotrustee the performance of a function the settlor reasonably expected the trustees to perform jointly. Unless a delegation was irrevocable, a trustee may revoke a delegation previously made.

(f) Except as otherwise provided in subsection (g) of this section, a trustee who does not join in an action of another trustee is not liable for the action.

(g) Subject to section 30-4312, each trustee shall exercise reasonable care to:

(1) prevent a cotrustee from committing a serious breach of trust; and

(2) compel a cotrustee to redress a serious breach of trust.

(h) A dissenting trustee who joins in an action at the direction of the majority of the trustees and who notified any cotrustee of the dissent at or before the time of the action is not liable for the action unless the action is a serious breach of trust.

Source: Laws 2003, LB 130, § 59; Laws 2019, LB55, § 4; Laws 2019, LB536, § 23.

PART 8

DUTIES AND POWERS OF TRUSTEE

30-3873 Repealed. Laws 2019, LB536, § 25.

30-3880 (UTC 815) General powers of trustee.

(UTC 815) (a) A trustee, without authorization by the court, may exercise:

(1) powers conferred by the terms of the trust; and

(2) except as limited by the terms of the trust:

(A) all powers over the trust property which an unmarried competent owner has over individually owned property;

(B) any other powers appropriate to achieve the proper investment, management, and distribution of the trust property; and

(C) any other powers conferred by the Nebraska Uniform Trust Code.

(b) The exercise of a power is subject to the fiduciary duties prescribed by sections 30-3866 to 30-3882.

(c) The changes made to this section by Laws 2019, LB593, shall apply retroactively to August 30, 2015.

Source: Laws 2003, LB 130, § 80; Laws 2015, LB72, § 1; Laws 2017, LB268, § 4; Laws 2019, LB593, § 2.

30-3881 (UTC 816) Specific powers of trustee.

(UTC 816) (a) Without limiting the authority conferred by section 30-3880, a trustee may:

(1) collect trust property and accept or reject additions to the trust property from a settlor or any other person;

(2) acquire or sell property, for cash or on credit, at public or private sale;

(3) exchange, partition, or otherwise change the character of trust property;

(4) deposit trust money in an account in a regulated financial-service institution;

(5) borrow money, including from the trustee, with or without security, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust;

(6) with respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, continue the business or other enterprise and take any action that may be taken by shareholders, members, or property owners, including merging, dissolving, or otherwise changing the form of business organization or contributing additional capital;

(7) with respect to stocks or other securities, exercise the rights of an absolute owner, including the right to:

(A) vote, or give proxies to vote, with or without power of substitution, or enter into or continue a voting trust agreement;

(B) hold a security in the name of a nominee or in other form without disclosure of the trust so that title may pass by delivery;

(C) pay calls, assessments, and other sums chargeable or accruing against the securities, and sell or exercise stock subscription or conversion rights; and

(D) deposit the securities with a depositary or other regulated financial-service institution;

(8) with respect to an interest in real property, construct, or make ordinary or extraordinary repairs to, alterations to, or improvements in, buildings or other structures, demolish improvements, raze existing or erect new party walls or buildings, subdivide or develop land, dedicate land to public use or grant public or private easements, and make or vacate plats and adjust boundaries;

(9) enter into a lease for any purpose as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without the option to purchase or renew, for a period within or extending beyond the duration of the trust;

(10) grant an option involving a sale, lease, or other disposition of trust property or acquire an option for the acquisition of property, including an option exercisable beyond the duration of the trust, and exercise an option so acquired;

(11) insure the property of the trust against damage or loss and insure the trustee, the trustee's agents, and beneficiaries against liability arising from the administration of the trust;

(12) abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration;

(13) with respect to possible liability for violation of environmental law:

(A) inspect or investigate property the trustee holds or has been asked to hold, or property owned or operated by an organization in which the trustee holds or has been asked to hold an interest, for the purpose of determining the application of environmental law with respect to the property;

(B) take action to prevent, abate, or otherwise remedy any actual or potential violation of any environmental law affecting property held directly or indirectly by the trustee, whether taken before or after the assertion of a claim or the initiation of governmental enforcement;

(C) decline to accept property into trust or disclaim any power with respect to property that is or may be burdened with liability for violation of environmental law;

(D) compromise claims against the trust which may be asserted for an alleged violation of environmental law; and

(E) pay the expense of any inspection, review, abatement, or remedial action to comply with environmental law;

(14) pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust;

(15) pay taxes, assessments, compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the administration of the trust;

(16) exercise elections with respect to federal, state, and local taxes;

(17) select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds;

(18) make loans out of trust property, including loans to a beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances, and the trustee has a lien on future distributions for repayment of those loans;

(19) pledge trust property to guarantee loans made by others to the beneficiary;

(20) appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the appointing trustee, require that the appointed trustee furnish security, and remove any trustee so appointed;

(21) pay an amount distributable to a beneficiary who is under a legal disability or who the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or applying it for the beneficiary's benefit, or by:

(A) paying it to the beneficiary's conservator or, if the beneficiary does not have a conservator, the beneficiary's guardian;

(B) paying it to the beneficiary's custodian under the Nebraska Uniform Transfers to Minors Act or custodial trustee under the Nebraska Uniform Custodial Trust Act, and, for that purpose, creating a custodianship or custodial trust;

(C) if the trustee does not know of a conservator, guardian, custodian, or custodial trustee, paying it to an adult relative or other person having legal or physical care or custody of the beneficiary, to be expended on the beneficiary's behalf; or

(D) managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution;

(22) on distribution of trust property or the division or termination of a trust, make distributions in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares, value the trust property for those purposes, and adjust for resulting differences in valuation;

(23) resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution;

(24) prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee's duties;

(25) sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the trustee's powers; and

(26) on termination of the trust, exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it.

(b) Except as otherwise provided under the terms of the trust, a trustee, other than a trustee who is a related or subordinate party with respect to the settlor within the meaning of section 672(c) of the Internal Revenue Code as defined in section 49-801.01, may, from time to time, in the trustee's absolute discretion, pay directly to the taxing authorities or reimburse the settlor for any tax on trust income or principal that is payable by the settlor for the portion of the settlor's income tax liability attributable to the trust under sections 671 to 678 of the Internal Revenue Code as defined in section 49-801.01 or any similar tax law. A trustee shall not exercise or participate in the exercise of discretion pursuant to this subsection in a manner that (1) would cause the inclusion of the trust assets in the settlor's gross taxable estate for federal estate tax purposes at the time of exercise or (2) is inconsistent with the qualification of all or any portion of the trust for the federal gift or estate tax marital deduction, to the extent the trust is intended to qualify for such deduction.

(c) The changes made to this section by Laws 2019, LB593, shall apply retroactively to August 30, 2015.

Source: Laws 2003, LB 130, § 81; Laws 2015, LB72, § 2; Laws 2017, LB268, § 5; Laws 2019, LB593, § 3; Laws 2022, LB707, § 33.

Cross References

Nebraska Uniform Custodial Trust Act, see section 30-3501.
Nebraska Uniform Transfers to Minors Act, see section 43-2701.

30-3882 (UTC 817) Distribution upon termination.

(UTC 817) (a) Upon termination or partial termination of a trust, the trustee may send to the beneficiaries a proposal for distribution. The right of any beneficiary to object to the proposed distribution terminates if the beneficiary does not notify the trustee of an objection within thirty days after the proposal was sent but only if the proposal informed the beneficiary of the right to object and of the time allowed for objection.

(b) Upon the occurrence of an event terminating or partially terminating a trust, the trustee shall proceed expeditiously to distribute the trust property to the persons entitled to it, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses, and taxes.

(c) A release by a beneficiary of a trustee from liability for breach of trust is invalid to the extent:

(1) it was induced by improper conduct of the trustee; or

(2) the beneficiary, at the time of the release, did not know of the beneficiary's rights or of the material facts relating to the breach.

(d) The changes made to this section by Laws 2019, LB593, shall apply retroactively to August 30, 2015.

Source: Laws 2003, LB 130, § 82; Laws 2015, LB72, § 3; Laws 2017, LB268, § 6; Laws 2019, LB593, § 4.

PART 12

SPECIAL NEEDS TRUST

30-38,111 Individuals with disabilities; policy of the state.

It is the policy of the State of Nebraska to encourage the use of an achieving a better life experience account established as provided in sections 77-1401 to

77-1409 under a qualified ABLE program as defined under section 529A of the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder or a special needs trust by an individual with disabilities to preserve funds to provide for the needs of the individual that are not met by governmental benefits and that enhance such individual's quality of life.

Source: Laws 2024, LB1074, § 75.
Operative date July 19, 2024.

30-38,112 Terms, defined.

For purposes of sections 30-38,111 to 30-38,115:

(1) Beneficiary with a disability means a beneficiary of a trust, who a special needs fiduciary believes may qualify for governmental benefits based on disability whether or not the beneficiary currently receives those benefits, or who is an individual who has been adjudicated to be disabled;

(2) Governmental benefits means financial aid or services from a state, federal, or other public agency;

(3) Pooled special needs trust means a trust which combines assets and is managed by a nonprofit association providing a separate account maintained for each beneficiary with a disability;

(4) Self-settled special needs trust means a trust which has been funded with the assets of a beneficiary with a disability and includes a first party special needs trust;

(5) Special needs fiduciary means a trustee or other fiduciary, other than a settlor, that has discretion to distribute, or is required to distribute, part or all of the principal of a trust to a current beneficiary with a disability;

(6) Special needs trust means a trust the trustee believes would not be considered a resource for purposes of determining whether a beneficiary with a disability is eligible for governmental benefits and includes a supplemental needs trust; and

(7) Third-party special needs trust means a trust which has been funded with the assets of an individual other than the beneficiary with a disability.

Source: Laws 2024, LB1074, § 76.
Operative date July 19, 2024.

30-38,113 State agency; means-tested programs; rules and regulations.

(1) Each state agency that provides governmental benefits to individuals of any age with disabilities through means-tested programs, including the medical assistance program, shall adopt and promulgate rules and regulations that:

(a) Are not more restrictive than existing federal law, regulations, or policies with regard to the treatment of a special needs trust, including a trust defined in 42 U.S.C. 1396p(c)(2) and 42 U.S.C. 1396p(d)(4);

(b) Are not more restrictive than any state law regarding trusts, including any state law relating to the reasonable exercise of discretion by a trustee, guardian, or conservator in the best interests of the beneficiary;

(c) Do not require disclosure of a beneficiary's personal or confidential information without the consent of the beneficiary;

(d) Allow an individual account in a pooled special needs trust to be funded without financial limit;

(e) Allow an individual to establish or fund an individual account in a pooled special needs trust without an age limit or a transfer penalty;

(f) Allow an individual to fund a special needs trust for the individual's child with disabilities without a transfer penalty and regardless of the child's age; and

(g) Allow all legally assignable income or resources to be assigned to any special needs trust without limit.

(2) Nothing in this section may be interpreted to require a court order to authorize the funding of, or a disbursement from, a special needs trust.

Source: Laws 2024, LB1074, § 77.
Operative date July 19, 2024.

30-38,114 Nonprofit status; determination; effect.

(1) A determination by the Internal Revenue Service regarding the nonprofit status of a nonprofit organization operating a pooled special needs trust shall be sufficient to satisfy the nonprofit requirement of 42 U.S.C. 1396p(d)(4)(C).

(2) A state agency may not impose additional requirements on an organization described in subsection (1) of this section for the purpose of qualifying or disqualifying the organization from offering a pooled special needs trust.

Source: Laws 2024, LB1074, § 78.
Operative date July 19, 2024.

30-38,115 Special needs trusts; applicability of rules and regulations.

Any rule or regulation adopted and promulgated by a state agency regarding pooled special needs trusts shall apply only to those trust beneficiaries who are residents of the state or who receive governmental benefits funded by the state.

Source: Laws 2024, LB1074, § 79.
Operative date July 19, 2024.

ARTICLE 40

NEBRASKA UNIFORM POWER OF ATTORNEY ACT

PART 1
GENERAL PROVISIONS

PART 2
AUTHORITY

PART 1

GENERAL PROVISIONS

30-4002 Definitions.

For purposes of the Nebraska Uniform Power of Attorney Act:

(1) Agent means a person granted authority to act for a principal under a power of attorney, whether denominated an agent, attorney in fact, or other-

wise. The term includes an original agent, coagent, successor agent, and a person to which an agent's authority is delegated;

(2) Business day means any day other than a Saturday, Sunday, or state or nationally observed legal holiday;

(3) Durable, with respect to a power of attorney, means not terminated by the principal's incapacity;

(4) Electronic means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;

(5) Good faith means honesty in fact;

(6) Incapacity means inability of an individual to manage property or property affairs effectively because the individual:

(a) Has an impairment in the ability to receive and evaluate information or make or communicate responsible decisions even with the use of technological assistance for reasons such as mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or lack of discretion in managing benefits received from public funds; or

(b) Is:

(i) Missing;

(ii) Detained, including incarcerated in a penal system; or

(iii) Outside the United States and unable to return;

(7) 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;

(8) Power of attorney means a writing or other record that grants authority to an agent to act in the place of the principal, whether or not the term power of attorney is used;

(9) Presently exercisable general power of appointment, with respect to property or a property interest subject to a power of appointment, means power exercisable at the time in question to vest absolute ownership in the principal individually, the principal's estate, the principal's creditors, or the creditors of the principal's estate. The term includes a power of appointment not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified period only after the occurrence of the specified event, the satisfaction of the ascertainable standard, or the passage of the specified period. The term does not include a power exercisable in a fiduciary capacity or only by will;

(10) Principal means an individual, who is eighteen years of age or older or is not a minor, who grants authority to an agent in a power of attorney;

(11) Property means anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest or right therein;

(12) 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;

(13) Sign means, with present intent to authenticate or adopt a record:

(a) To execute or adopt a tangible symbol; or

(b) To attach to or logically associate with the record an electronic sound, symbol, or process;

(14) 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; and

(15) Stocks and bonds means stocks, bonds, mutual funds, and all other types of securities and financial instruments, whether held directly, indirectly, or in any other manner. The term does not include commodity futures contracts and call or put options on stocks or stock indexes.

Source: Laws 2012, LB1113, § 2; Laws 2024, LB1195, § 9.
Effective date July 19, 2024.

30-4020 Liability for refusal to accept acknowledged power of attorney.

(1) Except as otherwise provided in subsection (2) of this section:

(a) A person shall either accept an acknowledged power of attorney or request a certification, a translation, or an opinion of counsel under subsection (4) of section 30-4019 no later than seven business days after presentation of the power of attorney for acceptance;

(b) If a person requests a certification, a translation, or an opinion of counsel under subsection (4) of section 30-4019, the person shall accept the power of attorney no later than five business days after receipt of the certification, translation, or opinion of counsel; and

(c) A person may not require an additional or different form of power of attorney for authority granted in the power of attorney presented, except as provided in section 30-4031.

(2) A person is not required to accept an acknowledged power of attorney if:

(a) The person is not otherwise required to engage in a transaction with the principal in the same circumstances;

(b) Engaging in a transaction with the agent or the principal in the same circumstances would be inconsistent with state or federal law;

(c) The person has actual knowledge of the termination of the agent's authority or of the power of attorney before exercise of the power;

(d) A request for a certification, a translation, or an opinion of counsel under subsection (4) of section 30-4019 is refused;

(e) The person in good faith believes that the power is not valid or that the agent does not have the authority to perform the act requested, whether or not a certification, a translation, or an opinion of counsel under subsection (4) of section 30-4019 has been requested or provided;

(f) The person makes, or has actual knowledge that another person has made, a report to the local adult protective services office stating a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a person acting for or with the agent;

(g) The person brought, or has actual knowledge that another person has brought, a judicial proceeding for construction of a power of attorney or review of the agent's conduct; or

(h) The power of attorney becomes effective upon the occurrence of an event or contingency, and neither a certification nor evidence of the occurrence of the event or contingency is presented to the person being asked to accept the power of attorney.

(3) A person may not refuse to accept an acknowledged power of attorney if any of the following applies:

(a) The person's reason for refusal is based exclusively upon the date the power of attorney was executed; or

(b) The person's refusal is based exclusively on a mandate that an additional or different power of attorney form must be used.

(4)(a) A person may bring an action or proceeding to mandate the acceptance of an acknowledged power of attorney.

(b) In any action or proceeding to mandate the acceptance of an acknowledged power of attorney or confirm the validity of an acknowledged power of attorney, a person found liable for refusing to accept such power of attorney is subject to:

(i) Liability to the principal and to the principal's heirs, assigns, and personal representative of the estate of the principal in the same manner as the person would be liable had the person refused to accept the authority of the principal to act on the principal's own behalf;

(ii) A court order mandating acceptance of the power of attorney; and

(iii) Liability for reasonable attorney's fees and costs incurred in such action or proceeding.

(c) In any action or proceeding in which a person's refusal to accept an acknowledged power of attorney in violation of this section prevents an agent from completing a transaction requested by the agent with respect to a security account as defined in section 30-2734, owned by the principal, such person, in addition to being subject to the provisions of subdivision (4)(b) of this section, is subject to:

(i) Economic damages of the principal proximately caused by the person's refusal to accept the acknowledged power of attorney and failure to comply with the instructions of the agent designated in such power of attorney with respect to such security account; and

(ii) Reasonable attorney's fees and costs incurred to seek damages resulting from such person's refusal to accept the acknowledged power of attorney and failure to comply with the instructions of such agent designated in the power of attorney with respect to the security account.

Source: Laws 2012, LB1113, § 20; Laws 2019, LB145, § 1; Laws 2019, LB146, § 1.

PART 2

AUTHORITY

30-4031 Banks and other financial institutions.

Unless the power of attorney otherwise provides, language in a power of attorney granting authority with respect to banks and other financial institutions authorizes the agent to:

(1) Continue, modify, and terminate an account or other banking arrangement made by or on behalf of the principal;

(2) Establish, modify, and terminate an account or other banking arrangement with a bank, trust company, savings and loan association, credit union, thrift company, brokerage firm, or other financial institution selected by the agent;

(3) Contract for services available from a financial institution, including renting a safe deposit box or space in a vault;

(4) Withdraw, by check, order, electronic funds transfer, or otherwise, money or property of the principal deposited with or left in the custody of a financial institution;

(5) Receive statements of account, vouchers, notices, and similar documents from a financial institution and act with respect to them;

(6) Enter a safe deposit box or vault and withdraw or add to the contents;

(7) Borrow money and pledge as security personal property of the principal necessary to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

(8) Make, assign, draw, endorse, discount, guarantee, and negotiate promissory notes, checks, drafts, and other negotiable or nonnegotiable paper of the principal or payable to the principal or the principal's order, transfer money, receive the cash or other proceeds of those transactions, and accept a draft drawn by a person upon the principal and pay it when due;

(9) Receive for the principal and act upon a sight draft, warehouse receipt, or other document of title whether tangible or electronic, or other negotiable or nonnegotiable instrument;

(10) Apply for, receive, and use letters of credit, credit and debit cards, electronic transaction authorizations, and traveler's checks from a financial institution and give an indemnity or other agreement in connection with letters of credit;

(11) Consent to an extension of the time of payment with respect to commercial paper or a financial transaction with a financial institution; and

(12) Execute such powers of attorney as may be required and necessary for interacting with a bank, trust company, savings and loan association, credit union, thrift company, brokerage firm, or other financial institution so long as the terms and conditions in the financial institution's power of attorney are similar to those in the power of attorney granting authority, including the identification of the acting agent and the agent's successors. The execution of a financial institution's power of attorney document does not revoke the power of attorney document granting authority.

Source: Laws 2012, LB1113, § 31; Laws 2019, LB145, § 2.

ARTICLE 41

PUBLIC GUARDIANSHIP ACT

Section
30-4108. Advisory Council on Public Guardianship; duties; meetings; expenses.

30-4108 Advisory Council on Public Guardianship; duties; meetings; expenses.

(1) The council shall advise the Public Guardian on the administration of public guardianship and public conservatorship.

(2) The council shall meet at least four times per year and at other times deemed necessary to perform its functions upon the call of the chairperson. Members of the council shall be reimbursed for expenses as provided in sections 81-1174 to 81-1177.

Source: Laws 2014, LB920, § 8; Laws 2020, LB381, § 25.

ARTICLE 43

NEBRASKA UNIFORM DIRECTED TRUST ACT

Section

30-4301 (UDTA 1) Act, how cited.

(UDTA 1) Sections 30-4301 to 30-4319 shall be known and may be cited as the Nebraska Uniform Directed Trust Act.

Source: Laws 2019, LB536, § 1.

30-4302 (UDTA 2) Definitions.

(UDTA 2) In the Nebraska Uniform Directed Trust Act:

(1) Breach of trust includes a violation by a trust director or trustee of a duty imposed on that director or trustee by the terms of the trust, the Nebraska Uniform Directed Trust Act, or law of this state other than the Nebraska Uniform Directed Trust Act pertaining to trusts.

(2) Directed trust means a trust for which the terms of the trust grant a power of direction.

(3) Directed trustee means a trustee that is subject to a trust director's power of direction.

(4) Person means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(5) Power of direction means a power over a trust granted to a person by the terms of the trust to the extent the power is exercisable while the person is not serving as a trustee. The term includes a power over the investment, manage-

ment, or distribution of trust property or other matters of trust administration, including, but not limited to, amendment, reform, or termination of the trust. The term excludes the powers described in subsection (b) of section 30-4305.

(6) Settlor has the same meaning as in section 30-3803.

(7) State means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any other territory or possession subject to the jurisdiction of the United States.

(8) Terms of a trust means:

(A) except as otherwise provided in subdivision (8)(B) of this section, the manifestation of the settlor's intent regarding a trust's provisions as:

(i) expressed in the trust instrument; or

(ii) established by other evidence that would be admissible in a judicial proceeding; or

(B) the trust's provisions as established, determined, or amended by:

(i) a trustee or trust director in accordance with applicable law;

(ii) court order; or

(iii) a nonjudicial settlement agreement under section 30-3811.

(9) Trust director means a person that is granted a power of direction by the terms of a trust to the extent the power is exercisable while the person is not serving as a trustee. The person is a trust director whether or not the terms of the trust refer to the person as a trust director and whether or not the person is a beneficiary or settlor of the trust.

(10) Trustee has the same meaning as in section 30-3803.

Source: Laws 2019, LB536, § 2.

30-4303 (UDTA 3) Application; principal place of administration.

(UDTA 3) The Nebraska Uniform Directed Trust Act applies to a trust, whenever created, that has its principal place of administration in this state, subject to the following rules:

(1) If the trust was created before September 7, 2019, the Nebraska Uniform Directed Trust Act applies only to a decision or action occurring on or after September 7, 2019.

(2) If the principal place of administration of the trust is changed to this state on or after September 7, 2019, the Nebraska Uniform Directed Trust Act applies only to a decision or action occurring on or after the date of the change.

Source: Laws 2019, LB536, § 3.

30-4304 (UDTA 4) Common law and principles of equity.

(UDTA 4) The common law and principles of equity supplement the Nebraska Uniform Directed Trust Act, except to the extent modified by the Nebraska Uniform Directed Trust Act or law of this state other than the Nebraska Uniform Directed Trust Act.

Source: Laws 2019, LB536, § 4.

30-4305 (UDTA 5) Exclusions.

(UDTA 5) (a) In this section, power of appointment means a power that enables a person acting in a nonfiduciary capacity to designate a recipient of an ownership interest in or another power of appointment over trust property.

(b) The Nebraska Uniform Directed Trust Act does not apply to a:

(1) power of appointment;

(2) power to appoint or remove a trustee or trust director;

(3) power of a settlor over a trust to the extent the settlor has a power to revoke the trust;

(4) power of a beneficiary over a trust to the extent the exercise or nonexercise of the power affects the beneficial interest of:

(A) the beneficiary; or

(B) the beneficial interest of another beneficiary represented by the beneficiary under sections 30-3822 to 30-3826 with respect to the exercise or nonexercise of the power;

(5) power over a trust if:

(A) the terms of the trust provide that the power is held in a nonfiduciary capacity; and

(B) the power must be held in a nonfiduciary capacity to achieve the settlor's tax objectives under the Internal Revenue Code of 1986 as defined in section 49-801.01; or

(6) power over a trust if:

(A) the terms of the trust provide that the power is held in a nonfiduciary capacity; and

(B) the power must be held in a nonfiduciary capacity to correct a mistake of the scrivener in order to conform the terms of the trust with the intention of a settlor. The correction must not reform the trust in any material respect.

(c) Unless the terms of a trust provide otherwise, a power granted to a person to designate a recipient of an ownership interest in or power of appointment over trust property which is exercisable while the person is not serving as a trustee is a power of appointment and not a power of direction.

Source: Laws 2019, LB536, § 5; Laws 2021, LB248, § 1.

30-4306 (UDTA 6) Powers of trust director.

(UDTA 6) (a) Subject to section 30-4307, the terms of a trust may grant a power of direction to a trust director.

(b) Unless the terms of a trust provide otherwise:

(1) a trust director may exercise any further power appropriate to the exercise or nonexercise of a power of direction granted to the trust director under subsection (a) of this section; and

(2) trust directors with joint powers must act by majority decision.

(c) A power of direction includes only those powers granted by the terms of the trust and further powers pursuant to subdivision (b)(1) of this section must be appropriate to the exercise or nonexercise of such power of direction granted by the terms of the trust.

Source: Laws 2019, LB536, § 6.

30-4307 (UDTA 7) Limitation on trust director.

(UDTA 7) A trust director is subject to the same rules as a trustee in a like position and under similar circumstances in the exercise or nonexercise of a power of direction or further power under subdivision (b)(1) of section 30-4306 regarding:

(1) a payback provision in the terms of a trust necessary to comply with the medicaid reimbursement requirements of section 68-919; and

(2) a charitable interest in the trust, including notice regarding the interest to the Attorney General.

Source: Laws 2019, LB536, § 7.

30-4308 (UDTA 8) Duty and liability of trust director.

(UDTA 8) (a) Subject to subsection (b) of this section, with respect to a power of direction or further power under subdivision (b)(1) of section 30-4306:

(1) a trust director has the same fiduciary duty and liability in the exercise or nonexercise of the power:

(A) if the power is held individually, as a sole trustee in a like position and under similar circumstances; or

(B) if the power is held jointly with a trustee or another trust director, as a cotrustee in a like position and under similar circumstances; and

(2) the terms of the trust may vary the director's duty or liability to the same extent the terms of the trust could vary the duty or liability of a trustee in a like position and under similar circumstances.

(b) Unless the terms of a trust provide otherwise, if a trust director is licensed, certified, or otherwise authorized or permitted by law other than the Nebraska Uniform Directed Trust Act to provide health care in the ordinary course of the director's business or practice of a profession, to the extent the director acts in that capacity, the director has no duty or liability under the Nebraska Uniform Directed Trust Act.

(c) The terms of a trust may impose a duty or liability on a trust director in addition to the duties and liabilities under this section.

Source: Laws 2019, LB536, § 8.

30-4309 (UDTA 9) Duty and liability of directed trustee.

(UDTA 9) (a) Subject to subsections (b) and (c) of this section, a directed trustee shall take reasonable action to comply with a trust director's exercise or nonexercise of a power of direction or further power under subdivision (b)(1) of section 30-4306, and the trustee is not liable for the action.

(b) A directed trustee must not comply with a trust director's exercise or nonexercise of a power of direction or further power under subdivision (b)(1) of section 30-4306 to the extent that by complying the trustee would engage in willful misconduct.

(c) A directed trustee must determine that the trust director's exercise of power of direction under subsection (a) of section 30-4306 or appropriation of further power under subsection (b) of section 30-4306 is granted by the terms of the trust pursuant to subsection (c) of section 30-4306.

(d) An exercise of a power of direction under which a trust director may release a trustee or another trust director from liability for breach of trust is not effective if:

(1) the breach involved the trustee's or other director's willful misconduct;

(2) the release was induced by improper conduct of the trustee or other director in procuring the release; or

(3) at the time of the release, the director did not know the material facts relating to the breach.

(e) A directed trustee that has reasonable doubt about its duty under this section may petition the court for instructions.

(f) The terms of a trust may impose a duty or liability on a directed trustee in addition to the duties and liabilities under this section.

Source: Laws 2019, LB536, § 9.

30-4310 (UDTA 10) Duty to provide information to trust director or trustee.

(UDTA 10) (a) Subject to section 30-4311, a trustee shall provide information to a trust director to the extent the information is reasonably related both to:

(1) the powers or duties of the trustee; and

(2) the powers or duties of the director.

(b) Subject to section 30-4311, a trust director shall provide information to a trustee or another trust director to the extent the information is reasonably related both to:

(1) the powers or duties of the director; and

(2) the powers or duties of the trustee or other director.

(c) A trustee that acts in reliance on information provided by a trust director is not liable for a breach of trust to the extent the breach resulted from the reliance, unless by so acting the trustee engages in willful misconduct.

(d) A trust director that acts in reliance on information provided by a trustee or another trust director is not liable for a breach of trust to the extent the breach resulted from the reliance, unless by so acting the trust director engages in willful misconduct.

Source: Laws 2019, LB536, § 10.

30-4311 (UDTA 11) No duty to monitor, inform, or advise.

(UDTA 11) (a) Unless the terms of a trust provide otherwise:

(1) a trustee does not have a duty to:

(A) monitor a trust director; or

(B) inform or give advice to a settlor, beneficiary, trustee, or trust director concerning an instance in which the trustee might have acted differently than the director; and

(2) by taking an action described in subdivision (a)(1) of this section, a trustee does not assume the duty excluded by such subdivision.

(b) Unless the terms of a trust provide otherwise:

(1) a trust director does not have a duty to:

(A) monitor a trustee or another trust director; or

(B) inform or give advice to a settlor, beneficiary, trustee, or another trust director concerning an instance in which the director might have acted differently than a trustee or another trust director; and

(2) by taking an action described in subdivision (b)(1) of this section, a trust director does not assume the duty excluded by such subdivision.

Source: Laws 2019, LB536, § 11.

30-4312 (UDTA 12) Application to cotrustee.

(UDTA 12) The terms of a trust may relieve a cotrustee from duty and liability with respect to another cotrustee's exercise or nonexercise of a power of the other cotrustee to the same extent that in a directed trust a directed trustee is relieved from duty and liability with respect to a trust director's power of direction under sections 30-4309 to 30-4311.

Source: Laws 2019, LB536, § 12.

30-4313 (UDTA 13) Limitation of action against trust director.

(UDTA 13) (a) An action against a trust director for breach of trust must be commenced within the same limitation period as under section 30-3894 for an action for breach of trust against a trustee in a like position and under similar circumstances.

(b) A report or accounting has the same effect on the limitation period for an action against a trust director for breach of trust that the report or accounting would have under section 30-3894 in an action for breach of trust against a trustee in a like position and under similar circumstances.

Source: Laws 2019, LB536, § 13.

30-4314 (UDTA 14) Defenses in action against trust director.

(UDTA 14) In an action against a trust director for breach of trust, the director may assert the same defenses a trustee in a like position and under similar circumstances could assert in an action for breach of trust against the trustee.

Source: Laws 2019, LB536, § 14.

30-4315 (UDTA 15) Jurisdiction over trust director.

(UDTA 15) (a) By accepting appointment as a trust director of a trust subject to the Nebraska Uniform Directed Trust Act, the director submits to personal jurisdiction of the courts of this state regarding any matter related to a power or duty of the director.

(b) This section does not preclude other methods of obtaining jurisdiction over a trust director.

Source: Laws 2019, LB536, § 15.

30-4316 (UDTA 16) Office of trust director.

(UDTA 16) Unless the terms of a trust provide otherwise, the rules applicable to a trustee apply to a trust director regarding the following matters:

(1) acceptance under section 30-3857;

(2) giving of bond to secure performance under section 30-3858;

(3) reasonable compensation under section 30-3864;

(4) resignation under section 30-3861;

(5) removal under section 30-3862; and

(6) vacancy and appointment of successor under section 30-3860.

Source: Laws 2019, LB536, § 16.

30-4317 (UDTA 17) Uniformity of application and construction.

(UDTA 17) In applying and construing the Nebraska Uniform Directed Trust 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, LB536, § 17.

30-4318 (UDTA 18) Electronic records and signatures.

(UDTA 18) The provisions of the Nebraska Uniform Directed Trust Act governing the legal effect, validity, or enforceability of electronic records or electronic signatures, and of contracts formed or performed with the use of such records or signatures, conform to the requirements of section 102 of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7002, as such section existed on January 1 immediately preceding January 1, 2005, and supersede, modify, and limit the requirements of the Electronic Signatures in Global and National Commerce Act.

Source: Laws 2019, LB536, § 18.

30-4319 Date; applicability.

(a) Except as otherwise provided in the Nebraska Uniform Directed Trust Act, on January 1, 2021:

(1) the Nebraska Uniform Directed Trust Act applies to all trusts created before, on, or after January 1, 2021;

(2) the Nebraska Uniform Directed Trust Act applies to all judicial proceedings concerning trust directors, trustees, and cotrustees commenced on or after January 1, 2021;

(3) the Nebraska Uniform Directed Trust Act applies to judicial proceedings concerning trusts commenced before January 1, 2021, unless the court finds that application of a particular provision of the Nebraska Uniform Directed Trust Act would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of the Nebraska Uniform Directed Trust Act does not apply and the superseded law applies; and

(4) an act done before January 1, 2021, is not affected by the Nebraska Uniform Directed Trust Act.

(b) If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before January 1, 2021, that statute continues to apply to the right even if it has been repealed or superseded.

Source: Laws 2019, LB536, § 19.

ARTICLE 44

ADVANCE MENTAL HEALTH CARE DIRECTIVES ACT

Section

30-4401 Act, how cited.

Sections 30-4401 to 30-4415 shall be known and may be cited as the Advance Mental Health Care Directives Act.

Source: Laws 2020, LB247, § 1.

30-4402 Legislative findings; act; purposes.

(1) The Legislature finds that:

(a) Issues implicated in advance planning for end-of-life care are distinct from issues implicated in advance planning for mental health care;

(b) Mental illness can be episodic and include periods of incapacity which obstruct an individual's ability to give informed consent and impede the individual's access to mental health care;

(c) An acute mental health episode can induce an individual to refuse treatment when the individual would otherwise consent to treatment if the individual's judgment were unimpaired;

(d) An individual may lose capacity without meeting the criteria for civil commitment in Nebraska; and

(e) An individual with mental illness has the same right to plan in advance for treatment as an individual planning for end-of-life care.

(2) The purposes of the Advance Mental Health Care Directives Act are to:

(a) Facilitate advance planning to help (i) prevent unnecessary involuntary commitment and incarceration, (ii) improve patient safety and health, (iii) improve mental health care, and (iv) enable an individual to exercise control over such individual's mental health treatment; and

(b) Protect patient safety, autonomy, and health by allowing an individual to create an advance mental health care directive to instruct and direct the individual's mental health care.

Source: Laws 2020, LB247, § 2.

30-4403 Advance mental health care directive; use; legislative declarations; right of individual.

(1) The Legislature hereby declares that an advance mental health care directive can only accomplish the purposes stated in section 30-4402 if an individual may use an advance mental health care directive to:

(a) Set forth instructions for any foreseeable mental health care when the individual loses capacity to make decisions regarding such mental health care, including, but not limited to, consenting to inpatient mental health treatment, psychotropic medication, or electroconvulsive therapy;

(b) Dictate whether the directive is revocable during periods of incapacity and provide consent to treatment despite illness-induced refusals;

(c) Choose the standard by which the directive becomes active; and

(d) In compliance with the federal Health Insurance Portability and Accountability Act of 1996, include in the directive a release authorization form stating the names of persons to whom information regarding the mental health treatment of the principal may be disclosed during the time the directive is activated, including, but not limited to, health care professionals, mental health care professionals, family, friends, and other interested persons with whom treatment providers are allowed to communicate if the principal loses capacity.

(2) An individual with capacity has the right to control decisions relating to the individual's mental health care unless subject to a court order involving mental health care under any other provision of law.

Source: Laws 2020, LB247, § 3.

30-4404 Terms, defined.

For purposes of the Advance Mental Health Care Directives Act:

(1) Activation means the point at which an advance mental health care directive is used as the basis for decisionmaking as provided in section 30-4409;

(2) Attorney in fact means an individual designated under a power of attorney for health care to make mental health care decisions for a principal;

(3)(a) Capacity means having both (i) the ability to understand and appreciate the nature and consequences of mental health care decisions, including the benefits and risks of each, and alternatives to any proposed mental health treatment, and to reach an informed decision, and (ii) the ability to communicate in any manner such mental health care decision.

(b) An individual's capacity is evaluated in relation to the demands of a particular mental health care decision;

(4) Principal means an individual who is nineteen years of age or older with capacity who provides instructions, preferences, or both instructions and preferences for any foreseeable mental health care in an advance mental health care directive; and

(5) Relative means the spouse, child, parent, sibling, grandchild, or grandparent, by blood, marriage, or adoption, of an individual.

Source: Laws 2020, LB247, § 4.

30-4405 Advance mental health care directive; requirements; irrevocable, when; witnesses; release authorization form.

(1) An advance mental health care directive shall:

(a) Be in writing;

(b) Be dated and signed by the principal or, subject to subsection (5) of this section, another individual acting at the direction of the principal if the principal is physically unable to sign. The attorney in fact of the principal may not sign the directive for the principal;

(c) State whether the principal wishes to be able to revoke the directive at any time or whether the directive remains irrevocable during periods of incapacity. Failure to clarify whether the directive is revocable does not render it unenforceable. If the directive fails to state whether it is revocable or irrevocable, the principal may revoke it at any time;

(d) State that the principal affirms that the principal is aware of the nature of the directive and signs the directive freely and voluntarily; and

(e)(i) Be signed in the presence of a notary public who is not the attorney in fact of the principal; or

(ii) Be witnessed in writing by at least two disinterested adults as provided in subsections (4) and (5) of this section.

(2) An advanced mental health care directive shall be valid upon execution.

(3) To be irrevocable during periods of incapacity, the directive shall state that the directive remains irrevocable during periods of incapacity.

(4) A witness shall not be:

(a) The principal's attending physician or a member of the principal's mental health treatment team at the time of executing the directive;

(b) The principal's spouse, parent, child, grandchild, sibling, presumptive heir, or known devisee at the time of the witnessing;

(c) In a romantic or dating relationship with the principal;

(d) The attorney in fact of the principal or a person designated to make mental health care decisions for the principal; or

(e) The owner, operator, employee, or relative of an owner or operator of a treatment facility at which the principal is receiving care.

(5) Each witness shall attest that:

(a) The witness was present when the principal signed the directive or, if the principal was physically unable to sign the directive, when another individual signed the directive as provided in subdivision (1)(b) of this section;

(b) The principal did not appear incapacitated or under undue influence or duress when the directive was signed; and

(c) The principal presented identification or the witness personally knew the principal when the directive was signed.

(6) A principal may, in compliance with the federal Health Insurance Portability and Accountability Act of 1996, include in the directive a release authori-

zation form stating the name of persons to whom information regarding the mental health treatment of the principal may be disclosed during the time the directive is activated, including, but not limited to, health care professionals, mental health care professionals, family, friends, and other interested persons with whom treatment providers are allowed to communicate if the principal loses capacity.

Source: Laws 2020, LB247, § 5.

30-4406 Instructions and preferences; binding; matters addressed; limitation.

(1) Except as provided in subsection (2) of this section, in an advance mental health care directive, a principal may issue instructions, preferences, or both instructions and preferences concerning the principal's mental health treatment. If the principal has designated an attorney in fact under a power of attorney for health care, the advance mental health care directive shall be binding on the principal's attorney in fact. The instructions and preferences may address matters including, but not limited to:

(a) Consent to or refusal of specific types of mental health treatment, such as inpatient mental health treatment, psychotropic medication, or electroconvulsive therapy. Consent to electroconvulsive therapy must be express;

(b) Treatment facilities and care providers;

(c) Alternatives to hospitalization if twenty-four-hour care is deemed necessary;

(d) Physicians who will provide treatment;

(e) Medications for psychiatric treatment;

(f) Emergency interventions, including seclusion, restraint, or medication;

(g) The provision of trauma-informed care and treatment;

(h) In compliance with the federal Health Insurance Portability and Accountability Act of 1996, a release authorization form stating the name of persons to whom information regarding the mental health treatment of the principal may be disclosed during the time the directive is activated, including persons who should be notified immediately of admission to an inpatient facility;

(i) Individuals who should be prohibited from visitation; and

(j) Other instructions or preferences regarding mental health care.

(2) A principal may not consent to or authorize an attorney in fact to consent to psychosurgery in a directive. If such consent or authorization is expressed in the directive, this does not revoke the entire directive, but such a provision is unenforceable.

Source: Laws 2020, LB247, § 6.

30-4407 Expiration; revocation.

(1) An advance mental health care directive, including an irrevocable advance mental health care directive, shall remain in effect until it expires according to its terms or until it is revoked by the principal, whichever is earlier.

(2) A principal may revoke the directive even if the principal is incapacitated unless the principal has made the directive irrevocable during periods of incapacity pursuant to subsection (3) of section 30-4405.

(3) A principal with capacity or a principal without capacity who did not make the directive irrevocable during periods of incapacity may revoke the directive by:

(a) A written statement revoking the directive; or

(b) A subsequent directive that revokes the original directive. If the subsequent directive does not revoke the original directive in its entirety, only inconsistent provisions in the original directive are revoked.

(4) When a principal with capacity consents to treatment that is different than the treatment requested in the directive or refuses treatment that the principal requested in the directive, this consent or refusal does not revoke the entire directive but is a waiver of the inconsistent provision.

Source: Laws 2020, LB247, § 7.

30-4408 Self-binding arrangement for mental health care; advance consent to inpatient treatment or administration of psychotropic medication; requirements.

(1) A principal has a right to form a self-binding arrangement for mental health care in an advance mental health care directive. A self-binding arrangement allows the principal to obtain mental health treatment in the event that an acute mental health episode renders the principal incapacitated and induces the principal to refuse treatment.

(2) To provide advance consent to inpatient treatment despite the principal's illness-induced refusal, a principal shall, in such directive:

(a) Make the directive irrevocable pursuant to subsection (3) of section 30-4405; and

(b) Consent to admission to an inpatient treatment facility.

(3) To provide advance consent to administration of psychotropic medication despite the principal's illness-induced refusal of medication, a principal shall, in such directive:

(a) Make the directive irrevocable pursuant to subsection (3) of section 30-4405; and

(b) Consent to administration of psychotropic medication.

Source: Laws 2020, LB247, § 8.

30-4409 Activation.

(1) Unless a principal designates otherwise in the advance mental health care directive, a directive becomes active when the principal loses capacity. Activation is the point at which the directive shall be used as the basis for decision-making and shall dictate mental health treatment of the principal.

(2) The principal may designate in the directive an activation standard other than incapacity by describing the circumstances under which the directive becomes active.

Source: Laws 2020, LB247, § 9.

30-4410 Attorney in fact; authority.

(1) Except as otherwise provided in subsection (2) of this section, a specific grant of authority to an attorney in fact to consent to the principal's inpatient mental health treatment or psychotropic medication is not required to convey authority to the attorney in fact to consent to such treatments. An attorney in fact may consent to such treatments for the principal if the principal's written grant of authority in the principal's advance mental health care directive is sufficiently broad to encompass these decisions.

(2) When an incapacitated principal refuses inpatient mental health treatment or psychotropic medication, the principal's attorney in fact only has the authority to consent to such treatments for the principal if the principal's directive is irrevocable and expressly authorizes the attorney in fact to consent to the applicable treatment. An attorney in fact shall only have the authority to consent to electroconvulsive therapy for the principal if the principal's directive is irrevocable and expressly authorizes the attorney in fact to consent to electroconvulsive therapy.

(3) An attorney in fact's decisions for the principal must be in good faith and consistent with the principal's instructions expressed in the principal's directive. If the directive fails to address an issue, the attorney in fact shall make decisions in accordance with the principal's instructions or preferences otherwise known to the attorney in fact. If the attorney in fact does not know the principal's instructions or preferences, the attorney in fact shall make decisions in the best interests of the principal.

(4) If the principal grants the attorney in fact authority to make decisions for the principal in circumstances in which the principal still has capacity, the principal's decisions when the principal has capacity shall nonetheless override the attorney in fact's decisions.

Source: Laws 2020, LB247, § 10.

30-4411 Principal who has capacity; contemporaneous preferences; effect; conflicting documents; which controls.

(1) Despite activation, an advance mental health care directive, including an irrevocable directive, shall not prevail over contemporaneous preferences expressed by a principal who has capacity.

(2) If an individual has a power of attorney for health care and an advance mental health care directive and there is any conflict between the two documents, the advance mental health care directive controls with regard to any mental health care instructions or preferences.

Source: Laws 2020, LB247, § 11.

30-4412 Inpatient treatment facility; principal refuses admission; facility; duties.

(1) If the principal forms a self-binding arrangement for treatment in an advance mental health care directive but then refuses admission to an inpatient treatment facility despite the directive's instructions to admit, the inpatient treatment facility shall respond as follows:

(a) The facility shall, as soon as practicable, obtain the informed consent of the principal's attorney in fact, if the principal has an attorney in fact;

(b) Two licensed physicians shall, within twenty-four hours after the principal's arrival at the facility, evaluate the principal to determine whether the principal has capacity and shall document in the principal's medical record a summary of findings, evaluations, and recommendations; and

(c) If the evaluating physicians determine the principal lacks capacity, the principal shall be admitted into the inpatient treatment facility pursuant to the principal's directive.

(2) After twenty-one days following the date of admission, if the principal has not regained capacity or has regained capacity but refuses to consent to remain for additional treatment, the facility shall dismiss the principal from the facility's care and the principal shall be released during daylight hours or to the care of an individual available only during nondaylight hours. This subsection does not apply if the principal is detained pursuant to involuntary commitment standards.

(3) A principal may specify in the advance mental health care directive a shorter amount of time than twenty-one days.

Source: Laws 2020, LB247, § 12.

30-4413 Psychotropic medication; administration after refusal; conditions.

If a principal with an irrevocable advance mental health care directive consenting to inpatient treatment refuses psychotropic medication through words or actions, psychotropic medication may only be administered by or under the immediate direction of a licensed psychiatrist, and only if:

(1) The principal expressly consented to psychotropic medication in the principal's irrevocable directive;

(2) The principal's attorney in fact, if the principal has an attorney in fact, consents to psychotropic medication; and

(3) Two of the following health care professionals recommend, in writing, treatment with the specific psychotropic medication: A licensed psychiatrist, physician, physician assistant, or advanced practice registered nurse or any other health care professional licensed to diagnose illnesses and prescribe drugs for mental health care.

Source: Laws 2020, LB247, § 13.

30-4414 Health care professional; immunity.

(1) A health care professional acting or declining to act, in accord with reasonable medical standards, in good faith reliance upon the principal's advance mental health care directive, and, if the principal has an attorney in fact, in reliance upon the decision made by a person whom the health care professional in good faith believes is the attorney in fact acting pursuant to the advance mental health care directive, shall not be subject to criminal prosecution, civil liability, or discipline for unprofessional conduct for so acting or declining to act.

(2) In the absence of knowledge of the revocation of an advance mental health care directive, a health care professional who acts or declines to act based upon the advance mental health care directive and in accord with reasonable medical standards shall not be subject to criminal prosecution, civil liability, or discipline for unprofessional conduct for so acting or declining to act.

(3) Nothing in the Advance Mental Health Care Directives Act shall limit the liability of an attorney in fact or a health care professional for a negligent act or omission.

Source: Laws 2020, LB247, § 14.

30-4415 Form; department powers and duties.

(1) An advance mental health care directive shall be in a form that complies with the Advance Mental Health Care Directives Act and may be in the form provided in this subsection.

ADVANCE MENTAL HEALTH CARE DIRECTIVE

I ....., being an adult nineteen years of age or older and of sound mind, freely and voluntarily make this directive for mental health care to be followed if it is determined that my ability to receive and evaluate information effectively or communicate decisions is impaired to such an extent that I lack the capacity to refuse or consent to mental health care. ''Mental health care'' includes, but is not limited to, treatment of mental illness with psychotropic medication, admission to and retention in a treatment facility for a period up to 21 days, or electroconvulsive therapy.

I understand that I may become incapable of giving or withholding informed consent for mental health care due to the symptoms of a diagnosed mental disorder. These symptoms may include, but not be limited to:

.....

PSYCHOTROPIC MEDICATIONS

If I become incapable of giving or withholding informed consent for mental health care, my wishes regarding psychotropic medications, including classes of medications if appropriate, are as follows (check one or both of the following, if applicable):

[ ] I consent to the administration of the following medications:

.....

[ ] I do not consent to the administration of the following medications:

.....

Conditions or limitations, if any:

.....

ADMISSION TO AND RETENTION IN FACILITY

If I become incapable of giving or withholding informed consent for mental health care, my wishes regarding admission to and retention in a health care facility for mental health care are as follows (check one of the following, if applicable):

[ ] I consent to being admitted to a treatment facility for mental health care.

[ ] I do not consent to being admitted to a treatment facility for mental health care.

This directive cannot, by law, provide consent to retain me in a treatment facility for more than 21 days.

Conditions or limitations, if any:

.....

ELECTROCONVULSIVE THERAPY

If I become incapable of giving or withholding informed consent for mental health care, my wishes regarding electroconvulsive therapy are as follows (check one of the following, if applicable):

[ ] I consent to the administration of electroconvulsive therapy.

[ ] I do not consent to the administration of electroconvulsive therapy.

Conditions or limitations, if any:

. . . . . .

DESIGNATION OF IRREVOCABILITY DURING INCAPACITY

If I become incapable of giving or withholding informed consent for mental health care, my advance mental health care directive remains irrevocable during such period of incapacity:

[] Yes

[] No

If yes, the directive is irrevocable during such period of incapacity with regard to:

[] Admission and retention in a treatment facility for mental health care for up to 21 days;

[] Psychotropic medication as follows:

. . . . . ;

[] Electroconvulsive therapy; or

[] All of the above.

If there is anything in this document that you do not understand, you should ask a lawyer to explain it to you. This directive will not be valid unless it is signed in the presence of a notary public or signed by two qualified witnesses who are either personally known to you or verify your identity and who are present when you sign or acknowledge your signature.

SELECTION OF PHYSICIAN

(OPTIONAL)

If it becomes necessary to determine if I have become incapable of giving or withholding informed consent for mental health care, I choose . . . . . of . . . . . (address of licensed physician) to be one of the two licensed physicians who will determine whether I am incapable. If that licensed physician is unavailable, that physician's designee shall serve as one of the two licensed physicians who will determine whether I am incapable.

ADDITIONAL REFERENCES OR INSTRUCTIONS

. . . . . .

Conditions or limitations, if any:

. . . . . .

This document will continue in effect until you revoke it as described below or until a date you designate in this document. If you wish to have this document terminate on a certain date, please indicate:

(Date of expiration of directive)

(Signature of Principal)

(Printed Name of Principal)

(Date signed)

THIS DOCUMENT MUST BE SIGNED IN
THE PRESENCE OF WITNESSES
OR SIGNED IN THE PRESENCE OF A NOTARY
PUBLIC. COMPLETE THE
APPROPRIATE PORTION WHICH FOLLOWS:

AFFIRMATION OF WITNESSES

We affirm that the principal is personally known to us or the principal presented identification, that the principal signed this advance mental health care directive in our presence or, if the principal was unable to sign the directive, the principal's designated representative signed the directive in our presence, that the principal did not appear to be incapacitated or under duress or undue influence, and that neither of us is:

(a) The principal's attending physician or a member of the principal's mental health treatment team;

(b) The principal's spouse, parent, child, grandchild, sibling, presumptive heir, or known devisee at the time of the witnessing;

(c) In a romantic or dating relationship with the principal;

(d) The attorney in fact of the principal or a person designated to make mental health care decisions for the principal; or

(e) The owner, operator, employee, or relative of an owner or operator of a treatment facility at which the principal is receiving care.

Witnessed By:

(Signature of Witness) (Signature of Witness)

(Printed Name of Witness) (Printed Name of Witness)

(Date) (Date)

OR COMPLETE THE FOLLOWING PORTION IF THIS DOCUMENT
IS SIGNED IN THE PRESENCE OF A NOTARY PUBLIC

State of Nebraska,)

) ss.

County of _____)

On this ..... day of ..... 20...., before me, ..., a notary public in and for ..... County, personally came ....., personally to me

known to be the identical person whose name is affixed to the above advance mental health care directive as principal, and I declare that such person appears in sound mind and not under duress or undue influence, that such person acknowledges the execution of the same to be such person's voluntary act and deed, and that I am not the attorney in fact of the principal designated by any power of attorney for health care.

Witness my hand and notarial seal at . . . . . in such county the day and year last above written.

_____

Seal Signature of Notary Public

NOTICE TO PERSON MAKING AN ADVANCE MENTAL HEALTH CARE DIRECTIVE

This is an important legal document. It creates an advance mental health care directive. Before signing this document, you should know these important facts:

This document allows you to make decisions in advance about mental health care, including administration of psychotropic medication, short-term (up to 21 days) admission to a treatment facility, and use of electroconvulsive therapy. The instructions that you include in this advance mental health care directive will be followed only if you are incapable of making treatment decisions. Otherwise, you will be considered capable to give or withhold consent for the treatments.

If you have an attorney in fact appointed under a power of attorney for health care, your attorney in fact has a duty to act consistent with your desires as stated in this document or, if your desires are not stated or otherwise made known to the attorney in fact, to act in a manner consistent with what your attorney in fact in good faith believes to be in your best interest. The person has the right to withdraw from acting as your attorney in fact at any time.

You have the right to revoke this document in whole or in part at any time you have been determined to be capable of giving or withholding informed consent for mental health care. A revocation is effective when it is communicated to your attending health care professional in writing and is signed by you. The revocation may be in a form similar to the following:

REVOCATION

I, ... , knowingly and voluntarily revoke my advance mental health care directive as indicated (check one of the following):

[ ] I revoke my entire directive.

[ ] I revoke the following portion or portions of my directive:

. . . . . .

_____

(Signature of Principal)

_____

(Printed Name of Principal)

_____

(Date)

EVALUATION BY HEALTH CARE PROFESSIONAL
(OPTIONAL)

I, ... , have evaluated the principal and determined that the principal is capable of giving or withholding informed consent for mental health care.

_____

(Signature of health care professional)

_____

(Printed Name of health care professional)

_____

(Date)

(2) The Department of Health and Human Services may adopt and promulgate rules and regulations to provide information to the public regarding the Advance Mental Health Care Directives Act. The rules and regulations may include information relating to the need to review and update an advance mental health care directive in a timely manner and the creation of a wellness recovery action plan upon dismissal from a treatment facility for ongoing mental health issues and rehabilitation goals. The department shall publish the form in this section on its website for use by the public.

Source: Laws 2020, LB247, § 15.

ARTICLE 45
UNIFORM TRUST DECANTING ACT

Section
30-4501. Act, how cited.
30-4502. Definitions.
30-4503. Scope.
30-4504. Fiduciary duty.
30-4505. Application; governing law.
30-4506. Reasonable reliance.
30-4507. Notice; exercise of decanting power.
30-4508. Representation.
30-4509. Court involvement.
30-4510. Formalities.
30-4511. Decanting power under expanded distributive discretion.
30-4512. Decanting power under limited distributive discretion.
30-4513. Trust for beneficiary with disability.
30-4514. Protection of charitable interest.
30-4515. Trust limitation on decanting.
30-4516. Change in compensation.
30-4517. Relief from liability and indemnification.
30-4518. Removal or replacement of authorized fiduciary.
30-4519. Tax-related limitations.
30-4520. Duration of second trust.
30-4521. Need to distribute not required.

Section
30-4522. Saving provision.
30-4523. Trust for care of animal.
30-4524. Terms of second trust.
30-4525. Settlor.
30-4526. Later-discovered property.
30-4527. Obligations.
30-4528. Uniformity of application and construction.
30-4529. Relation to federal Electronic Signatures in Global and National Commerce Act.

30-4501 Act, how cited.

Sections 30-4501 to 30-4529 shall be known and may be cited as the Uniform Trust Decanting Act.

Source: Laws 2020, LB808, § 11.

30-4502 Definitions.

In the Uniform Trust Decanting Act:

(1) Appointive property means the property or property interest subject to a power of appointment.

(2) Ascertainable standard has the same meaning as in section 30-3803.

(3) Authorized fiduciary means:

(A) a trustee or other fiduciary, other than a settlor, that has discretion to distribute or direct a trustee to distribute part or all of the principal of the first trust to one or more current beneficiaries;

(B) a special fiduciary appointed under section 30-4509; or

(C) a special-needs fiduciary under section 30-4513.

(4) Beneficiary means a person that:

(A) has a present or future, vested or contingent, beneficial interest in a trust;

(B) holds a power of appointment over trust property; or

(C) is an identified charitable organization that will or may receive distributions under the terms of the trust.

(5) Charitable interest means an interest in a trust which:

(A) is held by an identified charitable organization and makes the organization a qualified beneficiary;

(B) benefits only charitable organizations and, if the interest were held by an identified charitable organization, would make the organization a qualified beneficiary; or

(C) is held solely for charitable purposes and, if the interest were held by an identified charitable organization, would make the organization a qualified beneficiary.

(6) Charitable organization means:

(A) a person, other than an individual, organized and operated exclusively for charitable purposes; or

(B) a government or governmental subdivision, agency, or instrumentality, to the extent it holds funds exclusively for a charitable purpose.

(7) Charitable purpose has the same meaning as the description of a charitable trust in section 30-3831.

(8) Court means the court in this state having jurisdiction in matters relating to trusts.

(9) Current beneficiary means a beneficiary that on the date the beneficiary's qualification is determined is a distributee or permissible distributee of trust income or principal. The term includes the holder of a presently exercisable general power of appointment but does not include a person that is a beneficiary only because the person holds any other power of appointment.

(10) Decanting power or the decanting power means the power of an authorized fiduciary under the act to distribute property of a first trust to one or more second trusts or to modify the terms of the first trust.

(11) Expanded distributive discretion means a discretionary power of distribution that is not limited to an ascertainable standard or a reasonably definite standard.

(12) First trust means a trust over which an authorized fiduciary may exercise the decanting power.

(13) First-trust instrument means the trust instrument for a first trust.

(14) General power of appointment means a power of appointment exercisable in favor of a powerholder, the powerholder's estate, a creditor of the powerholder, or a creditor of the powerholder's estate.

(15) Jurisdiction has the same meaning as in section 30-3803.

(16) Person means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(17) Power of appointment means a power that enables a powerholder acting in a nonfiduciary capacity to designate a recipient of an ownership interest in or another power of appointment over the appointive property. The term does not include a power of attorney.

(18) Powerholder means a person in which a donor creates a power of appointment.

(19) Presently exercisable power of appointment means a power of appointment exercisable by the powerholder at the relevant time. The term:

(A) includes a power of appointment exercisable only after the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified time only after:

(i) the occurrence of the specified event;

(ii) the satisfaction of the ascertainable standard; or

(iii) the passage of the specified time; and

(B) does not include a power exercisable only at the powerholder's death.

(20) Qualified beneficiary has the same meaning as in section 30-3803.

(21) Reasonably definite standard means a clearly measurable standard under which a holder of a power of distribution is legally accountable within the meaning of 26 U.S.C. 674(b)(5)(A), as such section existed on November 14, 2020, and any applicable regulations.

(22) 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.

(23) Second trust means:

(A) a first trust after modification under the Uniform Trust Decanting Act; or

(B) a trust to which a distribution of property from a first trust is or may be made under the act.

(24) Second-trust instrument means the trust instrument for a second trust.

(25) Settlor, except as otherwise provided in section 30-4525, has the same meaning as in section 30-3803.

(26) Sign means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound, or process.

(27) State has the same meaning as in section 30-3803.

(28) Terms of the trust means:

(A) Except as otherwise provided in subdivision (B) of this subdivision, the manifestation of the settlor's intent regarding a trust's provisions as:

(i) expressed in the trust instrument; or

(ii) established by other evidence that would be admissible in a judicial proceeding; or

(B) the trust's provisions as established, determined, or amended by:

(i) a trustee or other person in accordance with applicable law;

(ii) a court order; or

(iii) a nonjudicial settlement agreement under section 30-3811.

(29) Trust instrument means a record executed by the settlor to create a trust or by any person to create a second trust which contains some or all of the terms of the trust, including any amendments.

Source: Laws 2020, LB808, § 12.

30-4503 Scope.

(a) Except as otherwise provided in subsections (b) and (c) of this section, the Uniform Trust Decanting Act applies to an express trust that is irrevocable or revocable by the settlor only with the consent of the trustee or a person holding an adverse interest.

(b) The act does not apply to a trust held solely for charitable purposes.

(c) Subject to section 30-4515, a trust instrument may restrict or prohibit exercise of the decanting power.

(d) The act does not limit the power of a trustee, powerholder, or other person to distribute or appoint property in further trust or to modify a trust under the trust instrument, law of this state other than the act, common law, a court order, or a nonjudicial settlement agreement.

(e) The act does not affect the ability of a settlor to provide in a trust instrument for the distribution of the trust property or appointment in further trust of the trust property or for modification of the trust instrument.

Source: Laws 2020, LB808, § 13.

30-4504 Fiduciary duty.

(a) In exercising the decanting power, an authorized fiduciary shall act in accordance with its fiduciary duties, including the duty to act in accordance with the purposes of the first trust.

(b) The Uniform Trust Decanting Act does not create or imply a duty to exercise the decanting power or to inform beneficiaries about the applicability of the act.

(c) Except as otherwise provided in a first-trust instrument, for purposes of the act and section 30-3866 and subsection (a) of section 38-3867, the terms of the first trust are deemed to include the decanting power.

Source: Laws 2020, LB808, § 14.

30-4505 Application; governing law.

The Uniform Trust Decanting Act applies to a trust created before, on, or after November 14, 2020, which:

(1) has its principal place of administration in this state, including a trust whose principal place of administration has been changed to this state; or

(2) provides by its trust instrument that it is governed by the law of this state or is governed by the law of this state for the purpose of:

(A) administration, including administration of a trust whose governing law for purposes of administration has been changed to the law of this state;

(B) construction of terms of the trust; or

(C) determining the meaning or effect of terms of the trust.

Source: Laws 2020, LB808, § 15.

30-4506 Reasonable reliance.

A trustee or other person that reasonably relies on the validity of a distribution of part or all of the property of a trust to another trust, or a modification of a trust, under the Uniform Trust Decanting Act, law of this state other than the act, or the law of another jurisdiction is not liable to any person for any action or failure to act as a result of the reliance.

Source: Laws 2020, LB808, § 16.

30-4507 Notice; exercise of decanting power.

(a) In this section, a notice period begins on the day notice is given under subsection (c) of this section and ends fifty-nine days after the day notice is given.

(b) Except as otherwise provided in the Uniform Trust Decanting Act, an authorized fiduciary may exercise the decanting power without the consent of any person and without court approval.

(c) Except as otherwise provided in subsection (f) of this section, an authorized fiduciary shall give notice in a record of the intended exercise of the decanting power not later than sixty days before the exercise to:

(1) each settlor of the first trust, if living or then in existence;

(2) each qualified beneficiary of the first trust;

(3) each holder of a presently exercisable power of appointment over any part or all of the first trust;

(4) each person that currently has the right to remove or replace the authorized fiduciary;

(5) each other fiduciary of the first trust;

(6) each fiduciary of the second trust;

(7) each person acting as an advisor or protector of the first trust;

(8) each person holding an adverse interest who has the power to consent to the revocation of the first trust; and

(9) the Attorney General, if subsection (b) of section 30-4514 applies.

(d) An authorized fiduciary is not required to give notice under subsection (c) of this section to a person that is not known to the fiduciary or is known to the fiduciary but cannot be located by the fiduciary after reasonable diligence.

(e) A notice under subsection (c) of this section must:

(1) specify the manner in which the authorized fiduciary intends to exercise the decanting power;

(2) specify the proposed effective date for exercise of the power;

(3) include a copy of the first-trust instrument; and

(4) include a copy of all second-trust instruments.

(f) The decanting power may be exercised before expiration of the notice period under subsection (a) of this section if all persons entitled to receive notice waive the period in a signed record.

(g) The receipt of notice, waiver of the notice period, or expiration of the notice period does not affect the right of a person to file an application under section 30-4509 asserting that:

(1) an attempted exercise of the decanting power is ineffective because it did not comply with the act or was an abuse of discretion or breach of fiduciary duty; or

(2) section 30-4522 applies to the exercise of the decanting power.

(h) An exercise of the decanting power is not ineffective because of the failure to give notice to one or more persons under subsection (c) of this section if the authorized fiduciary acted with reasonable care to comply with subsection (c) of this section.

Source: Laws 2020, LB808, § 17.

30-4508 Representation.

(a) Notice to a person with authority to represent and bind another person under a first-trust instrument or sections 30-3822 to 30-3826 has the same effect as notice given directly to the person represented.

(b) Consent of or waiver by a person with authority to represent and bind another person under a first-trust instrument or sections 30-3822 to 30-3826 is binding on the person represented unless the person represented objects to the representation before the consent or waiver otherwise would become effective.

(c) A person with authority to represent and bind another person under a first-trust instrument or sections 30-3822 to 30-3826 may file an application under section 30-4509 on behalf of the person represented.

(d) A settlor may not represent or bind a beneficiary for purposes of the Uniform Trust Decanting Act.

Source: Laws 2020, LB808, § 18.

30-4509 Court involvement.

(a) On application of an authorized fiduciary, a person entitled to notice under subsection (c) of section 30-4507, a beneficiary, or with respect to a charitable interest the Attorney General or other person that has standing to enforce the charitable interest, the court may:

(1) provide instructions to the authorized fiduciary regarding whether a proposed exercise of the decanting power is permitted under the Uniform Trust Decanting Act and consistent with the fiduciary duties of the authorized fiduciary;

(2) appoint a special fiduciary and authorize the special fiduciary to determine whether the decanting power should be exercised under the act and to exercise the decanting power;

(3) approve an exercise of the decanting power;

(4) determine that a proposed or attempted exercise of the decanting power is ineffective because:

(A) after applying section 30-4522, the proposed or attempted exercise does not or did not comply with the act; or

(B) the proposed or attempted exercise would be or was an abuse of the fiduciary's discretion or a breach of fiduciary duty;

(5) determine the extent to which section 30-4522 applies to a prior exercise of the decanting power;

(6) provide instructions to the trustee regarding the application of section 30-4522 to a prior exercise of the decanting power; or

(7) order other relief to carry out the purposes of the act.

(b) On application of an authorized fiduciary, the court may approve:

(1) an increase in the fiduciary's compensation under section 30-4516; or

(2) a modification under section 30-4518 of a provision granting a person the right to remove or replace the fiduciary.

Source: Laws 2020, LB808, § 19.

30-4510 Formalities.

An exercise of the decanting power must be made in a record signed by an authorized fiduciary. The signed record must, directly or by reference to the notice required by section 30-4507, identify the first trust and the second trust or trusts and state the property of the first trust being distributed to each second trust and the property, if any, that remains in the first trust.

Source: Laws 2020, LB808, § 20.

30-4511 Decanting power under expanded distributive discretion.

(a) In this section:

(1) Noncontingent right means a right that is not subject to the exercise of discretion or the occurrence of a specified event that is not certain to occur. The term does not include a right held by a beneficiary if any person has

discretion to distribute property subject to the right to any person other than the beneficiary or the beneficiary's estate.

(2) Presumptive remainder beneficiary means a qualified beneficiary other than a current beneficiary.

(3) Successor beneficiary means a beneficiary that is not a qualified beneficiary on the date the beneficiary's qualification is determined. The term does not include a person that is a beneficiary only because the person holds a nongeneral power of appointment.

(4) Vested interest means:

(A) a right to a mandatory distribution that is a noncontingent right as of the date of the exercise of the decanting power;

(B) a current and noncontingent right, annually or more frequently, to a mandatory distribution of income, a specified dollar amount, or a percentage of value of some or all of the trust property;

(C) a current and noncontingent right, annually or more frequently, to withdraw income, a specified dollar amount, or a percentage of value of some or all of the trust property;

(D) a presently exercisable general power of appointment; or

(E) a right to receive an ascertainable part of the trust property on the trust's termination which is not subject to the exercise of discretion or to the occurrence of a specified event that is not certain to occur.

(b) Subject to subsection (c) of this section and section 30-4514, an authorized fiduciary that has expanded distributive discretion over the principal of a first trust for the benefit of one or more current beneficiaries may exercise the decanting power over the principal of the first trust.

(c) Subject to section 30-4513, in an exercise of the decanting power under this section, a second trust may not:

(1) include as a current beneficiary a person that is not a current beneficiary of the first trust, except as otherwise provided in subsection (d) of this section;

(2) include as a presumptive remainder beneficiary or successor beneficiary a person that is not a current beneficiary, presumptive remainder beneficiary, or successor beneficiary of the first trust, except as otherwise provided in subsection (d) of this section; or

(3) reduce or eliminate a vested interest.

(d) Subject to subdivision (3) of subsection (c) of this section and section 30-4514, in an exercise of the decanting power under this section, a second trust may be a trust created or administered under the law of any jurisdiction and may:

(1) retain a power of appointment granted in the first trust;

(2) omit a power of appointment granted in the first trust, other than a presently exercisable general power of appointment;

(3) create or modify a power of appointment if the powerholder is a current beneficiary of the first trust and the authorized fiduciary has expanded distributive discretion to distribute principal to the beneficiary; and

(4) create or modify a power of appointment if the powerholder is a presumptive remainder beneficiary or successor beneficiary of the first trust,

but the exercise of the power may take effect only after the powerholder becomes, or would have become if then living, a current beneficiary.

(e) A power of appointment described in subdivisions (1) through (4) of subsection (d) of this section may be general or nongeneral. The class of permissible appointees in favor of which the power may be exercised may be broader than or different from the beneficiaries of the first trust.

(f) If an authorized fiduciary has expanded distributive discretion over part but not all of the principal of a first trust, the fiduciary may exercise the decanting power under this section over that part of the principal over which the authorized fiduciary has expanded distributive discretion.

Source: Laws 2020, LB808, § 21.

30-4512 Decanting power under limited distributive discretion.

(a) In this section, limited distributive discretion means a discretionary power of distribution that is limited to an ascertainable standard or a reasonably definite standard.

(b) An authorized fiduciary that has limited distributive discretion over the principal of the first trust for benefit of one or more current beneficiaries may exercise the decanting power over the principal of the first trust.

(c) Under this section and subject to section 30-4514, a second trust may be created or administered under the law of any jurisdiction. Under this section, the second trusts, in the aggregate, must grant each beneficiary of the first trust beneficial interests which are substantially similar to the beneficial interests of the beneficiary in the first trust.

(d) A power to make a distribution under a second trust for the benefit of a beneficiary who is an individual is substantially similar to a power under the first trust to make a distribution directly to the beneficiary. A distribution is for the benefit of a beneficiary if:

(1) the distribution is applied for the benefit of the beneficiary;

(2) the beneficiary is under a legal disability or the trustee reasonably believes the beneficiary is incapacitated, and the distribution is made as permitted under the Nebraska Uniform Trust Code; or

(3) the distribution is made as permitted under the terms of the first-trust instrument and the second-trust instrument for the benefit of the beneficiary.

(e) If an authorized fiduciary has limited distributive discretion over part but not all of the principal of a first trust, the fiduciary may exercise the decanting power under this section over that part of the principal over which the authorized fiduciary has limited distributive discretion.

Source: Laws 2020, LB808, § 22.

Cross References

Nebraska Uniform Trust Code, see section 30-3801.

30-4513 Trust for beneficiary with disability.

(a) In this section:

(1) Beneficiary with a disability means a beneficiary of a first trust who the special-needs fiduciary believes may qualify for governmental benefits based on

disability, whether or not the beneficiary currently receives those benefits or is an individual who has been adjudicated incapacitated.

(2) Governmental benefits means financial aid or services from a state, federal, or other public agency.

(3) Special-needs fiduciary means, with respect to a trust that has a beneficiary with a disability:

(A) a trustee or other fiduciary, other than a settlor, that has discretion to distribute part or all of the principal of a first trust to one or more current beneficiaries;

(B) if no trustee or fiduciary has discretion under subdivision (3)(A) of this subsection, a trustee or other fiduciary, other than a settlor, that has discretion to distribute part or all of the income of the first trust to one or more current beneficiaries; or

(C) if no trustee or fiduciary has discretion under subdivisions (3)(A) and (B) of this subsection, a trustee or other fiduciary, other than a settlor, that is required to distribute part or all of the income or principal of the first trust to one or more current beneficiaries.

(4) Special-needs trust means a trust the trustee believes would not be considered a resource for purposes of determining whether a beneficiary with a disability is eligible for governmental benefits.

(b) A special-needs fiduciary may exercise the decanting power under section 30-4511 over the principal of a first trust as if the fiduciary had authority to distribute principal to a beneficiary with a disability subject to expanded distributive discretion if:

(1) a second trust is a special-needs trust that benefits the beneficiary with a disability; and

(2) the special-needs fiduciary determines that exercise of the decanting power will further the purposes of the first trust.

(c) In an exercise of the decanting power under this section, the following rules apply:

(1) Notwithstanding subdivision (c)(2) of section 30-4511, the interest in the second trust of a beneficiary with a disability may:

(A) be a pooled trust as defined by medicaid law for the benefit of the beneficiary with a disability under 42 U.S.C. 1396p(d)(4)(C), as such section existed on November 14, 2020; or

(B) contain payback provisions complying with reimbursement requirements of medicaid law under 42 U.S.C. 1396p(d)(4)(A), as such section existed on November 14, 2020.

(2) Subdivision (c)(3) of section 30-4511 does not apply to the interests of the beneficiary with a disability.

(3) Except as affected by any change to the interests of the beneficiary with a disability, the second trust, or if there are two or more second trusts, the second trusts in the aggregate, must grant each other beneficiary of the first trust beneficial interests in the second trusts which are substantially similar to the beneficiary's beneficial interests in the first trust.

Source: Laws 2020, LB808, § 23.

30-4514 Protection of charitable interest.

(a) In this section:

(1) Determinable charitable interest means a charitable interest that is a right to a mandatory distribution currently, periodically, on the occurrence of a specified event, or after the passage of a specified time and which is unconditional or will be held solely for charitable purposes.

(2) Unconditional means not subject to the occurrence of a specified event that is not certain to occur, other than a requirement in a trust instrument that a charitable organization be in existence or qualify under a particular provision of the Internal Revenue Code of 1986, as amended, on the date of the distribution, if the charitable organization meets the requirement on the date of determination.

(b) If a first trust contains a determinable charitable interest, the Attorney General has the rights of a qualified beneficiary and may represent and bind the charitable interest.

(c) If a first trust contains a charitable interest, the second trust or trusts may not:

(1) diminish the charitable interest;

(2) diminish the interest of an identified charitable organization that holds the charitable interest;

(3) alter any charitable purpose stated in the first-trust instrument; or

(4) alter any condition or restriction related to the charitable interest.

(d) If there are two or more second trusts, the second trusts shall be treated as one trust for purposes of determining whether the exercise of the decanting power diminishes the charitable interest or diminishes the interest of an identified charitable organization for purposes of subsection (c) of this section.

(e) If a first trust contains a determinable charitable interest, the second trust or trusts that include a charitable interest pursuant to subsection (c) of this section must be administered under the law of this state unless:

(1) the Attorney General, after receiving notice under section 30-4507, fails to object in a signed record delivered to the authorized fiduciary within the notice period;

(2) the Attorney General consents in a signed record to the second trust or trusts being administered under the law of another jurisdiction; or

(3) the court approves the exercise of the decanting power.

(f) The Uniform Trust Decanting Act does not limit the powers and duties of the Attorney General under law of this state other than the act.

Source: Laws 2020, LB808, § 24.

30-4515 Trust limitation on decanting.

(a) An authorized fiduciary may not exercise the decanting power to the extent the first-trust instrument expressly prohibits exercise of:

(1) the decanting power; or

(2) a power granted by state law to the fiduciary to distribute part or all of the principal of the trust to another trust or to modify the trust.

(b) Exercise of the decanting power is subject to any restriction in the first-trust instrument that expressly applies to exercise of:

(1) the decanting power; or

(2) a power granted by state law to a fiduciary to distribute part or all of the principal of the trust to another trust or to modify the trust.

(c)(1) An authorized fiduciary who is a current beneficiary of the first trust or a beneficiary to which the net income or principal of the first trust would be distributed if the first trust were terminated may not exercise the decanting power under the Uniform Trust Decanting Act in a manner to eliminate or restrict a spendthrift clause or a clause restraining the voluntary or involuntary transfer of a beneficiary's interest in the first trust.

(2) Subject to subdivision (c)(1) of this section, a general prohibition of the amendment or revocation of a first trust, a spendthrift clause, or a clause restraining the voluntary or involuntary transfer of a beneficiary's interest does not preclude exercise of the decanting power.

(d) Subject to subsections (a) and (b) of this section, an authorized fiduciary may exercise the decanting power under the Uniform Trust Decanting Act even if the first-trust instrument permits the authorized fiduciary or another person to modify the first-trust instrument or to distribute part or all of the principal of the first trust to another trust.

(e) If a first-trust instrument contains an express prohibition described in subsection (a) of this section or an express restriction described in subsection (b) of this section, the provision must be included in the second-trust instrument.

Source: Laws 2020, LB808, § 25.

30-4516 Change in compensation.

(a) If a first-trust instrument specifies an authorized fiduciary's compensation, the fiduciary may not exercise the decanting power to increase the fiduciary's compensation above the specified compensation unless:

(1) all qualified beneficiaries of the second trust consent to the increase in a signed record; or

(2) the increase is approved by the court.

(b) If a first-trust instrument does not specify an authorized fiduciary's compensation, the fiduciary may not exercise the decanting power to increase the fiduciary's compensation above the compensation permitted by the Nebraska Uniform Trust Code unless:

(1) all qualified beneficiaries of the second trust consent to the increase in a signed record; or

(2) the increase is approved by the court.

(c) A change in an authorized fiduciary's compensation which is incidental to other changes made by the exercise of the decanting power is not an increase in the fiduciary's compensation for purposes of subsections (a) and (b) of this section.

Source: Laws 2020, LB808, § 26.

Cross References

Nebraska Uniform Trust Code, see section 30-3801.

30-4517 Relief from liability and indemnification.

(a) Except as otherwise provided in this section, a second-trust instrument may not relieve an authorized fiduciary from liability for breach of trust to a greater extent than the first-trust instrument.

(b) A second-trust instrument may provide for indemnification of an authorized fiduciary of the first trust or another person acting in a fiduciary capacity under the first trust for any liability or claim that would have been payable from the first trust if the decanting power had not been exercised.

(c) A second-trust instrument may not reduce fiduciary liability in the aggregate.

(d) Subject to subsection (c) of this section, a second-trust instrument may divide and reallocate fiduciary powers among fiduciaries, including one or more trustees, distribution advisors, investment advisors, trust protectors, or other persons, and relieve a fiduciary from liability for an act or failure to act of another fiduciary as permitted by law of this state other than the Uniform Trust Decanting Act.

Source: Laws 2020, LB808, § 27.

30-4518 Removal or replacement of authorized fiduciary.

An authorized fiduciary may not exercise the decanting power to modify a provision in a first-trust instrument granting another person power to remove or replace the fiduciary unless:

(1) the person holding the power consents to the modification in a signed record and the modification applies only to the person;

(2) the person holding the power and the qualified beneficiaries of the second trust consent to the modification in a signed record and the modification grants a substantially similar power to another person; or

(3) the court approves the modification and the modification grants a substantially similar power to another person.

Source: Laws 2020, LB808, § 28.

30-4519 Tax-related limitations.

(a) In this section:

(1) Grantor trust means a trust as to which a settlor of a first trust is considered the owner under 26 U.S.C. 671 to 677 or 26 U.S.C. 679, as such sections existed on November 14, 2020.

(2) Internal Revenue Code means the Internal Revenue Code of 1986, as amended.

(3) Nongrantor trust means a trust that is not a grantor trust.

(4) Qualified benefits property means property subject to the minimum distribution requirements of 26 U.S.C. 401(a)(9) and any applicable regulations, or to any similar requirements that refer to 26 U.S.C. 401(a)(9) or the regulations, as such section and regulations existed on November 14, 2020.

(b) An exercise of the decanting power is subject to the following limitations:

(1) If a first trust contains property that qualified, or would have qualified but for provisions of the Uniform Trust Decanting Act other than this section, for a marital deduction for purposes of the gift or estate tax under the Internal Revenue Code or a state gift, estate, or inheritance tax, the second-trust

instrument must not include or omit any term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying for the deduction, or would have reduced the amount of the deduction, under the same provisions of the Internal Revenue Code or state law under which the transfer qualified.

(2) If the first trust contains property that qualified, or would have qualified but for provisions of the Uniform Trust Decanting Act other than this section, for a charitable deduction for purposes of the income, gift, or estate tax under the Internal Revenue Code or a state income, gift, estate, or inheritance tax, the second-trust instrument must not include or omit any term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying for the deduction, or would have reduced the amount of the deduction, under the same provisions of the Internal Revenue Code or state law under which the transfer qualified.

(3) If the first trust contains property that qualified, or would have qualified but for provisions of the Uniform Trust Decanting Act other than this section, for the exclusion from the gift tax described in 26 U.S.C. 2503(b), as such section existed on November 14, 2020, the second-trust instrument must not include or omit a term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying under 26 U.S.C. 2503(b), as such section existed on November 14, 2020. If the first trust contains property that qualified, or would have qualified but for provisions of the Uniform Trust Decanting Act other than this section, for the exclusion from the gift tax described in 26 U.S.C. 2503(b), as such section existed on November 14, 2020, by application of 26 U.S.C. 2503(c), as such section existed on November 14, 2020, the second-trust instrument must not include or omit a term that, if included or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying under 26 U.S.C. 2503(c), as such section existed on November 14, 2020.

(4) If the property of the first trust includes shares of stock in an S corporation, as defined in 26 U.S.C. 1361, as such section existed on November 14, 2020, and the first trust is, or but for provisions of the Uniform Trust Decanting Act other than this section would be, a permitted shareholder under any provision of 26 U.S.C. 1361, as such section existed on November 14, 2020, an authorized fiduciary may exercise the power with respect to part or all of the S-corporation stock only if any second trust receiving the stock is a permitted shareholder under 26 U.S.C. 1361(c)(2), as such section existed on November 14, 2020. If the property of the first trust includes shares of stock in an S corporation and the first trust is, or but for provisions of the Uniform Trust Decanting Act other than this section would be, a qualified subchapter-S trust within the meaning of 26 U.S.C. 1361(d), as such section existed on November 14, 2020, the second-trust instrument must not include or omit a term that prevents the second trust from qualifying as a qualified subchapter-S trust.

(5) If the first trust contains property that qualified, or would have qualified but for provisions of the Uniform Trust Decanting Act other than this section, for a zero inclusion ratio for purposes of the generation-skipping transfer tax under 26 U.S.C. 2642(c), as such section existed on November 14, 2020, the second-trust instrument must not include or omit a term that, if included in or

omitted from the first-trust instrument, would have prevented the transfer to the first trust from qualifying for a zero inclusion ratio under 26 U.S.C. 2642(c), as such section existed on November 14, 2020.

(6) If the first trust is directly or indirectly the beneficiary of qualified benefits property, the second-trust instrument may not include or omit any term that, if included in or omitted from the first-trust instrument, would have increased the minimum distributions required with respect to the qualified benefits property under 26 U.S.C. 401(a)(9), as such section existed on November 14, 2020, and any applicable regulations, or any similar requirements that refer to 26 U.S.C. 401(a)(9), as such section existed on November 14, 2020, or the regulations. If an attempted exercise of the decanting power violates the preceding sentence, the trustee is deemed to have held the qualified benefits property and any reinvested distributions of the property as a separate share from the date of the exercise of the power and section 30-4522 applies to the separate share.

(7) If the first trust qualifies as a grantor trust because of the application of 26 U.S.C. 672(f)(2)(A), as such section existed on November 14, 2020, the second trust may not include or omit a term that, if included in or omitted from the first-trust instrument, would have prevented the first trust from qualifying under 26 U.S.C. 672(f)(2)(A), as such section existed on November 14, 2020.

(8) In this subdivision, tax benefit means a federal or state tax deduction, exemption, exclusion, or other benefit not otherwise listed in this section, except for a benefit arising from being a grantor trust. Subject to subdivision (9) of this subsection, a second-trust instrument may not include or omit a term that, if included in or omitted from the first-trust instrument, would have prevented qualification for a tax benefit if:

(A) the first-trust instrument expressly indicates an intent to qualify for the benefit or the first-trust instrument clearly is designed to enable the first trust to qualify for the benefit; and

(B) the transfer of property held by the first trust or the first trust qualified, or but for provisions of the Uniform Trust Decanting Act other than this section, would have qualified for the tax benefit.

(9) Subject to subdivision (4) of this subsection:

(A) except as otherwise provided in subdivision (7) of this subsection, the second trust may be a nongrantor trust, even if the first trust is a grantor trust; and

(B) except as otherwise provided in subdivision (10) of this subsection, the second trust may be a grantor trust, even if the first trust is a nongrantor trust.

(10) An authorized fiduciary may not exercise the decanting power if a settlor objects in a signed record delivered to the fiduciary within the notice period and:

(A) the first trust and a second trust are both grantor trusts, in whole or in part, the first trust grants the settlor or another person the power to cause the first trust to cease to be a grantor trust, and the second trust does not grant an equivalent power to the settlor or other person; or

(B) the first trust is a nongrantor trust and a second trust is a grantor trust, in whole or in part, with respect to the settlor, unless:

(i) the settlor has the power at all times to cause the second trust to cease to be a grantor trust; or

(ii) the first-trust instrument contains a provision granting the settlor or another person a power that would cause the first trust to cease to be a grantor trust and the second-trust instrument contains the same provision.

Source: Laws 2020, LB808, § 29.

30-4520 Duration of second trust.

(a) Subject to subsection (b) of this section, a second trust may have a duration that is the same as or different from the duration of the first trust.

(b) To the extent that property of a second trust is attributable to property of the first trust, the property of the second trust is subject to any rules governing maximum perpetuity, accumulation, or suspension of the power of alienation which apply to property of the first trust.

Source: Laws 2020, LB808, § 30.

30-4521 Need to distribute not required.

An authorized fiduciary may exercise the decanting power whether or not under the first trust's discretionary distribution standard the fiduciary would have made or could have been compelled to make a discretionary distribution of principal at the time of the exercise.

Source: Laws 2020, LB808, § 31.

30-4522 Saving provision.

(a) If exercise of the decanting power would be effective under the Uniform Trust Decanting Act except that the second-trust instrument in part does not comply with the act, the exercise of the power is effective and the following rules apply with respect to the principal of the second trust attributable to the exercise of the power:

(1) A provision in the second-trust instrument which is not permitted under the act is void to the extent necessary to comply with the act.

(2) A provision required by the act to be in the second-trust instrument which is not contained in the instrument is deemed to be included in the instrument to the extent necessary to comply with the act.

(b) If a trustee or other fiduciary of a second trust determines that subsection (a) of this section applies to a prior exercise of the decanting power, the fiduciary shall take corrective action consistent with the fiduciary's duties.

Source: Laws 2020, LB808, § 32.

30-4523 Trust for care of animal.

(a) In this section:

(1) Animal trust means a trust or an interest in a trust created to provide for the care of one or more animals.

(2) Protector means a person appointed in an animal trust to enforce the trust on behalf of the animal or, if no such person is appointed in the trust, a person appointed by the court for that purpose.

(b) The decanting power may be exercised over an animal trust that has a protector to the extent the trust could be decanted under the Uniform Trust

Decanting Act if each animal that benefits from the trust were an individual, if the protector consents in a signed record to the exercise of the power.

(c) A protector for an animal has the rights under the act of a qualified beneficiary.

(d) Notwithstanding any other provision of the act, if a first trust is an animal trust, in an exercise of the decanting power, the second trust must provide that trust property may be applied only to its intended purpose for the period the first trust benefited the animal.

Source: Laws 2020, LB808, § 33.

30-4524 Terms of second trust.

A reference in the Nebraska Uniform Trust Code to a trust instrument or terms of the trust includes a second-trust instrument and the terms of the second trust.

Source: Laws 2020, LB808, § 34.

Cross References

Nebraska Uniform Trust Code, see section 30-3801.

30-4525 Settlor.

(a) For purposes of law of this state other than the Uniform Trust Decanting Act and subject to subsection (b) of this section, a settlor of a first trust is deemed to be the settlor of the second trust with respect to the portion of the principal of the first trust subject to the exercise of the decanting power.

(b) In determining settlor intent with respect to a second trust, the intent of a settlor of the first trust, a settlor of the second trust, and the authorized fiduciary may be considered.

Source: Laws 2020, LB808, § 35.

30-4526 Later-discovered property.

(a) Except as otherwise provided in subsection (c) of this section, if exercise of the decanting power was intended to distribute all the principal of the first trust to one or more second trusts, later-discovered property belonging to the first trust and property paid to or acquired by the first trust after the exercise of the power is part of the trust estate of the second trust or trusts.

(b) Except as otherwise provided in subsection (c) of this section, if exercise of the decanting power was intended to distribute less than all the principal of the first trust to one or more second trusts, later-discovered property belonging to the first trust or property paid to or acquired by the first trust after exercise of the power remains part of the trust estate of the first trust.

(c) An authorized fiduciary may provide in an exercise of the decanting power or by the terms of a second trust for disposition of later-discovered property belonging to the first trust or property paid to or acquired by the first trust after exercise of the power.

Source: Laws 2020, LB808, § 36.

30-4527 Obligations.

A debt, liability, or other obligation enforceable against property of a first trust is enforceable to the same extent against the property when held by the second trust after exercise of the decanting power.

Source: Laws 2020, LB808, § 37.

30-4528 Uniformity of application and construction.

In applying and construing the Uniform Trust Decanting 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 2020, LB808, § 38.

30-4529 Relation to federal Electronic Signatures in Global and National Commerce Act.

The Uniform Trust Decanting Act modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b), as such sections existed on November 14, 2020.

Source: Laws 2020, LB808, § 39.

ARTICLE 46

UNIFORM POWERS OF APPOINTMENT ACT

PART 1
GENERAL PROVISIONS

PART 2
CREATION, REVOCATION, AND AMENDMENT OF POWER OF APPOINTMENT

PART 3
EXERCISE OF POWER OF APPOINTMENT

PART 1

GENERAL PROVISIONS

30-4601 Short title.

Sections 30-4601 to 30-4638 shall be known and may be cited as the Uniform Powers of Appointment Act.

Source: Laws 2021, LB501, § 24.

30-4602 Definitions.

In the Uniform Powers of Appointment Act:

(1) Appointee means a person to which a powerholder makes an appointment of appointive property.

(2) Appointive property means the property or property interest subject to a power of appointment.

(3) Blanket exercise clause means a clause in an instrument which exercises a power of appointment and is not a specific exercise clause. The term includes a clause that:

(A) expressly uses the words ''any power'' in exercising any power of appointment the powerholder has;

(B) expressly uses the words ''any property'' in appointing any property over which the powerholder has a power of appointment; or

(C) disposes of all property subject to disposition by the powerholder.

(4) Donor means a person that creates a power of appointment.

(5) Exclusionary power of appointment means a power of appointment exercisable in favor of any one or more of the permissible appointees to the exclusion of the other permissible appointees.

(6) General power of appointment means a power of appointment exercisable in favor of the powerholder, the powerholder's estate, a creditor of the powerholder, or a creditor of the powerholder's estate.

(7) Gift in default clause means a clause identifying a taker in default of appointment.

(8) Impermissible appointee means a person that is not a permissible appointee.

(9) Instrument means a record.

(10) Nongeneral power of appointment means a power of appointment that is not a general power of appointment.

(11) Permissible appointee means a person in whose favor a powerholder may exercise a power of appointment.

(12) Person means an individual, estate, trust, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(13) Power of appointment means a power that enables a powerholder acting in a nonfiduciary capacity to designate a recipient of an ownership interest in or another power of appointment over the appointive property. The term does not include a power of attorney.

(14) Powerholder means a person in which a donor creates a power of appointment.

(15) Presently exercisable power of appointment means a power of appointment exercisable by the powerholder at the relevant time. The term:

(A) includes a power of appointment not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified time only after:

(i) the occurrence of the specified event;

(ii) the satisfaction of the ascertainable standard; or

(iii) the passage of the specified time; and

(B) does not include a power exercisable only at the powerholder's death.

(16) 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.

(17) Specific exercise clause means a clause in an instrument which specifically refers to and exercises a particular power of appointment.

(18) Taker in default of appointment means a person that takes all or part of the appointive property to the extent the powerholder does not effectively exercise the power of appointment.

(19) Terms of the instrument means the manifestation of the intent of the maker of the instrument regarding the instrument's provisions as expressed in the instrument or as may be established by other evidence that would be admissible in a legal proceeding.

Source: Laws 2021, LB501, § 25.

30-4603 Governing law.

Unless the terms of the instrument creating a power of appointment manifest a contrary intent:

(1) the creation, revocation, or amendment of the power is governed by the law of the donor's domicile at the relevant time; and

(2) the exercise, release, renunciation, or disclaimer of the power, or the revocation or amendment of the exercise, release, renunciation, or disclaimer of the power, is governed by the law of the powerholder's domicile at the relevant time.

Source: Laws 2021, LB501, § 26.

30-4604 Common law and principles of equity.

The common law and principles of equity supplement the Uniform Powers of Appointment Act except to the extent modified by the Uniform Powers of Appointment Act or law of this state other than the Uniform Powers of Appointment Act.

Source: Laws 2021, LB501, § 27.

PART 2

CREATION, REVOCATION, AND AMENDMENT
OF POWER OF APPOINTMENT

30-4605 Creation of power of appointment.

(a) A power of appointment is created only if:

(1) the instrument creating the power:

(A) is valid under applicable law; and

(B) except as otherwise provided in subsection (b) of this section, transfers the appointive property; and

(2) the terms of the instrument creating the power manifest the donor's intent to create in a powerholder a power of appointment over the appointive property exercisable in favor of a permissible appointee.

(b) Subdivision (a)(1)(B) of this section does not apply to the creation of a power of appointment by the exercise of a power of appointment.

(c) A power of appointment may not be created in a deceased individual.

(d) Subject to an applicable rule against perpetuities, a power of appointment may be created in an unborn or unascertained powerholder.

Source: Laws 2021, LB501, § 28.

30-4606 Nontransferability.

A powerholder may not transfer a power of appointment. If a powerholder dies without exercising or releasing a power, the power lapses.

Source: Laws 2021, LB501, § 29.

30-4607 Presumption of unlimited authority.

Subject to section 30-4609, and unless the terms of the instrument creating a power of appointment manifest a contrary intent, the power is:

(1) presently exercisable;

(2) exclusionary; and

(3) except as otherwise provided in section 30-4609, general.

Source: Laws 2021, LB501, § 30.

30-4608 Exception to presumption of unlimited authority.

Unless the terms of the instrument creating a power of appointment manifest a contrary intent, the power is nongeneral if:

(1) the power is exercisable only at the powerholder's death; and

(2) the permissible appointees of the power are a defined and limited class that does not include the powerholder's estate, the powerholder's creditors, or the creditors of the powerholder's estate.

Source: Laws 2021, LB501, § 31.

30-4609 Rules of classification.

(a) In this section, adverse party means a person with a substantial beneficial interest in property which would be affected adversely by a powerholder's exercise or nonexercise of a power of appointment in favor of the powerholder, the powerholder's estate, a creditor of the powerholder, or a creditor of the powerholder's estate.

(b) If a powerholder may exercise a power of appointment only with the consent or joinder of an adverse party, the power is nongeneral.

(c) If the permissible appointees of a power of appointment are not defined and limited, the power is exclusionary.

Source: Laws 2021, LB501, § 32.

30-4610 Power to revoke or amend.

A donor may revoke or amend a power of appointment only to the extent that:

(1) the instrument creating the power is revocable by the donor; or

(2) the donor reserves a power of revocation or amendment in the instrument creating the power of appointment.

Source: Laws 2021, LB501, § 33.

PART 3

EXERCISE OF POWER OF APPOINTMENT

30-4611 Requisites for exercise of power of appointment.

A power of appointment is exercised only:

(1) if the instrument exercising the power is valid under applicable law;

(2) if the terms of the instrument exercising the power:

(A) manifest the powerholder's intent to exercise the power; and

(B) subject to section 30-4614, satisfy the requirements of exercise, if any, imposed by the donor; and

(3) to the extent the appointment is a permissible exercise of the power.

Source: Laws 2021, LB501, § 34.

30-4612 Intent to exercise: Determining intent from residuary clause.

(a) In this section:

(1) Residuary clause does not include a residuary clause containing a blanket exercise clause or a specific exercise clause.

(2) Will includes a codicil and a testamentary instrument that revises another will.

(b) A residuary clause in a powerholder's will, or a comparable clause in the powerholder's revocable trust, manifests the powerholder's intent to exercise a power of appointment only if:

(1) the terms of the instrument containing the residuary clause do not manifest a contrary intent;

(2) the power is a general power exercisable in favor of the powerholder's estate;

(3) there is no gift in default clause or the clause is ineffective; and

(4) the powerholder did not release the power.

Source: Laws 2021, LB501, § 35.

30-4613 Intent to exercise: After-acquired power.

Unless the terms of the instrument exercising a power of appointment manifest a contrary intent:

(1) except as otherwise provided in subdivision (2) of this section, a blanket exercise clause extends to a power acquired by the powerholder after executing the instrument containing the clause; and

(2) if the powerholder is also the donor of the power, the clause does not extend to the power unless there is no gift in default clause or the gift in default clause is ineffective.

Source: Laws 2021, LB501, § 36.

30-4614 Substantial compliance with donor-imposed formal requirement.

A powerholder's substantial compliance with a formal requirement of appointment imposed by the donor, including a requirement that the instrument exercising the power of appointment make reference or specific reference to the power, is sufficient if:

(1) the powerholder knows of and intends to exercise the power; and

(2) the powerholder's manner of attempted exercise of the power does not impair a material purpose of the donor in imposing the requirement.

Source: Laws 2021, LB501, § 37.

30-4615 Permissible appointment.

(a) A powerholder of a general power of appointment that permits appointment to the powerholder or the powerholder's estate may make any appointment, including an appointment in trust or creating a new power of appointment, that the powerholder could make in disposing of the powerholder's own property.

(b) A powerholder of a general power of appointment that permits appointment only to the creditors of the powerholder or of the powerholder's estate may appoint only to those creditors.

(c) Unless the terms of the instrument creating a power of appointment manifest a contrary intent, the powerholder of a nongeneral power may:

(1) make an appointment in any form, including an appointment in trust, in favor of a permissible appointee;

(2) create a general power in a permissible appointee;

(3) create a nongeneral power in any person to appoint to one or more of the permissible appointees of the original nongeneral power; or

(4) create a nongeneral power in a permissible appointee to appoint to one or more persons if the permissible appointees of the new nongeneral power include the permissible appointees of the original nongeneral power.

Source: Laws 2021, LB501, § 38.

30-4616 Appointment to deceased appointee or permissible appointee's descendant.

(a) Subject to section 30-2343, an appointment to a deceased appointee is ineffective.

(b) Unless the terms of the instrument creating a power of appointment manifest a contrary intent, a powerholder of a nongeneral power may exercise the power in favor of, or create a new power of appointment in, a descendant of a deceased permissible appointee whether or not the descendant is described by the donor as a permissible appointee.

Source: Laws 2021, LB501, § 39.

30-4617 Impermissible appointment.

(a) Except as otherwise provided in section 30-4616, an exercise of a power of appointment in favor of an impermissible appointee is ineffective.

(b) An exercise of a power of appointment in favor of a permissible appointee is ineffective to the extent the appointment is a fraud on the power.

Source: Laws 2021, LB501, § 40.

30-4618 Selective allocation doctrine.

If a powerholder exercises a power of appointment in a disposition that also disposes of property the powerholder owns, the owned property and the appointive property must be allocated in the permissible manner that best carries out the powerholder's intent.

Source: Laws 2021, LB501, § 41.

30-4619 Capture doctrine: Disposition of ineffectively appointed property under general power.

To the extent a powerholder of a general power of appointment, other than a power to withdraw property from, revoke, or amend a trust, makes an ineffective appointment:

(1) the gift in default clause controls the disposition of the ineffectively appointed property; or

(2) if there is no gift in default clause or to the extent the clause is ineffective, the ineffectively appointed property:

(A) passes to:

(i) the powerholder if the powerholder is a permissible appointee and living; or

(ii) if the powerholder is an impermissible appointee or deceased, the powerholder's estate if the estate is a permissible appointee; or

(B) if there is no taker under subdivision (A) of this subdivision, passes under a reversionary interest to the donor or the donor's transferee or successor in interest.

Source: Laws 2021, LB501, § 42.

30-4620 Disposition of unappointed property under released or unexercised general power.

To the extent a powerholder releases or fails to exercise a general power of appointment other than a power to withdraw property from, revoke, or amend a trust:

(1) the gift in default clause controls the disposition of the unappointed property; or

(2) if there is no gift in default clause or to the extent the clause is ineffective:

(A) except as otherwise provided in subdivision (B) of this subdivision, the unappointed property passes to:

(i) the powerholder if the powerholder is a permissible appointee and living; or

(ii) if the powerholder is an impermissible appointee or deceased, the powerholder's estate if the estate is a permissible appointee; or

(B) to the extent the powerholder released the power, or if there is no taker under subdivision (A) of this subdivision, the unappointed property passes under a reversionary interest to the donor or the donor's transferee or successor in interest.

Source: Laws 2021, LB501, § 43.

30-4621 Disposition of unappointed property under released or unexercised nongeneral power.

To the extent a powerholder releases, ineffectively exercises, or fails to exercise a nongeneral power of appointment:

(1) the gift in default clause controls the disposition of the unappointed property; or

(2) if there is no gift in default clause or to the extent the clause is ineffective, the unappointed property:

(A) passes to the permissible appointees if:

(i) the permissible appointees are defined and limited; and

(ii) the terms of the instrument creating the power do not manifest a contrary intent; or

(B) if there is no taker under subdivision (A) of this subdivision, passes under a reversionary interest to the donor or the donor's transferee or successor in interest.

Source: Laws 2021, LB501, § 44.

30-4622 Disposition of unappointed property if partial appointment to taker in default.

Unless the terms of the instrument creating or exercising a power of appointment manifest a contrary intent, if the powerholder makes a valid partial appointment to a taker in default of appointment, the taker in default of appointment may share fully in unappointed property.

Source: Laws 2021, LB501, § 45.

30-4623 Appointment to taker in default.

If a powerholder makes an appointment to a taker in default of appointment and the appointee would have taken the property under a gift in default clause had the property not been appointed, the power of appointment is deemed not to have been exercised and the appointee takes under the clause.

Source: Laws 2021, LB501, § 46.

30-4624 Powerholder's authority to revoke or amend exercise.

A powerholder may revoke or amend an exercise of a power of appointment only to the extent that:

(1) the powerholder reserves a power of revocation or amendment in the instrument exercising the power of appointment and, if the power is nongeneral, the terms of the instrument creating the power of appointment do not prohibit the reservation; or

(2) the terms of the instrument creating the power of appointment provide that the exercise is revocable or amendable.

Source: Laws 2021, LB501, § 47.

PART 4

DISCLAIMER OR RELEASE; CONTRACT TO APPOINT OR NOT TO APPOINT

30-4625 Disclaimer.

As provided by section 30-2352:

(1) A powerholder may renounce all or part of a power of appointment.

(2) A permissible appointee, appointee, or taker in default of appointment may renounce all or part of an interest in appointive property.

Source: Laws 2021, LB501, § 48.

30-4626 Authority to release.

A powerholder may release a power of appointment, in whole or in part, except to the extent the terms of the instrument creating the power prevent the release.

Source: Laws 2021, LB501, § 49.

30-4627 Method of release.

A powerholder of a releasable power of appointment may release the power in whole or in part:

(1) by substantial compliance with a method provided in the terms of the instrument creating the power; or

(2) if the terms of the instrument creating the power do not provide a method or the method provided in the terms of the instrument is not expressly made exclusive, by a record manifesting the powerholder's intent by clear and convincing evidence.

Source: Laws 2021, LB501, § 50.

30-4628 Revocation or amendment of release.

A powerholder may revoke or amend a release of a power of appointment only to the extent that:

(1) the instrument of release is revocable by the powerholder; or

(2) the powerholder reserves a power of revocation or amendment in the instrument of release.

Source: Laws 2021, LB501, § 51.

30-4629 Power to contract: Presently exercisable power of appointment.

A powerholder of a presently exercisable power of appointment may contract:

(1) not to exercise the power; or

(2) to exercise the power if the contract when made does not confer a benefit on an impermissible appointee.

Source: Laws 2021, LB501, § 52.

30-4630 Power to contract: Power of appointment not presently exercisable.

A powerholder of a power of appointment that is not presently exercisable may contract to exercise or not to exercise the power only if the powerholder:

(1) is also the donor of the power; and

(2) has reserved the power in a revocable trust.

Source: Laws 2021, LB501, § 53.

30-4631 Remedy for breach of contract to appoint or not to appoint.

The remedy for a powerholder's breach of a contract to appoint or not to appoint appointive property is limited to damages payable out of the appointive property or, if appropriate, specific performance of the contract.

Source: Laws 2021, LB501, § 54.

PART 5

RIGHTS OF POWERHOLDER'S CREDITORS IN APPOINTIVE PROPERTY

30-4632 Creditor claim: General power created by powerholder.

(a) In this section, power of appointment created by the powerholder includes a power of appointment created in a transfer by another person to the extent the powerholder contributed value to the transfer.

(b) Appointive property subject to a general power of appointment created by the powerholder is subject to a claim of a creditor of the powerholder or of the powerholder's estate to the extent provided in the Uniform Voidable Transactions Act.

(c) Subject to subsection (b) of this section, appointive property subject to a general power of appointment created by the powerholder is not subject to a claim of a creditor of the powerholder or the powerholder's estate to the extent the powerholder irrevocably appointed the property in favor of a person other than the powerholder or the powerholder's estate.

(d) Subject to subsections (b) and (c) of this section, and notwithstanding the presence of a spendthrift provision or whether the claim arose before or after the creation of the power of appointment, appointive property subject to a general power of appointment created by the powerholder is subject to a claim of a creditor of:

(1) the powerholder, to the same extent as if the powerholder owned the appointive property, if the power is presently exercisable; and

(2) the powerholder's estate, to the extent the estate is insufficient to satisfy the claim and subject to the right of a decedent to direct the source from which liabilities are paid, if the power is exercisable at the powerholder's death.

Source: Laws 2021, LB501, § 55.

Cross References

Uniform Voidable Transactions Act, see section 36-801.

30-4633 Creditor claim: General power not created by powerholder.

(a) Except as otherwise provided in subsection (b) of this section, appointive property subject to a general power of appointment created by a person other than the powerholder is subject to a claim of a creditor of:

(1) the powerholder, to the extent the powerholder's property is insufficient, if the power is presently exercisable; and

(2) the powerholder's estate, to the extent the estate is insufficient, subject to the right of a decedent to direct the source from which liabilities are paid.

(b) Subject to subsection (c) of section 30-4635, a power of appointment created by a person other than the powerholder which is subject to an ascertainable standard relating to an individual's health, education, support, or maintenance within the meaning of 26 U.S.C. 2041(b)(1)(A) or 26 U.S.C. 2514(c)(1), as such sections existed on January 1, 2021, is treated for purposes of the Uniform Powers of Appointment Act as a nongeneral power.

Source: Laws 2021, LB501, § 56.

30-4634 Power to withdraw.

(a) For purposes of the Uniform Powers of Appointment Act, and except as otherwise provided in subsection (b) of this section, a power to withdraw property from a trust is treated, during the time the power may be exercised, as a presently exercisable general power of appointment to the extent of the property subject to the power to withdraw.

(b) On the lapse, release, or waiver of a power to withdraw property from a trust, the power is treated as a presently exercisable general power of appointment only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in 26 U.S.C. 2041(b)(2) and 26 U.S.C. 2514(e) or the amount specified in 26 U.S.C. 2503(b), as such sections existed on January 1, 2021.

Source: Laws 2021, LB501, § 57.

30-4635 Creditor claim: Nongeneral power.

(a) Except as otherwise provided in subsections (b) and (c) of this section, appointive property subject to a nongeneral power of appointment is exempt from a claim of a creditor of the powerholder or the powerholder's estate.

(b) Appointive property subject to a nongeneral power of appointment is subject to a claim of a creditor of the powerholder or the powerholder's estate to the extent that the powerholder owned the property and, reserving the nongeneral power, transferred the property in violation of the Uniform Voidable Transactions Act.

(c) If the initial gift in default of appointment is to the powerholder or the powerholder's estate, a nongeneral power of appointment is treated for purposes of the Uniform Powers of Appointment Act as a general power.

Source: Laws 2021, LB501, § 58.

Cross References

Uniform Voidable Transactions Act, see section 36-801.

PART 6

MISCELLANEOUS PROVISIONS

30-4636 Uniformity of application and construction.

In applying and construing the Uniform Powers of Appointment 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, § 59.

30-4637 Relation to Electronic Signatures in Global and National Commerce Act.

The Uniform Powers of Appointment Act modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b).

Source: Laws 2021, LB501, § 60.

30-4638 Application to existing relationships.

(a) Except as otherwise provided in the Uniform Powers of Appointment Act, on and after August 28, 2021:

(1) the Uniform Powers of Appointment Act applies to a power of appointment created before, on, or after August 28, 2021;

(2) the Uniform Powers of Appointment Act applies to a judicial proceeding concerning a power of appointment commenced on or after August 28, 2021;

(3) the Uniform Powers of Appointment Act applies to a judicial proceeding concerning a power of appointment commenced before August 28, 2021, unless the court finds that application of a particular provision of the Uniform Powers of Appointment Act would interfere substantially with the effective conduct of the judicial proceeding or prejudice a right of a party, in which case the particular provision of the Uniform Powers of Appointment Act does not apply and the superseded law applies;

(4) a rule of construction or presumption provided in the Uniform Powers of Appointment Act applies to an instrument executed before August 28, 2021, unless there is a clear indication of a contrary intent in the terms of the instrument; and

(5) except as otherwise provided in subdivisions (1) through (4) of this subsection, an action done before August 28, 2021, is not affected by the Uniform Powers of Appointment Act.

(b) If a right is acquired, extinguished, or barred on the expiration of a prescribed period that commenced under law of this state other than the Uniform Powers of Appointment Act before August 28, 2021, the law continues to apply to the right.

Source: Laws 2021, LB501, § 61.

ARTICLE 47

UNIFORM COMMUNITY PROPERTY DISPOSITION AT DEATH ACT

Section

30-4701 Act, how cited.

Sections 30-4701 to 30-4715 shall be known and may be cited as the Uniform Community Property Disposition at Death Act.

Source: Laws 2024, LB83, § 1.
Effective date July 19, 2024.

30-4702 Definitions.

For purposes of the Uniform Community Property Disposition at Death Act:

(1) Community-property spouse means an individual in a marriage or other relationship:

(A) under which community property could be acquired during the existence of the relationship; and

(B) that remains in existence at the time of death of either party to the relationship.

(2) Electronic means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(3) Jurisdiction means the United States, a state, a foreign country, or a political subdivision of a foreign country.

(4) Partition means voluntarily divide property to which the Uniform Community Property Disposition at Death Act otherwise would apply.

(5) Person means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(6) Personal representative includes an executor, administrator, successor personal representative, special administrator, and other person that performs substantially the same function.

(7) Property means anything that may be the subject of ownership, whether real or personal, tangible or intangible, legal or equitable, or any interest therein.

(8) Reclassify means change the characterization or treatment of community property to property owned separately by community-property spouses.

(9) Record means information:

(A) inscribed on a tangible medium; or

(B) stored in an electronic or other medium and retrievable in perceivable form.

(10) Sign means, with present intent to authenticate or adopt a record:

(A) execute or adopt a tangible symbol; or

(B) attach to or logically associate with the record an electronic symbol, sound, or process.

(11) State means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any other territory or possession subject to the jurisdiction of the United States. The term includes a federally recognized Indian tribe.

Source: Laws 2024, LB83, § 2.
Effective date July 19, 2024.

30-4703 Included and excluded property.

(a) Subject to subsection (b) of this section, the Uniform Community Property Disposition at Death Act applies to the following property of a community-property spouse, without regard to how the property is titled or held:

(1) if a decedent was domiciled in this state at the time of death:

(A) all or a proportionate part of each item of personal property, wherever located, that was community property under the law of the jurisdiction where the decedent or the surviving community-property spouse was domiciled when the property:

(i) was acquired; or

(ii) after acquisition, became community property;

(B) income, rent, profit, appreciation, or other increase derived from or traceable to property described in subdivision (1)(A) of this subsection; and

(C) personal property traceable to property described in subdivision (1)(A) or (1)(B) of this subsection; and

(2) regardless whether a decedent was domiciled in this state at the time of death:

(A) all or a proportionate part of each item of real property located in this state traceable to community property or acquired with community property under the law of the jurisdiction where the decedent or the surviving community-property spouse was domiciled when the property:

(i) was acquired; or

(ii) after acquisition, became community property; and

(B) income, rent, profit, appreciation, or other increase, derived from or traceable to property described in subdivision (2)(A) of this subsection.

(b) If community-property spouses acquired community property by complying with the law of a jurisdiction that allows for creation of community property by transfer of property to a trust, the Uniform Community Property Disposition at Death Act applies to the property only to the extent the property is held in the trust or characterized as community property by the terms of the trust or the law of the jurisdiction under which the trust was created.

(c) The Uniform Community Property Disposition at Death Act does not apply to property that:

(1) community-property spouses have partitioned or reclassified; or

(2) is the subject of a waiver of rights granted by the Uniform Community Property Disposition at Death Act.

Source: Laws 2024, LB83, § 3.
Effective date July 19, 2024.

30-4704 Form of partition, reclassification, or waiver.

(a) Community-property spouses domiciled in this state may partition or reclassify property to which the Uniform Community Property Disposition at Death Act otherwise would apply. The partition or reclassification must be in a record signed by both community-property spouses.

(b) A community-property spouse domiciled in this state may waive a right granted by the Uniform Community Property Disposition at Death Act only by complying with the law of this state, including this state's choice-of-law rules, applicable to waiver of a spousal property right.

Source: Laws 2024, LB83, § 4.
Effective date July 19, 2024.

30-4705 Community property presumption.

All property acquired by a community-property spouse when domiciled in a jurisdiction where community property then could be acquired by the commu-

nity-property spouse by operation of law is presumed to be community property. This presumption may be rebutted by a preponderance of the evidence.

Source: Laws 2024, LB83, § 5.
Effective date July 19, 2024.

30-4706 Disposition of property at death.

(a) One-half of the property to which the Uniform Community Property Disposition at Death Act applies belongs to the surviving community-property spouse of a decedent and is not subject to disposition by the decedent at death.

(b) One-half of the property to which the Uniform Community Property Disposition at Death Act applies belongs to the decedent and is subject to disposition by the decedent at death.

(c) For the purpose of calculating the augmented estate of the decedent and the elective-share right of the surviving community-property spouse:

(1) property under subsection (a) of this section is deemed to be property of the surviving community-property spouse; and

(2) property under subsection (b) of this section is deemed to be property of the decedent.

(d) Except for the purpose of calculating the augmented estate of the decedent and the elective-share right of the surviving community-property spouse, this section does not apply to property transferred by right of survivorship or under a revocable trust or other nonprobate transfer.

(e) This section does not limit the right of a surviving community-property spouse to the homestead allowance under section 30-2322, exempt property allowance under section 30-2323, and family allowance under section 30-2324.

(f) If at death a decedent purports to transfer to a third person property that, under this section, belongs to the surviving community-property spouse and transfers other property to the surviving community-property spouse, this section does not limit the authority of the court under other law of this state to require that the community-property spouse elect between retaining the property transferred to the community-property spouse or asserting rights under the Uniform Community Property Disposition at Death Act.

Source: Laws 2024, LB83, § 6.
Effective date July 19, 2024.

30-4707 Other remedies available at death.

(a) At the death of a community-property spouse, the surviving community-property spouse or a personal representative, heir, or nonprobate transferee of the decedent may assert a right based on an act of:

(1) the surviving community-property spouse or decedent during the marriage or other relationship under which community property then could be acquired; or

(2) the decedent that takes effect at the death of the decedent.

(b) In determining a right under subsection (a) of this section and corresponding remedy, the court:

(1) shall apply equitable principles; and

(2) may consider the community property law of the jurisdiction where the decedent or surviving community-property spouse was domiciled when property was acquired or enhanced.

Source: Laws 2024, LB83, § 7.
Effective date July 19, 2024.

30-4708 Right of surviving community-property spouse.

(a) The surviving community-property spouse of the decedent may assert a claim for relief with respect to a right under the Uniform Community Property Disposition at Death Act in accordance with the following rules:

(1) In an action asserting a right in or to property, the surviving community-property spouse must:

(A) not later than one year after the death of the decedent, commence an action against an heir, devisee, or nonprobate transferee of the decedent that is in possession of the property; or

(B) not later than six months after appointment of the personal representative of the decedent, send a demand in a record to the personal representative.

(2) In an action other than an action under subdivision (1) of this subsection, the surviving community-property spouse must:

(A) not later than six months after appointment of the personal representative of the decedent, send a demand in a record to the personal representative; or

(B) if a personal representative is not appointed, commence the action not later than one year after the death of the decedent.

(b) Unless a timely demand is made under subdivision (a)(1)(B) or (a)(2)(A) of this section, the personal representative may distribute the assets of the decedent's estate without personal liability for a community-property spouse's claim under the Uniform Community Property Disposition at Death Act.

Source: Laws 2024, LB83, § 8.
Effective date July 19, 2024.

30-4709 Right of heir, devisee, or nonprobate transferee.

An heir, devisee, or nonprobate transferee of a deceased community-property spouse may assert a claim for relief with respect to a right under the Uniform Community Property Disposition at Death Act in accordance with the following rules:

(1) In an action asserting a right in or to property, the heir, devisee, or nonprobate transferee shall:

(A) not later than one year after the death of the decedent, commence an action against the surviving community-property spouse of the decedent who is in possession of the property; or

(B) not later than six months after appointment of the personal representative of the decedent, send a demand in a record to the personal representative.

(2) In an action other than an action under subdivision (1) of this section, the heir, devisee, or nonprobate transferee must:

(A) not later than six months after the appointment of the personal representative of the decedent, send a demand in a record to the personal representative; or

(B) if a personal representative is not appointed, commence the action not later than one year after the death of the decedent.

Source: Laws 2024, LB83, § 9.
Effective date July 19, 2024.

30-4710 Protection of third person.

(a) With respect to property to which the Uniform Community Property Disposition at Death Act applies, a person is not liable under the Uniform Community Property Disposition at Death Act to the extent the person:

(1) transacts in good faith and for value:

(A) with a community-property spouse; or

(B) after the death of the decedent, with a surviving community-property spouse, personal representative, heir, devisee, or nonprobate transferee of the decedent; and

(2) does not know or have reason to know that the other party to the transaction is exceeding or improperly exercising the party's authority.

(b) Good faith under subdivision (a)(1) of this section does not require the person to inquire into the extent or propriety of the exercise of authority by the other party to the transaction.

Source: Laws 2024, LB83, § 10.
Effective date July 19, 2024.

30-4711 Principles of law and equity.

The principles of law and equity supplement the Uniform Community Property Disposition at Death Act except to the extent inconsistent with the act.

Source: Laws 2024, LB83, § 11.
Effective date July 19, 2024.

30-4712 Uniformity of application and construction.

In applying and construing the Uniform Community Property Disposition at Death Act, a court shall consider the promotion of uniformity of the law among jurisdictions that enact it.

Source: Laws 2024, LB83, § 12.
Effective date July 19, 2024.

30-4713 Saving provision.

If a right with respect to property to which the Uniform Community Property Disposition at Death Act applies is acquired, extinguished, or barred on the expiration of a limitation period that began to run under another statute before July 19, 2024, that statute continues to apply to the right even if the statute has been repealed or superseded by the Uniform Community Property Disposition at Death Act.

Source: Laws 2024, LB83, § 13.
Effective date July 19, 2024.

30-4714 Transitional provision.

Except as provided in section 30-4713, the Uniform Community Property Disposition at Death Act applies to a judicial proceeding with respect to property to which the act applies commenced on or after July 19, 2024, regardless of the date of death of the decedent.

Source: Laws 2024, LB83, § 14.
Effective date July 19, 2024.

30-4715 Venue.

Venue for any proceeding under the Uniform Community Property Disposition at Death Act is in the county in this state where:

(1) The decedent was domiciled at the time of death; or

(2) The decedent's property was located at the time of death if the decedent was not domiciled in Nebraska at the time of death.

Source: Laws 2024, LB83, § 15.
Effective date July 19, 2024.

CHAPTER 31
DRAINAGE

Article.
3. Drainage Districts Organized by Proceedings in District Court. 31-320 to 31-333.
5. Sanitary Drainage Districts in Municipalities. 31-501 to 31-543.
7. Sanitary and Improvement Districts.
   (b) Districts Formed under Act of 1949. 31-727 to 31-749.
   (c) District Boundaries. 31-763 to 31-766.
   (f) Recall of Trustees. 31-787, 31-793.
9. County Drainage Act. 31-925.
10. Flood Plain Management. 31-1017.

ARTICLE 3

DRAINAGE DISTRICTS ORGANIZED BY PROCEEDINGS IN DISTRICT COURT

Section
31-320. Land outside of district; inclusion; conditions; procedure.
31-329. Engineer's report; objections; decision; appeal; bond; procedure.
31-333. Drainage tax; levy; certificate; form; extension on tax books; collection.

31-320 Land outside of district; inclusion; conditions; procedure.

If, upon the filing of the report of the engineer, together with the estimates as provided in section 31-311, it appears that lands, other than those incorporated by the court in the district, will be benefited by the drainage improvements of the district, the chairperson of the board of supervisors shall file a petition in the district court of the county where the district was originally organized, containing a description of the lands and the name or names of the owners as they appear on the tax duplicate of the county in which the lands are situated and their place or places of residence and alleging that such land will be benefited by the improvements and ought in justice bear its proportion of the expense and cost of such improvement and that such land was not incorporated within the limits of the drainage district as originally established by the court. If the names of the owners of any such tract or tracts of land are unknown, this fact shall be stated. The prayer of the petition shall be that such tract or tracts of land may be incorporated and made a part of the district. Upon the filing of such petition, duly verified, the clerk of the district court shall issue summons or notice to the parties interested as provided by section 31-303 with reference to the original petition for the establishment of the district, the same proceedings shall be had upon the petition and in the same court as upon the original petition for the establishment of the district, and the same provisions of law shall apply thereto insofar as the same are applicable. Upon the return day of such notice or summons, or at any other time to which the court shall adjourn the cause, the court shall have jurisdiction to try and determine such matter at chambers and to make all necessary orders, judgments, and decrees. The owners of such lands may by writing, duly verified, waive the issuance and service of all notice or process and consent that the court may at once upon the filing of the petition and waiver enter the necessary decree. Upon filing the petition it shall be the duty of the clerk to record the cause as a proceeding in

and part of the original cause for the establishment of the district. After entering of the decree of the court, the land and all of the parties so brought into the district shall be subject to the same provisions of law as would have applied to them had they been incorporated in the original petition and decree entered thereon. No land shall be included in such drainage district or be subject to taxation for the drainage except wet, submerged, and swamp lands or land within a district subject to overflow.

Source: Laws 1905, c. 161, § 11, p. 616; R.S.1913, § 1815; C.S.1922, § 1762; C.S.1929, § 31-419; R.S.1943, § 31-320; Laws 2018, LB193, § 67.

31-329 Engineer's report; objections; decision; appeal; bond; procedure.

Any person or corporation who has filed objections and had a hearing, feeling aggrieved by the decision and judgment of the board of supervisors, may appeal to the district court within and for the county in which the drainage district was originally established, upon giving a bond conditioned the same as in appeals to the district court as from civil actions in county court in this state and payable to the drainage district, and in addition thereto conditioned that the appellant will pay all damages which may accrue to the drainage district by reason of such appeal. The bond shall be approved by the secretary of the board of supervisors and filed with the secretary within ten days after the rendition of the decision appealed from. Within ten days after the filing of the bond the secretary shall make and file a transcript of the proceedings appealed from, together with all the documents relating thereto, with the clerk of the district court in which the matter has been appealed. Upon the filing of the transcript and bond, the district court shall have jurisdiction of the cause, and the same shall be filed as in appeals in other civil actions to such court. The court shall hear and determine all such objections in a summary manner as in a case in equity and shall increase or reduce the amount of benefit on any tract where the same may be required in order to make the apportionment equitable. All objections that may be filed shall be heard and determined by the court as one proceeding, and only one transcript of the final order of the board of supervisors, fixing the apportionments or benefits, shall be required. The clerk of the district court shall forthwith certify the decision of the court to the board of supervisors which shall take such action as may be rendered necessary by such decisions.

Source: Laws 1905, c. 161, § 17, p. 623; Laws 1909, c. 147, § 7, p. 515; R.S.1913, § 1824; C.S.1922, § 1771; C.S.1929, § 31-428; R.S. 1943, § 31-329; Laws 1972, LB 1032, § 207; Laws 2018, LB193, § 68.

31-333 Drainage tax; levy; certificate; form; extension on tax books; collection.

The board of supervisors shall annually thereafter determine, order, and levy the amount of the installment of the tax hereinbefore named which shall become due and be collected during the year at the same time that county taxes are due and collected, and in case bonds are issued, the amount of the interest which will accrue on such bonds shall be included and added to the tax. The annual installment and levy shall be evidenced and certified by the board, on or before September 30, to the county clerk of each county in which lands of the

district are situated, which certificate shall be substantially in the following form:

State of Nebraska,)
) ss.
County of _____)

To _____ county clerk of the county:

This is to certify that by virtue of the provisions of sections 31-330 to 31-333, the board of supervisors of ..... drainage district, including lands and property in the counties of ..... in the State of Nebraska, have determined to and do hereby levy the annual installment of the total tax, heretofore certified to you under the direction of such sections, on the lands and property situated in your county described in the following table in which are (1) the names of the owners of such lands and properties as they appeared in the decree of the district court organizing the district or as shown by the certificate heretofore filed showing the total assessment against the property, (2) the description of the lands and property opposite the names of owners, and (3) the amount of the annual installment and interest levied on each tract of land or piece of property: (Here insert table). The installments of tax shall be collectible and payable the present year at the same time that county taxes are due and collected. Witness the signature of the chairperson of the board of supervisors and attested by the seal of the district and the signature of the secretary of the board this ..... day of ..... A.D. 20.....

Secretary .....

Chairperson .....

(Seal)

The certificate shall be filed in the office of the clerk, and the annual installment of the total tax so certified shall be extended by the county clerk on the tax books of the county against the real property, right-of-way, road, or property to be benefited, situated in such drainage district, in the same manner that other taxes are extended on the tax books of the county in a column under the heading of Drainage Tax, and the taxes shall be collected by the treasurer of the county in which the real property is situated on which the tax is levied at the same time and in the same manner that the county taxes on such property are collected. The county clerk shall be allowed the same fees as he or she receives for like services in other cases.

Source: Laws 1907, c. 152, § 3, p. 469; Laws 1909, c. 147, § 8, p. 518; R.S.1913, § 1828; C.S.1922, § 1775; C.S.1929, § 31-432; R.S. 1943, § 31-333; Laws 1961, c. 138, § 3, p. 397; Laws 1972, LB 1053, § 3; Laws 1992, LB 1063, § 24; Laws 1992, Second Spec. Sess., LB 1, § 24; Laws 1993, LB 734, § 35; Laws 1995, LB 452, § 8; Laws 1995, LB 589, § 7; Laws 2004, LB 813, § 14; Laws 2021, LB644, § 13.

ARTICLE 5

SANITARY DRAINAGE DISTRICTS IN MUNICIPALITIES

Section
31-501. Sanitary drainage district in municipality; organization; petition for election.
31-505. Sanitary district trustees; election; organization; officers; corporate powers.

Section
31-508. Ditches constructed from cities of the primary class; improvement beyond the district; plan and estimate; duties of Department of Natural Resources.
31-513. Annual tax levy; limit; certification to county clerk; collection; disbursement of funds.
31-538. Sanitary district; activities; discontinuance; effect on powers of trustees and property rights.
31-539. Sanitary district; activities; discontinuance; effect on contract rights.
31-540. Sanitary district; activities; discontinuance; effect on power to levy taxes.
31-541. Sanitary district; activities; discontinuance; powers of county board; succession.
31-543. Sanitary district; discontinuance; funds and property; city or riverfront development authority; rights and liability; conditions.

31-501 Sanitary drainage district in municipality; organization; petition for election.

Whenever one or more municipalities may be situated upon or near a stream which is bordered by lands subject to overflow from natural causes, or which is obstructed by dams or artificial obstructions so that the natural flow of waters is impeded so that drainage or the improvement of the channel of the stream will conduce to the preservation of public health, such municipalities and the surrounding lands deleteriously affected by the conditions of the stream, may be incorporated as a sanitary drainage district under sections 31-501 to 31-523 in the manner following: Any one hundred legal voters, residents within the limits of such proposed sanitary drainage district, may petition the county board of the county wherein they reside to cause the question to be submitted to the legal voters within the limits of such proposed sanitary drainage district whether they will organize as a sanitary drainage district under such sections. In the case of municipalities of less than one thousand inhabitants, as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, two-thirds of the legal voters, residents within the limits of such proposed sanitary drainage district, may petition the county board of the county wherein they reside to cause the question to be submitted to the legal voters within the limits of such proposed sanitary drainage district whether they will organize as a sanitary drainage district under such sections, and if a majority of those voting on the question are in favor of the proposition the district shall be organized.

Source: Laws 1891, c. 36, § 1, p. 287; R.S.1913, § 1922; Laws 1919, c. 142, § 1, p. 320; C.S.1922, § 1863; C.S.1929, § 31-601; R.S.1943, § 31-501; Laws 2017, LB113, § 35.

31-505 Sanitary district trustees; election; organization; officers; corporate powers.

Upon the organization of any such sanitary district the county board shall call an election for the election of trustees, who shall hold their offices until their successors are elected and qualified. Where such sanitary district does not contain a city of more than forty thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, there shall be three trustees, and where such sanitary district contains a city of more than forty thousand inhabitants as so determined, there shall be five trustees. In districts having three trustees, at the first general state election held in November after the organization of the district, there shall be elected one trustee for a term of two

years and two trustees for a term of four years, and thereafter their respective successors shall be elected for a term of four years at the general state election held in November immediately prior to the expiration of their respective terms. In districts having five trustees, at the first general state election held in November after the organization of the district, there shall be elected two trustees for a term of two years and three trustees for a term of four years, and thereafter their respective successors shall be elected for a term of four years at the general state election held in November immediately prior to the expiration of their respective terms. At the first meeting after election of one or more members, the board shall elect one of their number president and, in case they fail to elect, then the member who at his or her election received the highest number of votes shall be president of such board. Such district shall be a body corporate and politic by name of Sanitary District of ....., with power to sue, be sued, contract, acquire and hold property, and adopt a common seal.

Source: Laws 1891, c. 36, § 2, p. 288; R.S.1913, § 1926; C.S.1922, § 1867; C.S.1929, § 31-605; Laws 1943, c. 75, § 3, p. 259; R.S.1943, § 31-505; Laws 1949, c. 81, § 1, p. 214; Laws 2019, LB67, § 7.

31-508 Ditches constructed from cities of the primary class; improvement beyond the district; plan and estimate; duties of Department of Natural Resources.

If a sanitary drainage district has constructed one or more channels, drains, or ditches from a city of the primary class to or beyond the boundaries of the district downstream and there remains from the lower terminus of such improvement a portion or continuation of the watercourse unimproved, the Department of Natural Resources shall investigate the conditions of such watercourse, and if the department determines that further improvement in such watercourse downstream is for the interest of lands adjacent to such watercourse below the point of the improvement, the department shall file a plan of such improvement in the office of the county clerk of each of the counties in which any of the lands to be benefited are situated and in which any portion of the watercourse to be improved is located. Such plan shall describe the boundaries of the district to be benefited and shall contain an estimate of the benefits that would accrue to the sanitary district by reason of such improvement as well as the cost thereof and an estimate of the special benefits that would accrue to lands adjacent to the watercourse by reason of improved drainage, such estimate being detailed as to the various tracts of land under separate ownership as shown by the records of the county in which such lands are situated.

Source: Laws 1927, c. 144, § 1, p. 390; C.S.1929, § 31-607; R.S.1943, § 31-508; Laws 1949, c. 81, § 2, p. 214; Laws 1969, c. 248, § 1, p. 906; Laws 2000, LB 900, § 71; Laws 2017, LB113, § 36; Laws 2022, LB820, § 5.

31-513 Annual tax levy; limit; certification to county clerk; collection; disbursement of funds.

(1) The board of trustees may levy and collect annually taxes for corporate purposes upon property within the limits of such sanitary district to the amount

of not more than three and five-tenths cents on each one hundred dollars upon the taxable value of the taxable property of such district.

(2) The board of trustees shall, on or before September 30 of each year, certify the amount of tax to be levied to the county clerk who shall place the proper levy upon the county tax list, and the tax shall be collected by the county treasurer in the same manner as county taxes.

(3) The tax money collected by the levy shall be used exclusively for the purpose or purposes set forth in subsection (1) of this section. The county treasurer shall disburse the taxes on warrants of the board of trustees, and in respect to such fund, the county treasurer shall be ex officio treasurer of the sanitary district.

Source: Laws 1891, c. 36, § 9, p. 290; R.S.1913, § 1932; C.S.1922, § 1873; C.S.1929, § 31-611; Laws 1943, c. 73, § 1, p. 255; R.S.1943, § 31-513; Laws 1947, c. 113, § 1, p. 308; Laws 1951, c. 97, § 1, p. 266; Laws 1953, c. 287, § 51, p. 960; Laws 1955, c. 114, § 1, p. 305; Laws 1969, c. 248, § 2, p. 907; Laws 1969, c. 145, § 32, p. 692; Laws 1979, LB 187, § 136; Laws 1992, LB 1063, § 28; Laws 1992, Second Spec. Sess., LB 1, § 28; Laws 1993, LB 734, § 36; Laws 1995, LB 452, § 9; Laws 2021, LB644, § 14.

31-538 Sanitary district; activities; discontinuance; effect on powers of trustees and property rights.

(1) The result of such election shall be certified to the county board of the county in which such district is located, and if at such election a majority of the qualified electors actually voting in such sanitary district shall vote in favor of the discontinuance of the activities and work of the district, the trustees of such district shall thereupon cease the performance of their duties as such trustees, and the county board of the county in which such district is located shall thereupon act as trustees ex officio of the district and shall have all the powers, rights, and authority previously vested by law in the trustees of the district, but without additional compensation.

(2) Except as otherwise provided in section 31-543, all tangible property within the territorial limits of any city or village within such district, and any tangible property serving a particular city or village, such as a sanitary sewage treatment plant, and which could be operated and maintained by the particular city or village so served, shall be transferred and assigned to such city or village which shall, upon an acceptance of such transfer or assignment by its council or board of trustees or other local governing body, be thereafter wholly operated and maintained out of funds appropriated and levied by such city or village.

Source: Laws 1941, c. 56, § 3, p. 256; C.S.Supp.,1941, § 31-632; R.S. 1943, § 31-538; Laws 2022, LB800, § 332.

31-539 Sanitary district; activities; discontinuance; effect on contract rights.

Except as otherwise provided in section 31-543, all lawful claims, rights, and demands against such a district, and all contractual obligations of such a district, existing in any person at the time of discontinuance of the activities and work of such district, shall continue to subsist in such person and shall remain the charge and obligation of the sanitary district, and all claims and

demands in favor of such district at the time of the discontinuance of its activities and work shall subsist in its favor and may be collected in the same manner as might have been theretofore done by the district.

Source: Laws 1941, c. 56, § 4, p. 256; C.S.Supp.,1941, § 31-633; R.S. 1943, § 31-539; Laws 2022, LB800, § 333.

31-540 Sanitary district; activities; discontinuance; effect on power to levy taxes.

Except as otherwise provided in section 31-543, for the purpose of discharging obligations of such district incurred prior to the discontinuance of its activities and work as provided in sections 31-501 to 31-534, such district shall continue to have the power to levy taxes as provided in such sections, and thereafter the district shall have the power to levy and collect general taxes in an amount not to exceed one and seven-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such district and shall have the power to levy special assessments in the manner and to the extent previously vested in such district.

Source: Laws 1941, c. 56, § 5, p. 256; C.S.Supp.,1941, § 31-634; R.S. 1943, § 31-540; Laws 1953, c. 287, § 52, p. 961; Laws 1979, LB 187, § 138; Laws 1992, LB 719A, § 125; Laws 2022, LB800, § 334.

31-541 Sanitary district; activities; discontinuance; powers of county board; succession.

Except as otherwise provided in section 31-543, the county board of the county within which such district is located shall take possession of all rights and personal property, books, papers and records of such district, and shall discharge the duties within the territorial limits of such district imposed by law upon the district. For the discharge of such services the county board may employ such officers, servants and agents as may be necessary in the manner provided by law.

Source: Laws 1941, c. 56, § 6, p. 257; C.S.Supp.,1941, § 31-635; R.S. 1943, § 31-541; Laws 2022, LB800, § 335.

31-543 Sanitary district; discontinuance; funds and property; city or riverfront development authority; rights and liability; conditions.

(1) For a discontinued sanitary district which lies solely within the zoning jurisdiction of a city, title to all funds and all other property and property rights of the discontinued district, and all taxes, assessments, and demands of every kind due or owing to the discontinued district, shall be vested in or paid to and collected by (a) such city or (b) except as specifically provided in subsection (3) of this section, the riverfront development authority established pursuant to section 19-5305 if such city has elected to create a riverfront development district pursuant to section 19-5304.

(2) The city or riverfront development authority described in subsection (1) of this section shall also be liable for and recognize, assume, and carry out all valid contracts and obligations of that portion of the discontinued district assumed by such city or authority, including all outstanding bonds, warrants, or other debts and financial obligations.

(3) For any discontinuance of a district under subdivision (1)(b) of this section, the riverfront development authority shall only take title to and ownership of that property or those property rights of the discontinued sanitary district contained within the boundaries of the riverfront development district managed by the authority. The city shall take title to and ownership of any discontinued sanitary district property outside the boundaries of such riverfront development district. The city or authority shall thereafter maintain any drainway or drainage or sewage system of that portion of the discontinued district conveyed or transferred to the city or authority.

Source: Laws 2022, LB800, § 336.

ARTICLE 7

SANITARY AND IMPROVEMENT DISTRICTS

(b) DISTRICTS FORMED UNDER ACT OF 1949

(c) DISTRICT BOUNDARIES

(f) RECALL OF TRUSTEES

(b) DISTRICTS FORMED UNDER ACT OF 1949

31-727 Sanitary and improvement district; organized by proceedings in district court; purposes; powers; articles of association; contents; filing; real estate; conditions; terms, defined.

(1)(a) A majority of the owners having an interest in the real property within the limits of a proposed sanitary and improvement district, situated in one or

more counties in this state, may form a sanitary and improvement district for the purposes of installing electric service lines and conduits, a sewer system, a water system, an emergency management warning system, a system of sidewalks, public roads, streets, and highways, public waterways, docks, or wharfs, and related appurtenances, contracting for water for fire protection and for resale to residents of the district, contracting for police protection and security services, contracting for solid waste collection services, contracting for access to the facilities and use of the services of the library system of one or more neighboring cities or villages, and contracting for gas and for electricity for street lighting for the public streets and highways within such proposed district, constructing and contracting for the construction of dikes and levees for flood protection for the district, acquiring, improving, and operating public parks, playgrounds, and recreational facilities, and acquiring, purchasing, leasing, owning, erecting, constructing, equipping, operating, or maintaining all or a portion of offstreet motor vehicle public parking facilities located in the district to serve business.

(b) The sanitary and improvement district may also contract with a county within which all or a portion of such sanitary and improvement district is located or a city within whose zoning jurisdiction such sanitary and improvement district is located for any public purpose specifically authorized in this section.

(c) Sanitary and improvement districts located in any county which has a city of the metropolitan class within its boundaries or in any adjacent county which has adopted a comprehensive plan may contract with other sanitary and improvement districts to acquire, build, improve, and operate public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting districts.

(d) Nothing in this section shall authorize districts to purchase electric service and resell the same.

(e) The district, in lieu of establishing its own water system, may contract with any utilities district, municipality, or corporation for the installation of a water system and for the provision of water service for fire protection and for the use of the residents of the district.

(f) For the purposes listed in this section, such majority of the owners may make and sign articles of association in which shall be stated (i) the name of the district, (ii) that the district will have perpetual existence, (iii) the limits of the district, (iv) the names and places of residence of the owners of the land in the proposed district, (v) the description of the several tracts of land situated in the district owned by those who may organize the district, (vi) the name or names and the description of the real estate owned by such owners as do not join in the organization of the district but who will be benefited thereby, and (vii) whether the purpose of the corporation is installing gas and electric service lines and conduits, installing a sewer system, installing a water system, installing a system of public roads, streets, and highways, public waterways, docks, or wharfs, and related appurtenances, contracting for water for fire protection and for resale to residents of the district, contracting for police protection and security services, contracting for solid waste collection services, contracting for access to the facilities and use of the services of the library system of one or more neighboring cities or villages, contracting for street lighting for the public streets and highways within the proposed district, constructing or contracting

for the construction of dikes and levees for flood protection of the proposed district, acquiring, improving, and operating public parks, playgrounds, and recreational facilities, acquiring, purchasing, leasing, owning, erecting, constructing, equipping, operating, or maintaining all or a portion of offstreet motor vehicle public parking facilities located in the district to serve business, or, when permitted by this section, contracting with other sanitary and improvement districts to acquire, build, improve, and operate public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting districts, contracting for any public purpose specifically authorized in this section, or combination of any one or more of such purposes, or all of such purposes. Such owners of real estate as are unknown may also be set out in the articles as such.

(g) No sanitary and improvement district may own or hold land in excess of ten acres, unless such land so owned and held by such district is actually used for a public purpose, as provided in this section, within three years of its acquisition. Any sanitary and improvement district which has acquired land in excess of ten acres in area and has not devoted the same to a public purpose, as set forth in this section, within three years of the date of its acquisition, shall devote the same to a use set forth in this section or shall divest itself of such land. When a district divests itself of land pursuant to this section, it shall do so by sale at public auction to the highest bidder after notice of such sale has been given by publication at least three times for three consecutive weeks prior to the date of sale in a legal newspaper of general circulation within the area of the district.

(2) The articles of association shall further state that the owners of real estate so forming the district for such purposes are willing and obligate themselves to pay the tax or taxes which may be levied against all the property in the district and special assessments against the real property benefited which may be assessed against them to pay the expenses that may be necessary to install a sewer or water system or both a sewer and water system, the cost of water for fire protection, the cost of grading, changing grade, paving, repairing, graveling, regraveling, widening, or narrowing sidewalks and roads, resurfacing or relaying existing pavement, or otherwise improving any public roads, streets, or highways within the district, including protecting existing sidewalks, streets, highways, and roads from floods or erosion which has moved within fifteen feet from the edge of such sidewalks, streets, highways, or roads, regardless of whether such flooding or erosion is of natural or artificial origin, the cost of constructing public waterways, docks, or wharfs, and related appurtenances, the cost of constructing or contracting for the construction of dikes and levees for flood protection for the district, the cost of contracting for water for fire protection and for resale to residents of the district, the cost of contracting for police protection and security services, the cost of contracting for solid waste collection services, the cost of contracting for access to the facilities and use of the services of the library system of one or more neighboring cities or villages, the cost of electricity for street lighting for the public streets and highways within the district, the cost of installing gas and electric service lines and conduits, the cost of acquiring, improving, and operating public parks, playgrounds, and recreational facilities, the cost of acquiring, purchasing, leasing, owning, erecting, constructing, equipping, operating, or maintaining all or a portion of offstreet motor vehicle public parking facilities located in the district to serve business, and, when permitted by this section, the cost of contracting

for building, acquiring, improving, and operating public parks, playgrounds, and recreational facilities, and the cost of contracting for any public purpose specifically authorized in this section, as provided by law.

(3) The articles shall propose the names of five or more trustees who are (a) owners of real estate located in the proposed district or (b) designees of the owners if the real estate is owned by a limited partnership, a general partnership, a limited liability company, a public, private, or municipal corporation, an estate, or a trust. These five trustees shall serve as a board of trustees until their successors are elected and qualified if such district is organized. No corporation formed or hereafter formed shall perform any new functions, other than those for which the corporation was formed, without amending its articles of association to include the new function or functions.

(4) After the articles are signed, the same shall be filed in the office of the clerk of the district court of the county in which such sanitary and improvement district is located or, if such sanitary and improvement district is composed of tracts or parcels of land in two or more different counties, in the office of the clerk of the district court for the county in which the greater portion of such proposed sanitary and improvement district is located, together with a petition praying that the same may be declared a sanitary and improvement district under sections 31-727 to 31-762.

(5) Notwithstanding the repeal of sections 31-701 to 31-726.01 by Laws 1996, LB 1321:

(a) Any sanitary and improvement district organized pursuant to such sections and in existence on July 19, 1996, shall, after August 31, 2003, be treated for all purposes as if formed and organized pursuant to sections 31-727 to 31-762;

(b) Any act or proceeding performed or conducted by a sanitary and improvement district organized pursuant to such repealed sections shall be deemed lawful and within the authority of such sanitary and improvement district to perform or conduct after August 31, 2003; and

(c) Any trustees of a sanitary and improvement district organized pursuant to such repealed sections and lawfully elected pursuant to such repealed sections or in conformity with the provisions of sections 31-727 to 31-762 shall be deemed for all purposes, on and after August 31, 2003, to be lawful trustees of such sanitary and improvement district for the term provided by such sections. Upon the expiration of the term of office of a trustee or at such time as there is a vacancy in the office of any such trustee prior to the expiration of his or her term, his or her successors or replacement shall be elected pursuant to sections 31-727 to 31-762.

(6)(a) A sanitary and improvement district that meets the requirements of this subsection shall have the additional powers provided for in subdivision (b) of this subsection, subject to the approval and restrictions established by the city council or village board within whose zoning jurisdiction the sanitary and improvement district is located and the county board in which a majority of the sanitary and improvement district is located. The sanitary and improvement district shall be (i) located in a county with a population less than one hundred thousand inhabitants, (ii) located predominately in a county different from the county of the municipality within whose zoning jurisdiction such sanitary and improvement district is located, (iii) unable to incorporate due to its close proximity to a municipality, and (iv) unable to be annexed by a municipality

with zoning jurisdiction because the sanitary and improvement district is not adjacent or contiguous to such municipality.

(b) Any sanitary and improvement district that meets the requirements of subdivision (6)(a) of this section shall have only the following additional powers, subject to the approval and restrictions of the city council or village board within whose zoning jurisdiction such sanitary and improvement district is located and the county board in which a majority of the sanitary and improvement district is located. Such sanitary and improvement district shall have the power to (i) regulate and license dogs and other animals, (ii) regulate and provide for streets and sidewalks, including the removal of obstructions and encroachments, (iii) regulate parking on public roads and rights-of-way relating to snow removal and access by emergency vehicles, and (iv) regulate the parking of abandoned motor vehicles.

(7) For the purposes of sections 31-727 to 31-762 and 31-771 to 31-780, unless the context otherwise requires:

(a) Public waterways means artificially created boat channels dedicated to public use and providing access to navigable rivers or streams;

(b) Operation and maintenance expenses means and includes, but is not limited to, salaries, cost of materials and supplies for operation and maintenance of the district's facilities, cost of ordinary repairs, replacements, and alterations, cost of surety bonds and insurance, cost of audits and other fees, and taxes;

(c) Capital outlay means expenditures for construction or reconstruction of major permanent facilities having an expected long life, including, but not limited to, street paving and curbs, storm and sanitary sewers, and other utilities;

(d) Warrant means an investment security under article 8, Uniform Commercial Code, in the form of a short-term, interest-bearing order payable on a specified date issued by the board of trustees or administrator of a sanitary and improvement district to be paid from funds expected to be received in the future, and includes, but is not limited to, property tax collections, special assessment collections, and proceeds of sale of general obligation bonds;

(e) General obligation bond means an investment security under article 8, Uniform Commercial Code, in the form of a long-term, written promise to pay a specified sum of money, referred to as the face value or principal amount, at a specified maturity date or dates in the future, plus periodic interest at a specified rate; and

(f) Administrator means the person appointed by the Auditor of Public Accounts pursuant to section 31-771 to manage the affairs of a sanitary and improvement district and to exercise the powers of the board of trustees during the period of the appointment to the extent prescribed in sections 31-727 to 31-780.

Source: Laws 1949, c. 78, § 1, p. 194; Laws 1955, c. 117, § 1, p. 310; Laws 1961, c. 142, § 1, p. 409; Laws 1967, c. 189, § 1, p. 518; Laws 1969, c. 250, § 1, p. 909; Laws 1969, c. 251, § 1, p. 918; Laws 1973, LB 245, § 1; Laws 1974, LB 757, § 7; Laws 1976, LB 313, § 1; Laws 1977, LB 228, § 1; Laws 1982, LB 868, § 1; Laws

1985, LB 207, § 1; Laws 1994, LB 501, § 1; Laws 1996, LB 43, § 5; Laws 2003, LB 721, § 1; Laws 2008, LB768, § 1; Laws 2015, LB324, § 1; Laws 2021, LB81, § 1.

31-727.02 District; board of trustees; notice of meetings; minutes; clerk or administrator of district; duties.

(1) Except as provided in subsection (6) of section 84-1411, the clerk or administrator of each sanitary and improvement district shall notify any municipality or county within whose zoning jurisdiction such district is located of all meetings of the district board of trustees or called by the administrator by sending a notice of such meeting to the clerk of the municipality or county not less than seven days prior to the date set for any meeting. In the case of meetings called by the administrator, notice shall be provided to the clerk of the district not less than seven days prior to the date set for any meeting.

(2) Except as provided in subsection (6) of section 84-1411, within thirty days after any meeting of a sanitary and improvement district board of trustees or called by the administrator, the clerk or administrator of the district shall transmit to the municipality or county within whose zoning jurisdiction the sanitary and improvement district is located a copy of the minutes of such meeting.

Source: Laws 1976, LB 313, § 11; Laws 1982, LB 868, § 2; Laws 2021, LB83, § 3; Laws 2024, LB287, § 6.
Operative date April 17, 2024.

31-728 District; summons; notice to landowners, counties, and cities affected; contents.

Immediately after the petition and articles of association shall have been filed, as provided for by subsection (4) of section 31-727, the clerk of the district court for the county where same are filed shall issue a summons, as now provided by law, returnable as any other summons in a civil action filed in said court, and directed to the several owners of real estate in the proposed district who may be alleged in such petition to be benefited thereby, but who have not signed the articles of association, which shall be served as summonses in civil cases. In case any owner or owners of real estate in the proposed district are unknown, or are nonresidents, they shall be notified in the same manner as nonresident defendants are now notified according to law in actions in the district courts of this state, setting forth in such notice (1) that the articles of association have been filed, (2) the purpose thereof, (3) that the real estate of such owner or owners situated in the district, describing the same, will be affected thereby and rendered liable to taxation and special assessment in accordance with law for the purpose of installing and maintaining such sewer or water system, or both, and maintaining the district, for constructing and maintaining a system of sidewalks, public roads, streets, and highways, public waterways, docks or wharfs, and related appurtenances, for the furnishing of water for fire protection, for contracting for gas and for electricity for street lighting for the public streets and highways within the district, for constructing or contracting for the construction of dikes and levees for flood protection for the district, for installing electric service lines and conduits, for the acquisition, improvement, and operation of public parks, playgrounds, and recreational facilities, for acquiring, purchasing, leasing, owning, erecting, constructing,

equipping, operating, or maintaining all or a portion of offstreet motor vehicle public parking facilities located in the district to serve business, and, where permitted by section 31-727, for the contracting with other sanitary and improvement districts for acquiring, building, improving, and operating public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting districts, (4) the names of the proposed trustees, and (5) that a petition has been made to have the district declared a sanitary and improvement district.

Within five days after the filing of the petition the clerk of the district court shall send notice of such petition to each county in which all or a portion of the proposed district lies and to each city in whose zoning jurisdiction all or a portion of the proposed district lies.

Source: Laws 1949, c. 78, § 2, p. 196; Laws 1955, c. 117, § 2, p. 312; Laws 1961, c. 142, § 2, p. 411; Laws 1967, c. 189, § 2, p. 520; Laws 1969, c. 250, § 2, p. 911; Laws 1973, LB 245, § 2; Laws 1974, LB 757, § 8; Laws 1980, LB 933, § 26; Laws 2021, LB81, § 2.

Cross References

Methods of service, see sections 25-505.01, 25-506.01, and 25-540.
Return date of summons, see section 25-507.01.
Service on unknown defendants, see section 25-321.

31-729 District; formation; objections.

All owners of real estate situated in the proposed district who have not signed the articles of association and who may object to the organization of the district or to any one or more of the proposed trustees shall, on or before the time in which they are required to answer, file any such objection in writing, stating (1) why such sanitary and improvement district should not be organized and declared a public corporation in this state, (2) why their land will not be benefited by the installation of a sewer or water system, or both a sewer and water system, a system of sidewalks, public roads, streets, and highways, public waterways, docks or wharfs, and related appurtenances, and gas and electricity for street lighting for the public streets and highways within the district, by the contracting for solid waste collection services, by the construction or contracting for the construction of dikes and levees for flood protection for the district, gas or electric service lines and conduits, and water for fire protection and the health and property of the owners protected, by the acquisition, improvement and operation of public parks, playgrounds, and recreational facilities, by acquiring, purchasing, leasing, owning, erecting, constructing, equipping, operating, or maintaining all or a portion of offstreet motor vehicle public parking facilities located in the district to serve business, and, where permitted by section 31-727, by the contracting with other sanitary and improvement districts for the building, acquisition, improvement, and operation of public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting districts, (3) why their land should not be embraced in the limits of such district, and (4) their objections if any to any one or more of the proposed trustees.

Source: Laws 1949, c. 78, § 3, p. 196; Laws 1955, c. 117, § 3, p. 312; Laws 1961, c. 142, § 3, p. 412; Laws 1967, c. 189, § 3, p. 521;

Laws 1969, c. 250, § 3, p. 912; Laws 1973, LB 245, § 3; Laws 1974, LB 757, § 9; Laws 2015, LB324, § 3; Laws 2021, LB81, § 3.

31-735 District; trustees; election; procedure; term; notice; qualified voters; reduction in number of trustees; procedure.

(1) On the first Tuesday after the second Monday in September which is at least fifteen months after the judgment of the district court creating a sanitary and improvement district and on the first Tuesday after the second Monday in September each two years thereafter, the board of trustees shall cause a special election to be held, at which election a board of trustees shall be elected. The board of trustees shall have five members except as provided in subsection (2) of this section. Each member elected to the board of trustees shall be elected to a term of two years and shall hold office until such member's successor is elected and qualified. Any person desiring to file for the office of trustee may file for such office with the election commissioner, or county clerk in counties having no election commissioner, of the county in which the greater proportion in area of the district is located not later than fifty days before the election. If such person will serve on the board of trustees as a designated representative of a limited partnership, general partnership, limited liability company, public, private, or municipal corporation, estate, or trust which owns real estate in the district, the filing shall indicate that fact and shall include appropriate documentation evidencing such fact. No filing fee shall be required. A person filing for the office of trustee to be elected at the election held four years after the first election of trustees and each election thereafter shall designate whether such person is a candidate for election by the resident owners of such district or a candidate for election by all of the owners of real estate located in the district. If a person filing for the office of trustee is a designated representative of a limited partnership, a general partnership, a limited liability company, a public, private, or municipal corporation, an estate, or a trust which owns real estate in the district, the name of such entity shall accompany the name of the candidate on the ballot in the following form: (Name of candidate) to represent (name of entity) as a member of the board. The name of each candidate shall appear on only one ballot.

The name of a person may be written in and voted for as a candidate for the office of trustee, and such write-in candidate may be elected to the office of trustee. A write-in candidate for the office of trustee who will serve as a designated representative of a limited partnership, a general partnership, a limited liability company, a public, private, or municipal corporation, an estate, or a trust which owns real estate in the district shall not be elected to the office of trustee unless (a) each vote is accompanied by the name of the entity which the candidate will represent and (b) within ten days after the date of the election the candidate provides the election commissioner or county clerk with appropriate documentation evidencing the candidate's representation of the entity. Votes cast which do not carry such accompanying designation shall not be counted.

A trustee shall be an owner of real estate located in the district or shall be a person designated to serve as a representative on the board of trustees if the real estate is owned by a limited partnership, a general partnership, a limited liability company, a public, private, or municipal corporation, an estate, or a trust. Notice of the date of the election shall be mailed by the clerk of the

district not later than sixty-five days prior to the election to each person who is entitled to vote at the election for trustees whose property ownership or lease giving a right to vote is of record on the records of the register of deeds as of a date designated by the election commissioner or county clerk, which date shall be not more than eighty days prior to the election.

(2)(a) For any sanitary and improvement district, a person whose ownership or right to vote becomes of record or is received after the date specified pursuant to subsection (1) of this section may vote when such person establishes the right to vote to the satisfaction of the election board. At the first election and at the election held two years after the first election, any person may cast one vote for each trustee for each acre of unplatted land or fraction thereof and one vote for each platted lot which such person may own in the district.

(b) This subdivision applies to a district until the board of trustees amends its articles of association pursuant to subdivision (2)(d) of this section. At the election held four years after the first election of trustees, two members of the board of trustees shall be elected by the legal property owners resident within such sanitary and improvement district and three members shall be elected by all of the owners of real estate located in the district pursuant to this section. Every resident property owner may cast one vote for a candidate for each office of trustee to be filled by election of resident property owners only. Such resident property owners may also each cast one vote for each acre of unplatted land or fraction thereof and for each platted lot owned within the district for a candidate for each office of trustee to be filled by election of all property owners. For each office of trustee to be filled by election of all property owners of the district, every legal property owner not resident within such sanitary and improvement district may cast one vote for each acre of unplatted land or fraction thereof and one vote for each platted lot which such legal property owner owns in the district. At the election held six years after the first election of trustees and at each election thereafter, three members of the board of trustees shall be elected by the legal property owners resident within such sanitary and improvement district and two members shall be elected by all of the owners of real estate located in the district pursuant to this section. If there are not any legal property owners resident within such district or if not less than ninety percent of the area of the district is owned for other than residential uses, the five members shall be elected by the legal property owners of all property within such district as provided in this section.

(c) Any public, private, or municipal corporation owning any land or lot in the district may vote at an election the same as an individual. If more than fifty percent of the homes in any sanitary and improvement district are used as a second, seasonal, or recreational residence, the owners of such property shall be considered legal property owners resident within such district for purposes of electing trustees. For purposes of voting for trustees, each condominium apartment under a condominium property regime established prior to January 1, 1984, under the Condominium Property Act or established after January 1, 1984, under the Nebraska Condominium Act shall be deemed to be a platted lot and the lessee or the owner of the lessee's interest, under any lease for an initial term of not less than twenty years which requires the lessee to pay taxes and special assessments levied on the leased property, shall be deemed to be the owner of the property so leased and entitled to cast the vote of such property. When ownership of a platted lot or unplatted land is held jointly by two or

more persons, whether as joint tenants, tenants in common, limited partners, members of a limited liability company, or any other form of joint ownership, only one person shall be entitled to cast the vote of such property. The executor, administrator, guardian, or trustee of any person or estate interested shall have the right to vote. No corporation, estate, or irrevocable trust shall be deemed to be a resident owner for purposes of voting for trustees. Should two or more persons or officials claim the right to vote on the same tract, the election board shall determine the party entitled to vote. Such board shall select one of their number chairperson and one of their number clerk. In case of a vacancy on such board, the remaining trustees shall fill the vacancy on such board until the next election.

(d) For any sanitary and improvement district which has been in existence for at least ten years, which has less than seventy property owners entitled to vote for trustees, which has at least two resident property owners, and in which less than ten percent of the area of the district is owned for other than residential uses, the board of trustees may amend its articles of association as provided in section 31-740.01 to provide for a reduction in the number of trustees on the board from five members to three members to be effective at the beginning of the term of office for the board of trustees elected at the next election. At the next election and at each election thereafter, two members of the board of trustees shall be elected by the legal property owners resident within such sanitary and improvement district and one member shall be elected by all of the owners of real estate located in the district pursuant to this section. Every resident property owner may cast one vote for a candidate for each office of trustee to be filled by election of resident property owners only. Such resident property owners may also each cast one vote for each acre of unplatted land or fraction thereof and for each platted lot owned within the district for a candidate for the office of trustee to be filled by election of all property owners. For the office of trustee to be filled by election of all property owners of the district, every legal property owner not resident within such sanitary and improvement district may cast one vote for each acre of unplatted land or fraction thereof and one vote for each platted lot which such legal property owner owns in the district.

(3) The election commissioner or county clerk shall hold any election required by subsection (1) of this section by sealed mail ballot by notifying the board of trustees on or before July 1 of a given year. The election commissioner or county clerk shall, at least twenty days prior to the election, mail a ballot and return envelope to each person who is entitled to vote at the election and whose property ownership or lease giving a right to vote is of record with the register of deeds as of the date designated by the election commissioner or county clerk, which date shall not be more than eighty days prior to the election. The ballot and return envelope shall include: (a) The names and addresses of the candidates; (b) room for write-in candidates; and (c) instructions on how to vote and return the ballot. Such ballots shall be returned in the return envelope to the election commissioner or county clerk no later than 5 p.m. on the date set for the election. If the ballot is not returned in the return envelope, such ballot shall not be counted. If more than one ballot is included in the same return envelope, such ballots shall not be counted and shall be reinserted into the return envelope which shall be resealed and marked rejected.

Source: Laws 1949, c. 78, § 9, p. 198; Laws 1971, LB 188, § 3; Laws 1974, LB 757, § 10; Laws 1976, LB 313, § 14; Laws 1977, LB

228, § 2; Laws 1981, LB 37, § 1; Laws 1982, LB 359, § 1; Laws 1983, LB 433, § 71; Laws 1984, LB 1105, § 1; Laws 1986, LB 483, § 1; Laws 1987, LB 587, § 1; Laws 1987, LB 652, § 4; Laws 1992, LB 764, § 2; Laws 1993, LB 121, § 195; Laws 1997, LB 874, § 9; Laws 1999, LB 740, § 1; Laws 2005, LB 401, § 1; Laws 2009, LB412, § 1; Laws 2015, LB116, § 1; Laws 2015, LB149, § 1; Laws 2016, LB695, § 1; Laws 2022, LB800, § 337.

Cross References

Condominium Property Act, see section 76-801.
Nebraska Condominium Act, see section 76-825.

31-739 District; bonds; interest; tax levies; restrictions; treasurer; duties; collection of charges other than taxes; disbursement of funds.

(1) The district may borrow money for corporate purposes and issue its general obligation bonds therefor and shall annually levy a tax on the taxable value of the taxable property in the district sufficient to pay the interest and principal on the bonds. Such levy shall be known as the bond tax levy of the district. The district shall also annually levy a tax on the taxable value of the taxable property in the district for the purpose of creating a sinking fund for the maintenance and repairing of any sewer or water system or electric lines and conduits in the district, for the payment of any hydrant rentals, for the maintenance and repairing of any sidewalks, public roads, streets, and highways, public waterways, docks, or wharfs, and related appurtenances in the district, for the cost of operating any street lighting system for the public streets and highways within the district, for the building, construction, improvement, or replacement of facilities or systems when necessary to remove or alleviate an existing threat to public health and safety affecting no more than one hundred existing homes, for the cost of building, acquiring, maintaining, and operating public parks, playgrounds, and recreational facilities, for the cost of acquiring, purchasing, leasing, owning, erecting, constructing, equipping, operating, or maintaining all or a portion of offstreet motor vehicle public parking facilities located in the district to serve business, or, when permitted by section 31-727, for contracting with other sanitary and improvement districts for building, acquiring, maintaining, and operating public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting districts, or for the cost of any other services for which the district has contracted or to make up any deficiencies caused by the nonpayment of any special assessments. Such levy shall be known as the operating levy of the district. On or before September 30 of each year, the clerk of the board shall certify the tax to the county clerk of the counties in which such district is located in order that the tax may be extended upon the county tax list. Nothing contained in this section shall authorize any district which has been annexed by a city or village to levy any taxes within or upon the annexed area after the effective date of the annexation if the effective date of the annexation is prior to such levy certification date of the district for the year in which such annexation occurs.

(2) The county treasurer of the county in which the greater portion of the area of the district is located shall be ex officio treasurer of the sanitary and improvement district and shall be responsible for all funds of the district coming into his or her hands. He or she shall collect all taxes and special assessments levied by the district and deposit the same in a bond sinking fund for the payment of principal and interest on any bonds outstanding.

(3) Except as provided in subsection (5) of this section, the trustees or administrator of the district may authorize the clerk or appoint an independent agent to collect service charges and all items other than taxes, connection charges, special assessments, and funds from sale of bonds and warrants, but all funds so collected shall, at least once each month, be remitted to the treasurer to be held in a fund, separate from the general fund or construction fund of the district, which shall be known as the service fee fund of the district. The trustees or administrator may direct the district's treasurer to disburse funds held in the service fee fund to maintain and operate any service for which the funds have been collected or to deposit such funds into the general fund of the district.

(4) The treasurer of the district shall not be responsible for such funds until they are received by him or her. The treasurer shall disburse the funds of the district only on warrants authorized by the trustees or the administrator and signed by the chairperson and clerk or the administrator.

(5) If the average weekly balance in the service fee fund of a district for a full budget year does not exceed five thousand dollars, the trustees or administrator of the district may authorize the clerk to establish an interest-bearing checking account in the name of the district to be maintained as the district service fee fund and the district's treasurer shall disburse the balance of funds held in the service fee fund of the district to the clerk for deposit into the district service fee fund. Following the creation of the district service fee fund, all funds required to be deposited into the service fee fund shall be deposited into the district service fee fund and all disbursements which may lawfully be made from the service fee fund may be made from the district service fee fund as directed or approved by the trustees or the administrator.

Source: Laws 1949, c. 78, § 13, p. 200; Laws 1955, c. 117, § 4, p. 313; Laws 1961, c. 142, § 4, p. 412; Laws 1967, c. 189, § 4, p. 521; Laws 1969, c. 252, § 1, p. 921; Laws 1969, c. 250, § 4, p. 913; Laws 1969, c. 51, § 98, p. 334; Laws 1973, LB 245, § 4; Laws 1974, LB 757, § 11; Laws 1979, LB 187, § 143; Laws 1982, LB 868, § 7; Laws 1985, LB 207, § 2; Laws 1992, LB 1063, § 30; Laws 1992, Second Spec. Sess., LB 1, § 30; Laws 1993, LB 734, § 38; Laws 1995, LB 452, § 11; Laws 1996, LB 1362, § 5; Laws 1997, LB 531, § 1; Laws 2003, LB 721, § 3; Laws 2021, LB81, § 4; Laws 2021, LB644, § 15.

31-740 District; trustees or administrator; powers; plans or contracts; approval required; hearing; contracts authorized; audit; failure to perform audit; effect; connection with city sewerage system; rental or use charge; levy; special assessment.

(1) The board of trustees or the administrator of any district organized under sections 31-727 to 31-762 shall have power to provide for establishing, maintaining, and constructing gas and electric service lines and conduits, an emergency management warning system, water mains, sewers, and disposal plants and disposing of drainage, waste, and sewage of such district in a satisfactory manner; for establishing, maintaining, and constructing sidewalks, public roads, streets, and highways, including grading, changing grade, paving, repaving, graveling, regraveling, widening, or narrowing roads, resurfacing or relaying existing pavement, or otherwise improving any road, street, or high-

way within the district, including protecting existing sidewalks, streets, highways, and roads from floods or erosion which has moved within fifteen feet from the edge of such sidewalks, streets, highways, or roads, regardless of whether such flooding or erosion is of natural or artificial origin; for establishing, maintaining, and constructing public waterways, docks, or wharfs, and related appurtenances; and for constructing and contracting for the construction of dikes and levees for flood protection for the district.

(2) The board of trustees or the administrator of any district may contract for access to the facilities and use of the services of the library system of one or more neighboring cities or villages, for solid waste collection services, and for electricity for street lighting for the public streets and highways within the district and shall have power to provide for building, acquisition, improvement, maintenance, and operation of public parks, playgrounds, and recreational facilities, for acquiring, purchasing, leasing, owning, erecting, constructing, equipping, operating, or maintaining all or a portion of offstreet motor vehicle public parking facilities located in the district to serve business, and, when permitted by section 31-727, for contracting with other sanitary and improvement districts for the building, acquisition, improvement, maintenance, and operation of public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting districts, and for contracting for any public purpose specifically authorized in this section. Power to construct clubhouses and similar facilities for the giving of private parties within the zoning jurisdiction of any city or village is not included in the powers granted in this section. Any sewer system established shall be approved by the Department of Health and Human Services. Any contract entered into on or after August 30, 2015, for solid waste collection services shall include a provision that, in the event the district is annexed in whole or in part by a city or village, the contract shall be canceled and voided upon such annexation as to the annexed areas.

(3) Prior to the installation of any of the improvements or services provided for in this section, the plans or contracts for such improvements or services, other than for public parks, playgrounds, and recreational facilities, whether a district acts separately or jointly with other districts as permitted by section 31-727, shall be approved by the public works department of any municipality when such improvements or any part thereof or services are within the area of the zoning jurisdiction of such municipality. If such improvements or services are without the area of the zoning jurisdiction of any municipality, plans for such improvements shall be approved by the county board of the county in which such improvements are located. Plans and exact costs for public parks, playgrounds, and recreational facilities shall be approved by resolution of the governing body of such municipality or county after a public hearing. Purchases of public parks, playgrounds, and recreational facilities so approved may be completed and shall be valid notwithstanding any interest of any trustee of the district in the transaction. Such approval shall relate to conformity with the master plan and the construction specifications and standards established by such municipality or county. When no master plan and construction specifications and standards have been established, such approval shall not be required. When such improvements are within the area of the zoning jurisdiction of more than one municipality, such approval shall be required only from the most populous municipality, except that when such improvements are furnished to the district by contract with a particular municipality, the necessary approval

shall in all cases be given by such municipality. The municipality or county shall be required to approve plans for such improvements and shall enforce compliance with such plans by action in equity.

(4) The district may construct its sewage disposal plant and other sewerage or water improvements, or both, in whole or in part, inside or outside the boundaries of the district and may contract with corporations or municipalities for disposal of sewage and use of existing sewerage improvements and for a supply of water for fire protection and for resale to residents of the district. It may also contract with any company, public power district, electric membership or cooperative association, or municipality for access to the facilities and use of the services of the library system of one or more neighboring cities or villages, for solid waste collection services, for the installation, maintenance, and cost of operating a system of street lighting upon the public streets and highways within the district, for installation, maintenance, and operation of a water system, for the installation, maintenance, and operation of electric service lines and conduits, or for the acquisition, purchase, lease, ownership, erection, construction, equipping, operation, or maintenance of all or a portion of offstreet motor vehicle public parking facilities located in the district to serve business, and to provide water service for fire protection and use by the residents of the district. It may also contract with any company, municipality, or other sanitary and improvement district, as permitted by section 31-727, for building, acquiring, improving, and operating public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting parties. It may also contract with a county within which all or a portion of such sanitary and improvement district is located or a city within whose zoning jurisdiction the sanitary and improvement district is located for intersection and traffic control improvements, which improvements serve or benefit the district and which may be within or without the corporate boundaries of the district, and for any public purpose specifically authorized in this section.

(5) Each sanitary and improvement district shall have the books of account kept by the board of trustees of the district examined and audited by a certified public accountant or a public accountant for the year ending June 30 and shall file a copy of the audit with the office of the Auditor of Public Accounts by December 31 of the same year. Such audits may be waived by the Auditor of Public Accounts upon proper showing by the district that the audit is unnecessary. Such examination and audit shall show (a) the gross income of the district from all sources for the previous year, (b) the amount spent for access to the facilities and use of the services of the library system of one or more neighboring cities or villages, (c) the amount spent for solid waste collection services, (d) the amount spent for sewage disposal, (e) the amount expended on water mains, (f) the gross amount of sewage processed in the district, (g) the cost per thousand gallons of processing sewage, (h) the amount expended each year for (i) maintenance and repairs, (ii) new equipment, (iii) new construction work, and (iv) property purchased, (i) a detailed statement of all items of expense, (j) the number of employees, (k) the salaries and fees paid employees, (l) the total amount of taxes levied upon the property within the district, and (m) all other facts necessary to give an accurate and comprehensive view of the cost of carrying on the activities and work of such sanitary and improvement district. The reports of all audits provided for in this section shall be and remain a part of the public records in the office of the Auditor of Public Accounts. The expense of such audits shall be paid out of the funds of the district. The Auditor

of Public Accounts shall be given access to all books and papers, contracts, minutes, bonds, and other documents and memoranda of every kind and character of such district and be furnished all additional information possessed by any present or past officer or employee of any such district, or by any other person, that is essential to the making of a comprehensive and correct audit.

(6) If any sanitary and improvement district fails or refuses to cause such annual audit to be made of all of its functions, activities, and transactions for the fiscal year within a period of six months following the close of such fiscal year, unless such audit has been waived, the Auditor of Public Accounts shall, after due notice and a hearing to show cause by such district, appoint a certified public accountant or public accountant to conduct the annual audit of the district and the fee for such audit shall become a lien against the district.

(7) Whenever the sanitary sewer system or any part thereof of a sanitary and improvement district is directly or indirectly connected to the sewerage system of any city, such city, without enacting an ordinance or adopting any resolution for such purpose, may collect such city's applicable rental or use charge from the users in the sanitary and improvement district and from the owners of the property served within the sanitary and improvement district. The charges of such city shall be charged to each property served by the city sewerage system, shall be a lien upon the property served, and may be collected from the owner or the person, firm, or corporation using the service. If the city's applicable rental or service charge is not paid when due, such sum may be recovered by the municipality in a civil action or it may be assessed against the premises served as a special assessment and may be assessed by such city and collected and returned in the same manner as other municipal special assessments are enforced and collected. When any such assessment is levied, it shall be the duty of the city clerk to deliver a certified copy of the ordinance to the county treasurer of the county in which the premises assessed are located and such county treasurer shall collect the assessment as provided by law and return the assessment to the city treasurer. Funds of such city raised from such charges shall be used by it in accordance with laws applicable to its sewer service rental or charges. The governing body of any city may make all necessary rules and regulations governing the direct or indirect use of its sewerage system by any user and premises within any sanitary and improvement district and may establish just and equitable rates or charges to be paid to such city for use of any of its disposal plants and sewerage system. The board of trustees may, in connection with the issuance of any warrants or bonds of the district, agree to make a specified minimum levy on taxable property in the district to pay, or to provide a sinking fund to pay, principal and interest on warrants and bonds of the district for such number of years as the board may establish at the time of making such agreement and may agree to enforce, by foreclosure or otherwise as permitted by applicable laws, the collection of special assessments levied by the district. Such agreements may contain provisions granting to creditors and others the right to enforce and carry out the agreements on behalf of the district and its creditors.

(8) The board of trustees or administrator shall have power to sell and convey real and personal property of the district on such terms as it or he or she shall determine, except that real estate shall be sold to the highest bidder at public auction after notice of the time and place of the sale has been published for three consecutive weeks prior to the sale in a newspaper of general circulation in the county. The board of trustees or administrator may reject such bids and

negotiate a sale at a price higher than the highest bid at the public auction at such terms as may be agreed.

Source: Laws 1949, c. 78, § 14, p. 200; Laws 1955, c. 117, § 5, p. 314; Laws 1961, c. 142, § 5, p. 413; Laws 1963, c. 170, § 1, p. 585; Laws 1965, c. 158, § 1, p. 507; Laws 1967, c. 188, § 2, p. 515; Laws 1971, LB 188, § 4; Laws 1972, LB 1387, § 2; Laws 1973, LB 245, § 5; Laws 1974, LB 629, § 1; Laws 1974, LB 757, § 12; Laws 1976, LB 313, § 3; Laws 1979, LB 187, § 144; Laws 1982, LB 868, § 8; Laws 1985, LB 207, § 3; Laws 1994, LB 501, § 3; Laws 1996, LB 43, § 6; Laws 1996, LB 1044, § 92; Laws 1997, LB 589, § 1; Laws 1997, LB 874, § 10; Laws 2002, LB 176, § 2; Laws 2007, LB296, § 50; Laws 2008, LB768, § 2; Laws 2015, LB324, § 4; Laws 2015, LB361, § 52; Laws 2021, LB81, § 5.

31-744 District; trustees or administrator; improvements and facilities authorized; resolution; construction; acquisition; contracting; approval; cost; assessment.

Whenever the board of trustees or the administrator deems it advisable or necessary (1) to build, reconstruct, purchase, or otherwise acquire a water system, an emergency management warning system, a sanitary sewer system, a sanitary and storm sewer or sewage disposal plant, pumping stations, sewer outlets, gas or electric service lines and conduits constructed or to be constructed in whole or in part inside or outside of the district, a system of sidewalks, public roads, streets, and highways wholly within the district, public waterways, docks, or wharfs, and related appurtenances, wholly within the district, or a public park or parks, playgrounds, and recreational facilities wholly within the district, (2) to acquire, purchase, lease, own, erect, construct, equip, operate, or maintain all or a portion of offstreet motor vehicle public parking facilities located in the district to serve business, (3) to contract as permitted by section 31-740 with the county or city within whose zoning jurisdiction the sanitary and improvement district is located for intersection and traffic control improvements which serve or benefit the district and are located within or without the corporate boundaries of the district, (4) to contract, as permitted by section 31-727, with other sanitary and improvement districts for acquiring, building, improving, and operating public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting districts, or (5) to contract for the installation and operation of a water system, the board of trustees shall declare the advisability and necessity therefor in a proposed resolution, which resolution, in the case of pipe sewer construction, shall state the kinds of pipe proposed to be used, shall include cement concrete pipe and vitrified clay pipe and any other material deemed suitable, shall state the size or sizes and kinds of sewers proposed to be constructed, and shall designate the location and terminal points thereof. If it is proposed to construct a water system, disposal plants, pumping stations, outlet sewers, gas or electric service lines and conduits, or a system of sidewalks, public roads, streets, or highways or public waterways, docks, or wharfs, to construct or contract for the construction of dikes and levees for flood protection for the district, to construct or contract for the construction of public parks, playgrounds, or recreational facilities, to construct or contract for the construction of all or a portion of offstreet motor vehicle public parking facilities located in the district to serve business, or to contract, as permitted by section 31-727, with other sanitary and

improvement districts for acquiring, building, improving, and operating public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting districts, the resolution shall refer to the plans and specifications thereof which have been made and filed before the publication of such resolution by the engineer employed for such purpose. If it is proposed to purchase or otherwise acquire a water system, a sanitary sewer system, a sanitary or storm water sewer, sewers, sewage disposal plant, pumping stations, sewer outlets, gas or electric service lines and conduits, public parks, playgrounds, or recreational facilities, offstreet motor vehicle public parking facilities as described in this section, or to contract, as permitted by section 31-727, with other sanitary and improvement districts for acquiring, building, improving, and operating public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting districts, the resolution shall state the price and conditions of the purchase or how such facility is being acquired. If it is proposed to contract for the installation and operation of a water system for fire protection and for the use of the residents of the district, to contract for the construction of dikes and levees for flood protection for the district or gas or electric service lines and conduits, to contract with a county within which all or a portion of such sanitary and improvement district is located or a city within whose zoning jurisdiction the sanitary and improvement district is located for any public purpose specifically authorized in this section, or to contract, as permitted by section 31-727, with other sanitary and improvement districts for acquiring, building, improving, and operating public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting districts, the resolution shall state the principal terms of the proposed agreement and how the cost thereof is to be paid. When gas or electric service lines and conduits are among the improvements that are proposed to be constructed, purchased, or otherwise acquired or contracted for, and no construction specifications and standards therefor have been established by the municipality having zoning jurisdiction over the area where such improvements are to be located, or when such service lines and conduits are not to be located within any municipality's area of zoning jurisdiction, the plans and specifications for and the method of construction of such service lines and conduits shall be approved by the supplier of gas or electricity within whose service or customer area they are to be located. The engineer shall also make and file, prior to the publication of such resolution, an estimate of the total cost of the proposed improvement. The proposed resolution shall state the amount of such estimated cost.

The board of trustees or the administrator shall assess, to the extent of special benefits, the cost of such improvements upon properties specially benefited thereby, except that if the improvement consists of the replacement of an existing facility, system, or improvement that poses an existing threat to public health and safety affecting no more than one hundred existing homes, the cost of such improvements may be paid for by an issue of general obligation bonds under section 31-755. The resolution shall state the outer boundaries of the district or districts in which it is proposed to make special assessments.

Source: Laws 1949, c. 78, § 18, p. 202; Laws 1955, c. 117, § 7, p. 315; Laws 1961, c. 142, § 6, p. 414; Laws 1967, c. 189, § 5, p. 522; Laws 1969, c. 250, § 5, p. 914; Laws 1973, LB 245, § 6; Laws 1974, LB 757, § 13; Laws 1976, LB 313, § 4; Laws 1982, LB 868,

§ 12; Laws 1985, LB 207, § 4; Laws 1994, LB 501, § 4; Laws 1996, LB 43, § 7; Laws 1997, LB 531, § 2; Laws 1997, LB 589, § 2; Laws 1997, LB 874, § 11; Laws 2021, LB81, § 6.

31-749 Improvements; engineer; certificate of acceptance; cost; statement; special assessment; notices; hearing; appeal; hearing in district court.

After (1) the completion of any work or purchase, (2) acquiring a sewer or water system, or both, or public parks, playgrounds, or recreational facilities, (3) completing, acquiring, purchasing, erecting, constructing, or equipping all or a portion of offstreet motor vehicle public parking facilities located in the district to serve business, (4) contracting, as permitted by section 31-727, with other sanitary and improvement districts to acquire public parks, playgrounds, and recreational facilities for the joint use of the residents of the contracting districts, or gas or electric service lines or conduits, or (5) completion of the work on (a) a system of sidewalks, public roads, streets, highways, public waterways, docks, or wharfs and related appurtenances or (b) levees for flood protection for the district, the engineer shall file with the clerk of the district a certificate of acceptance which shall be approved by the board of trustees or the administrator by resolution. The board of trustees or administrator shall then require the engineer to make a complete statement of all the costs of any such improvements, a plat of the property in the district, and a schedule of the amount proposed to be assessed against each separate piece of property in such district. The statement, plat, and schedule shall be filed with the clerk of the district within sixty days after the date of acceptance of: The work, purchase, or acquisition of a sewer or water system, or both; the work on a system of sidewalks, public roads, streets, highways, public waterways, docks, or wharfs and related appurtenances, or dikes and levees for flood protection for the district; the acquisition, purchase, erection, construction, or equipping of all or a portion of offstreet motor vehicle public parking facilities located in the district to serve business; or as permitted by section 31-727, the acquisition of public parks, playgrounds, and recreational facilities whether acquired separately or jointly with other districts. The board of trustees or administrator shall then order the clerk to give notice that such statement, plat, and schedules are on file in his or her office and that all objections thereto or to prior proceedings on account of errors, irregularities, or inequalities not made in writing and filed with the clerk of the district within twenty days after the first publication of such notice shall be deemed to have been waived. Such notice shall be given by publication the same day each week two consecutive weeks in a newspaper of general circulation published in the county where the district was organized and by handbills posted along the line of the work. Such notice shall state the time and place where any objections, filed as provided in this section, shall be considered by the board of trustees or administrator. The cost of such improvements in the district which are within the area of the zoning jurisdiction of any municipality shall be levied as special assessments to the extent of special benefits to the property and to the extent the costs of such improvements are assessed in such municipality. The complete statement of costs and the schedule of proposed special assessments for such improvements which are within the zoning jurisdiction of such municipality against each separate piece of property in districts located within the zoning jurisdiction of such municipality shall be given to such municipality within seven days after the first publication of notice of statement, plat, and schedules. When such improvements are within

the area of the zoning jurisdiction of more than one municipality, such proposed special assessments schedule and statement need be given only to the most populous municipality. Such municipality shall have the right to be heard, and it shall have the right of appeal from a final determination by the board of trustees or administrator against objections which such city has filed. Notice of the proposed special assessments for such improvements against each separate piece of property shall be given to each owner of record thereof within five days after the first publication of notice of statement, plat, and schedules and, within five days after the first publication of such notice, a copy thereof, along with statements of costs and schedules of proposed special assessments, shall be given to each person or company who, pursuant to written contract with the district, has acted as underwriter or fiscal agent for the district in connection with the sale or placement of warrants or bonds issued by the district. Each owner shall have the right to be heard, and shall have the right of appeal from the final determination made by the board of trustees or administrator. Any person or any such municipality feeling aggrieved may appeal to the district court by petition within twenty days after such a final determination. The court shall hear and determine such appeal in a summary manner as in a case in equity and without a jury and shall increase or reduce the special assessments as the same may be required to provide that the special assessments shall be to the full extent of special benefits, and to make the apportionment of benefits equitable.

Source: Laws 1949, c. 78, § 23, p. 204; Laws 1955, c. 117, § 9, p. 317; Laws 1961, c. 142, § 7, p. 415; Laws 1965, c. 157, § 1, p. 504; Laws 1967, c. 190, § 1, p. 524; Laws 1971, LB 188, § 5; Laws 1973, LB 245, § 7; Laws 1974, LB 757, § 14; Laws 1976, LB 313, § 5; Laws 1979, LB 252, § 4; Laws 1982, LB 868, § 17; Laws 2015, LB361, § 53; Laws 2021, LB81, § 7.

(c) DISTRICT BOUNDARIES

31-763 Annexation of territory by a city or village; effect on certain contracts.

(1) Whenever any city or village annexes all the territory within the boundaries of any sanitary and improvement district organized under the provisions of sections 31-701 to 31-726.01 as such sections existed prior to July 19, 1996, or under sections 31-727 to 31-762, the district shall merge with the city or village and the city or village shall succeed to all the property and property rights of every kind, contracts, obligations, and choses in action of every kind, held by or belonging to the district, and the city or village shall be liable for and recognize, assume, and carry out all valid contracts and obligations of the district. All taxes, assessments, claims, and demands of every kind due or owing to the district shall be paid to and collected by the city or village. Any special assessments which the district was authorized to levy, assess, relevy, or reassess, but which were not levied, assessed, relevied, or reassessed, at the time of the merger, for improvements made by it or in the process of construction or contracted for may be levied, assessed, relevied, or reassessed by the annexing city or village to the same extent as the district may have levied or assessed but for the merger. Nothing in this section shall authorize the annexing city or village to revoke any resolution, order, or finding made by the district in regard to special benefits or increase any assessments made by the district, but such city or village shall be bound by all such findings or orders and assessments to

the same extent as the district would be bound. No district so annexed shall have power to levy any special assessments after the effective date of such annexation.

(2) Any contract entered into on or after August 30, 2015, by a sanitary and improvement district for solid waste collection services shall, upon annexation of such district by a city or village, be canceled and voided.

Source: Laws 1959, c. 130, § 1, p. 467; Laws 1969, c. 255, § 1, p. 925; Laws 2015, LB324, § 5; Laws 2018, LB130, § 1.

31-764 Annexation; trustees; administrator; accounting; effect; special assessments prohibited.

The trustees or administrator of a sanitary and improvement district shall, within thirty days after the effective date of the merger, submit to the city or village a written accounting of all assets and liabilities, contingent or fixed, of the district. Unless the city or village within six months thereafter brings an action against the trustees or administrator of the district for an accounting or for damages for breach of duty, the trustees or administrator shall be discharged of all further duties and liabilities and their bonds exonerated. If the city or village brings such an action and does not recover judgment in its favor, the taxable costs may include reasonable expenses incurred by the trustees or administrator in connection with such suit and a reasonable attorney's fee for the trustees' or administrator's attorney. The city or village shall represent the district and all parties who might be interested in such an action. The city or village and such trustees or administrator shall be the only necessary parties to such action. Nothing contained in this section shall authorize the trustees or administrator to levy any special assessments after the effective date of the merger.

Source: Laws 1959, c. 130, § 2, p. 468; Laws 1969, c. 255, § 2, p. 926; Laws 1976, LB 313, § 9; Laws 1982, LB 868, § 26; Laws 2018, LB130, § 2.

31-765 Annexation; when effective; trustees; administrator; duties; special assessments prohibited.

The merger shall be effective thirty days after the effective date of the ordinance annexing the territory within the sanitary and improvement district. If the validity of the ordinance annexing the territory is challenged by a proceeding in a court of competent jurisdiction, the effective date of the merger shall be thirty days after the final determination of the validity of the ordinance. The trustees or administrator of the sanitary and improvement district shall continue in possession and conduct the affairs of the district until the effective date of the merger, but shall not during such period levy any special assessments after the effective date of annexation.

Source: Laws 1959, c. 130, § 3, p. 468; Laws 1969, c. 255, § 3, p. 926; Laws 1982, LB 868, § 27; Laws 2018, LB130, § 3.

31-766 Annexation; obligations and assessments; agreement to divide; approval; special assessments prohibited; effect on certain contracts.

(1) If only a part of the territory within any sanitary and improvement district is annexed by a city or village, the sanitary and improvement district acting through its trustees or administrator and the city or village acting through its

governing body may agree between themselves as to the division of the assets, liabilities, maintenance, contracts, or other obligations of the district for a change in the boundaries of the district so as to exclude the portion annexed by the city or village or may agree upon a merger of the district with the city or village. The division of assets, liabilities, maintenance, contracts, or other obligations of the district shall be equitable, shall be proportionate to the valuation of the portion of the district annexed and to the valuation of the portion of the district remaining following annexation, and shall, to the greatest extent feasible, reflect the actual impact of the annexation on the ability of the district to perform its duties and responsibilities within its new boundaries following annexation. In the event a merger is agreed upon, the city or village shall have all the rights, privileges, duties, and obligations as provided in sections 31-763 to 31-765 when the city or village annexes the entire territory within the district, and the trustees or administrator shall be relieved of all further duties and liabilities and their bonds exonerated as provided in section 31-764. No agreement between the district and the city or village shall be effective until submitted to and approved by the district court of the county in which the major portion of the district is located. No agreement shall be approved which may prejudice the rights of any bondholder or creditor of the district or employee under contract to the district. The court may authorize or direct amendments to the agreement before approving the same. If the district and city or village do not agree upon the proper adjustment of all matters growing out of the annexation of a part of the territory located within the district, the district, the annexing city or village, any bondholder or creditor of the district, or any employee under contract to the district may apply to the district court of the county where the major portion of the district is located for an adjustment of all matters growing out of or in any way connected with the annexation of such territory, and after a hearing thereon the court may enter an order or decree fixing the rights, duties, and obligations of the parties. In every case such decree or order shall require a change of the district boundaries so as to exclude from the district that portion of the territory of the district which has been annexed. Such change of boundaries shall become effective on the date of entry of such decree. Only the district and the city or village shall be necessary parties to such an action. Any bondholder or creditor of the district or any employee under contract to the district whose interests may be adversely affected by the annexation may intervene in the action pursuant to section 25-328. The decree when entered shall be binding on the parties the same as though the parties had voluntarily agreed thereto. Nothing contained in this section shall authorize any district to levy any special assessments within the annexed area after the effective date of annexation.

(2) Any contract entered into on or after August 30, 2015, by a sanitary and improvement district for solid waste collection services shall, upon annexation of all or part of such district by a city or village, be canceled and voided as to the annexed areas.

Source: Laws 1959, c. 130, § 4, p. 469; Laws 1969, c. 255, § 4, p. 927; Laws 1982, LB 868, § 28; Laws 1994, LB 630, § 6; Laws 2015, LB324, § 6; Laws 2018, LB130, § 4.

(f) RECALL OF TRUSTEES

31-787 Trustee; removal by recall; petition; procedure.

(1) A trustee of a sanitary and improvement district may be removed from office by recall pursuant to sections 31-786 to 31-793. A petition for an election to recall a trustee shall be sufficient if it complies with the requirements of this section.

(2) The signers of the petition shall be persons who were, on the date the initial petition papers are issued under subsection (7) of this section, eligible to vote in a district election as provided in section 31-735. A person's eligibility to sign a petition shall be the same as the person's eligibility to cast one or more votes at a district election under section 31-735. Only one person shall be allowed to sign on behalf of joint owners of property in the district or on behalf of a public, private, or municipal corporation that owns property in the district. If the trustee whose recall is sought was elected by vote of resident owners only, then only resident owners shall be allowed to sign the petition. If the trustee whose recall is sought was elected by vote of all owners of property, then all owners shall be allowed to sign the petition. Resident owner means qualified resident voter. All owners means all qualified resident voters and all qualified property owning voters.

(3) The filing clerk shall assign to each signature a count equal to the number of votes that the signer was eligible to cast on the date he or she signed. The number of votes that a signer was eligible to cast shall be based on section 31-735. If the signature was made by or for an owner of more than one parcel of property, the signature made by or on behalf of such owner shall be assigned a count equal to the total number of votes which the owner was eligible to cast.

(4) The filing clerk shall total the count assigned to the signatures on the petition. The petition shall be sufficient if the total is at least equal to thirty-five percent of the highest number of votes that were cast for a candidate at the previous district election for the trustee positions in the same category as the trustee whose recall is sought by the petition. The categories of trustees shall be the same as provided in section 31-735.

(5) The signatures shall be affixed to petition papers and shall be considered part of the petition.

(6) The petition papers shall be procured from the filing clerk. Prior to the issuance of such petition papers, a recall petition filing form shall be signed and filed with the filing clerk by at least one qualified resident voter of the district, if the trustee whose recall is being sought was elected solely by qualified resident voters, or at least one qualified resident voter or qualified property owning voter, if the trustee whose recall is being sought was elected by other qualified resident voters and qualified property owning voters. Such voter or voters shall be deemed to be the principal circulator or circulators of the recall petition. The filing form shall state the name of the trustee sought to be removed and whether qualified property owning voters participated in the election of the trustee and shall request that the filing clerk issue initial petition papers to the principal circulator for circulation. The filing clerk shall notify the principal circulator or circulators that the necessary signatures must be gathered within thirty days after the date of issuing the petitions.

(7) The filing clerk, upon issuing the initial petition papers or any subsequent petition papers, shall enter in a record, to be kept in his or her office, the name of the principal circulator or circulators to whom the papers were issued, the date of issuance, the number of papers issued, and whether qualified property owning voters may participate in signing the petitions. The filing clerk shall

certify on the papers the name of the principal circulator or circulators to whom the papers were issued, the date they were issued, and whether qualified property owning voters may participate in signing the petitions. No petition paper shall be accepted as part of the petition unless it bears such certificate. The principal circulator or circulators who check out petitions from the filing clerk may distribute such petitions to persons who may act as circulators of such petitions.

Source: Laws 1997, LB 874, § 2; Laws 2002, LB 176, § 5; Laws 2003, LB 444, § 2; Laws 2012, LB1121, § 1; Laws 2019, LB411, § 27.

31-793 Recall petition filing form; filing limitation.

No recall petition filing form shall be filed against a trustee under section 31-787 within twelve months after a recall election has failed to remove him or her from office or within six months after the beginning of his or her term of office or within six months prior to the incumbent filing deadline for the office.

Source: Laws 1997, LB 874, § 8; Laws 2019, LB411, § 28.

ARTICLE 9

COUNTY DRAINAGE ACT

Section
31-925. Cleaning project; ditch or watercourse; state highway; contract with Department of Transportation.

31-925 Cleaning project; ditch or watercourse; state highway; contract with Department of Transportation.

Where the cleaning of a ditch or watercourse involves a state highway, the county board is authorized to make any contract with the Department of Transportation with reference to bridges or culverts or, if unable to agree therein, to bring any action necessary to force the state to participate in such improvement.

Source: Laws 1959, c. 132, § 25, p. 492; Laws 2017, LB339, § 82.

ARTICLE 10

FLOOD PLAIN MANAGEMENT

Section
31-1017. Department; flood plain management; powers and duties.

31-1017 Department; flood plain management; powers and duties.

The department shall be the official state agency for all matters pertaining to flood plain management. In carrying out that function, the department shall have the power and authority to:

(1) Coordinate flood plain management activities of local, state, and federal agencies;

(2) Receive federal funds intended to accomplish flood plain management objectives;

(3) Prepare and distribute information and conduct educational activities which will aid the public and local units of government in complying with the purposes of sections 31-1001 to 31-1023;

(4) Provide local governments having jurisdiction over flood-prone lands with technical data and maps adequate to develop or support reasonable flood plain management regulation;

(5) Adopt and promulgate rules and regulations establishing minimum standards for local flood plain management regulation. In addition to the public notice requirement in the Administrative Procedure Act, the department shall, at least twenty days in advance, notify the clerks of all cities, villages, and counties which might be affected of any hearing to consider the adoption, amendment, or repeal of such minimum standards. Such minimum standards shall be designed to protect human life, health, and property and to preserve the capacity of the flood plain to discharge the waters of the base flood and shall take into consideration (a) the danger to life and property by water which may be backed up or diverted by proposed obstructions and land uses, (b) the danger that proposed obstructions or land uses will be swept downstream to the injury of others, (c) the availability of alternate locations for proposed obstructions and land uses, (d) the opportunities for construction or alteration of proposed obstructions in such a manner as to lessen the danger, (e) the permanence of proposed obstructions or land uses, (f) the anticipated development in the foreseeable future of areas which may be affected by proposed obstructions or land uses, (g) hardship factors which may result from approval or denial of proposed obstructions or land uses, and (h) such other factors as are in harmony with the purposes of sections 31-1001 to 31-1023. Such minimum standards may, when required by law, distinguish between farm and nonfarm activities and shall provide for anticipated developments and gradations in flood hazards. If deemed necessary by the department to adequately accomplish the purposes of such sections, such standards may be more restrictive than those contained in the national flood insurance program standards, except that the department shall not adopt standards which conflict with those of the national flood insurance program in such a way that compliance with both sets of standards is not possible;

(6) Provide local governments and other state and local agencies with technical assistance, engineering assistance, model ordinances, assistance in evaluating permit applications and possible violations of flood plain management regulations, assistance in personnel training, and assistance in monitoring administration and enforcement activities;

(7) Serve as a repository for all known flood data within the state;

(8) Assist federal, state, or local agencies in the planning and implementation of flood plain management activities, such as flood warning systems, land acquisition programs, and relocation programs;

(9) Enter upon any lands and waters in the state for the purpose of making any investigation or survey or as otherwise necessary to carry out the purposes of such sections. Such right of entry shall extend to all employees, surveyors, or other agents of the department in the official performance of their duties, and such persons shall not be liable to prosecution for trespass when performing their official duties;

(10) Enter into contracts or other arrangements with any state or federal agency or person as defined in section 49-801 as necessary to carry out the purposes of sections 31-1001 to 31-1023; and

(11) Adopt and enforce such rules and regulations as are necessary to carry out the duties and responsibilities of such sections.

Source: Laws 1983, LB 35, § 17; Laws 1993, LB 626, § 4; Laws 2000, LB 900, § 78; Laws 2019, LB319, § 1.

Cross References

Administrative Procedure Act, see section 84-920.

CHAPTER 32
ELECTIONS

Article.
1. General Provisions and Definitions. 32-101 to 32-123.
2. Election Officials.
   (a) Secretary of State. 32-202 to 32-206.
   (b) County Election Officials. 32-207 to 32-217.
   (c) Counties with Election Commissioners. 32-221, 32-223.
   (d) Counties without Election Commissioners. 32-230 to 32-236.
3. Registration of Voters. 32-301 to 32-331.
4. Time of Elections. 32-404, 32-405.
5. Officers and Issues.
   (a) Offices and Officeholders. 32-504 to 32-551.
   (b) Local Elections. 32-552 to 32-559.
   (c) Vacancies. 32-564 to 32-573.
6. Filing and Nomination Procedures. 32-601 to 32-632.
7. Political Parties. 32-713 to 32-717.
8. Notice, Publication, and Printing of Ballots. 32-802 to 32-816.
9. Voting and Election Procedures. 32-901 to 32-963.
10. Counting and Canvassing Ballots. 32-1002 to 32-1049.
11. Contest of Elections and Recounts. 32-1101 to 32-1121.
12. Election Costs. 32-1201.01 to 32-1205.
13. Recall. 32-1301 to 32-1310.
14. Initiatives, Referendums, and Advisory Votes. 32-1405 to 32-1412.
15. Violations and Penalties. 32-1518 to 32-1552.

ARTICLE 1
GENERAL PROVISIONS AND DEFINITIONS

Section
32-101. Act, how cited.
32-103. Definitions, where found.
32-108.01. Electioneering, defined.
32-110.03. Emergency response provider, defined.
32-112.01. Poll watcher, defined.
32-112.02. Political subdivision, defined.
32-116. Residence, defined.
32-118. Signature, defined; person unable to write; assistance.
32-119.01. Voting system, defined.
32-123. Valid photographic identification, defined.

32-101 Act, how cited.

Sections 32-101 to 32-1552 shall be known and may be cited as the Election Act.

Source: Laws 1994, LB 76, § 1; Laws 1995, LB 337, § 1; Laws 1995, LB 514, § 1; Laws 1996, LB 964, § 1; Laws 1997, LB 764, § 8; Laws 2001, LB 768, § 1; Laws 2002, LB 1054, § 7; Laws 2003, LB 181, § 1; Laws 2003, LB 358, § 1; Laws 2003, LB 359, § 1; Laws 2003, LB 521, § 3; Laws 2005, LB 401, § 2; Laws 2005, LB 566, § 1; Laws 2010, LB951, § 1; Laws 2013, LB299, § 1; Laws 2013, LB349, § 1; Laws 2014, LB661, § 1; Laws 2014, LB946, § 3; Laws 2015, LB575, § 5; Laws 2018, LB1065, § 1; Laws 2019,

LB492, § 35; Laws 2020, LB1055, § 2; Laws 2022, LB843, § 2; Laws 2023, LB514, § 1; Laws 2024, LB287, § 7.
Operative date April 17, 2024.

32-103 Definitions, where found.

For purposes of the Election Act, the definitions found in sections 32-104 to 32-120 and 32-123 shall be used.

Source: Laws 1994, LB 76, § 3; Laws 1997, LB 764, § 9; Laws 2003, LB 358, § 2; Laws 2005, LB 566, § 2; Laws 2020, LB1055, § 3; Laws 2022, LB843, § 3; Laws 2023, LB514, § 2; Laws 2024, LB287, § 8.
Operative date April 17, 2024.

32-108.01 Electioneering, defined.

(1) Electioneering means the deliberate, visible display or audible or physical dissemination of information for the purpose of advocating for or against:

(a) Any candidate for an office on the ballot for the election at which such display or dissemination is occurring;

(b) Any officeholder of an elected state constitutional office or federal office at the time of the election at which such display or dissemination is occurring; or

(c) Any political party on the ballot for the election at which such display or dissemination is occurring.

(2) For purposes of this section, information includes: (a) A candidate's name, likeness, logo, or symbol; (b) a button, hat, pencil, pen, shirt, sign, or sticker containing information described by this section; and (c) audible information or any literature, writing, or drawing referring to a candidate, an officeholder, or a political party described in this section.

Source: Laws 2024, LB287, § 9.
Operative date April 17, 2024.

32-110.03 Emergency response provider, defined.

Emergency response provider shall mean a person responding to a mutual aid agreement or a state of emergency proclamation issued by the Governor or the President of the United States who is temporarily assigned by a governmental or nongovernmental relief agency or employer to provide support to victims of an emergency or a natural disaster or to rebuild the infrastructure of an area affected by such emergency or natural disaster.

Source: Laws 2022, LB843, § 4.

32-112.01 Poll watcher, defined.

Poll watcher means an individual appointed pursuant to section 32-961 who is legally in a polling place to observe the conduct of the election.

Source: Laws 2020, LB1055, § 4.

32-112.02 Political subdivision, defined.

Political subdivision shall include a county, city, village, township, school district, public power district, sanitary and improvement district, metropolitan utilities district, rural or suburban fire protection district, natural resources

district, regional metropolitan transit authority, community college, learning community coordinating council, educational service unit, hospital district, reclamation district, library board, airport authority, and any other unit of local government of the State of Nebraska.

Source: Laws 2022, LB843, § 5.

32-116 Residence, defined.

Residence shall mean (1) that place in Nebraska in which a person is actually domiciled, which is the residence of an individual or family, with which a person has a settled connection for the determination of his or her civil status or other legal purposes because it is actually or legally his or her permanent and principal home, and to which, whenever he or she is absent, he or she has the intention of returning, (2) the place in Nebraska where a person has his or her family domiciled even if he or she does business in another place, and (3) if a person is homeless, the county in Nebraska in which the person is living. No person serving in the armed forces of the United States shall be deemed to have a residence in Nebraska because of being stationed in Nebraska.

Source: Laws 1994, LB 76, § 16; Laws 2019, LB411, § 29.

32-118 Signature, defined; person unable to write; assistance.

(1) Signature shall mean the name or symbol of a person written with his or her own hand.

(2) A person with a disability who by reason of that disability is unable to write his or her name or symbol may substitute either:

(a) A mark if the person's name is written by some other person and the mark is made near the name by the person unable to write his or her name or symbol; or

(b) An impression made using a signature stamp. A signature stamp shall be used only by that person or another person upon the request and in the presence of the person unable to write his or her name or symbol.

(3) Any person rendering assistance to a person unable to write his or her name or symbol shall write, next to such person's mark or impression, the name and address of the person rendering assistance.

Source: Laws 1994, LB 76, § 18; Laws 2022, LB843, § 6.

32-119.01 Voting system, defined.

Voting system means the process of creating, casting, and counting ballots and includes any software or service used in such process.

Source: Laws 2003, LB 358, § 4; Laws 2022, LB843, § 7.

32-123 Valid photographic identification, defined.

Valid photographic identification means:

(1) A document issued by the United States, the State of Nebraska, an agency or a political subdivision of the State of Nebraska, or a postsecondary institution within the State of Nebraska that:

(a) Shows the name of the individual to whom the document was issued; and

(b) Shows a photograph or digital image of the individual to whom the document was issued;

(2) A document issued by the United States Department of Defense, the United States Department of Veterans Affairs or its predecessor, the Veterans Administration, a branch of the uniformed services as defined in section 85-2902, or a Native American Indian tribe or band recognized by the United States Government that:

(a) Shows the name of the individual to whom the document was issued; and

(b) Shows a photograph or digital image of the individual to whom the document was issued; or

(3) A hospital, an assisted-living facility, a nursing home, or any other intermediate care facility record that:

(a) Shows the name of the individual who is the subject of the record; and

(b) Shows a photograph or digital image of the individual who is the subject of the record.

Source: Laws 2023, LB514, § 3; Laws 2024, LB287, § 10.
Operative date April 17, 2024.

ARTICLE 2

ELECTION OFFICIALS

(a) SECRETARY OF STATE

(a) SECRETARY OF STATE

32-202 Secretary of State; duties.

In addition to any other duties prescribed by law, the Secretary of State shall:

(1) Supervise the conduct of primary and general elections in this state;

(2) Provide training and support for election commissioners, county clerks, and other election officials in providing for day-to-day operations of the office, registration of voters, and the conduct of elections;

(3) Enforce the Election Act;

(4) With the assistance and advice of the Attorney General, make uniform interpretations of the act;

(5) Provide periodic training for the agencies and their agents and contractors in carrying out their duties under sections 32-308 to 32-310;

(6) Develop and print forms for use as required by sections 32-308, 32-310, 32-320, 32-329, 32-947, 32-956, and 32-958;

(7) Contract with the Department of Administrative Services for storage and distribution of the forms;

(8) Require reporting to ensure compliance with sections 32-308 to 32-310;

(9) Prepare and transmit reports as required by the National Voter Registration Act of 1993, 52 U.S.C. 20501 et seq.;

(10) Develop and print a manual describing the requirements of the initiative and referendum process and distribute the manual to election commissioners and county clerks for distribution to the public upon request;

(11) Develop and print pamphlets described in section 32-1405.01;

(12) Adopt and promulgate rules and regulations as necessary for elections conducted under sections 32-952 to 32-959;

(13) Establish a free access system, such as a toll-free telephone number or an Internet website, that any voter who casts a provisional ballot may access to discover whether the vote of that voter was counted and, if the vote was not counted, the reason that the vote was not counted. The Secretary of State shall establish and maintain reasonable procedures necessary to protect the security, confidentiality, and integrity of personal information collected, stored, or otherwise used by the free access system. Access to information about an individual provisional ballot shall be restricted to the individual who cast the ballot;

(14) Provide a website dedicated to voter identification requirements and procedures. The Secretary of State shall establish, maintain, and regularly update on the website a document entitled ''List of Acceptable Forms of Identification'' that lists forms of identification that qualify as valid photographic identification for purposes of voter identification;

(15) Provide a public awareness campaign regarding the voter identification requirements and procedures, including communication through multiple mediums and in-person events;

(16) Provide instructions and information to the Department of Health and Human Services, the Department of Motor Vehicles, and the State Department of Education for distribution by such agencies to Nebraska residents regarding the requirement to present valid photographic identification in order to vote and the way to obtain free valid photographic identification; and

(17) Not use or allow the use of citizenship information shared with or collected by the Secretary of State pursuant to the Election Act for any purpose

other than maintenance of the voter registration list, including law enforcement purposes.

Source: Laws 1994, LB 76, § 22; Laws 1995, LB 337, § 2; Laws 1996, LB 964, § 2; Laws 2003, LB 358, § 5; Laws 2008, LB838, § 1; Laws 2019, LB411, § 30; Laws 2022, LB843, § 8; Laws 2023, LB514, § 4.

32-202.01 Secretary of State; match and verify citizenship of registered voter; Attorney General; Department of Motor Vehicles; cooperate.

The Secretary of State shall develop a process to use the information in possession of or available to his or her office to match and verify the citizenship of the corresponding registered voter. The process developed shall ensure that no registered voter is removed from the voter registration register in violation of state or federal law. The Attorney General and the Department of Motor Vehicles shall cooperate with the Secretary of State for such purpose. The Secretary of State may adopt and promulgate rules and regulations to carry out this section.

Source: Laws 2023, LB514, § 5; Laws 2024, LB287, § 11.
Operative date April 17, 2024.

32-203 Secretary of State; powers.

In addition to any other powers prescribed by law, the Secretary of State may:

(1) Inspect, with or without the filing of a complaint by any person, and review the practices and procedures of election commissioners, county clerks, their employees, and other election officials in the day-to-day operations of the office, the conduct of primary and general elections, and the registration of qualified electors;

(2) Employ such personnel as necessary to efficiently carry out his or her powers and duties as prescribed in the Election Act;

(3) Adopt and promulgate rules and regulations in regard to the registration of voters and the conduct of elections; and

(4) Enforce the act by injunctive action brought by the Attorney General in the district court for the county in which any violation of the act occurs.

Source: Laws 1994, LB 76, § 23; Laws 2005, LB 566, § 4; Laws 2022, LB843, § 9.

32-204 Election Administration Fund; created; use; investment.

The Election Administration Fund is hereby created. The fund shall consist of federal funds, state funds, gifts, and grants appropriated for the administration of elections. The Secretary of State shall use the fund for voting systems, provisional voting, computerized statewide voter registration lists, voter registration, training or informational materials related to elections, and any other costs related to elections. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. The State

Treasurer shall transfer any funds in the Carbon Sequestration Assessment Cash Fund on August 24, 2017, to the Election Administration Fund.

Source: Laws 1994, LB 76, § 24; Laws 1995, LB 7, § 29; Laws 1997, LB 764, § 13; Laws 2003, LB 14, § 1; Laws 2014, LB661, § 2; Laws 2017, LB644, § 3.

Cross References

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

32-206 Official election calendar; publish; contents; delivery of copy; filing or other acts; time.

(1) The Secretary of State shall publish an official election calendar by November 1 prior to the statewide primary election. Such calendar, to be approved as to form by the Attorney General, shall set forth the various election deadline dates and other pertinent data as determined by the Secretary of State. The official election calendar shall be merely a guideline and shall in no way legally bind the Secretary of State or the Attorney General.

(2) The Secretary of State shall deliver a copy of the official election calendar to the state party headquarters of each recognized political party within ten days after publication under subsection (1) of this section.

(3) Except as provided in sections 32-302, 32-304, and 32-306, any filing or other act required to be performed by a specified day shall be performed by 5 p.m. of such day, except that if such day falls upon a Saturday, Sunday, or legal holiday, performance shall be required on the next business day.

Source: Laws 1994, LB 76, § 26; Laws 2012, LB878, § 1; Laws 2014, LB1048, § 1; Laws 2018, LB1038, § 1.

(b) COUNTY ELECTION OFFICIALS

32-207 Election commissioner; counties having over 100,000 inhabitants; appointment; term; vacancy; duties; oversight.

The office of election commissioner shall be created for each county having a population of more than one hundred thousand inhabitants. The election commissioner shall be appointed by the Governor and shall serve for a term of four years or until a successor has been appointed and qualified. In the event of a vacancy, the Governor shall appoint an election commissioner to serve the unexpired portion of the term. In order to further the purpose of fair and open elections free from outside influence, the election commissioner shall have the duty of operational and administrative oversight over the business of the office, subject to review by the Secretary of State.

Source: Laws 1994, LB 76, § 27; Laws 2022, LB843, § 10.

Cross References

Distribute political accountability and disclosure forms, see section 49-14,139.

32-208 Election commissioner; qualifications; appointment to elective office; effect.

The election commissioner in counties having a population of more than one hundred thousand inhabitants shall be a registered voter, a resident of such county for at least one year, and of good moral character and integrity and

capacity. No person who is a candidate for any elective office or is a deputy, clerk, or employee of any person who is a candidate for any elective office shall be eligible for the office of election commissioner. The election commissioner shall not hold any other elective office or become a candidate for an elective office during his or her term of office. An election commissioner may be appointed to an elective office during his or her term of office as election commissioner, and acceptance of such appointment shall be deemed to be his or her resignation from the office of election commissioner.

Source: Laws 1994, LB 76, § 28; Laws 1997, LB 764, § 14; Laws 2001, LB 226, § 1; Laws 2003, LB 707, § 1; Laws 2011, LB449, § 1; Laws 2015, LB575, § 6; Laws 2017, LB451, § 2.

32-217 Election commissioner, chief deputy election commissioner, and employees; county employees; salaries; how paid.

The election commissioner and the chief deputy election commissioner shall be county employees for the purposes of salary and benefit plans. All employees of the office of the election commissioner shall be county employees and subject to the county personnel system. The county board shall set the salaries of the election commissioner and chief deputy election commissioner at least sixty days prior to the expiration of the term of office of the election commissioner holding office. The salary shall become effective as soon as such salary may become operative under the Constitution of Nebraska.

In counties having a population of more than two hundred thousand inhabitants, the salary of the election commissioner shall be at least ten thousand five hundred dollars annually payable in periodic installments out of the county general fund and the salary of the chief deputy election commissioner shall be at least nine thousand dollars annually payable in periodic installments out of the county general fund.

In counties having a population of more than one hundred fifty thousand and not more than two hundred thousand inhabitants, the salary of the election commissioner shall be at least seven thousand five hundred dollars annually payable in periodic installments out of the county general fund and the salary of the chief deputy election commissioner shall be at least six thousand dollars annually payable in periodic installments out of the county general fund.

In counties having a population of more than one hundred thousand and not more than one hundred fifty thousand inhabitants, the salary of the election commissioner shall be at least nine thousand five hundred dollars annually payable in periodic installments out of the county general fund and the salary of the chief deputy election commissioner shall be at least eight thousand five hundred dollars annually payable in periodic installments out of the county general fund.

In counties having a population of not more than one hundred thousand inhabitants, the salary of the election commissioner shall be at least six thousand five hundred dollars annually payable in periodic installments out of the county general fund and the salary of the chief deputy election commissioner shall be at least five thousand dollars annually payable in periodic installments out of the county general fund.

Source: Laws 1994, LB 76, § 37; Laws 2022, LB843, § 11.

(c) COUNTIES WITH ELECTION COMMISSIONERS

32-221 Inspectors and judges and clerks of election; appointment; term; qualifications; vacancy; failure to appear; removal.

(1) The election commissioner shall appoint precinct and district inspectors, judges of election, and clerks of election to assist the election commissioner in conducting elections on election day. In counties with a population of less than four hundred thousand inhabitants as determined by the most recent federal decennial census, judges and clerks of election and inspectors shall be appointed at least thirty days prior to the statewide primary election, shall hold office for terms of two years or until their successors are appointed and qualified for the next statewide primary election, and shall serve at all elections in the county during their terms of office. In counties with a population of four hundred thousand or more inhabitants as determined by the most recent federal decennial census, judges and clerks of election shall be appointed at least thirty days prior to the first election for which appointments are necessary and shall serve for at least four elections.

(2) Judges and clerks of election may be selected at random from a cross section of the population of the county. All qualified citizens shall have the opportunity to be considered for service. All qualified citizens shall fulfill their obligation to serve as judges or clerks of election as prescribed by the election commissioner. No citizen shall be excluded from service as a result of discrimination based upon race, color, religion, sex, national origin, or economic status. No citizen shall be excluded from service unless excused by reason of ill health or other good and sufficient reason.

(3) All persons appointed shall be of good repute and character, be able to read and write the English language, and except as otherwise provided in subsections (4), (5), and (6) of section 32-223, be registered voters in the county. No candidate at an election shall be appointed as a judge or clerk of election or inspector for such election other than a candidate for delegate to a county, state, or national political party convention.

(4) If a vacancy occurs in the office of judge or clerk of election or inspector, the election commissioner shall fill such vacancy in accordance with section 32-223. If any judge or clerk of election or inspector fails to appear at the hour appointed for the opening of the polls, the remaining officers shall notify the election commissioner, select a registered voter to serve in place of the absent officer if so directed by the election commissioner, and proceed to conduct the election. If the election commissioner finds that a judge or clerk of election or inspector does not possess all the qualifications prescribed in this section or if any judge or clerk of election or inspector is guilty of neglecting the duties of the office or of any official misconduct, the election commissioner shall remove the person and fill the vacancy.

Source: Laws 1994, LB 76, § 41; Laws 1997, LB 764, § 19; Laws 2003, LB 357, § 1; Laws 2016, LB742, § 16; Laws 2019, LB411, § 31; Laws 2022, LB843, § 12.

32-223 Receiving board; members; inspectors; requirements; appointment.

(1) Except as otherwise provided in the Election Act, the election commissioner shall appoint a precinct inspector and a receiving board to consist of at least two judges and two clerks of election for each precinct. The election

commissioner may appoint district inspectors to aid the election commissioner in the performance of his or her duties and supervise a group of precincts on election day.

(2) The election commissioner may allow persons serving on a receiving board as judges and clerks of election and precinct inspectors to serve for part of the time the polls are open and appoint other judges and clerks of election and precinct inspectors to serve on the same receiving board for the remainder of the time the polls are open.

(3) On each receiving board at any one time, one judge and one clerk of election shall be registered voters of the political party casting the highest number of votes in the county for Governor or for President of the United States in the immediately preceding general election, and one judge and one clerk of election shall be registered voters of the political party casting the next highest number of votes in the county for Governor or for President of the United States in the immediately preceding general election, except that one judge or clerk of election may be a registered voter who is not affiliated with either of such parties. If a third judge is appointed, such judge shall be a registered voter of the political party casting the highest number of votes in the county for Governor or for President of the United States in the immediately preceding general election. All precinct and district inspectors shall be divided between all political parties as nearly as practicable in proportion to the number of votes cast in such county at the immediately preceding general election for Governor or for President of the United States by the parties, respectively.

(4) The election commissioner may appoint an elector residing outside the county as a precinct inspector, district inspector, judge of election, or clerk of election if the elector resides in a county which conducts all elections by mail pursuant to section 32-960.

(5) If authorized by the Secretary of State and registered voters of the county are unavailable, the election commissioner may appoint an elector residing outside the county as a precinct inspector, district inspector, judge of election, or clerk of election.

(6) The election commissioner may appoint a person who is at least sixteen years old but is not eligible to register to vote as a clerk of election. Such clerk of election shall meet the requirements of subsection (3) of section 32-221, except that such clerk shall not be required to be a registered voter. No more than one clerk of election appointed under this subsection shall serve at any precinct. A clerk of election appointed under this subsection shall be considered a registered voter who is not affiliated with a political party for purposes of this section.

Source: Laws 1994, LB 76, § 43; Laws 2002, LB 1054, § 8; Laws 2003, LB 357, § 2; Laws 2003, LB 358, § 7; Laws 2019, LB411, § 32; Laws 2022, LB843, § 13.

(d) COUNTIES WITHOUT ELECTION COMMISSIONERS

32-230 Receiving board; members; appointment; procedure; qualification; vacancy; inspectors; appointment.

(1) As provided in subsection (4) of this section, the precinct committeeman and committeewoman of each political party shall appoint a receiving board

consisting of three judges of election and two clerks of election. The chairperson of the county central committee of each political party shall send the names of the appointments to the county clerk no later than February 1 prior to the primary election.

(2) If no names are submitted by the chairperson, the county clerk shall appoint judges or clerks of election from the appropriate political party. Judges and clerks of election may be selected at random from a cross section of the population of the county. All qualified citizens shall have the opportunity to be considered for service. All qualified citizens shall fulfill their obligation to serve as judges or clerks of election as prescribed by the county clerk. No citizen shall be excluded from service as a result of discrimination based upon race, color, religion, sex, national origin, or economic status. No citizen shall be excluded from service unless excused by reason of ill health or other good and sufficient reason.

(3) The county clerk may allow persons serving on a receiving board to serve for part of the time the polls are open and appoint other persons to serve on the same receiving board for the remainder of the time the polls are open.

(4) In each precinct at any one time, one judge and one clerk of election shall be appointed from the political party casting the highest number of votes in the county for Governor or for President of the United States in the immediately preceding general election, one judge and one clerk shall be appointed from the political party casting the next highest number of votes in the county for Governor or for President of the United States in the immediately preceding general election, and one judge shall be appointed from the political party casting the third highest number of votes in the county for Governor or for President of the United States in the immediately preceding general election. If the political party casting the third highest number of votes cast less than ten percent of the total vote cast in the county at the immediately preceding general election, the political party casting the highest number of votes at the immediately preceding general election shall be entitled to two judges and one clerk.

(5) The county clerk may appoint registered voters to serve in case of a vacancy among any of the judges or clerks of election or in addition to the judges and clerks in any precinct when necessary to meet any situation that requires additional judges and clerks. Such appointees may include registered voters unaffiliated with any political party. Such appointees shall serve at subsequent or special elections as determined by the county clerk.

(6) The county clerk may appoint an elector residing outside the county as a precinct inspector, district inspector, judge of election, or clerk of election if the elector resides in a county which conducts all elections by mail pursuant to section 32-960.

(7) If authorized by the Secretary of State and registered voters of the county are unavailable, the county clerk may appoint an elector residing outside the county as a precinct inspector, district inspector, judge of election, or clerk of election.

(8) The county clerk may appoint a person who is at least sixteen years old but is not eligible to register to vote as a clerk of election. Such clerk of election shall meet the requirements of subsection (1) of section 32-231, except that such clerk shall not be required to be a registered voter. No more than one clerk of election appointed under this subsection shall serve at any precinct. A clerk of election appointed under this subsection shall be considered a regis-

tered voter who is not affiliated with a political party for purposes of this section.

Source: Laws 1994, LB 76, § 50; Laws 1997, LB 764, § 22; Laws 2002, LB 1054, § 11; Laws 2003, LB 357, § 3; Laws 2003, LB 358, § 8; Laws 2007, LB646, § 1; Laws 2019, LB411, § 33; Laws 2022, LB843, § 14.

32-231 Judge and clerk of election; qualifications; term; district inspectors; duties.

(1) Each judge and clerk of election appointed pursuant to section 32-230 shall (a) be of good repute and character and able to read and write the English language, (b) reside in the precinct in which he or she is to serve unless necessity demands that personnel be appointed from another precinct, (c) be a registered voter except as otherwise provided in subsections (6), (7), and (8) of section 32-230, and (d) serve for a term of two years or until judges and clerks of election are appointed for the next primary election. No candidate at an election shall be eligible to serve as a judge or clerk of election at the same election other than a candidate for a delegate to a county, state, or national political party convention.

(2) The county clerk may appoint district inspectors to aid the county clerk in the performance of his or her duties and supervise a group of precincts on election day. A district inspector shall meet the requirements for judges and clerks of election as provided in subsection (1) of this section, shall oversee the procedures of a group of polling places, and shall act as the personal agent and deputy of the county clerk. The district inspector shall ensure that the Election Act is uniformly enforced at the polling places assigned to him or her and perform tasks assigned by the county clerk. The district inspector may perform all of the duties required of a judge or clerk of election.

Source: Laws 1994, LB 76, § 51; Laws 1999, LB 802, § 2; Laws 2002, LB 1054, § 12; Laws 2003, LB 357, § 4; Laws 2019, LB411, § 34; Laws 2022, LB843, § 15.

32-233 Election workers; wages; waiver agreeing not to be paid; contracts authorized.

(1) Except as otherwise provided in subsection (2) of this section, judges and clerks of election, district inspectors, messengers, and other temporary election workers shall receive wages at no less than the minimum rate set in section 48-1203 for each hour of service rendered. The county clerk shall determine the rate of pay and may vary the rate based on the duties of each position. Each such election worker shall sign an affidavit stating the number of hours he or she has worked.

(2) Any judge or clerk of election, district inspector, messenger, or other temporary election worker may choose either:

(a) Not to be paid for the hours he or she works. An election worker that chooses not to be paid shall sign a waiver agreeing not to be paid for each election for which he or she chooses not to be paid; or

(b) To have his or her election pay used by the county clerk to contract with an organization authorized by the county clerk to recruit election workers if the county clerk contracts with such an organization. To be eligible to enter into

such a contract, the organization shall be exempt for federal tax purposes under section 501(c)(3) of the Internal Revenue Code, as defined in section 49-801.01.

Source: Laws 1994, LB 76, § 53; Laws 1996, LB 1011, § 20; Laws 1999, LB 802, § 4; Laws 2002, LB 1054, § 13; Laws 2024, LB287, § 12.
Operative date April 17, 2024.

32-235 Election worker; notice of appointment.

(1) The county clerk shall, by mail, notify judges and clerks of election, district inspectors, members of counting boards, and members of canvassing boards of their appointment. The notice shall inform the appointee of his or her appointment and of the date and time he or she is required to report to the office of the county clerk or other designated location and the polling place. The notice shall be mailed at least fifteen days prior to each statewide primary and general election and on or before the third Friday prior to each special election. The county clerk shall order the members of the receiving board to appear at their respective polling place on the day and at the hour specified in the notice of appointment.

(2) Each appointee shall, at the time fixed in the notice of appointment, report to the office or other location to complete any informational forms and receive training regarding his or her duties. The training shall include instruction as required by the Secretary of State and any other training deemed necessary by the county clerk.

Source: Laws 1994, LB 76, § 55; Laws 1997, LB 764, § 23; Laws 1999, LB 802, § 5; Laws 2002, LB 1054, § 14; Laws 2007, LB646, § 3; Laws 2022, LB843, § 16.

32-236 Judge and clerk of election; district inspector; service required; violation; penalty.

Each judge and clerk of election appointed pursuant to subsection (4) of section 32-230 and each district inspector appointed pursuant to subsection (2) of section 32-231 shall serve at all elections, except city and village elections, held in the county or precinct during his or her two-year term unless excused. A violation of this section by an appointee is a Class V misdemeanor. The county clerk shall submit the names of appointees violating this section to the local law enforcement agency for citation pursuant to sections 32-1549 and 32-1550.

Source: Laws 1994, LB 76, § 56; Laws 1997, LB 764, § 24; Laws 1999, LB 802, § 6; Laws 2002, LB 1054, § 15; Laws 2019, LB411, § 35.

ARTICLE 3
REGISTRATION OF VOTERS

Section

Section
32-312. Registration application; contents.
32-313. Qualifications of elector; abstract of felony convictions; clerks of court; duty; notification of federal court felony conviction; how treated.
32-318.01. Identification documents; required, when.
32-320.01. Voter registration application; distribution by mail; requirements; applicability.
32-326. Removal of name and cancellation of registration; conditions.
32-329. Registration list; maintenance; voter registration register; verification; training; procedure; voter registration systems; information exempt from disclosure, when; Secretary of State; report.
32-330. Voter registration register; public record; exception; examination; lists of registered voters; availability; breach in security; notice required.
32-331. Confidential records; procedure.

32-301 Registration list; registration of electors; registration records; how kept; use on election day.

(1) The Secretary of State shall implement, in a uniform and nondiscriminatory manner, a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the office of the Secretary of State that contains the name and registration information of every legally registered voter in the state and assigns a unique identifier to each legally registered voter in the state. The computerized list shall serve as the single system for storing and managing the official list of registered voters throughout the state and shall comprise the voter registration register. The computerized list shall be coordinated with other agency databases within the state and shall be available for electronic access by election commissioners and county clerks. The computerized list shall serve as the official voter registration list for the conduct of all elections under the Election Act and beginning July 1, 2019, shall be the basis for electronic poll books at each precinct if applicable. The Secretary of State shall provide such support as may be required so that election commissioners and county clerks are able to electronically enter voter registration information obtained by such officials on an expedited basis at the time the information is received. The Secretary of State shall provide adequate technological security measures to prevent unauthorized access to the computerized list.

(2) The election commissioner or county clerk shall provide for the registration of the electors of the county. Upon receipt of a voter registration application in his or her office from an eligible elector, the election commissioner or county clerk shall enter the information from the application in the voter registration register and may create an electronic image, photograph, microphotograph, or reproduction in an electronic digital format to be used as the voter registration record. The election commissioner or county clerk shall provide a precinct list of registered voters for each precinct for the use of judges and clerks of election in their respective precincts on election day. Beginning July 1, 2019, the election commissioner or county clerk may provide an electronic poll book as described in section 32-301.01 to meet the requirements for a precinct list of registered voters.

(3) The digital signatures in the possession of the Secretary of State, the election commissioner, or the county clerk shall not be public records as

defined in section 84-712.01 and are not subject to disclosure under sections 84-712 to 84-712.09.

Source: Laws 1994, LB 76, § 63; Laws 1999, LB 234, § 1; Laws 2003, LB 357, § 5; Laws 2005, LB 566, § 5; Laws 2017, LB451, § 3; Laws 2018, LB1065, § 3.

32-301.01 Electronic poll books; contents.

Beginning July 1, 2019, the electronic poll books for a precinct shall contain the list of registered voters and the sign-in register for the precinct combined in one database and shall include the registration information and the digital signatures for the registered voters of the precinct.

Source: Laws 2018, LB1065, § 2.

32-304 Registration of electors electronically; application process; application; contents; Secretary of State; Department of Motor Vehicles; duties.

(1) The Secretary of State in conjunction with the Department of Motor Vehicles shall implement a registration application process which may be used statewide to register to vote and update voter registration records electronically using the Secretary of State's website. An applicant who has a valid Nebraska motor vehicle operator's license or state identification card may use the application process to register to vote or to update his or her voter registration record with changes in his or her personal information or other information related to his or her eligibility to vote. For each electronic application, the Secretary of State shall obtain a copy of the electronic representation of the applicant's digital image and signature from the Department of Motor Vehicles' records of his or her motor vehicle operator's license or state identification card for purposes of voter registration, electronic poll books, and voting.

(2) The application shall contain substantially all the information provided in section 32-312 and the following informational statements:

(a) An applicant who submits this application electronically is affirming that the information in the application is true. Any applicant who submits this application electronically knowing that any of the information in the application is false shall be guilty of a Class IV felony under section 32-1502 of the statutes of Nebraska. The penalty for a Class IV felony is up to two years imprisonment and twelve months post-release supervision, a fine of up to ten thousand dollars, or both;

(b) An applicant who submits this application electronically is agreeing to the use of his or her digital image and signature from the Department of Motor Vehicles' records of his or her motor vehicle operator's license or state identification card for purposes of voter registration;

(c) To vote at the polling place on election day, the completed application must be submitted on or before the third Friday before the election and prior to midnight on such Friday; and

(d) The election commissioner or county clerk will, upon receipt of the application for registration, send an acknowledgment of registration to the applicant indicating whether the application is proper or not.

Source: Laws 2014, LB661, § 3; Laws 2015, LB575, § 9; Laws 2017, LB451, § 4; Laws 2018, LB1038, § 2; Laws 2018, LB1065, § 4; Laws 2024, LB287, § 13.
Operative date January 1, 2025.

32-308 Registration list; verification; voter registration application; Department of Motor Vehicles; duties; registration; when; confidentiality; persons involved in registration; status.

(1) The Secretary of State and the Director of Motor Vehicles shall enter into an agreement to match information in the computerized statewide voter registration list with information in the database of the Department of Motor Vehicles to the extent required to enable each such official to verify the accuracy of the information, including citizenship, provided on applications for voter registration. The Director of Motor Vehicles shall enter into an agreement with the Commissioner of Social Security under section 205(r)(8) of the federal Social Security Act, 42 U.S.C. 405(r)(8), as such section existed on April 17, 2003, for purposes of the Election Act.

(2) The Department of Motor Vehicles, with the assistance of the Secretary of State, shall prescribe a voter registration application which may be used to register to vote or change his or her address for voting purposes at the same time an elector applies for an original or renewal motor vehicle operator's license, an original or renewal state identification card, or a replacement thereof. The voter registration application shall contain the information required pursuant to section 32-312 and shall be designed so that it does not require the duplication of information in the application for the motor vehicle operator's license or state identification card, except that it may require a second signature of the applicant. The department and the Secretary of State shall make the voter registration application available to any person applying for an operator's license or state identification card. The application shall be completed at the office of the department by the close of business on the third Friday preceding any election to be registered to vote at such election. A registration application received after the deadline shall not be processed by the election commissioner or county clerk until after the election.

(3) The Department of Motor Vehicles, in conjunction with the Secretary of State, shall develop a process to electronically transmit voter registration application information received under subsection (2) of this section to the election commissioner or county clerk of the county in which the applicant resides within the time limits prescribed in subsection (4) of this section. The Director of Motor Vehicles shall designate an implementation date for the process which shall be on or before January 1, 2016.

(4) The voter registration application information shall be transmitted to the election commissioner or county clerk of the county in which the applicant resides not later than ten days after receipt, except that if the voter registration application information is received within five days prior to the third Friday preceding any election, it shall be transmitted not later than five days after its original submission. Any information on whether an applicant registers or declines to register and the location of the office at which he or she registers shall be confidential and shall only be used for voter registration purposes.

(5) For each voter registration application for which information is transmitted electronically pursuant to this section, the Secretary of State shall obtain a copy of the electronic representation of the applicant's digital image and signature from the Department of Motor Vehicles' records of his or her motor vehicle operator's license or state identification card for purposes of voter registration and voting. Each voter registration application electronically transmitted under this section shall include information provided by the applicant

that includes whether the applicant is a citizen of the United States, whether the applicant is of sufficient age to register to vote, the applicant's residence address, the applicant's postal address if different from the residence address, the date of birth of the applicant, the party affiliation of the applicant or an indication that the applicant is not affiliated with any political party, the applicant's motor vehicle operator's license number, the applicant's previous registration location by city, county, or state, if applicable, and the applicant's signature.

(6) State agency personnel involved in the voter registration process pursuant to this section and section 32-309 shall not be considered deputy registrars or agents or employees of the election commissioner or county clerk.

Source: Laws 1994, LB 76, § 70; Laws 1997, LB 764, § 32; Laws 2003, LB 357, § 6; Laws 2005, LB 566, § 7; Laws 2014, LB661, § 4; Laws 2014, LB777, § 1; Laws 2023, LB514, § 6; Laws 2024, LB287, § 14.
Operative date January 1, 2025.

32-312 Registration application; contents.

The registration application prescribed by the Secretary of State pursuant to section 32-304 or 32-311.01 shall provide the instructional statements and request the information from the applicant as provided in this section.

CITIZENSHIP—''Are you a citizen of the United States of America?'' with boxes to check to indicate whether the applicant is or is not a citizen of the United States.

AGE—''Are you at least eighteen years of age or will you be eighteen years of age on or before the first Tuesday following the first Monday of November of this year?'' with boxes to check to indicate whether or not the applicant will be eighteen years of age or older on election day.

WARNING—''If you checked 'no' in response to either of these questions, do not complete this application.''.

NAME—the name of the applicant giving the first and last name in full, the middle name in full or the middle initial, and the maiden name of the applicant, if applicable.

RESIDENCE—the name and number of the street, avenue, or other location of the dwelling where the applicant resides if there is a number. If the registrant resides in a hotel, apartment, tenement house, or institution, such additional information shall be included as will give the exact location of such registrant's place of residence. If the registrant lives in an incorporated or unincorporated area not identified by the use of roads, road names, or house numbers, the registrant shall state the section, township, and range of his or her residence and the corporate name of the school district as described in section 79-405 in which he or she is located.

POSTAL ADDRESS—the address at which the applicant receives mail if different from the residence address.

ADDRESS OF LAST REGISTRATION—the name and number of the street, avenue, or other location of the dwelling from which the applicant last registered.

TELEPHONE NUMBERS—the telephone numbers of the applicant. At the request of the applicant, a designation shall be made that a telephone number is

an unlisted number, and such designation shall preclude the listing of such telephone number on any list of voter registrations.

EMAIL ADDRESS—an email address of the applicant. At the request of the applicant, a designation shall be made that the email address is private, and such designation shall preclude the listing of the applicant's email address on any list of voter registrations.

DRIVER'S LICENSE NUMBER OR LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER—if the applicant has a Nebraska driver's license, the license number, and if the applicant does not have a Nebraska driver's license, the last four digits of the applicant's social security number.

DATE OF APPLICATION FOR REGISTRATION—the month, day, and year when the applicant presented himself or herself for registration, when the applicant completed and signed the registration application if the application was submitted by mail or delivered to the election official by the applicant's personal messenger or personal agent, or when the completed application was submitted if the registration application was completed pursuant to section 32-304.

PLACE OF BIRTH—show the state, country, kingdom, empire, or dominion where the applicant was born.

DATE OF BIRTH—show the date of the applicant's birth. The applicant shall be at least eighteen years of age or attain eighteen years of age on or before the first Tuesday after the first Monday in November to have the right to register and vote in any election in the present calendar year.

REGISTRATION TAKEN BY—show the signature of the authorized official or staff member accepting the application pursuant to section 32-309 or 32-310 or at least one of the deputy registrars taking the application pursuant to section 32-306, if applicable.

PARTY AFFILIATION—show the party affiliation of the applicant as Democratic, Republican, or Other _____ or show no party affiliation as Nonpartisan. (Note: If you wish to vote in both partisan and nonpartisan primary elections for state and local offices, you must indicate a political party affiliation on the registration application. If you register without a political party affiliation (nonpartisan), you will receive only the nonpartisan ballots for state and local offices at primary elections. If you register without a political party affiliation, you may vote in partisan primary elections for congressional offices.)

OTHER—information the Secretary of State determines will assist in the proper and accurate registration of the voter.

Immediately following the spaces for inserting information as provided in this section, the following statement shall be printed:

To the best of my knowledge and belief, I declare under penalty of election falsification that:

(1) I live in the State of Nebraska at the address provided in this application;

(2) I have not been convicted of a felony or, if convicted, I have completed my sentence for the felony, including any parole term;

(3) I have not been officially found to be non compos mentis (mentally incompetent); and

(4) I am a citizen of the United States.

Any registrant who signs this application knowing that any of the information in the application is false shall be guilty of a Class IV felony under section 32-1502 of the statutes of Nebraska. The penalty for a Class IV felony is up to two years imprisonment and twelve months post-release supervision, a fine of up to ten thousand dollars, or both.

APPLICANT'S SIGNATURE—require the applicant to affix his or her signature to the application.

Source: Laws 1994, LB 76, § 74; Laws 1996, LB 900, § 1037; Laws 1997, LB 764, § 34; Laws 2003, LB 357, § 7; Laws 2003, LB 359, § 2; Laws 2005, LB 53, § 4; Laws 2005, LB 566, § 11; Laws 2011, LB449, § 3; Laws 2014, LB661, § 7; Laws 2017, LB451, § 5; Laws 2020, LB1055, § 5; Laws 2022, LB843, § 18; Laws 2024, LB20, § 4.
Effective date July 19, 2024.

32-313 Qualifications of elector; abstract of felony convictions; clerks of court; duty; notification of federal court felony conviction; how treated.

(1) No person is qualified to vote or to register to vote who is non compos mentis or who has been convicted of treason under the laws of the state or of the United States unless restored to civil rights. No person who has been convicted of a felony under the laws of this state or any other state is qualified to vote or to register to vote until the sentence is completed, including any parole term. The disqualification is automatically removed at such time.

(2) The clerk of any court in which a person is convicted of a felony shall prepare an abstract each month of each final judgment served by the clerk convicting an elector of a felony. The clerk shall file the abstract with the election commissioner or county clerk of the elector's county of residence not later than the tenth day of the month following the month in which the abstract is prepared. The clerk of the court shall notify the election commissioner or county clerk in writing if any such conviction is overturned.

(3) Upon receiving notification from the United States Attorney of a felony conviction of a Nebraska resident in federal court or of the overturning of any such conviction, the Secretary of State shall forward the notice to the election commissioner or county clerk of the county of such person's residence. The election commissioner or county clerk shall remove the name of such person from the voter registration register upon receipt of notice of conviction.

Source: Laws 1994, LB 76, § 75; Laws 1999, LB 234, § 2; Laws 2005, LB 53, § 5; Laws 2024, LB20, § 5.
Effective date July 19, 2024.

32-318.01 Identification documents; required, when.

(1)(a) Except as provided by subsection (2) of this section, a person who registers to vote by mail after January 1, 2003, and has not previously voted in an election within the state shall present a photographic identification which is current and valid or a copy of a utility bill, bank statement, government check, paycheck, or other government document which is dated within the sixty days immediately prior to the date of presentation and which shows the same name and residence address of the person provided on the registration application in order to avoid identification requirements at the time of voting pursuant to section 32-914 or 32-947.

(b) Such documentation may be presented at the time of application for registration, after submission of the application for registration, or at the time of voting. The documentation must be received by the election commissioner or county clerk not later than 6 p.m. on the second Friday preceding the election to avoid additional identification requirements at the time of voting at the polling place if the voter votes in person. If the voter is voting using a ballot for early voting, the documentation must be received by the election commissioner or county clerk prior to the date on which the ballot is mailed to the voter to avoid additional identification requirements at the time of voting. Documentation received after the ballot has been mailed to the voter but not later than the deadline for the receipt of ballots specified in subsection (2) of section 32-908 will be considered timely for purposes of determining the applicant's eligibility to vote in the election.

(c) Such documentation may be presented in person, by mail, by facsimile transmission, or by electronic mail.

(d) Failure to present such documentation may result in the ballot not being counted pursuant to verification procedures prescribed in sections 32-1002 and 32-1027.

(2) This section shall not apply to a person who registers to vote by mail after January 1, 2003, and has not previously voted in an election within the state if he or she:

(a) Has provided his or her Nebraska driver's license number or the last four digits of his or her social security number and the election commissioner or county clerk verifies the number provided pursuant to subsection (2) of section 32-312.03;

(b) Is a member of the armed forces of the United States who by reason of active duty is absent from his or her place of residence where the member is otherwise eligible to vote;

(c) Is a member of the United States Merchant Marine who by reason of service is away from his or her place of residence where the member is otherwise eligible to vote;

(d) Is a spouse or dependent of a member of the armed forces of the United States or United States Merchant Marine who is absent from his or her place of residence due to the service of that member;

(e) Resides outside the United States and but for such residence would be qualified to vote in the state if the state was the last place in which the person was domiciled before leaving the United States; or

(f) Is elderly or handicapped and has requested to vote by alternative means other than by casting a ballot at his or her polling place on election day.

(3) In addition to the requirements of this section, a qualified voter shall present valid photographic identification before casting a ballot.

Source: Laws 2005, LB 566, § 20; Laws 2022, LB843, § 19; Laws 2023, LB514, § 7; Laws 2024, LB287, § 15.
Operative date July 19, 2024.

32-320.01 Voter registration application; distribution by mail; requirements; applicability.

(1) Except as provided in subsection (2) of this section, any person or organization distributing voter registration applications by mail shall:

(a) Use the form prescribed by the Secretary of State. The form shall contain on the top of the first page in bold type (i) the identity of the person or organization distributing the form and (ii) the following statements:

You may submit this form if you wish to register to vote or update your voter registration. You do not need to complete this form if you have already registered to vote; and

(b) If enclosing a return envelope, have either a blank address or the address of the election commissioner or county clerk printed on the envelope.

(2) This section shall not apply to voter registration applications distributed by the Secretary of State, an election commissioner, a county clerk, the State Department of Education, the Department of Health and Human Services, or the Department of Motor Vehicles.

Source: Laws 2022, LB843, § 17; Laws 2024, LB287, § 16.
Operative date July 19, 2024.

32-326 Removal of name and cancellation of registration; conditions.

The election commissioner or county clerk shall remove the name of a registered voter from the voter registration register and cancel the registration of such voter if:

(1) The election commissioner or county clerk has received information that the voter is deceased;

(2) The voter requests in writing that his or her name be removed;

(3) The election commissioner or county clerk has received information that the voter has moved from the address at which he or she is registered to vote from the National Change of Address program of the United States Postal Service pursuant to section 32-329 and the voter has not responded to a confirmation notice sent pursuant to section 32-329 and has not voted or offered to vote at any election held prior to and including the second statewide federal general election following the mailing of the confirmation notice;

(4) The election commissioner or county clerk has received information that the registrant has moved out of the state and has registered to vote or voted in another territory or state pursuant to section 32-314;

(5) The election commissioner or county clerk has received information from the Department of Motor Vehicles that the registrant has changed the registrant's state of residence by surrendering the registrant's Nebraska motor vehicle operator's license or state identification card to another state; or

(6) The voter has become ineligible to vote as provided in section 32-313.

Source: Laws 1994, LB 76, § 88; Laws 1999, LB 234, § 4; Laws 2005, LB 566, § 27; Laws 2022, LB843, § 20.

32-329 Registration list; maintenance; voter registration register; verification; training; procedure; voter registration systems; information exempt from disclosure, when; Secretary of State; report.

(1) The Secretary of State with the assistance of the election commissioners and county clerks shall perform list maintenance with respect to the computer-

ized statewide voter registration list on a regular basis. The list maintenance shall be conducted in a manner that ensures that:

(a) The name of each registered voter appears in the computerized list;

(b) Only persons who have been entered into the register in error or who are not eligible to vote are removed from the computerized list; and

(c) Duplicate names are eliminated from the computerized list.

(2) The election commissioner or county clerk shall verify the voter registration register by using (a) the National Change of Address program of the United States Postal Service and a confirmation notice pursuant to subsection (3) of this section or (b) the biennial mailing of a nonforwardable notice to each registered voter. The Secretary of State shall provide biennial training for the election commissioners and county clerks responsible for maintaining voter registration lists. No name shall be removed from the voter registration register for the sole reason that such person has not voted for any length of time.

(3) When an election commissioner or county clerk receives information from the National Change of Address program of the United States Postal Service that a registered voter has moved from the address at which he or she is registered to vote, the election commissioner or county clerk shall update the voter registration register to indicate that the voter may have moved and mail a confirmation notice by forwardable first-class mail. If a nonforwardable notice under subdivision (2)(b) of this section is returned as undeliverable, the election commissioner or county clerk shall mail a confirmation notice by forwardable first-class mail. The confirmation notice shall include a confirmation letter and a preaddressed, postage-paid confirmation card. The confirmation letter shall contain statements substantially as follows:

(a) The election commissioner or county clerk has received information that you have moved to a different residence address from that appearing on the voter registration register;

(b) If you have not moved or you have moved to a new residence within this county, you should return the enclosed confirmation card by the regular registration deadline prescribed in section 32-302. If you fail to return the card by the deadline, you will be required to affirm or confirm your address prior to being allowed to vote. If you are required to affirm or confirm your address, it may result in a delay at your polling place; and

(c) If you have moved out of the county, you must reregister to be eligible to vote. This can be accomplished by mail or in person. For further information, contact your local election commissioner or county clerk.

(4) The election commissioner or county clerk shall maintain for a period of not less than two years a record of each confirmation letter indicating the date it was mailed and the person to whom it was mailed.

(5) If information from the National Change of Address program or the nonforwardable notice under subdivision (2)(b) of this section indicates that the voter has moved outside the jurisdiction and the election commissioner or county clerk receives no response to the confirmation letter and the voter does not offer to vote at any election held prior to and including the second statewide federal general election following the mailing of the confirmation notice, the voter's registration shall be canceled and his or her name shall be deleted from the voter registration register.

(6)(a) In the event that the Secretary of State becomes a member of a nongovernmental entity whose sole purpose is to share and exchange information in order to improve the accuracy and efficiency of voter registration systems, information received by the Secretary of State from such nongovernmental entity is exempt from disclosure as a public record pursuant to sections 84-712 to 84-712.09 and any other provision of law, except that the Secretary of State may provide such information to the election commissioners and county clerks to conduct voter registration list maintenance activities.

(b) If the Secretary of State becomes a member of a nongovernmental entity as described in subdivision (6)(a) of this section, the Secretary of State shall submit an annual report electronically to the Clerk of the Legislature by February 1 encompassing the preceding calendar year. The report shall describe the terms of membership in the nongovernmental entity and provide information on the total number of voters removed from the voter registration register as a result of information received by such membership and the reasons for the removal of such voters.

Source: Laws 1994, LB 76, § 91; Laws 1997, LB 764, § 44; Laws 1999, LB 234, § 7; Laws 2003, LB 357, § 8; Laws 2005, LB 566, § 29; Laws 2010, LB325, § 2; Laws 2021, LB285, § 5.

32-330 Voter registration register; public record; exception; examination; lists of registered voters; availability; breach in security; notice required.

(1) Except as otherwise provided in subsection (3) of section 32-301, the voter registration register shall be a public record. Any person may examine the register at the office of the election commissioner or county clerk, but no person other than the Secretary of State, the election commissioner, the county clerk, or law enforcement shall be allowed to make copies of the register. Copies of the register shall only be used for list maintenance as provided in section 32-329 or law enforcement purposes. The electronic records of the original voter registrations created pursuant to section 32-301 may constitute the voter registration register. The Secretary of State, election commissioner, or county clerk shall withhold information in the register designated as confidential under section 32-331. No portion of the register made available to the public and no list distributed pursuant to this section shall include the digital signature of any voter.

(2) The Secretary of State, election commissioner, or county clerk shall make available a list of registered voters that contains no more than the information authorized in subsections (3) and (7) of this section and, if requested, a list that only contains such information for registered voters who have voted in an election held more than thirty days prior to the request for the list. The Secretary of State, election commissioner, or county clerk shall establish the price of the lists at a rate that fairly covers the actual production cost of the lists, not to exceed three cents per name. Lists shall be used solely for purposes related to elections, political activities, voter registration, law enforcement, or jury selection. Lists shall not be posted, displayed, or used for commercial purposes or made accessible on the Internet.

(3)(a) The Secretary of State, election commissioner, or county clerk shall withhold from any list of registered voters distributed pursuant to subsection (2) of this section any information in the voter registration records which is

designated as confidential under section 32-331 or marked private on the voter registration application or voter registration record.

(b) Except as otherwise provided in subdivision (a) of this subsection, a list of registered voters distributed pursuant to subsection (2) of this section shall contain no more than the following information:

(i) The registrant's name;

(ii) The registrant's residential address;

(iii) The registrant's mailing address;

(iv) The registrant's telephone number;

(v) The registrant's voter registration status;

(vi) The registrant's voter identification number;

(vii) The registrant's birth year;

(viii) The registrant's date of voter registration;

(ix) The registrant's voting precinct;

(x) The registrant's polling site;

(xi) The registrant's political party affiliation;

(xii) The political subdivisions in which the registrant resides; and

(xiii) The registrant's voter history.

(4) Any person who acquires a list of registered voters under subsection (2) of this section shall provide his or her name, address, telephone number, email address, and campaign committee name or organization name, if applicable, the state of organization, if applicable, and the reason for requesting the list, and shall take and subscribe to an oath in substantially the following form:

I hereby swear that I will use the list of registered voters of _____ County, Nebraska, (or the State of Nebraska) only for the purposes prescribed in section 32-330 and for no other purpose, that I will not permit the use or copying of such list for unauthorized purposes, and that I will not post, display, or make such list accessible on the Internet.

I hereby declare under the penalty of election falsification that the statements above are true to the best of my knowledge.

The penalty for election falsification is a Class IV felony.

_____

(Signature of person acquiring list)

Subscribed and sworn to before me this ____ day of _____ 20__.

_____

(Signature of officer)

_____

(Name and official title of officer)

(5) The Secretary of State, election commissioner, or county clerk shall provide, upon request and free of charge, a complete and current listing of all registered voters and their addresses to the Clerk of the United States District Court for the District of Nebraska. Such list shall be provided no later than December 31 of each even-numbered year.

(6)(a) The Secretary of State, election commissioner, or county clerk shall provide, upon request and free of charge, a complete and current listing of all registered voters containing only the information authorized under subsection

(3) of this section to the state party headquarters of each political party and to the county chairperson of each political party.

(b) The Secretary of State, election commissioner, or county clerk shall not be required to provide more than one list of registered voters free of charge to the state party headquarters of each political party or the county chairperson of each political party per calendar month.

(7) The Secretary of State shall make available to each jury commissioner a list of registered voters that contains the information authorized in this section and in subsection (1) of section 25-1654.

(8) Nothing in this section shall prevent a political party or candidate from using the list of registered voters for campaign activities.

(9) Any person who acquires a list of registered voters under subsection (2) of this section shall, following discovery or notification of a breach in the security of the storage of the information, disclose the breach in security to the Secretary of State, election commissioner, or county clerk without delay.

Source: Laws 1994, LB 76, § 92; Laws 1995, LB 514, § 2; Laws 1997, LB 764, § 45; Laws 1999, LB 234, § 8; Laws 2015, LB575, § 10; Laws 2018, LB1065, § 5; Laws 2019, LB411, § 36; Laws 2021, LB285, § 6; Laws 2022, LB843, § 21; Laws 2024, LB287, § 17. Operative date April 17, 2024.

32-331 Confidential records; procedure.

A registered voter may file an affidavit with the election commissioner or county clerk to have the information relating to his or her name, residence address, and telephone number remain confidential. If the registered voter is a program participant under the Address Confidentiality Act, the affidavit shall state that fact. If the registered voter is not a program participant under the act, the affidavit shall state that the county court or district court has issued an order upon a showing of good cause that a life-threatening circumstance exists in relation to the voter or a member of his or her household. The registered voter shall vote under sections 32-938 to 32-951 in elections held after the filing of the affidavit. To terminate the affidavit and withdraw the confidential designation, the registered voter shall notify the election commissioner or county clerk in writing. The registered voter shall provide a valid mailing address to be used in place of the residence address for election, research, and government purposes. If the registered voter is a program participant under the Address Confidentiality Act, the mailing address shall be as provided in the act. The election commissioner or county clerk may use the mailing address or the word ''confidential'' or a similar designation in place of the residence address in producing any list, roster, or register required under the Election Act. Those records declared confidential under this section shall be kept in a separate file from the other registered voter information. A county, election commissioner, or county clerk shall be liable in an action for negligence as a result of the disclosure of the confidential information if there is a showing of gross negligence or willfulness.

Source: Laws 1995, LB 514, § 3; Laws 2003, LB 228, § 11; Laws 2005, LB 98, § 4; Laws 2022, LB843, § 22.

Cross References

Address Confidentiality Act, see section 42-1201.

ARTICLE 4
TIME OF ELECTIONS

Section

32-404 Political subdivisions; elections; how held; notice of filing deadlines; certifications required; forms; maps and additional information.

(1) When any political subdivision holds an election in conjunction with the statewide primary or general election, the election shall be held as provided in the Election Act. Any other election held by a political subdivision shall be held as provided in the act unless otherwise provided by the charter, code, or bylaws of the political subdivision.

(2) No later than December 1 of each odd-numbered year, the Secretary of State, election commissioner, or county clerk shall give notice to each political subdivision of the filing deadlines for the statewide primary election. No later than January 5 of each even-numbered year, the governing board of each political subdivision which will hold an election in conjunction with a statewide primary election shall certify to the Secretary of State, the election commissioner, or the county clerk the name of the subdivision, the number of officers to be elected, the length of the terms of office, the vacancies to be filled by election and length of remaining term, and the number of votes to be cast by a registered voter for each office.

(3) No later than June 15 of each even-numbered year, the governing board of each reclamation district, county weed district, village, county under township organization, public power district receiving annual gross revenue of less than forty million dollars, or educational service unit which will hold an election in conjunction with a statewide general election shall certify to the Secretary of State, the election commissioner, or the county clerk the name of the subdivision, the number of officers to be elected, the length of the terms of office, the vacancies to be filled by election and length of remaining term, and the number of votes to be cast by a registered voter for each office.

(4) The Secretary of State shall prescribe the forms to be used for certification to him or her, and the election commissioner or county clerk shall prescribe the forms to be used for certification to him or her.

(5) Each city, village, township, school district, public power district, sanitary and improvement district, metropolitan utilities district, fire protection district, natural resources district, regional metropolitan transit authority, community college area, learning community coordinating council, educational service unit, hospital district, reclamation district, library board, and airport authority shall furnish to the Secretary of State and election commissioner or county clerk any maps and additional information which the Secretary of State and election commissioner or county clerk may require in the proper performance of their duties in the conduct of elections and certification of results.

Source: Laws 1994, LB 76, § 96; Laws 1997, LB 764, § 46; Laws 2004, LB 927, § 1; Laws 2017, LB451, § 6; Laws 2021, LB285, § 7; Laws 2024, LB287, § 18.
Operative date July 19, 2024.

32-405 Special election; when held.

Any special election under the Election Act shall be held on the first Tuesday following the second Monday of the selected month unless otherwise specifically provided. Except as otherwise specifically provided, no special election shall be held under the Election Act in April, May, June, October, November, or December of an even-numbered year unless it is held in conjunction with the statewide primary or general election. No special election shall be held under the Election Act in September of an even-numbered year except as provided in section 32-564 and except for a special election by a political subdivision pursuant to section 13-519 or 77-3444 to approve a property tax levy or exceed a property tax levy limitation. A special election for a Class I, II, III, IV, or V school district which is located in whole or in part in a county in which a city of the primary or metropolitan class is located may be held in conjunction with the primary or general election for a city of the primary or metropolitan class which is governed by a home rule charter.

Source: Laws 2003, LB 521, § 4; Laws 2014, LB946, § 6; Laws 2020, LB1055, § 6; Laws 2024, LB287, § 19; Laws 2024, LB1329, § 4.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB287, section 19, with LB1329, section 4, to reflect all amendments.

Note: Changes made by LB287 became operative April 17, 2024. Changes made by LB1329 became effective July 19, 2024.

ARTICLE 5

OFFICERS AND ISSUES

(a) OFFICES AND OFFICEHOLDERS

Section

(b) LOCAL ELECTIONS

(c) VACANCIES

(a) OFFICES AND OFFICEHOLDERS

32-504 Congressional 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 three districts for electing Representatives in the Congress of the United States, and each district shall be entitled to elect one representative.

(2) The numbers and boundaries of the districts are designated and established by maps identified and labeled as maps CONG21-39002, CONG21-39002-1, CONG21-39002-2, and CONG21-39002-3, filed with the Clerk of the Legislature, and incorporated by reference as part of Laws 2021, LB1, 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 1994, LB 76, § 100; Laws 2001, LB 851, § 1; Laws 2011, LB704, § 1; Laws 2021, First Spec. Sess., LB1, § 1.

32-505 Congressional districts; population figures and maps; basis.

For purposes of section 32-504, 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 1994, LB 76, § 101; Laws 2001, LB 851, § 2; Laws 2011, LB704, § 2; Laws 2021, First Spec. Sess., LB1, § 2.

32-520 County sheriff; terms; qualifications; partisan ballot.

Except as provided in section 23-1701, a county sheriff shall be elected in each county at the statewide general election in 1990 and each four years thereafter. The term of the county sheriff shall be four years or until his or her successor is elected and qualified. The county sheriff shall meet the qualifications found in sections 23-1701 and 23-1701.01. The county sheriff shall be elected on the partisan ballot.

Source: Laws 1994, LB 76, § 116; Laws 2024, LB894, § 3. Effective date July 19, 2024.

32-538 City with city manager plan of government; city council; members; nomination and election; terms.

(1) In a city which adopts the city manager plan of government pursuant to the City Manager Plan of Government Act, the city council members shall be nominated at the statewide primary election and elected at the statewide general election.

(2) City council members shall be elected from the city at large unless the city council by ordinance provides for the election of all or some of the city council members by wards, the number and boundaries of which are provided for in section 16-104. City council members shall serve for terms of four years or until their successors are elected and qualified. The city council members shall meet the qualifications found in sections 19-613 and 19-613.01.

(3) The first election under an ordinance changing the number of city council members or their manner of election shall take place at the next statewide primary and general elections. City council members whose terms of office expire after the election shall continue in office until the expiration of the terms for which they were elected and until their successors are elected and qualified. At the first election under an ordinance changing the number of city council members or their manner of election, one-half or the bare majority of city council members elected at large, as the case may be, who receive the highest number of votes shall serve for four years and the other or others, if needed, for two years. At such first election, one-half or the bare majority of city council members, as the case may be, who are elected by wards shall serve for four years and the other or others, if needed, for two years, as provided in the ordinance. If only one city council member is to be elected at large at such first election, such member shall serve for four years.

Source: Laws 1994, LB 76, § 134; Laws 2001, LB 71, § 2; Laws 2001, LB 730, § 3; Laws 2017, LB113, § 37; Laws 2019, LB193, § 240; Laws 2020, LB1003, § 184.

Cross References

City Manager Plan of Government Act, see section 19-601.

32-539 City with commission plan of government; city council; members; nonpartisan ballot; mayor and council members; terms.

(1) In a city which adopts the commission plan of government pursuant to the Municipal Commission Plan of Government Act, the number of city council members shall be determined by the class and population of the city. In cities having two thousand or more but not more than forty thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, there shall be five members, in cities of the primary class, there shall be five members, and in cities of the metropolitan class, there shall be seven members. Council members shall be elected from the city at large. Nomination and election of all council members shall be by nonpartisan ballot. The mayor shall be elected for a four-year term.

(2) If a city elects to adopt the commission plan of government, the council member elected as the commissioner of the department of public works and the council member elected as the commissioner of the department of public accounts and finances shall each serve a term of four years and the council

member elected as the commissioner of the department of streets, public improvements, and public property and the council member elected as the commissioner of the department of parks and recreation shall each serve a term of two years. Upon the expiration of such terms, all council members shall serve terms of four years and until their successors are elected and qualified.

(3) Commencing with the statewide primary election in 2000, and every two years thereafter, candidates shall be nominated at the statewide primary election and elected at the statewide general election except as otherwise provided in section 19-405.

Source: Laws 1994, LB 76, § 135; Laws 1999, LB 250, § 3; Laws 2017, LB113, § 38; Laws 2019, LB193, § 241.

Cross References

Municipal Commission Plan of Government Act, see section 19-401.

32-541 Repealed. Laws 2018, LB377, § 87.

32-542 Repealed. Laws 2018, LB377, § 87.

32-543 Class I, II, or III school district; board of education members; terms; qualifications.

(1) If a caucus is held for nominations under section 79-549 for a Class I, II, or III school district, the board of education shall consist of six members to be elected by the registered voters of the school district at the statewide primary election. Two members shall be elected at each election for a term of six years. The members shall meet the qualifications found in section 79-543.

(2) Except as provided in subsection (1) of this section, members of the board of education of a Class I, II, or III school district shall be nominated at the statewide primary election and elected at the statewide general election. The board of education of a Class I, II, or III school district shall have no fewer than five members and no more than nine members as provided in section 79-549 or 79-550, and the members shall be nominated and elected at large or by district or ward as provided in section 32-554 or nominated by district or ward and elected at large as provided in section 79-550. The number of members to be nominated at the statewide primary election and elected at the statewide general election and the terms for which they will be nominated and elected shall be determined by the election commissioner or county clerk with the aid of the elected secretary of the board of education of the district. The terms of office of members of such board shall expire on the first Thursday after the first Tuesday in January. Terms shall be staggered so that approximately one-half of the members are elected to the board at each general election for terms of four years. When it becomes necessary to establish the staggering of terms by electing members for terms of different duration at the same election, candidates receiving the greatest number of votes shall be elected for the longest terms. The members shall meet the qualifications found in section 79-543.

Source: Laws 1994, LB 76, § 139; Laws 1996, LB 900, § 1042; Laws 1997, LB 595, § 1; Laws 1997, LB 764, § 48; Laws 2006, LB 1024, § 4; Laws 2014, LB946, § 9; Laws 2024, LB1329, § 5. Effective date July 19, 2024.

32-545 Class V school district; board of education members; districts; qualifications; terms; nonpartisan ballot.

(1) A member of the board of education of a Class V school district shall be elected from each district provided for in section 32-552. Such election shall be held on the date provided in subsection (2) of this section. The members of such board of education shall meet the qualifications found in sections 79-543 and 79-552.

(2) In 2014, candidates for election to such board of education from even-numbered districts shall be nominated at the statewide primary election and elected at the statewide general election and shall take office on the first Monday in January 2015. In 2016, candidates for election to such board of education from odd-numbered districts shall be nominated at the statewide primary election and elected at the statewide general election and shall take office on the first Monday in January 2017. Thereafter, all members shall be nominated at the statewide primary election and elected at the statewide general election, shall take office on the first Monday in January following their election, and shall serve terms of four years or until their successors are elected and qualified. Candidates for election to such board of education shall be nominated upon the nonpartisan ballot.

Source: Laws 1994, LB 76, § 141; Laws 1996, LB 900, § 1044; Laws 2013, LB125, § 1; Laws 2020, LB1055, § 7.

32-546 Repealed. Laws 2018, LB377, § 87.

32-551 Regional metropolitan transit authority; terms.

(1) Members of the board of directors of a regional metropolitan transit authority shall be nominated at the statewide primary election and elected at the statewide general election following the effective date of the conversion of such transit authority established under the Transit Authority Law into a regional metropolitan transit authority as provided in section 18-808, and subsequently elected members shall be nominated at subsequent statewide primary elections and elected at subsequent statewide general elections. Candidates for election shall be nominated upon a nonpartisan ballot.

(2) Members elected to represent odd-numbered districts in the first election of board members shall be elected for two-year terms. Members elected to represent even-numbered districts in the first election of board members shall be elected for four-year terms. Members elected in subsequent elections shall be elected for four-year terms and until their successors are elected and qualified.

(3) Members shall take office on the first Thursday after the first Tuesday in January following their election, except that members appointed to fill vacancies shall take office immediately following administration of the oath of office.

Source: Laws 2019, LB492, § 36.

Cross References

Transit Authority Law, see section 14-1826.

(b) LOCAL ELECTIONS

32-552 Election districts; adjustment of boundaries; when; procedure; Class IV school district; Class V school district; election districts.

(1) At least five months prior to an election, the governing board of any political subdivision requesting the adjustment of the boundaries of election

districts shall provide to the election commissioner or county clerk (a) written notice of the need and necessity of his or her office to perform such adjustments and (b) a revised election district boundary map that has been approved by the requesting political subdivision's governing board and subjected to all public review and challenge ordinances of the political subdivision.

(2) After each federal decennial census, the election commissioner of the county in which the greater part of a Class IV school district is situated shall, subject to review by the school board, divide the school district into seven numbered districts, substantially equal in population as determined by the most recent federal decennial census. The election commissioner shall consider the location of schools within the district and their boundaries. The election commissioner shall adjust the boundaries of the election districts, subject to final review and adjustment by the school board, to conform to changes in the territory and population of the school district and also following each federal decennial census. Except when specific procedures are otherwise provided, section 32-553 shall apply to all Class IV school districts.

(3) For purposes of election of members to the board of education of a Class V school district, such school district shall be divided into nine numbered election districts of compact and contiguous territory and of as nearly equal population as may be practical. Each election district shall be entitled to one member on the board of education of such Class V school district. After each federal decennial census, the election commissioner of the county in which the greater part of a Class V school district is situated shall divide the school district into nine numbered districts of compact and contiguous territory and of as nearly equal population as may be practical. The election commissioner shall adjust the boundaries of such districts, subject to final review and adjustment by the school board, to conform to changes in the territory of the school district.

Source: Laws 1994, LB 76, § 148; Laws 1997, LB 764, § 49; Laws 2002, LB 935, § 5; Laws 2013, LB125, § 2; Laws 2019, LB411, § 37; Laws 2020, LB1055, § 8; Laws 2021, LB285, § 8; Laws 2024, LB287, § 20.
Operative date July 19, 2024.

32-553 Political subdivision; redistrict; when; procedure.

(1)(a) When any political subdivision except a public power district nominates or elects members of the governing board by districts, such districts shall be substantially equal in population as determined by the most recent federal decennial census.

(b) Any such political subdivision that has districts in place on the date the census figures used in drawing district boundaries for the Legislature are required to be submitted to the state by the United States Department of Commerce, Bureau of the Census, shall, if necessary to maintain substantial population equality as required by this subsection, have new district boundaries drawn within six months after the passage and approval of the legislative bill providing for reestablishing legislative districts. Any such political subdivision in existence on the date the census figures used in drawing district boundaries for the Legislature are required to be submitted to the state by the United States Department of Commerce, Bureau of the Census, and which has not established

any district boundaries shall establish district boundaries pursuant to this section within six months after such date.

(c) If the deadline for drawing or redrawing district boundary lines imposed by this section is not met, the procedures set forth in section 32-555 shall be followed.

(2) The governing board of each such political subdivision shall be responsible for drawing its own district boundaries and shall, as nearly as possible, follow the precinct lines created by the election commissioner or county clerk after each federal decennial census, except that the election commissioner of any county in which a Class IV or V school district is located shall draw district boundaries for such school district as provided in this section and section 32-552.

Source: Laws 1994, LB 76, § 149; Laws 1997, LB 595, § 2; Laws 2001, LB 71, § 3; Laws 2021, LB285, § 9; Laws 2024, LB287, § 21. Operative date July 19, 2024.

32-559 Political subdivision; special election; certification; cancellation; procedure.

(1)(a) Except as provided in section 77-3444, any issue to be submitted to the registered voters at a special election by a political subdivision shall be certified by the clerk of the political subdivision to the election commissioner or county clerk on or before the eighth Friday prior to the election. A special election may be held by mail as provided in sections 32-952 to 32-959. Any other special election under this section shall be subject to section 32-405.

(b) In lieu of submitting the issue at a special election, any political subdivision may submit the issue at a statewide primary or general election or at any scheduled county election, except that no such issue shall be submitted at a statewide election or scheduled county election unless the issue to be submitted has been certified by the clerk of the political subdivision to the election commissioner or county clerk by March 1 for the primary election and by September 1 for the general election. After the election commissioner or county clerk has received the certification of the issue to be submitted, he or she shall be responsible for all matters relating to the submission of the issue to the registered voters, except that the clerk of the political subdivision shall be responsible for the publication or posting of any required special notice of the submission of such issue other than the notice required to be given of the statewide election issues. The election commissioner or county clerk shall prepare the ballots and issue ballots for early voting and shall also conduct the submission of the issue, including the receiving and counting of the ballots on the issue. The election returns shall be made to the election commissioner or county clerk. The ballots shall be counted and canvassed at the same time and in the same manner as the other ballots. Upon completion of the canvass of the vote by the county canvassing board, the election commissioner or county clerk shall certify the election results to the governing body of the political subdivision. The canvass by the county canvassing board shall have the same force and effect as if made by the governing body of the political subdivision.

(2)(a) A political subdivision that has submitted an issue for a special election under subdivision (1)(a) of this section may cancel the special election if the Secretary of State, election commissioner, or county clerk receives a resolution adopted by the political subdivision canceling the special election on or before

the fourth Thursday prior to the election. No cancellation shall be effective after such date. If a special election is canceled in such manner, the political subdivision shall be responsible for the costs incurred that are related to the canceled election. Such costs shall include all chargeable costs as provided in section 32-1202 associated with preparing for and conducting a special election.

(b) A political subdivision that has submitted an issue at a statewide primary or general election or at any scheduled county election under subdivision (1)(b) of this section may withdraw the issue from the ballot if the Secretary of State, election commissioner, or county clerk receives a resolution adopted by the political subdivision withdrawing the issue from the ballot no later than March 1 prior to a statewide primary election or September 1 prior to a statewide general election. No withdrawal shall be effective after such date. Any issue withdrawn in this manner shall not be printed on the ballot.

Source: Laws 1994, LB 76, § 155; Laws 1996, LB 964, § 3; Laws 1998, LB 306, § 4; Laws 2003, LB 521, § 4; Laws 2005, LB 98, § 6; Laws 2022, LB843, § 23.

Cross References

School bonds, special elections, see sections 10-703 and 10-703.01.

(c) VACANCIES

32-564 Representatives in Congress; vacancy; how filled; special election; procedure.

(1) Except as otherwise provided in subsection (2) of this section:

(a) If a vacancy occurs in the office of Representative in Congress on or after August 1 in an even-numbered year and prior to the statewide general election in such year, the Governor shall order a special election to be held in conjunction with such statewide general election. The only candidates who may appear on the ballot for such office at such special election are those who were nominated at the statewide primary election in such year, those who comply with section 32-616, and those who comply with section 32-627 to fill a vacancy on the ballot if such a vacancy exists. The candidate receiving the most votes at such special election shall serve for the remainder of the vacated term and for the succeeding term of office;

(b) If a vacancy occurs in the office of Representative in Congress on or after the day of the statewide general election and prior to the end of the term of the office which is vacated, no special election shall be called; and

(c) If a vacancy occurs in such office at any time other than as described in subdivision (a) or (b) of this subsection, the Governor shall order a special election to be held not less than seventy-five days nor more than ninety days after the vacancy occurs. Such election shall be held on a Tuesday. Each political party which polled at least five percent of the entire vote in the district in which the vacancy occurs may select a candidate following the applicable procedures in subsection (2) of section 32-627, except that the certificate and filing fee shall be submitted at least sixty-seven days prior to the day of the election. Any candidate so selected shall have his or her name placed on the ballot with the appropriate political party designation. Any other person may have his or her name placed on the ballot without a political party designation by filing petitions pursuant to sections 32-617 and 32-618 and paying the filing

fee as provided by section 32-608, except that the deadline for filing the petitions and paying the fee shall be sixty-seven days prior to the day of the election. The candidate receiving the most votes at such special election shall serve for the remainder of the vacated term.

(2)(a) If the Speaker of the United States House of Representatives announces that there are more than one hundred vacancies in the House of Representatives requiring special elections according to 2 U.S.C. 8, as such section existed on July 18, 2008, and there is any vacancy in the office of Representative in Congress representing Nebraska, the Governor shall issue a writ of election. The writ of election shall specify the date of a special election to fill such vacancy to be held within forty-nine days after the Speaker's announcement.

(b) The Secretary of State shall notify the chairperson and secretary of each political party which polled at least five percent of the entire vote in the district in which the vacancy occurs that the party may select a candidate following the applicable procedures in subsection (2) of section 32-627, except that the certificate and filing fee shall be submitted within seven days after notification by the Secretary of State. Any candidate so selected shall have his or her name placed on the ballot with the appropriate political party designation.

(c) The ballot for any voter meeting the criteria of section 32-939 shall be transmitted to such voter within fifteen days after the Speaker's announcement and shall be accepted if received by the election commissioner or county clerk within forty-five days after transmission to the voter.

(d) The candidate receiving the most votes at such special election shall serve for the remainder of the vacated term.

Source: Laws 1994, LB 76, § 160; Laws 2005, LB 682, § 1; Laws 2008, LB856, § 1; Laws 2024, LB287, § 22.
Operative date April 17, 2024.

32-565 United States Senator; vacancy; how filled.

(1) When a vacancy occurs in the representation of the State of Nebraska in the Senate of the United States, the office shall be filled by the Governor. The Governor shall appoint a suitable person possessing the qualifications necessary for senator to fill such vacancy.

(2)(a) If the vacancy occurs on or after August 1 prior to a statewide general election and if the term vacated expires on the following January 3, the appointee shall serve until the following January 3.

(b) If the vacancy occurs on or after August 1 prior to a statewide general election and if the term extends beyond the following January 3, the appointee shall serve until January 3 following the second statewide general election next succeeding the vacancy and at such election a senator shall be elected to serve the unexpired term if any.

(c) If the vacancy occurs at any time not described in subdivision (a) or (b) of this subsection, the appointee shall serve until January 3 following the next statewide general election next succeeding the vacancy and at such election a senator shall be elected to serve the unexpired term if any.

Source: Laws 1994, LB 76, § 161; Laws 1997, LB 764, § 52; Laws 2024, LB287, § 23.
Operative date April 17, 2024.

32-566 Legislature; vacancy; how filled.

(1) When a vacancy occurs in the Legislature, the office shall be filled by the Governor. The Governor shall appoint a suitable person possessing the qualifications necessary for a member of the Legislature.

(2) If the vacancy occurs at any time on or after May 1 of the second year of the term of office, the appointee shall serve for the remainder of the unexpired term. If the vacancy occurs at any time prior to May 1 of the second year of the term of office, the appointee shall serve until the first Tuesday following the first Monday in January following the next regular general election and at the regular general election a member of the Legislature shall be elected to serve the unexpired term as provided in subsection (3) of this section.

(3)(a) If the vacancy occurs on or after February 1 and prior to May 1 during the second year of the term of office, the vacancy shall be filled at the regular election in November of that year. Candidates shall file petitions to appear on the ballot for such election as provided in section 32-617.

(b) If the vacancy occurs at any time prior to February 1 of the second year of the term of office, the procedure for filling the vacated office shall be the same as the procedure for filling the office at the expiration of the term and candidates shall be nominated and elected at the statewide primary and general elections during the second year of the term.

Source: Laws 1994, LB 76, § 162; Laws 2017, LB451, § 7.

32-567 Vacancies; offices listed; how filled.

Vacancies in office shall be filled as follows:

(1) In state and judicial district offices and in the membership of any board or commission created by the state when no other method is provided, by the Governor;

(2) In county offices, by the county board;

(3) In the membership of the county board, by the county clerk, county attorney, and county treasurer;

(4) In the membership of the city council, according to section 32-568 or 32-569, as applicable;

(5) In township offices, by the township board or, if there are two or more vacancies on the township board, by the county board;

(6) In offices in public power and irrigation districts, according to section 70-615;

(7) In offices in natural resources districts, according to section 2-3215;

(8) In offices in community college areas, according to section 85-1514;

(9) In offices in educational service units, according to section 79-1217;

(10) In offices in hospital districts, according to section 23-3534;

(11) In offices in metropolitan utilities districts, according to section 14-2104;

(12) In membership on airport authority boards, according to section 3-502, 3-611, or 3-703, as applicable;

(13) In membership on the board of trustees of a road improvement district, according to section 39-1607;

(14) In membership on the council of a municipal county, by the council;

(15) For learning community coordinating councils, according to section 32-546.01; and

(16) For regional metropolitan transit authority boards, according to section 18-808.

Source: Laws 1994, LB 76, § 163; Laws 1996, LB 900, § 1046; Laws 2001, LB 142, § 38; Laws 2007, LB641, § 1; Laws 2014, LB946, § 10; Laws 2015, LB575, § 12; Laws 2019, LB492, § 37.

Cross References

Public Service Commission, vacancy, how filled, see section 75-103.
State Board of Education, vacancy, how filled, see section 79-314.

32-569 Vacancies in city and village elected offices; procedure for filling.

(1)(a) Except as otherwise provided in subsection (2) or (3) of this section or section 32-568, vacancies in city and village elected offices shall be filled by the mayor and council or board of trustees for the balance of the unexpired term. Notice of a vacancy, except a vacancy resulting from the death of the incumbent, shall be in writing and presented to the council or board of trustees at a regular or special meeting and shall appear as a part of the minutes of such meeting. The council or board of trustees shall at once give public notice of the vacancy by causing to be published in a newspaper of general circulation within the city or village or by posting in three public places in the city or village the office vacated and the length of the unexpired term.

(b) The mayor or chairperson of the board shall call a special meeting of the council or board of trustees or place the issue of filling such vacancy on the agenda at the next regular meeting at which time the mayor or chairperson shall submit the name of a qualified registered voter to fill the vacancy for the balance of the unexpired term. The regular or special meeting shall occur upon the death of the incumbent or within four weeks after the meeting at which such notice of vacancy has been presented. The council or board of trustees shall vote upon such nominee, and if a majority votes in favor of such nominee, the vacancy shall be declared filled. If the nominee fails to receive a majority of the votes, the nomination shall be rejected and the mayor or chairperson shall at the next regular or special meeting submit the name of another qualified registered voter to fill the vacancy. If the subsequent nominee fails to receive a majority of the votes, the mayor or chairperson shall continue at such meeting to submit the names of qualified registered voters in nomination and the council or board of trustees shall continue to vote upon such nominations at such meeting until the vacancy is filled. The mayor shall cast his or her vote for or against the nominee in the case of a tie vote of the council. All council members and trustees present shall cast a ballot for or against the nominee. Any member of the city council or board of trustees who has been appointed to fill a vacancy on the council or board shall have the same rights, including voting, as if such person were elected.

(2) The mayor and council or chairperson and board of trustees may, in lieu of filling a vacancy in a city or village elected office as provided in subsection (1) of this section or subsection (3) of section 32-568, call a special city election to fill such vacancy.

(3) If vacancies exist in the offices of one-half or more of the members of a city council or village board, the Secretary of State shall conduct a special city

election to fill such vacancies. Candidates for such special election shall file a candidate filing form pursuant to section 32-606.01.

Source: Laws 1994, LB 76, § 165; Laws 1997, LB 734, § 3; Laws 2006, LB 1067, § 2; Laws 2015, LB575, § 14; Laws 2024, LB287, § 24.
Operative date July 19, 2024.

32-570 School board; vacancy; how filled.

(1) A vacancy in the membership of a school board shall occur as set forth in section 32-560 or in the case of absences, unless excused by a majority of the remaining members of the board, when a member is absent from the district for a continuous period of sixty days at one time or from more than two consecutive regular meetings of the board. The resignation of a member or any other reason for a vacancy shall be made a part of the minutes of the school board. The school board shall give notice of the date the vacancy occurred, the office vacated, and the length of the unexpired term (a) in writing to the election commissioner or county clerk and (b) by a notice published in a newspaper of general circulation in the school district.

(2) Except as provided in subsection (3) of this section, a vacancy in the membership of a school board resulting from any cause other than the expiration of a term shall be filled by appointment of a qualified registered voter by the remaining members of the board for the remainder of the unexpired term. A registered voter appointed pursuant to this subsection shall meet the same requirements as the member whose office is vacant.

(3) Any vacancy in the membership of a school board of a school district described in section 79-549 which does not nominate candidates at a primary election and elect members at the following general election shall be filled by appointment of a qualified registered voter by the remaining members of the board for the remainder of the unexpired term.

(4) If any school board fails to fill a vacancy on the board, the vacancy may be filled by election at a special election or school district meeting called for that purpose. Such election or meeting shall be called in the same manner and subject to the same procedures as other special elections or school district meetings.

(5) If there are vacancies in the offices of one-half or more of the members of a school board, the Secretary of State shall conduct a special school district election to fill such vacancies. Candidates for such special election shall file a candidate filing form pursuant to section 32-606.01.

Source: Laws 1994, LB 76, § 166; Laws 1999, LB 272, § 15; Laws 2010, LB965, § 1; Laws 2012, LB878, § 3; Laws 2013, LB125, § 3; Laws 2016, LB874, § 1; Laws 2018, LB377, § 2; Laws 2024, LB287, § 25.
Operative date July 19, 2024.

32-573 Board of Regents of the University of Nebraska; vacancy; how filled.

(1) When a vacancy occurs in the Board of Regents of the University of Nebraska, the office shall be filled by the Governor. The Governor shall appoint a suitable person possessing the qualifications necessary for a member of the Board of Regents.

(2)(a) If the vacancy occurs during the first year of the term or before February 1 during a calendar year in which a statewide general election will be held, the appointee shall serve until the first Thursday following the first Tuesday in January following such general election and at such general election a member of the Board of Regents shall be elected to serve the unexpired term if any.

(b) If the vacancy occurs on or after February 1 during a calendar year in which a statewide general election will be held and if the term vacated expires on the first Thursday following the first Tuesday in January following such general election, the appointee shall serve the unexpired term.

(c) If the vacancy occurs on or after February 1 during a calendar year in which a statewide general election will be held and if the term vacated extends beyond the first Thursday following the first Tuesday in January following such general election, the appointee shall serve until the first Thursday following the first Tuesday in January following the second general election next succeeding his or her appointment and at such election a member of the Board of Regents shall be elected to serve the unexpired term if any.

Source: Laws 2003, LB 181, § 2; Laws 2017, LB451, § 8.

ARTICLE 6

FILING AND NOMINATION PROCEDURES

Section

32-601 Political subdivision; offices to be filled; filing deadlines; notices required.

(1) Each political subdivision shall notify the election commissioner or county clerk of the offices to be filled no later than:

(a) January 5 of any election year as provided in subsection (2) of section 32-404; or

(b) June 15 of any election year as provided in subsection (3) of section 32-404.

(2) The election commissioner or county clerk shall give notice of the offices to be filled by election and the filing deadlines for such offices by publication in

at least one newspaper of general circulation in the county once at least fifteen days prior to such deadlines.

Source: Laws 1994, LB 76, § 169; Laws 2017, LB451, § 9.

32-602 Candidate; general requirements; limitation on filing for office.

(1) Any person seeking an elective office shall be a registered voter at the time of filing for the office pursuant to section 32-606 or 32-611.

(2) Any person filing for office shall meet the constitutional and statutory requirements of the office for which he or she is filing. If a person is filing for a partisan office, he or she shall be a registered voter affiliated with the appropriate political party if required pursuant to section 32-702. If the person is required to sign a contract or comply with a bonding or equivalent commercial insurance policy requirement prior to holding such office, he or she shall be at least nineteen years of age at the time of filing for the office.

(3) A person shall not be eligible to file for an office if he or she holds the office and his or her term of office expires after the beginning of the term of office for which he or she would be filing. This subsection does not apply to filing for an office to represent a different district, ward, subdistrict, or subdivision of the same governmental entity as the office held at the time of filing.

(4)(a) Except as provided in subdivision (b) of this subsection, a person shall not be eligible to file for an office until he or she has paid any outstanding civil penalties and interest imposed pursuant to the Nebraska Political Accountability and Disclosure Act. The filing officer shall determine such eligibility before accepting a filing. The Nebraska Accountability and Disclosure Commission shall provide the filing officers with current information or the most current list of such outstanding civil penalties and interest owed pursuant to subdivision (13) of section 49-14,123.

(b) A person owing a civil penalty to the commission shall be eligible to file for an office if:

(i) The matter in which the civil penalty was assessed is pending on appeal before a state court; and

(ii) The person files with the commission a surety bond running in favor of the State of Nebraska with surety by a corporate bonding company authorized to do business in this state and conditioned upon the payment of the civil penalty imposed under the Nebraska Political Accountability and Disclosure Act.

(5) The governing body of the political subdivision swearing in the officer shall determine whether the person meets all requirements prior to swearing in the officer.

Source: Laws 1994, LB 76, § 170; Laws 2004, LB 884, § 17; Laws 2011, LB499, § 1; Laws 2017, LB85, § 1.

Cross References

Nebraska Political Accountability and Disclosure Act, see section 49-1401.

32-604 Multiple office holding; when allowed.

(1) Except as provided in subsection (2) or (4) of this section, no person shall be precluded from being elected or appointed to or holding an elective office

for the reason that he or she has been elected or appointed to or holds another elective office.

(2) No person serving as a member of the Legislature or in an elective office described in Article IV, section 1 or 20, or Article VII, section 3 or 10, of the Constitution of Nebraska shall simultaneously serve in any other elective office, except that such a person may simultaneously serve in another elective office which is filled at an election held in conjunction with the annual meeting of a public body.

(3) Whenever an incumbent serving as a member of the Legislature or in an elective office described in Article IV, section 1 or 20, or Article VII, section 3 or 10, of the Constitution of Nebraska assumes another elective office, except an elective office filled at an election held in conjunction with the annual meeting of a public body, the office first held by the incumbent shall be deemed vacant.

(4) No person serving in a high elective office shall simultaneously serve in any other high elective office, except that (a) a county attorney may serve as the county attorney for more than one county if appointed under subsection (2) of section 23-1201.01 and (b) a county sheriff may serve as the county sheriff for more than one county if appointed under subsection (3) of section 23-1701.

(5) Notwithstanding subsection (4) of this section, any person holding more than one high elective office upon July 15, 2010, shall be entitled to serve the remainder of all terms for which he or she was elected or appointed.

(6) For purposes of this section, (a) elective office has the meaning found in section 32-109 and includes an office which is filled at an election held in conjunction with the annual meeting of a public body created by an act of the Legislature but does not include a member of a learning community coordinating council appointed pursuant to subsection (5) or (7) of section 32-546.01 prior to January 5, 2017, and (b) high elective office means a member of the Legislature, an elective office described in Article IV, section 1 or 20, or Article VII, section 3 or 10, of the Constitution of Nebraska, or a county, city, community college area, learning community, regional metropolitan transit authority, or school district elective office.

Source: Laws 1994, LB 76, § 172; Laws 1997, LB 221, § 3; Laws 2003, LB 84, § 2; Laws 2007, LB641, § 2; Laws 2008, LB1154, § 4; Laws 2010, LB951, § 2; Laws 2016, LB1067, § 5; Laws 2019, LB492, § 38; Laws 2024, LB894, § 4.
Effective date July 19, 2024.

32-606 Candidate filing form; filing period.

(1) Any candidate may place his or her name on the primary election ballot by filing a candidate filing form prescribed by the Secretary of State as provided in section 32-607. Except as otherwise provided in subsection (4) of this section, if a candidate for an elective office is an incumbent of any elective office, the filing period for filing the candidate filing form shall be between January 5 and February 15 prior to the date of the primary election. No incumbent who resigns from elective office prior to the expiration of his or her term shall file for any office after February 15 of that election year. All other candidates shall file for office between January 5 and March 1 prior to the date of the primary election. A candidate filing form and a copy of payment of the filing fee, if applicable, may be transmitted by facsimile for the offices listed in

subdivision (2)(a) of section 32-607 if (a) the transmission is received in the office of the filing officer by the filing deadline and (b) the original filing form and payment of the filing fee, if applicable, is mailed to the filing officer with a legible postmark bearing a date on or prior to the filing deadline and is in the office of the filing officer no later than seven days after the filing deadline.

(2) Any candidate for a township office in a county under township organization, the board of trustees of a village, the board of directors of a reclamation district, the county weed district board, the board of directors of a public power district receiving annual gross revenue of less than forty million dollars, or the board of an educational service unit may place his or her name on the general election ballot by filing a candidate filing form prescribed by the Secretary of State as provided in section 32-607. Except as otherwise provided in subsection (4) of this section, if a candidate for an elective office is an incumbent of any elective office, the filing period for filing the candidate filing form shall be between January 5 and July 15 prior to the date of the general election. No incumbent who resigns from elective office prior to the expiration of his or her term shall file for any office after July 15 of that election year. All other candidates shall file for office between January 5 and August 1 prior to the date of the general election. A candidate filing form may be transmitted by facsimile for the offices listed in subdivision (2)(a) of section 32-607 if (a) the transmission is received in the office of the filing officer by the filing deadline and (b) the original filing form is mailed to the filing officer with a legible postmark bearing a date on or prior to the filing deadline and is in the office of the filing officer no later than seven days after the filing deadline.

(3) Any city having a home rule charter may provide for filing deadlines for any person desiring to be a candidate for the office of council member or mayor.

(4) If a candidate for an elective office was appointed to an elective office to fill a vacancy after the deadline for an incumbent to file a candidate filing form in subsection (1) or (2) of this section but before the deadline for all other candidates, the candidate may file a candidate filing form for any office on or before the deadline for all other candidates.

Source: Laws 1994, LB 76, § 174; Laws 1996, LB 967, § 2; Laws 1997, LB 764, § 54; Laws 1999, LB 802, § 12; Laws 2007, LB641, § 3; Laws 2009, LB392, § 7; Laws 2011, LB449, § 4; Laws 2011, LB550, § 1; Laws 2013, LB125, § 4; Laws 2018, LB377, § 3; Laws 2020, LB1055, § 9; Laws 2021, LB285, § 10; Laws 2024, LB287, § 27.
Operative date July 19, 2024.

32-606.01 Candidate filing form; special election; filing period; requirements.

(1) Except as provided in section 32-564, any candidate in a special election to fill a vacancy for an office of a political subdivision may have his or her name placed on the special election ballot by filing a candidate filing form prescribed by the Secretary of State as provided in section 32-607 and this section. The filing period for filing the candidate filing form shall be:

(a) On or before March 1 for a special election to be held in conjunction with the statewide primary election;

(b) On or before August 1 for a special election to be held in conjunction with the statewide general election; and

(c) Between the eighth Friday prior to the election and the fifth Friday prior to the election for all other elections.

(2) A candidate filing form for such special election shall meet the requirements of section 32-607, except that the form shall contain the following statement: ''I hereby swear that I will abide by the laws of the State of Nebraska regarding the results of the special election, that I am a registered voter and qualified to be elected, and that I will serve if elected.''.

(3) A candidate filing form for such special election shall be filed with the filing officer specified in subsection (2) of section 32-607.

Source: Laws 2024, LB287, § 26.
Operative date July 19, 2024.

32-607 Candidate filing forms; contents; filing officers; objections to the name of a candidate.

(1)(a) All candidate filing forms shall contain the following statement: I hereby swear that I will abide by the laws of the State of Nebraska regarding the results of the primary and general elections, that I am a registered voter and qualified to be elected, and that I will serve if elected. Candidate filing forms shall also contain the following information regarding the candidate: Name, as provided under subdivision (b) of this subsection; residence address; mailing address if different from the residence address; telephone number; office sought; party affiliation if the office sought is a partisan office; a statement as to whether or not civil penalties are owed pursuant to the Nebraska Political Accountability and Disclosure Act; and, if civil penalties are owed, whether or not a surety bond has been filed pursuant to subdivision (4)(b) of section 32-602. An email address shall also be included on the filing form as an optional field.

(b) The name contained on a candidate filing form shall be the name by which the candidate is generally known in the community and by which the candidate is distinguished from others and shall not contain titles, characterizations, or designations.

(2) Candidate filing forms shall be filed with the following filing officers:

(a) For candidates for national, state, or congressional office, directors of public power and irrigation districts, directors of reclamation districts, directors of natural resources districts, directors of metropolitan utilities districts, members of the boards of educational service units, members of governing boards of community colleges, delegates to national conventions, and other offices filled by election held in more than one county and judges desiring retention, in the office of the Secretary of State;

(b) For officers elected within a county, in the office of the election commissioner or county clerk;

(c) For officers in school districts which include land in adjoining counties, in the office of the election commissioner or county clerk of the county in which the greatest number of registered voters entitled to vote for the officers reside; and

(d) For city or village officers, in the office of the election commissioner or county clerk.

(3) Objections to the name of a candidate submitted on a candidate filing form may be made and passed upon in the same manner as objections to a candidate filing form pursuant to section 32-624.

Source: Laws 1994, LB 76, § 175; Laws 1997, LB 764, § 55; Laws 1999, LB 571, § 2; Laws 2007, LB603, § 3; Laws 2009, LB501, § 2; Laws 2010, LB325, § 3; Laws 2015, LB575, § 15; Laws 2017, LB85, § 2; Laws 2019, LB411, § 38; Laws 2022, LB843, § 24; Laws 2024, LB287, § 28.
Operative date July 19, 2024.

Cross References

Nebraska Political Accountability and Disclosure Act, see section 49-1401.

32-608 Filing fees; payment; amount; not required; when; refund; when allowed.

(1) Except as provided in subsection (4) or (5) of this section, a filing fee shall be paid by or on behalf of each candidate prior to filing for office. For candidates who file in the office of the Secretary of State as provided in subdivision (2)(a) of section 32-607, the filing fee shall be paid to the Secretary of State who shall remit the fee to the State Treasurer for credit to the Election Administration Fund. For candidates for any city or village office, the filing fee shall be paid to the city or village treasurer of the city or village in which the candidate resides. For candidates who file in the office of the election commissioner or county clerk, the filing fee shall be paid to the election commissioner or county clerk in the county in which the office is sought. The election commissioner or county clerk shall remit the fee to the county treasurer. The fee shall be placed in the general fund of the county, city, or village. No candidate filing forms shall be filed until the proper payment or the proper receipt showing the payment of such filing fee is presented to the filing officer. On the day of the filing deadline, the city or village treasurer's office shall remain open to receive filing fees until the hour of the filing deadline.

(2) Except as provided in subsection (4) or (5) of this section, the filing fees shall be as follows:

(a) For the office of United States Senator, state officers, including members of the Legislature, Representatives in Congress, county officers, and city or village officers, except the mayor or council members of cities having a home rule charter, a sum equal to one percent of the annual salary as of November 30 of the year preceding the election for the office for which he or she files as a candidate;

(b) For directors of public power and irrigation districts in districts receiving annual gross revenue of forty million dollars or more, twenty-five dollars, and in districts receiving annual gross revenue of less than forty million dollars, ten dollars;

(c) For directors of reclamation districts, ten dollars; and

(d) For Regents of the University of Nebraska, members of the State Board of Education, and directors of metropolitan utilities districts, twenty-five dollars.

(3) All declared write-in candidates shall pay the filing fees that are required for the office at the time that they present the write-in affidavit to the filing officer.

(4) No filing fee shall be required for any candidate filing for an office in which a per diem is paid rather than a salary or for which there is a salary of less than five hundred dollars per year. No filing fee shall be required for any candidate for membership on a school board, on the board of an educational service unit, on the board of governors of a community college area, on the board of directors of a natural resources district, or on the board of trustees of a sanitary and improvement district.

(5) No filing fee shall be required of any candidate completing an affidavit requesting to file for elective office in forma pauperis. A pauper shall mean a person whose income and other resources for maintenance are found under assistance standards to be insufficient for meeting the cost of his or her requirements and whose reserve of cash or other available resources does not exceed the maximum available resources that an eligible individual may own. Available resources shall include every type of property or interest in property that an individual owns and may convert into cash except:

(a) Real property used as a home;

(b) Household goods of a moderate value used in the home; and

(c) Assets to a maximum value of three thousand dollars used by a recipient in a planned effort directed towards self-support.

(6) If any candidate dies prior to an election, the spouse of the candidate may file a claim for refund of the filing fee with the proper governing body prior to the date of the election. Upon approval of the claim by the proper governing body, the filing fee shall be refunded.

Source: Laws 1994, LB 76, § 176; Laws 1997, LB 764, § 56; Laws 1998, LB 896, § 9; Laws 1998, LB 1161, § 12; Laws 1999, LB 272, § 16; Laws 1999, LB 802, § 13; Laws 2003, LB 537, § 1; Laws 2004, LB 323, § 2; Laws 2014, LB946, § 12; Laws 2021, LB285, § 11; Laws 2024, LB287, § 29.
Operative date July 19, 2024.

32-610 Partisan elections; candidate; requirements.

No person shall be allowed to file a candidate filing form as a partisan candidate or to have his or her name placed upon a primary election ballot of a political party if subsection (2) of section 32-720 applies to the political party. For any other political party, no person shall be allowed to file a candidate filing form as a partisan candidate or to have his or her name placed upon a primary election ballot of a political party unless (1) he or she is a registered voter of the political party if required pursuant to section 32-702 and (2)(a) the political party has at least ten thousand persons affiliated as indicated by voter registration records in Nebraska or (b) at one of the two immediately preceding statewide general elections, (i) a candidate nominated by the political party polled at least five percent of the entire vote in the state in a statewide race or (ii) a combination of candidates nominated by the political party for a combination of districts that encompass all of the voters of the entire state polled at least five percent of the vote in each of their respective districts. A candidate filing form filed in violation of this section shall be void.

Source: Laws 1994, LB 76, § 178; Laws 2012, LB1035, § 1; Laws 2014, LB1048, § 2; Laws 2017, LB34, § 1.

32-613 President; nominating petition; consent of candidate required; form of petition.

Any petition to place a person's name on the primary election ballot for President of the United States shall contain the names of not less than one hundred voters registered with the appropriate political party from each congressional district of the state, except that if the political party dissolves as provided in subsection (2) of section 32-720, the Secretary of State shall not accept a petition under this section. The name of the candidate for President shall be placed upon the ballot only when written consent of such person has been filed with the Secretary of State not less than sixty days before the primary election. The form of the petition shall comply with the requirements of section 32-628 and shall as nearly as possible conform to the form prescribed by the Secretary of State. All signed petitions not filed with the Secretary of State shall become invalid if not filed by August 1 of the presidential election year.

Source: Laws 1994, LB 76, § 181; Laws 1997, LB 764, § 59; Laws 2014, LB1048, § 3; Laws 2024, LB287, § 31.
Operative date April 17, 2024.

32-615 Write-in candidate; requirements.

(1) Except as otherwise provided in subsection (2) of this section, any candidate engaged in or pursuing a write-in campaign shall file a notarized affidavit of his or her intent together with the receipt for any filing fee with the filing officer as provided in section 32-608 no earlier than January 5 and no later than the second Friday prior to the election.

(2) For any county office elected pursuant to sections 32-517 to 32-529 which is subject to subdivision (1)(b) of section 32-811, a candidate may engage in or pursue a write-in campaign if he or she files a notarized affidavit of his or her intent together with the receipt for the filing fee with the filing officer as provided in section 32-608 on or before March 3 of the year of the statewide primary election. If such an affidavit is filed as prescribed, the election commissioner or county clerk shall place that county office on the statewide primary election ballot with the names of the candidate properly filed for the nomination of the applicable political party and a line for write-in candidates.

(3) A candidate submitting an affidavit under this section for a partisan office on the statewide primary election ballot shall be a registered voter of the political party named in the affidavit unless the political party allows candidates not affiliated with the party by not adopting a rule under section 32-702.

(4) A candidate who has been defeated as a candidate in the primary election or defeated as a write-in candidate in the primary election shall not be eligible as a write-in candidate for the same office in the general election unless (a) a vacancy on the ballot exists pursuant to section 32-625 or (b) the candidate was a candidate for an office described in sections 32-512 to 32-550 and the candidate lost the election as a result of a determination pursuant to section 32-1122 in the case of a tie vote.

(5) A candidate who files a notarized affidavit shall be entitled to all write-in votes for the candidate even if only the last name of the candidate has been written if such last name is reasonably close to the proper spelling.

Source: Laws 1994, LB 76, § 183; Laws 2002, LB 251, § 4; Laws 2003, LB 537, § 2; Laws 2011, LB449, § 5; Laws 2014, LB56, § 1;

Laws 2014, LB144, § 2; Laws 2015, LB575, § 17; Laws 2022, LB843, § 25; Laws 2024, LB287, § 32.
Operative date July 19, 2024.

32-617 Nomination by petition; requirements; procedure.

(1) Petitions for nomination for partisan and nonpartisan offices shall conform to the requirements of section 32-628. Petitions shall state the office to be filled and the name and address of the candidate. Petitions for partisan office shall also indicate the party affiliation of the candidate. A sample copy of the petition shall be filed with the filing officer prior to circulation. Petitions shall be signed by registered voters residing in the district or political subdivision in which the officer is to be elected and shall be filed with the filing officer in the same manner as provided for candidate filing forms in section 32-607. Petition signers and petition circulators shall conform to the requirements of sections 32-629 and 32-630. No petition for nomination shall be filed unless there is attached thereto a receipt showing the payment of the filing fee required pursuant to section 32-608. Such petitions shall be filed by September 1 in the year of the general election, and all signed petitions not filed with the Secretary of State by such date shall become invalid.

(2) The filing officer shall verify the signatures according to section 32-631. Within three days after the signatures on a petition for nomination have been verified pursuant to such section and the filing officer has determined that pursuant to section 32-618 a sufficient number of registered voters signed the petitions, the filing officer shall notify the candidate so nominated by registered or certified mail or electronic mail, and the candidate shall, within five days after the date of receiving such notification, file with such officer his or her acceptance of the nomination or his or her name will not be printed on the ballot.

(3) A candidate placed on the ballot by petition shall be termed a candidate by petition. The words BY PETITION shall be printed upon the ballot after the name of each candidate by petition.

Source: Laws 1994, LB 76, § 185; Laws 2003, LB 537, § 3; Laws 2011, LB499, § 2; Laws 2024, LB287, § 33.
Operative date April 17, 2024.

32-618 Nomination by petition; number of signatures required.

(1) The number of signatures of registered voters needed to place the name of a candidate upon the nonpartisan ballot for the general election shall be as follows:

(a) For each nonpartisan office other than members of the Board of Regents of the University of Nebraska and board members of a Class I, II, or III school district, at least ten percent of the total number of registered voters voting for Governor or President of the United States at the immediately preceding general election in the district or political subdivision in which the officer is to be elected, not to exceed two thousand;

(b) For members of the Board of Regents of the University of Nebraska, at least ten percent of the total number of registered voters voting for Governor or President of the United States at the immediately preceding general election in the regent district in which the officer is to be elected, not to exceed one thousand; and

(c) For board members of a Class I, II, or III school district, at least twenty percent of the total number of votes cast for the board member receiving the highest number of votes at the immediately preceding general election in the school district.

(2) The number of signatures of registered voters needed to place the name of a candidate for an office upon the partisan ballot for the general election shall be as follows:

(a) For each partisan office to be filled by the registered voters of the entire state, at least four thousand, and at least seven hundred fifty signatures shall be obtained in each congressional district in the state;

(b) For each partisan office to be filled by the registered voters of a county, at least twenty percent of the total number of registered voters voting for Governor or President of the United States at the immediately preceding general election within the county, not to exceed two thousand, except that the number of signatures shall not be required to exceed twenty-five percent of the total number of registered voters voting for the office at the immediately preceding general election; and

(c) For each partisan office to be filled by the registered voters of a political subdivision other than a county, at least twenty percent of the total number of registered voters voting for Governor or President of the United States at the immediately preceding general election within the political subdivision, not to exceed two thousand.

Source: Laws 1994, LB 76, § 186; Laws 1997, LB 764, § 62; Laws 2003, LB 181, § 5; Laws 2003, LB 461, § 3; Laws 2007, LB298, § 1; Laws 2011, LB399, § 1; Laws 2016, LB874, § 2; Laws 2019, LB411, § 39; Laws 2024, LB1329, § 6.
Effective date July 19, 2024.

32-622.01 Candidate; name change; documentation required; objection; procedure.

(1) Any person who has filed for elective office pursuant to subsection (1) of section 32-606 whose legal name has changed since filing may change the name to appear on the ballot to reflect the person's changed legal name by March 1 before the primary election. The candidate shall provide any documentation verifying the legal name change to the filing officer by March 1.

(2) Any person who has filed for elective office pursuant to subsection (2) of section 32-606 or a nominee for elective office for the general election whose legal name has changed since filing may change the name to appear on the ballot to reflect the person's changed legal name by September 1 before the general election. The candidate shall provide any documentation verifying the legal name change to the filing officer by September 1.

(3) Any objection to a name change pursuant to subsection (1) or (2) of this section may be made and passed upon in the same manner as an objection to a candidate filing form pursuant to section 32-624, except that any objection pursuant to this subsection shall be made within seven days after the documentation verifying the legal name change is provided to the filing officer.

(4) Any candidate may file a name change on or before the filing deadline, and such name change shall conform to the requirements of subdivision (1)(b)

of section 32-607. Any objection to a name change pursuant to this subsection may be made pursuant to subsection (3) of section 32-607.

Source: Laws 2024, LB287, § 30.
Operative date July 19, 2024.

32-623 Declination of nomination; deadline; notice, to whom given; vacancy, how filled.

If any person nominated for elective office for the general election notifies the filing officer with whom the candidate filing form or other acceptance of nomination was filed by filing a statement, in writing and duly acknowledged, that he or she declines such nomination on or before August 1 before the election, the person's name shall not be printed on the ballot, but no declination shall be effective after such date. The filing officer shall inform one or more persons whose names are attached to the nomination if the candidate was nominated by a political party convention or committee or, if nominated at a primary election, the chairperson or secretary of the campaign or political party committee of his or her political party if there is one within the jurisdiction of the filing officer and, if not, at least three of the prominent members of the candidate's political party within the jurisdiction of the filing officer that such candidate has declined the nomination by mailing or delivering to them personally notice of such fact. Such declination shall create a vacancy on the ballot which may be filled pursuant to section 32-627. In lieu of filing a declination with the Secretary of State, the person so nominated may file a declination with the election commissioner or county clerk in the county in which he or she resides. Any election commissioner or county clerk receiving such a declination shall within five days after its receipt forward a copy of the written declination statement to the Secretary of State. The Secretary of State shall make notifications required by this section for all individuals for whom he or she receives a copy of the written declination statement.

Source: Laws 1994, LB 76, § 191; Laws 2012, LB503, § 1; Laws 2022, LB843, § 26.

32-630 Petitions; signers and circulators; duties; prohibited acts.

(1) Each person who signs a petition shall, at the time of and in addition to signing, personally affix the date, print his or her last name and first name in full, and affix his or her date of birth and address, including the street and number or a designation of a rural route or voting precinct and the city or village or a post office address. A person signing a petition may use his or her initials in place of his or her first name if such person is registered to vote under such initials.

(2) Each circulator of a petition shall personally witness the signatures on the petition and shall sign the circulator's affidavit.

(3) No person shall:

(a) Sign any name other than his or her own to any petition;

(b) Knowingly sign his or her name more than once for the same petition effort or measure;

(c) Sign a petition if he or she is not a registered voter and qualified to sign the same except as provided in section 32-1404;

(d) Falsely swear to any signature upon any such petition;

(e) Accept money or other thing of value for signing any petition; or

(f) Offer money or other thing of value in exchange for a signature upon any petition.

Source: Laws 1994, LB 76, § 198; Laws 1997, LB 460, § 2; Laws 2003, LB 444, § 7; Laws 2008, LB39, § 3; Laws 2015, LB367, § 1; Laws 2024, LB287, § 34.
Operative date July 1, 2024.

32-631 Petitions; signature verification; procedure.

(1) All petitions that are filed with the election commissioner or county clerk for signature verification shall be retained in the election office and shall be open to public inspection. Upon receipt of the pages of a petition, the election commissioner or county clerk shall issue a written receipt indicating the number of pages of the petition in his or her custody to the person filing the petition for signature verification. Petitions may be destroyed twenty-two months after the election to which they apply.

(2) The election commissioner or county clerk shall determine the validity and sufficiency of such petition by comparing the names, dates of birth if applicable, and addresses of the signers with the voter registration records to determine if the signers were registered voters on the date of signing the petition. If it is determined that a signer has affixed his or her signature more than once to any petition and that only one person is registered by that name, the election commissioner or county clerk shall strike from the pages of the petition all but one such signature. Only one of the duplicate signatures shall be added to the total number of valid signatures. All signatures, dates of birth, and addresses shall be presumed to be valid if the election commissioner or county clerk has found the signers to be registered voters on or before the date on which the petition was signed. This presumption shall not be conclusive and may be rebutted by any credible evidence which the election commissioner or county clerk finds sufficient.

(3) If the election commissioner or county clerk verifies signatures in excess of one hundred ten percent of the number necessary for the issue to be placed on the ballot, the election commissioner or county clerk may cease verifying signatures and certify the number of signatures verified to the person who delivered the petitions for verification.

(4) If the number of signatures verified does not equal or exceed the number necessary to place the issue on the ballot 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 petition page number and line number where the signature is found. If the signature or address is challenged for a reason other than the nonregistration of the signer, the election commissioner or county clerk shall set forth the reasons for the challenge of the signature.

Source: Laws 1994, LB 76, § 199; Laws 1997, LB 460, § 3; Laws 1997, LB 764, § 66; Laws 2003, LB 444, § 8; Laws 2019, LB411, § 40.

32-632 Petition; removal of name; procedure.

(1) Any person may remove his or her name from a petition by signing and delivering a written letter to the Secretary of State, election commissioner, or county clerk. Name removal letters shall be filed with the following officers:

(a) For initiative and referendum petitions, new political party petitions, and petitions for President of the United States, with the Secretary of State;

(b) For candidate petitions, with the filing officer prescribed in section 32-607;

(c) For recall petitions, with the filing officer prescribed in section 32-1301; and

(d) For all other petitions, with the applicable election commissioner, county clerk, or city clerk.

(2) The name removal letter shall be delivered to and received by the officer prescribed in subsection (1) of this section by the following deadlines:

(a) For initiative and referendum petitions, by the deadline for filing petitions pursuant to section 32-1407;

(b) For new political party petitions, prior to or on the day the petition is filed for verification with the Secretary of State;

(c) For petitions for President of the United States, by the deadline for filing petitions pursuant to section 32-613 for the primary election or pursuant to section 32-620 for the general election;

(d) For candidate petitions, by the deadline for filing petitions pursuant to section 32-617;

(e) For recall petitions, by the deadline for filing petitions prescribed by section 32-1305; and

(f) For all other petitions, prior to or on the day the petition is filed for verification with the election commissioner, county clerk, or city clerk.

(3) The Secretary of State, election commissioner, or county clerk shall verify the signature in the letter with the signature appearing in the voter registration records.

Source: Laws 1994, LB 76, § 200; Laws 1997, LB 764, § 67; Laws 2011, LB499, § 3; Laws 2024, LB287, § 35.
Operative date July 19, 2024.

ARTICLE 7

POLITICAL PARTIES

Section

32-713 Presidential electors; notice of appointment; meeting; pledge.

(1) The certificates of appointment for presidential electors shall be served by the Governor on each person appointed. The Governor shall notify the presidential electors to be at the meeting location designated by the Governor at noon on the first Tuesday after the second Wednesday in December after appointment and report to the Governor at the designated meeting location as being in attendance. The Governor shall serve the certificates of appointment

by registered or certified mail. In submitting this state's certificate of ascertainment as required by 3 U.S.C. 5, the Governor shall certify this state's presidential electors, include a security feature for purposes of verifying the authenticity of the certificate, and state in the certificate that:

(a) The presidential electors will serve as presidential electors unless a vacancy occurs in the office of presidential elector before the end of the meeting at which the presidential electors cast their votes, in which case a substitute presidential elector will fill the vacancy; and

(b) If a substitute presidential elector is appointed to fill a vacancy, the Governor will submit an amended certificate of ascertainment stating the names on the final list of this state's presidential electors.

(2) The presidential electors shall convene at 2 p.m. of such Tuesday at the meeting location designated by the Governor. Each presidential elector shall execute the following pledge: As a presidential elector duly selected (or appointed) for this position, I agree to serve and to mark my ballots for President and Vice President for the presidential and vice-presidential candidates who received the highest number of votes in the state if I am an at-large presidential elector or the highest number of votes in my congressional district if I am a congressional district presidential elector.

Source: Laws 1994, LB 76, § 213; Laws 2014, LB946, § 14; Laws 2024, LB287, § 36.
Operative date April 17, 2024.

32-716 New political party; formation; petition; requirements.

(1) Any person, group, or association desiring to form a new political party shall present to the Secretary of State petitions containing signatures totaling not less than one percent of the total votes cast for Governor at the most recent general election for such office. The signatures of registered voters on such petitions shall be so distributed as to include registered voters totaling at least one percent of the votes cast for Governor in the most recent gubernatorial election in each of the three congressional districts in this state. Petition signers and petition circulators shall conform to the requirements of sections 32-629 and 32-630. The petitions shall be filed with the Secretary of State no later than January 15 before any statewide primary election for the new political party to be entitled to have ballot position in the primary election of that year. If the new political party desires to be established and have ballot position for the general election and not in the primary election of that year, the petitions shall be filed with the Secretary of State on or before July 15 of that year. Prior to the circulation of petitions to form a new political party, a sample copy of the petitions shall be filed with the Secretary of State by the person, group, or association seeking to establish the new party. The sample petition shall be accompanied by the name and address of the person or the names and addresses of the members of the group or association sponsoring the petition to form a new political party. Sponsors of the petition may be added or removed with the unanimous written consent of the original sponsor or sponsors at any time prior to or on the day the petition is filed for verification with the Secretary of State. The sponsor or sponsors of the petition shall file, as one instrument, all petition papers comprising a new political party petition for signature verification with the Secretary of State. All signed petitions in

circulation but not filed with the Secretary of State shall become invalid after July 15 in the year of the statewide general election.

(2) The petition shall conform to the requirements of section 32-628. The Secretary of State shall prescribe the form of the petition for the formation of a new political party. The petition shall be addressed to and filed with the Secretary of State and shall state its purpose and the name of the party to be formed. Such name shall not be or include the name of any political party then in existence or any word forming any part of the name of any political party then in existence, and in order to avoid confusion regarding party affiliation of a candidate or registered voter, the name of the party to be formed shall not include the word ''independent'' or ''nonpartisan''. The petition shall contain a statement substantially as follows:

We, the undersigned registered voters of the State of Nebraska and the county of _____, being severally qualified to sign this petition, respectfully request that the above-named new political party be formed in the State of Nebraska, and each for himself or herself says: I have personally signed this petition on the date opposite my name; I am a registered voter of the State of Nebraska and county of _____ and am qualified to sign this petition; and my date of birth and city, village, or post office address and my street and number or voting precinct are correctly written after my name.

Source: Laws 1994, LB 76, § 216; Laws 1997, LB 460, § 4; Laws 2006, LB 940, § 1; Laws 2021, LB285, § 12; Laws 2024, LB287, § 37. Operative date July 19, 2024.

32-717 New political party; validity of petition signatures; certification of establishment; copy of constitution and bylaws; filed.

Within twenty business days after all the petitions to form a new political party which contain signatures are filed with the Secretary of State, he or she shall determine the validity and sufficiency of such petitions and signatures. Clerical and technical errors in a petition shall be disregarded if the forms prescribed by the Secretary of State are substantially followed. If the petitions are determined to be sufficient and valid, the Secretary of State shall issue a certification establishing the new political party. Copies of such certification shall be issued to the person, group, or association forming the new political party. Within twenty days after the certification of establishment of the new political party by the Secretary of State, the person, group, or association forming the new political party or its new officers shall file with the Secretary of State the constitution and bylaws of such party along with a certified list of the names and addresses of the officers of the new political party.

Source: Laws 1994, LB 76, § 217; Laws 2021, LB285, § 13.

ARTICLE 8

NOTICE, PUBLICATION, AND PRINTING OF BALLOTS

Section

Section
32-816. Official ballots; write-in space provided; exceptions; requirements.

32-802 Notice of election; contents.

The notice of election for any election shall state the date on which the election is to be held and the hours the polls will be open and list all offices, candidates, and issues that will appear on the ballots. The notice of election shall be printed in English and in any other language required pursuant to the Voting Rights Act Language Assistance Amendments of 1992. In the case of a primary election, the notice of election shall list all offices and candidates that are being forwarded to the general election. The notice of election shall only state that amendments or referendums will be voted upon and that the Secretary of State will publish a true copy of the title and text of any amendments or referendums once each week for three consecutive weeks preceding the election. Such notice of election shall appear in at least one newspaper designated by the election commissioner, county clerk, city council, or village board no later than forty-two days prior to the election. The election commissioner or county clerk shall, not later than forty-two days prior to the election, (1) post in his or her office the same notice of election published in the newspaper and (2) provide a copy of the notice to the political subdivisions appearing on the notice of election. The election commissioner or county clerk shall correct the ballot to reflect any corrections received within five days after mailing the notice as provided in section 32-819. The notice of election shall be posted in lieu of sample ballots until such time as sample ballots are printed. If joint elections are held in conjunction with the statewide primary or general election by a county, city, or village, only one notice of election need be published and signed by the election commissioner or county clerk.

Source: Laws 1994, LB 76, § 223; Laws 2002, LB 935, § 6; Laws 2017, LB451, § 10; Laws 2024, LB287, § 38.
Operative date July 19, 2024.

32-803 Sample of official ballot; publication; requirements; rate; limitation.

(1) A sample of the official ballot shall be printed in one or more newspapers of general circulation in the county, city, or village as designated by the election commissioner, county clerk, city council, or village board. The sample shall be printed in English and in any other language required pursuant to the Voting Rights Language Assistance Act of 1992.

(2) Except for elections conducted in accordance with section 32-960, such publication shall be made not more than fifteen nor less than two days before the day of election, and the same shall appear in only one regular issue of each paper. For elections conducted in accordance with section 32-960, such publication shall be made not less than thirty days before the election.

(3) The form of the ballot so published shall conform in all respects to the form prescribed for official ballots as set forth in sections 32-806, 32-809, and 32-812, but larger or smaller type may be used. When paper ballots are not being used, a reduced-size facsimile of the official ballot shall be published as it appears on the voting system. Such publication shall include suitable instructions to the voters for casting their ballots using the voting system being used at the election.

(4) The rate charged by the newspapers and paid by the county board for the publication of such sample ballot shall not exceed the rate regularly charged for display advertising in such newspaper in which the publication is made.

Source: Laws 1994, LB 76, § 224; Laws 1997, LB 764, § 73; Laws 2003, LB 358, § 10; Laws 2019, LB411, § 41.

32-808.01 Ballot for early voting; application; distribution by mail; requirements; applicability.

(1) Except as provided in subsection (2) of this section, any person or organization distributing an application by mail for a ballot for early voting shall:

(a) Use the form prescribed by the Secretary of State. The form shall contain on the top of the first page in bold type (i) the identity of the person or organization distributing the form and (ii) the following statements:

You may submit this form if you wish to request a ballot for early voting. You do not need to complete this form if you have already requested a ballot for early voting for this election; and

(b) If enclosing a return envelope, have either a blank address or the address of the election commissioner or county clerk printed on the envelope.

(2) This section shall not apply to an application for a ballot for early voting distributed by the Secretary of State, an election commissioner, or a county clerk.

Source: Laws 2022, LB843, § 31; Laws 2024, LB287, § 39.
Operative date July 19, 2024.

32-809 Statewide primary election; official ballot; form; contents.

(1) The form of the official ballot at the statewide primary election shall be prescribed by the Secretary of State. At the top of the ballot and over all else shall be printed in boldface type the name of the political party, _____ Official Ballot, Primary Election 20__ . Each division containing the names of the office and a list of candidates for such office shall be separated from other groups by a bold line. The ballot shall list at-large candidates and subdistrict candidates under appropriate headings.

(2) All proposals for constitutional amendments and candidates on the nonpartisan ballot shall be submitted on a ballot where bold lines separate one office or issue from another. Proposals for constitutional amendments proposed by the Legislature shall be placed on the ballot as provided in sections 49-201 to 49-211. All constitutional amendments shall be placed on a separate ballot when a paper ballot is used which requires the ballot after being voted to be folded before being deposited in a ballot box. When an optical-scan ballot is used which requires a ballot envelope or sleeve in which the ballot after being voted is placed before being deposited in a ballot box, constitutional amendments may be printed on either side of the ballot and shall be separated from other offices or issues by a bold line. Constitutional amendments so arranged shall constitute a separate ballot.

(3) Except as otherwise provided in section 32-811, the statewide primary election ballot shall contain the name of every candidate filing or recognized under subsection (1) of section 32-606 and sections 32-611, 32-613, and 32-614 and no other names. No name of a candidate for member of the Legislature or

an elective office described in Article IV, section 1, of the Constitution of Nebraska shall appear on any ballot or any series of ballots at any primary election more than once. When two or more of the last names of candidates for the same office at the primary election are the same in spelling or sound, the official ballots may, on the request of any such candidate, have his or her address printed immediately below his or her name in capital and lowercase letters in lightface type of the same size as the type in which the name of the candidate is printed.

Source: Laws 1994, LB 76, § 230; Laws 2003, LB 358, § 11; Laws 2012, LB878, § 4; Laws 2022, LB843, § 27.

32-811 Political subdivisions; certain county officers; political party convention delegates; names not on ballot; when.

(1)(a) If the names of candidates properly filed for nomination at the primary election for directors of natural resources districts, directors of public power districts, members of airport authority boards elected pursuant to sections 32-547 to 32-549, members of the boards of governors of community college areas, members of the boards of Class I, Class II, Class III, or Class V school districts which nominate candidates at a primary election, and officers of cities of the first or second class and cities having a city manager plan of government do not exceed two candidates for each position to be filled, any such candidates shall be declared nominated and their names shall not appear on any primary election ballots.

(b) If the number of candidates properly filed for the nomination of a political party at the primary election for any county officer elected pursuant to sections 32-517 to 32-529 does not exceed the number of candidates to be nominated by that party for that office, any such properly filed candidates shall be declared nominated and their names shall not appear on any primary election ballots.

(c) The official abstract of votes kept by the county or state shall show the names of such candidates with the statement Nominated Without Opposition. The election commissioner or county clerk shall place the names of such automatically nominated candidates on the general election ballot as provided in section 32-814 or 32-815.

(2) Candidates shall not appear on the ballot in the primary election for the offices listed in subsection (2) of section 32-606.

(3) If the number of candidates for delegates to a county or national political party convention are the same in number or less than the number of candidates to be elected, the names shall not appear on the primary election ballot and those so filed shall receive a certificate of election.

Source: Laws 1994, LB 76, § 232; Laws 1995, LB 194, § 8; Laws 1997, LB 764, § 76; Laws 2003, LB 15, § 1; Laws 2011, LB449, § 7; Laws 2012, LB878, § 5; Laws 2012, LB1035, § 2; Laws 2014, LB56, § 2; Laws 2024, LB1329, § 7.
Effective date July 19, 2024.

32-816 Official ballots; write-in space provided; exceptions; requirements.

(1) A blank space shall be provided at the end of each office division on the ballot for registered voters to fill in the name of any person for whom they wish to vote and whose name is not printed upon the ballot. A square or oval shall be

printed opposite each write-in space similar to the square or oval placed opposite other candidates and issues on the ballot. The square or oval shall be marked to vote for a write-in candidate whose name appears in the write-in space provided.

(2) The Secretary of State shall approve write-in space for optical-scan ballots and any other voting system authorized for use under the Election Act. Adequate provision shall be made for write-in votes sufficient to allow one write-in space for each office to be elected at any election except offices for which write-in votes are specifically prohibited. The write-in ballot shall clearly identify the office for which such write-in vote is cast. The write-in space shall be a part of the official ballot, may be on the envelope or a separate piece of paper from the printed portion of the ballot, and shall allow the voter adequate space to fill in the name of the candidate for whom he or she desires to cast his or her ballot.

Source: Laws 1994, LB 76, § 237; Laws 1997, LB 764, § 79; Laws 2001, LB 252, § 2; Laws 2003, LB 358, § 14; Laws 2010, LB852, § 1; Laws 2019, LB411, § 42; Laws 2021, LB285, § 14.

ARTICLE 9

VOTING AND ELECTION PROCEDURES

Section

32-901 Ballots; voting procedure.

(1) To vote for a candidate or on a ballot question using a paper ballot that is to be manually counted, the registered voter shall make a cross or other clear, discernible mark in the square opposite the name of every candidate, including write-in candidates, for whom he or she desires to vote and, in the case of a ballot question, opposite the answer he or she wishes to give. Making a cross or other clear, discernible mark in the square constitutes a valid vote.

(2) To vote for a candidate or on a ballot question using a ballot that is to be counted by optical scanner, the registered voter shall fill in the oval or other space provided opposite the name of every candidate, including write-in candidates, for whom he or she desires to vote and, in the case of a ballot question, opposite the answer he or she wishes to give. A mark in the oval or provided space that is discernible by the scanner constitutes a valid vote.

(3) To vote for a candidate or on a ballot question using a voting system with an electronic aspect authorized for use under the Election Act, the registered voter shall follow the instructions for using the voting system to cause a mark to be recorded opposite the candidate or ballot question response for which the voter wishes to vote. Causing such mark to be recorded does not constitute a valid vote. A paper ballot printed to reflect the voter's choices constitutes a valid vote.

Source: Laws 1994, LB 76, § 244; Laws 2003, LB 358, § 16; Laws 2005, LB 566, § 31; Laws 2019, LB411, § 43.

32-903 Precincts; creation; requirements; election commissioner or county clerk; powers and duties.

(1) The election commissioner or county clerk shall create precincts composed of compact and contiguous territory within the boundary lines of legislative districts. The precincts shall contain not less than seventy-five nor more than one thousand seven hundred fifty registered voters based on the number of voters voting at the last statewide general election, except that a precinct may

contain less than seventy-five registered voters if in the judgment of the election commissioner or county clerk it is necessary to avoid creating an undue hardship on the registered voters in the precinct. The election commissioner or county clerk shall create precincts based on the number of votes cast at the immediately preceding presidential election or the current list of registered voters for the precinct. The election commissioner or county clerk shall revise and rearrange the precincts and increase or decrease them at such times as may be necessary to make the precincts contain as nearly as practicable not less than seventy-five nor more than one thousand seven hundred fifty registered voters voting at the last statewide general election. The election commissioner or county clerk shall, when necessary and possible, readjust precinct boundaries to coincide with the boundaries of cities, villages, and school districts which are divided into districts or wards for election purposes. The election commissioner or county clerk shall not make any precinct changes in precinct boundaries or divide precincts into two or more parts between the statewide primary and general elections unless he or she has been authorized to do so by the Secretary of State. If changes are authorized, the election commissioner or county clerk shall notify each state and local candidate affected by the change.

(2) The election commissioner or county clerk may alter and divide the existing precincts, except that when any city of the first class by ordinance divides any ward of such city into two or more voting districts or polling places, the election commissioner or county clerk shall establish precincts or polling places in conformity with such ordinance. No such alteration or division shall take place between the statewide primary and general elections except as provided in subsection (1) of this section.

Source: Laws 1994, LB 76, § 246; Laws 1997, LB 764, § 80; Laws 2003, LB 358, § 18; Laws 2005, LB 401, § 3; Laws 2011, LB449, § 8; Laws 2019, LB411, § 44; Laws 2021, LB285, § 15; Laws 2024, LB287, § 40.
Operative date July 19, 2024.

32-904 Polling places; designation; changes; notification required.

(1) The election commissioner or county clerk shall designate the polling places for each precinct at which the registered voters of the precinct will cast their votes. Polling places representing different precincts may be combined at a single location when potential sites cannot be found, contracts for utilizing polling sites cannot be obtained, or a potential site is not accessible to handicapped persons as provided in section 32-907.

(2) When combining polling places at a single site for an election other than a special election, the election commissioner or county clerk shall clearly separate the polling places from each other and maintain separate receiving boards. When combining polling places at a single site for a special election, the election commissioner or county clerk may combine the polling places and receiving boards.

(3) Polling places shall not be changed between the statewide primary and general elections unless the election commissioner or county clerk has been authorized to make such change by the Secretary of State. If changes are authorized, the election commissioner or county clerk shall notify each state and local candidate affected by the change.

(4) Notwithstanding any other provision of the Election Act, the Secretary of State may adopt and promulgate rules and regulations, with the consent of the appropriate election commissioner or county clerk, for the establishment of polling places which may be used for voting pursuant to section 32-1041 for the twenty days preceding the day of election. Such polling places shall be in addition to the office of the election commissioner or county clerk and the polling places otherwise established pursuant to this section.

Source: Laws 1994, LB 76, § 247; Laws 1997, LB 764, § 81; Laws 2005, LB 401, § 4; Laws 2007, LB646, § 6; Laws 2019, LB411, § 45.

32-905 Political subdivision; building; use as polling place or for election training purposes; when.

A political subdivision which receives federal or state funds and owns or leases a building which is suitable for a polling place in the county shall make the building available to the election commissioner or county clerk for use as a polling place or for election training purposes. The political subdivision shall not charge for the use of the building as a polling place or for election training purposes.

Source: Laws 1994, LB 76, § 248; Laws 2022, LB843, § 28.

32-907 Polling places; accessibility requirements; Secretary of State; duties; training manual; training.

(1) All polling places shall be accessible to all registered voters and shall be in compliance with the federal Americans with Disabilities Act of 1990, as amended, and the federal Help America Vote Act of 2002, as amended. In addition, all polling places shall be modified or relocated to architecturally barrier-free buildings to provide unobstructed access to such polling places by people with physical limitations as required by this section. At least one voting booth shall be so constructed as to provide easy access for people with limitations, shall accommodate a wheelchair, and shall have a cover or barrier to provide privacy. The modifications required by this section may be of a temporary nature to provide such unobstructed access only on election day.

(2) All polling places shall meet the requirements of the federal Americans with Disabilities Act of 1990, as amended, and the federal Help America Vote Act of 2002, as amended, including, but not limited to, requirements for:

(a) Parking;

(b) An exterior route to an accessible entrance;

(c) Polling place entrances;

(d) The route from the entrance into the voting area;

(e) Voting areas, including, but not limited to, a sign (i) that indicates that assistance is available, (ii) that contains the contact telephone number approved by the Secretary of State, and (iii) posted with visible lettering that is two inches, plus one-eighth inch per foot of viewing distance more than one hundred eighty inches from viewing points;

(f) Ramps;

(g) Lifts; and

(h) Elevators.

(3) The Secretary of State shall develop, print, and make publicly available a training manual regarding accessibility requirements of the Election Act, the federal Americans with Disabilities Act of 1990, as amended, and the federal Help America Vote Act of 2002, as amended.

(4) The Secretary of State shall include in the biennial training for election commissioners and county clerks current standards for accessibility. All poll workers shall receive training regarding accessibility between appointment and serving at an election.

Source: Laws 1994, LB 76, § 250; Laws 2019, LB411, § 46.

32-908 Polls; when opened and closed; receipt of ballots; deadline.

(1) At all elections in the area of this state lying within the Mountain Standard or Mountain Daylight time zone, the polls shall open at 7 a.m. and close at 7 p.m. of the same day, and in the area lying within the Central Standard or Central Daylight time zone, the polls shall open at 8 a.m. and close at 8 p.m. of the same day.

(2) Except for special elections conducted by mail as provided in sections 32-952 to 32-959, the deadline for the receipt of ballots is 7 p.m. on the day set for the election in the area lying within the Mountain Standard or Mountain Daylight time zone and 8 p.m. on the day set for the election in the area lying within the Central Standard or Central Daylight time zone.

(3) If the judges and clerks of election are not present at the polls at the required hour, the polls may be opened by those placed in charge of the polling place at any time before the time required for closing the polls on election day.

(4) If at the hour of closing there are any persons desiring to vote who are in the polling place or in a line at the polling place and who have not been able to vote since appearing at the polling place, the polls shall be kept open reasonably long enough after the hour for closing to allow those present at that hour to vote. No person arriving after the hour when the polls have officially closed shall be entitled to vote.

Source: Laws 1994, LB 76, § 251; Laws 2005, LB 566, § 32; Laws 2022, LB843, § 29.

32-910 Polling places; obstructions prohibited; restrictions on access.

Any judge or clerk of election, precinct or district inspector, sheriff, or other peace officer shall clear the passageways and prevent obstruction of the doors or entries and provide free ingress to and egress from the polling place or building and shall arrest any person obstructing such passageways. Other than a registered voter engaged in receiving, preparing, or marking a ballot or depositing a ballot in a ballot box or a precinct-based optical scanner at the polling place, an election commissioner, a county clerk, a precinct inspector, a district inspector, a judge of election, a clerk of election, a member of a counting board, or a poll watcher as provided in section 32-1525, no person shall be permitted to be within eight feet of the ballot boxes or within eight feet of any ballots being counted by a counting board.

Source: Laws 1994, LB 76, § 253; Laws 1997, LB 764, § 82; Laws 2019, LB411, § 47; Laws 2020, LB1055, § 13.

32-912.01 Voter with religious objection to being photographed; notation on precinct list of registered voters.

(1) A voter with a religious objection to being photographed may inform the election commissioner or county clerk of the county in which the voter resides of such objection in writing prior to an election. If the election commissioner or county clerk receives written notice not later than 6 p.m. on the second Friday preceding the election, the election commissioner or county clerk shall place a notation on the precinct list of registered voters for the polling place that the voter has a religious objection to being photographed.

(2) For all subsequent elections, the election commissioner or county clerk shall place a notation on the precinct list of registered voters for the polling place that the voter has a religious objection to being photographed if such voter:

(a) Completes a reasonable impediment certification pursuant to section 32-912.02;

(b) Has a ballot accepted pursuant to section 32-1002.01; and

(c) Is otherwise eligible to vote.

(3) The election commissioner or county clerk shall remove a notation if the election commissioner or county clerk receives written notice from the voter that the voter no longer has a religious objection to being photographed.

Source: Laws 2023, LB514, § 12; Laws 2024, LB287, § 41.
Operative date April 17, 2024.

32-912.02 Standard certification; reasonable impediment; grounds; Secretary of State, election commissioner, county clerk; duties.

(1) The Secretary of State shall provide a standard certification for a voter with a reasonable impediment preventing the voter from obtaining valid photographic identification. A voter with a reasonable impediment shall check to identify the applicable reasonable impediment box on the certification, which shall be limited to only the following reasons:

(a) Inability to obtain valid photographic identification due to:

(i) Disability or illness that prevents the voter from obtaining valid photographic identification; or

(ii) Lack of a birth certificate or other required documents and an inability to obtain a birth certificate or other required documents without significant difficulty or expense; or

(b) Religious objection to being photographed.

(2) The Secretary of State shall provide the form of the certification to the election commissioners and county clerks. A voter who has a reasonable impediment shall execute the certification under penalty of election falsification. The election commissioner or county clerk shall verify:

(a) The signature on the certification with the signature appearing on the voter registration record; and

(b) That the voter does not have a current, unexpired driver's license or state identification card issued by the State of Nebraska.

(3) A voter who casts a ballot by mail shall include the certification with the application, except that a voter who casts a ballot pursuant to section 32-953 shall include the certification within the ballot envelope.

Source: Laws 2023, LB514, § 11; Laws 2024, LB287, § 42.
Operative date July 19, 2024.

32-913 Precinct list of registered voters; sign-in register; preparation and use.

(1) The clerks of election shall have a list of registered voters of the precinct and a sign-in register at the polling place on election day. The list of registered voters shall be used for guidance on election day and may be in the form of a computerized, typed, or handwritten list or precinct registration cards. Registered voters of the precinct shall place and record their signature in the sign-in register before receiving any ballot. The list of registered voters and the sign-in register may be combined into one document at the discretion of the election commissioner or county clerk including, beginning July 1, 2019, by the use of an electronic poll book. If a combined document is used, a clerk of election may list the names of the registered voters in a separate book in the order in which they voted.

(2) Within twenty-four hours after the polls close in the precinct, the precinct inspector or one of the judges of election shall deliver the precinct list of registered voters and the precinct sign-in register to the election commissioner or county clerk. The election commissioner or county clerk shall file and preserve the list and register. No member of a receiving board who has custody or charge of the precinct list of registered voters and the precinct sign-in register shall permit the list or register to leave his or her possession from the time of receipt until he or she delivers them to another member of the receiving board or to the precinct inspector or judge of election for delivery to the election commissioner or county clerk.

Source: Laws 1994, LB 76, § 256; Laws 1997, LB 764, § 83; Laws 2003, LB 358, § 21; Laws 2007, LB44, § 1; Laws 2018, LB1065, § 6.

32-914 Ballots; distribution procedure.

(1) Official ballots shall be used at all elections. No person shall receive a ballot or be entitled to vote unless and until he or she is registered as a voter except as provided in section 32-914.01, 32-914.02, 32-915, 32-915.01, or 32-936.

(2) Except as otherwise specifically provided, no ballot shall be handed to any voter at any election until:

(a) The voter has presented valid photographic identification and stated the voter's name and address to the clerk of election unless otherwise entitled to vote in the precinct under section 32-915.03;

(b) The clerk has found that the voter is a registered voter at the address as shown by the precinct list of registered voters unless otherwise entitled to vote in the precinct under section 32-328, 32-914.01, 32-914.02, 32-915, or 32-915.01;

(c) The voter has presented a photographic identification which is current and valid at the time of the election, or a copy of a utility bill, bank statement, paycheck, government check, or other government document which is current

at the time of the election and which shows the same name and residence address of the voter that is on the precinct list of registered voters, if the voter registered by mail after January 1, 2003, and has not previously voted in an election for a federal office within the county and a notation appears on the precinct list of registered voters that the voter has not previously presented identification to the election commissioner or county clerk;

(d) As instructed by the clerk of election, the registered voter has personally written his or her name (i) in the precinct sign-in register on the appropriate line which follows the last signature of any previous voter or (ii) in the combined document containing the precinct list of registered voters and the sign-in register; and

(e) The clerk has listed on the precinct list of registered voters the corresponding line number and name of the registered voter or has listed the name of the voter in a separate book as provided in section 32-913.

Source: Laws 1994, LB 76, § 257; Laws 1997, LB 764, § 84; Laws 2002, LB 1054, § 19; Laws 2003, LB 358, § 22; Laws 2003, LB 359, § 4; Laws 2005, LB 566, § 34; Laws 2007, LB44, § 2; Laws 2023, LB514, § 8.

32-915 Provisional ballot; conditions; certification.

(1) A person whose name does not appear on the precinct list of registered voters at the polling place for the precinct in which he or she resides, whose name appears on the precinct list of registered voters at the polling place for the precinct in which he or she resides at a different residence address as described in section 32-914.02, or whose name appears with a notation that he or she received a ballot for early voting may vote a provisional ballot if he or she:

(a) Claims that he or she is a registered voter who has continuously resided in the county in which the precinct is located since registering to vote;

(b) Is not entitled to vote under section 32-914.01 or 32-914.02;

(c) Has not registered to vote or voted in any other county since registering to vote in the county in which the precinct is located;

(d) Has appeared to vote at the polling place for the precinct to which the person would be assigned based on his or her residence address; and

(e) Completes and signs a registration application before voting.

(2) A voter whose name appears on the precinct list of registered voters for the polling place with a notation that the voter is required to present identification pursuant to section 32-318.01 but fails to present identification may vote a provisional ballot if he or she completes and signs a registration application before voting.

(3) Each person voting by provisional ballot shall enclose his or her ballot in an envelope marked Provisional Ballot and shall, by signing the certification on the front of the envelope or a separate form attached to the envelope, certify to the following facts:

(a) I am a registered voter in _____ County;

(b) My name or address did not correctly appear on the precinct list of registered voters;

(c) I registered to vote on or about this date _____;

(d) I registered to vote

____ in person at the election office or a voter registration site,

____ by mail,

____ by using the Secretary of State's website,

____ through the Department of Motor Vehicles,

____ on a form through another state agency,

____ in some other way;

(e) I have not resided outside of this county or voted outside of this county since registering to vote in this county;

(f) My current address is shown on the registration application completed as a requirement for voting by provisional ballot; and

(g) I am eligible to vote in this election and I have not voted and will not vote in this election except by this ballot.

(4) The voter shall sign the certification under penalty of election falsification. The following statements shall be on the front of the envelope or on the attached form: By signing the front of this envelope or the attached form you are certifying to the information contained on this envelope or the attached form under penalty of election falsification. Election falsification is a Class IV felony and may be punished by up to two years imprisonment and twelve months post-release supervision, a fine of up to ten thousand dollars, or both.

(5) If the voter is also required to fill out a provisional voter identification verification envelope pursuant to section 32-915.03, the provisional ballot envelope shall be placed inside the provisional voter identification verification envelope.

(6) If the person's name does not appear on the precinct list of registered voters for the polling place and the judge or clerk of election determines that the person's residence address is located in another precinct within the same county, the judge or clerk of election shall direct the person to his or her correct polling place to vote.

Source: Laws 1994, LB 76, § 258; Laws 1997, LB 764, § 87; Laws 1999, LB 234, § 12; Laws 2003, LB 358, § 24; Laws 2005, LB 401, § 5; Laws 2005, LB 566, § 37; Laws 2010, LB325, § 5; Laws 2010, LB951, § 4; Laws 2014, LB661, § 14; Laws 2017, LB451, § 11; Laws 2023, LB514, § 9.

32-915.03 Provisional voter identification verification envelope; required; when; certification.

(1) A registered voter shall fill out a provisional voter identification verification envelope if:

(a)(i) The voter fails to produce valid photographic identification at the polling place; and

(ii) The voter's name appears on the precinct list of registered voters for the polling place or the voter has voted a provisional ballot as provided in section 32-915;

(b) The voter fails to produce valid photographic identification at the time of voting early in person at the office of the election commissioner or county clerk; or

(c) The voter has a reasonable impediment preventing the voter from obtaining valid photographic identification or the voter's name appears on the precinct list of registered voters for the polling place with a notation that the voter has a religious objection to being photographed.

(2) Each voter casting a ballot using a provisional voter identification verification envelope shall enclose the ballot in an envelope marked provisional voter identification verification and shall, by signing the certification on the front of the envelope or a separate form attached to the envelope, certify to the following facts:

(a) My name is _____;

(b) I am registered to vote at _____;

(c) I did not present valid photographic identification as required by law or I have a reasonable impediment preventing me from obtaining valid photographic identification;

(d) I am eligible to vote in this election and have not voted and will not vote in this election except by this ballot; and

(e) I acknowledge that my ballot will not be counted if:

(i) I do not present valid photographic identification to my county election office on or before the Tuesday after the election; or

(ii) I have a reasonable impediment that prevents me from obtaining valid photographic identification and:

(A) I do not complete a reasonable impediment certification; or

(B) My county election official cannot verify the signature on my reasonable impediment certification.

(3) The voter shall sign the certification under penalty of election falsification. The following statements shall be on the front of the envelope or on the attached form: By signing the front of this envelope or the attached form you are certifying to the information contained on this envelope or the attached form under penalty of election falsification. Election falsification is a Class IV felony and may be punished by up to two years imprisonment and twelve months post-release supervision, a fine of up to ten thousand dollars, or both.

Source: Laws 2023, LB514, § 10; Laws 2024, LB287, § 43.
Operative date April 17, 2024.

32-916 Ballots; initials required; approval; deposit in ballot box; procedure.

(1) Two judges of election or a precinct inspector and a judge of election shall affix their initials to the official ballots. The judge of election shall deliver a ballot to each registered voter after complying with section 32-914.

(2) After voting the ballot, the registered voter shall, as directed by the judge of election, fold his or her ballot or place the ballot in the ballot envelope or sleeve so as to conceal the voting marks and to expose the initials affixed on the ballot. The registered voter shall, without delay and without exposing the voting marks upon the ballot, deliver the ballot to the judge of election before leaving the enclosure in which the voting booths are placed.

(3) The judge of election shall, without exposing the voting marks on the ballot, approve the exposed initials upon the ballot and deposit the ballot in the ballot box or the precinct-based optical scanner in the presence of the registered voter. No judge of election shall deposit any ballot in a ballot box unless

the ballot has been identified as having the appropriate initials. Any ballot not properly identified shall be rejected in the presence of the voter, the judge of election shall make a notation on the ballot Rejected, not properly identified, and another ballot shall be issued to the voter and the voter shall then be permitted to cast his or her ballot. If the ballot is in order, the judge shall deposit the ballot in the ballot box or the precinct-based optical scanner in the presence of the voter and the voter shall promptly leave the polling place. If a precinct uses a precinct-based optical scanner and a ballot is identified by the scanner as containing an overvote or an undervote, the voter shall be notified of the consequence of an overvote and the right to vote in the case of an undervote, whichever is applicable. The judges of election shall maintain the secrecy of the rejected ballots and shall cause the rejected ballots to be made up in a sealed packet. The judges of election shall endorse the packet with the words Rejected Ballots and the designation of the precinct. The judges of election shall sign the endorsement label and shall return the packet to the election commissioner or county clerk with a statement by the judges of election showing the number of ballots rejected.

(4) Upon receiving a provisional ballot as provided in section 32-915, the judge of election shall give the voter written information that states that the voter may determine if his or her vote was counted and, if not, the reason that the vote was not counted by accessing the system created pursuant to section 32-202 and the judge of election shall ensure that the appropriate information is on the outside of the envelope in which the ballot is enclosed or attached to the envelope, attach the statement required by section 32-915 if not contained on the envelope, and place the entire envelope into the ballot box. Upon receiving a provisional ballot as provided in section 32-915.01, the judge of election shall comply with the requirements for a provisional ballot under this subsection, except that a provisional ballot cast pursuant to section 32-915.01 shall be kept separate from the other ballots cast at the election.

Source: Laws 1994, LB 76, § 259; Laws 1997, LB 764, § 88; Laws 1999, LB 802, § 15; Laws 2002, LB 1054, § 21; Laws 2003, LB 358, § 26; Laws 2003, LB 359, § 6; Laws 2005, LB 566, § 38; Laws 2019, LB411, § 48.

32-918 Assistance to registered voters; when; procedure.

(1) If a registered voter declares to the judge of election that the voter cannot read or that the voter is blind or visually impaired or has a disability such that the registered voter requires assistance in the marking of the voter's ballot, (a) the registered voter may be assisted in marking the voter's ballot by a relative or friend of the voter's selection or (b) one judge of election and one clerk of election of different political parties may take the ballot or ballots from the polling place to a convenient place within the building or to the registered voter's automobile if the automobile is within one block of the polling place and the registered voter may cast the voter's ballot in the general presence of the judge and clerk. If a registered voter declares to the judge of election that the voter needs assistance in the operation of a voting device, a judge or clerk of election may assist the voter in operating the device.

(2) The judge and clerk shall give no information regarding the casting of the ballot. Any registered voter receiving assistance in voting the ballot from a judge and clerk shall declare to the judge and clerk the name of the candidates

and the measures for which the voter desires to vote, and the judge and clerk shall cast the voter's ballot only as the voter so requests. No person other than the registered voter who is receiving assistance shall divulge to anyone within the polling place the name of any candidate for whom the voter intends to vote or ask or receive assistance within the polling place in the preparation of the voter's ballot.

(3) The judges of election shall enter Assistance Rendered upon the precinct sign-in register near the name of any registered voter who receives such assistance in casting a ballot and shall include the name of such person rendering assistance to the registered voter. The person rendering assistance shall sign an oath before a judge of election substantially as follows: _____, hereby swears that he or she is a friend or relative of _____, a registered voter with a disability who requested assistance in casting the ballot, that he or she did enter the voting booth or aid such voter outside of the voting booth and marked the ballot according to the intentions and desires of the registered voter, that he or she has kept the ballot at all times in his or her possession, and that the ballot was duly delivered to the judge of election on this _____ day of _____ 20____ .

Source: Laws 1994, LB 76, § 261; Laws 2003, LB 358, § 27; Laws 2022, LB843, § 30.

32-939 Nebraska resident residing outside the state or country; members of Nebraska National Guard in active service; registration to vote; application for ballot; when; elector and citizen outside the country; register to vote or voting; form.

(1) As provided in section 32-939.02, the persons listed in this subsection who are residents of Nebraska and who reside outside of Nebraska or the United States or are members of the Nebraska National Guard ordered into the active service of the state or of the United States shall be allowed to simultaneously register to vote and make application for ballots for all elections in a calendar year through the use of the Federal Post Card Application or a personal letter which includes the same information as appears on the Federal Post Card Application:

(a) Members of the armed forces of the United States or the United States Merchant Marine, and their spouses and dependents residing with them who are absent from the state;

(b) Members of the Nebraska National Guard ordered into the active service of the state or of the United States;

(c) Citizens temporarily residing outside of the United States and the District of Columbia; and

(d) Overseas citizens.

(2)(a) As provided in section 32-939.02, a person who is the age of an elector and a citizen of the United States residing outside the United States, who has never resided in the United States, who has not registered to vote in any other state of the United States, and who has a parent registered to vote within this state shall be eligible to register to vote and vote in one county in which either one of his or her parents is a registered voter.

(b) A person registering to vote or voting pursuant to this subsection shall sign and enclose with the registration application and with the ballot being

voted a form provided by the election commissioner or county clerk substantially as follows: I am the age of an elector and a citizen of the United States residing outside the United States, I have never resided in the United States, I have not registered to vote in any other state of the United States, and I have a parent registered to vote in _____ County, Nebraska. I hereby declare, under penalty of election falsification, a Class IV felony, that the statements above are true to the best of my knowledge.

THE PENALTY FOR ELECTION FALSIFICATION IS IMPRISONMENT FOR UP TO TWO YEARS AND TWELVE MONTHS POST-RELEASE SUPERVISION OR A FINE NOT TO EXCEED TEN THOUSAND DOLLARS, OR BOTH.

(Signature of Voter) _____

Source: Laws 1994, LB 76, § 282; Laws 2004, LB 727, § 1; Laws 2005, LB 98, § 11; Laws 2005, LB 401, § 7; Laws 2005, LB 566, § 41; Laws 2010, LB951, § 5; Laws 2011, LB499, § 4; Laws 2017, LB451, § 12; Laws 2022, LB843, § 32.

32-939.02 Person residing outside the country; ballot for early voting; request; use of Federal Post Card Application or personal letter; special ballot; use of Federal Write-In Absentee Ballot; Secretary of State; duties; oath.

(1) Upon request for a ballot, a ballot for early voting shall be forwarded to each voter meeting the criteria of section 32-939 at least forty-five days prior to any election.

(2) An omission of required information, except the political party affiliation of the applicant, may prevent the processing of an application for and mailing of ballots. The request for any ballots and a registration application shall be sent to the election commissioner or county clerk of the county of the applicant's residence. The request may be sent at any time in the same calendar year as the election, except that the request shall be received by the election commissioner or county clerk not later than the third Friday preceding an election to vote in that election. If an applicant fails to indicate his or her political party affiliation on the application, the applicant shall be registered as nonpartisan.

(3) A person described in section 32-939 may register to vote through the use of the Federal Post Card Application or a personal letter which includes the same information as appears on the Federal Post Card Application and may simultaneously make application for ballots for all elections in a calendar year. The person may indicate a preference for ballots and other election materials to be delivered via facsimile transmission or electronic mail by indicating such preference on the Federal Post Card Application. If the person indicates such a preference, the election commissioner or county clerk shall accommodate the voter's preference.

(4) If the ballot for early voting has not been printed in sufficient time to meet the request and special requirements of a voter meeting the criteria of section 32-939, the election commissioner or county clerk may issue a special ballot at least sixty days prior to an election to such a voter upon a written request by such voter requesting the special ballot. For purposes of this subsection, a special ballot means a ballot prescribed by the Secretary of State which contains the titles of all offices being contested at such election and permits the voter to vote by writing in the names of the specific candidates or the decision

on any issue. The election commissioner or county clerk shall include with the special ballot a complete list of the nominated candidates and issues to be voted upon by the voter which are known at the time of the voter's request.

(5) Any person meeting the criteria in section 32-939 may cast a ballot by the use of the Federal Write-In Absentee Ballot. The Federal Write-In Absentee Ballot may be used for all elections. If a person casting a ballot using the Federal Write-In Absentee Ballot is not a registered voter, the information submitted in the Federal Write-In Absentee Ballot transmission envelope shall be treated as a voter registration application.

(6)(a) Any person requesting a ballot under this section may receive and return the ballot and the oath prescribed in subdivision (b) of this subsection using any method of transmission authorized by the Secretary of State.

(b) An oath shall be delivered with the ballot and shall be in a form substantially as follows:

VOTER'S OATH

I, the undersigned voter, declare that the ballot or ballots contained no voting marks of any kind when I received them, and I caused the ballot or ballots to be marked.

To the best of my knowledge and belief, I declare under penalty of election falsification that:

(a) I, _____, am a registered voter in _____ County;

(b) I have voted the ballot and am returning it in compliance with Nebraska law; and

(c) I have not voted and will not vote in this election except by this ballot.

ANY PERSON WHO SIGNS THIS FORM KNOWING THAT ANY OF THE INFORMATION IN THE FORM IS FALSE SHALL BE GUILTY OF ELECTION FALSIFICATION, A CLASS IV FELONY UNDER SECTION 32-1502 OF THE STATUTES OF NEBRASKA. THE PENALTY FOR ELECTION FALSIFICATION IS IMPRISONMENT FOR UP TO TWO YEARS AND TWELVE MONTHS POST-RELEASE SUPERVISION OR A FINE NOT TO EXCEED TEN THOUSAND DOLLARS, OR BOTH.

I also understand that failure to sign below will invalidate my ballot.

Signature _____

(7) The Secretary of State shall develop a process for a person casting a ballot under this section to check the status of his or her ballot via the Internet or a toll-free telephone call.

Source: Laws 2010, LB951, § 6; Laws 2017, LB451, § 13.

32-939.03 Emergency response provider; outside of county of residence; application for ballot; when; form; voter's oath.

(1) A registered voter serving as an emergency response provider outside of the voter's county of residence for a period beginning on or after the forty-five days prior to any election may request an early voting ballot via facsimile transmission or electronic mail using a form prescribed by the Secretary of State. The election commissioner or county clerk shall send the requested ballot if the request is received not later than noon on election day and contains the required information.

(2)(a) Any person requesting a ballot under this section may receive and return the ballot and the oath prescribed in subdivision (b) of this subsection using any method of transmission authorized by the Secretary of State.

(b) An oath shall be delivered with the ballot and shall be in a form substantially as provided in this subdivision.

VOTER'S OATH

I, the undersigned voter, declare that the ballot or ballots contained no voting marks of any kind when I received them, and I caused the ballot or ballots to be marked.

To the best of my knowledge and belief, I declare under penalty of election falsification that:

(1) I, _____, am a registered voter in _____ County;

(2) I have voted the ballot and am returning it in compliance with Nebraska law; and

(3) I have not voted and will not vote in this election except by this ballot.

ANY PERSON WHO SIGNS THIS FORM KNOWING THAT ANY OF THE INFORMATION IN THE FORM IS FALSE SHALL BE GUILTY OF ELECTION FALSIFICATION, A CLASS IV FELONY UNDER SECTION 32-1502 OF THE STATUTES OF NEBRASKA. THE PENALTY FOR ELECTION FALSIFICATION IS IMPRISONMENT FOR UP TO TWO YEARS AND TWELVE MONTHS POST-RELEASE SUPERVISION OR A FINE NOT TO EXCEED TEN THOUSAND DOLLARS, OR BOTH.

I also understand that failure to sign below will invalidate my ballot.

Signature _____

Source: Laws 2022, LB843, § 33.

32-941 Early voting; written request for ballot; procedure.

(1) Any registered voter permitted to vote early pursuant to section 32-938 may, not more than one hundred twenty days before any election and not later than the close of business on the second Friday preceding the election, request a ballot for the election to be mailed to a specific address. A registered voter shall request a ballot in writing to the election commissioner or county clerk in the county where the registered voter has established his or her home, shall indicate his or her residence address, the address to which the ballot is to be mailed if different, and his or her telephone number if available, and shall include:

(a) The identification number of the voter's driver's license or state identification card issued by the State of Nebraska;

(b) A photocopy of any other valid photographic identification issued to or related to the voter; or

(c) The voter's reasonable impediment certification.

(2) If the identification number of the voter's driver's license or state identification card issued by the State of Nebraska is provided, the election commissioner or county clerk shall verify the driver's license or state identification card data with the information provided by the Department of Motor Vehicles pursuant to section 32-308.

(3) If such identification or certification is not provided or cannot be verified, the election commissioner or county clerk shall contact the voter and inform the voter that the ballot will not be issued until the voter provides the identification or certification required under this section.

(4) The registered voter may use the form published by the election commissioner or county clerk pursuant to section 32-808. The registered voter shall sign the request. A registered voter may use a facsimile machine or electronic mail for the submission of a request for a ballot.

(5) The election commissioner or county clerk shall include a registration application with the ballots if the person is not registered. Registration applications shall not be mailed after the third Friday preceding the election. If the person is not registered to vote, the registration application shall be returned not later than the closing of the polls on the day of the election. No ballot issued under this section shall be counted unless such registration application is properly completed and processed.

(6) Subdivisions (1)(a) through (c) of this section do not apply to any voter who casts a ballot pursuant to section 32-939.02 or 32-939.03.

Source: Laws 1994, LB 76, § 284; Laws 1997, LB 764, § 93; Laws 2002, LB 935, § 9; Laws 2005, LB 98, § 13; Laws 2005, LB 566, § 43; Laws 2011, LB499, § 5; Laws 2015, LB575, § 20; Laws 2016, LB874, § 3; Laws 2023, LB514, § 13; Laws 2024, LB287, § 44. Operative date April 17, 2024.

32-942 Registered voter anticipating absence on election day; right to vote; method; voter present in county; voting place; person registering to vote and requesting a ballot at same time; treatment of ballot.

(1)(a) A registered voter of this state who anticipates being absent from the county of his or her residence on the day of any election may appear in person before the election commissioner or county clerk not more than thirty days prior to the day of election for a statewide primary or general election, and not more than fifteen days prior to the election for all other elections, present valid photographic identification, and obtain his or her ballot unless otherwise entitled to vote in the office under section 32-915.03. The registered voter shall vote the ballot in the office of the election commissioner or county clerk or shall return the ballot to the office not later than the closing of the polls on the day of the election.

(b) A registered voter who is present in the county on the day of the election and who chooses to vote on the day of the election shall vote at the polling place assigned to the precinct in which he or she resides unless he or she is returning a ballot for early voting or voting pursuant to section 32-943.

(2) If a person registers to vote and requests a ballot at the same time under this section, he or she shall, in addition to the requirements of subsection (1) of this section, (a)(i) present one of the address confirmation documents as prescribed in subdivision (1)(a) of section 32-318.01, (ii) present proof that he or she is a member of the armed forces of the United States who by reason of active duty has been absent from his or her place of residence where the member is otherwise eligible to vote, is a member of the United States Merchant Marine who by reason of service has been away from his or her place of residence where the member is otherwise eligible to vote, is a spouse or dependent of a member of the armed forces of the United States or United

States Merchant Marine who has been absent from his or her place of residence due to the service of that member, or resides outside the United States and but for such residence would be qualified to vote in the state if the state was the last place in which the person was domiciled before leaving the United States, or (iii) state that he or she is elderly or handicapped and has requested to vote by alternative means other than by casting a ballot at his or her polling place on election day or (b) vote a ballot which is placed in an envelope with the voter's name and address and other necessary identifying information and kept securely for counting as provided in this subsection. This subsection does not extend the deadline for voter registration specified in section 32-302. A ballot cast pursuant to subdivision (b) of this subsection shall be rejected and shall not be counted if the acknowledgment of registration sent to the registrant pursuant to section 32-322 is returned as undeliverable for a reason other than clerical error within ten days after it is mailed, otherwise after such ten-day period, the ballot shall be counted.

(3) This section applies only to a person who appears in person to obtain a ballot as provided in subsection (1) of this section and does not apply to a ballot mailed to a voter pursuant to section 32-945.

Source: Laws 1994, LB 76, § 285; Laws 2002, LB 935, § 10; Laws 2005, LB 98, § 14; Laws 2005, LB 566, § 44; Laws 2011, LB499, § 6; Laws 2013, LB271, § 3; Laws 2014, LB565, § 1; Laws 2015, LB575, § 21; Laws 2023, LB514, § 14; Laws 2024, LB287, § 45. Operative date January 1, 2025.

32-942.01 Registration and voting after voter registration deadline; certain naturalized citizens; procedure.

If a person becomes a naturalized citizen of the United States after the voter registration deadline for any election, such person may register to vote after the voter registration deadline by completing the necessary voter registration application in the office of the election commissioner or county clerk of the county of such person's residence before one hour prior to the closing of the polls on election day. After completing the voter registration application and the citizenship attestation provided by section 32-928, such person shall then be allowed to vote in the office of the election commissioner or county clerk.

Source: Laws 2024, LB287, § 46. Operative date April 17, 2024.

32-943 Ballot to be picked up by agent; written request; procedure; restrictions on agent.

(1) Any registered voter who is permitted to vote early pursuant to section 32-938 may appoint an agent to submit a request for a ballot for early voting on his or her behalf. The registered voter or his or her agent may request that the ballot be sent to the registered voter by mail or indicate on the request that the agent will personally pick up the ballot for such registered voter from the office of the election commissioner or county clerk. A registered voter or an agent acting on behalf of a registered voter shall request a ballot in writing to the election commissioner or county clerk in the county where the registered voter has established his or her residence, shall indicate the voter's residence address, the address to which the ballot is to be mailed if different, and the voter's telephone number if available and precinct if known, and shall:

(a) Present a valid photographic identification of the voter; or

(b) Include, with the request:

(i) The identification number of the voter's driver's license or state identification card issued by the State of Nebraska;

(ii) A photocopy of valid photographic identification issued to or related to the voter; or

(iii) The voter's reasonable impediment certification. The certification shall be verified pursuant to section 32-1002.01.

(2) The registered voter or the voter's agent may use the form published by the election commissioner or county clerk pursuant to section 32-808. The registered voter or his or her agent shall sign the request.

(3) A candidate for office at such election and any person serving on a campaign committee for such a candidate shall not act as an agent for any registered voter requesting a ballot pursuant to this section unless such person is a member of the registered voter's family. No person shall act as agent for more than two registered voters in any election.

(4) The agent shall pick up the ballot before one hour prior to the closing of the polls on election day and deliver the ballot to the registered voter. The ballot shall be returned not later than the closing of the polls on the day of the election and shall be returned in an identification envelope as provided in section 32-947.

(5) The election commissioner or county clerk shall adopt procedures for the distribution of ballots under this section.

(6) Subdivisions (1)(a) and (b) of this section do not apply to any voter who casts a ballot pursuant to section 32-939.02 or 32-939.03.

Source: Laws 1994, LB 76, § 286; Laws 1997, LB 764, § 94; Laws 2002, LB 935, § 11; Laws 2005, LB 98, § 15; Laws 2005, LB 566, § 45; Laws 2023, LB514, § 15.

32-947 Ballot to vote early; delivery; procedure; identification envelope; instructions.

(1) Upon receipt of an application or other request for a ballot to vote early, the election commissioner or county clerk shall determine whether the applicant is a registered voter and is entitled to vote as requested. If the election commissioner or county clerk determines that the applicant is a registered voter entitled to vote early and the application was received not later than the close of business on the second Friday preceding the election, the election commissioner or county clerk shall deliver a ballot to the applicant in person or by nonforwardable first-class mail, postage paid. The election commissioner or county clerk or any employee of the election commissioner or county clerk shall write or cause to be affixed his or her customary signature or initials on the ballot.

(2) An unsealed identification envelope shall be delivered with the ballot, and upon the back of the envelope shall be printed a form substantially as follows:

VOTER'S OATH

I, the undersigned voter, declare that the enclosed ballot or ballots contained no voting marks of any kind when I received them, and I caused the ballot or

ballots to be marked, enclosed in the identification envelope, and sealed in such envelope.

To the best of my knowledge and belief, I declare under penalty of election falsification that:

(a) I, _____, am a registered voter in _____ County;

(b) I reside in the State of Nebraska at _____;

(c) I have voted the enclosed ballot and am returning it in compliance with Nebraska law; and

(d) I have not voted and will not vote in this election except by this ballot.

ANY PERSON WHO SIGNS THIS FORM KNOWING THAT ANY OF THE INFORMATION IN THE FORM IS FALSE SHALL BE GUILTY OF ELECTION FALSIFICATION, A CLASS IV FELONY UNDER SECTION 32-1502 OF THE STATUTES OF NEBRASKA. THE PENALTY FOR ELECTION FALSIFICATION IS IMPRISONMENT FOR UP TO TWO YEARS AND TWELVE MONTHS POST-RELEASE SUPERVISION OR A FINE NOT TO EXCEED TEN THOUSAND DOLLARS, OR BOTH.

I also understand that failure to sign below will invalidate my ballot.

Signature _____

(3) If the ballot and identification envelope will be returned by mail or by someone other than the voter, the election commissioner or county clerk shall include with the ballot an identification envelope upon the face of which shall be printed the official title and post office address of the election commissioner or county clerk.

(4) The election commissioner or county clerk shall also enclose with the ballot materials:

(a) A registration application, if the election commissioner or county clerk has determined that the applicant is not a registered voter pursuant to section 32-945, with instructions that failure to return the completed and signed application indicating the residence address as it appears on the voter's request for a ballot to the election commissioner or county clerk by the close of the polls on election day will result in the ballot not being counted;

(b) A registration application and the oath pursuant to section 32-946, if the voter is without a residence address, with instructions that the residence address of the voter shall be deemed that of the office of the election commissioner or county clerk of the county of the voter's prior residence and that failure to return the completed and signed application and oath to the election commissioner or county clerk by the close of the polls on election day will result in the ballot not being counted; or

(c) Written instructions directing the voter to submit a copy of an identification document pursuant to section 32-318.01 if the voter is required to present identification under such section and advising the voter that failure to submit identification to the election commissioner or county clerk by the close of the polls on election day will result in the ballot not being counted.

(5) The election commissioner or county clerk may enclose with the ballot materials a separate return envelope for the voter's use in returning his or her

identification envelope containing the voted ballot, registration application, and other materials that may be required.

Source: Laws 1994, LB 76, § 290; Laws 1995, LB 514, § 5; Laws 1999, LB 571, § 8; Laws 1999, LB 802, § 16; Laws 2002, LB 1054, § 22; Laws 2003, LB 359, § 7; Laws 2005, LB 98, § 19; Laws 2005, LB 566, § 48; Laws 2008, LB838, § 2; Laws 2011, LB449, § 9; Laws 2015, LB575, § 22; Laws 2016, LB874, § 4; Laws 2017, LB451, § 14; Laws 2024, LB287, § 47.
Operative date July 19, 2024.

Cross References

Forgery or false placement of initials or signatures on ballot pursuant to section, penalty, see section 32-1516.

32-949.01 Ballot for early voting; destroyed, spoiled, lost, or not received; cast provisional ballot or obtain replacement ballot; deadline; procedure.

(1) If a ballot for early voting is destroyed, spoiled, lost, or not received by the registered voter, the voter may cast a provisional ballot pursuant to section 32-915 at the voter's polling place on election day or may obtain a replacement ballot from the election commissioner or county clerk by signing a statement on a form prescribed by the Secretary of State that the original ballot for early voting was destroyed, spoiled, lost, or not received and delivering the statement to the election commissioner or county clerk.

(2) If the voter mails the statement or uses electronic mail or a facsimile machine for the submission of the statement, the election commissioner or county clerk shall not mail a replacement ballot to the voter unless the statement is received by 6 p.m. on the second Friday preceding the election. To receive a replacement ballot in person, the voter shall return the statement to the office of the election commissioner or county clerk by the deadline for the receipt of ballots specified in subsection (2) of section 32-908.

(3) The election commissioner or county clerk shall verify the signature on the statement with the signature appearing on the voter registration records.

(4) If the election commissioner or county clerk receives a statement meeting the requirements of this section, the election commissioner or county clerk shall deliver a replacement ballot to the voter if the voter is present in the office or shall mail a replacement ballot to the voter at the address shown on the statement. The election commissioner or county clerk shall keep a record of all replacement ballots issued under this section.

Source: Laws 2005, LB 401, § 8; Laws 2014, LB946, § 16; Laws 2016, LB874, § 5; Laws 2022, LB843, § 34.

32-950.01 Secure ballot drop-box; requirements; election commissioner or county clerk; duties.

(1) If an election commissioner or county clerk maintains a secure ballot drop-box for voters to deposit completed ballots, the election commissioner or county clerk shall ensure that the secure ballot drop-box:

(a) Is securely fastened to the ground or a concrete slab connected to the ground;

(b) Is secured by a lock that can only be opened by the election commissioner or county clerk or by an election official designated by the election commissioner or county clerk; and

(c) Complies with the federal Americans with Disabilities Act of 1990 and is accessible as determined by the election commissioner or county clerk.

(2) The election commissioner or county clerk shall inform the Secretary of State of each secure ballot drop-box's location no later than forty-two days prior to any statewide primary or general election.

(3) Except for a secure ballot drop-box for an election conducted under section 32-960, the election commissioner or county clerk or an election official designated by the election commissioner or county clerk shall open each secure ballot drop-box no later than the sixth Friday prior to any statewide primary or general election and no later than the fourth Friday prior to any special election. For any statewide primary or general election, each secure ballot drop-box shall remain accessible to voters until the deadline for the receipt of ballots as provided in section 32-908. For any special election, at least one secure ballot drop-box shall remain accessible to voters until the deadline for the receipt of ballots as provided in section 32-954.

(4) After a secure ballot drop-box is made available for depositing ballots, the election commissioner or county clerk shall ensure that ballots deposited in such secure ballot drop-box are collected and returned to the office of the election commissioner or county clerk at least once during each business day.

Source: Laws 2022, LB843, § 40; Laws 2024, LB287, § 48.
Operative date July 19, 2024.

32-952 Special election by mail; when.

If a political subdivision decides to place a candidate or an issue on the ballot at a special election, the election commissioner or county clerk may conduct the special election by mail as provided in section 32-953 or conduct the special election as otherwise authorized in the Election Act. In making a determination as to whether to conduct the election by mail, the election commissioner or county clerk shall consider whether all of the following conditions are met:

(1) All registered voters of the political subdivision or a district or ward of the political subdivision are eligible to vote on all candidates and issues submitted to the voters;

(2) Only registered voters of the political subdivision or the district or ward of the political subdivision are eligible to vote on all candidates and issues submitted to the voters;

(3) A review has been conducted of the costs and the expected voter turnout which may result from holding the election by mail;

(4) The election commissioner or county clerk has determined a date for the election which is not the same date as another election in which the registered voters of the political subdivision are eligible to vote;

(5) The election commissioner or county clerk has submitted a written plan to the Secretary of State within five business days after receiving the resolution from the political subdivision to hold the election; and

(6) The Secretary of State has approved a written plan for the conduct of the election, including a written timetable for the conduct of the election, submitted by the election commissioner or county clerk. The written plan shall include provisions for the notice of election to be published and for the application for ballots for early voting notwithstanding other statutory provisions regarding the

content and publication of a notice of election or the application for ballots for early voting.

Source: Laws 1996, LB 964, § 5; Laws 2005, LB 98, § 24; Laws 2015, LB575, § 23; Laws 2019, LB411, § 49.

32-953 Special election by mail; mailing of ballots; requirements; oath; procedure.

(1) Except as otherwise provided in subsection (2) of this section, the election commissioner or county clerk shall mail the official ballot to all registered voters of the political subdivision or the district or ward of the political subdivision at the addresses appearing on the voter registration register on the same day. The ballots shall be mailed by nonforwardable first-class mail not sooner than the twenty-second day before the date set for the election and not later than the tenth day before the date set for the election. The election commissioner or county clerk shall include with the ballot instructions sufficient to describe the voting process and an unsealed identification envelope. Upon the back of the identification envelope shall be printed boxes sufficient for the voter to provide the voter's Nebraska driver's license number or state identification card number and a form substantially as follows:

VOTER'S OATH

I, the undersigned voter, declare that the enclosed ballot or ballots contained no voting marks of any kind when I received them and that I caused the ballot or ballots to be marked, enclosed in the identification envelope, and sealed in such envelope.

To the best of my knowledge and belief, I declare under penalty of election falsification that:

(a) I, _____, am a registered voter in _____ County;

(b) I reside in the State of Nebraska at _____;

(c) I have voted the enclosed ballot and am returning it in compliance with Nebraska law;

(d) I have not voted and will not vote in this election except by this ballot; and

(e)(i) My Nebraska driver's license number or state identification card number is written in the corresponding boxes;

(ii) A photocopy of my valid photographic identification is enclosed; or

(iii) I have a reasonable impediment that prevents me from presenting valid photographic identification and my certification is enclosed.

ANY PERSON WHO SIGNS THIS FORM KNOWING THAT ANY OF THE INFORMATION IN THE FORM IS FALSE SHALL BE GUILTY OF ELECTION FALSIFICATION, A CLASS IV FELONY UNDER SECTION 32-1502 OF THE STATUTES OF NEBRASKA. THE PENALTY FOR ELECTION FALSIFICATION IS IMPRISONMENT FOR UP TO TWO YEARS AND TWELVE MONTHS POST-RELEASE SUPERVISION OR A FINE NOT TO EXCEED TEN THOUSAND DOLLARS, OR BOTH.

I also understand that failure to sign below will invalidate my ballot.

Signature _____

(2) The election commissioner or county clerk may choose not to mail a ballot to all registered voters who have been sent a notice pursuant to section 32-329 and failed to respond to the notice. If the election commissioner or county clerk chooses not to mail a ballot to such voters, he or she shall mail a notice to all such registered voters explaining how to obtain a ballot and stating the applicable deadlines.

(3) This section does not apply to any voter who casts a ballot pursuant to section 32-939.02 or 32-939.03.

Source: Laws 1996, LB 964, § 6; Laws 2008, LB838, § 3; Laws 2014, LB946, § 17; Laws 2015, LB575, § 24; Laws 2016, LB874, § 6; Laws 2023, LB514, § 16.

32-956 Special election by mail; replacement ballot; how obtained; procedure.

(1) If a ballot is destroyed, spoiled, lost, or not received by the registered voter, the voter may obtain a replacement ballot from the election commissioner or county clerk by signing a statement on a form prescribed by the Secretary of State that the ballot was destroyed, spoiled, lost, or not received and delivering the statement to the election commissioner or county clerk by 5 p.m. on the date set for the election.

(2) If the voter mails the statement or uses electronic mail or a facsimile machine for the submission of the statement, the election commissioner or county clerk shall not deliver a replacement ballot to the voter unless the statement is received prior to the close of business on the second Friday preceding the election.

(3) The election commissioner or county clerk shall verify the signature on the statement with the signature appearing on the voter registration records.

(4) If the election commissioner or county clerk receives a statement meeting the requirements of this section, he or she shall deliver a replacement ballot to the voter if the voter is present in the office or shall mail a replacement ballot to the voter at the address shown on the statement. The election commissioner or county clerk shall keep a record of all replacement ballots issued under this section.

Source: Laws 1996, LB 964, § 9; Laws 2002, LB 935, § 15; Laws 2014, LB946, § 18; Laws 2019, LB411, § 50; Laws 2022, LB843, § 35.

32-957 Special election by mail; verification of signatures; identification requirements.

(1) An official ballot under section 32-953 shall be counted only if it is returned in the identification envelope, the envelope is signed by the voter to whom it was issued, the signature is verified by the election commissioner or county clerk, and the voter provided the voter's driver's license number or state identification card number on the envelope or provided a photocopy of valid photographic identification or a reasonable impediment certification inside the envelope.

(2) The election commissioner or county clerk shall verify the signature on each identification envelope received in his or her office with the signature appearing on the voter registration records. If the election commissioner or county clerk is unable to verify a signature, the election commissioner or

county clerk shall contact the voter within two days after determining that he or she is unable to verify the signature to ascertain whether the voter cast a ballot. The election commissioner or county clerk may request that the registered voter sign and submit a current signature card pursuant to section 32-318. The election commissioner or county clerk may begin verifying the signatures as the envelopes are received in his or her office.

(3) If a voter fails to provide the voter's driver's license number or state identification card number, valid photographic identification, or a reasonable impediment certification as required under subsection (1) of this section, the election commissioner or county clerk shall contact the voter no later than the day after the election and the voter shall present valid photographic identification or a reasonable impediment certification to the election commissioner or county clerk on or before the Tuesday after the election or the ballot shall not be counted.

(4) If the election commissioner or county clerk determines that a voter has voted more than once, no ballot cast by that voter in that election shall be counted. The election commissioner or county clerk shall make public any record or list of registered voters who have returned their ballots.

(5) Subsections (1) and (3) of this section do not apply to any voter who casts a ballot pursuant to section 32-939.02 or 32-939.03.

Source: Laws 1996, LB 964, § 10; Laws 2008, LB838, § 5; Laws 2014, LB946, § 19; Laws 2023, LB514, § 17.

32-960 County with less than ten thousand inhabitants; elections conducted by mail; application for approval; contents; requirements for voting and returning ballots.

(1) In any county with less than ten thousand inhabitants, the county clerk may apply to the Secretary of State to mail ballots for all elections held after approval of the application to registered voters of any or all of the precincts in the county. The application shall include a written plan for the conduct of the election which complies with this section, including a timetable for the conduct of the election and provisions for the notice of election to be published and for the application for ballots for early voting notwithstanding other statutory provisions regarding the content and publication of a notice of election or the application for ballots for early voting. If the Secretary of State approves such application for one or more precincts in the county, the county clerk shall follow the applicable procedures in sections 32-953 to 32-959 for conducting elections by mail, except that the deadline for receipt of the ballots shall be the deadline specified in subsection (2) of section 32-908.

(2) The county clerk of a county that has an approved application pursuant to subsection (1) of this section:

(a) Shall allow a voter to return the ballot by hand-delivering it to the office of the county clerk;

(b) Shall maintain at least one secure ballot drop-box available for voters to deposit completed ballots twenty-four hours per day, starting at least ten days before the election through the deadline provided in subsection (1) of this section for the receipt of ballots;

(c) Shall maintain at least one in-person voting location at the office of the county clerk at which a voter in a precinct subject to a plan under this section

approved by the Secretary of State may receive and cast a ballot which shall be open on the day of the election from the time for opening the polls pursuant to section 32-908 through the deadline provided in subsection (1) of this section for the receipt of ballots;

(d) Shall maintain in-person early voting opportunities as described in section 32-942; and

(e) May provide additional secure ballot drop-boxes and in-person voting locations that need not be open according to the requirements of subdivisions (b) and (c) of this subsection.

Source: Laws 2005, LB 401, § 9; Laws 2009, LB501, § 3; Laws 2020, LB1055, § 14; Laws 2022, LB843, § 36.

32-961 Poll watchers; eligibility; appointment; notice required.

(1)(a) To be eligible to be a poll watcher, an individual shall be either:

(i) A registered voter of this state; or

(ii) An individual representing a state-based, national, or international election monitoring organization.

(b) A candidate or a spouse of a candidate on the ballot at the election shall not be eligible for appointment as a poll watcher at such election.

(2) For poll watchers eligible under subdivision (1)(a)(i) of this section, any political party in Nebraska, a candidate for election in Nebraska not affiliated with a political party, an organization of persons interested in a question on the ballot, or a nonpartisan organization interested in Nebraska's elections and the elective process may appoint one or more poll watchers. Any such person or organization intending to appoint one or more poll watchers shall provide written notification to the election commissioner or county clerk of the county in which the poll watchers will be active on election day no later than the close of business on the Wednesday prior to election day. The notification shall include a list of appointed poll watchers and a list of the precincts that the poll watchers plan to observe and shall be provided prior to each election at which one or more poll watchers will be active. A poll watcher shall not be denied entry to a polling place because the poll watcher is not on the list or because the precinct is not on the list.

(3) For poll watchers eligible under subdivision (1)(a)(ii) of this section, any national or international election monitoring organization intending to appoint one or more poll watchers shall provide written notification to the Secretary of State no later than the close of business on the Wednesday prior to election day. The notification shall include a list of appointed poll watchers and a list of the counties and precincts to be observed and shall be provided prior to each election at which one or more poll watchers will be active.

Source: Laws 2020, LB1055, § 10.

32-962 Poll watchers; credential; requirements; notice.

(1) For poll watchers eligible under subdivision (1)(a)(i) of section 32-961, the election commissioner or county clerk shall provide a credential as an election observer for each poll watcher for whom the election commissioner or county clerk receives notice of appointment under section 32-961. The election commissioner or county clerk may approve, as a credential, a name badge provided by the person who appointed the poll watcher if the name badge includes the

name of the poll watcher and the name of the person or organization who appointed the poll watcher and if the name badge does not contain any campaign materials advocating a vote for or against any candidate, political party, or position on a ballot question.

(2) For poll watchers eligible under subdivision (1)(a)(ii) of section 32-961, the Secretary of State shall provide the national or international election monitoring organization with the proper credentials for each poll watcher for whom the Secretary of State receives notice. The Secretary of State shall also notify the election commissioner or county clerk in each of the counties in which the poll watchers would be observing, and the notice shall include the name of the organization, a list of the poll watchers, a description of the credential that will be worn by the poll watchers, and the plans of the organization for election day, including which counties and precincts the organization plans to observe.

Source: Laws 2020, LB1055, § 11; Laws 2022, LB843, § 37.

32-963 Poll watchers; display credential; sign register; authorized activities; protest conduct of election; ruling.

(1) Upon arrival at a polling place, a poll watcher shall display such poll watcher's credentials to the precinct inspector or precinct receiving board and sign the register of poll watchers. The election commissioner or county clerk shall provide a register at each precinct for poll watchers to sign. A poll watcher shall wear the approved credential with the poll watcher's name and the name of the person or organization who appointed the poll watcher while engaged in observing at a polling place.

(2) Subject to section 32-1525, a poll watcher may be present during all proceedings at the polling place governed by the Election Act and may watch and observe the performance in and around the polling place of all duties under the act.

(3) If a poll watcher or the person or organization who appointed the poll watcher wishes to protest any aspect of the conduct of the election, such poll watcher, person, or organization shall present such protest to the Secretary of State or to the election commissioner or county clerk of the applicable county. The Secretary of State, election commissioner, or county clerk shall rule on the issue within a reasonable amount of time relative to the issue presented.

Source: Laws 2020, LB1055, § 12.

ARTICLE 10

COUNTING AND CANVASSING BALLOTS

Section

Section

32-1002 Provisional ballots; when counted.

(1) As the ballots are removed from the ballot box pursuant to sections 32-1012 to 32-1018, the receiving board shall separate the envelopes containing the provisional ballots from the rest of the ballots and deliver them to the election commissioner or county clerk.

(2) Upon receipt of a provisional ballot, the election commissioner or county clerk shall verify that the certificate on the front of the envelope or the form attached to the envelope is in proper form and that the certification has been signed by the voter.

(3) The election commissioner or county clerk shall also (a) verify that such person has not voted anywhere else in the county or been issued a ballot for early voting, (b) investigate whether any credible evidence exists that the person was properly registered to vote in the county before the deadline for registration for the election, (c) investigate whether any information has been received pursuant to section 32-308, 32-309, 32-310, or 32-324 that the person has resided, registered, or voted in any other county or state since registering to vote in the county, and (d) upon determining that credible evidence exists that the person was properly registered to vote in the county, make the appropriate changes to the voter registration register by entering the information contained in the registration application completed by the voter at the time of voting a provisional ballot.

(4) A provisional ballot cast by a voter pursuant to section 32-915 shall be counted if:

(a) Credible evidence exists that the voter was properly registered in the county before the deadline for registration for the election;

(b) The voter has resided in the county continuously since registering to vote in the county;

(c) The voter has not voted anywhere else in the county or has not otherwise voted early using a ballot for early voting;

(d) The voter has completed a registration application prior to voting as prescribed in subsection (6) of this section and:

(i) The residence address provided on the registration application completed pursuant to subdivision (1)(e) of section 32-915 is located within the precinct in which the person voted; and

(ii) If the voter is voting in a primary election, the party affiliation provided on the registration application completed prior to voting the provisional ballot is the same party affiliation that appears on the voter's voter registration record based on his or her previous registration application; and

(e) The certification on the front of the envelope or form attached to the envelope is in the proper form and signed by the voter.

(5) A provisional ballot cast by a voter pursuant to section 32-915 shall not be counted if:

(a) The voter was not properly registered in the county before the deadline for registration for the election;

(b) Information has been received pursuant to section 32-308, 32-309, 32-310, or 32-324 that the voter has resided, registered, or voted in any other county or state since registering to vote in the county in which he or she cast the provisional ballot;

(c) Credible evidence exists that the voter has voted elsewhere or has otherwise voted early;

(d) The voter failed to complete and sign a registration application pursuant to subsection (6) of this section and subdivision (1)(e) of section 32-915;

(e) The residence address provided on the registration application completed pursuant to subdivision (1)(e) of section 32-915 is in a different county or in a different precinct than the county or precinct in which the voter voted;

(f) If the voter is voting in a primary election, the party affiliation on the registration application completed prior to voting the provisional ballot is different than the party affiliation that appears on the voter's voter registration record based on his or her previous registration application; or

(g) The voter failed to complete and sign the certification on the envelope or form attached to the envelope pursuant to subsection (3) of section 32-915.

(6) An error or omission of information on the registration application or the certification required under section 32-915 shall not result in the provisional ballot not being counted if:

(a)(i) The errant or omitted information is contained elsewhere on the registration application or certification; or

(ii) The information is not necessary to determine the eligibility of the voter to cast a ballot; and

(b) Both the registration application and the certification are signed by the voter.

(7) Upon determining that the voter's provisional ballot is eligible to be counted, the election commissioner or county clerk shall remove the ballot from the envelope without exposing the marks on the ballot and shall place the ballot with the ballots to be counted by the county canvassing board.

(8) The election commissioner or county clerk shall notify the system administrator of the system created pursuant to section 32-202 as to whether the ballot was counted and, if not, the reason the ballot was not counted.

(9) The verification and investigation shall be completed within seven business days after the election.

Source: Laws 1994, LB 76, § 296; Laws 1999, LB 234, § 13; Laws 2002, LB 1054, § 23; Laws 2003, LB 358, § 30; Laws 2005, LB 566, § 53; Laws 2007, LB646, § 10; Laws 2010, LB325, § 7; Laws 2014, LB661, § 15; Laws 2019, LB411, § 51.

32-1002.01 Provisional voter identification verification envelopes; procedure to verify; ballots; when counted.

(1) As the ballots are removed from the ballot box pursuant to sections 32-1012 to 32-1018, the receiving board shall separate the provisional voter identification verification envelopes from the rest of the ballots and deliver them to the election commissioner or county clerk.

(2) Upon receipt of a provisional voter identification verification envelope, the election commissioner or county clerk shall verify that the certificate on the front of the envelope or the form attached to the envelope is in proper form and that the certification has been signed by the voter.

(3) The election commissioner or county clerk shall also verify that such person has not voted anywhere else in the county or been issued a ballot for early voting.

(4) A ballot cast by a voter pursuant to section 32-915.03 shall be counted if the voter completed and signed the certification on the provisional voter identification verification envelope and the voter:

(a) Presented valid photographic identification to the election commissioner or county clerk on or before the Tuesday after the election; or

(b) Has a reasonable impediment preventing the voter from obtaining valid photographic identification, the voter completes a reasonable impediment certification, and the election commissioner or county clerk verifies:

(i) The signature on the reasonable impediment certification with the signature appearing on the voter registration record; and

(ii) That the voter does not have a current, unexpired driver's license or state identification card issued by the State of Nebraska.

(5) A ballot cast by a voter pursuant to section 32-915.03 shall not be counted if:

(a) The voter failed to complete and sign the certification on the provisional voter identification verification envelope pursuant to subsection (2) of section 32-915.03;

(b) The voter failed to present valid photographic identification to the election commissioner or county clerk on or before the Tuesday after the election; or

(c) The voter has a reasonable impediment preventing the voter from obtaining valid photographic identification and:

(i) The voter did not complete a reasonable impediment certification; or

(ii) The election commissioner or county clerk was not able to verify the signature on the reasonable impediment certification with the signature appearing on the voter registration record.

(6) Upon determining that the voter's ballot is eligible to be counted, the election commissioner or county clerk shall remove the ballot from the provisional voter identification verification envelope without exposing the marks on the ballot and shall place the ballot with the ballots to be counted by the county canvassing board.

(7) The election commissioner or county clerk shall notify the system administrator of the free access system created pursuant to section 32-202 as to whether the ballot was counted and, if not, the reason the ballot was not counted.

(8) The verification shall be completed within seven business days after the election.

Source: Laws 2023, LB514, § 18; Laws 2024, LB287, § 49.
Operative date April 17, 2024.

32-1005 Write-in vote; when valid.

If the last name or a reasonably close spelling of the last name of a person engaged in or pursuing a write-in campaign pursuant to section 32-615 or 32-633 is written or printed on a line provided for that purpose and the square or oval opposite such line has been marked with a cross or other clear, intelligible mark, the vote shall be valid and the ballot shall be counted. A write-in vote for a person who is not engaged in or pursuing a write-in campaign pursuant to section 32-615 or 32-633 shall not be counted.

Source: Laws 1994, LB 76, § 299; Laws 1999, LB 571, § 9; Laws 2003, LB 358, § 31; Laws 2013, LB349, § 4; Laws 2021, LB285, § 16.

32-1006 Repealed. Laws 2021, LB285, § 21.

32-1007 Ballots; write-in votes; improper name; rejected.

If only the last name of a person is in the write-in space on the ballot and there is more than one person in the county having the same last name, the counting board shall reject the ballot for that office unless the last name is reasonably close to the proper spelling of the last name of a candidate engaged in or pursuing a write-in campaign pursuant to section 32-615. The counting board shall make the following notation on the rejected ballot: Rejected for the office of _____, no first or generally recognized name.

Source: Laws 1994, LB 76, § 301; Laws 1999, LB 571, § 10; Laws 2001, LB 252, § 3; Laws 2003, LB 358, § 33; Laws 2013, LB349, § 5; Laws 2018, LB377, § 4; Laws 2019, LB411, § 52.

32-1008 Write-in votes; totals; how reported.

If the write-in vote in the county for a person pursuing a write-in campaign pursuant to section 32-615 or 32-633 totals less than five percent of the vote for such office in the county and the election commissioner or county clerk believes that such vote will not impact the outcome of the election, the number of write-in votes for that office may be counted and listed together as one total.

Source: Laws 1994, LB 76, § 302; Laws 1999, LB 571, § 11; Laws 2013, LB349, § 6; Laws 2019, LB411, § 53.

32-1010 Ballots; where counted.

Ballots shall be counted at a centralized location or at polling places as provided in sections 32-1012 to 32-1018. If counting takes place at a centralized location, the receiving board shall deliver the ballot box and other election materials to the centralized location as directed by the election commissioner or county clerk.

Source: Laws 1994, LB 76, § 304; Laws 2007, LB646, § 12; Laws 2019, LB411, § 54.

32-1012 Centralized location; partial returns; when; designation of location; counting procedure.

(1) In counties using optical scanners to count the ballots at a centralized location, the election commissioner or county clerk may arrange to have partial returns delivered, properly locked or sealed, to the centralized location or locations at any time desired after the opening of the polls if at least twenty-five ballots have been cast since any prior delivery of ballots. The election commissioner or county clerk shall designate the location or locations for counting the ballots and may designate a location or locations in any county. Upon completion of the count, the ballots shall be conveyed under supervision of the election commissioner or county clerk to the office of such official. If for any reason it becomes impracticable to count all or a part of the ballots with optical scanners, the election commissioner or county clerk may direct that the ballots be counted manually following as closely as possible the provisions governing the manual counting of ballots.

(2) In counties using optical scanners to count the ballots at polling places, the election commissioner or county clerk may arrange to have partial returns delivered, properly locked, sealed, or digitally secured, to the election office at any time desired after the opening of the polls if at least twenty-five ballots have been cast since any prior delivery of partial returns. The election commissioner or county clerk shall designate polling places as locations for counting the ballots. Upon completion of the count, the ballots shall be conveyed under supervision of the election commissioner or county clerk to the office of such official. If for any reason it becomes impracticable to count all or a part of the ballots with optical scanners, the election commissioner or county clerk may direct that the ballots be counted manually following as closely as possible the provisions governing the manual counting of ballots.

Source: Laws 1994, LB 76, § 306; Laws 2003, LB 358, § 34; Laws 2019, LB411, § 55.

32-1013 Counting location; watchers; counting board members; oath; authorized observers.

(1) In each counting location, watchers may be appointed to be present and observe the counting of ballots. Each political party shall be entitled to one watcher at each location appointed and supplied with credentials by the county central committee of such political party. The district court having jurisdiction over any such county may appoint additional watchers for any location.

(2) The watchers and the members of the counting board shall take the following oath administered by the election commissioner or county clerk or an election official designated by the election commissioner or county clerk: I do solemnly swear that I will not in any manner make known to anyone other than duly authorized election officials the results of the votes as they are being counted until the polls have officially closed and the summary of votes cast is delivered to the election commissioner or county clerk.

(3) Except for polling places using precinct-based optical scanners, all other persons shall be excluded from the place where the counting is being conducted except for observers authorized by the election commissioner or county clerk. No such observer shall be connected with any candidate, political party, or measure on the ballot.

Source: Laws 1994, LB 76, § 307; Laws 2019, LB411, § 56.

32-1027 Counting board for early voting; appointment; duties.

(1) The election commissioner or county clerk shall appoint two or more registered voters to the counting board for early voting. One registered voter shall be appointed from the political party casting the highest number of votes for Governor or for President of the United States in the county in the immediately preceding general election, and one registered voter shall be appointed from the political party casting the next highest vote for such office. The election commissioner or county clerk may appoint additional registered voters to serve on the counting board and may appoint registered voters to serve in case of a vacancy among any of the members of the counting board. Such appointees shall be balanced between the political parties and may include registered voters unaffiliated with any political party. The counting board may begin carrying out its duties not earlier than the second Friday before the election and shall meet as directed by the election commissioner or county clerk.

(2) The counting board shall place all identification envelopes in order and shall review each returned identification envelope pursuant to verification procedures prescribed in subsections (3) and (4) of this section.

(3) In its review, the counting board shall determine if:

(a) The voter has provided his or her name, residence address, and signature on the voter identification envelope;

(b) The ballot has been received from the voter who requested it and the residence address is the same address provided on the voter's request for a ballot for early voting, by comparing the information provided on the identification envelope with information recorded in the record of early voters or the voter's request;

(c) A completed and signed registration application has been received from the voter by the deadline in section 32-302, 32-321, or 32-325 or by the close of the polls pursuant to section 32-945;

(d) An identification document has been received from the voter not later than the close of the polls on election day if required pursuant to section 32-318.01; and

(e) A completed and signed registration application and oath has been received from the voter by the close of the polls on election day if required pursuant to section 32-946.

(4) On the basis of its review, the counting board shall determine whether the ballot shall be counted or rejected as follows:

(a) A ballot received from a voter who was properly registered on or prior to the deadline for registration pursuant to section 32-302 or 32-321 shall be accepted for counting without further review if:

(i) The name on the identification envelope appears to be that of a registered voter to whom a ballot for early voting has been issued or sent;

(ii) The residence address provided on the identification envelope is the same residence address at which the voter is registered or is in the same precinct and subdivision of a precinct, if any; and

(iii) The identification envelope has been signed by the voter;

(b) In the case of a ballot received from a voter who was not properly registered prior to the deadline for registration pursuant to section 32-302 or 32-321, the ballot shall be accepted for counting if:

(i) A valid registration application completed and signed by the voter has been received by the election commissioner or county clerk prior to the close of the polls on election day;

(ii) The name on the identification envelope appears to be that of the person who requested the ballot;

(iii) The residence address provided on the identification envelope and on the registration application is the same as the residence address as provided on the voter's request for a ballot for early voting; and

(iv) The identification envelope has been signed by the voter;

(c) In the case of a ballot received from a voter without a residence address who requested a ballot pursuant to section 32-946, the ballot shall be accepted for counting if:

(i) The name on the identification envelope appears to be that of a registered voter to whom a ballot has been sent;

(ii) A valid registration application completed and signed by the voter, for whom the residence address is deemed to be the address of the office of the election commissioner or county clerk pursuant to section 32-946, has been received by the election commissioner or county clerk prior to the close of the polls on election day;

(iii) The oath required pursuant to section 32-946 has been completed and signed by the voter and received by the election commissioner or county clerk by the close of the polls on election day; and

(iv) The identification envelope has been signed by the voter;

(d) In the case of a ballot received from a registered voter required to present identification before voting pursuant to section 32-318.01, the ballot shall be accepted for counting if:

(i) The name on the identification envelope appears to be that of a registered voter to whom a ballot has been issued or sent;

(ii) The residence address provided on the identification envelope is the same address at which the voter is registered or is in the same precinct and subdivision of a precinct, if any;

(iii) A copy of an identification document authorized in section 32-318.01 has been received by the election commissioner or county clerk prior to the close of the polls on election day; and

(iv) The identification envelope has been signed by the voter; and

(e) In the case of a ballot received from a registered voter who filled out a reasonable impediment certification pursuant to section 32-912.02, the ballot shall be accepted for counting if:

(i) The signature on the certification matches the signature on file with the election commissioner or county clerk;

(ii) The election commissioner or county clerk verifies that the voter does not have a current, unexpired driver's license or state identification card issued by the State of Nebraska;

(iii) The name on the identification envelope appears to be that of a registered voter to whom a ballot has been issued or sent;

(iv) The residence address provided on the identification envelope is the same address at which the voter is registered or is in the same precinct and subdivision of a precinct, if any; and

(v) The identification envelope has been signed by the voter.

(5) In opening the identification envelope or the return envelope to determine if registration applications, oaths, or identification documents have been enclosed by the voters from whom they are required, the counting board shall make a good faith effort to ensure that the ballot remains folded and that the secrecy of the vote is preserved.

(6) The counting board may, on the second Friday before the election, open all identification envelopes which are approved, and if the signature of the election commissioner or county clerk or his or her employee is on the ballot, the ballot shall be unfolded, flattened for purposes of using the optical scanner, and placed in a sealed container for counting as directed by the election commissioner or county clerk. At the discretion of the election commissioner or county clerk, the counting board may begin counting early ballots no earlier than twenty-four hours prior to the opening of the polls on the day of the election.

(7) If an identification envelope is rejected, the counting board shall not open the identification envelope. The counting board shall write Rejected on the identification envelope and the reason for the rejection. If the ballot is rejected after opening the identification envelope because of the absence of the official signature on the ballot, the ballot shall be reinserted in the identification envelope which shall be resealed and marked Rejected, no official signature. The counting board shall place the rejected identification envelopes and ballots in a container labeled Rejected Ballots and seal it.

(8) As soon as all ballots have been placed in the sealed container and rejected identification envelopes or ballots have been sealed in the Rejected Ballots container, the counting board shall count the ballots the same as all other ballots and an unofficial count shall be reported to the election commissioner or county clerk. No results shall be released prior to the closing of the polls on election day.

Source: Laws 1994, LB 76, § 321; Laws 1999, LB 802, § 18; Laws 2002, LB 935, § 16; Laws 2005, LB 98, § 26; Laws 2005, LB 566, § 54; Laws 2007, LB646, § 13; Laws 2020, LB1055, § 15; Laws 2023, LB514, § 19; Laws 2024, LB287, § 50.
Operative date April 17, 2024.

32-1031 County canvassing board; canvass of votes; procedure.

(1) The election commissioner or county clerk shall, prior to 1 p.m. on election day, post in a conspicuous place in the office of such election commissioner or county clerk a notice stating the day and hour when the county canvassing board will convene.

(2) After counting the ballots under section 32-1027 but no earlier than twenty-four hours after the notice is posted as required under subsection (1) of this section, the county canvassing board shall proceed with the official canvass of votes cast on election day. If in the process of canvassing the votes for any

candidate or measure in any precinct the election commissioner or county clerk or the canvassing board determines that there is an obvious error in the certification of the votes, the error shall be corrected. The county canvassing board may open the ballots-cast container and recount the ballots for any candidate or any measure which appears to be in error. If the county canvassing board finds and corrects any such error, it shall make the correction entry in the precinct sign-in register, the precinct list of registered voters, and the official summary or summaries of votes cast and shall attach a letter of explanation to each book where the correction was made. The letter shall be signed by all members of the county canvassing board.

(3) When it has been determined that the returns in all precincts are correct, the county canvassing board shall provide a record of the results to the election commissioner or county clerk either in a ledger or by using a computer printout. The election commissioner or county clerk shall preserve the record of the results for the period of time specified by the State Records Administrator pursuant to the Records Management Act, and then it may be transferred to the State Archives of the Nebraska State Historical Society for permanent preservation.

(4) Any recesses or adjournments of the county canvassing board shall be to a fixed time and publicly announced. When a recess is called, all ballots that have not been counted and all other supplies shall be placed in a fireproof safe or other suitable location which is locked until such board reconvenes.

Source: Laws 1994, LB 76, § 325; Laws 2005, LB 98, § 28; Laws 2012, LB1035, § 3; Laws 2022, LB843, § 38.

Cross References

Records Management Act, see section 84-1220.

32-1033 Certificate of nomination; certificate of election; issuance by election commissioner or county clerk; when; form.

The election commissioner or county clerk shall, on or before the sixth Monday after the election, prepare, sign, and deliver a certificate of nomination or a certificate of election to each person whom the county canvassing board has declared to have received the highest vote for county, city, or village offices. No person shall be issued a certificate of nomination as a candidate of a political party unless such person has received a number of votes at least equal to five percent of the total ballots cast at the primary election by registered voters affiliated with that political party in the district which the office for which he or she is a candidate serves. The certificate shall be substantially as follows:

State of Nebraska. At an election held on the _____ day of _____ 20__, _____ was elected to the office of _____ for the term of _____ years from the _____ day of _____ 20__ (or when filling a vacancy, for the residue of the term ending on the ____ day of _____ 20__). Given at _____ this ____ day of _____ 20__ .

Source: Laws 1994, LB 76, § 327; Laws 1997, LB 764, § 101; Laws 1999, LB 571, § 12; Laws 2022, LB843, § 39.

32-1041 Voting and counting methods and locations authorized; approval required; when; electronic voting system prohibited.

(1) The election commissioner or county clerk may use optical-scan ballots or voting systems approved by the Secretary of State to allow registered voters to cast their votes at any election. The election commissioner or county clerk may use vote counting devices and voting systems approved by the Secretary of State for tabulating the votes cast at any election. Vote counting devices shall include electronic counting devices such as optical scanners.

(2) No electronic voting system shall be used under the Election Act.

(3) Any new voting or counting system shall be approved by the Secretary of State prior to use by an election commissioner or county clerk. The Secretary of State may adopt and promulgate rules and regulations to establish different procedures and locations for voting and counting votes pursuant to the use of any new voting or counting system. The procedures shall be designed to preserve the safety and confidentiality of each vote cast and the secrecy and security of the counting process, to establish security provisions for the prevention of fraud, and to ensure that the election is conducted in a fair manner.

Source: Laws 1994, LB 76, § 335; Laws 1997, LB 526, § 1; Laws 2003, LB 358, § 37; Laws 2005, LB 401, § 10; Laws 2007, LB646, § 14; Laws 2019, LB411, § 57.

32-1049 Vote counting device; requirements.

Any election commissioner or county clerk using a vote counting device to count ballots in a centralized location shall:

(1) Provide for the proper sealing of the containers and the security of the ballots when transported from each polling place to the centralized location and when removed from their containers and delivered to the personnel who operate the vote counting devices;

(2) Provide a process of counting which allows for the ballots of each precinct to be placed in a sealed container and placed in a secure location after the counting process has been completed;

(3) Provide for a method of overseeing the ballots that have been overvoted or damaged which does not involve judging voter intent to assure that these ballots have not been or will not be intentionally mismarked;

(4) Provide for a procedure for counting write-in votes when such votes and names of write-in candidates are to be counted and recorded;

(5) Provide for at least three independent tests to be conducted before counting begins to verify the accuracy of the counting process, which includes the computerized program installed for counting various ballots by vote counting devices, by (a) the election commissioner or county clerk, (b) the chief deputy election commissioner or a registered voter with a different party affiliation than that of the election commissioner or county clerk, and (c) the person who installed the program in the vote counting device or the person in charge of operating the device;

(6) Provide for storing and safeguarding the magnetic tapes or computer chips of the vote counting devices for the required period of time;

(7) Provide the appropriate security personnel or measures necessary to safeguard the secrecy and security of the counting process;

(8) Develop a procedure for picking up and counting ballots during election day at the discretion of the election commissioner or county clerk. No report or

tabulation of vote totals for such ballots shall be produced or generated prior to one hour before the closing of the polls;

(9) Develop a procedure for picking up and transporting ballots from a secure ballot drop-box to the office of the election commissioner or county clerk; and

(10) Submit a written plan to the Secretary of State specifically outlining the procedures that will be followed on election day to implement this section. The plan shall be submitted no later than twenty-five days before the election and shall be modified, as necessary, for each primary, general, or special election.

Source: Laws 1994, LB 76, § 343; Laws 2007, LB646, § 15; Laws 2022, LB843, § 41.

ARTICLE 11

CONTEST OF ELECTIONS AND RECOUNTS

Section

32-1101 Contest of election other than member of Legislature; applicability of sections; grounds.

(1) Sections 32-1101 to 32-1117 shall apply to contests of any election other than the election of a member of the Legislature. The contest of the election of a member of the Legislature is subject to the Legislative Qualifications and Election Contests Act.

(2) The election of any person to an elective office other than the Legislature, the location or relocation of a county seat, or any proposition submitted to a vote of the people may be contested:

(a) For misconduct, fraud, or corruption on the part of an election commissioner, a county clerk, an inspector, a judge or clerk of election, a member of a counting or canvassing board, or an employee of the election commissioner or county clerk sufficient to change the result;

(b) If the incumbent was not eligible to the office at the time of the election;

(c) If the incumbent has been convicted of a felony unless at the time of the election his or her civil rights have been restored;

(d) If the incumbent has given or offered to any voter or an election commissioner, a county clerk, an inspector, a judge or clerk of election, a member of a counting or canvassing board, or an employee of the election commissioner or county clerk any bribe or reward in money, property, or thing of value for the purpose of procuring his or her election;

(e) If illegal votes have been received or legal votes rejected at the polls sufficient to change the results;

(f) For any error of any board of canvassers in counting the votes or in declaring the result of the election if the error would change the result;

(g) If the incumbent is in default as a collector and custodian of public money or property; or

(h) For any other cause which shows that another person was legally elected.

(3) When the misconduct is on the part of an election commissioner, a county clerk, an inspector, a judge or clerk of election, a member of a counting or canvassing board, or an employee of the election commissioner or county clerk, it shall be insufficient to set aside the election unless the vote of the county, precinct, or township would change the result as to that office.

Source: Laws 1994, LB 76, § 344; Laws 2018, LB744, § 1.

Cross References

Legislative Qualifications and Election Contests Act, see section 50-1501.

32-1105 Election contest; bond.

The petitioner shall file in the proper court within ten days after filing of the petition a bond with security to be approved by the clerk of the court conditioned to pay all costs in case the election is confirmed.

Source: Laws 1994, LB 76, § 348; Laws 2018, LB744, § 2.

32-1106 Repealed. Laws 2018, LB744, § 30.

32-1107 Repealed. Laws 2018, LB744, § 30.

32-1111 Election contest; person holding certificate of election; powers and duties.

When a contested election is pending, the person holding the certificate of election may give bond, qualify and take the office at the time specified by law, and exercise the duties of the office until the contest is decided. If the contest is decided against him or her, the court shall order him or her to give up the office to the successful party in the contest and deliver to the successful party all books, records, papers, property, and effects pertaining to the office, and the court may enforce such order by attachment or other proper legal process.

Source: Laws 1994, LB 76, § 354; Laws 2018, LB744, § 3.

32-1112 Election contest; recount of votes; issuance of writ; certification of results.

Any court before which any contested election may be pending or the clerk of such court in vacation may issue a writ to the election commissioner or county clerk of the county in which the contested election was held commanding him or her to open, count, compare with the list of voters, and examine the ballots in his or her office which were cast at the election in contest and to certify the result of such count, comparison, and examination to the court from which the writ was issued.

Source: Laws 1994, LB 76, § 355; Laws 2018, LB744, § 4.

32-1114 Election contest; recount of ballots; procedure.

On the day fixed for opening the ballots pursuant to section 32-1113, the election commissioner or county clerk and the county canvassing board which

officiated in making the official county canvass of the election returns shall proceed to open such ballots in the presence of the petitioner and the person whose election is contested or their attorneys. While the ballots are open and being examined, the election commissioner or county clerk shall exclude all other persons from the counting room. All persons witnessing the counting of ballots shall be placed under oath requiring them not to disclose any fact discovered from such ballots except as stated in the certificate of the election commissioner or county clerk.

Source: Laws 1994, LB 76, § 357; Laws 2018, LB744, § 5.

32-1115 Election contest; rights of parties; recount of ballots; completion; certification.

The election commissioner or county clerk shall permit the petitioner, the person whose election is being contested, and their attorneys to fully examine the ballots. The election commissioner or county clerk shall make return to the writ, under his or her hand and official seal, of all the facts which either of the parties may desire and which appear from the ballots to affect or relate to the contested election. After the examination of the ballots is completed, the election commissioner or county clerk shall again securely seal the ballots as they were and preserve and destroy them as provided by law in the same manner as if they had not been opened. The certificate of the election commissioner or county clerk certifying the total number of votes received by a candidate shall be prima facie evidence of the facts stated in the certificate, but the persons present at the examination of the ballots may be heard as witnesses to contradict the certificate.

Source: Laws 1994, LB 76, § 358; Laws 2018, LB744, § 6.

32-1116 Election contests and recounts; costs.

Except for election contests involving a member of the Legislature under the Legislative Qualifications and Election Contests Act, the cost of election contests under sections 32-1101 to 32-1117 and recounts under section 32-1118 shall be adjudged against the petitioner if he or she loses the contest, and if the petitioner wins the contest, the cost shall be adjudged against the state, county, or other political subdivision of which such contested office was a part. The payment of such costs shall be enforced as in civil cases.

Source: Laws 1994, LB 76, § 359; Laws 2018, LB744, § 7.

Cross References

Legislative Qualifications and Election Contests Act, see section 50-1501.

32-1121 Recount requested by losing candidate; procedure; costs.

If any candidate failed to be nominated or elected by more than the margin provided in section 32-1119, the losing candidate may submit a certified written request for a recount at such candidate's expense. The request shall be filed with the filing officer with whom the candidate filed for election not later than the fifth day after the county canvassing board or the board of state canvassers concludes. The recount shall be conducted as provided in section 32-1119. Prior to conducting the recount, the cost of the recount shall be determined by the election commissioner or county clerk and the requesting candidate shall be so notified. The candidate requesting the recount shall pay the estimated cost of

the recount before the recount is scheduled to be conducted. If the recount involves more than one county, the election commissioner or county clerk shall certify the cost to the Secretary of State. The Secretary of State shall then notify the candidate of the determined cost, and the cost shall be paid before any recount is scheduled to be conducted. The candidate shall pay the cost on demand to the county treasurer of each county involved, and such sums shall be placed in the county general fund to help defray the cost of the recount. If the actual expense is less than the determined cost, the candidate may file a claim with the county board for overpayment of the recount. If the recount determines the candidate to be the winner, all costs which he or she paid shall be refunded. Refunds shall be made from the county general fund.

Source: Laws 1994, LB 76, § 364; Laws 2019, LB411, § 58; Laws 2022, LB843, § 42.

ARTICLE 12
ELECTION COSTS

Section
32-1201.01. Gift, grant, or donation; permitted, when.
32-1203. Political subdivisions; election expenses; duties; determination of charge.
32-1205. Recall petition; political subdivision; pay costs.

32-1201.01 Gift, grant, or donation; permitted, when.

(1) The Secretary of State, election commissioners, and county clerks shall not accept or use any gift, grant, or donation from any private entity for the purpose of preparing for, administering, or conducting an election unless the money received as a result of such gift, grant, or donation is appropriated to the Secretary of State for such use by the Legislature.

(2) This section does not prohibit (a) the acceptance of an in-kind contribution of food or beverages for election workers during the administration of an election or (b) the actual use of a public or private building, without charge or for a reduced fee, for the purposes of conducting an election, including use as a polling place or for election training purposes.

Source: Laws 2022, LB843, § 44.

32-1203 Political subdivisions; election expenses; duties; determination of charge.

(1) Each city, village, township, school district, public power district, sanitary and improvement district, metropolitan utilities district, fire protection district, natural resources district, regional metropolitan transit authority, community college area, learning community coordinating council, educational service unit, hospital district, reclamation district, library board, and airport authority shall pay for the costs of nominating and electing its officers as provided in subsection (2), (3), or (4) of this section. If a special issue is placed on the ballot at the time of the statewide primary or general election by any political subdivision, the political subdivision shall pay for the costs of the election as provided in subsection (2), (3), or (4) of this section.

(2) The charge for each primary and general election shall be determined by (a) ascertaining the total cost of all chargeable costs as described in section 32-1202, (b) dividing the total cost by the number of precincts participating in the election to fix the cost per precinct, (c) prorating the cost per precinct by

the inked ballot inch in each precinct for each political subdivision, and (d) totaling the cost for each precinct for each political subdivision, except that the minimum charge for each primary and general election for each political subdivision shall be one hundred dollars.

(3) In lieu of the charge determined pursuant to subsection (2) of this section, the election commissioner or county clerk may charge public power districts the fee for election costs set by section 70-610.

(4) In lieu of the charge determined pursuant to subsection (2) of this section, the election commissioner or county clerk may bill school districts directly for the costs of an election held under section 10-703.01.

Source: Laws 1994, LB 76, § 368; Laws 1997, LB 764, § 104; Laws 2008, LB1067, § 1; Laws 2011, LB449, § 11; Laws 2015, LB575, § 27; Laws 2019, LB492, § 39; Laws 2022, LB843, § 43; Laws 2024, LB287, § 51.
Operative date July 19, 2024.

32-1205 Recall petition; political subdivision; pay costs.

A political subdivision in which a recall petition is issued, a recall election is held, an official is recalled, or a vacancy needs to be filled as the result of a recall petition shall pay the costs of the recall procedure and any special election held as a result of a recall election. If a recall election is canceled pursuant to section 32-1306, the political subdivision shall be responsible for costs incurred related to the canceled election. The costs shall include all chargeable costs as provided in section 32-1202 associated with preparing for and conducting a recall or special election.

Source: Laws 1994, LB 76, § 370; Laws 2008, LB312, § 3; Laws 2024, LB287, § 52.
Operative date July 19, 2024.

ARTICLE 13

RECALL

Section
32-1301. Recall; filing officer, defined.
32-1303. Recall petition; signers and circulators; requirements; notification.
32-1304. Petition papers; requirements.
32-1305. Petition papers; filing; signature verification; procedure.
32-1306. Filing officer; notification required; recall election; when held.
32-1308. Recall election; results; effect; vacancies; how filled.
32-1309. Recall petition filing form prohibited; when.
32-1310. Recall election; failure or refusal to call; county attorney; duties.

32-1301 Recall; filing officer, defined.

For purposes of sections 32-1301 to 32-1309, filing officer means (1) the election commissioner or county clerk for recall of elected officers of cities, villages, counties, irrigation districts, school districts, and hospital districts and (2) the Secretary of State for recall of elected officers of natural resources districts, public power districts, community college areas, educational service units, and metropolitan utilities districts.

Source: Laws 1994, LB 76, § 374; Laws 2003, LB 444, § 9; Laws 2024, LB287, § 53.
Operative date July 19, 2024.

32-1303 Recall petition; signers and circulators; requirements; notification.

(1) A petition demanding that the question of removing an elected official or member of a governing body listed in section 32-1302 be submitted to the registered voters shall be signed by registered voters equal in number to at least thirty-five percent of the total vote cast for that office in the last general election, except that (a) for an office for which more than one candidate is chosen, the petition shall be signed by registered voters equal in number to at least thirty-five percent of the number of votes cast for the person receiving the most votes for such office in the last general election and (b) for a member of a governing body of a village, the petition shall be signed by registered voters of the village equal in number to at least forty-five percent of the total vote cast for the person receiving the most votes for that office in the last general election. The signatures shall be affixed to petition papers and shall be considered part of the petition.

(2) Petition circulators shall conform to the requirements of sections 32-629 and 32-630.

(3) The petition papers shall be procured from the filing officer. Prior to the issuance of such petition papers, a recall petition filing form shall be signed and filed with the filing officer by at least one registered voter. Such voter or voters shall be deemed to be the principal circulator or circulators of the recall petition. The filing form shall state the name and office of the official sought to be removed, shall include in concise language of sixty words or less the reason or reasons for which recall is sought, and shall request that the filing officer issue initial petition papers to the principal circulator for circulation.

(4) After receiving the filing form, the filing officer shall notify the official whose removal is sought by any method specified in section 25-505.01 or, if notification cannot be made with reasonable diligence by any of the methods specified in section 25-505.01, by leaving a copy of the filing form at the official's usual place of residence and mailing a copy by first-class mail to the official's last-known address. If the official chooses, he or she may submit a defense statement in concise language of sixty words or less for inclusion on the petition. Any such defense statement shall be submitted to the filing officer within twenty days after the official receives the copy of the filing form. The filing officer shall prepare the petition papers within five business days after receipt of the defense statement. The principal circulator or circulators shall gather the petition papers within twenty days after being notified by the filing officer that the petition papers are available. The filing officer shall notify the principal circulator or circulators that the necessary signatures must be gathered within thirty days from the date of issuing the petitions.

(5) The filing officer, upon issuing the initial petition papers or any subsequent petition papers, shall enter in a record, to be kept in his or her office, the name of the principal circulator or circulators to whom the papers were issued, the date of issuance, and the number of papers issued. The filing officer shall certify on the papers the name of the principal circulator or circulators to whom the papers were issued and the date they were issued. No petition paper shall be accepted as part of the petition unless it bears such certificate. The principal circulator or circulators who check out petitions from the filing officer may distribute such petitions to persons who may act as circulators of such petitions.

(6) Petition signers shall conform to the requirements of sections 32-629 and 32-630. Each signer of a recall petition shall be a registered voter and qualified by his or her place of residence to vote for the office in question.

Source: Laws 1994, LB 76, § 376; Laws 1997, LB 764, § 106; Laws 2002, LB 1054, § 25; Laws 2003, LB 444, § 10; Laws 2004, LB 820, § 1; Laws 2008, LB39, § 4; Laws 2011, LB449, § 12; Laws 2018, LB377, § 5; Laws 2019, LB411, § 59; Laws 2024, LB287, § 54. Operative date July 19, 2024.

32-1304 Petition papers; requirements.

(1) The Secretary of State shall design the uniform petition papers to be distributed by all filing officers and shall keep a sufficient number of such blank petition papers on file for distribution to any filing officer requesting recall petitions. The petition papers shall as nearly as possible conform to the requirements of section 32-628.

(2) In addition to the requirements specified in section 32-628, for the purpose of preventing fraud, deception, and misrepresentation, every sheet of each petition paper presented to a registered voter for his or her signature shall have upon it, above the lines for signatures, (a) a statement that the signatories must be registered voters qualified by residence to vote for the office in question and support the holding of a recall election and (b) in letters not smaller than sixteen-point type in red print (i) the name and office of the individual sought to be recalled, (ii) the reason or reasons for which recall is sought, (iii) the defense statement, if any, submitted by the official, and (iv) the name of the principal circulator or circulators of the recall petition. The decision of a county attorney to prosecute or not to prosecute any individual shall not be stated on a petition as a reason for recall.

(3) Every sheet of each petition paper presented to a registered voter for his or her signature shall have upon it, below the lines for signatures, an affidavit as required in subsection (3) of section 32-628 which also includes language substantially as follows: ''and that the affiant stated to each signer, before the signer affixed his or her signature to the petition, the following: (a) The name and office of the individual sought to be recalled, (b) the reason or reasons for which recall is sought as printed on the petition, (c) the defense statement, if any, submitted by the official as printed on the petition, and (d) the name of the principal circulator or circulators of the recall petition''.

(4) Each petition paper shall contain a statement entitled Instructions to Petition Circulators prepared by the Secretary of State to assist circulators in understanding the provisions governing the petition process established by sections 32-1301 to 32-1309. The instructions shall include the following statements:

(a) No one circulating this petition paper in an attempt to gather signatures shall sign the circulator's affidavit unless each person who signed the petition paper did so in the presence of the circulator.

(b) No one circulating this petition paper in an attempt to gather signatures shall allow a person to sign the petition until the circulator has stated to the person (i) the object of the petition as printed on the petition, (ii) the name and office of the individual sought to be recalled, (iii) the reason or reasons for which recall is sought as printed on the petition, (iv) the defense statement, if

any, submitted by the official as printed on the petition, and (v) the name of the principal circulator or circulators of the recall petition.

Source: Laws 1994, LB 76, § 377; Laws 2002, LB 1054, § 26; Laws 2003, LB 444, § 11; Laws 2024, LB287, § 55.
Operative date July 19, 2024.

32-1305 Petition papers; filing; signature verification; procedure.

(1) The principal circulator or circulators shall file, as one instrument, all petition papers comprising a recall petition for signature verification with the filing officer within thirty days after the filing officer issues the initial petition papers to the principal circulator or circulators as provided in section 32-1303.

(2) If the filing officer is the subject of a recall petition, the signature verification process shall be conducted by two election commissioners or county clerks appointed by the Secretary of State which shall not include the filing officer. Mileage and expenses incurred by officials appointed pursuant to this subsection shall be reimbursed by the political subdivision involved in the recall.

(3) Within fifteen business days after the filing of the petition, the filing officer shall ascertain whether or not the petition is signed by the requisite number of registered voters. No new signatures may be added after the initial filing of the petition papers. Any person may remove his or her name from a petition as provided in section 32-632. If the petition is found to be sufficient, the filing officer shall attach to the petition a certificate showing the result of such examination. If the requisite number of signatures has not been gathered, the filing officer shall file the petition in his or her office without prejudice to the filing of a new petition for the same purpose.

Source: Laws 1994, LB 76, § 378; Laws 2020, LB1055, § 16; Laws 2024, LB287, § 56.
Operative date July 19, 2024.

32-1306 Filing officer; notification required; recall election; when held.

(1) If the recall petition is found to be sufficient, the filing officer shall notify the official whose removal is sought and the governing body of the affected political subdivision that sufficient signatures have been gathered. Notification of the official sought to be removed shall be by any method specified in section 25-505.01 or, if notification cannot be made with reasonable diligence by any of the methods specified in section 25-505.01, by leaving such notice at the official's usual place of residence and mailing a copy by first-class mail to the official's last-known address.

(2) The governing body of the political subdivision shall, within twenty-one days after receipt of the notification from the filing officer pursuant to subsection (1) of this section, order an election. The date of the election shall be the first available date that complies with section 32-405 and that can be certified to the election commissioner or county clerk at least fifty days prior to the election, except that if any other election is to be held in that political subdivision within ninety days after such notification, the governing body of the political subdivision shall provide for the holding of the recall election on the same day.

(3) All resignations shall be tendered as provided in section 32-562. If the official whose removal is sought resigns before the recall election is held, the governing body may cancel the recall election if the governing body notifies the election commissioner or county clerk of the cancellation on or before the fourth Thursday prior to the election, otherwise the recall election shall be held as scheduled.

(4) If a filing officer is subject to a recall election, the Secretary of State shall conduct the recall election.

Source: Laws 1994, LB 76, § 379; Laws 2004, LB 820, § 2; Laws 2008, LB312, § 4; Laws 2011, LB449, § 13; Laws 2019, LB411, § 60; Laws 2020, LB1055, § 17; Laws 2022, LB843, § 45; Laws 2024, LB287, § 57.
Operative date July 19, 2024.

32-1308 Recall election; results; effect; vacancies; how filled.

(1) If a majority of the votes cast at a recall election are against the removal of the official named on the ballot or the election results in a tie, the official shall continue in office for the remainder of his or her term but may be subject to further recall attempts as provided in section 32-1309.

(2) If a majority of the votes cast at a recall election are for the removal of the official named on the ballot, he or she shall, regardless of any technical defects in the recall petition, be deemed removed from office unless a recount is ordered. If the official is deemed removed, the removal shall result in a vacancy in the office which shall be filled as provided in this section and sections 32-567 to 32-570, 32-574, and 32-606.01.

(3) If the election results show a margin of votes equal to one percent or less between the removal or retention of the official in question, the Secretary of State, election commissioner, or county clerk shall order a recount of the votes cast unless the official named on the ballot files a written statement with the filing officer that he or she does not want a recount.

(4) If there are vacancies in the offices of one-half or more of the members of any governing body at one time due to the recall of such members, a special election to fill such vacancies shall be conducted as expeditiously as possible by the Secretary of State, election commissioner, or county clerk. Candidates for the special election shall file a candidate filing form pursuant to section 32-606.01.

(5) No official who is removed at a recall election or who resigns after the initiation of the recall process shall be appointed to fill the vacancy resulting from his or her removal or the removal of any other member of the same governing body during the remainder of his or her term of office.

Source: Laws 1994, LB 76, § 381; Laws 2015, LB575, § 28; Laws 2024, LB287, § 58.
Operative date July 19, 2024.

32-1309 Recall petition filing form prohibited; when.

No recall petition filing form shall be filed against an elected official within twelve months after a recall election has failed to remove him or her from

office or within six months after the beginning of his or her term of office or within six months prior to the incumbent filing deadline for the office.

Source: Laws 1994, LB 76, § 382; Laws 2019, LB411, § 61.

32-1310 Recall election; failure or refusal to call; county attorney; duties.

If the governing board of a political subdivision fails or refuses to call for a recall election by the date established in subsection (2) of section 32-1306, the county attorney in the county in which the board is located shall file an action in the district court to order the recall election. For offices filled by election in more than one county, the county attorney in the county with the most registered voters residing within the political subdivision shall file the action in the district court to order the recall election.

Source: Laws 2022, LB843, § 46.

ARTICLE 14

INITIATIVES, REFERENDUMS, AND ADVISORY VOTES

Section

32-1405 Initiative and referendum petitions; sponsors; filing required; Revisor of Statutes; Secretary of State; duties.

(1) Prior to obtaining any signatures on an initiative or referendum petition, a statement of the object of the petition and the text of the measure shall be filed with the Secretary of State together with a sworn statement containing the names and street addresses of every person, corporation, or association sponsoring the petition. Sponsors of the petition may be added or removed with the unanimous written consent of the original sponsor or sponsors at any time prior to or on the day the petition is filed for verification with the Secretary of State.

(2) Upon receipt of the filing, the Secretary of State shall transmit the text of the proposed measure to the Revisor of Statutes. The Revisor of Statutes shall review the proposed measure and suggest changes as to form and draftsmanship. The revisor shall complete the review within ten business days after receipt from the Secretary of State. The Secretary of State shall provide the results of the review and suggested changes to the sponsor but shall otherwise keep the proposed measure, the review, and the sworn statement confidential for five days after receipt of the review by the sponsor. The Secretary of State shall then maintain the proposed measure, the opinion, and the sworn statement as public information and as a part of the official record of the initiative. The sponsor may make any changes recommended by the Revisor of Statutes and shall submit final language to the Secretary of State. If the final language is addressing a subject that is substantially different in form or substance from the initial filing or the changes recommended by the Revisor of Statutes, the Secretary of State shall reject it.

(3) The Secretary of State shall prepare the form of the petition from the final language filed by the sponsor and shall provide a copy of the form of the petition to the sponsor within five business days after receipt of the final language of the proposed measure. The sponsor shall print the petitions to be circulated from the forms provided. Prior to circulation, the sponsor shall file a sample copy of the petition to be circulated with the Secretary of State.

Source: Laws 1994, LB 76, § 387; Laws 1995, LB 337, § 5; Laws 2019, LB411, § 62; Laws 2022, LB843, § 47; Laws 2024, LB287, § 59. Operative date July 19, 2024.

32-1407 Initiative petition; filing deadline; issue placed on ballot; when; referendum petition; filing deadline; affidavit of sponsor.

(1) Initiative petitions shall be filed in the office of the Secretary of State at least four months prior to the general election at which the proposal would be submitted to the voters.

(2) When a copy of the form of any initiative petition is filed with the Secretary of State prior to obtaining signatures, the issue presented by such petition shall be placed before the voters at the next general election occurring at least four months after the date that such copy is filed if the signed petitions are found to be valid and sufficient. All signed initiative petitions shall become invalid on the date of the first general election occurring at least four months after the date on which the copy of the form is filed with the Secretary of State.

(3) Petitions invoking a referendum shall be filed in the office of the Secretary of State within ninety days after the Legislature at which the act sought to be referred was passed has adjourned sine die or has adjourned for more than ninety days.

(4) At the time of filing the signed petitions, at least one sponsor shall sign an affidavit certifying that the petitions contain a sufficient number and distribution of signatures pursuant to Article III, section 2, of the Constitution of Nebraska to place the issue on the ballot if such number and distribution of signatures were found to be valid.

Source: Laws 1994, LB 76, § 389; Laws 2019, LB411, § 63; Laws 2024, LB287, § 60.
Operative date April 17, 2024.

32-1409 Initiative and referendum petitions; signature verification; procedure; certification; Secretary of State; duties.

(1) Upon the receipt of the petitions, the Secretary of State, with the aid and assistance of the election commissioner or county clerk, shall determine the validity and sufficiency of signatures on the pages of the filed petition. The Secretary of State shall deliver the various pages of the filed 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 pages of the petition, the election commissioner or county clerk shall issue to the Secretary of State a written receipt that the pages of the petition are in the custody of the election commissioner or county clerk. The election commissioner or county clerk shall determine if each signer was a registered voter on or before the date on which the petition was required to be filed with the Secretary of State. The election commissioner or county clerk shall compare the signer's signature, printed name, date of birth, street name 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 determination of the election commissioner or county clerk may be rebutted by any credible evidence which the election commissioner or county clerk 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 such petition, the sufficiency of such petition, and the qualifications of the signer, shall be to prevent fraud, deception, and misrepresentation in the petition process. If the Secretary of State receives reports from a sufficient number of the counties that signatures in excess of one hundred ten percent of the number necessary to place the issue on the ballot have been verified, the Secretary of State may instruct the election commissioners and county clerks in all counties to stop verifying signatures and certify the number of signatures verified as of receipt of the instruction from the Secretary of State.

(2) Upon completion of the determination of registration, 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 petition 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 any page or pages of 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 deliver all pages of the petition and the certifications to the Secretary of State within forty days after the receipt of such pages from the Secretary of State. The delivery shall be by hand carrier, by use of law enforcement officials, or by certified mail, return receipt requested. The Secretary of State may grant to the election commissioner or county clerk an additional ten days to return all pages of the petition in extraordinary circumstances.

(3) Upon receipt of the pages of the petition, the Secretary of State shall issue a written receipt indicating the number of pages of the petition that are in his or her custody. When all the petitions and certifications have been received by the Secretary of State, he or she shall strike from the pages of the petition all but the earliest dated signature of any duplicate signatures and such stricken signatures shall not be added to the total number of valid signatures. Not more than twenty signatures on one sheet shall be counted. All signatures secured in a manner contrary to sections 32-1401 to 32-1416 shall not be counted. Clerical and technical errors in a petition shall be disregarded if the forms prescribed in sections 32-1401 to 32-1403 are substantially followed. The Secretary of State shall total the valid signatures and determine if constitutional and statutory requirements have been met. The Secretary of State shall immediately serve a copy of such determination by certified or registered mail upon the person filing the initiative or referendum petition. If the petition is found to be valid and sufficient, the Secretary of State shall proceed to place the measure on the general election ballot.

(4) The Secretary of State may adopt and promulgate rules and regulations for the issuance of all necessary forms and procedural instructions to carry out this section.

Source: Laws 1994, LB 76, § 391; Laws 1995, LB 337, § 6; Laws 1997, LB 460, § 8; Laws 2007, LB311, § 1; Laws 2019, LB411, § 64.

32-1412 Initiative and referendum measures; refusal of Secretary of State to place on ballot; jurisdiction of district court; parties; appeal.

(1) If the Secretary of State refuses to place on the ballot any measure proposed by an initiative petition presented at least four months preceding the date of the election at which the proposed law or constitutional amendment is to be voted upon or a referendum petition presented within ninety days after the Legislature enacting the law to which the petition applies adjourns sine die or for a period longer than ninety days, any resident may apply, within ten days after such refusal, to the district court of Lancaster County for a writ of mandamus. If it is decided by the court that such petition is legally sufficient, the Secretary of State shall order the issue placed upon the ballot at the next general election.

(2) On a showing that an initiative or referendum petition is not legally sufficient, the court, on the application of any resident, may enjoin the Secretary of State and all other officers from certifying or printing on the official ballot for the next general election the ballot title and number of such measure. If a suit is filed against the Secretary of State seeking to enjoin him or her from placing the measure on the official ballot, the person who is the sponsor of record of the petition shall be a necessary party defendant in such suit.

(3) Such suits shall be advanced on the trial docket and heard and decided by the court as quickly as possible. Either party may appeal to the Court of Appeals within ten days after a decision is rendered. The appeal procedures described in the Administrative Procedure Act shall not apply to this section.

(4) The district court of Lancaster County shall have jurisdiction over all litigation arising under sections 32-1401 to 32-1416.

Source: Laws 1994, LB 76, § 394; Laws 2018, LB193, § 69.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 15
VIOLATIONS AND PENALTIES

Section

32-1518 Election officials; other violations of Election Act; penalty; political subdivision; member of governing body; failure or refusal to perform duty; penalty.

(1) Any judge or clerk of election, any precinct or district inspector, or any other person upon whom any duty is imposed by the Election Act relating to elections who willfully does or performs anything prohibited by the act for which no other penalty is provided or neglects or omits to perform any such duty shall be guilty of a Class I misdemeanor and shall forfeit his or her office.

(2) Any member of a governing body of a political subdivision upon whom a duty is imposed under subsection (2) of section 32-1306 who fails or refuses to perform such duty is guilty of a Class I misdemeanor.

Source: Laws 1994, LB 76, § 417; Laws 2022, LB843, § 48.

32-1524 Electioneering; dissemination of information or materials; circulation of petitions; prohibited acts; penalty.

(1) No judge or clerk of election or precinct or district inspector shall do any electioneering or disseminate information or materials advertising or advocating for or against any ballot measure while acting as an election official.

(2) No person shall do any electioneering, disseminate information or materials advertising or advocating for or against any ballot measure, or circulate petitions within any polling place or any building designated for voters to cast ballots by the election commissioner or county clerk pursuant to the Election Act while the polling place or building is set up for voters to cast ballots or within two hundred feet of the entrances to any such polling place or building except as otherwise provided in subsection (4) of this section.

(3) No person shall do any electioneering or disseminate information or materials advertising or advocating for or against any ballot measure within two hundred feet of any secure ballot drop-box.

(4) Subject to any local ordinance, a person may display yard signs on private real property within two hundred feet of a polling place or building designated for voters to cast ballots or a secure ballot drop-box if the property is not under common ownership with the property on which the polling place, building, or secure ballot drop-box is located.

(5) Any person violating this section shall be guilty of a Class V misdemeanor.

Source: Laws 1994, LB 76, § 423; Laws 2006, LB 940, § 2; Laws 2016, LB874, § 7; Laws 2019, LB411, § 65; Laws 2022, LB843, § 49; Laws 2024, LB287, § 61.
Operative date April 17, 2024.

32-1525 Polling and interviews; poll watchers; prohibited acts; penalty.

(1) No person shall conduct an exit poll, a public opinion poll, or any other interview with voters on election day seeking to determine voter preference within twenty feet of the entrance of any polling place or, if inside the polling place or building, within one hundred feet of any voting booth.

(2)(a) No poll watcher shall interfere with any voter in the preparation or casting of such voter's ballot or prevent any election worker from performing the worker's duties.

(b) A poll watcher shall not provide assistance to a voter as described in section 32-918 unless selected by the voter to provide assistance as provided in section 32-918.

(c) A poll watcher shall not do any electioneering or disseminate any information or materials advertising or advocating for or against any ballot measure while engaged in observing at a polling place.

(d) A poll watcher shall maintain a distance of at least eight feet from the sign-in table, the sign-in register, the polling booths, the ballot box, and any ballots which have not been cast, except that if the polling place is not large enough for a distance of eight feet, the judge of election shall post a notice of the minimum distance the poll watcher must maintain from the sign-in table, the sign-in register, the polling booths, the ballot box, and any ballots which have not been cast. The posted notice shall be clearly visible to the voters and shall be posted prior to the opening of the polls on election day. The minimum distance shall not be determined to exclude a poll watcher from being in the polling place.

(3) Any person violating this section shall be guilty of a Class V misdemeanor.

Source: Laws 1994, LB 76, § 424; Laws 2020, LB1055, § 18; Laws 2024, LB287, § 62.
Operative date April 17, 2024.

32-1530 Ineligible voter; illegal voting; penalty.

Any person who votes (1) who is not a resident of this state or registered in the county or who at the time of election is not of the constitutionally prescribed age of a registered voter, (2) who is not a citizen of the United States, or (3) after being disqualified by law by reason of his or her conviction of a felony and prior to completing the sentence, including any parole term, shall be guilty of a Class IV felony.

Source: Laws 1994, LB 76, § 429; Laws 2005, LB 53, § 6; Laws 2024, LB20, § 6.
Effective date July 19, 2024.

32-1546 Petition signers and circulators; prohibited acts; penalties.

(1) Any person who is not, at the time of signing a petition, a registered voter and qualified to sign the petition except as provided for initiative and referendum petitions in section 32-1404 or who signs any name other than his or her own to any petition shall be guilty of a Class I misdemeanor.

(2) Any person who falsely swears to a circulator's affidavit on a petition, who accepts money or other things of value for signing a petition, or who offers money or other things of value in exchange for a signature upon any petition shall be guilty of a Class IV felony.

(3) Any person who falsifies a letter submitted pursuant to section 32-632 or subsection (3) of section 32-1305 or who signs any name other than his or her own to such letter shall be guilty of a Class I misdemeanor.

Source: Laws 1994, LB 76, § 445; Laws 2003, LB 444, § 13; Laws 2024, LB287, § 63.
Operative date July 19, 2024.

32-1552 Initiative or referendum petition; sponsor's affidavit; falsely swearing; penalty.

Any person who knowingly and falsely swears to a sponsor's affidavit on a petition filed under section 32-1407 shall be guilty of a Class I misdemeanor.

Source: Laws 2024, LB287, § 64.
Operative date April 17, 2024.

CHAPTER 33
FEES AND SALARIES

Section

33-101 Secretary of State; fees.

There shall be paid to the Secretary of State the following fees:

(1) For certificate or exemplification with seal, ten dollars;

(2) For copies of records, for each page, a fee of one dollar;

(3) For accessing records by electronic means:

(a) For batch requests of business entity information, fifteen dollars for up to one thousand business entities accessed and an additional fifteen dollars for each additional one thousand business entities accessed over one thousand;

(b) For information in the Secretary of State's Uniform Commercial Code Division database, including records filed pursuant to the Uniform Commercial Code, Chapter 52, article 2, 5, 7, 9, 10, 11, 12, or 14, Chapter 54, article 2, or the Uniform State Tax Lien Registration and Enforcement Act, for batch requests searched by debtor location, fifteen dollars for up to one thousand records accessed and an additional fifteen dollars for each additional one thousand records accessed over one thousand;

(c) For an electronically transmitted certificate indicating whether a business is properly registered with the Secretary of State and authorized to do business in the state, six dollars and fifty cents;

(d) For the entire contents of the database regarding corporations and the Uniform Commercial Code, but excluding electronic images, three hundred dollars weekly subscription rate, one thousand dollars monthly subscription

rate for a twice-monthly service, and eight hundred dollars monthly subscription rate;

(e) For images of records accessed over the Internet or by other electronic means other than facsimile machine, forty-five cents for each page or image of a page, not to exceed two thousand dollars per request for batch requests; and

(f) For the entire contents of the image database regarding corporations and the Uniform Commercial Code, eight hundred dollars monthly subscription rate;

(4) For taking acknowledgment, ten dollars;

(5) For administering oath, ten dollars;

(6) For filings by for-profit corporations and associations required or permitted by law to file articles of incorporation or organization with the Secretary of State, the fees provided in section 21-205 unless otherwise specifically provided by law; and

(7) For filings by nonprofit corporations and associations required or permitted by law to file articles of incorporation or organization with the Secretary of State or for such a filing by any entity declared to be a corporation under section 21-608, the fees provided in section 21-1905 unless otherwise specifically provided by law.

The Secretary of State shall remit all fees collected pursuant to subdivisions (1), (2), and (4) through (7) of this section to the State Treasurer for credit to the Secretary of State Cash Fund. The Secretary of State shall remit all fees collected pursuant to subdivision (3) of this section to the State Treasurer for credit to the Records Management Cash Fund, and such fees shall be distributed as provided in any agreements between the State Records Board and the Secretary of State.

Source: Laws 1877, § 5, p. 196; Laws 1897, c. 72, § 1, p. 331; Laws 1907, c. 139, § 1, p. 445; Laws 1911, c. 128, § 1, p. 435; R.S.1913, § 2423; Laws 1921, c. 104, § 1, p. 374; C.S.1922, § 2364; C.S. 1929, § 33-103; R.S.1943, § 33-101; Laws 1947, c. 118, § 1, p. 349; Laws 1955, c. 63, § 12, p. 207; Laws 1961, c. 156, § 1, p. 477; Laws 1965, c. 183, § 1, p. 569; Laws 1969, c. 268, § 1, p. 1030; Laws 1975, LB 95, § 6; Laws 1982, LB 928, § 27; Laws 1994, LB 1004, § 2; Laws 1995, LB 109, § 214; Laws 1996, LB 681, § 194; Laws 1998, LB 924, § 18; Laws 2000, LB 929, § 23; Laws 2003, LB 524, § 20; Laws 2014, LB278, § 1; Laws 2014, LB749, § 279; Laws 2018, LB749, § 2; Laws 2020, LB910, § 11.

Cross References

Uniform State Tax Lien Registration and Enforcement Act, see section 77-3901.

33-102 Notary public; fees.

The Secretary of State shall be entitled to the sum of thirty dollars for receiving an application for a commission to act as a notary public pursuant to section 64-102. The Secretary of State shall be entitled to the sum of thirty dollars for receiving a renewal application pursuant to section 64-104.

The fees received by the Secretary of State pursuant to this section shall be remitted to the State Treasurer for credit seventy-five percent to the General Fund and twenty-five percent to the Secretary of State Cash Fund.

Source: Laws 1869, § 13, p. 25; R.S.1913, § 2424; Laws 1921, c. 99, § 1, p. 364; C.S.1922, § 2365; C.S.1929, § 33-104; R.S.1943, § 33-102; Laws 1945, c. 145, § 11, p. 494; Laws 1949, c. 93, § 4, p. 246; Laws 1963, c. 184, § 1, p. 625; Laws 1967, c. 396, § 1, p. 1241; Laws 1982, LB 928, § 28; Laws 1994, LB 1004, § 3; Laws 1995, LB 7, § 30; Laws 2009, First Spec. Sess., LB3, § 17; Laws 2020, LB910, § 12.

33-105 Repealed. Laws 2024, LB1368, § 11.

33-106 Clerk of the district court; fees; enumerated.

(1) In addition to the judges' retirement fund fee provided in section 24-703 and the fees provided in section 33-106.03 and except as otherwise provided by law, the fees of the clerk of the district court shall be as provided in this section. There shall be a docket fee of forty-two dollars for each civil and criminal case except:

(a) There shall be a docket fee of twenty-five dollars for each case commenced by filing a transcript of judgment from another court in this state for the purpose of obtaining a lien;

(b) For proceedings under the Nebraska Workers' Compensation Act and the Employment Security Law, when provision is made for the fees that may be charged; and

(c) There shall be a docket fee of twenty-seven dollars for each criminal case appealed to the district court from any court inferior thereto.

(2) In all cases, other than those appealed from an inferior court or original filings which are within jurisdictional limits of an inferior court and when a jury is demanded in district court, the docket fee shall cover all fees of the clerk, except that the clerk shall be paid for each copy or transcript ordered of any pleading, record, or other document and that the clerk shall be entitled to a fee of fifteen dollars for a records management fee which will be taxed as costs of the case.

(3) In all civil cases, except habeas corpus cases in which a poverty affidavit is filed and approved by the court, and for all other services, the docket fee or other fee shall be paid by the party filing the case or requesting the service at the time the case is filed or the service requested.

(4) For any other service which may be rendered or performed by the clerk but which is not required in the discharge of his or her official duties, the fee shall be the same as that of a notary public but in no case less than one dollar.

Source: R.S.1866, c. 19, § 3, p. 157; Laws 1877, § 5, p. 217; Laws 1899, c. 31, § 1, p. 164; Laws 1905, c. 68, § 1, p. 363; Laws 1909, c. 55, § 1, p. 280; R.S.1913, §§ 2421, 2429; Laws 1917, c. 40, § 1, p. 119; Laws 1919, c. 82, § 1, p. 204; C.S.1922, §§ 2362, 2369; Laws 1925, c. 81, § 1, p. 255; Laws 1927, c. 118, § 1, p. 328; C.S.1929, §§ 33-101, 33-108; R.S.1943, § 33-106; Laws 1947, c. 120, § 1, p. 353; Laws 1949, c. 94, § 1(1), p. 252; Laws 1951, c. 106, § 2, p. 512; Laws 1959, c. 140, § 4, p. 546; Laws 1961, c. 157, § 1, p. 480; Laws 1965, c. 125, § 3, p. 463; Laws 1977, LB 126, § 2;

Laws 1981, LB 84, § 1; Laws 1983, LB 617, § 4; Laws 1986, LB 811, § 14; Laws 1986, LB 333, § 8; Laws 2003, LB 760, § 13; Laws 2005, LB 348, § 7; Laws 2011, LB17, § 5; Laws 2017, LB307, § 1; Laws 2018, LB193, § 70; Laws 2020, LB912, § 16.

Cross References

Employment Security Law, see section 48-601.
Nebraska Workers' Compensation Act, see section 48-1,110.

33-106.01 Clerk of the district court; costs; record.

The clerk of the district court shall keep a record of the costs chargeable and taxable against each party in any suit pending in court. He or she at any time may make out a statement of such fees specifying each item of the fees so charged and taxed under seal of the court, which fee bill, so made under the seal of the court, shall have the same force and effect as an execution. The sheriff to whom the fee bill shall be issued shall execute the same as an execution and have the same fees therefor. The clerk shall not enter on the record any fees of any officer claiming the same, unless such officer shall duly return an itemized bill of the same.

Source: R.S.1866, c. 19, § 3, p. 157; Laws 1877, § 4, p. 217; Laws 1899, c. 31, § 1, p. 164; Laws 1905, c. 68, § 1, p. 363; Laws 1909, c. 55, § 1, p. 280; R.S.1913, §§ 2421, 2429; Laws 1917, c. 40, § 1, p. 119; Laws 1919, c. 82, § 1, p. 204; C.S.1922, §§ 2362, 2369; Laws 1925, c. 81, § 1, p. 255; Laws 1927, c. 118, § 1, p. 328; C.S.1929, §§ 33-101, 33-108; R.S.1943, § 33-106; Laws 1947, c. 120, § 1, p. 353; Laws 1949, c. 94, § 1(2), p. 253; Laws 1959, c. 140, § 5, p. 547; Laws 2018, LB193, § 71.

33-106.02 Clerk of the district court; fees; report; disposition.

(1) The clerk of the district court of each county shall not retain for his or her own use any fees, revenue, perquisites, or receipts, fixed, enumerated, or provided in this or any other section of the statutes of the State of Nebraska or any fees authorized by federal law to be collected or retained by a county official. The clerk shall on or before the fifteenth day of each month make a report to the county board, under oath, showing the different items of such fees, revenue, perquisites, or receipts received, from whom, at what time, and for what service, and the total amount received by such officer since the last report, and also the amount received for the current year.

(2) The clerk shall account for and pay any fees, revenue, perquisites, or receipts not later than the fifteenth day of the month following the calendar month in which such fees, revenue, perquisites, or receipts were received in the following manner:

(a) Of the forty-two-dollar docket fee imposed pursuant to section 33-106, one dollar shall be remitted to the State Treasurer for credit to the General Fund and six dollars shall be remitted to the State Treasurer for credit to the Nebraska Retirement Fund for Judges through June 30, 2021. Beginning July 1, 2021, seven dollars of such forty-two-dollar docket fee shall be remitted to the State Treasurer for credit to the Nebraska Retirement Fund for Judges;

(b) Of the twenty-seven-dollar docket fee imposed for appeal of a criminal case to the district court pursuant to section 33-106, two dollars shall be

remitted to the State Treasurer for credit to the Nebraska Retirement Fund for Judges; and

(c) The remaining fees, revenue, perquisites, or receipts shall be credited to the general fund of the county.

Source: R.S.1866, c. 19, § 3, p. 157; Laws 1877, § 5, p. 217; Laws 1899, c. 31, § 1, p. 164; Laws 1905, c. 68, § 1, p. 363; Laws 1909, c. 55, § 1, p. 280; R.S.1913, §§ 2421, 2429; Laws 1917, c. 40, § 1, p. 119; Laws 1919, c. 82, § 1, p. 204; C.S.1922, §§ 2362, 2369; Laws 1925, c. 81, § 1, p. 255; Laws 1927, c. 118, § 1, p. 328; C.S.1929, §§ 33-101, 33-108; R.S.1943, § 33-106; Laws 1947, c. 120, § 1, p. 353; Laws 1949, c. 94, § 1(3), p. 254; Laws 1983, LB 617, § 5; Laws 1989, LB 4, § 3; Laws 2005, LB 348, § 8; Laws 2006, LB 823, § 1; Laws 2016, LB803, § 1; Laws 2021, LB17, § 5.

33-106.03 Dissolution of marriage; additional fees.

In addition to the fees provided for in sections 33-106 and 33-123, the clerk of the court shall collect an additional fifty dollars as a mediation fee and twenty-five dollars as a child abuse prevention fee for each complaint filed for dissolution of marriage. The fees shall be remitted to the State Treasurer who shall credit the child abuse prevention fee to the Nebraska Child Abuse Prevention Fund and the mediation fee to the Parenting Act Fund.

Source: Laws 1986, LB 333, § 7; Laws 1996, LB 1296, § 6; Laws 2002, Second Spec. Sess., LB 48, § 1; Laws 2007, LB554, § 26; Laws 2017, LB307, § 2.

33-107.02 Paternity determination; parental support proceeding; certain marriage, child support, child custody, or parenting time actions; additional mediation fee and civil legal services fee.

(1) A mediation fee of fifty dollars and a civil legal services fee of fifteen dollars shall be collected by the clerk of the county court or the clerk of the district court for each paternity determination or parental support proceeding under sections 43-1401 to 43-1418, for each complaint or action to modify a decree of dissolution or annulment of marriage, and for each complaint or action to modify an award of child support, child custody, parenting time, visitation, or other access as defined in section 43-2922. Such fees shall be remitted to the State Treasurer on forms prescribed by the State Treasurer within ten days after the close of each month. The civil legal services fee shall be credited to the Legal Aid and Services Fund, and the mediation fee shall be credited to the Parenting Act Fund.

(2) Any proceeding filed by a county attorney or an authorized attorney, in a case in which services are being provided under Title IV-D of the federal Social Security Act, as amended, shall not be subject to the provisions of subsection (1) of this section. In any such proceeding, a mediation fee of fifty dollars and a civil legal services fee of fifteen dollars shall be collected by the clerk of the county court or the clerk of the district court for any pleading in such proceeding filed by any party, other than a county attorney or authorized attorney, subsequent to the paternity filing if such pleading is to modify an award of child support or to establish or modify custody, parenting time, visitation, or other access as defined in section 43-2922. Such fees shall be remitted to the State Treasurer on forms prescribed by the State Treasurer

within ten days after the close of each month. The mediation fee shall be credited to the Parenting Act Fund and the civil legal services fee shall be credited to the Legal Aid and Services Fund.

(3) For purposes of this section, authorized attorney has the same meaning as in section 43-1704.

Source: Laws 1997, LB 729, § 2; Laws 1999, LB 19, § 1; Laws 2007, LB554, § 27; Laws 2017, LB307, § 3.

33-109 Register of deeds; county clerk; fees.

(1) The register of deeds and the county clerk shall receive for recording a deed, mortgage, or release, recording and indexing of a will, recording and indexing of a decree in a testate estate, recording proof of publication, or recording any other instrument, a fee of ten dollars for the first page and six dollars for each additional page. Two dollars and fifty cents of the ten-dollar fee for recording the first page and fifty cents of the six-dollar fee for recording each additional page shall be used exclusively for the purposes of preserving and maintaining public records of the office of the register of deeds and for modernization and technology needs relating to such records and preserving and maintaining public records of a register of deeds office that has been consolidated with another county office pursuant to section 22-417 and for modernization and technology needs relating to such records. The funds allocated under this subsection shall not be substituted for other allocations of county general funds to the register of deeds office or any other county office for the purposes enumerated in this subsection.

(2) The cost for a certified copy of any instrument filed or recorded in the office of county clerk or register of deeds shall be one dollar and fifty cents per page.

Source: Laws 1879, § 1, p. 107; Laws 1887, c. 42, § 1, p. 461; R.S.1913, § 2435; C.S.1922, § 2375; C.S.1929, § 33-114; Laws 1931, c. 66, § 1, p. 185; Laws 1935, c. 80, § 1, p. 269; Laws 1941, c. 67, § 1, p. 292; C.S.Supp.,1941, § 33-114; R.S.1943, § 33-109; Laws 1949, c. 93, § 5, p. 247; Laws 1961, c. 159, § 1, p. 484; Laws 1963, c. 185, § 1, p. 626; Laws 1965, c. 185, § 1, p. 574; Laws 1967, c. 204, § 1, p. 560; Laws 1969, c. 270, § 1, p. 1034; Laws 1971, LB 381, § 1; Laws 1972, LB 1264, § 1; Laws 1983, LB 463, § 1; Laws 2012, LB14, § 4; Laws 2017, LB152, § 2; Laws 2017, LB268, § 7; Laws 2019, LB593, § 5.

33-116 County surveyor; compensation; fees; mileage; equipment furnished.

Each county surveyor shall be entitled to receive the following fees: (1) For all services rendered to the county or state, a daily rate as determined by the county board; and (2) for each mile actually and necessarily traveled in going to and from work, the rate allowed by the provisions of section 81-1176. All expense of necessary assistants in the performance of the above work, the fees of witnesses, and material used for perpetuation and reestablishing lost exterior section and quarter corners necessary for the survey shall be paid for by the county and the remainder of the cost of the survey shall be paid for by the parties for whom the work may be done. All necessary equipment, conveyance, and repairs to such equipment, required in the performance of the duties of the office, shall be furnished such surveyor at the expense of the county, except that

in any county with a population of less than one hundred thousand the county board may, in its discretion, allow the county surveyor a salary fixed pursuant to section 23-1114, payable monthly, by warrant drawn on the general fund of the county. All fees received by surveyors so receiving a salary may, with the authorization of the county board, be retained by the surveyor, but in the absence of such authorization all such fees shall be turned over to the county treasurer monthly for credit to the county general fund.

Source: R.S.1866, c. 19, § 16, p. 168; Laws 1869, § 1, p. 157; Laws 1899, c. 32, § 1, p. 167; Laws 1913, c. 43, § 12, p. 146; R.S.1913, § 2440; Laws 1919, c. 75, § 1, p. 194; C.S.1922, § 2380; Laws 1927, c. 114, § 1, p. 321; C.S.1929, § 33-119; Laws 1931, c. 65, § 7, p. 180; C.S.Supp.,1941, § 33-119; Laws 1943, c. 90, § 19, p. 305; R.S.1943, § 33-116; Laws 1947, c. 122, § 1, p. 357; Laws 1953, c. 117, § 1, p. 372; Laws 1957, c. 70, § 4, p. 296; Laws 1961, c. 158, § 2, p. 482; Laws 1961, c. 160, § 1, p. 485; Laws 1969, c. 272, § 1, p. 1036; Laws 1981, LB 204, § 50; Laws 1982, LB 127, § 8; Laws 1996, LB 1011, § 21; Laws 2017, LB200, § 3; Laws 2022, LB791, § 3.

33-117 Sheriffs; fees; disposition; mileage; report to county board.

(1) The several sheriffs shall charge and collect fees at the rates specified in this section. The rates shall be as follows: (a) Serving a capias with commitment or bail bond and return, two dollars; (b) serving a search warrant, two dollars; (c) arresting under a search warrant, two dollars for each person so arrested; (d) unless otherwise specifically listed in subdivisions (f) through (s) of this subsection, serving a summons, subpoena, order of attachment, order of replevin, other order of the court, notice of motion, other notice, other writ or document, or any combination thereof, including any accompanying or attached documents, twelve dollars for each person served, except that when more than one person is served at the same time and location in the same case, the service fee shall be twelve dollars for the first person served at that time and location and three dollars for each other person served at that time and location; (e) making a return of each summons, subpoena, order of attachment, order of replevin, other order of the court, notice of motion, other notice, or other writ or document, whether served or not, six dollars; (f) taking and filing a replevin bond or other indemnification to be furnished and approved by the sheriff, one dollar; (g) making a copy of any process, bond, or other paper not otherwise provided for in this section, twenty-five cents per page; (h) traveling each mile actually and necessarily traveled within or without their several counties in their official duties, three cents more per mile than the rate provided in section 81-1176, except that the minimum fee shall be fifty cents when the service is made within one mile of the courthouse, and, as far as is expedient, all papers in the hands of the sheriff at any one time shall be served in one or more trips by the most direct route or routes and only one mileage fee shall be charged for a single trip, the total mileage cost to be computed as a unit for each trip and the combined mileage cost of each trip to be prorated among the persons or parties liable for the payment of same; (i) levying a writ or a court order and return thereof, eighteen dollars; (j) summoning a grand jury, not including mileage to be paid by the county, ten dollars; (k) summoning a petit jury, not including mileage to be paid by the county, twelve dollars; (l) summoning a special jury, for each person impaneled, fifty cents; (m) calling a

jury for a trial of a case or cause, fifty cents; (n) executing a writ of restitution or a writ of assistance and return, eighteen dollars; (o) calling an inquest to appraise lands and tenements levied on by execution, one dollar; (p) calling an inquest to appraise goods and chattels taken by an order of attachment or replevin, one dollar; (q) advertising a sale in a newspaper in addition to the price of printing, one dollar; (r) advertising in writing for a sale of real or personal property, five dollars; and (s) making deeds for land sold on execution or order of sale, five dollars.

(2)(a) Except as provided in subdivision (b) of this subsection, the commission due a sheriff on an execution or order of sale, an order of attachment decree, or a sale of real or personal property shall be: For each dollar not exceeding four hundred dollars, six cents; for every dollar above four hundred dollars and not exceeding one thousand dollars, four cents; and for every dollar above one thousand dollars, two cents.

(b) In real estate foreclosure, when any party to the original action purchases the property or when no money is received or disbursed by the sheriff, the commission shall be computed pursuant to subdivision (a) of this subsection but shall not exceed two hundred dollars.

(3) The sheriff shall, on the first Tuesday in January, April, July, and October of each year, make a report to the county board showing (a) the different items of fees collected, from whom, at what time, and for what service, (b) the total amount of the fees collected by the officer since the last report, and (c) the amount collected for the current year. All fees collected by the sheriff, except mileage fees when the sheriff or his or her employee is using a personal vehicle, shall be paid to the county treasurer who shall credit the fees to the general fund of the county.

(4) Any future adjustment made to the reimbursement rate provided in subsection (1) of this section shall be deemed to apply to all provisions of law which refer to this section for the computation of mileage.

(5) All fees collected pursuant to this section, except fees for mileage accrued in a personal vehicle, by any constable who is a salaried employee of the State of Nebraska shall be remitted to the clerk of the county court. The clerk of the county court shall pay the same to the General Fund.

Source: R.S.1866, c. 19, § 5, p. 161; Laws 1877, § 1, p. 40; Laws 1877, § 5, p. 217; Laws 1907, c. 53, § 1, p. 225; R.S.1913, §§ 2421, 2441; Laws 1915, c. 37, § 1, p. 106; Laws 1921, c. 102, § 1, p. 371; C.S.1922, §§ 2362, 2381; C.S.1929, §§ 33-101, 33-120; Laws 1933, c. 96, § 7, p. 386; Laws 1935, c. 79, § 1, p. 266; C.S.Supp.,1941, § 33-120; Laws 1943, c. 86, § 1(1), p. 286; R.S. 1943, § 33-117; Laws 1947, c. 123, § 1, p. 358; Laws 1951, c. 266, § 1, p. 895; Laws 1953, c. 118, § 1, p. 373; Laws 1957, c. 70, § 5, p. 297; Laws 1959, c. 84, § 3, p. 385; Laws 1961, c. 161, § 1, p. 487; Laws 1961, c. 162, § 1, p. 489; Laws 1965, c. 186, § 1, p. 575; Laws 1967, c. 125, § 4, p. 401; Laws 1969, c. 273, § 1, p. 1037; Laws 1974, LB 625, § 3; Laws 1978, LB 691, § 3; Laws 1980, LB 615, § 3; Laws 1980, LB 628, § 2; Laws 1981, LB 204, § 51; Laws 1982, LB 662, § 1; Laws 1984, LB 394, § 9; Laws 1987, LB 223, § 1; Laws 1988, LB 1030, § 34; Laws 1996, LB 1011, § 22; Laws 2009, LB35, § 25; Laws 2024, LB1162, § 2. Effective date July 19, 2024.

Cross References

For other provisions for fees of sheriff:
Certificate of title, inspection fees, see section 60-158.
Distraint and sale of taxpayer's property, see section 77-3906.
Distress warrant, issuance, levy, and return, fee, see section 77-1720.
Handgun, application, filing fee, see section 69-2404.
Summons in error, see section 25-1904.
Summons of county board of equalization, see section 77-1509.
Summons out of county, see section 25-1713.
Transporting mental health patients, see section 71-929.
Transporting prisoners, see section 83-424.

33-123 County court; civil matters; fees.

The county court shall be entitled to the following fees in civil matters:

(1) Twenty dollars for any and all services rendered up to and including the judgment or dismissal of the action other than for a domestic relations matter. Of such twenty-dollar fee, the following amounts shall be remitted to the State Treasurer for credit to the Nebraska Retirement Fund for Judges: (a) Six dollars through June 30, 2021, (b) beginning July 1, 2021, through June 30, 2022, eight dollars, (c) beginning July 1, 2022, through June 30, 2023, nine dollars, (d) beginning July 1, 2023, through June 30, 2024, ten dollars, (e) beginning July 1, 2024, through June 30, 2025, eleven dollars, and (f) beginning July 1, 2025, twelve dollars;

(2) For any and all services rendered up to and including the judgment or dismissal of a domestic relations matter, forty dollars;

(3) For filing a foreign judgment or a judgment transferred from another court in this state, fifteen dollars; and

(4) For writs of execution, writs of restitution, garnishment, and examination in aid of execution, five dollars each.

Source: R.S.1866, c. 19, § 8, p. 164; Laws 1887, c. 41, § 1, p. 458; Laws 1907, c. 56, § 1, p. 229; Laws 1909, c. 58, § 1, p. 286; R.S.1913, § 2449; Laws 1915, c. 39, § 1, p. 110; Laws 1917, c. 45, § 1, p. 125; Laws 1921, c. 95, § 1, p. 357; C.S.1922, § 2388; Laws 1925, c. 98, § 1, p. 284; C.S.1929, § 33-127; Laws 1931, c. 64, § 1, p. 171; Laws 1937, c. 86, § 1, p. 283; C.S.Supp.,1941, § 33-127; R.S.1943, § 33-123; Laws 1945, c. 74, § 1, p. 276; Laws 1972, LB 1032, § 220; Laws 1974, LB 739, § 2; Laws 1981, LB 99, § 2; Laws 1982, LB 928, § 29; Laws 1983, LB 617, § 6; Laws 1989, LB 233, § 2; Laws 1995, LB 270, § 2; Laws 1996, LB 1296, § 7; Laws 2005, LB 348, § 10; Laws 2015, LB468, § 7; Laws 2021, LB17, § 6.

33-124 County court; criminal cases; fee.

In criminal matters, including preliminary and juvenile hearings, the county court shall receive, for any and all services rendered up to and including the judgment or dismissal of the action and the issuance of mittimus or discharge to the jailer, a fee of twenty dollars. Of such twenty-dollar fee, the following amounts shall be remitted to the State Treasurer for credit to the Nebraska Retirement Fund for Judges: (a) Six dollars through June 30, 2021, (b) beginning July 1, 2021, through June 30, 2022, eight dollars, (c) beginning July 1, 2022, through June 30, 2023, nine dollars, (d) beginning July 1, 2023, through

June 30, 2024, ten dollars, (e) beginning July 1, 2024, through June 30, 2025, eleven dollars, and (f) beginning July 1, 2025, twelve dollars.

Source: Laws 1915, c. 39, § 1, p. 110; Laws 1917, c. 45, § 1, p. 126; Laws 1921, c. 95, § 1, p. 359; C.S.1922, § 2388; Laws 1925, c. 98, § 1, p. 285; C.S.1929, § 33-127; Laws 1931, c. 64, § 1, p. 172; Laws 1937, c. 86, § 1, p. 284; C.S.Supp.,1941, § 33-127; R.S.1943, § 33-124; Laws 1945, c. 74, § 2, p. 276; Laws 1972, LB 1032, § 221; Laws 1981, LB 99, § 3; Laws 1982, LB 928, § 30; Laws 1983, LB 617, § 7; Laws 1989, LB 233, § 3; Laws 2005, LB 348, § 11; Laws 2015, LB468, § 8; Laws 2021, LB17, § 7.

33-125 County court; probate fees; how determined.

(1) In probate matters the county court shall be entitled to receive the following fees:

(a)(i) Twenty-two dollars for probate proceedings commenced and closed informally. Of such twenty-two-dollar fee, the following amounts shall be remitted to the State Treasurer for credit to the Nebraska Retirement Fund for Judges: (A) Six dollars through June 30, 2021, (B) beginning July 1, 2021, through June 30, 2022, eight dollars, (C) beginning July 1, 2022, through June 30, 2023, nine dollars, (D) beginning July 1, 2023, through June 30, 2024, ten dollars, (E) beginning July 1, 2024, through June 30, 2025, eleven dollars, and (F) beginning July 1, 2025, twelve dollars;

(ii) Twenty-two dollars for each subsequent petition or application filed within an informal proceeding, not including the fee for a petition for determination of inheritance tax as provided in section 33-126.03. Of the twenty-two-dollar fee described in this subdivision (ii), the following amounts shall be remitted to the State Treasurer for credit to the Nebraska Retirement Fund for Judges: (A) Six dollars through June 30, 2021, (B) beginning July 1, 2021, through June 30, 2022, eight dollars, (C) beginning July 1, 2022, through June 30, 2023, nine dollars, (D) beginning July 1, 2023, through June 30, 2024, ten dollars, (E) beginning July 1, 2024, through June 30, 2025, eleven dollars, and (F) beginning July 1, 2025, twelve dollars; and

(iii) Twenty-two dollars for any other proceeding under the Nebraska Probate Code for which no court fee is established by statute. Of such twenty-two-dollar fee, the following amounts shall be remitted to the State Treasurer for credit to the Nebraska Retirement Fund for Judges: (A) Six dollars through June 30, 2021, (B) beginning July 1, 2021, through June 30, 2022, eight dollars, (C) beginning July 1, 2022, through June 30, 2023, nine dollars, (D) beginning July 1, 2023, through June 30, 2024, ten dollars, (E) beginning July 1, 2024, through June 30, 2025, eleven dollars, and (F) beginning July 1, 2025, twelve dollars.

The fees assessed under this subdivision (a) shall not exceed the fees which would be assessed for a formal probate under subdivision (b) of this subsection; and

(b) For probate proceedings commenced or closed formally:

(i) When the value does not exceed one thousand dollars, twenty-two dollars;

(ii) When the value exceeds one thousand dollars and is not more than two thousand dollars, thirty dollars;

(iii) When the value exceeds two thousand dollars and is not more than five thousand dollars, fifty dollars;

(iv) When the value exceeds five thousand dollars and is not more than ten thousand dollars, seventy dollars;

(v) When the value exceeds ten thousand dollars and is not more than twenty-five thousand dollars, eighty dollars;

(vi) When the value exceeds twenty-five thousand dollars and is not more than fifty thousand dollars, one hundred dollars;

(vii) When the value exceeds fifty thousand dollars and is not more than seventy-five thousand dollars, one hundred twenty dollars;

(viii) When the value exceeds seventy-five thousand dollars and is not more than one hundred thousand dollars, one hundred sixty dollars;

(ix) When the value exceeds one hundred thousand dollars and is not more than one hundred twenty-five thousand dollars, two hundred twenty dollars;

(x) When the value exceeds one hundred twenty-five thousand dollars and is not more than one hundred fifty thousand dollars, two hundred fifty dollars;

(xi) When the value exceeds one hundred fifty thousand dollars and is not more than one hundred seventy-five thousand dollars, two hundred seventy dollars;

(xii) When the value exceeds one hundred seventy-five thousand dollars and is not more than two hundred thousand dollars, three hundred dollars;

(xiii) When the value exceeds two hundred thousand dollars and is not more than three hundred thousand dollars, three hundred fifty dollars;

(xiv) When the value exceeds three hundred thousand dollars and is not more than four hundred thousand dollars, four hundred dollars;

(xv) When the value exceeds four hundred thousand dollars and is not more than five hundred thousand dollars, five hundred dollars;

(xvi) When the value exceeds five hundred thousand dollars and is not more than seven hundred fifty thousand dollars, six hundred dollars;

(xvii) When the value exceeds seven hundred fifty thousand dollars and is not more than one million dollars, seven hundred dollars;

(xviii) When the value exceeds one million dollars and is not more than two million five hundred thousand dollars, eight hundred dollars;

(xix) When the value exceeds two million five hundred thousand dollars and is not more than five million dollars, one thousand dollars; and

(xx) On all estates when the value exceeds five million dollars, one thousand five hundred dollars.

(2) The fees prescribed in subdivision (1)(b) of this section shall be based on the gross value of the estate, including both real and personal property in the State of Nebraska at the time of death. The gross value shall mean the actual value of the estate less liens and joint tenancy property. Formal fees shall be charged in full for all services performed by the court, and no additional fees shall be charged for petitions, hearing, and orders in the course of such administration. The court shall provide one certified copy of letters of appointment without charge. In other cases when it is necessary to copy instruments, the county court shall be allowed the fees provided in section 33-126.05. In all cases when a petition for probate of will or appointment of an administrator, special administrator, personal representative, guardian, or trustee or any other

petition for an order in probate matters is filed and no appointment is made or order entered and the cause is dismissed, the fee shall be ten dollars.

Source: R.S.1866, c. 19, § 8, p. 164; Laws 1887, c. 41, § 1, p. 459; Laws 1907, c. 56, § 1, p. 230; Laws 1909, c. 58, § 1, p. 287; R.S.1913, § 2449; Laws 1915, c. 39, § 1, p. 111; Laws 1917, c. 45, § 1, p. 126; Laws 1921, c. 95, § 1, p. 358; C.S.1922, § 2388; Laws 1925, c. 98, § 1, p. 285; C.S.1929, § 33-127; Laws 1931, c. 64, § 1, p. 172; Laws 1937, c. 86, § 1, p. 284; C.S.Supp.,1941, § 33-127; R.S.1943, § 33-125; Laws 1945, c. 74, § 3, p. 277; Laws 1963, c. 187, § 1, p. 629; Laws 1975, LB 481, § 22; Laws 1982, LB 928, § 31; Laws 1983, LB 2, § 1; Laws 1984, LB 373, § 2; Laws 1984, LB 492, § 1; Laws 1989, LB 233, § 4; Laws 2005, LB 348, § 12; Laws 2015, LB468, § 9; Laws 2021, LB17, § 8.

Cross References

Nebraska Probate Code, see section 30-2201.

33-126.02 County court; guardianships; conservatorships; fees; how determined.

In matters of guardianship and conservatorship, the county court shall be entitled to receive the following fees: Upon the filing of a petition for the appointment of a guardian, twenty-two dollars; upon the filing of a petition for the appointment of a conservator, twenty-two dollars; upon the filing of one petition for a consolidated appointment of both a guardian and conservator, twenty-two dollars; for the appointment of a successor guardian or conservator, twenty-two dollars; for the appointment of a temporary guardian or temporary or special conservator, twenty-two dollars; and for proceedings for a protective order in the absence of a guardianship or conservatorship, twenty-two dollars. If there is more than one ward listed in a petition for appointment of a guardian or conservator or both, only one filing fee shall be assessed. Two dollars of each twenty-two-dollar 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, four dollars of each twenty-two-dollar fee shall be remitted to the State Treasurer for credit to the Nebraska Retirement Fund for Judges. While such guardianship or conservatorship is pending, the court shall receive five dollars for filing and recording each report. When the appointment of a custodian as provided for in the Nebraska Uniform Transfers to Minors Act is made, the county court shall be entitled to receive a fee of twenty dollars.

Source: R.S.1866, c. 19, § 8, p. 164; Laws 1887, c. 41, § 1, p. 460; Laws 1907, c. 56, § 1, p. 231; Laws 1909, c. 58, § 1, p. 288; R.S.1913, § 2449; Laws 1915, c. 39, § 1, p. 111; Laws 1917, c. 45, § 1, p. 127; Laws 1921, c. 95, § 1, p. 359; C.S.1922, § 2388; Laws 1925, c. 98, § 1, p. 286; C.S.1929, § 33-127; Laws 1931, c. 64, § 1, p. 173; Laws 1937, c. 86, § 1, p. 286; C.S.Supp.,1941, § 33-127; R.S.1943, § 33-126; Laws 1945, c. 74, § 4, p. 278; Laws 1949, c. 95, § 1(2), p. 255; Laws 1951, c. 103, § 1, p. 508; Laws 1963, c. 189, § 1, p. 633; Laws 1975, LB 481, § 23; Laws 1982, LB 928, § 33; Laws 1984, LB 492, § 2; Laws 1988, LB 790, § 5; Laws 1989, LB 233, § 5; Laws 1992, LB 907, § 27; Laws 2005, LB 348, § 13; Laws 2021, LB17, § 9.

Cross References

Nebraska Uniform Transfers to Minors Act, see section 43-2701.

33-126.03 County court; inheritance tax proceedings; fees; by whom paid.

In all matters for the determination of inheritance tax under Chapter 77, article 20, the county court shall be entitled to receive fees of twenty-two dollars. Fees under this section shall not be charged if fees have been imposed pursuant to subdivision (1)(b) of section 33-125. Except in cases instituted by the county attorney, such fee shall be paid by the person petitioning for such determination. Two dollars 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, four dollars of such fee shall be remitted to the State Treasurer for credit to the Nebraska Retirement Fund for Judges.

Source: R.S.1866, c. 19, § 8, p. 164; Laws 1887, c. 41, § 1, p. 460; Laws 1907, c. 56, § 1, p. 231; Laws 1909, c. 58, § 1, p. 288; R.S.1913, § 2449; Laws 1915, c. 39, § 1, p. 111; Laws 1917, c. 45, § 1, p. 127; Laws 1921, c. 95, § 1, p. 359; C.S.1922, § 2388; Laws 1925, c. 98, § 1, p. 286; C.S.1929, § 33-127; Laws 1931, c. 64, § 1, p. 173; Laws 1937, c. 86, § 1, p. 286; C.S.Supp.,1941, § 33-127; R.S.1943, § 33-126; Laws 1945, c. 74, § 4, p. 278; Laws 1949, c. 95, § 1(3), p. 256; Laws 1959, c. 376, § 1, p. 1316; Laws 1975, LB 481, § 24; Laws 1982, LB 928, § 34; Laws 1984, LB 373, § 3; Laws 1989, LB 233, § 6; Laws 2005, LB 348, § 14; Laws 2021, LB17, § 10.

33-126.06 County court; matters relating to trusts; fees.

The county court shall be entitled to collect the following fees: For the registration of any trust, whether testamentary or not, twenty-two dollars; for each proceeding initiated in county court concerning the administration and distribution of trusts, the declaration of rights, and the determination of other matters involving trustees and beneficiaries of trusts, twenty-two dollars; for the appointment of a successor trustee, twenty-two dollars; and for filing and recording each report, five dollars. Two dollars of each twenty-two-dollar 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, four dollars of each twenty-two-dollar fee shall be remitted to the State Treasurer for credit to the Nebraska Retirement Fund for Judges.

Source: Laws 1975, LB 481, § 27; Laws 1982, LB 928, § 37; Laws 1989, LB 233, § 9; Laws 2005, LB 348, § 16; Laws 2021, LB17, § 11.

33-131 County officers; records; duties.

The sheriffs, county judges, county treasurers, county clerks, and registers of deeds of the several counties of the state shall each keep a book, unless authorized to use a computerized system, which shall be provided by the county, which shall be known as the fee book, which shall be a part of the records of such office, and in which shall be entered each and every item of fees collected showing in separate columns the name of the party from whom received, the date of receiving the same, the amount received, and for what service the same was charged. The clerks of the district court shall use the

court's electronic case management system provided by the state which shall be the record of receipts and reimbursements.

Source: Laws 1877, § 3, p. 216; R.S.1913, § 2455; C.S.1922, § 2397; Laws 1925, c. 88, § 1, p. 267; C.S.1929, § 33-136; R.S.1943, § 33-131; Laws 1984, LB 679, § 12; Laws 2018, LB193, § 72.

33-138 Juror; compensation; mileage.

(1) Each member of a grand or petit jury in a district court or county court shall receive for his or her services thirty-five dollars for each day employed in the discharge of his or her duties and mileage at the rate provided in section 81-1176 for each mile necessarily traveled. No juror is entitled to pay for the days he or she is voluntarily absent or excused from service by order of the court. No juror is entitled to pay for nonjudicial days unless actually employed in the discharge of his or her duties as a juror on such days.

(2) In the event that any temporary release from service, other than that obtained by the request of a juror, occasions an extra trip or trips to and from the residence of any juror or jurors the court may, by special order, allow mileage for such extra trip or trips.

(3) Payment of jurors for service in the district and county courts shall be made by the county.

(4) A juror may voluntarily waive payment under this section for his or her service as a juror.

Source: Laws 1867, § 2, p. 90; Laws 1911, c. 51, § 1, p. 234; R.S.1913, § 2463; Laws 1919, c. 115, § 1, p. 280; C.S.1922, § 2404; Laws 1929, c. 105, § 1, p. 395; C.S.1929, § 33-143; Laws 1933, c. 62, § 1, p. 296; C.S.Supp.,1941, § 33-143; R.S.1943, § 33-138; Laws 1947, c. 125, § 1, p. 364; Laws 1957, c. 134, § 1, p. 450; Laws 1965, c. 187, § 1, p. 578; Laws 1969, c. 278, § 1, p. 1045; Laws 1974, LB 736, § 1; Laws 1981, LB 204, § 54; Laws 1984, LB 13, § 75; Laws 1991, LB 147, § 1; Laws 2003, LB 760, § 14; Laws 2012, LB865, § 3; Laws 2020, LB387, § 46.

33-140.03 Unclaimed witness fees; duty of county board to make examination; failure of clerk to pay; suit authorized to recover.

The county board shall examine the books and records of the clerk of the county and district courts of the county. If the board finds that a clerk has failed to report or pay over any of the fees required by section 33-140 to be paid over or reported, the board shall notify the clerk to pay over the fees at once. If the clerk fails to pay over such fees to the county treasurer, the county board shall commence suit in any court having jurisdiction against the clerk and the person who issued the clerk's bond. The action shall be commenced in the name of the county for the benefit of the common schools of the county.

Source: Laws 1877, § 3, p. 226; R.S.1913, § 6678; C.S.1922, § 6215; C.S.1929, § 77-2604; R.S.1943, § 77-2404; R.S.1943, (1986), § 77-2404; Laws 1989, LB 11, § 4; Laws 2018, LB193, § 73.

33-141 Legal notices; rates.

(1) Until one year after September 9, 1995, the legal rate for the publication of all legal notices other than those exceptional legal notices described in

section 33-142 shall be forty-one cents per line, single column, standard newspaper measurements of eight-point type and pica width of eleven for the first insertion and thirty-five and nine-tenths cents per line, single column, standard newspaper measurements of eight-point type and pica width of eleven for each subsequent insertion. Publication of such notices may be in any type selected by the publisher. For the purpose of uniformity, the calculation of fees for such publication shall be based on the official conversion table that follows:

CONVERSION TABLE

Five-and-One-Half-Point Type

Pica Width	First Insertion	Subsequent Insertions
9	48.791 ¢	42.721 ¢
9 1/2	51.502	45.095
10	54.213	47.469
10 1/2	56.924	49.843
11	59.635	52.217
11 1/2	62.346	54.591
12	65.057	56.965
12 1/2	67.768	59.339
13	70.479	61.713
13 1/2	73.190	64.087
14	75.901	66.461
14 1/2	78.612	68.835
15	81.323	71.209
15 1/2	84.034	73.583
16	86.745	75.957

Six-Point Type

Pica Width	First Insertion	Subsequent Insertions
9	44.725 ¢	39.161 ¢
9 1/2	47.210	41.337
10	49.695	43.513
10 1/2	52.180	45.689
11	54.665	47.865
11 1/2	57.150	50.041
12	59.635	52.217
12 1/2	62.120	54.393
13	64.605	56.569
13 1/2	67.090	58.745
14	69.575	60.921
14 1/2	72.060	63.097
15	74.545	65.273
15 1/2	77.030	67.449
16	79.515	69.625

Seven-Point Type

Pica Width	First Insertion	Subsequent Insertions
9	38.339 ¢	33.570 ¢
9 1/2	40.469	35.435
10	42.599	37.300
10 1/2	44.729	39.165
11	46.859	41.030
11 1/2	48.989	42.895
12	51.119	44.760
12 1/2	53.249	46.625
13	55.379	48.490
13 1/2	57.509	50.355
14	59.639	52.220
14 1/2	61.769	54.085
15	63.899	55.950
15 1/2	66.029	57.815
16	68.159	59.680

Eight-Point Type

Pica Width	First Insertion	Subsequent Insertions
9	33.544 ¢	29.372 ¢
9 1/2	35.408	31.004
10	37.272	32.636
10 1/2	39.136	34.268
11	41.000	35.900
11 1/2	42.864	37.532
12	44.728	39.164
12 1/2	46.592	40.796
13	48.456	42.428
13 1/2	50.320	44.060
14	52.184	45.692
14 1/2	54.048	47.324
15	55.912	48.956
15 1/2	57.776	50.588
16	59.640	52.220

Nine-Point Type

Pica Width	First Insertion	Subsequent Insertions
9	29.817 ¢	26.108 ¢
9 1/2	31.474	27.559
10	33.131	29.010
10 1/2	34.788	30.461
11	36.445	31.912
11 1/2	38.102	33.363
12	39.759	34.814
12 1/2	41.416	36.265
13	43.073	37.716
13 1/2	44.730	39.167
14	46.387	40.618
14 1/2	48.044	42.069
15	49.701	43.520
15 1/2	51.358	44.971
16	53.015	46.422

Ten-Point Type

Pica Width	First Insertion	Subsequent Insertions
9	26.836 ¢	23.496 ¢
9 1/2	28.327	24.802
10	29.818	26.108
10 1/2	31.309	27.414
11	32.800	28.720
11 1/2	34.291	30.026
12	35.782	31.332
12 1/2	37.273	32.638
13	38.764	33.944
13 1/2	40.255	35.250
14	41.746	36.556
14 1/2	43.237	37.862
15	44.728	39.168
15 1/2	46.219	40.474
16	47.710	41.780.

(2) Until October 1, 2022, the legal rate for the publication of all legal notices other than those exceptional legal notices described in section 33-142 shall be forty-five cents per line, single column, standard newspaper measurements of eight-point type and pica width of eleven for the first insertion and thirty-nine and four-tenths cents per line, single column, standard newspaper measurements of eight-point type and pica width of eleven for each subsequent insertion. Publication of such notices may be in any type selected by the publisher. For the purpose of uniformity, the calculation of fees for such publication shall be based on the official conversion table that follows:

CONVERSION TABLE

Five-and-One-Half-Point Type

Pica Width	First Insertion	Subsequent Insertions
9	53.553 ¢	46.887 ¢
9 1/2	56.528	49.492
10	59.503	52.097
10 1/2	62.478	54.702
11	65.453	57.307
11 1/2	68.428	59.912
12	71.403	62.517
12 1/2	74.378	65.122
13	77.353	67.727
13 1/2	80.328	70.332
14	83.303	72.937
14 1/2	86.278	75.542
15	89.253	78.147
15 1/2	92.228	80.752
16	95.203	83.357

Six-Point Type

Pica Width	First Insertion	Subsequent Insertions
9	49.087 ¢	42.980 ¢
9 1/2	51.815	45.368
10	54.543	47.756
10 1/2	57.271	50.144
11	59.999	52.532
11 1/2	62.727	54.920
12	65.455	57.308
12 1/2	68.183	59.696
13	70.911	62.084
13 1/2	73.639	64.472
14	76.367	66.860
14 1/2	79.095	69.248
15	81.823	71.636
15 1/2	84.551	74.024
16	87.279	76.412

Seven-Point Type

Pica Width	First Insertion	Subsequent Insertions
9	42.079 ¢	36.842 ¢
9 1/2	44.417	38.889
10	46.755	40.936
10 1/2	49.093	42.983
11	51.431	45.030
11 1/2	53.769	47.077
12	56.107	49.124
12 1/2	58.445	51.171
13	60.783	53.218
13 1/2	63.121	55.265
14	65.459	57.312
14 1/2	67.797	59.359
15	70.135	61.406
15 1/2	72.473	63.453
16	74.811	65.500

Eight-Point Type

Pica Width	First Insertion	Subsequent Insertions
9	36.816 ¢	32.236 ¢
9 1/2	38.862	34.027
10	40.908	35.818
10 1/2	42.954	37.609
11	45.000	39.400
11 1/2	47.046	41.191
12	49.092	42.982

12 1/2	51.138	44.773
13	53.184	46.564
13 1/2	55.230	48.355
14	57.276	50.146
14 1/2	59.322	51.937
15	61.368	53.728
15 1/2	63.414	55.519
16	65.460	57.310

Nine-Point Type

Pica Width	First Insertion	Subsequent Insertions
9	32.724 ¢	28.655 ¢
9 1/2	34.543	30.247
10	36.362	31.839
10 1/2	38.181	33.431
11	40.000	35.023
11 1/2	41.819	36.615
12	43.638	38.207
12 1/2	45.457	39.799
13	47.276	41.391
13 1/2	49.095	42.983
14	50.914	44.575
14 1/2	52.733	46.167
15	54.552	47.759
15 1/2	56.371	49.351
16	58.190	50.943

Ten-Point Type

Pica Width	First Insertion	Subsequent Insertions
9	29.452 ¢	25.788 ¢
9 1/2	31.089	27.221
10	32.726	28.654
10 1/2	34.363	30.087
11	36.000	31.520
11 1/2	37.637	32.953
12	39.274	34.386
12 1/2	40.911	35.819
13	42.548	37.252
13 1/2	44.185	38.685
14	45.822	40.118
14 1/2	47.459	41.551
15	49.096	42.984
15 1/2	50.733	44.417
16	52.370	45.850.

(3) Beginning October 1, 2022, and until October 1, 2023, the legal rate for the publication of all legal notices other than those exceptional legal notices described in section 33-142 shall be forty-eight cents per line, single column, standard newspaper measurements of eight-point type and pica width of eleven for the first insertion and thirty-nine and four-tenths cents per line, single column, standard newspaper measurements of eight-point type and pica width of eleven for each subsequent insertion. Publication of such notices may be in any type selected by the publisher. For the purpose of uniformity, the calculation of fees for such publication shall be based on the official conversion table that follows:

CONVERSION TABLE

Five-and-One-Half-Point Type

Pica Width	First Insertion	Subsequent Insertions
9	57.102 ¢	49.700 ¢

9 1/2	60.296	52.462
10	63.469	55.223
10 1/2	66.643	57.984
11	69.816	60.745
11 1/2	72.989	63.507
12	76.163	66.268
12 1/2	79.336	69.029
13	82.509	71.791
13 1/2	85.683	74.552
14	88.856	77.313
14 1/2	92.029	80.075
15	95.203	82.836
15 1/2	98.376	85.597
16	101.549	88.358

Six-Point Type

Pica Width	First Insertion	Subsequent Insertions
9	52.359 ¢	45.559 ¢
9 1/2	55.269	48.090
10	58.179	50.621
10 1/2	61.089	53.153
11	63.999	55.684
11 1/2	66.908	58.215
12	69.818	60.746
12 1/2	72.728	63.278
13	75.638	65.809
13 1/2	78.548	68.340
14	81.458	94.192
14 1/2	84.367	73.403
15	87.277	75.934
15 1/2	90.187	78.465
16	93.097	80.997

Seven-Point Type

Pica Width	First Insertion	Subsequent Insertions
9	44.884 ¢	39.053 ¢
9 1/2	47.378	41.222
10	49.872	43.392
10 1/2	52.366	45.562
11	54.859	47.732
11 1/2	57.353	49.902
12	59.847	52.071
12 1/2	62.341	54.241
13	64.835	56.411
13 1/2	67.329	58.581
14	69.819	60.751
14 1/2	72.316	62.921
15	74.810	65.090
15 1/2	77.304	67.260
16	79.798	69.430

Eight-Point Type

Pica Width	First Insertion	Subsequent Insertions
9	39.270 ¢	34.170 ¢
9 1/2	41.453	36.069
10	43.635	37.967
10 1/2	45.817	39.866
11	48.000	41.764
11 1/2	50.182	43.662
12	52.364	45.561
12 1/2	54.547	47.459
13	56.729	49.358
13 1/2	58.912	51.256
14	61.094	53.155

14 1/2	63.276	55.053
15	65.459	56.952
15 1/2	67.641	58.850
16	69.824	60.749

Nine-Point Type

Pica Width	First Insertion	Subsequent Insertions
9	34.905 ¢	30.374 ¢
9 1/2	36.846	32.062
10	38.786	33.749
10 1/2	40.726	35.437
11	42.666	37.124
11 1/2	44.607	38.812
12	46.547	40.499
12 1/2	48.487	42.187
13	50.427	43.874
13 1/2	52.368	45.562
14	54.308	47.250
14 1/2	56.248	48.937
15	58.188	50.625
15 1/2	60.129	52.312
16	62.069	54.000

Ten-Point Type

Pica Width	First Insertion	Subsequent Insertions
9	31.415 ¢	27.335 ¢
9 1/2	33.161	28.854
10	34.908	30.373
10 1/2	36.654	31.892
11	38.400	33.411
11 1/2	40.146	34.930
12	41.892	36.449
12 1/2	43.638	37.968
13	45.384	39.487
13 1/2	47.130	41.006
14	48.876	42.525
14 1/2	50.623	44.044
15	52.369	45.563
15 1/2	54.115	47.082
16	55.861	48.601.

(4) Beginning October 1, 2023, the legal rate for the publication of all legal notices other than those exceptional legal notices described in section 33-142 shall be fifty cents per line, single column, standard newspaper measurements of eight-point type and pica width of eleven for the first insertion and thirty-nine and four-tenths cents per line, single column, standard newspaper measurements of eight-point type and pica width of eleven for each subsequent insertion. Publication of such notices may be in any type selected by the publisher. For the purpose of uniformity, the calculation of fees for such publication shall be based on the official conversion table that follows:

CONVERSION TABLE

Five-and-One-Half-Point Type

Pica Width	First Insertion	Subsequent Insertions
9	59.481 ¢	51.576 ¢
9 1/2	62.808	54.441
10	66.114	57.307
10 1/2	69.419	60.172
11	72.725	63.038
11 1/2	76.030	65.903

12	79.336	68.769
12 1/2	82.641	71.634
13	85.947	74.500
13 1/2	89.552	77.365
14	92.558	80.231
14 1/2	95.863	83.096
15	99.169	85.962
15 1/2	102.475	88.827
16	105.780	91.693

Six-Point Type

Pica Width	First Insertion	Subsequent Insertions
9	54.541 ¢	47.278 ¢
9 1/2	57.572	49.905
10	60.603	52.532
10 1/2	63.634	55.158
11	66.665	57.785
11 1/2	69.696	60.412
12	72.727	63.039
12 1/2	75.758	65.666
13	78.789	68.292
13 1/2	81.820	70.919
14	84.851	97.746
14 1/2	87.882	76.173
15	90.914	78.800
15 1/2	93.945	81.426
16	96.976	84.053

Seven-Point Type

Pica Width	First Insertion	Subsequent Insertions
9	46.754 ¢	40.526 ¢
9 1/2	49.352	42.778
10	51.949	45.030
10 1/2	54.547	47.281
11	57.145	49.533
11 1/2	59.743	51.785
12	62.340	54.036
12 1/2	64.938	56.288
13	67.536	58.540
13 1/2	70.134	60.792
14	72.728	63.043
14 1/2	75.329	65.295
15	77.927	67.547
15 1/2	80.525	69.798
16	83.123	72.050

Eight-Point Type

Pica Width	First Insertion	Subsequent Insertions
9	40.906 ¢	35.460 ¢
9 1/2	43.180	37.430
10	45.453	39.400
10 1/2	47.726	41.370
11	50.000	43.340
11 1/2	52.273	45.310
12	54.546	47.280
12 1/2	56.819	49.250
13	59.093	51.220
13 1/2	61.366	53.191
14	63.639	55.161
14 1/2	65.913	57.131
15	68.186	59.101
15 1/2	70.459	61.071
16	72.733	63.041

Nine-Point Type

Pica Width	First Insertion	Subsequent Insertions
9	36.360 ¢	31.521 ¢
9 1/2	38.381	33.272
10	40.402	35.023
10 1/2	42.423	36.774
11	44.444	38.525
11 1/2	46.465	40.277
12	48.486	42.028
12 1/2	50.507	43.779
13	52.528	45.530
13 1/2	54.549	47.281
14	56.571	49.033
14 1/2	58.592	50.784
15	60.613	52.535
15 1/2	62.634	54.286
16	64.655	56.037

Ten-Point Type

Pica Width	First Insertion	Subsequent Insertions
9	32.721 ¢	28.367 ¢
9 1/2	34.540	29.943
10	36.359	31.519
10 1/2	38.177	33.096
11	39.996	34.672
11 1/2	41.815	36.248
12	43.633	37.825
12 1/2	45.452	39.401
13	47.271	40.977
13 1/2	49.090	42.554
14	50.908	44.130
14 1/2	52.727	45.706
15	54.546	47.282
15 1/2	56.364	48.859
16	58.183	50.453.

Source: R.S.1866, c. 19, § 17, p. 168; Laws 1869, § 1, p. 159; R.S.1913, § 2466; Laws 1921, c. 181, § 1, p. 682; C.S.1922, § 2407; C.S. 1929, § 33-146; R.S.1943, § 33-141; Laws 1951, c. 105, § 1, p. 511; Laws 1965, c. 189, § 1, p. 580; Laws 1971, LB 401, § 1; Laws 1982, LB 629, § 1; Laws 1989, LB 298, § 1; Laws 1995, LB 418, § 1; Laws 2022, LB840, § 2.

CHAPTER 34
FENCES, BOUNDARIES, AND LANDMARKS

Article.
1. Division Fences. 34-112.02.

ARTICLE 1
DIVISION FENCES

Section
34-112.02. Division fence; construction, maintenance, or repair; notice; court action authorized; hearing; mediation; costs.

34-112.02 Division fence; construction, maintenance, or repair; notice; court action authorized; hearing; mediation; costs.

(1) Whenever a landowner desires to construct a division fence or perform maintenance or repairs to an existing division fence, such landowner shall give written notice of such intention to any person who is liable for the construction, maintenance, or repair of the division fence. Such notice may be served upon any nonresident by delivering the written notice to the occupant of the land or the landowner's agent in charge of the land. The written notice shall request that the person liable for the construction, maintenance, or repair satisfy his or her obligation by performance or by other manner of contribution. After giving written notice, a landowner may commence construction of a division fence, or commence maintenance or repair upon an existing division fence, in which cases any cause of action under this section and sections 34-102, 34-112, and 34-112.01 shall be an action for contribution.

(2) If notice is given prior to commencing construction, maintenance, or repair of a division fence and the person so notified either fails to respond to such request or refuses such request, the landowner sending notice may commence an action in the county court of the county where the land is located. If the landowners cannot agree what proportion of a division fence each shall construct, maintain, or repair, whether by performance or by contribution, either landowner may commence an action, without further written notice, in the county court of the county where the land is located. An action shall be commenced by filing a fence dispute complaint on a form prescribed by the State Court Administrator and provided to the plaintiff by the clerk of the county court. The complaint shall be executed by the plaintiff in the presence of a judge, a clerk or deputy or assistant clerk of a county court, or a notary public or other person authorized by law to take acknowledgments and be accompanied by the fee provided in section 33-123. A party shall not commence an action under this subsection until thirty days after giving notice under subsection (1) of this section and shall commence the action within one year after giving such notice.

(3) Upon filing of a fence dispute complaint, 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 awarded to the plaintiff.

(4) In any proceeding under this section, subsequent to the initial filing, the parties shall receive from the clerk of the court information regarding availability of mediation through the farm mediation service of the Department of Agriculture or the state mediation centers as established through the Office of Dispute Resolution. Development of the informational materials and the implementation of this subsection shall be accomplished through the State Court Administrator. With the consent of both parties, a court may refer a case to mediation and may state a date for the case to return to court, but such date shall be no longer than ninety days from the date the order is signed unless the court grants an extension. If the parties consent to mediate and if a mediation agreement is reached, the court shall enter the agreement as the judgment in the action. The costs of mediation shall be shared by the parties according to the schedule of fees established by the mediation service and collected directly by the mediation service.

(5) If the case is not referred to mediation or if mediation is terminated or fails to reach an agreement between the parties, the action shall proceed as a civil action subject to the rules of civil procedure.

Source: Laws 2007, LB108, § 6; Laws 2018, LB766, § 1.

CHAPTER 35
FIRE COMPANIES AND FIREFIGHTERS

Article.
1. Volunteer Fire Companies. 35-102.
5. Rural and Suburban Fire Protection Districts. 35-506 to 35-540.
10. Death or Disability.
    (a) Cause of Death or Disability. 35-1001.
    (b) Firefighter Cancer Benefits Act. 35-1002 to 35-1010.
12. Mutual Finance Assistance Act. 35-1204 to 35-1207.

ARTICLE 1
VOLUNTEER FIRE COMPANIES

Section
35-102. Volunteer fire department; number of members; apparatus.

35-102 Volunteer fire department; number of members; apparatus.

No volunteer fire department shall have upon its rolls at one time more than twenty-five persons, for each engine and hose company in such fire department, and no hook and ladder company shall have upon its rolls at any one time more than twenty-five members. No organization shall be deemed to be a bona fide fire or hook and ladder company until it has procured for active service apparatus for the extinguishment or prevention of fires, in case of a hose company, to the value of seven hundred dollars, and of a hook and ladder company to the value of five hundred dollars.

Source: Laws 1867 (Ter.), § 2, p. 16; G.S.1873, c. 24, § 2, p. 390; R.S.1913, § 2497; Laws 1915, c. 44, § 1, p. 122; C.S.1922, § 2435; C.S.1929, § 35-102; R.S.1943, § 35-102; Laws 2018, LB193, § 74.

ARTICLE 5
RURAL AND SUBURBAN FIRE PROTECTION DISTRICTS

Section
35-506. District; vote on organization; officers; terms; compensation.
35-507. District; meeting; when held.
35-509. District; budget; tax to support; limitation; how levied; county treasurer; duties.
35-514. District; annexation of territory; procedure.
35-537. Annexation of territory by a city or village; effect on certain contracts.
35-538. Annexation; board of directors; accounting; effect.
35-539. Annexation; when effective; board of directors; duties.
35-540. Annexation; obligations and assessments; agreement to divide; approval; decree.

35-506 District; vote on organization; officers; terms; compensation.

(1) After formation of a district by merger or reorganization under section 35-517, at the time and place fixed by the county board for public hearing as provided in section 35-514, the registered voters who are residing within the boundaries of the district shall have the opportunity to decide by majority vote

of those present whether the organization of the district shall be completed. Permanent organization shall be effected by the election of a board of directors consisting of five residents of the district. Such directors shall at the first regular meeting after their election select from the board a president, a vice president, and a secretary-treasurer who shall serve as the officers of the board of directors for one year. The board shall reorganize itself annually. The elected member of the board of directors receiving the highest number of votes in the election shall preside over the first regular meeting until the officers of such board have been selected. The three members receiving the highest number of votes shall serve for a term of four years and the other two members for a term of two years; and this provision shall apply to directors elected at the organizational meeting of the district.

(2) The board shall reorganize itself annually. Election of directors of existing districts shall be held by the registered voters present at the regular annual meeting provided for in section 35-507 which is held in the calendar year during which the terms of directors are scheduled to expire. As the terms of these members expire, their successors shall be elected for four years and hold office until their successors have been elected. If the district contains more than one township, each township may be represented on the board of directors unless there are more than five townships within the district, and in such event there shall be only five directors on the board and no township shall have more than one member elected to such board of directors. In case of a vacancy on account of resignation, death, malfeasance, or nonfeasance of a member, the remaining members of the board shall fill the vacancy for the unexpired term. The person appointed to fill the vacancy shall be from the same area as the person whose office is vacated, if possible, otherwise from the district at large.

(3) The members of the board of directors of a rural or suburban fire protection district may receive up to fifty dollars for each meeting of the board, but not to exceed twelve meetings in any calendar year, and reimbursement for any actual expenses necessarily incurred as a direct result of their responsibilities and duties as members of the board engaged upon the business of the district. When it is necessary for any member of the board of directors to travel on business of the district and to attend meetings of the district, he or she shall be allowed mileage at the rate provided in section 81-1176 for each mile actually and necessarily traveled.

Source: Laws 1939, c. 38, § 4, p. 193; C.S.Supp.,1941, § 35-604; R.S. 1943, § 35-404; Laws 1949, c. 98, § 6, p. 264; Laws 1967, c. 208, § 1, p. 567; Laws 1969, c. 283, § 1, p. 1051; Laws 1969, c. 257, § 36, p. 950; Laws 1981, LB 204, § 56; Laws 1995, LB 756, § 1; Laws 1998, LB 1120, § 9; Laws 2019, LB63, § 1.

35-507 District; meeting; when held.

A regular meeting of the registered voters who are residing within the boundaries of a district shall be held at the time of the budget hearing as provided by the Nebraska Budget Act, and special meetings may be called by the board of directors at any time. Notice of a meeting shall be given by the secretary-treasurer by one publication in a legal newspaper of general circulation in each county in which such district is situated. Notice of the place and time of a meeting shall be published at least four calendar days prior to the date

set for meeting. For purposes of such notice, the four calendar days shall include the day of publication but not the day of the meeting.

Source: Laws 1949, c. 98, § 7, p. 265; Laws 1971, LB 713, § 1; Laws 1992, LB 1063, § 34; Laws 1992, Second Spec. Sess., LB 1, § 34; Laws 1998, LB 1120, § 10; Laws 2017, LB151, § 4.

Cross References

Nebraska Budget Act, see section 13-501.

35-509 District; budget; tax to support; limitation; how levied; county treasurer; duties.

(1) The board of directors shall have the power and duty to determine a general fire protection and rescue policy for the district and shall annually fix the amount of money for the proposed budget statement as may be deemed sufficient and necessary in carrying out such contemplated program for the ensuing fiscal year, including the amount of principal and interest upon the indebtedness of the district for the ensuing year.

(2)(a) For any rural or suburban fire protection district that has levy authority pursuant to subsection (10) of section 77-3442, after the adoption of the budget statement, the president and secretary of the district shall certify the amount of tax to be levied which the district requires for the adopted budget statement for the ensuing year to the proper county clerk or county clerks on or before September 30 of each year. The county board shall levy a tax not to exceed ten and one-half cents on each one hundred dollars upon the taxable value of all the taxable property in such district for the maintenance of the fire protection district for the fiscal year, plus such levy as is authorized to be made under subdivision (13)(a) of section 35-508, all such levies being subject to subsection (10) of section 77-3442. The tax shall be collected as other taxes are collected in the county, deposited with the county treasurer, and placed to the credit of the rural or suburban fire protection district so authorizing the same on or before the fifteenth day of each month or more frequently as provided in section 77-1759 or be remitted to the county treasurer of the county in which the greatest portion of the valuation of the district is located as is provided for by subsection (3) of this section.

(b) For any rural or suburban fire protection district that does not have levy authority pursuant to subsection (10) of section 77-3442, after the adoption of the budget statement, the president and secretary of the district shall request the amount of tax to be levied which the district requires for the adopted budget statement for the ensuing year to the proper county clerk or county clerks on or before August 1 of each year pursuant to subsection (3) of section 77-3443. The county board shall levy a tax not to exceed ten and one-half cents on each one hundred dollars upon the taxable value of all the taxable property in such district for the maintenance of the fire protection district for the fiscal year, plus such levy as is authorized to be made under subdivision (13)(b) of section 35-508, all such levies being subject to section 77-3443. The tax shall be collected as other taxes are collected in the county, deposited with the county treasurer, and placed to the credit of the rural or suburban fire protection district so authorizing the same on or before the fifteenth day of each month or more frequently as provided in section 77-1759 or be remitted to the county treasurer of the county in which the greatest portion of the valuation of the district is located as is provided for by subsection (3) of this section. For

purposes of section 77-3443, the county board of the county in which the greatest portion of the valuation of the district is located shall approve the levy.

(3) All such taxes collected or received for the district by the treasurer of any other county than the one in which the greatest portion of the valuation of the district is located shall be remitted to the treasurer of the county in which the greatest portion of the valuation of the district is located at least quarterly. All such taxes collected or received shall be placed to the credit of such district in the treasury of the county in which the greatest portion of the valuation of the district is located.

(4) In no case shall the amount of tax levy exceed the amount of funds to be received from taxation according to the adopted budget statement of the district.

Source: Laws 1939, c. 38, § 5, p. 193; C.S.Supp.,1941, § 35-605; R.S. 1943, § 35-405; Laws 1947, c. 128, § 1, p. 368; Laws 1949, c. 98, § 9, p. 266; Laws 1953, c. 121, § 1, p. 383; Laws 1953, c. 287, § 54, p. 962; Laws 1955, c. 127, § 1, p. 360; Laws 1955, c. 128, § 4, p. 365; Laws 1969, c. 145, § 34, p. 693; Laws 1972, LB 849, § 3; Laws 1975, LB 375, § 2; Laws 1979, LB 187, § 150; Laws 1990, LB 918, § 3; Laws 1992, LB 719A, § 131; Laws 1996, LB 1114, § 55; Laws 1998, LB 1120, § 12; Laws 2007, LB334, § 5; Laws 2015, LB325, § 4; Laws 2019, LB63, § 2; Laws 2021, LB644, § 16.

35-514 District; annexation of territory; procedure.

(1) Any territory which is outside the limits of any incorporated city may be annexed to an adjacent district in the manner provided in this section, whether or not the territory is in an existing rural or suburban fire protection district.

(2) The proceedings for the annexation may be initiated by either (a) the presentation to the county clerk of a petition signed by sixty percent or more of the registered voters who are residing within the boundaries of the territory to be annexed stating the desires and purposes of such petitioners or (b) the presentation to the county clerk of certified copies of resolutions passed by the board of directors of the annexing district and any other district from which the property would be annexed supporting the proposed annexation. The petition or resolutions shall contain a description of the boundaries of the territory proposed to be annexed. The petition or resolutions shall be accompanied by a map or plat and a deposit for publication costs.

(3) The county clerk shall verify the petition as provided in section 32-631 and determine and certify whether or not such petition or resolution complies with the requirements of subsection (2) of this section and that the persons signing the petition appear to reside at the addresses indicated by such petition. Thereafter, the county clerk shall forward any petition, map or plat, and certificate to the board of directors of the districts concerned.

(4) Within thirty days after receiving the petition, map or plat, and certificate of the county clerk, in accordance with subsection (3) of this section, from the county clerk, the board of directors of all affected districts shall transmit the same to the proper county board, accompanied by a report in writing approving or disapproving the proposal contained in the petition, or approving such proposal in part and disapproving it in part. If the annexation is proposed by

resolutions of the affected districts, the resolutions shall be transmitted to the proper county board.

(5) The county board shall promptly designate a time and place for a hearing upon the annexation. Notice of such hearing shall be given by publication two weeks in a newspaper of general circulation in the county, the last publication appearing at least seven days prior to the hearing. The notice shall be addressed to ''all registered voters residing in the following boundaries'' and shall include a description of the proposed boundaries as set forth in the petition or resolutions. At such hearing, any person shall have the opportunity to be heard respecting the proposed annexation.

(6) The county board shall, within forty-five days after the hearing referred to in subsection (5) of this section, determine whether such territory should be annexed and shall fix the boundaries of the territory to be annexed. No annexation shall be approved which would leave any district with less than the minimum valuation of two million eight hundred sixty thousand dollars. The determination of the county board shall be set forth in a written order which shall describe the boundaries determined upon and shall be filed in the office of the county clerk.

(7) Any area annexed from a rural or suburban fire protection district, except areas duly incorporated within the boundaries of a municipality, shall be subject to assessment and be otherwise chargeable for the payment and discharge of all the obligations of the rural or suburban fire protection district outstanding at the time of the filing of the petition or resolution for the annexation of the area as fully as though the area had not been annexed. All procedures which could be used to compel the annexed area, except for areas duly incorporated within the boundaries of a municipality, to pay its portion of the outstanding obligations had the annexation not occurred may be used to compel such payment. Areas duly incorporated within the boundaries of a municipality shall be automatically annexed from the boundaries of the district notwithstanding the provisions of section 35-540 and shall not be subject to further tax levy or other charges by the district, except that before the annexation is complete, the municipality shall assume and pay that portion of all outstanding obligations of the district which would otherwise constitute an obligation of the area annexed or incorporated. An area annexed from a rural or suburban fire protection district shall not be subject to assessment or otherwise chargeable for any obligation of any nature or kind incurred by the district after the annexation of the area from the district.

Source: Laws 1949, c. 98, § 14, p. 268; Laws 1953, c. 120, § 2, p. 379; Laws 1955, c. 128, § 9, p. 368; Laws 1957, c. 136, § 1, p. 454; Laws 1981, LB 310, § 1; Laws 1998, LB 1120, § 15; Laws 2018, LB130, § 9.

35-537 Annexation of territory by a city or village; effect on certain contracts.

Whenever any city or village annexes all the territory within the boundaries of any rural or suburban fire protection district authorized under Chapter 35, article 5, the district shall merge with the city or village and the city or village shall succeed to all the property and property rights of every kind, contracts, obligations, and choses in action of every kind, held by or belonging to the district, and the city or village shall be liable for and recognize, assume, and carry out all valid contracts and obligations of the district. All taxes, assess-

ments, claims, and demands of every kind due or owing to the district shall be paid to and collected by the city or village. Nothing in this section shall authorize the annexing city or village to revoke any resolution, order, or finding made by the district in regard to special benefits or increase any assessments made by the district, but such city or village shall be bound by all such findings or orders and assessments to the same extent as the district would be bound.

Source: Laws 2018, LB130, § 5.

35-538 Annexation; board of directors; accounting; effect.

The board of directors of a rural or suburban fire protection district shall, within thirty days after the effective date of the merger, submit to the city or village a written accounting of all assets and liabilities, contingent or fixed, of the district. Unless the city or village within six months thereafter brings an action against the board of directors of the district for an accounting or for damages for breach of duty, the board of directors shall be discharged of all further duties and liabilities and their bonds exonerated. If the city or village brings such an action and does not recover judgment in its favor, the taxable costs may include reasonable expenses incurred by the board of directors in connection with such suit and a reasonable attorney's fee for the board's attorney. The city or village shall represent the district and all parties who might be interested in such an action. The city or village and such board shall be the only necessary parties to such action.

Source: Laws 2018, LB130, § 6.

35-539 Annexation; when effective; board of directors; duties.

The merger shall be effective thirty days after the effective date of the ordinance annexing the territory within the rural or suburban fire protection district. If the validity of the ordinance annexing the territory is challenged by a proceeding in a court of competent jurisdiction, the effective date of the merger shall be thirty days after the final determination of the validity of the ordinance. The board of directors of the district of the rural or suburban fire protection district shall continue in possession and conduct the affairs of the district until the effective date of the merger.

Source: Laws 2018, LB130, § 7.

35-540 Annexation; obligations and assessments; agreement to divide; approval; decree.

If only a part of the territory within any rural or suburban fire protection district is annexed by a city or village, the fire protection district acting through its board of directors and the city or village acting through its governing body may agree between themselves as to the division of the assets, liabilities, maintenance, contracts, or other obligations of the district for a change in the boundaries of the district so as to exclude the portion annexed by the city or village or may agree upon a merger of the district with the city or village. The division of assets, liabilities, maintenance, contracts, or other obligations of the district shall be equitable, shall be proportionate to the valuation of the portion of the district annexed and to the valuation of the portion of the district remaining following annexation, and shall, to the greatest extent feasible, reflect the actual impact of the annexation on the ability of the district to perform its duties and responsibilities within its new boundaries following

annexation. In the event a merger is agreed upon, the city or village shall have all the rights, privileges, duties, and obligations as provided in sections 35-537 to 35-539 when the city or village annexes the entire territory within the district, and the board of directors shall be relieved of all further duties and liabilities and their bonds exonerated as provided in section 35-538. No agreement between the district and the city or village shall be effective until submitted to and approved by the district court of the county in which the major portion of the district is located. No agreement shall be approved which may prejudice the rights of any bondholder or creditor of the district or employee under contract to the district. The court may authorize or direct amendments to the agreement before approving the same. If the district and city or village do not agree upon the proper adjustment of all matters growing out of the annexation of a part of the territory located within the district, the district, the annexing city or village, any bondholder or creditor of the district, or any employee under contract to the district may apply to the district court of the county where the major portion of the district is located for an adjustment of all matters growing out of or in any way connected with the annexation of such territory, and after a hearing thereon the court may enter an order or decree fixing the rights, duties, and obligations of the parties. In every case such decree or order shall require a change of the district boundaries so as to exclude from the district that portion of the territory of the district which has been annexed. Such change of boundaries shall become effective on the date of entry of such decree. Only the district and the city or village shall be necessary parties to such an action. Any bondholder or creditor of the district or any employee under contract to the district whose interests may be adversely affected by the annexation may intervene in the action pursuant to section 25-328. The decree when entered shall be binding on the parties the same as though the parties had voluntarily agreed thereto.

Source: Laws 2018, LB130, § 8.

ARTICLE 10
DEATH OR DISABILITY

(a) CAUSE OF DEATH OR DISABILITY

(b) FIREFIGHTER CANCER BENEFITS ACT

(a) CAUSE OF DEATH OR DISABILITY

35-1001 Death or disability as a result of cancer; death or disability as a result of certain diseases; prima facie evidence.

(1) For a firefighter or firefighter-paramedic who is a member of a paid fire department of a municipality or a rural or suburban fire protection district in this state, including a municipality having a home rule charter or a municipal authority created pursuant to a home rule charter that has its own paid fire department, and who suffers death or disability as a result of cancer, including, but not limited to, breast cancer, ovarian cancer, and cancer affecting the skin or the central nervous, lymphatic, digestive, hematological, urinary, skeletal, oral, or prostate systems, evidence which demonstrates that (a) such firefighter or firefighter-paramedic successfully passed a physical examination upon entry into such service or subsequent to such entry, which examination failed to reveal any evidence of cancer, (b) such firefighter or firefighter-paramedic was exposed to a known carcinogen, as defined on July 19, 1996, by the International Agency for Research on Cancer, while in the service of the fire department, and (c) such carcinogen is reported by the agency to be a suspected or known cause of the type of cancer the firefighter or firefighter-paramedic has, shall be prima facie evidence that such death or disability resulted from injuries, accident, or other cause while in the line of duty for the purposes of the Cities of the First Class Firefighters Retirement Act, a firefighter's pension plan established pursuant to a home rule charter, and a firefighter's pension or disability plan established by a rural or suburban fire protection district.

(2) For a firefighter or firefighter-paramedic who is a member of a paid fire department of a municipality or a rural or suburban fire protection district in this state, including a municipality having a home rule charter or a municipal authority created pursuant to a home rule charter that has its own paid fire department, and who suffers death or disability as a result of a blood-borne infectious disease, tuberculosis, meningococcal meningitis, or methicillin-resistant Staphylococcus aureus, evidence which demonstrates that (a) such firefighter or firefighter-paramedic successfully passed a physical examination upon entry into such service or subsequent to such entry, which examination failed to reveal any evidence of such blood-borne infectious disease, tuberculosis, meningococcal meningitis, or methicillin-resistant Staphylococcus aureus, and (b) such firefighter or firefighter-paramedic has engaged in the service of the fire department within ten years before the onset of the disease, shall be prima facie evidence that such death or disability resulted from injuries, accident, or other cause while in the line of duty for the purposes of the Cities of the First Class Firefighters Retirement Act, a firefighter's pension plan established pursuant to a home rule charter, and a firefighter's pension or disability plan established by a rural or suburban fire protection district.

(3) The prima facie evidence presumed under this section shall extend to death or disability as a result of cancer as described in this section, a blood-borne infectious disease, tuberculosis, meningococcal meningitis, or methicillin-resistant Staphylococcus aureus after the firefighter or firefighter-paramedic separates from his or her service to the fire department if the death or disability occurs within three months after such separation.

(4) For purposes of this section, blood-borne infectious disease means human immunodeficiency virus, acquired immunodeficiency syndrome, and all strains of hepatitis.

Source: Laws 1996, LB 1076, § 45; Laws 2010, LB373, § 2; Laws 2020, LB643, § 1; Laws 2024, LB686, § 14.
Effective date July 19, 2024.

Cross References

Cities of the First Class Firefighters Retirement Act, see section 16-1020.

(b) FIREFIGHTER CANCER BENEFITS ACT

35-1002 Act, how cited.

Sections 35-1002 to 35-1010 shall be known and may be cited as the Firefighter Cancer Benefits Act.

Source: Laws 2021, LB432, § 1.

35-1003 Terms, defined.

For purposes of the Firefighter Cancer Benefits Act:

(1) Cancer means:

(a) A disease (i) caused by an uncontrolled division of abnormal cells in a part of the body or a malignant growth or tumor resulting from the division of abnormal cells and (ii) affecting the prostate, breast, or lung or the lymphatic, hematological, digestive, urinary, neurological, or reproductive system; or

(b) Melanoma; and

(2) Firefighter means:

(a) A firefighter or firefighter-paramedic who is a member of a paid fire department of a municipality or a rural or suburban fire protection district in this state, including a municipality having a home rule charter or a municipal authority created pursuant to a home rule charter that has its own paid fire department;

(b) A firefighter or firefighter-paramedic who is a member of a paid fire department of an airport authority; or

(c) A volunteer firefighter who has been deemed an employee under subdivision (3) of section 48-115.

Source: Laws 2021, LB432, § 2.

35-1004 Benefits; entitled, when.

Before any firefighter is entitled to benefits under the Firefighter Cancer Benefits Act, such firefighter shall (1) have successfully passed a physical examination which failed to reveal any evidence of cancer, (2) have served at least twenty-four consecutive months as a firefighter at any fire station within the State of Nebraska, (3) have been actively engaged in fire suppression at an actual fire or fire training event, and (4) wear all available personal protective equipment when fighting any fire, including a self-contained breathing apparatus when fighting structure fires. After serving at least twenty-four consecutive months as a firefighter, the firefighter shall be deemed to be in compliance with subdivision (2) of this section even with a break in service, so long as such break does not exceed six months.

Source: Laws 2021, LB432, § 3.

35-1005 Enhanced cancer benefits; provide and maintain; minimum benefits; additional payment upon death; conditions.

(1) Beginning on and after January 1, 2022, any rural or suburban fire protection district, airport authority, city, village, or nonprofit corporation may

provide and maintain enhanced cancer benefits. If such benefits are provided, they shall include, at a minimum, the following:

(a) A lump-sum benefit of twenty-five thousand dollars for each diagnosis payable to a firefighter upon acceptable proof to the insurance carrier or other payor of a diagnosis by a board-certified physician in the medical specialty appropriate for the type of cancer diagnosed that there are one or more malignant tumors characterized by the uncontrollable and abnormal growth and spread of malignant cells with invasion of normal tissue, and that either:

(i) There is metastasis and:

(A) Surgery, radiotherapy, or chemotherapy is medically necessary; or

(B) There is a tumor of the prostate, provided that it is treated with radical prostatectomy or external beam therapy; or

(ii) Such firefighter has terminal cancer, his or her life expectancy is twenty-four months or less from the date of diagnosis, and he or she will not benefit from, or has exhausted, curative therapy;

(b) A lump-sum benefit of six thousand two hundred fifty dollars for each diagnosis payable to a firefighter upon acceptable proof to the insurance carrier or other payor of a diagnosis by a board-certified physician in the medical specialty appropriate for the type of cancer involved that either:

(i) There is carcinoma in situ such that surgery, radiotherapy, or chemotherapy has been determined to be medically necessary;

(ii) There are malignant tumors which are treated by endoscopic procedures alone; or

(iii) There are malignant melanomas; and

(c)(i) A monthly benefit of one thousand five hundred dollars payable to a firefighter, of which the first payment shall be made six months after total disability and submission of acceptable proof of such disability to the insurance carrier or other payor that such disability is caused by cancer and that such cancer precludes the firefighter from serving as a firefighter. Such benefit shall continue for up to thirty-six consecutive monthly payments.

(ii) Such monthly benefit shall be subordinate to any other benefit actually paid to the firefighter solely for such disability from any other source, not including private insurance purchased solely by the firefighter, and shall be limited to the difference between the amount of such other pay benefit and the amount specified in this section.

(iii) Any firefighter receiving such monthly benefit may be required to have his or her condition reevaluated. In the event any such reevaluation reveals that such person has regained the ability to perform duties as a firefighter, then his or her monthly benefits shall cease the last day of the month of the reevaluation.

(iv) In the event that there is a subsequent reoccurrence of a disability caused by cancer which precludes the firefighter from serving as a firefighter, he or she shall be entitled to receive any remaining monthly benefits.

(2) A firefighter shall also be entitled to an additional payment of enhanced cancer death benefits in the amount of fifty thousand dollars payable to his or her beneficiary or, if no beneficiary is named, to such firefighter's estate upon acceptable proof by a board-certified physician that such firefighter's death resulted from complications associated with cancer.

(3) A firefighter shall be ineligible for benefits under the Firefighter Cancer Benefits Act if he or she is already provided paid firefighter cancer benefits pursuant to section 35-1001.

Source: Laws 2021, LB432, § 4.

35-1006 Benefits; maximum amount.

The combined total of all benefits received by any firefighter pursuant to subdivisions (1)(a) and (b) of section 35-1005 during his or her lifetime shall not exceed fifty thousand dollars.

Source: Laws 2021, LB432, § 5.

35-1007 Firefighter; cessation of status; eligibility for benefits; rural or suburban fire protection district, airport authority, city, village, or nonprofit corporation; responsible for payment of premiums or other costs.

A firefighter shall remain eligible for benefits pursuant to subsections (1) and (2) of section 35-1005 for thirty-six months after the formal cessation of the firefighter's status as a firefighter. If a firefighter has a physical examination during the thirty-six months of eligibility that reveals evidence of cancer, the firefighter shall be eligible for benefits under subsections (1) and (2) of section 35-1005 even if such benefits are paid after the thirty-six-month eligibility period ends. The rural or suburban fire protection district, airport authority, city, village, or nonprofit corporation for which such firefighter served shall be responsible for payment of all premiums or other costs associated with benefits that may be provided under subsections (1) and (2) of section 35-1005 throughout the duration of the firefighter's coverage.

Source: Laws 2021, LB432, § 6.

35-1008 Benefits; proof of insurance coverage or ability to pay; documentation.

A rural or suburban fire protection district, airport authority, city, village, or nonprofit corporation, if it provides benefits pursuant to subsections (1) and (2) of section 35-1005, shall maintain proof of insurance coverage that meets the requirements of the Firefighter Cancer Benefits Act or shall maintain satisfactory proof of the ability to pay such compensation to ensure adequate coverage for all firefighters. Sufficient documentation of satisfactory proof of the ability to pay such compensation to ensure adequate coverage for all firefighters shall be required and shall comply with rules and regulations adopted and promulgated by the State Fire Marshal. Such coverage shall remain in effect until thirty-six months after the rural or suburban fire protection district, airport authority, city, village, or nonprofit corporation no longer has any firefighters who could qualify for benefits under the act.

Source: Laws 2021, LB432, § 7.

35-1009 Reports; requirements.

(1) Any rural or suburban fire protection district, airport authority, city, village, or nonprofit corporation that has had a firefighter file a claim for or receive cancer benefits under the Firefighter Cancer Benefits Act shall report such claims filed, claims paid, and types of claims to the State Fire Marshal. On or before December 1, 2023, and on or before December 1 of each year

thereafter, the State Fire Marshal shall submit electronically an annual report to the Legislature and Governor stating the number of firefighters who have filed claims pursuant to the act and the number of firefighters who have received benefits under the act.

(2) If the firefighters in a fire department are being provided cancer benefits under the Firefighter Cancer Benefits Act, the fire chief of such fire department, or his or her designee, shall submit an annual report to the governing body of the rural or suburban fire protection district, airport authority, city, or village served by such fire department listing the total number of fire suppression incidents occurring during the most recently completed calendar year. Such report shall be submitted on or before February 15, 2023, and on or before February 15 of each year thereafter.

Source: Laws 2021, LB432, § 8.

35-1010 Rules and regulations.

The State Fire Marshal may adopt and promulgate rules and regulations necessary to carry out the Firefighter Cancer Benefits Act.

Source: Laws 2021, LB432, § 9.

ARTICLE 12

MUTUAL FINANCE ASSISTANCE ACT

Section
35-1204. Mutual finance organization; creation by agreement; tax levy.
35-1206. Distributions from fund; amount; disqualification; when.
35-1207. Application for distribution; financial information required; State Treasurer; duties.

35-1204 Mutual finance organization; creation by agreement; tax levy.

(1) A mutual finance organization may be created by agreement among its members pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act. The agreement shall:

(a) Have a duration of three years;

(b) Require that each member of the mutual finance organization levy the same agreed-upon property tax rate within their boundaries for one out of the three tax years covered by the agreement. The members need not levy such agreed-upon property tax rate during the same year;

(c) Require that all members of the mutual finance organization levy no more than such agreed-upon property tax rate for the remaining tax years covered by the agreement; and

(d) Contain a statement of the agreed-upon maximum property tax rate.

(2) The property tax rates described in subsection (1) of this section shall be levied for the purpose of jointly funding the operations of all members of the mutual finance organization. All such property tax rates shall exclude levies for bonded indebtedness and lease-purchase contracts in existence on July 1, 1998.

(3) The changes made to this section by Laws 2020, LB1130, do not affect eligibility for funding pursuant to the Mutual Finance Assistance Act that is to be paid on or before May 1, 2021.

Source: Laws 1998, LB 1120, § 4; Laws 1999, LB 87, § 70; Laws 2019, LB63, § 3; Laws 2020, LB1130, § 1.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.

35-1206 Distributions from fund; amount; disqualification; when.

(1)(a) Rural and suburban fire protection districts or mutual finance organizations which qualify for assistance under section 35-1205 shall receive ten dollars times the assumed population of the fire protection district or mutual finance organization as calculated in subsection (3) of such section plus the population of any city of the first class that is part of the district or mutual finance organization, not to exceed three hundred thousand dollars for any one district or mutual finance organization;

(b) Each village or city of the second class that is a member of a mutual finance organization which qualifies for assistance under section 35-1205 shall receive ten thousand dollars; and

(c) Each rural or suburban fire protection district which qualifies for assistance under section 35-1205 shall receive ten thousand dollars, regardless of whether such district is a member in a mutual finance organization which qualifies for assistance under section 35-1205.

(2) If the district or mutual finance organization is located in more than one county and meets the threshold for qualification in subsection (1) or (2) of section 35-1205 in one of such counties, the district or mutual finance organization shall receive assistance under this section for all of its assumed population, including that which is assumed population in counties for which the threshold is not reached by the district or mutual finance organization.

(3) If a mutual finance organization qualifies for assistance under this section and one or more rural or suburban fire protection districts or cities or villages fail to levy a tax rate that complies with subsection (1) of section 35-1204, as required under the mutual finance organization agreement, the mutual finance organization shall be disqualified for assistance in the following year and each subsequent year until the year following any year for which all districts and cities and villages in the mutual finance organization levy a tax rate that complies with subsection (1) of section 35-1204, as required by a mutual finance organization agreement.

Source: Laws 1998, LB 1120, § 6; Laws 1999, LB 141, § 8; Laws 2019, LB63, § 4; Laws 2021, LB664, § 1.

Note: The Revisor of Statutes, as authorized by section 49-705(1)(g), has corrected a manifest clerical error in Laws 2021, LB664, section 1, by changing two references to section 32-1205 which should have been section 35-1205 in subdivision (1)(c) of section 35-1206.

35-1207 Application for distribution; financial information required; State Treasurer; duties.

(1) Any rural or suburban fire protection district or mutual finance organization seeking funds pursuant to the Mutual Finance Assistance Act shall submit an application and any forms required by the State Treasurer. Such application and forms shall be submitted to the State Treasurer by September 20. The State Treasurer shall develop the application which requires calculations showing assumed population eligibility under section 35-1205 and the distribution amount under section 35-1206. If the applicant is a mutual finance organization, it shall attach to its first application a copy of the agreement pursuant to section 35-1204 and attach to any subsequent application a copy of an amended

agreement or an affidavit stating that the previously submitted agreement is still accurate and effective. Any mutual finance organization making application pursuant to this section shall include with the application additional financial information regarding the manner in which any funds received by the mutual finance organization based upon the prior year's application pursuant to the act have been expended or distributed by that mutual finance organization. The State Treasurer shall provide electronic copies of such reports on mutual finance organization expenditures and distributions to the Clerk of the Legislature by December 1 of each year in which any reports are filed.

(2) The State Treasurer shall review all applications for eligibility for funds under the act and approve any application which is accurate and demonstrates that the applicant is eligible for funds. On or before November 4, the State Treasurer shall notify the applicant of approval or denial of the application and certify the amount of funds for which an approved applicant is eligible. The decision of the State Treasurer may be appealed as provided in the Administrative Procedure Act.

(3)(a) Except as provided in subsection (5) of this section, funds shall be disbursed by the State Treasurer in two payments which are as nearly equal as possible. Such payments shall be made as follows:

(i) For applications received by the State Treasurer by July 1, 2020, such payments shall be made on or before November 1, 2020, and May 1, 2021;

(ii) For applications received by the State Treasurer after July 1, 2020, and by September 20, 2021, such payments shall be made on or before January 20, 2022, and May 20, 2022; and

(iii) For applications received by the State Treasurer by September 20 of any year thereafter, such payments shall be made on or before the next following January 20 and May 20.

(b) If the Mutual Finance Assistance Fund is insufficient to make all payments to all applicants in the amounts provided in section 35-1206, the State Treasurer shall prorate payments to approved applicants.

(4) Funds remaining in the Mutual Finance Assistance Fund on June 20 shall be transferred to the General Fund before July 1.

(5) No funds shall be disbursed to an eligible mutual finance organization until it has provided to the State Treasurer the financial information regarding the manner in which it has expended or distributed prior disbursements made pursuant to the Mutual Finance Assistance Act as provided in subsection (1) of this section.

Source: Laws 1998, LB 1120, § 7; Laws 2006, LB 1175, § 6; Laws 2012, LB782, § 34; Laws 2019, LB63, § 5; Laws 2020, LB1130, § 2.

Cross References

Administrative Procedure Act, see section 84-920.

CHAPTER 36
FRAUD AND VOIDABLE TRANSACTIONS

Article.
7. Uniform Fraudulent Transfer Act. Repealed.
8. Uniform Voidable Transactions Act. 36-801 to 36-815.

ARTICLE 7
UNIFORM FRAUDULENT TRANSFER ACT

Section
36-701. Repealed. Laws 2019, LB70, § 20.
36-702. Repealed. Laws 2019, LB70, § 20.
36-703. Repealed. Laws 2019, LB70, § 20.
36-704. Repealed. Laws 2019, LB70, § 20.
36-705. Repealed. Laws 2019, LB70, § 20.
36-706. Repealed. Laws 2019, LB70, § 20.
36-707. Repealed. Laws 2019, LB70, § 20.
36-708. Repealed. Laws 2019, LB70, § 20.
36-709. Repealed. Laws 2019, LB70, § 20.
36-710. Repealed. Laws 2019, LB70, § 20.
36-711. Repealed. Laws 2019, LB70, § 20.
36-712. Repealed. Laws 2019, LB70, § 20.

36-701 Repealed. Laws 2019, LB70, § 20.

36-702 Repealed. Laws 2019, LB70, § 20.

36-703 Repealed. Laws 2019, LB70, § 20.

36-704 Repealed. Laws 2019, LB70, § 20.

36-705 Repealed. Laws 2019, LB70, § 20.

36-706 Repealed. Laws 2019, LB70, § 20.

36-707 Repealed. Laws 2019, LB70, § 20.

36-708 Repealed. Laws 2019, LB70, § 20.

36-709 Repealed. Laws 2019, LB70, § 20.

36-710 Repealed. Laws 2019, LB70, § 20.

36-711 Repealed. Laws 2019, LB70, § 20.

36-712 Repealed. Laws 2019, LB70, § 20.

ARTICLE 8
UNIFORM VOIDABLE TRANSACTIONS ACT

Section
36-801. Short title.
36-802. Definitions.
36-803. Insolvency.

Section

36-801 Short title.

Sections 36-801 to 36-815 shall be known and may be cited as the Uniform Voidable Transactions Act.

Source: Laws 2019, LB70, § 1.

36-802 Definitions.

As used in the Uniform Voidable Transactions Act:

(1) Affiliate means:

(i) a person that directly or indirectly owns, controls, or holds with power to vote, twenty percent or more of the outstanding voting securities of the debtor, other than a person that holds the securities:

(A) as a fiduciary or agent without sole discretionary power to vote the securities; or

(B) solely to secure a debt, if the person has not in fact exercised the power to vote;

(ii) a corporation twenty percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person that directly or indirectly owns, controls, or holds, with power to vote, twenty percent or more of the outstanding voting securities of the debtor, other than a person that holds the securities:

(A) as a fiduciary or agent without sole discretionary power to vote the securities; or

(B) solely to secure a debt, if the person has not in fact exercised the power to vote;

(iii) a person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or

(iv) a person that operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.

(2) Asset means property of a debtor, but the term does not include:

(i) property to the extent it is encumbered by a valid lien;

(ii) property to the extent it is generally exempt under nonbankruptcy law; or

(iii) an interest in property held in tenancy by the entireties to the extent it is not subject to process by a creditor holding a claim against only one tenant.

(3) Claim, except as used in claim for relief, means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(4) Creditor means a person that has a claim.

(5) Debt means liability on a claim.

(6) Debtor means a person that is liable on a claim.

(7) Electronic means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(8) Insider includes:

(i) if the debtor is an individual:

(A) a relative of the debtor or of a general partner of the debtor;

(B) a partnership in which the debtor is a general partner;

(C) a general partner in a partnership described in subdivision (8)(i)(B) of this section; or

(D) a corporation of which the debtor is a director, officer, or person in control;

(ii) if the debtor is a corporation:

(A) a director of the debtor;

(B) an officer of the debtor;

(C) a person in control of the debtor;

(D) a partnership in which the debtor is a general partner;

(E) a general partner in a partnership described in subdivision (8)(ii)(D) of this section; or

(F) a relative of a general partner, director, officer, or person in control of the debtor;

(iii) if the debtor is a partnership:

(A) a general partner in the debtor;

(B) a relative of a general partner in, a general partner of, or a person in control of the debtor;

(C) another partnership in which the debtor is a general partner;

(D) a general partner in a partnership described in subdivision (8)(iii)(C) of this section; or

(E) a person in control of the debtor;

(iv) an affiliate, or an insider of an affiliate as if the affiliate were the debtor; and

(v) a managing agent of the debtor.

(9) Lien means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien.

(10) Organization means a person other than an individual.

(11) Person means an individual, estate, partnership, association, trust, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal or commercial entity.

(12) Property means anything that may be the subject of ownership.

(13) 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.

(14) Relative means an individual related by consanguinity within the third degree as determined by the common law, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.

(15) Sign means, with present intent to authenticate or adopt a record:

(i) to execute or adopt a tangible symbol; or

(ii) to attach to or logically associate with the record an electronic symbol, sound, or process.

(16) Transfer means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, license, and creation of a lien or other encumbrance.

(17) Valid lien means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

Source: Laws 2019, LB70, § 2.

36-803 Insolvency.

(a) A debtor is insolvent if, at a fair valuation, the sum of the debtor's debts is greater than the sum of the debtor's assets.

(b) A debtor that is generally not paying the debtor's debts as they become due other than as a result of a bona fide dispute is presumed to be insolvent. The presumption imposes on the party against which the presumption is directed the burden of proving that the nonexistence of insolvency is more probable than its existence.

(c) Assets under this section do not include property that has been transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making the transfer voidable under the Uniform Voidable Transactions Act.

(d) Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset.

Source: Laws 2019, LB70, § 3.

36-804 Value.

(a) Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied, but value does not include an unperformed promise made otherwise than in the ordinary course of the promisor's business to furnish support to the debtor or another person.

(b) For the purposes of subdivision (a)(2) of section 36-805 and section 36-806, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust, or security agreement.

(c) A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous.

Source: Laws 2019, LB70, § 4.

36-805 Transfer or obligation voidable as to present or future creditor.

(a) A transfer made or obligation incurred by a debtor is voidable as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(1) with actual intent to hinder, delay, or defraud any creditor of the debtor; or

(2) without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

(i) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(ii) intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

(b) In determining actual intent under subdivision (a)(1) of this section, consideration may be given, among other factors, to whether:

(1) the transfer or obligation was to an insider;

(2) the debtor retained possession or control of the property transferred after the transfer;

(3) the transfer or obligation was disclosed or concealed;

(4) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

(5) the transfer was of substantially all the debtor's assets;

(6) the debtor absconded;

(7) the debtor removed or concealed assets;

(8) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;

(9) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

(10) the transfer occurred shortly before or shortly after a substantial debt was incurred; and

(11) the debtor transferred the essential assets of the business to a lienor that transferred the assets to an insider of the debtor.

(c) A creditor making a claim for relief under subsection (a) of this section has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

Source: Laws 2019, LB70, § 5.

36-806 Transfer or obligation voidable as to present creditor.

(a) A transfer made or obligation incurred by a debtor is voidable as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

(b) A transfer made by a debtor is voidable as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

(c) Subject to subsection (b) of section 36-803, a creditor making a claim for relief under subsection (a) or (b) of this section has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

Source: Laws 2019, LB70, § 6.

36-807 When transfer is made or obligation is incurred.

For the purposes of the Uniform Voidable Transactions Act:

(1) a transfer is made:

(i) with respect to an asset that is real property other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good-faith purchaser of the asset from the debtor against which applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and

(ii) with respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise than under the Uniform Voidable Transactions Act that is superior to the interest of the transferee;

(2) if applicable law permits the transfer to be perfected as provided in subdivision (1) of this section and the transfer is not so perfected before the commencement of an action for relief under the act, the transfer is deemed made immediately before the commencement of the action;

(3) if applicable law does not permit the transfer to be perfected as provided in subdivision (1) of this section, the transfer is made when it becomes effective between the debtor and the transferee;

(4) a transfer is not made until the debtor has acquired rights in the asset transferred; and

(5) an obligation is incurred:

(i) if oral, when it becomes effective between the parties; or

(ii) if evidenced by a record, when the record signed by the obligor is delivered to or for the benefit of the obligee.

Source: Laws 2019, LB70, § 7.

36-808 Remedies of creditor.

(a) In an action for relief against a transfer or obligation under the Uniform Voidable Transactions Act, a creditor, subject to the limitations in section 36-809, may obtain:

(1) avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;

(2) an attachment or other provisional remedy against the asset transferred or other property of the transferee if available under applicable law; and

(3) subject to applicable principles of equity and in accordance with applicable rules of civil procedure:

(i) an injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;

(ii) appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or

(iii) any other relief the circumstances may require.

(b) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.

Source: Laws 2019, LB70, § 8.

36-809 Defenses, liability, and protection of transferee or obligee.

(a) A transfer or obligation is not voidable under subdivision (a)(1) of section 36-805 against a person that took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.

(b) To the extent a transfer is avoidable in an action by a creditor under subdivision (a)(1) of section 36-808, the following rules apply:

(1) Except as otherwise provided in this section, the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (c) of this section, or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

(i) the first transferee of the asset or the person for whose benefit the transfer was made; or

(ii) an immediate or mediate transferee of the first transferee, other than:

(A) a good-faith transferee that took for value; or

(B) an immediate or mediate good-faith transferee of a person described in subdivision (b)(1)(ii)(A) of this section.

(2) Recovery pursuant to subdivision (a)(1) or subsection (b) of section 36-808 of or from the asset transferred or its proceeds, by levy or otherwise, is available only against a person described in subdivision (b)(1)(i) or (ii) of this section.

(c) If the judgment under subsection (b) of this section is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

(d) Notwithstanding voidability of a transfer or an obligation under the Uniform Voidable Transactions Act, a good faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

(1) a lien on or a right to retain an interest in the asset transferred;

(2) enforcement of an obligation incurred; or

(3) a reduction in the amount of the liability on the judgment.

(e) A transfer is not voidable under subdivision (a)(2) of section 36-805 or section 36-806 if the transfer results from:

(1) termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or

(2) enforcement of a security interest in compliance with article 9, Uniform Commercial Code, other than acceptance of collateral in full or partial satisfaction of the obligation it secures.

(f) A transfer is not voidable under subsection (b) of section 36-806:

(1) to the extent the insider gave new value to or for the benefit of the debtor after the transfer was made, except to the extent the new value was secured by a valid lien;

(2) if made in the ordinary course of business or financial affairs of the debtor and the insider; or

(3) if made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.

(g) The following rules determine the burden of proving matters referred to in this section:

(1) A party that seeks to invoke subsection (a), (d), (e), or (f) of this section has the burden of proving the applicability of that subsection.

(2) Except as otherwise provided in subdivisions (g)(3) and (4) of this section, the creditor has the burden of proving each applicable element of subsection (b) or (c) of this section.

(3) The transferee has the burden of proving the applicability to the transferee of subdivision (b)(1)(ii)(A) or (B) of this section.

(4) A party that seeks adjustment under subsection (c) of this section has the burden of proving the adjustment.

(h) The standard of proof required to establish matters referred to in this section is preponderance of the evidence.

Source: Laws 2019, LB70, § 9.

36-810 Extinguishment of claim for relief.

A claim for relief with respect to a transfer or obligation under the Uniform Voidable Transactions Act is extinguished unless action is brought:

(1) under subdivision (a)(1) of section 36-805, not later than four years after the transfer was made or the obligation was incurred or, if later, not later than one year after the transfer or obligation was or could reasonably have been discovered by the claimant;

(2) under subdivision (a)(2) of section 36-805 or subsection (a) of section 36-806, not later than four years after the transfer was made or the obligation was incurred; or

(3) under subsection (b) of section 36-806, not later than one year after the transfer was made.

Source: Laws 2019, LB70, § 10.

36-811 Governing law.

(a) In this section, the following rules determine a debtor's location:

(1) A debtor who is an individual is located at the individual's principal residence.

(2) A debtor that is an organization and has only one place of business is located at its place of business.

(3) A debtor that is an organization and has more than one place of business is located at its chief executive office.

(b) A claim for relief in the nature of a claim for relief under the Uniform Voidable Transactions Act is governed by the local law of the jurisdiction in which the debtor is located when the transfer is made or the obligation is incurred.

Source: Laws 2019, LB70, § 11.

36-812 Application to series organization.

(a) In this section:

(1) Protected series means an arrangement, however denominated, created by a series organization that, pursuant to the law under which the series organization is organized, has the characteristics set forth in subdivision (2) of this subsection.

(2) Series organization means an organization that, pursuant to the law under which it is organized, has the following characteristics:

(i) The organic record of the organization provides for creation by the organization of one or more protected series, however denominated, with respect to specified property of the organization, and for records to be maintained for each protected series that identify the property of or associated with the protected series;

(ii) Debt incurred or existing with respect to the activities of, or property of or associated with, a particular protected series is enforceable against the property of or associated with the protected series only, and not against the property of or associated with the organization or other protected series of the organization; and

(iii) Debt incurred or existing with respect to the activities or property of the organization is enforceable against the property of the organization only, and not against the property of or associated with a protected series of the organization.

(b) A series organization and each protected series of the organization is a separate person for purposes of the Uniform Voidable Transactions Act, even if for other purposes a protected series is not a person separate from the organization or other protected series of the organization.

Source: Laws 2019, LB70, § 12.

36-813 Supplementary provisions.

Unless displaced by the provisions of the Uniform Voidable Transactions Act, the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement its provisions.

Source: Laws 2019, LB70, § 13.

36-814 Uniformity of application and construction.

The Uniform Voidable Transactions Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of the act among states enacting it.

Source: Laws 2019, LB70, § 14.

36-815 Relation to Electronic Signatures in Global and National Commerce Act.

The Uniform Voidable Transactions Act modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq., as the act existed on September 1, 2019, but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b).

Source: Laws 2019, LB70, § 15.

CHAPTER 37
GAME AND PARKS

ARTICLE 1
GAME AND PARKS COMMISSION

37-104 Game and Parks Commission; meetings; special meeting; notice; place; quorum; agreement with city of Lincoln for building and facilities; location.

Regular meetings of the Game and Parks Commission shall be held quarterly. Special meetings may be held upon call of the chairperson or pursuant to a call signed by three other members, of which the chairperson shall have three days' written notice. No official action shall be taken except at a public meeting at the headquarters of the commission or at a public meeting at a location within the state as determined by a majority of members of the commission. Five members of the commission shall constitute a quorum for the transaction of business.

All regular meetings held in Lincoln, Nebraska, shall be held in suitable offices to be provided under the authority of Chapter 72, article 14. The Game and Parks Commission is authorized to enter into an agreement with the city of Lincoln providing for the supplying by the city of Lincoln to the State of Nebraska for the commission of a headquarters office building and related buildings and facilities therefor, including the parking of motor vehicles, to be located on real estate which is north of Holdrege Street and east of 33rd Street.

Source: Laws 1969, c. 776, § 1, p. 2947; Laws 1997, LB 141, § 1; R.S.Supp.,1997, § 81-803.01; Laws 1998, LB 922, § 4; Laws 2023, LB565, § 22.

37-105 Game and Parks Commission; expenses; per diem.

The members of the Game and Parks Commission, other than the secretary, shall be reimbursed for expenses incurred in the discharge of their official duties as provided in sections 81-1174 to 81-1177 and shall be allowed a per diem of thirty-five dollars for days actually away from home on business of the commission, not exceeding forty-five days in any one year.

Source: Laws 1929, c. 113, § 4, p. 444; C.S.1929, § 81-6504; Laws 1933, c. 96, § 17, p. 396; Laws 1941, c. 180, § 7, p. 704; C.S.Supp.,1941, § 81-6504; R.S.1943, § 81-804; Laws 1947, c. 315, § 3, p. 954; Laws 1967, c. 584, § 1, p. 1973; Laws 1977, LB 482, § 1; Laws 1981, LB 204, § 172; Laws 1988, LB 864, § 13; R.S.1943, (1996), § 81-804; Laws 1998, LB 922, § 5; Laws 2020, LB381, § 26.

37-106 Game and Parks Commission; secretary; qualifications; terms; compensation; expenses; duties; removal.

The Game and Parks Commission shall appoint a secretary, who will act as its director and chief conservation officer and be in charge of its activities. He or she shall be a person with knowledge of and experience in the requirements of the protection, propagation, conservation, and restoration of the wildlife resources of the state. The secretary shall serve for a term of six years. The secretary shall not hold any other public office and shall devote his or her entire time to the service of the state in the discharge of his or her official duties. The secretary shall receive such compensation as the commission may determine and shall be reimbursed for expenses incurred by him or her in the discharge of his or her official duties as provided in sections 81-1174 to 81-1177. Before entering upon the duties of his or her office, the secretary shall take and subscribe to the constitutional oath of office, and shall, in addition thereto, swear or affirm that he or she holds no other public office, nor any position under any political committee or party. Such oath or affirmation shall be filed in the office of the Secretary of State. Under the direction of the commission, the secretary shall have general supervision and control of all activities and functions of the commission, shall enforce all the provisions of the law of the state relating to wild animals, birds, fish, parks, and recreational areas, and shall exercise all necessary powers incident thereto not specifically conferred on the commission. The secretary may be removed by the commission for inefficiency, neglect of duty, or misconduct in office, but only by a majority vote of the commissioners after delivering to the secretary a copy of the charges and affording him or her an opportunity of being publicly heard in

person or by counsel in his or her own defense. If the secretary is removed, the commission shall place in its minutes a complete statement of all charges made against the secretary and its findings thereon, together with a complete record of the proceedings and the recorded vote thereon.

Source: Laws 1929, c. 113, § 10, p. 446; C.S.1929, § 81-6510; Laws 1935, c. 174, § 7, p. 642; C.S.Supp.,1941, § 81-6510; R.S.1943, § 81-807; Laws 1967, c. 36, § 7, p. 163; Laws 1967, c. 585, § 10, p. 1979; Laws 1981, LB 204, § 173; R.S.1943, (1996), § 81-807; Laws 1998, LB 922, § 6; Laws 2020, LB381, § 27.

Cross References

For provisions relating to oath of office and bond approval generally, see Article XV, section 1, Constitution of Nebraska, and Chapter 11.

37-111 Water safety education; grants; powers and duties.

The Game and Parks Commission shall create a program for the purpose of providing financial support for the education of persons about water safety in general and specifically for the education of children about staying away from water unless accompanied by an adult. The commission shall use the Josh the Otter-Be Safe Around Water Cash Fund to award grants to nonprofit organizations that are dedicated to educating children about water safety. The grants shall be used by the recipient organization to support educating persons about water safety in general and specifically for the education of children about water safety.

Source: Laws 2021, LB166, § 9.

37-112 Josh the Otter-Be Safe Around Water Cash Fund; created; use; investment.

The Josh the Otter-Be Safe Around Water Cash Fund is created for the purpose of funding the program set forth in section 37-111. The fund shall consist of any money credited to the fund pursuant to section 60-3,258. The fund may also receive gifts, bequests, grants, or other contributions or donations from public or private entities. The state investment officer shall invest any money in the fund available for investment pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2021, LB166, § 10.

Cross References

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

ARTICLE 2
GAME LAW GENERAL PROVISIONS

Section
37-201. Law, how cited.
37-202. Definitions, where found.
37-208.01. Bonus point, defined.
37-237.02. Preference point, defined.
37-247.01. Wildlife abatement, defined.

37-201 Law, how cited.

Sections 37-201 to 37-814 and 37-1501 to 37-1510 and the State Park System Construction Alternatives Act shall be known and may be cited as the Game Law.

Source: Laws 1929, c. 112, I, § 2, p. 408; C.S.1929, § 37-102; R.S.1943, § 37-102; Laws 1989, LB 34, § 2; Laws 1989, LB 251, § 1; Laws 1991, LB 403, § 2; Laws 1993, LB 830, § 7; Laws 1994, LB 1088, § 2; Laws 1994, LB 1165, § 6; Laws 1995, LB 274, § 1; Laws 1996, LB 923, § 2; Laws 1997, LB 19, § 2; R.S.Supp.,1997, § 37-102; Laws 1998, LB 922, § 11; Laws 1999, LB 176, § 2; Laws 2000, LB 788, § 2; Laws 2002, LB 1003, § 14; Laws 2003, LB 305, § 1; Laws 2004, LB 826, § 1; Laws 2005, LB 121, § 2; Laws 2005, LB 162, § 1; Laws 2007, LB504, § 1; Laws 2009, LB105, § 2; Laws 2010, LB743, § 3; Laws 2010, LB836, § 1; Laws 2012, LB391, § 1; Laws 2012, LB928, § 1; Laws 2014, LB699, § 1; Laws 2014, LB814, § 1; Laws 2015, LB142, § 1; Laws 2016, LB474, § 1; Laws 2018, LB775, § 1; Laws 2019, LB374, § 1; Laws 2020, LB287, § 1; Laws 2021, LB507, § 1; Laws 2022, LB1082, § 1; Laws 2024, LB867, § 1; Laws 2024, LB1335, § 1.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB867, section 1, with LB1335, section 1, to reflect all amendments.

Note: Changes made by LB867 became operative July 19, 2024. Changes made by LB1335 became effective July 19, 2024.

Cross References

State Park System Construction Alternatives Act, see section 37-1701.

37-202 Definitions, where found.

For purposes of the Game Law, unless the context otherwise requires, the definitions found in sections 37-203 to 37-247.01 are used.

Source: Laws 1929, c. 112, I, § 1, p. 407; C.S.1929, § 37-101; Laws 1931, c. 75, § 1, p. 199; Laws 1937, c. 89, § 1, p. 290; Laws 1941, c. 72, § 1, p. 300; C.S.Supp.,1941, § 37-101; Laws 1943, c. 94, § 1, p. 321; R.S.1943, § 37-101; Laws 1949, c. 100, § 1, p. 275; Laws 1953, c. 123, § 1, p. 386; Laws 1957, c. 139, § 1, p. 464; Laws 1959, c. 148, § 2, p. 563; Laws 1963, c. 200, § 1, p. 647; Laws 1965, c. 194, § 1, p. 592; Laws 1967, c. 216, § 1, p. 578; Laws 1971, LB 733, § 8; Laws 1973, LB 331, § 1; Laws 1975, LB 195, § 1; Laws 1975, LB 142, § 1; Laws 1976, LB 861, § 1; Laws 1981, LB 72, § 1; Laws 1985, LB 557, § 1; Laws 1987, LB 154, § 1; Laws 1989, LB 34, § 1; Laws 1993, LB 121, § 201; Laws 1993, LB 830, § 6; Laws 1994, LB 884, § 57; Laws 1994, LB 1088, § 1; Laws 1994, LB 1165, § 5; Laws 1995, LB 259, § 1; Laws 1997, LB 173, § 1; R.S.Supp.,1997, § 37-101; Laws 1998, LB 922, § 12; Laws 1999, LB 176, § 3; Laws 2002, LB 1003, § 15; Laws 2012, LB391, § 2; Laws 2019, LB374, § 2; Laws 2020, LB287, § 2.

37-208.01 Bonus point, defined.

Bonus point means a point or points accrued by an applicant for preference in a random permit drawing in which the number of points determines the number of entries in the permit drawing.

Source: Laws 2020, LB287, § 3.

37-237.02 Preference point, defined.

Preference point means a point or points accrued by an applicant for preference in a structured random permit drawing in which the draw is structured by the number of preference points and the applicants with the most points are drawn first.

Source: Laws 2020, LB287, § 4.

37-247.01 Wildlife abatement, defined.

Wildlife abatement means the use of a trained raptor to frighten, flush, haze, take, or kill certain wildlife to manage depredation, damage, or other threats to human health and safety or commerce caused by such wildlife.

Source: Laws 2019, LB374, § 3.

ARTICLE 3

COMMISSION POWERS AND DUTIES

(a) GENERAL PROVISIONS

(a) GENERAL PROVISIONS

37-317 Commission; disseminate information and promotional materials.

The commission may disseminate information and promotional materials regarding the state park system and the wildlife resources of the state in order to inform the public of the outdoor recreation opportunities to be found in Nebraska.

Source: Laws 1998, LB 922, § 75; Laws 2020, LB287, § 5.

(b) FUNDS

37-324 Funds from permits and publications; placed in the State Game Fund; how used.

(1) The funds derived from the sale of permits and publications as provided in the Game Law, any unexpended balance now on hand from the sale of hunting,

fur-harvesting, and fishing permits, and all money required by the Game Law to be paid into the State Game Fund are hereby appropriated to the use of the commission (a) for the propagation, importation, protection, preservation, and distribution of game and fish and necessary equipment therefor and all things pertaining thereto, (b) for the creation of cash funds under section 37-326, (c) for the administration and enforcement of the State Boat Act, (d) for boating safety educational programs, (e) for the construction and maintenance of boating and docking facilities, navigation aids, and access to boating areas and such other uses which will promote the safety and convenience of the boating public in Nebraska, (f) for payment of claims by landowners in Nebraska for property damage caused by deer, antelope, or elk, if such payment is in compliance with federal laws and regulations, and (g) for publishing costs for publications relating to topics listed in subdivisions (a) and (b) of this subsection and other topics of general interest to the state as approved by the commission. An amount equal to two dollars from each annual resident fishing permit and two dollars from each combination hunting and fishing permit sold in this state shall be used by the commission for the administration, construction, operation, and maintenance of fish hatcheries and for the distribution of fish.

(2) Expenditures for publications on topics of general interest to the state shall not exceed the income derived from single-copy and subscription sales of commission publications and advertising revenue from such publications.

Source: Laws 1929, c. 112, II, § 12, p. 412; C.S.1929, § 37-212; Laws 1935, c. 82, § 1, p. 271; Laws 1943, c. 94, § 4, p. 324; R.S.1943, § 37-212; Laws 1959, c. 153, § 1, p. 579; Laws 1965, c. 196, § 1, p. 596; Laws 1976, LB 717, § 1; Laws 1981, LB 72, § 7; Laws 1987, LB 105, § 3; Laws 1987, LB 785, § 1; Laws 1989, LB 34, § 10; R.S.1943, (1993), § 37-212; Laws 1998, LB 922, § 82; Laws 2003, LB 305, § 2; Laws 2023, LB818, § 8.

Cross References

State Boat Act, see section 37-1201.

37-327.02 Game and Parks Commission Capital Maintenance Fund; created; use; investment; projects; report.

(1) The Game and Parks Commission Capital Maintenance Fund is created. The fund shall consist of money credited to the fund pursuant to section 77-27,132, transfers authorized by the Legislature, and any gifts, grants, bequests, or donations to the fund. The fund shall be administered by the commission and shall be used to build, repair, renovate, rehabilitate, restore, modify, or improve any infrastructure within the statutory authority and administration of the commission. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Beginning October 1, 2024, any investment earnings from investment of money in the fund shall be credited to the General Fund.

(2) On or before December 1, 2021, and on or before December 1 of each year thereafter through 2027, the commission shall electronically submit a report to the Clerk of the Legislature and the Revenue Committee of the Legislature. The report shall include (a) a list of each project that received funding from the Game and Parks Commission Capital Maintenance Fund

under subsection (1) of this section during the most recently completed fiscal year and (b) a list of projects that will receive such funding during the current fiscal year.

(3) Transfers may be made from the Game and Parks Commission Capital Maintenance Fund to the Nebraska Emergency Medical System Operations Fund at the direction of the Legislature. The State Treasurer shall transfer one million two hundred seventy thousand dollars from the Game and Parks Commission Capital Maintenance Fund to the Nebraska Emergency Medical System Operations Fund in June of each fiscal year beginning in June 2025, from the proceeds of the sales and use taxes imposed pursuant to section 77-2703 on the sale or lease of all-terrain vehicles and utility-type vehicles as provided in section 77-27,132, on such date as directed by the budget administrator of the budget division of the Department of Administrative Services.

Source: Laws 2014, LB814, § 2; Laws 2017, LB331, § 22; Laws 2018, LB945, § 10; Laws 2021, LB595, § 1; Laws 2024, LB1108, § 1; Laws 2024, First Spec. Sess., LB3, § 6.

Note: Changes made by Laws 2024, LB1108, became effective April 16, 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.

37-327.03 Game and Parks State Park Improvement and Maintenance Fund; created; use; investment.

The Game and Parks State Park Improvement and Maintenance Fund is created. The fund shall consist of transfers made by the Legislature, money credited to the fund pursuant to section 60-3,254, and any gifts, grants, bequests, or donations to the fund. The money credited to the fund pursuant to section 60-3,254 shall be used only for the improvement and maintenance of state recreational trails as defined in section 37-338. Any other money in the fund shall be used to build, repair, renovate, rehabilitate, restore, modify, or improve any infrastructure in the state park system. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Beginning October 1, 2024, any investment earnings from investment of money in the fund shall be credited to the General Fund.

Source: Laws 2014, LB906, § 4; Laws 2020, LB944, § 3; Laws 2024, First Spec. Sess., LB3, § 7.
Effective date August 21, 2024.

Cross References

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

(e) STATE PARK SYSTEM

37-345 Fees; concessions; disposition; State Park Cash Revolving Fund; created; use; investment.

(1) The commission may establish and collect reasonable fees for the use of state park-operated facilities of a personal-service nature, such as cabins, camps, swimming facilities, boats, and other equipment or services of a similar

nature. The commission, in its sole discretion, may grant concessions in state park areas for the provisions of certain appropriate services to the public, may grant permits for certain land or other resource utilization commensurate with the purposes of sections 37-337 to 37-348, and may prescribe and collect appropriate fees or rentals therefor.

(2) The proceeds of all such fees, rentals, or other revenue from operated facilities, concessions, or permits shall be credited to the State Park Cash Revolving Fund, which fund is hereby created in the state treasury, and shall be used by the commission solely for the improvement, maintenance, and operation of the state parks. 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 1959, c. 436, § 10, p. 1467; Laws 1969, c. 584, § 99, p. 2408; Laws 1995, LB 7, § 103; R.S.1943, (1996), § 81-815.30; Laws 1998, LB 922, § 103; Laws 2024, First Spec. Sess., LB3, § 8.
Effective date August 21, 2024.

Cross References

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

(i) HUNTING AND FISHING GUIDE AND OUTFITTER DATABASE

37-356 Hunting and fishing guide and outfitter database; voluntary; fee; applicant; eligibility.

(1) For purposes of this section:

(a) Guide means a person who advertises or otherwise holds himself or herself out to the public for hire as a guide for hunting or fishing, or both, to provide services to any person for the purpose of hunting or fishing for any animal; and

(b) Outfitter means a person who advertises or otherwise holds himself or herself out to the public for hire to assist any person in the taking of animals by providing facilities, equipment, accommodations, or other services for use in hunting or fishing for any animal. Outfitter does not mean any self-guided excursion or group hunt.

(2) The commission may establish and maintain on its website a voluntary hunting and fishing guide and outfitter database. The commission may establish a registration fee for guides and outfitters applying for placement on the database. Such fee shall be in a reasonable amount the commission deems necessary to cover the costs of administering the database.

(3) A person may apply to the commission for placement as a guide or an outfitter on the database for a period of three years. An applicant for placement on the database as a guide or an outfitter may be included in the database if such applicant:

(a) Has never been convicted of any felony, has never been cited for trespassing, has not violated any state or federal game law within the three years prior to application, and does not have his or her privilege or right to

hunt or fish suspended in Nebraska, another state, or a participating state in the Interstate Wildlife Violator Compact;

(b) Has completed a commission-sponsored hunter education program or a similar program approved by the commission. This subdivision does not apply to fishing guides or fishing outfitters;

(c) Provides proof of adequate liability insurance or similar bond security;

(d) Is a registered business in the State of Nebraska; and

(e) Agrees to comply with any other requirements established under the Game Law and pursuant to the rules and regulations of the commission.

(4) The commission may remove a guide or an outfitter from the database for any violation of the Game Law or the rules and regulations of the commission or for any failure by such guide or outfitter to maintain compliance with the requirements set forth in subsection (3) of this section. The commission shall not be liable for any such failure by a guide or outfitter.

(5) The commission may adopt and promulgate rules and regulations to carry out this section. This section does not apply to licensees of licensed game breeding and controlled shooting areas.

Source: Laws 2024, LB867, § 2.
Operative date July 19, 2024.

Cross References

Interstate Wildlife Violator Compact, see section 37-1601.

(j) SPECIAL MIGRATORY WATERFOWL HUNTING SEASON

37-357 Veterans; members of the armed forces; migratory waterfowl hunting season; requirements.

(1) For purposes of this section:

(a) Member of the armed forces means any member of the armed forces on active duty, including any member of the National Guard or reserves on active duty other than active duty for training; and

(b) Veteran has the same meaning as in 38 U.S.C. 101, as such section existed on January 1, 2024.

(2) The commission shall prescribe a migratory waterfowl hunting season for veterans and members of the armed forces.

(3) Any veteran or member of the armed forces may hunt during such season as long as such veteran or member of the armed forces has a valid hunting permit issued under the Game Law and all required stamps necessary to hunt migratory waterfowl in Nebraska.

(4) No motor vehicle entry permit or fee shall be required for entry into a permit area as defined in section 37-435 by such veteran or member of the armed forces during such season.

(5) Nothing in this section shall affect the applicability of statutes, rules, regulations, and orders other than the permit and stamp requirements described in this section.

(6) The commission may adopt and promulgate rules and regulations and pass and publish orders to carry out this section.

Source: Laws 2024, LB867, § 3.
Operative date July 19, 2024.

ARTICLE 4
PERMITS AND LICENSES

(a) GENERAL PERMITS

Section

(b) SPECIAL PERMITS AND LICENSES

(a) GENERAL PERMITS

37-406.01 Organ and tissue donation; commission; distribute brochure; permit application; request status as donor; change; procedure; commission powers and duties; anatomical gift; when effective.

(1) Beginning January 1, 2023, when a Nebraska resident at least sixteen years of age applies for an annual hunting permit or annual fishing permit, the commission shall distribute a brochure provided by an organ and tissue procurement organization approved by the Department of Health and Human Services containing a description and explanation of the Revised Uniform Anatomical Gift Act to each person applying for a permit who has not previously provided a response under subsection (2) of this section. If the application for

a permit is made through the Internet, a link to an electronic copy of the brochure shall be provided.

(2) The application for an annual hunting permit or annual fishing permit shall contain the following question: Do you wish to include your name in the Donor Registry of Nebraska and donate your organs and tissues at the time of your death? The commission shall record such response in an electronic database if the permit applicant is at least sixteen years of age and indicates on the application whether he or she wishes to be an organ and tissue donor. Submitting an application indicating that the permit applicant wishes to be a donor shall constitute an authorization under subsection (b) of section 71-4828.

(3) A person may change his or her status as a donor by (a) Internet access to the Donor Registry of Nebraska, (b) telephone request to the registry, or (c) other methods approved by the federally designated organ procurement organization for Nebraska. The commission shall provide information on its website on how a person may change such person's donor status.

(4) The commission shall electronically transfer to the federally designated organ procurement organization for Nebraska the first and last name, date of birth, gender, address, city, state, zip code, email address if provided, date of registration, and the unique user identification number of each person who agreed to make an anatomical gift under subsection (2) of this section.

(5) An anatomical gift made through the process described in subsection (2) of this section shall be considered made at the time the application is submitted regardless of when the information described in subsection (4) of this section is transferred.

(6) No person shall obtain information about an applicant's response as described in subsection (2) of this section except to facilitate the donation process. General statistical information may be provided upon request to the federally designated organ procurement organization for Nebraska.

(7) The commission may adopt and promulgate rules and regulations necessary to carry out the provisions of this section.

Source: Laws 2022, LB1082, § 2.

Cross References

Revised Uniform Anatomical Gift Act, see section 71-4824.

37-407 Hunting, fishing, and fur-harvesting permits; fees.

(1) The commission may offer multiple-year permits or combinations of permits at reduced rates and may establish fees pursuant to section 37-327 to be paid to the state for resident and nonresident annual hunting permits, annual fishing permits, three-day fishing permits, one-day fishing permits, combination hunting and fishing permits, fur-harvesting permits, and nonresident two-day hunting permits issued for periods of two consecutive days, as provided in this section.

(2) The fee for a multiple-year permit shall be established by the commission pursuant to section 37-327 and shall not be more than the number of years the permit will be valid times the fee required for an annual permit as provided in subsection (3) or (4) of this section. Payment for a multiple-year permit shall be made in a lump sum at the time of application. A replacement multiple-year permit may be issued under section 37-409 if the original is lost or destroyed.

(3) Resident fees shall be (a) not more than eighteen dollars for an annual hunting permit, (b) not more than twenty-four dollars for an annual fishing permit, (c) not more than fifteen dollars for a three-day fishing permit, (d) not more than nine dollars for a one-day fishing permit, (e) not more than thirty-nine dollars for an annual fishing and hunting permit, and (f) not more than twenty dollars for an annual fur-harvesting permit.

(4) Nonresident fees shall be (a) not more than two hundred sixty dollars for a period of time specified by the commission for fur harvesting one thousand or less fur-bearing animals and not more than seventeen dollars and fifty cents additional for each one hundred or part of one hundred fur-bearing animals harvested, (b)(i) for persons sixteen years of age and older, not more than one hundred thirty-eight dollars for an annual hunting permit and (ii) for persons under sixteen years of age, not less than the fee required pursuant to subdivision (3)(a) of this section for an annual hunting permit, (c) not more than ninety-five dollars for a two-day hunting permit plus the cost of a habitat stamp, (d) not more than fifteen dollars for a one-day fishing permit, (e) not more than twenty-nine dollars for a three-day fishing permit, (f) not more than eighty-six dollars for an annual fishing permit, and (g)(i) for persons sixteen years of age and older, not more than two hundred seven dollars for an annual fishing and hunting permit and (ii) for persons under sixteen years of age, not less than the fee required pursuant to subdivision (3)(e) of this section for an annual fishing and hunting permit.

(5) The commission may offer permits or combinations of permits at temporarily reduced rates for specific events or during specified timeframes.

Source: Laws 1929, c. 112, II, § 4, p. 410; C.S.1929, § 37-204; Laws 1935, c. 84, § 2, p. 275; Laws 1939, c. 44, § 1, p. 203; C.S.Supp.,1941, § 37-204; Laws 1943, c. 94, § 3, p. 323; R.S.1943, § 37-204; Laws 1945, c. 78, § 1, p. 288; Laws 1947, c. 132, § 1, p. 374; Laws 1949, c. 101, § 1, p. 278; Laws 1955, c. 130, § 1, p. 376; Laws 1957, c. 140, § 2, p. 475; Laws 1959, c. 150, § 1, p. 568; Laws 1963, c. 203, § 1, p. 654; Laws 1963, c. 202, § 2, p. 652; Laws 1965, c. 195, § 1, p. 594; Laws 1967, c. 215, § 1, p. 576; Laws 1969, c. 290, § 1, p. 1060; Laws 1972, LB 777, § 1; Laws 1974, LB 811, § 4; Laws 1975, LB 489, § 1; Laws 1976, LB 861, § 4; Laws 1977, LB 129, § 1; Laws 1979, LB 78, § 1; Laws 1979, LB 553, § 1; Laws 1981, LB 72, § 4; Laws 1987, LB 105, § 2; Laws 1989, LB 34, § 5; Laws 1993, LB 235, § 6; Laws 1995, LB 579, § 1; Laws 1995, LB 583, § 1; R.S.Supp.,1996, § 37-204; Laws 1998, LB 922, § 117; Laws 2001, LB 111, § 1; Laws 2002, LB 1003, § 19; Laws 2003, LB 306, § 1; Laws 2005, LB 162, § 2; Laws 2007, LB299, § 2; Laws 2009, LB105, § 5; Laws 2011, LB41, § 4; Laws 2016, LB745, § 4; Laws 2020, LB287, § 6; Laws 2023, LB565, § 23.

37-409 Hunting, fishing, and fur-harvesting permits; lost permit; replacement; fee.

The commission may issue a replacement permit for hunting, fishing, both hunting and fishing, or fur harvesting or for such other permits as may be issued by the commission to any person who has lost his or her original permit upon receipt from such person of satisfactory proof of purchase and an affidavit

of loss of such original permit. The commission shall prescribe the procedures for applying for a replacement permit and may authorize electronic issuance. The commission may also designate agents to issue replacement permits pursuant to section 37-406. A fee of not more than five dollars, as established by the commission, shall be charged for the issuance of each replacement permit, except that no such fee shall be charged for replacement of any permits exempt from the payment of fees, lifetime permits, or permits issued under section 37-421 or 37-421.01.

Source: Laws 1959, c. 151, § 1, p. 576; Laws 1967, c. 216, § 3, p. 580; Laws 1981, LB 72, § 5; Laws 1993, LB 235, § 7; R.S.1943, (1993), § 37-204.01; Laws 1998, LB 922, § 119; Laws 1999, LB 176, § 21; Laws 2001, LB 111, § 2; Laws 2020, LB287, § 7.

37-415 Lifetime fur-harvesting, fishing, hunting, or combination permit; fees; replacement; rules and regulations.

(1) The commission may issue to any Nebraska resident a lifetime fur-harvesting, fishing, hunting, or combination hunting and fishing permit upon application and payment of the appropriate fee. The fee for a resident lifetime fur-harvesting permit shall be not more than two hundred ninety-nine dollars, the fee for a resident lifetime hunting permit shall be not more than three hundred ninety-six dollars, the fee for a resident lifetime fishing permit shall be not more than four hundred fifty-seven dollars plus the cost of a lifetime aquatic habitat stamp, and the fee for a resident lifetime combination hunting and fishing permit shall be not more than seven hundred ninety-two dollars plus the cost of a lifetime aquatic habitat stamp, as such fees are established by the commission pursuant to section 37-327. Payment of the fee shall be made in a lump sum at the time of application.

(2) A resident lifetime permit shall not be made invalid by reason of the holder subsequently residing outside the state.

(3) The commission may issue to any nonresident a lifetime fishing, hunting, or combination hunting and fishing permit upon application and payment of the appropriate fee. The fee for a nonresident lifetime hunting permit shall be not more than one thousand five hundred sixty-two dollars, the fee for a nonresident lifetime fishing permit shall be not more than one thousand one hundred twenty-five dollars plus the cost of a lifetime aquatic habitat stamp, and the fee for a nonresident lifetime combination hunting and fishing permit shall be not more than two thousand three hundred forty-two dollars plus the cost of a lifetime aquatic habitat stamp, as such fees are established by the commission pursuant to section 37-327. Payment of the fee shall be made in a lump sum at the time of application.

(4) A replacement resident or nonresident lifetime permit may be issued if the original has been lost or destroyed for no additional fee. This subsection applies only to a paper permit and not a commemorative brass plate permit.

(5) The commission may adopt and promulgate rules and regulations to carry out this section and sections 37-416 and 37-417. Such rules and regulations may include, but need not be limited to, establishing fees which vary based on the age of the applicant.

Source: Laws 1983, LB 173, § 1; Laws 1993, LB 235, § 4; R.S.1943, (1993), § 37-202.01; Laws 1998, LB 922, § 125; Laws 1999, LB

176, § 24; Laws 2001, LB 111, § 5; Laws 2003, LB 306, § 2; Laws 2005, LB 162, § 4; Laws 2008, LB1162, § 1; Laws 2009, LB105, § 8; Laws 2016, LB745, § 5; Laws 2020, LB287, § 8.

37-420 Hunting, fur-harvesting, and fishing permit; veterans; exempt from payment of fees, when; special permits; limitations.

(1) Any veteran who is a legal resident of the State of Nebraska shall, upon application and without payment of any fee, be issued a combination fishing, fur-harvesting, and hunting permit, habitat stamp, aquatic habitat stamp, and Nebraska migratory waterfowl stamp if the veteran:

(a) Was discharged or separated with a characterization of honorable or general (under honorable conditions); and

(b)(i) Is rated by the United States Department of Veterans Affairs as fifty percent or more disabled as a result of service in the armed forces of the United States; or

(ii) Is receiving a pension from the department as a result of total and permanent disability, which disability was not incurred in the line of duty in the military service.

(2) If disabled persons are unable by reason of physical infirmities to hunt and fish in the normal manner, the commission may issue special permits without cost to those persons to hunt and fish from a vehicle, but such permits shall not authorize any person to shoot from any public highway.

(3) All permits issued without the payment of any fees pursuant to this section shall be perpetual and become void only upon termination of eligibility as provided in this section.

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

(5) Permits issued under subdivision (3) of this section as it existed prior to January 1, 2006, shall not expire as provided in subsection (1) of section 37-421.

Source: Laws 1957, c. 143, § 1, p. 479; Laws 1959, c. 155, § 1, p. 582; Laws 1965, c. 198, § 1, p. 600; Laws 1967, c. 216, § 7, p. 583; Laws 1972, LB 1204, § 1; Laws 1973, LB 138, § 1; Laws 1979, LB 434, § 2; Laws 1991, LB 2, § 5; Laws 1993, LB 235, § 11; R.S.1943, (1993), § 37-214.03; Laws 1998, LB 922, § 130; Laws 2005, LB 54, § 6; Laws 2005, LB 162, § 6; Laws 2005, LB 227, § 2; Laws 2011, LB41, § 6; Laws 2016, LB745, § 6; Laws 2024, LB867, § 4.
Operative date July 19, 2024.

37-421 Combination hunting, fur-harvesting, and fishing permits; stamps; persons eligible; one-day permits and stamps for veterans; special permits, limitation.

(1)(a) The commission may issue an annual combination fishing, fur-harvesting, and hunting permit, habitat stamp, aquatic habitat stamp, and Nebraska migratory waterfowl stamp upon application and payment of a fee of five dollars to (i) any Nebraska resident who is a veteran, who is sixty-four years of age or older, and who was discharged or separated with a characterization of

honorable or general (under honorable conditions) or (ii) any Nebraska resident who is sixty-nine years of age or older.

(b) A permit issued as provided in this subsection shall expire as provided in subdivision (3)(a) of section 37-405. Permits issued under this section as it existed before January 1, 2006, shall not expire as provided in section 37-405.

(2) The commission shall issue a one-day hunting permit, habitat stamp, and Nebraska migratory waterfowl stamp upon application and without payment of any fee to any veteran who is a Nebraska resident who was discharged or separated with a characterization of honorable or general (under honorable conditions) for use on Veterans Day. A permit and stamps issued under this subsection shall only be valid on November 11 in the year in which such permit and stamps are issued.

(3) If disabled persons are unable by reason of physical infirmities to hunt and fish in the normal manner, the commission may issue special permits without cost to those persons to hunt and fish from a vehicle, but such permits shall not authorize any person to shoot from any public highway.

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

Source: Laws 1972, LB 1204, § 6; Laws 1973, LB 138, § 2; Laws 1975, LB 79, § 2; Laws 1979, LB 434, § 3; Laws 1993, LB 235, § 12; R.S.1943, (1993), § 37-214.04; Laws 1998, LB 922, § 131; Laws 2005, LB 162, § 7; Laws 2005, LB 227, § 3; Laws 2011, LB41, § 7; Laws 2016, LB745, § 7; Laws 2024, LB867, § 5.
Operative date July 19, 2024.

37-426 Taking birds, animals, and aquatic organisms; stamps; when required; exhibit on request; fees.

(1) Except as provided in subsection (4) of this section:

(a) No resident of Nebraska sixteen years of age or older and no nonresident of Nebraska regardless of age shall hunt, harvest, or possess any game bird, upland game bird, game animal, or fur-bearing animal unless, at the time of such hunting, harvesting, or possessing, such person has an unexpired habitat stamp as prescribed by the rules and regulations of the commission prior to the time of hunting, harvesting, or possessing such bird or animal;

(b) No resident or nonresident of Nebraska shall take or possess any aquatic organism requiring a Nebraska fishing permit, including any fish, bullfrog, snapping turtle, tiger salamander, or mussel, unless, at the time of such taking or possessing, such person has an unexpired aquatic habitat stamp as prescribed by the rules and regulations of the commission prior to the time of taking or possessing a fish, bullfrog, snapping turtle, tiger salamander, or mussel; and

(c) No resident of Nebraska sixteen years of age or older and no nonresident of Nebraska regardless of age shall hunt, harvest, or possess any migratory waterfowl unless, at the time of such hunting, harvesting, or possessing, such person has an unexpired Nebraska migratory waterfowl stamp as prescribed by the rules and regulations of the commission prior to the time of hunting, harvesting, or possessing such migratory waterfowl.

(2) The commission may issue a lifetime habitat stamp, lifetime Nebraska migratory waterfowl stamp, or lifetime aquatic habitat stamp upon application

and payment of the appropriate fee. The fee for a lifetime stamp shall be not more than twenty times the fee required in subsection (5) of this section for an annual habitat stamp, annual Nebraska migratory waterfowl stamp, or annual aquatic habitat stamp. Payment of such fee shall be made in a lump sum at the time of application. A replacement lifetime stamp may be issued if the original is lost or destroyed at no additional fee. This subsection applies only to a paper permit and not a commemorative brass plate permit.

(3) The commission may issue a multiple-year habitat stamp, multiple-year Nebraska migratory waterfowl stamp, or multiple-year aquatic habitat stamp upon application and payment of the appropriate fee. The fee for such multiple-year stamps shall be established by the commission pursuant to section 37-327 and shall not be more than the number of years the stamp is valid times the fee required in subsection (5) of this section for an annual habitat stamp, annual Nebraska migratory waterfowl stamp, or annual aquatic habitat stamp. Payment of such fee shall be made in a lump sum at the time of application. A replacement multiple-year stamp may be issued if the original is lost or destroyed at no additional fee.

(4) Habitat stamps are not required for holders of limited permits issued under section 37-455. Aquatic habitat stamps are not required (a) when a fishing permit is not required, (b) for holders of permits pursuant to section 37-424, or (c) for holders of lifetime fishing permits or lifetime combination hunting and fishing permits purchased prior to January 1, 2006. Nebraska migratory waterfowl stamps are not required for hunting, harvesting, or possessing any species other than ducks, geese, or brant. For purposes of this section, a showing of proof of the electronic issuance of a stamp by the commission shall fulfill the requirements of this section.

(5)(a) Any person to whom a stamp has been issued shall, immediately upon request, exhibit evidence of issuance of the stamp to any officer. Any person hunting, fishing, harvesting, or possessing any game bird, upland game bird, game animal, or fur-bearing animal or any aquatic organism requiring a fishing permit in this state without evidence of issuance of the appropriate stamp shall be deemed to be without such stamp.

(b) An annual habitat stamp shall be issued upon the payment of a fee of not more than twenty-five dollars per stamp. A multiple-year habitat stamp shall be issued in conjunction with a multiple-year hunting permit or a multiple-year combination hunting and fishing permit at a fee of not more than twenty-five dollars times the number of years the multiple-year permit is valid.

(c) An aquatic habitat stamp shall be issued in conjunction with each fishing permit for a fee of not more than fifteen dollars per stamp for annual fishing permits, three-day fishing permits, or combination hunting and fishing permits, a fee of not more than fifteen dollars times the number of years the multiple-year fishing permit or a multiple-year combination hunting and fishing permit is valid, and a fee of not more than twenty times the fee required for an annual aquatic habitat stamp for lifetime fishing or combination hunting and fishing permits. The fee established under section 37-407 for a one-day fishing permit shall include an aquatic habitat stamp. One dollar from the sale of each one-day fishing permit shall be remitted to the State Treasurer for credit to the Nebraska Aquatic Habitat Fund.

(d) An annual Nebraska migratory waterfowl stamp shall be issued upon the payment of a fee of not more than sixteen dollars per stamp. A multiple-year

Nebraska migratory waterfowl stamp may only be issued in conjunction with a multiple-year hunting permit or a multiple-year combination hunting and fishing permit at a fee of not more than the annual fee times the number of years the multiple-year permit is valid.

(e) The commission shall establish the fees pursuant to section 37-327.

(6) The commission may offer stamps or combinations of stamps at temporarily reduced rates for specific events or during specified timeframes in conjunction with other permit sales.

Source: Laws 1976, LB 861, § 7; Laws 1981, LB 72, § 12; Laws 1983, LB 170, § 3; Laws 1991, LB 340, § 1; Laws 1993, LB 235, § 15; Laws 1996, LB 584, § 9; Laws 1997, LB 19, § 3; R.S.Supp.,1997, § 37-216.01; Laws 1998, LB 922, § 136; Laws 1999, LB 176, § 27; Laws 2001, LB 111, § 6; Laws 2002, LB 1003, § 20; Laws 2003, LB 305, § 11; Laws 2003, LB 306, § 3; Laws 2005, LB 162, § 8; Laws 2007, LB299, § 4; Laws 2008, LB1162, § 2; Laws 2009, LB105, § 10; Laws 2011, LB41, § 9; Laws 2016, LB745, § 9; Laws 2020, LB287, § 9.

37-438 Annual, temporary, disabled veteran, and active-duty military permits; fees.

(1) The commission shall devise annual, temporary, disabled veteran, and active-duty military permits.

(2) The annual permit may be purchased by any person and shall be valid through December 31 in the year for which the permit is issued. The fee for the annual permit for a resident motor vehicle shall be not more than thirty-five dollars per permit. The fee for the annual permit for a nonresident motor vehicle shall be two times the fee for a resident motor vehicle or sixty dollars, whichever is greater. The commission shall establish such fees by the adoption and promulgation of rules and regulations.

(3) A temporary permit may be purchased by any person and shall be valid until noon of the day following the date of issue. The fee for the temporary permit for a resident motor vehicle shall be not more than seven dollars. The fee for the temporary permit for a nonresident motor vehicle shall be two times the fee for a resident motor vehicle or twelve dollars, whichever is greater. The commission shall establish such fees by the adoption and promulgation of rules and regulations. The commission may issue temporary permits which are either valid for any area or valid for a single area.

(4)(a) A veteran who is a resident of Nebraska shall, upon application and without payment of any fee, be issued one disabled veteran permit for a resident motor vehicle if the veteran:

(i) Was discharged or separated with a characterization of honorable or general (under honorable conditions); and

(ii)(A) Is rated by the United States Department of Veterans Affairs as fifty percent or more disabled as a result of service in the armed forces of the United States; or

(B) Is receiving a pension from the United States Department of Veterans Affairs as a result of total and permanent disability, which disability was not incurred in the line of duty in the military service.

(b) All disabled veteran permits issued pursuant to this subsection shall be perpetual and shall become void only upon termination of eligibility as provided in this subsection.

(5) An active-duty military permit may be purchased by any individual who is active-duty military and shall be valid through December 31 in the year for which the permit is issued. The fee for the active-duty military permit is five dollars, regardless of residency. To qualify for an active-duty military permit, the individual shall present:

(a) Such individual's military identification card; and

(b) Proof that such individual is stationed at a military base located in Nebraska for active-duty military service.

(6) The commission may offer permits or combinations of permits at temporarily reduced rates for specific events or during specified timeframes.

(7) The commission may adopt and promulgate rules and regulations to carry out this section.

Source: Laws 1977, LB 81, § 5; Laws 1978, LB 742, § 7; Laws 1980, LB 723, § 3; Laws 1981, LB 74, § 1; Laws 1983, LB 199, § 1; Laws 1993, LB 235, § 32; R.S.1943, (1993), § 37-1105; Laws 1998, LB 922, § 148; Laws 1999, LB 176, § 35; Laws 2003, LB 122, § 1; Laws 2005, LB 162, § 14; Laws 2008, LB1162, § 3; Laws 2011, LB421, § 1; Laws 2016, LB745, § 10; Laws 2020, LB287, § 10; Laws 2020, LB770, § 1; Laws 2021, LB336, § 1; Laws 2024, LB867, § 6.
Operative date July 19, 2024.

(b) SPECIAL PERMITS AND LICENSES

37-447 Permit to hunt deer; commission; powers; issuance; fee; violation; penalty.

(1) The commission may issue permits for the hunting of deer and adopt and promulgate rules and regulations and pass commission orders pursuant to section 37-314 to prescribe limitations for the hunting, transportation, and possession of deer. The commission may offer permits or combinations of permits at temporarily reduced rates for specific events or during specified timeframes. The commission may specify by rule and regulation the information to be required on applications for such permits. Rules and regulations for the hunting, transportation, and possession of deer may include, but not be limited to, rules and regulations as to the type, caliber, and other specifications of firearms and ammunition used and specifications for bows and arrows used. Such rules and regulations may further specify and limit the method of hunting deer and may provide for dividing the state into management units or areas, and the commission may enact different deer hunting regulations for the different management units pertaining to sex, species, and age of the deer hunted.

(2) The number of such permits may be limited as provided by the rules and regulations of the commission, and except as provided in section 37-454, the permits shall be allocated in an impartial manner. Whenever the commission deems it advisable to limit the number of permits issued for any or all management units, the commission shall, by rules and regulations, determine eligibility to obtain such permits. In establishing eligibility, the commission may

give preference to persons who did not receive a permit or a specified type of permit during the previous year or years.

(3) Such permits may be issued to allow deer hunting in the Nebraska National Forest and other game reserves and such other areas as the commission may designate whenever the commission deems that permitting such hunting will not be detrimental to the proper preservation of wildlife in Nebraska in such forest, reserves, or areas.

(4)(a) The commission may, pursuant to section 37-327, establish and charge a nonrefundable application fee of not more than seven dollars for deer permits in those management units awarded on the basis of a random drawing. The commission shall, pursuant to section 37-327, establish and charge a fee of not more than thirty-nine dollars for residents and not more than three hundred sixty-nine dollars for nonresidents for each permit issued under this section except as otherwise provided in subdivision (b) of this subsection and subsection (6) of this section. The commission may, pursuant to section 37-327, establish and charge a fee of not more than twenty-four dollars for residents and not more than seventy-two dollars for nonresidents for the issuance of a preference point, in addition to any application fee, in lieu of entering the draw for a deer permit during the application period for the random drawing.

(b) The fee for a statewide buck-only permit limited to white-tailed deer shall be no more than two and one-half times the amount of a regular deer permit. The fee for a statewide buck-only deer permit that allows harvest of mule deer shall be no more than five times the amount of a regular deer permit.

(5)(a) The commission may issue nonresident permits after preference has been given for the issuance of resident permits as provided in rules and regulations adopted and promulgated by the commission.

(b) In management units specified by the commission, the commission may issue nonresident permits after resident preference has been provided by allocating at least eighty-five percent of the available permits to residents. The commission may require a predetermined application period for permit applications in specified management units. Such permits shall be issued after a reasonable period for making application, as established by the commission, has expired. When more valid applications are received for a designated management unit than there are permits available, such permits shall be allocated on the basis of a random drawing. All valid applications received during the predetermined application period shall be considered equally in any such random drawing without regard to time of receipt of such applications by the commission.

(6) The commission shall, pursuant to section 37-327, establish and charge a fee of not more than twenty-five dollars for residents and not more than forty-five dollars for nonresidents for a youth deer permit.

(7) Any person violating the rules and regulations adopted and promulgated or commission orders passed pursuant to this section shall be guilty of a Class II misdemeanor and shall be fined at least one hundred dollars upon conviction.

Source: Laws 1945, c. 85, § 1, p. 305; Laws 1947, c. 133, § 1, p. 376; Laws 1949, c. 103, § 1(1), p. 282; Laws 1951, c. 109, § 1, p. 517; Laws 1953, c. 124, § 1, p. 389; Laws 1957, c. 141, § 1, p. 477; Laws 1959, c. 156, § 1, p. 584; Laws 1969, c. 292, § 1, p. 1063; Laws 1972, LB 777, § 3; Laws 1974, LB 767, § 1; Laws 1976, LB

861, § 6; Laws 1979, LB 437, § 1; Laws 1981, LB 72, § 11; Laws 1984, LB 1001, § 1; Laws 1985, LB 557, § 2; Laws 1993, LB 235, § 13; Laws 1994, LB 1088, § 4; Laws 1995, LB 583, § 2; Laws 1995, LB 862, § 1; Laws 1996, LB 584, § 6; Laws 1997, LB 107, § 2; R.S.Supp.,1997, § 37-215; Laws 1998, LB 922, § 157; Laws 1999, LB 176, § 42; Laws 2003, LB 306, § 4; Laws 2005, LB 162, § 15; Laws 2007, LB299, § 7; Laws 2009, LB105, § 15; Laws 2013, LB94, § 1; Laws 2013, LB499, § 5; Laws 2016, LB745, § 11; Laws 2020, LB287, § 11; Laws 2023, LB565, § 24.

37-448 Special deer, antelope, and elk depredation season; extension of existing hunting season; permit; issuance; fees.

(1) Subject to rules and regulations adopted and promulgated by the commission, the secretary of the commission may designate, by order, special deer, antelope, and elk depredation seasons or extensions of existing hunting seasons. The secretary may designate a depredation season or an extension of an existing hunting season whenever he or she determines that deer, antelope, or elk are causing excessive property damage. The secretary shall specify the number of permits to be issued, the species, sex, and number or quota of animals allowed to be taken, the bag limit for such species, the beginning and ending dates for the depredation season or hunting season extension, any limitations on nonresident permits, shooting hours, the length of the depredation season or hunting season extension, and the geographic area in which hunting will be permitted. The rules and regulations shall allow use of any weapon permissible for use during the regular deer, antelope, or elk season.

(2) The depredation season may commence not less than five days after the first public announcement that the depredation season has been established. Permits shall be issued in an impartial manner at a location determined by the secretary. The commission shall, pursuant to section 37-327, establish and charge a fee of not more than twenty-five dollars for a resident special depredation season permit and a fee of not more than seventy-five dollars for a nonresident special depredation season permit. The commission shall, pursuant to section 37-327, establish and charge a fee of not more than ten dollars for a landowner special depredation season permit for the taking of deer and antelope for any person owning or operating at least twenty acres of farm or ranch land within the geographic area in which hunting will be permitted and to any member of the immediate family of any such person as defined in subdivision (2)(a) of section 37-455, and for the taking of elk for any person owning or operating at least eighty acres of farm or ranch land within the geographic area in which hunting will be permitted and to any member of the immediate family of such person as defined in subdivision (2)(a) of section 37-455. A special depredation season permit shall be valid only within such area and only during the designated depredation season. The commission shall use the income from the sale of special depredation season permits for abatement of damage caused by deer, antelope, and elk. Receipt of a depredation season permit shall not in any way affect a person's eligibility for a permit issued under section 37-447, 37-449, 37-450, or 37-455.

Source: Laws 1998, LB 922, § 158; Laws 2008, LB1162, § 4; Laws 2010, LB836, § 2; Laws 2012, LB928, § 3; Laws 2013, LB499, § 6; Laws 2021, LB507, § 2; Laws 2023, LB565, § 25.

37-449 Permit to hunt antelope; regulation and limitation by commission; issuance; fees; violation; penalty.

(1) The commission may issue permits for hunting antelope and may adopt and promulgate separate and, when necessary, different rules and regulations therefor within the limitations prescribed in sections 37-447 and 37-452 for hunting deer. The commission may offer permits or combinations of permits at reduced rates for specific events or during specified timeframes.

(2) The commission may, pursuant to section 37-327, establish and charge a nonrefundable application fee of not more than seven dollars for antelope permits in those management units awarded on the basis of a random drawing. The commission shall, pursuant to section 37-327, establish and charge a fee of not more than thirty-nine dollars for residents and not more than two hundred fifty-seven dollars for nonresidents for each permit issued under this section except as provided in subsection (4) of this section. The commission may, pursuant to section 37-327, establish and charge a fee of not more than twenty-four dollars for residents and not more than seventy-two dollars for nonresidents for the issuance of a preference point, in addition to any application fee, in lieu of entering the draw for an antelope permit during the application period for the random drawing.

(3) The provisions for the distribution of deer permits and the authority of the commission to determine eligibility of applicants for permits as described in sections 37-447 and 37-452 shall also apply to the distribution of antelope permits.

(4) The commission shall, pursuant to section 37-327, establish and charge a fee of not more than twenty-five dollars for residents and not more than forty-five dollars for nonresidents for a youth antelope permit.

(5) Any person violating the rules and regulations adopted and promulgated pursuant to this section shall be guilty of a Class II misdemeanor and shall be fined at least one hundred dollars upon conviction.

Source: Laws 1998, LB 922, § 159; Laws 2003, LB 305, § 14; Laws 2003, LB 306, § 5; Laws 2007, LB299, § 8; Laws 2009, LB105, § 16; Laws 2016, LB745, § 12; Laws 2020, LB287, § 12; Laws 2023, LB565, § 26.

37-450 Permit to hunt elk; regulation and limitation by commission; issuance; fee; violation; penalty.

(1) The commission may issue permits for hunting elk and may adopt and promulgate separate and, when necessary, different rules and regulations therefor within the limitations prescribed in sections 37-447 and 37-452 for hunting deer.

(2) The commission shall, pursuant to section 37-327, establish and charge (a) a nonrefundable application fee of not more than twelve dollars for a resident elk permit and not to exceed three times such amount for a nonresident elk permit and (b) a fee of not more than one hundred ninety-eight dollars for each resident elk permit issued and three times such amount for each nonresident elk permit issued. The commission may, pursuant to section 37-327, establish and charge a fee of not more than twenty-four dollars for residents and not more than seventy-two dollars for nonresidents for the issuance of a preference point or a bonus point, in addition to any application

fee, in lieu of entering the draw for an elk permit during the application period for the random drawing.

(3) An applicant shall not be issued a resident elk permit that allows the harvest of an antlered elk more than once every five years. A person may only harvest one antlered elk in his or her lifetime except when harvesting an antlered elk with a limited permit to hunt elk pursuant to subdivision (1)(b) of section 37-455 or an auction or lottery permit pursuant to section 37-455.01.

(4) The provisions for the distribution of deer permits and the authority of the commission to determine eligibility of applicants for permits as described in sections 37-447 and 37-452 shall also apply to the distribution of elk permits.

(5) Any person violating the rules and regulations adopted and promulgated pursuant to this section shall be guilty of a Class III misdemeanor and shall be fined at least two hundred dollars upon conviction.

Source: Laws 1998, LB 922, § 160; Laws 2003, LB 306, § 6; Laws 2005, LB 162, § 16; Laws 2007, LB299, § 9; Laws 2009, LB105, § 17; Laws 2011, LB41, § 12; Laws 2013, LB94, § 2; Laws 2016, LB745, § 13; Laws 2020, LB287, § 13.

37-451 Permit to hunt mountain sheep; regulation and limitation by commission; issuance; fee; violation; penalty.

(1) The commission may issue permits for hunting mountain sheep and may adopt and promulgate separate and, when necessary, different rules and regulations therefor within the limitations prescribed in subsection (1) of section 37-447 and section 37-452 for hunting deer. Such rules and regulations shall include provisions allowing persons who find dead mountain sheep, or any part of a mountain sheep, to turn over to the commission such mountain sheep or part of a mountain sheep. The commission may dispose of such mountain sheep or part of a mountain sheep as it deems reasonable and prudent. Except as otherwise provided in this section, the permits shall be issued to residents of Nebraska.

(2) The commission shall, pursuant to section 37-327, establish and charge a nonrefundable application fee of not more than thirty-four dollars for permits issued only to residents. Any number of resident-only permits, as authorized by the commission, shall be awarded by random drawing to eligible applicants. No permit fee shall be charged in addition to the nonrefundable application fee.

(3) No more than one additional permit may be authorized and issued pursuant to an auction open to residents and nonresidents. The auction shall be conducted according to rules and regulations prescribed by the commission. Any money derived from the sale of permits by auction shall be used only for perpetuation and management of mountain sheep, elk, and deer.

(4) If the commission determines to limit the number of permits issued for any or all management units, the commission shall by rule and regulation determine eligibility requirements for the permits.

(5) A person may obtain only one mountain sheep permit in his or her lifetime, except that an auction permit issued in accordance with subsection (3) of this section to harvest a mountain sheep shall not count against such total.

(6) Any person violating the rules and regulations adopted and promulgated pursuant to this section shall be guilty of a Class III misdemeanor and shall be fined at least five hundred dollars upon conviction.

Source: Laws 1998, LB 922, § 161; Laws 2008, LB1162, § 5; Laws 2009, LB105, § 18; Laws 2016, LB745, § 14; Laws 2023, LB565, § 27.

37-453 Permit to hunt deer, antelope, or elk; individual or joint application; ineligibility of individual, when.

Applications for the special permits provided for in section 37-447 or 37-449 shall be made individually or on a unit basis. If such application is made on a unit basis, not more than six applicants may apply for such permit in one application. If such application is granted, such special permits shall be issued to the persons so applying. If any one of the persons so applying shall be ineligible to receive such special permit, the entire group so applying shall be disqualified. No person applying for such special permit on a unit basis shall also apply individually.

Source: Laws 1953, c. 126, § 1, p. 392; Laws 1959, c. 156, § 2, p. 585; Laws 1985, LB 557, § 4; R.S.1943, (1993), § 37-215.02; Laws 1998, LB 922, § 163; Laws 2002, LB 1003, § 22; Laws 2003, LB 305, § 15; Laws 2023, LB565, § 28.

37-455 Limited deer, antelope, wild turkey, or elk permit; conditions; fee.

(1) The commission may issue a limited permit for deer, antelope, wild turkey, or elk to a person who is a qualifying landowner or leaseholder or a member of such person's immediate family as described in this section. The commission may issue nonresident landowner limited permits after preference has been given for the issuance of resident permits as provided in rules and regulations adopted and promulgated by the commission. Except as provided in subsection (4) of this section, a permit shall be valid during the predetermined period established by the commission pursuant to sections 37-447 to 37-450, 37-452, 37-456, or 37-457. Upon receipt of an application in proper form as prescribed by the rules and regulations of the commission, the commission may issue (a) a limited deer, antelope, or wild turkey permit valid for hunting on all of the land which is owned or leased by the qualifying landowner or leaseholder if such lands are identified in the application or (b) a limited elk permit valid for hunting on the entire elk management unit of which the land of the qualifying landowner or leaseholder included in the application is a part.

(2)(a) The commission shall adopt and promulgate rules and regulations prescribing procedures and forms and create requirements for documentation by an applicant or permittee to determine whether the applicant or permittee is a Nebraska resident and is a qualifying landowner or leaseholder of the described property or is a member of the immediate family of such qualifying landowner or leaseholder. The commission may adopt and promulgate rules and regulations that create requirements for documentation to designate one qualifying landowner among partners of a partnership or officers or shareholders of a corporation that owns or leases eighty acres or more of farm or ranch land for agricultural purposes and among beneficiaries of a trust that owns or leases eighty acres or more of farm or ranch land for agricultural purposes. Only a person who is a qualifying landowner or leaseholder or a member of such person's immediate family may apply for a limited permit. An applicant

may apply for no more than one permit per species per year except as otherwise provided in subsection (4) of this section and the rules and regulations of the commission. For purposes of this section, member of a person's immediate family means and is limited to the spouse of such person, any child or stepchild of such person or of the spouse of such person, any spouse of any such child or stepchild, any grandchild or stepgrandchild of such person or of the spouse of such person, any spouse of such grandchild or stepgrandchild, any sibling of such person sharing ownership in the property, and any spouse of any such sibling.

(b) The conditions applicable to permits issued pursuant to sections 37-447 to 37-450, 37-452, 37-456, or 37-457, whichever is appropriate, shall apply to limited permits issued pursuant to this section, except that the commission may pass commission orders for species harvest allocation pertaining to the sex and age of the species harvested which are different for a limited permit than for other hunting permits. For purposes of this section, white-tailed deer and mule deer shall be treated as one species.

(3)(a) To qualify for a limited permit to hunt deer or antelope, the applicant shall be a Nebraska resident who (i) owns or leases eighty acres or more of farm or ranch land for agricultural purposes or a member of such person's immediate family or (ii) is the partner, officer, shareholder, or beneficiary designated as the qualifying landowner by a partnership, corporation, or trust as provided in the rules and regulations under subdivision (2)(a) of this section or a member of the immediate family of the partner, officer, shareholder, or beneficiary. The number of limited permits issued annually per species for each farm or ranch shall not exceed the total acreage of the farm or ranch divided by eighty. The fee for a limited permit to hunt deer or antelope shall be one-half the fee for the regular permit for such species.

(b) A nonresident of Nebraska who owns three hundred twenty acres or more of farm or ranch land in the State of Nebraska for agricultural purposes or a member of such person's immediate family may apply for a limited deer or antelope permit. The number of limited permits issued annually per species for each farm or ranch shall not exceed the total acreage of the farm or ranch divided by three hundred twenty. The fee for such a permit to hunt deer or antelope shall be one-half the fee for a nonresident permit to hunt such species.

(c) The commission may adopt and promulgate rules and regulations providing for the issuance of an additional limited deer permit to a qualified individual for the taking of a deer without antlers at a fee equal to or less than the fee for the original limited permit.

(4)(a) In addition to any limited permit to hunt deer issued to a qualifying landowner under subsection (3) of this section, the commission shall issue up to eight limited permits to hunt deer during the three days of Saturday through Monday immediately preceding the opening day of firearm deer hunting season to any qualifying landowner meeting the requirements of subdivision (b) of this subsection and designated members of his or her immediate family. The fee for each permit issued under this subsection shall be five dollars. Permits shall be issued subject to the following:

(i) No more than eight permits may be issued per qualifying landowner to the landowner or designated members of his or her immediate family, except that no more than one permit shall be issued per person for the qualifying landowner or any designated member of his or her immediate family;

(ii) Of the eight permits that may be issued, no more than six permits may be issued to persons who are younger than nineteen years of age and no more than two permits may be issued to persons who are nineteen years of age or older; and

(iii) For a Nebraska resident landowner, the number of permits issued shall not exceed the total acreage of the farm or ranch divided by eighty, and for a nonresident landowner, the number of permits issued shall not exceed the total acreage of the farm or ranch divided by three hundred twenty.

(b) For purposes of this subsection, the qualifying criteria for a Nebraska resident described in subdivisions (3)(a)(i) and (ii) of this section and the ownership criteria for a nonresident of Nebraska described in subdivision (3)(b) of this section apply.

(c) The commission may adopt and promulgate rules and regulations to carry out this subsection.

(5)(a) To qualify for a limited permit to hunt wild turkey, the applicant shall be a Nebraska resident who (i) owns or leases eighty acres or more of farm or ranch land for agricultural purposes or a member of such person's immediate family or (ii) is the partner, officer, shareholder, or beneficiary designated as the qualifying landowner by a partnership, corporation, or trust as provided in the rules and regulations under subdivision (2)(a) of this section or a member of the immediate family of the partner, officer, shareholder, or beneficiary. The number of limited permits issued annually per season for each farm or ranch shall not exceed the total acreage of the farm or ranch divided by eighty. An applicant may apply for no more than one limited permit per season. The fee for a limited permit to hunt wild turkey shall be one-half the fee for the regular permit to hunt wild turkey.

(b) A nonresident of Nebraska who owns three hundred twenty acres or more of farm or ranch land in the State of Nebraska for agricultural purposes or a member of such person's immediate family may apply for a limited permit to hunt wild turkey. Only one limited wild turkey permit per three hundred twenty acres may be issued annually for each wild turkey season under this subdivision. The fee for such a permit to hunt shall be one-half the fee for a nonresident permit to hunt wild turkey.

(6) To qualify for a limited permit to hunt elk, (a) the applicant shall be (i) a Nebraska resident who owns three hundred twenty acres or more of farm or ranch land for agricultural purposes, (ii) a Nebraska resident who leases six hundred forty acres or more of farm or ranch land for agricultural purposes or has a leasehold interest and an ownership interest in farm or ranch land used for agricultural purposes which when added together totals at least six hundred forty acres, (iii) a nonresident of Nebraska who owns at least one thousand two hundred eighty acres of farm or ranch land for agricultural purposes, or (iv) a member of such owner's or lessee's immediate family and (b) the qualifying farm or ranch land of the applicant shall be within an area designated as an elk management zone by the commission in its rules and regulations. An applicant shall not be issued a limited bull elk permit more than once every three years, and the commission may give preference to a person who did not receive a limited elk permit or a specified type of limited elk permit during the previous years. The fee for a resident landowner limited permit to hunt elk shall not exceed one-half the fee for the regular permit to hunt elk. The fee for a nonresident landowner limited permit to hunt elk shall not exceed three times

the cost of a resident elk permit. The number of applications allowed for limited elk permits for each farm or ranch shall not exceed the total acreage of the farm or ranch divided by the minimum acreage requirements established for the property. No more than one person may qualify for the same described property.

Source: Laws 1969, c. 761, § 1, p. 2878; Laws 1974, LB 767, § 2; Laws 1975, LB 270, § 1; Laws 1983, LB 170, § 2; Laws 1985, LB 557, § 5; Laws 1993, LB 235, § 14; Laws 1996, LB 584, § 7; Laws 1997, LB 107, § 3; Laws 1997, LB 173, § 3; R.S.Supp.,1997, § 37-215.03; Laws 1998, LB 922, § 165; Laws 2001, LB 111, § 9; Laws 2002, LB 1003, § 23; Laws 2003, LB 305, § 16; Laws 2004, LB 1149, § 1; Laws 2009, LB105, § 19; Laws 2013, LB94, § 3; Laws 2013, LB499, § 7; Laws 2019, LB127, § 1; Laws 2020, LB126, § 1; Laws 2022, LB809, § 1.

37-456 Limited antelope or elk permit; issuance; limitation.

The issuance of limited antelope permits pursuant to section 37-455 in any management unit shall not exceed seventy-five percent of the regular permits authorized for such antelope management unit. The issuance of limited elk permits pursuant to section 37-455 in any management unit shall not exceed seventy-five percent of the regular permits authorized for such elk management unit.

Source: Laws 1974, LB 865, § 2; Laws 1975, LB 270, § 2; Laws 1985, LB 557, § 7; Laws 1996, LB 584, § 8; R.S.Supp.,1996, § 37-215.08; Laws 1998, LB 922, § 166; Laws 2009, LB105, § 21; Laws 2021, LB507, § 3.

37-456.01 Free-earned landowner elk permit; issuance; conditions.

(1) The commission may issue one free-earned landowner elk permit for the taking of either sex of elk to any person owning or leasing at least eighty acres of farm or ranch land used for agricultural purposes, or to any member of the immediate family of such person as defined in subdivision (2)(a) of section 37-455, when the qualifying number of antlerless elk have been harvested on such land by hunters with a permit issued under section 37-448 or 37-450. Such permit shall be limited to hunting on the lands owned or leased by the qualifying landowner. Receipt of a free-earned landowner elk permit shall not in any way affect a person's eligibility for a permit issued under section 37-450 or 37-455.

(2) The commission shall adopt and promulgate rules and regulations prescribing procedures, forms, and requirements for documentation by landowners or lessees as described in subsection (1) of this section to annually report antlerless elk harvested on their property for eligibility, and the number of antlerless elk required to be harvested on such property to qualify for a free-earned landowner elk permit. The number of antlerless elk harvested to qualify shall accumulate each year until such time as a free-earned landowner elk permit is awarded.

Source: Laws 2021, LB507, § 4.

37-457 Hunting wild turkey; permit required; fee; issuance.

(1) The commission may issue permits for hunting wild turkey and prescribe and establish regulations and limitations for the hunting, transportation, and possession of wild turkey. The commission may offer multiple-year permits or combinations of permits at reduced rates. The number of such permits may be limited as provided by the regulations of the commission, but the permits shall be disposed of in an impartial manner. Such permits may be issued to allow wild turkey hunting in the Nebraska National Forest and other game reserves and such other areas as the commission may designate whenever the commission deems that permitting such hunting would not be detrimental to the proper preservation of wildlife in such forest, reserves, or areas.

(2) The commission shall, pursuant to section 37-327, establish and charge a fee of not more than thirty-one dollars for residents and not more than one hundred sixty-four dollars for nonresidents for each permit issued under this section except as provided in subsection (5) of this section.

(3) The commission may issue nonresident permits after preference has been given for the issuance of resident permits as provided in rules and regulations adopted and promulgated by the commission. The commission may require a predetermined application period for permit applications in specified management units.

(4) The provisions of section 37-447 for the distribution of deer permits also may apply to the distribution of wild turkey permits. No permit to hunt wild turkey shall be issued without payment of the fee required by this section.

(5) The commission shall, pursuant to section 37-327, establish and charge a fee of not more than twenty-five dollars for residents and not more than forty-five dollars for nonresidents for a youth wild turkey permit.

Source: Laws 1961, c. 172, § 1, p. 513; Laws 1969, c. 292, § 2, p. 1064; Laws 1976, LB 861, § 16; Laws 1993, LB 235, § 17; R.S.1943, (1993), § 37-227; Laws 1998, LB 922, § 167; Laws 1999, LB 176, § 44; Laws 2003, LB 306, § 7; Laws 2005, LB 162, § 19; Laws 2007, LB299, § 11; Laws 2009, LB105, § 22; Laws 2016, LB745, § 15; Laws 2023, LB565, § 29.

37-478 Captive wildlife auction permit; issuance; fee; prohibited acts.

(1) To conduct an auction in this state of captive wild birds, captive wild mammals, or captive wildlife as specified in subsection (1) of section 37-477, a person shall apply to the commission on a form prescribed by the commission for a captive wildlife auction permit. An applicant for a permit shall specify the dates of the auction and shall apply for a permit for each auction to be held in the state. The application for the permit shall include the applicant's social security number. The fee for such permit shall be not more than sixty-five dollars, as established by the commission pursuant to section 37-327. The commission shall adopt and promulgate rules and regulations specifying application requirements and procedures, reporting and inspection requirements, and other requirements related to auction activities.

(2) A permitholder shall not (a) take wild birds, wild mammals, or other wildlife from the wild in Nebraska or (b) purchase wild birds, wild mammals, or other wildlife from any person other than the commission or a person authorized to propagate and dispose of wild birds, wild mammals, or other

wildlife. A permit under this section is not required for an auction of domesticated cervine animals as defined in section 54-2914.

Source: Laws 1957, c. 151, § 2, p. 490; Laws 1981, LB 72, § 20; Laws 1986, LB 558, § 2; Laws 1993, LB 235, § 26; R.S.1943, (1993), § 37-714; Laws 1998, LB 922, § 188; Laws 1999, LB 176, § 57; Laws 2008, LB1162, § 10; Laws 2020, LB344, § 59.

37-479 Captive wildlife permit; issuance; fee; prohibited acts; violation; penalty.

(1) To purchase, possess, propagate, or sell captive wild birds, captive wild mammals, or captive wildlife as specified in subsection (1) of section 37-477 or to sell parts thereof, except as provided in section 37-505, a person shall apply to the commission on a form prescribed by the commission for a captive wildlife permit. The commission shall adopt and promulgate rules and regulations specifying application requirements and procedures. The permit shall expire on December 31. The application for the permit shall include the applicant's social security number. The annual fee for such permit shall be not more than thirty dollars, as established by the commission pursuant to section 37-327. A holder of a captive wildlife permit shall report to the commission by January 15 for the preceding calendar year on forms provided by the commission. The commission shall adopt and promulgate rules and regulations specifying the requirements for the reports.

(2) A permitholder shall not (a) take wild birds, wild mammals, or wildlife from the wild in Nebraska or (b) purchase wild birds, wild mammals, or wildlife from any person other than the commission or a person authorized to propagate and dispose of wild birds, wild mammals, or wildlife. A permit under this section is not required for possession or production of domesticated cervine animals as defined in section 54-2914.

(3) It shall be unlawful to lure or entice wildlife into a domesticated cervine animal facility for the purpose of containing such wildlife. Any person violating this subsection shall be guilty of a Class II misdemeanor and upon conviction shall be fined at least one thousand dollars.

Source: Laws 1957, c. 151, § 3, p. 490; Laws 1981, LB 72, § 21; Laws 1987, LB 379, § 2; Laws 1993, LB 235, § 27; Laws 1997, LB 752, § 92; R.S.Supp.,1997, § 37-715; Laws 1998, LB 922, § 189; Laws 1999, LB 176, § 58; Laws 2008, LB1162, § 11; Laws 2009, LB105, § 24; Laws 2020, LB344, § 60.

37-492 Commission; rules and regulations; commission orders; limitations upon game breeding and controlled shooting areas.

The commission may adopt and promulgate rules and regulations and pass commission orders for carrying out, administering, and enforcing the provisions of sections 37-484 to 37-496. The commission shall limit the number of areas proposed for licensing so that the total acreage licensed for game breeding and controlled shooting areas in any one county does not exceed five percent of the total acreage of the county in which the areas are sought to be licensed. The commission shall not require distances between boundaries of game breeding and controlled shooting areas to be greater than two miles. No license shall be issued for any area whereon mallard ducks are shot or to be shot if the area lies within three miles of any river or within three miles of any

lake with an area exceeding three acres, except that a license may be issued for such area for the shooting of upland game birds only, and the rearing or shooting of mallard ducks thereon is prohibited.

Source: Laws 1957, c. 152, § 10, p. 495; Laws 1969, c. 297, § 3, p. 1071; R.S.1943, (1993), § 37-910; Laws 1998, LB 922, § 202; Laws 2011, LB41, § 22; Laws 2013, LB499, § 9; Laws 2023, LB565, § 30.

37-497 Raptors; protection; management; raptor permit; raptor permit for wildlife abatement; captive propagation permit; raptor collecting permit; fees.

(1) The commission may take such steps as it deems necessary to provide for the protection and management of raptors. The commission may issue raptor permits for the taking and possession of raptors for the purpose of practicing falconry or wildlife abatement.

(2) A raptor permit for falconry may be issued only to a resident of the state who has paid the fees required in this subsection and has passed a written and oral examination concerning raptors given by the commission or an authorized representative of the commission. The commission shall charge a fee for each permit of not more than twenty-three dollars for persons between twelve and seventeen years of age and not more than sixty-one dollars for persons eighteen years of age and older, as established by the commission pursuant to section 37-327. If the applicant fails to pass the examination, he or she shall not be entitled to reapply for a raptor permit for falconry for a period of six months after the date of the examination. No person under twelve years of age shall be issued a raptor permit for falconry. A person between twelve and seventeen years of age may be issued a permit only if he or she is sponsored by an adult who has a valid raptor permit for falconry and appropriate experience. All raptor permits for falconry shall be nontransferable and shall expire three years after the date of issuance. If the commission is satisfied as to the competency and fitness of an applicant whose permit has expired, his or her permit may be renewed without requiring further examination subject to terms and conditions imposed by the commission. The commission shall adopt and promulgate rules and regulations outlining species of raptors which may be taken, captured, or held in possession.

(3) A raptor permit for wildlife abatement may be issued only to a resident of the state who has paid the fees required in this subsection and has agreed to comply with federal law concerning raptors used for wildlife abatement as attested to in his or her application. The commission shall charge a fee for each permit of not more than twenty-three dollars for persons between twelve and seventeen years of age and not more than sixty-one dollars for persons eighteen years of age and older, as established by the commission pursuant to section 37-327. No person under twelve years of age shall be issued a raptor permit for wildlife abatement. A person between twelve and seventeen years of age may be issued a permit only if he or she is sponsored and supervised by an adult who has a valid raptor permit for wildlife abatement and appropriate experience. All raptor permits for wildlife abatement shall be nontransferable and shall expire three years after the date of issuance. The commission shall adopt and promulgate rules and regulations to carry out this subsection.

(4) The commission may issue captive propagation permits to allow the captive propagation of raptors. A permit may be issued to a resident of the state

who has paid the fee required in this subsection. The fee for each permit shall be not more than three hundred five dollars, as established by the commission pursuant to section 37-327. The permit shall be nontransferable, shall expire three years after the date of issuance, and may be renewed under terms and conditions established by the commission. The commission shall authorize the species and the number of each such species which may be taken, captured, acquired, or held in possession. The commission shall adopt and promulgate rules and regulations governing the issuance and conditions of captive propagation permits.

(5) The commission may issue raptor collecting permits to nonresidents as prescribed by the rules and regulations of the commission. The fee for a permit shall be not more than two hundred sixty-five dollars, as established by the commission pursuant to section 37-327. A raptor collecting permit shall be nontransferable. The commission shall adopt and promulgate rules and regulations governing the issuance and conditions of raptor collecting permits.

Source: Laws 1971, LB 733, § 1; Laws 1987, LB 154, § 2; Laws 1990, LB 940, § 1; Laws 1993, LB 235, § 28; R.S.1943, (1993), § 37-720; Laws 1998, LB 922, § 207; Laws 2003, LB 306, § 14; Laws 2008, LB1162, § 14; Laws 2011, LB41, § 23; Laws 2016, LB745, § 18; Laws 2019, LB374, § 4.

37-498 Raptors; take or maintain; permit required.

(1) It shall be unlawful for any person to take or attempt to take or maintain a raptor in captivity, except as otherwise provided by law or by rule or regulation of the commission, unless he or she possesses a raptor permit for falconry, a raptor permit for wildlife abatement, a captive propagation permit, or a raptor collecting permit as required by section 37-497.

(2) No person shall sell, barter, purchase, or offer to sell, barter, or purchase any raptor, raptor egg, or raptor semen, except as permitted under a raptor permit for falconry, a raptor permit for wildlife abatement, or a captive propagation permit issued under section 37-497 or the rules and regulations adopted and promulgated by the commission. Nothing in this section shall be construed to permit any sale, barter, purchase, or offer to sell, barter, or purchase any raptor, raptor egg, or raptor semen taken from the wild.

Source: Laws 1971, LB 733, § 2; Laws 1987, LB 154, § 3; R.S.1943, (1993), § 37-721; Laws 1998, LB 922, § 208; Laws 2011, LB41, § 24; Laws 2019, LB374, § 5.

37-4,111 Permit to take paddlefish; issuance; fee.

The commission may adopt and promulgate rules and regulations to provide for the issuance of permits for the taking of paddlefish. The commission may, pursuant to section 37-327, establish and charge a fee of not more than thirty-five dollars for residents. The fee for a nonresident permit to take paddlefish shall be two times the resident permit fee. In addition, the commission may, pursuant to section 37-327, establish and charge a nonrefundable application fee of not more than seven dollars. The commission may, pursuant to section 37-327, establish and charge a fee of not more than twenty-four dollars for residents and not more than seventy-two dollars for nonresidents for the issuance of a preference point, in addition to any application fee, in lieu of applying for a paddlefish permit during the application period. All fees collect-

ed under this section shall be remitted to the State Treasurer for credit to the State Game Fund.

Source: Laws 2002, LB 1003, § 30; Laws 2007, LB299, § 12; Laws 2009, LB105, § 26; Laws 2016, LB745, § 19; Laws 2020, LB287, § 14.

ARTICLE 5

REGULATIONS AND PROHIBITED ACTS

(a) GENERAL PROVISIONS

(a) GENERAL PROVISIONS

37-504 Violations; penalties; exception.

(1) Any person who at any time, except during an open season ordered by the commission as authorized in the Game Law, unlawfully hunts, traps, or has in his or her possession:

(a) Any deer, antelope, swan, or wild turkey shall be guilty of a Class III misdemeanor and, upon conviction, shall be fined at least five hundred dollars for each violation; or

(b) Any elk shall be guilty of a Class II misdemeanor and, upon conviction, shall be fined at least one thousand dollars for each violation.

(2) Any person who at any time, except during an open season ordered by the commission as authorized in the Game Law, unlawfully hunts, traps, or has in his or her possession any mountain sheep shall be guilty of a Class I misdemeanor and shall be fined at least one thousand dollars upon conviction.

(3) Any person who at any time, except during an open season ordered by the commission as authorized in the Game Law, unlawfully hunts, traps, or has in his or her possession any quail, pheasant, partridge, Hungarian partridge, curlew, grouse, mourning dove, sandhill crane, or waterfowl shall be guilty of a Class III misdemeanor and shall be fined at least five hundred dollars upon conviction.

(4) Any person who unlawfully takes any game or unlawfully has in his or her possession any such game shall be guilty of a Class III misdemeanor and, except as otherwise provided in this section and section 37-501, shall be fined at least fifty dollars for each animal unlawfully taken or unlawfully possessed up to the maximum fine authorized by law upon conviction.

(5) Any person who, in violation of the Game Law, takes any mourning dove that is not flying shall be guilty of a Class V misdemeanor.

(6) Any person who, in violation of the Game Law, has in his or her possession any protected bird, or destroys or takes the eggs or nest of any such bird, shall be guilty of a Class V misdemeanor.

(7) The provisions of this section shall not render it unlawful for anyone operating a captive wildlife facility or an aquaculture facility, pursuant to the laws of this state, to at any time kill game or fish actually raised thereon or lawfully placed thereon by such person.

(8) A person holding a special permit pursuant to the Game Law for the taking of any game or any birds not included in the definition of game shall not be liable under this section while acting under the authority of such permit.

Source: Laws 1929, c. 112, III, § 9, p. 419; C.S.1929, § 37-309; Laws 1937, c. 89, § 10, p. 295; Laws 1941, c. 72, § 4, p. 302; C.S.Supp.,1941, § 37-309; Laws 1943, c. 94, § 8, p. 327; R.S. 1943, § 37-308; Laws 1947, c. 134, § 1, p. 377; Laws 1949, c. 104, § 1, p. 283; Laws 1953, c. 123, § 3, p. 387; Laws 1957, c. 139, § 10, p. 469; Laws 1975, LB 142, § 3; Laws 1977, LB 40, § 182; Laws 1981, LB 72, § 16; Laws 1989, LB 34, § 18; Laws 1997, LB 107, § 4; R.S.Supp.,1997, § 37-308; Laws 1998, LB 922, § 224; Laws 1999, LB 176, § 67; Laws 2009, LB105, § 28; Laws 2017, LB566, § 2.

37-505 Game animals, birds, or fish; possession or sale prohibited; exceptions; violation; penalty.

(1) It shall be unlawful to buy, sell, or barter the meat or flesh of game animals or game birds whether such animals or birds were killed or taken within or outside this state. Except as otherwise provided in this section, it shall be unlawful to buy, sell, or barter other parts of game animals or game birds.

(2) It shall be lawful to buy, sell, or barter only the following parts of legally taken antelope, deer, elk, rabbits, squirrels, and upland game birds: The hides, hair, hooves, bones, antlers, and horns of antelope, deer, or elk, the skins, tails, or feet of rabbits and squirrels, and the feathers or skins of upland game birds.

(3) It shall be lawful to pick up, possess, buy, sell, or barter antlers or horns which have been dropped or shed by antelope, deer, or elk. It shall be unlawful to pick up, possess, buy, sell, or barter mountain sheep or any part of a mountain sheep except (a) as permitted by law or rule or regulation of the commission and (b) for possession of mountain sheep or any part of a mountain sheep lawfully obtained in this state or another state or country.

(4) The commission may provide by rules and regulations for allowing, restricting, or prohibiting the acquisition, possession, purchase, sale, or barter of discarded parts, including, but not limited to, horns and antlers, or parts of dead game animals and upland game birds which have died from natural causes or causes which were not associated with any known illegal acts, which parts are discovered by individuals.

(5) Any domesticated cervine animal as defined in section 54-2914 or any part of such an animal may be bought, sold, or bartered if the animal or parts are appropriately marked for proof of ownership according to rules and regulations adopted and promulgated by the Department of Agriculture.

(6) It shall be unlawful to buy, sell, or barter any sport fish protected by the Game Law at any time whether the fish was killed or taken within or outside

this state, except that game fish lawfully shipped in from outside this state by residents of this state or fish lawfully acquired from a person having an aquaculture permit or, in the case of bullheads, pursuant to section 37-545 may be sold in this state. The burden of proof shall be upon any such buyer, seller, or possessor to show by competent and satisfactory evidence that any game fish in his or her possession or sold by him or her was lawfully shipped in from outside this state or was lawfully acquired from one of such sources.

(7) Any person violating this section shall be guilty of a Class III misdemeanor and shall be fined at least fifty dollars.

Source: Laws 1929, c. 112, V, § 5, p. 427; C.S.1929, § 37-505; Laws 1931, c. 72, § 2, p. 194; Laws 1937, c. 89, § 12, p. 297; C.S.Supp.,1941, § 37-505; R.S.1943, § 37-505; Laws 1945, c. 81, § 1, p. 300; Laws 1945, c. 80, § 2, p. 299; Laws 1959, c. 154, § 2, p. 581; Laws 1961, c. 169, § 7, p. 506; Laws 1961, c. 174, § 2, p. 517; Laws 1963, c. 200, § 2, p. 648; Laws 1967, c. 216, § 12, p. 587; Laws 1972, LB 556, § 1; Laws 1981, LB 72, § 17; Laws 1985, LB 557, § 9; Laws 1989, LB 34, § 28; Laws 1989, LB 166, § 2; Laws 1989, LB 172, § 1; Laws 1991, LB 341, § 1; Laws 1993, LB 235, § 24; Laws 1994, LB 1165, § 10; Laws 1995, LB 718, § 1; Laws 1997, LB 107, § 5; Laws 1997, LB 752, § 90; R.S.Supp.,1997, § 37-505; Laws 1998, LB 922, § 225; Laws 2020, LB344, § 61.

(b) GAME, BIRDS, AND AQUATIC INVASIVE SPECIES

37-513 Shooting at wildlife from highway or roadway; violation; penalty; trapping in county road right-of-way; county; powers; limitation on traps.

(1) It shall be unlawful to shoot at any wildlife from any highway or roadway, which includes that area of land from the center of the traveled surface to the right-of-way on either side. Any person violating this subsection shall be guilty of a Class III misdemeanor and shall be fined at least five hundred dollars.

(2)(a) Any county may adopt a resolution having the force and effect of law to prohibit the trapping of wildlife in the county road right-of-way or in a certain area of the right-of-way as designated by the county.

(b) A person trapping wildlife in a county road right-of-way is not allowed to use traps in the county road right-of-way that are larger than those allowed by the commission as of February 1, 2009, on any land owned or controlled by the commission.

(c) For purposes of this subsection, county road right-of-way means the area which has been designated a part of the county road system and which has not been vacated pursuant to law.

Source: Laws 1929, c. 112, V, § 1, p. 426; C.S.1929, § 37-501; Laws 1937, c. 89, § 11, p. 296; Laws 1941, c. 72, § 6, p. 303; C.S.Supp.,1941, § 37-501; Laws 1943, c. 94, § 11, p. 329; R.S.1943, § 37-501; Laws 1947, c. 137, § 1, p. 382; Laws 1959, c. 150, § 6, p. 572; Laws 1961, c. 169, § 5, p. 503; Laws 1963, c. 204, § 1, p. 656; Laws 1965, c. 203, § 1, p. 606; Laws 1967, c. 220, § 1, p. 594; Laws 1969, c. 294, § 1, p. 1066; Laws 1972, LB 1447, § 1; Laws 1974, LB 765, § 1; Laws 1974, LB 779, § 1; Laws 1975, LB 142, § 4; Laws 1975, LB 220, § 1; Laws 1989, LB 34, § 26; Laws 1989, LB 171, § 1; R.S.1943, (1993), § 37-501; Laws 1998, LB

922, § 233; Laws 2007, LB299, § 13; Laws 2008, LB865, § 1; Laws 2009, LB5, § 1; Laws 2009, LB105, § 30; Laws 2017, LB566, § 3.

37-524 Aquatic invasive species; wild or nonnative animals; importation, possession, or release; prohibition; violation; penalty.

(1) It shall be unlawful for any person, partnership, limited liability company, association, or corporation to import into the state or possess aquatic invasive species, the animal known as the San Juan rabbit, or any other species of wild vertebrate animal, including domesticated cervine animals as defined in section 54-2914, declared by the commission following public hearing and consultation with the Department of Agriculture to constitute a serious threat to economic or ecologic conditions, except that the commission may authorize by specific written permit the acquisition and possession of such species for educational or scientific purposes. It shall also be unlawful to release to the wild any nonnative bird or nonnative mammal without written authorization from the commission. Any person, partnership, limited liability company, association, or corporation violating the provisions of this subsection shall be guilty of a Class IV misdemeanor.

(2) Following public hearing and consultation with the Department of Agriculture, the commission may, by rule and regulation, regulate or limit the importation and possession of any aquatic invasive species or wild vertebrate animal, including a domesticated cervine animal as defined in section 54-2914, which is found to constitute a serious threat to economic or ecologic conditions.

Source: Laws 1957, c. 139, § 20, p. 474; Laws 1967, c. 222, § 1, p. 597; Laws 1973, LB 331, § 7; Laws 1977, LB 40, § 205; Laws 1993, LB 121, § 203; Laws 1993, LB 830, § 9; Laws 1995, LB 718, § 5; R.S.Supp.,1996, § 37-719; Laws 1998, LB 922, § 244; Laws 2012, LB391, § 8; Laws 2020, LB344, § 62.

Cross References

Domesticated Cervine Animal Act, possession of certain animals prohibited, see section 54-2324.

37-527 Hunter orange display required; exception; violation; penalty.

(1) For purposes of this section, hunter orange means a daylight fluorescent orange color with a dominant wave length between five hundred ninety-five and six hundred five nanometers, an excitation purity of not less than eighty-five percent, and a luminance factor of not less than forty percent.

(2) Any person hunting deer, antelope, wild turkey, elk, or mountain sheep during an authorized firearm season in this state shall display on his or her head, chest, and back a total of not less than four hundred square inches of hunter orange material except as exempted by rules and regulations of the commission.

(3) Any person who violates this section shall be guilty of a Class V misdemeanor.

(4) This section shall not apply to archery hunters hunting during a non-center-fire firearm season or in a management unit where a current center-fire firearm season is not open. The commission may adopt and promulgate rules

and regulations allowing additional exceptions and establishing requirements for the display of hunter orange during other authorized hunting seasons.

Source: Laws 1972, LB 1216, § 1; R.S.1943, (1993), § 37-215.05; Laws 1998, LB 922, § 247; Laws 1999, LB 176, § 72; Laws 2007, LB299, § 14; Laws 2020, LB287, § 15.

(e) DAMAGE BY WILDLIFE

37-559 Destruction of predators; permit required; when; mountain lion; actions authorized.

(1) Any private landowner or tenant may destroy or have destroyed any predator preying on livestock or poultry or suspected of causing other damage on land owned or controlled by such person without a permit issued by the commission. For purposes of this subsection, predator means a badger, bobcat, coyote, gray fox, long-tailed weasel, mink, opossum, raccoon, red fox, or skunk.

(2) Any private landowner or tenant or agent of such person may kill a mountain lion immediately without prior notice to or permission from the commission if such person or agent encounters a mountain lion and the mountain lion is in the process of stalking, killing, or consuming livestock on such person's property. Such private landowner or tenant or agent shall be responsible for immediately notifying the commission and arranging with the commission to transfer the mountain lion to the commission.

(3) Any person shall be entitled to defend himself or herself or another person without penalty if, in the presence of such person, a mountain lion stalks, attacks, or shows unprovoked aggression toward such person or another person.

(4) This section shall not be construed to allow any private landowner or tenant or agent of such person to destroy or have destroyed species which are protected by the Nongame and Endangered Species Conservation Act or rules and regulations adopted and promulgated under the act, the federal Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 et seq., the federal Fish and Wildlife Coordination Act, as amended, 16 U.S.C. 661 et seq., the federal Bald and Golden Eagle Protection Act, as amended, 16 U.S.C. 668 et seq., the federal Migratory Bird Treaty Act, as amended, 16 U.S.C. 703 et seq., or federal regulations under such federal acts.

Source: Laws 1998, LB 922, § 279; Laws 2010, LB836, § 4; Laws 2023, LB565, § 31.

Cross References

Nongame and Endangered Species Conservation Act, see section 37-801.

ARTICLE 6
ENFORCEMENT

Section
37-613. Wildlife; prohibited acts; liquidated damages; schedule; disposition.
37-614. Revocation and suspension of permits; grounds.
37-615. Revoked or suspended permit; unlawful acts; violation; penalty.
37-617. Suspension, revocation, or conviction; court; duties.

37-613 Wildlife; prohibited acts; liquidated damages; schedule; disposition.

(1) Any person who sells, purchases, takes, or possesses contrary to the Game Law any wildlife shall be liable to the State of Nebraska for the damages caused thereby. Such damages shall be:

(a) Twenty-five thousand dollars for each mountain sheep;

(b) Ten thousand dollars for each elk with a minimum of twelve total points and three thousand dollars for any other elk;

(c) Ten thousand dollars for each whitetail deer with a minimum of eight total points and an inside spread between beams of at least sixteen inches, two thousand dollars for any other antlered whitetail deer, and five hundred dollars for each antlerless whitetail deer and whitetail doe deer;

(d) Ten thousand dollars for each mule deer with a minimum of eight total points and an inside spread between beams of at least twenty-two inches and two thousand dollars for any other mule deer;

(e) Five thousand dollars for each antelope with the shortest horn measuring a minimum of fourteen inches in length and one thousand dollars for any other antelope;

(f) One thousand five hundred dollars for each bear or moose or each individual animal of any threatened or endangered species of wildlife not otherwise listed in this subsection;

(g) Five thousand dollars for each mountain lion, lynx, bobcat, river otter, or raw pelt thereof;

(h) Twenty-five dollars for each raccoon, opossum, skunk, or raw pelt thereof;

(i) Five thousand dollars for each eagle;

(j) Five hundred dollars for each wild turkey;

(k) Twenty-five dollars for each dove;

(l) Seventy-five dollars for each other game bird, other game animal, other fur-bearing animal, raw pelt thereof, or nongame wildlife in need of conservation as designated by the commission pursuant to section 37-805, not otherwise listed in this subsection;

(m) Fifty dollars for each wild bird not otherwise listed in this subsection;

(n) Seven hundred fifty dollars for each swan or paddlefish;

(o) Two hundred dollars for each master angler fish measuring more than twelve inches in length;

(p) Fifty dollars for each game fish measuring more than twelve inches in length not otherwise listed in this subsection;

(q) Twenty-five dollars for each other game fish; and

(r) Fifty dollars for any other species of game not otherwise listed in this subsection.

(2) The commission shall adopt and promulgate rules and regulations to provide for a list of master angler fish which are subject to this section and to prescribe guidelines for measurements and point determinations as required by this section. The commission may adopt a scoring system which is uniformly recognized for this purpose.

(3) Such damages may be collected by the commission by civil action. In every case of conviction for any of such offenses, the court or magistrate before whom such conviction is obtained shall further enter judgment in favor of the State of Nebraska and against the defendant for liquidated damages in the

amount set forth in this section and collect such damages by execution or otherwise. Failure to obtain conviction on a criminal charge shall not bar a separate civil action for such liquidated damages. Damages collected pursuant to this section shall be remitted to the secretary of the commission who shall remit them to the State Treasurer for credit to the State Game Fund.

Source: Laws 1929, c. 112, VI, § 14, p. 437; C.S.1929, § 37-614; R.S. 1943, § 37-614; Laws 1949, c. 105, § 1, p. 285; Laws 1957, c. 139, § 17, p. 472; Laws 1989, LB 34, § 43; Laws 1989, LB 43, § 1; R.S.1943, (1993), § 37-614; Laws 1998, LB 922, § 303; Laws 1999, LB 176, § 88; Laws 2001, LB 130, § 5; Laws 2009, LB105, § 34; Laws 2018, LB1008, § 1.

37-614 Revocation and suspension of permits; grounds.

(1) When a person pleads guilty to or is convicted of any violation listed in this subsection, the court shall, in addition to any other penalty, revoke and require the immediate surrender of all permits to hunt, fish, and harvest fur held by such person and suspend the privilege of such person to hunt, fish, and harvest fur and to purchase such permits for a period of not less than three years. The court shall consider the number and severity of the violations of the Game Law in determining the length of the revocation and suspension. The violations shall be:

(a) Carelessly or purposely killing or causing injury to livestock with a firearm or bow and arrow;

(b) Purposely taking or having in his or her possession a number of game animals, game fish, game birds, or fur-bearing animals exceeding twice the limit established pursuant to section 37-314;

(c) Taking any species of wildlife protected by the Game Law during a closed season in violation of section 37-502;

(d) Resisting or obstructing any officer or any employee of the commission in the discharge of his or her lawful duties in violation of section 37-609; and

(e) Being a habitual offender of the Game Law.

(2) When a person pleads guilty to or is convicted of any violation listed in this subsection, the court may, in addition to any other penalty, revoke and require the immediate surrender of all permits to hunt, fish, and harvest fur held by such person and suspend the privilege of such person to hunt, fish, and harvest fur and to purchase such permits for a period of not less than one year. The court shall consider the number and severity of the violations of the Game Law in determining the length of the revocation and suspension. The violations shall be:

(a) Hunting, fishing, or fur harvesting without a permit in violation of section 37-411;

(b) Hunting from a vehicle, aircraft, or boat in violation of section 37-513, 37-514, 37-515, 37-535, or 37-538; and

(c) Knowingly taking any wildlife on private land without permission in violation of section 37-722.

(3) When a person pleads guilty to or is convicted of any violation of the Game Law, the rules and regulations of the commission, or commission orders not listed in subsection (1) or (2) of this section, the court may, in addition to

any other penalty, revoke and require the immediate surrender of all permits to hunt, fish, and harvest fur held by such person and suspend the privilege of such person to hunt, fish, and harvest fur and to purchase such permits for a period of not less than one year.

Source: Laws 1998, LB 922, § 304; Laws 1999, LB 176, § 89; Laws 2007, LB299, § 16; Laws 2009, LB5, § 2; Laws 2013, LB499, § 16; Laws 2017, LB566, § 4.

37-615 Revoked or suspended permit; unlawful acts; violation; penalty.

It shall be unlawful for any person to take any species of wildlife protected by the Game Law while his or her permits are revoked or suspended. It shall be unlawful for any person to apply for or purchase a permit to hunt, fish, or harvest fur in Nebraska while his or her permits are revoked and while the privilege to purchase such permits is suspended. Any person who violates this section shall be guilty of a Class I misdemeanor and in addition shall be suspended from hunting, fishing, and fur harvesting or purchasing permits to hunt, fish, and harvest fur for a period of not less than two years as the court directs. The court shall consider the number and severity of the violations of the Game Law in determining the length of the suspension.

Source: Laws 1998, LB 922, § 305; Laws 2011, LB41, § 28; Laws 2017, LB566, § 5.

37-617 Suspension, revocation, or conviction; court; duties.

The court shall notify the commission of any suspension, revocation, or conviction under sections 37-614 to 37-616.

Source: Laws 1998, LB 922, § 307; Laws 1999, LB 176, § 90; Laws 2017, LB566, § 6.

ARTICLE 7

RECREATIONAL LANDS

(a) RESERVES AND SANCTUARIES

(a) RESERVES AND SANCTUARIES

37-708 Game refuges; prohibited acts; exceptions.

(1) It shall be unlawful within the boundaries of the state game refuges designated in section 37-706 for any person (a) to hunt or chase with dogs any game birds, game animals, or other birds or animals of any kind or description whatever, (b) to carry firearms of any kind, or (c) from October 15 through January 15 each year to operate a motorboat as defined in section 37-1204.

(2) This section shall not prevent highway or railroad transport of firearms or dogs across the refuge, retrieval of game birds lawfully killed from such refuge, or the taking of fur-bearing animals by the use of traps during lawful open seasons on the refuge.

(3) This section shall not prevent the commission from issuing such permits as may be necessary for the killing of animal or bird predators that may endanger game birds or game animals or the domestic property of adjacent

landowners or from issuing permits as provided in sections 37-447 to 37-452 for the taking of deer or elk from such refuges whenever the number of deer or elk on such refuges is deemed detrimental to habitat conditions on the refuges or to adjacent privately owned real or personal property.

(4) This section shall not prevent the owners of land or dwellings or their relatives or invitees from operating any motorboat within the boundaries of the refuge for purposes of access by the most direct route to and from such land or dwellings.

Source: Laws 1939, c. 43, § 3, p. 202; C.S.Supp.,1941, § 37-430; R.S. 1943, § 37-420; Laws 1947, c. 135, § 4, p. 380; Laws 1965, c. 202, § 1, p. 605; Laws 1993, LB 235, § 20; R.S.1943, (1993), § 37-420; Laws 1998, LB 922, § 322; Laws 2023, LB565, § 32.

ARTICLE 8

NONGAME AND ENDANGERED SPECIES CONSERVATION ACT

Section
37-801. Act, how cited.
37-802. Terms, defined.
37-806. Endangered or threatened species; how determined; commission; powers and duties; unlawful acts; exceptions; local law, regulation, or ordinance; effect.
37-807. Commission; establish conservation programs; agreements authorized; Governor; duties; state agency; effect of agency action on endangered or threatened species or critical habitat; commission statement; conservation programs; public meeting; when required.
37-811. Wildlife Conservation Fund; created; use; investment.
37-812. Transportation infrastructure; act, applicability.
37-813. Transportation infrastructure; exempt party; duties; commission; powers and duties.
37-814. Critical habitat; designation; factors; procedure.

37-801 Act, how cited.

Sections 37-801 to 37-814 shall be known and may be cited as the Nongame and Endangered Species Conservation Act.

Source: Laws 1975, LB 145, § 1; Laws 1984, LB 466, § 1; R.S.1943, (1993), § 37-430; Laws 1998, LB 922, § 351; Laws 2024, LB1335, § 2.
Effective date July 19, 2024.

37-802 Terms, defined.

For purposes of the Nongame and Endangered Species Conservation Act, unless the context otherwise requires, the definitions found in sections 37-203 to 37-236, 37-238, 37-239, 37-241, and 37-243 to 37-247 and the following definitions are used:

(1)(a) Critical habitat means any specific area within the geographical area occupied by any endangered or threatened species at the time such species was listed pursuant to section 37-806 that contains the physical or biological features that are essential to the conservation of the species and that may require special management considerations or protection.

(b) Critical habitat includes any specific area outside the geographical area occupied by the species at the time such species is listed pursuant to section

37-806 upon a determination by the commission that such area is essential for the conservation of the species.

(c) Critical habitat does not include any manmade structure that is not necessary to the survival or recovery of any endangered or threatened species that is listed pursuant to section 37-806, including any transportation infrastructure or human settlement.

(d) Each public road, street, and highway, including any associated right-of-way, is a manmade structure and is not critical habitat for purposes of the Nongame and Endangered Species Conservation Act;

(2) Endangered species means any species of wildlife or wild plants whose continued existence as a viable component of the wild fauna or flora of the state is determined to be in jeopardy or any species of wildlife or wild plants which meets the criteria of the Endangered Species Act;

(3) Exempt party means any state agency or political subdivision with a lawful duty to design, construct, reconstruct, repair, operate, or maintain transportation infrastructure, or any agent, employee, consultant, or contractor of any such state agency or political subdivision;

(4) Extirpated species means any species of wildlife or wild plants which no longer exists or is found in Nebraska;

(5) Nongame species means any species of mollusks, crustaceans, or vertebrate wildlife not legally classified as game bird, game animal, game fish, furbearing animal, threatened species, or endangered species by statute or regulation of this state;

(6) Person means an individual, corporation, partnership, limited liability company, trust, association, or other private entity or any officer, employee, agent, department, or instrumentality of the federal government, any state or political subdivision thereof, or any foreign government;

(7) Restore means to return to a state that is not less beneficial for endangered or threatened species than the property was prior to an exempt party's actions;

(8) Species means any subspecies of wildlife or wild plants and any other group of wildlife of the same species or smaller taxa in common spatial arrangement that interbreed when mature;

(9) Take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct;

(10) Threatened species means any species of wild fauna or flora which appears likely to become endangered, either by determination of the commission or by criteria provided by the Endangered Species Act; and

(11) Transportation infrastructure includes any:

(a) Road, street, highway, or right-of-way of a road, street, or highway;

(b) Previously approved and utilized interdependent or interrelated contractor-use site that is identified on the website of the Department of Transportation, including any borrow, waste, plant, stockpile, or construction debris site;

(c) Actions permitted by a state agency or political subdivision within any road, street, highway, or right-of-way of any road, street, or highway controlled by the state agency or political subdivision;

(d) Pedestrian or bicycle trail, lane, or bridge;

(e) Technology with the primary purpose of benefiting the traveling public; and

(f) Broadband infrastructure placed by the Department of Transportation.

Source: Laws 1975, LB 145, § 2; Laws 1984, LB 466, § 3; Laws 1987, LB 150, § 2; Laws 1993, LB 121, § 202; R.S.1943, (1993), § 37-431; Laws 1998, LB 922, § 352; Laws 2024, LB1335, § 3.
Effective date July 19, 2024.

37-806 Endangered or threatened species; how determined; commission; powers and duties; unlawful acts; exceptions; local law, regulation, or ordinance; effect.

(1)(a) Any species of wildlife or wild plants determined to be an endangered species pursuant to the Endangered Species Act shall be an endangered species under the Nongame and Endangered Species Conservation Act, and any species of wildlife or wild plants determined to be a threatened species pursuant to the Endangered Species Act shall be a threatened species under the Nongame and Endangered Species Conservation Act.

(b) Within a reasonable time after any federal listing, downlisting, removal, or uplisting, the commission may determine that any species of wildlife or wild plant should receive a different state-listed status throughout all or any portion of the range of such species within this state by completing the formal listing process as prescribed in this section or by retaining its previous state-listed status.

(2) In addition to the species determined to be endangered or threatened pursuant to the Endangered Species Act, the commission shall, by adopting and promulgating rules and regulations, determine whether any species of wildlife or wild plants normally occurring within this state is an endangered or threatened species as a result of any of the following factors:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range;

(b) Overutilization for commercial, recreational, scientific, educational, or other purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence within this state.

(3)(a) The commission shall make determinations required by subsection (2) of this section on the basis of the best scientific, commercial, and other data available to the commission.

(b) Except with respect to species of wildlife or wild plants determined to be endangered or threatened species under subsection (1) of this section, the commission shall not add a species to nor remove a species from any list published pursuant to subsection (5) of this section unless the commission has first:

(i) Provided public notice of such proposed action by publication in a newspaper of general circulation in each county in that portion of the subject species' range in which it is endangered or threatened or, if the subject species'

range extends over more than five counties, in a newspaper of statewide circulation distributed in the county;

(ii) Provided notice of such proposed action to and allowed comment from the Department of Agriculture, the Department of Environment and Energy, the Department of Natural Resources, and any other state agency that the commission determines might be impacted by the proposed action;

(iii) Provided notice of such proposed action to and allowed comment from each natural resources district and public power district located in that portion of the subject species' range in which it is endangered or threatened;

(iv) Notified the Governor of any state sharing a common border with this state, in which the subject species is known to occur, that such action is being proposed;

(v) Allowed at least sixty days following publication for comment from the public and other interested parties;

(vi) Held at least one public hearing on such proposed action in each game and parks commissioner district of the subject species' range in which it is endangered or threatened;

(vii) Submitted the scientific, commercial, and other data that is the basis of the proposed action to scientists or experts outside and independent of the commission for peer review of the data and conclusions. If the commission submits the data to a state or federal fish and wildlife agency for peer review, the commission shall also submit the data to scientists or experts not affiliated with such an agency for review. For purposes of this section, state fish and wildlife agency does not include a postsecondary educational institution; and

(viii) For species proposed to be added under this subsection but not for species proposed to be removed under this subsection, developed an outline of the potential impacts, requirements, or rules and regulations that may be placed on private landowners, or on other persons who hold state-recognized property rights on behalf of themselves or others, as a result of the listing of the species or the development of a proposed program for the conservation of the species as required in subsection (1) of section 37-807.

(c) The inadvertent failure to provide notice as required by subdivision (3)(b) of this section shall not prohibit the listing of a species and shall not be deemed to be a violation of the Administrative Procedure Act or the Nongame and Endangered Species Conservation Act.

(d) When the commission proposes to add or remove a species under this subsection, public notice under subdivision (3)(b)(i) of this section shall include, but not be limited to, (i) the species proposed to be listed and a description of that portion of its range in which the species is endangered or threatened, (ii) a declaration that the commission submitted the data that is the basis for the listing for peer review and developed an outline if required under subdivision (b)(viii) of this subsection, and (iii) a declaration of the availability of the peer review, including an explanation of any changes or modifications the commission has made to its proposal as a result of the peer review, and the outline required under subdivision (b)(viii) of this subsection, if applicable, for public examination.

(e) In cases when the commission determines that an emergency situation exists involving the continued existence of such species as a viable component of the wild fauna or flora of the state, the commission may add species to such

lists after first publishing public notice that such an emergency situation exists together with a summary of facts that support such determination.

(4) In determining whether any species of wildlife or wild plants is an endangered or threatened species, the commission shall take into consideration those actions being carried out by the federal government, by other states, by other agencies of this state or its political subdivisions, or by any other person which may affect the species under consideration.

(5) The commission shall adopt and promulgate rules and regulations containing a list of all species of wildlife and wild plants normally occurring within this state that it determines, in accordance with subsections (1) through (4) of this section, to be endangered or threatened species and a list of all such species. Each list shall refer to the species contained in such list by scientific and common name or names, if any, and shall specify with respect to each such species over what portion of its range it is endangered or threatened.

(6) Except with respect to species of wildlife or wild plants determined to be endangered or threatened pursuant to the Endangered Species Act, the commission shall, upon the petition of an interested person, conduct a review of any listed or unlisted species proposed to be removed from or added to the lists published pursuant to subsection (5) of this section, but only if the commission publishes a public notice that such person has presented substantial evidence that warrants such a review.

(7) Whenever any species of wildlife or wild plants is listed as a threatened species pursuant to subsection (5) of this section, the commission shall issue such rules and regulations as are necessary to provide for the conservation of such species. The commission may prohibit, with respect to any threatened species of wildlife or wild plants, any act prohibited under subsection (8) or (9) of this section.

(8) With respect to any endangered species of wildlife, it shall be unlawful, except as provided in subsection (7) of this section or section 37-807, for any person subject to the jurisdiction of this state to:

(a) Export any such species from this state;

(b) Take any such species within this state;

(c) Possess, process, sell or offer for sale, deliver, carry, transport, or ship, by any means whatsoever except as a common or contract motor carrier under the jurisdiction of the Public Service Commission or the federal Surface Transportation Board, any such species; or

(d) Violate any rule or regulation pertaining to the conservation of such species or to any threatened species of wildlife listed pursuant to this section and adopted and promulgated by the commission pursuant to the Nongame and Endangered Species Conservation Act.

(9) With respect to any endangered species of wild plants, it shall be unlawful, except as provided in subsection (7) of this section, for any person subject to the jurisdiction of this state to:

(a) Export any such species from this state;

(b) Possess, process, sell or offer for sale, deliver, carry, transport, or ship, by any means whatsoever, any such species; or

(c) Violate any rule or regulation pertaining to such species or to any threatened species of wild plants listed pursuant to this section and adopted and promulgated by the commission pursuant to the act.

(10) Any endangered species of wildlife or wild plants that enters this state from another state or from a point outside the territorial limits of the United States and that is being transported to a point within or beyond this state may be so entered and transported without restriction in accordance with the terms of any federal permit or permit issued under the laws or regulations of another state.

(11) The commission may permit any act otherwise prohibited by subsection (8) of this section for scientific purposes or to enhance the propagation or survival of the affected species.

(12) Any law, rule, regulation, or ordinance of any political subdivision of this state that applies with respect to the taking, importation, exportation, possession, sale or offer for sale, processing, delivery, carrying, transportation other than under the jurisdiction of the Public Service Commission, or shipment of species determined to be endangered or threatened species pursuant to the Nongame and Endangered Species Conservation Act shall be void to the extent that it may effectively (a) permit that which is prohibited by the act or by any rule or regulation that implements the act or (b) prohibit that which is authorized pursuant to an exemption or permit provided for in the act or in any rule or regulation that implements the act. The Nongame and Endangered Species Conservation Act shall not otherwise be construed to void any law, rule, regulation, or ordinance of any political subdivision of this state which is intended to conserve wildlife or wild plants.

Source: Laws 1975, LB 145, § 5; R.S.1943, (1993), § 37-434; Laws 1998, LB 922, § 356; Laws 2002, LB 1003, § 33; Laws 2019, LB302, § 19; Laws 2024, LB1335, § 4.
Effective date July 19, 2024.

Cross References

Administrative Procedure Act, see section 84-920.

37-807 Commission; establish conservation programs; agreements authorized; Governor; duties; state agency; effect of agency action on endangered or threatened species or critical habitat; commission statement; conservation programs; public meeting; when required.

(1) The commission shall establish such programs, including acquisition of land or aquatic habitat or interests therein, as are necessary for the conservation of nongame, threatened, or endangered species of wildlife or wild plants. Acquisition for the purposes of this subsection shall not include the power to obtain by eminent domain.

(2) In carrying out programs authorized by this section, the commission shall consult with other states having a common interest in particular species of nongame, endangered, or threatened species of wildlife or wild plants and may enter into agreements with federal agencies, other states, political subdivisions of this state, or private persons with respect to programs designed to conserve such species including, when appropriate, agreements for administration and management of any area established under this section or utilized for conservation of such species.

(3)(a) For purposes of this section, state agency means any department, agency, board, bureau, or commission of the state or any other entity whose primary function is to act as, and while acting as, an instrumentality or agency of the state, except that state agency does not include a natural resources district or any other political subdivision.

(b) The Governor shall review other programs administered by him or her and utilize such programs in furtherance of the purposes of the Nongame and Endangered Species Conservation Act. All other state agencies shall, in consultation with and with the assistance of the commission, utilize their authorities in furtherance of the purposes of the act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 37-806.

(c) Each state agency shall, in consultation with and with the assistance of the commission, ensure with the best scientific and commercial data available that any action authorized, funded, or carried out by such state agency is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of any designated critical habitat.

(4)(a) After each consultation described in subsection (3) of this section, the commission shall provide each state agency, applicant, and project proponent, if any, with a written statement described in subdivision (4)(b) of this section if the commission concludes that:

(i) The agency action will not violate the restrictions in subdivision (3)(c) of this section, or, if the agency action might violate such restrictions, the agency offers reasonable and prudent alternatives that the commission believes will not violate such restrictions; and

(ii) The taking of any endangered or threatened species incidental to the potential action of the state agency will not violate the restrictions in subdivision (3)(c) of this section.

(b) The written statement described in subdivision (4)(a) of this section shall:

(i) Specify the impact of any incidental taking of any endangered or threatened species;

(ii) Specify reasonable and prudent measures that the commission considers necessary or appropriate to minimize such impact; and

(iii) Set forth terms and conditions with which the state agency, applicant, and project proponent, if any, shall comply to implement the measures specified in subdivision (3)(c) of this section, including reporting requirements.

(5) Any taking of any endangered or threatened species that is in compliance with the terms and conditions specified in a written statement provided under subsection (4) of this section is not a prohibited taking of such species.

(6) If the written statement provided under subsection (4) of this section pertains to any species that was listed pursuant to subsection (1) of section 37-806 and a federal incidental take statement has been issued for the same action pursuant to the Endangered Species Act, the commission shall issue a written statement with the same terms as the federal incidental take statement.

(7) The commission shall provide notice and hold a public meeting prior to the implementation of conservation programs designed to reestablish threatened, endangered, or extirpated species of wildlife or wild plants through the release of animals or plants to the wild. The purpose of holding such a public

meeting shall be to inform the public of programs requiring the release to the wild of such wildlife or wild plants and to solicit public input and opinion. The commission shall set a date and time for the public meeting to be held at a site convenient to the proposed release area and shall publish a notice of such meeting in a legal newspaper published in or of general circulation in the county or counties where the proposed release is to take place. The notice shall be published at least twenty days prior to the meeting and shall set forth the purpose, date, time, and place of the meeting.

Source: Laws 1975, LB 145, § 6; Laws 1984, LB 1106, § 22; Laws 1987, LB 150, § 3; Laws 1991, LB 772, § 3; R.S.1943, (1993), § 37-435; Laws 1998, LB 922, § 357; Laws 2024, LB1335, § 5.
Effective date July 19, 2024.

37-811 Wildlife Conservation Fund; created; use; investment.

There is hereby created the Wildlife Conservation Fund. The fund shall be used to assist in carrying out the Nongame and Endangered Species Conservation Act, to pay for research into and management of the ecological effects of the release, importation, commercial exploitation, and exportation of wildlife species pursuant to section 37-548, and to pay any expenses incurred by the Department of Revenue or any other agency in the administration of the income tax designation program required by section 77-27,119.01. The fund shall consist of money credited pursuant to section 60-3,238 and any other money as determined by the Legislature. The fund shall also consist of money transferred from the General Fund by the State Treasurer in an amount to be determined by the Tax Commissioner which shall be equal to the total amount of contributions designated pursuant to section 77-27,119.01. Any money in the Wildlife Conservation 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 1984, LB 466, § 7; Laws 1989, LB 258, § 2; Laws 1994, LB 1066, § 23; R.S.Supp.,1996, § 37-439; Laws 1998, LB 922, § 361; Laws 1999, LB 176, § 98; Laws 2007, LB299, § 18; Laws 2019, LB356, § 1.

Cross References

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

37-812 Transportation infrastructure; act, applicability.

The Nongame and Endangered Species Conservation Act does not apply to any action of an exempt party in furtherance of its lawful duties associated with designing, constructing, reconstructing, repairing, operating, or maintaining transportation infrastructure, except that:

(1) This exemption does not extend to any state agency as defined in section 37-807 performing any action that would require consultation pursuant to subsection (3) of section 37-807 if such state agency is not actually engaged in designing, constructing, reconstructing, repairing, operating, or maintaining transportation infrastructure; and

(2) The Nongame and Endangered Species Conservation Act applies to any initial action by an exempt party that creates new transportation infrastructure in areas not previously dedicated to the exempt party's lawful duties or any

subsequent action that increases the area of existing transportation infrastructure.

Source: Laws 2024, LB1335, § 6.
Effective date July 19, 2024.

37-813 Transportation infrastructure; exempt party; duties; commission; powers and duties.

(1) To the extent the exempt party deems practical and compatible with the primary purposes of transportation infrastructure, such exempt party shall:

(a) Consider the impact on endangered or threatened species when designing, constructing, reconstructing, repairing, operating, or maintaining transportation infrastructure. The exempt party may modify or amend designs and operation and maintenance practices to decrease or avoid any negative impact on any endangered or threatened species; and

(b) Restore areas of temporary disturbance on real property it owns in fee simple at the conclusion of any construction, reconstruction, repair, operation, or maintenance.

(2)(a) Upon request of any exempt party, the commission shall provide support and recommendations to such exempt party relating to any potential impact caused by the actions of the exempt party on any endangered or threatened species related to the design, construction, reconstruction, repair, operation, or maintenance of transportation infrastructure.

(b) The exempt party may enter into any written agreement with the commission or any other governmental entity for the purpose of providing aid in the conservation of any endangered or threatened species.

Source: Laws 2024, LB1335, § 7.
Effective date July 19, 2024.

37-814 Critical habitat; designation; factors; procedure.

(1) Any federally designated critical habitat under the Endangered Species Act shall be critical habitat under the Nongame and Endangered Species Conservation Act.

(2)(a) In addition to federally designated critical habitat under the Endangered Species Act, the commission shall by rule and regulation determine if any additional habitat of a species listed pursuant to subsection (2) of section 37-806 is critical habitat as a result of any of the following factors:

(i) The present or threatened destruction, modification, or curtailment of the habitat or range of such species;

(ii) Overutilization for commercial, recreational, scientific, educational, or other purposes;

(iii) Disease or predation;

(iv) The inadequacy of existing regulatory mechanisms; or

(v) Other natural or manmade factors affecting the continued existence within this state of such species.

(b) The commission shall not designate as critical habitat for any endangered or threatened species the entire geographical area that can be occupied by such endangered or threatened species unless the commission determines that such designation is essential for the survival of the endangered or threatened species.

(c) The commission may, concurrently with making a determination under subsection (2) of section 37-806 that a species is an endangered or threatened species, designate any habitat of such species that is also considered to be critical habitat.

(d) The commission may designate critical habitat for any plant or animal species that is listed under section 37-806 that does not have a designated critical habitat.

(e) The commission may revise any previous designation of critical habitat.

(3)(a) The commission shall make determinations required by subsection (2) of this section on the basis of the best scientific, commercial, and other data available to the commission.

(b) Except with respect to critical habitat designated under subsection (1) of this section, the commission shall not designate or remove designation of critical habitat for a species from any list published pursuant to subsection (5) of this section unless the commission:

(i) Provides public notice of such proposed action by publication in a newspaper of general circulation in each county in which the critical habitat is proposed to be designated, or if the proposed critical habitat designation extends over more than five counties, in a newspaper of statewide circulation distributed in each of the counties;

(ii) Provides notice of such proposed action to and allows comment from the Department of Agriculture, the Department of Environment and Energy, the Department of Natural Resources, and any other state agency that the commission determines might be impacted by the proposed action;

(iii) Provides notice of such proposed action to and allows comment from each natural resources district and public power district located within the area proposed to be designated as critical habitat;

(iv) Notifies the Governor of any state sharing a common border with this state, in which the species for which the critical habitat that is being proposed to be designated is known to occur, that such action is being proposed;

(v) Allows at least sixty days following publication for comment from the public and other interested parties;

(vi) Holds at least one public hearing on such proposed action in each game and parks commissioner district where the critical habitat is proposed to be designated;

(vii) Submits the scientific, commercial, and other data that is the basis of the proposed action to scientists or experts outside and independent of the commission for peer review of the data and conclusions. If the commission submits the data to a state or federal fish and wildlife agency for peer review, the commission shall also submit the data to scientists or experts not affiliated with such agency for review. For purposes of this section, state fish and wildlife agency does not include a postsecondary educational institution; and

(viii) For critical habitat proposed to be designated under this subsection, but not for critical habitat proposed to be removed from designation under this subsection, develops an outline of any potential impact, requirement, or rule or regulation that might be placed on any private landowner or other person who holds any state-recognized property right as a result of the listing of the critical habitat designation.

(c) The inadvertent failure to provide notice as required by subdivision (3)(b) of this section shall not prohibit the designation of critical habitat and shall not be deemed to be a violation of the Administrative Procedure Act or the Nongame and Endangered Species Conservation Act.

(d) When the commission proposes to designate or remove designation of critical habitat under this subsection, public notice under subdivision (3)(b)(i) of this section shall include (i) the critical habitat proposed to be listed as designated critical habitat and a description of the portion of the range in which the species for which critical habitat is proposed to be designated is endangered or threatened, (ii) a declaration that the commission submitted the data that is the basis for the listing for peer review and developed an outline if required under subdivision (b)(viii) of this subsection, and (iii) a declaration of the availability of the peer review, including an explanation of any changes or modifications the commission has made to its proposal as a result of the peer review, and the outline required under subdivision (b)(viii) of this subsection, if applicable, for public examination.

(e) In cases when the commission determines that an emergency situation exists that requires the designation of critical habitat to provide for the continued existence of a species as a viable component of the wild fauna or flora of the state, the commission may add the designated critical habitat to such lists after first publishing public notice that such an emergency situation exists together with a summary of facts that support such determination.

(4) In determining whether any endangered or threatened species requires the designation of critical habitat, the commission shall take into consideration those actions being carried out by the federal government, by other states, by other agencies of this state or its political subdivisions, or by any other person which may affect the species under consideration.

(5) The commission shall adopt and promulgate rules and regulations containing a list of all designated critical habitat in this state and the endangered or threatened species for which such critical habitat was designated. Each species on such list shall be referred to by both scientific and common name or names, if any.

Source: Laws 2024, LB1335, § 8.
Effective date July 19, 2024.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 10
RECREATIONAL TRAILS

Section
37-1017. Trail Development and Maintenance Fund; created; use; investment.

37-1017 Trail Development and Maintenance Fund; created; use; investment.

The Trail Development and Maintenance Fund is hereby created. The fund shall consist of transfers at the direction of the Legislature and any gifts, bequests, or other contributions to such fund from public or private entities. The Game and Parks Commission shall administer the fund to provide grants to natural resources districts to assist in completing the Missouri-Pacific trail

between the cities of Lincoln and Omaha. 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 2022, LB1012, § 6; Laws 2024, First Spec. Sess., LB3, § 9. 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 12
STATE BOAT ACT

Section

37-1201 Act, how cited; declaration of policy.

Sections 37-1201 to 37-12,110 shall be known and may be cited as the State Boat Act. It is the policy of this state to promote safety for persons and property in and connected with the use, operation, and equipment of vessels and to promote uniformity of laws relating thereto.

Source: Laws 1978, LB 21, § 1; Laws 2004, LB 560, § 3; Laws 2009, LB49, § 3; Laws 2009, LB202, § 1; Laws 2011, LB667, § 8; Laws 2017, LB263, § 2.

37-1214 Motorboat; registration; period valid; application; registration fee; aquatic invasive species stamp.

(1) Except as otherwise provided in section 37-1211, the owner of each motorboat shall register such vessel or renew the registration every three years as provided in section 37-1226. The owner of such vessel shall file an initial application for a certificate of number pursuant to section 37-1216 with a county treasurer on forms approved and provided by the commission. The application shall be signed by the owner of the vessel, shall contain the year manufactured, and shall be accompanied by a registration fee for the three-year period of twenty-eight dollars for Class 1 boats, fifty-one dollars for Class 2 boats, seventy-two dollars and fifty cents for Class 3 boats, and one hundred

twenty dollars for Class 4 boats. Of each motorboat registration fee, not more than ten dollars may be used for the Aquatic Invasive Species Program.

(2) The owner of a motorboat not registered in Nebraska shall purchase an aquatic invasive species stamp for the Aquatic Invasive Species Program valid for one calendar year prior to launching into any waters of the state. The cost of such one-year stamp shall be established pursuant to section 37-327 and be not less than ten dollars and not more than fifteen dollars plus an issuance fee pursuant to section 37-406. Such one-year stamp may be purchased electronically or through any vendor authorized by the commission to sell other permits and stamps issued under the Game Law pursuant to section 37-406. The aquatic invasive species stamp shall be permanently affixed on the starboard and rearward side of the vessel. The proceeds from the sale of stamps shall be remitted to the State Game Fund.

(3) This subsection applies beginning on an implementation date designated by the Director of Motor Vehicles in cooperation with the commission. The director shall designate an implementation date on or before January 1, 2021, for motorboat registration. In addition to the information required under subsection (1) of this section, the application for registration shall contain (a)(i) the full legal name as defined in section 60-468.01 of each owner or (ii) the name of each owner as such name appears on the owner's motor vehicle operator's license or state identification card and (b)(i) the motor vehicle operator's license number or state identification card number of each owner, if applicable, and one or more of the identification elements as listed in section 60-484 of each owner, if applicable, and (ii) if any owner is a business entity, a nonprofit organization, an estate, a trust, or a church-controlled organization, its tax identification number.

Source: Laws 1978, LB 21, § 14; Laws 1993, LB 235, § 36; Laws 1994, LB 123, § 1; Laws 1995, LB 376, § 2; Laws 1996, LB 464, § 2; Laws 1997, LB 720, § 1; Laws 1998, LB 922, § 396; Laws 1999, LB 176, § 111; Laws 2003, LB 305, § 20; Laws 2003, LB 306, § 21; Laws 2012, LB801, § 6; Laws 2015, LB142, § 3; Laws 2015, LB642, § 1; Laws 2019, LB270, § 1; Laws 2020, LB287, § 16.

Cross References

Game Law, see section 37-201.

37-1215 Motorboat; registration period already commenced; registration fee reduced; computation.

In the event an application is made after the beginning of any registration period for registration of any vessel not previously registered by the applicant in this state, the registration fee on such vessel shall be reduced by one thirty-sixth for each full month of the registration period already expired as of the date such vessel was acquired. The county treasurer shall compute the registration fee on forms and pursuant to rules of the commission.

Source: Laws 1978, LB 21, § 15; Laws 1996, LB 464, § 3; Laws 2012, LB801, § 7; Laws 2015, LB142, § 4; Laws 2020, LB287, § 17.

37-1219 Registration fees; remitted to commission; when; form; duplicate copy.

All registration fees received by the county treasurers shall be remitted on or before the thirtieth day of the following month to the secretary of the commission. All remittances shall be upon a form to be furnished by the commission and a duplicate copy shall be retained by the county treasurer.

Source: Laws 1978, LB 21, § 19; Laws 1996, LB 464, § 7; Laws 2012, LB801, § 11; Laws 2015, LB142, § 5; Laws 2020, LB287, § 18.

37-1278 Certificate of title; application; contents; issuance; transfer of motorboat.

(1) Application for a certificate of title shall be presented to the county treasurer, shall be made upon a form prescribed by the Department of Motor Vehicles, and shall be accompanied by the fee prescribed in section 37-1287. The owner of a motorboat for which a certificate of title is required shall obtain a certificate of title prior to registration required under section 37-1214. The buyer of a motorboat sold pursuant to section 76-1607 shall present documentation that such sale was completed in compliance with such section.

(2)(a) If a certificate of title has previously been issued for the motorboat in this state, the application for a new certificate of title shall be accompanied by the certificate of title duly assigned. If a certificate of title has not previously been issued for the motorboat in this state, the application shall be accompanied by a certificate of number from this state, a manufacturer's or importer's certificate, a duly certified copy thereof, proof of purchase from a governmental agency or political subdivision, a certificate of title from another state, or a court order issued by a court of record, a manufacturer's certificate of origin, or an assigned registration certificate, if the motorboat was brought into this state from a state which does not have a certificate of title law. The county treasurer shall retain the evidence of title presented by the applicant on which the certificate of title is issued. When the evidence of title presented by the applicant is a certificate of title or an assigned registration certificate issued by another state, the department shall notify the state of prior issuance that the certificate has been surrendered. If a certificate of title has not previously been issued for the motorboat in this state and the applicant is unable to provide such documentation, the applicant may apply for a bonded certificate of title as prescribed in section 37-1278.01.

(b) This subdivision applies beginning on an implementation date designated by the Director of Motor Vehicles. The director shall designate an implementation date which is on or before January 1, 2021. In addition to the information required under subdivision (2)(a) of this section, the application for a certificate of title shall contain (i)(A) the full legal name as defined in section 60-468.01 of each owner or (B) the name of each owner as such name appears on the owner's motor vehicle operator's license or state identification card and (ii)(A) the motor vehicle operator's license number or state identification card number of each owner, if applicable, and one or more of the identification elements as listed in section 60-484 of each owner, if applicable, and (B) if any owner is a business entity, a nonprofit organization, an estate, a trust, or a church-controlled organization, its tax identification number.

(3) The county treasurer shall use reasonable diligence in ascertaining whether or not the statements in the application for a certificate of title are true by checking the application and documents accompanying the same with the records of motorboats in his or her office. If he or she is satisfied that the

applicant is the owner of the motorboat and that the application is in the proper form, the county treasurer shall issue a certificate of title over his or her signature and sealed with his or her seal.

(4)(a) In the case of the sale of a motorboat, the certificate of title shall be obtained in the name of the purchaser upon application signed by the purchaser, except that for titles to be held by a married couple, applications may be accepted by the county treasurer upon the signature of either spouse as a signature for himself or herself and as an agent for his or her spouse.

(b) This subdivision applies beginning on an implementation date designated by the Director of Motor Vehicles. The director shall designate an implementation date which is on or before January 1, 2021. If the purchaser of a motorboat does not apply for a certificate of title in accordance with subdivision (4)(a) of this section within thirty days after the sale of the motorboat, the seller of such motorboat may request the department to update the electronic certificate of title record to reflect the sale. The department shall update such record upon receiving evidence of a sale satisfactory to the director.

(5) In all cases of transfers of motorboats, the application for a certificate of title shall be filed within thirty days after the delivery of the motorboat. A dealer need not apply for a certificate of title for a motorboat in stock or acquired for stock purposes, but upon transfer of a motorboat in stock or acquired for stock purposes, the dealer shall give the transferee a reassignment of the certificate of title on the motorboat or an assignment of a manufacturer's or importer's certificate. If all reassignments printed on the certificate of title have been used, the dealer shall obtain title in his or her name prior to any subsequent transfer.

Source: Laws 1994, LB 123, § 6; Laws 1996, LB 464, § 14; Laws 1997, LB 635, § 14; Laws 1997, LB 720, § 5; Laws 2000, LB 1317, § 1; Laws 2012, LB801, § 15; Laws 2015, LB642, § 2; Laws 2017, LB492, § 10; Laws 2019, LB111, § 1; Laws 2019, LB270, § 2.

Cross References

Certificate of title, negligent execution by government employee, see sections 13-910 and 81-8,219.

37-1279 Certificate of title; issuance; form; county treasurer; duties; filing.

(1) The county treasurer shall issue the certificate of title. The county treasurer shall sign and affix his or her seal to the original certificate of title and deliver the certificate to the applicant if there are no liens on the motorboat. If there are one or more liens on the motorboat, the certificate of title shall be handled as provided in section 37-1282. The county treasurer shall keep on hand a sufficient supply of blank forms which shall be furnished and distributed without charge to manufacturers, dealers, or other persons residing within the county, except that certificates of title shall only be issued by the county treasurer or the Department of Motor Vehicles. Each county shall issue and file certificates of title using the Vehicle Title and Registration System which shall be provided and maintained by the department.

(2) Each county treasurer of the various counties shall provide his or her seal without charge to the applicant on any certificate of title, application for certificate of title, duplicate copy, assignment or reassignment, power of attorney, statement, or affidavit pertaining to the issuance of a certificate of title. The department shall prescribe a uniform method of numbering certificates of title.

(3) The county treasurer shall (a) file all certificates of title according to rules and regulations of the department, (b) maintain in the office indices for such certificates of title, (c) be authorized to destroy all previous records five years after a subsequent transfer has been made on a motorboat, and (d) be authorized to destroy all certificates of title and all supporting records and documents which have been on file for a period of five years or more from the date of filing the certificate or a notation of lien, whichever occurs later.

Source: Laws 1994, LB 123, § 7; Laws 1996, LB 464, § 16; Laws 2009, LB202, § 4; Laws 2012, LB801, § 16; Laws 2017, LB263, § 4.

Cross References

Certificate of title, negligent execution by government employee, see sections 13-910 and 81-8,219.

37-1280 Department of Motor Vehicles; powers and duties; rules and regulations; cancellation of certificate of title; removal of improperly noted lien on certificate of title; procedure.

(1) The Department of Motor Vehicles may adopt and promulgate rules and regulations necessary to carry out sections 37-1275 to 37-1290. The county treasurers shall conform to any such rules and regulations and act at the direction of the department. The department shall also provide the county treasurers with the necessary training for the proper administration of such sections. The department shall receive and file in its office all instruments forwarded to it by the county treasurers under such sections and shall maintain indices covering the entire state for the instruments so filed. These indices shall be by hull identification number and alphabetically by the owner's name and shall be for the entire state and not for individual counties. The department shall provide and furnish the forms required by section 37-1286 to the county treasurers except manufacturers' or importers' certificates. The department shall check with its records all duplicate certificates of title received from the county treasurers. If it appears that a certificate of title has been improperly issued, the department shall cancel the certificate of title. Upon cancellation of any certificate of title, the department shall notify the county treasurer who issued the certificate, and the county treasurer shall enter the cancellation upon his or her records. The department shall also notify the person to whom such certificate of title was issued and any lienholders appearing on the certificate of the cancellation and shall demand the surrender of the certificate of title, but the cancellation shall not affect the validity of any lien noted on the certificate. The holder of the certificate of title shall return the certificate to the department immediately. If a certificate of number has been issued pursuant to section 37-1216 to the holder of a certificate of title so canceled, the department shall notify the commission. Upon receiving the notice, the commission shall immediately cancel the certificate of number and demand the return of the certificate of number and the holder of the certificate of number shall return the certificate to the commission immediately.

(2) The department may remove a lien on a certificate of title when such lien was improperly noted if evidence of the improperly noted lien is submitted to the department and the department finds the evidence sufficient to support removal of the lien. The department shall send notification prior to removal of the lien to the last-known address of the lienholder. The lienholder must respond within thirty days after the date on the notice and provide sufficient

evidence to support that the lien should not be removed. If the lienholder fails to respond to the notice, the lien may be removed by the department.

Source: Laws 1994, LB 123, § 8; Laws 1996, LB 464, § 17; Laws 2012, LB801, § 17; Laws 2018, LB909, § 2; Laws 2019, LB270, § 3.

37-1283 New certificate; when issued; proof required; processing of application.

(1)(a) This subsection applies prior to the implementation date designated by the Director of Motor Vehicles pursuant to subsection (2) of section 60-1508.

(b)(i) Whenever ownership of a motorboat is transferred by operation of law as upon inheritance, devise, bequest, order in bankruptcy, insolvency, replevin, or execution sale, (ii) whenever a motorboat is sold to satisfy storage or repair charges or under section 76-1607, or (iii) whenever repossession is had upon default in performance of the terms of a chattel mortgage, trust receipt, conditional sales contract, or other like agreement, the county treasurer of any county or the Department of Motor Vehicles, upon the surrender of the prior certificate of title or the manufacturer's or importer's certificate, or when that is not possible, upon presentation of satisfactory proof of ownership and right of possession to the motorboat, and upon payment of the fee prescribed in section 37-1287 and the presentation of an application for certificate of title, may issue to the applicant a certificate of title thereto.

(2)(a) This subsection applies beginning on the implementation date designated by the director pursuant to subsection (2) of section 60-1508.

(b)(i) Whenever ownership of a motorboat is transferred by operation of law as upon inheritance, devise, bequest, order in bankruptcy, insolvency, replevin, or execution sale, (ii) whenever a motorboat is sold to satisfy storage or repair charges or under section 76-1607, or (iii) whenever repossession is had upon default in performance of the terms of a chattel mortgage, trust receipt, conditional sales contract, or other like agreement, and upon acceptance of an electronic certificate of title record after repossession, in addition to the title requirements in this section, the county treasurer of any county or the Department of Motor Vehicles, upon the surrender of the prior certificate of title or the manufacturer's or importer's certificate, or when that is not possible, upon presentation of satisfactory proof of ownership and right of possession to the motorboat, and upon payment of the fee prescribed in section 37-1287 and the presentation of an application for certificate of title, may issue to the applicant a certificate of title thereto.

(3) If the prior certificate of title issued for the motorboat provided for joint ownership with right of survivorship, a new certificate of title shall be issued to a subsequent purchaser upon the assignment of the prior certificate of title by the surviving owner and presentation of satisfactory proof of death of the deceased owner.

(4) Only an affidavit by the person or agent of the person to whom possession of the motorboat has so passed, setting forth facts entitling him or her to such possession and ownership, together with a copy of a court order or an instrument upon which such claim of possession and ownership is founded shall be considered satisfactory proof of ownership and right of possession, except that if the applicant cannot produce such proof of ownership, he or she may submit to the department such evidence as he or she may have and the department may thereupon, if it finds the evidence sufficient, issue the certifi-

cate of title or authorize any county treasurer to issue a certificate of title, as the case may be. If from the records of the county treasurer or the department there appear to be any liens on the motorboat, the certificate of title shall comply with section 37-1282 regarding the liens unless the application is accompanied by proper evidence of their satisfaction or extinction.

Source: Laws 1994, LB 123, § 11; Laws 1996, LB 464, § 19; Laws 2009, LB202, § 7; Laws 2012, LB751, § 2; Laws 2012, LB801, § 19; Laws 2017, LB263, § 5; Laws 2017, LB492, § 11; Laws 2018, LB193, § 75; Laws 2018, LB909, § 3.

Cross References

Certificate of title, negligent execution by government employee, see sections 13-910 and 81-8,219.

37-1285 Certificate; surrender and cancellation; when required.

Each owner of a motorboat and each person mentioned as owner in the last certificate of title, when the motorboat is dismantled, destroyed, or changed in such a manner that it loses its character as a motorboat or changed in such a manner that it is not the motorboat described in the certificate of title, shall surrender his or her certificate of title to any county treasurer or to the Department of Motor Vehicles. If the certificate of title is surrendered to a county treasurer, he or she shall, with the consent of any holders of any liens noted on the certificate, enter a cancellation upon the records and shall notify the department of the cancellation. Beginning on the implementation date designated by the Director of Motor Vehicles pursuant to subsection (3) of section 60-1508, a wrecker or salvage dealer shall report electronically to the department using the electronic reporting system. If the certificate is surrendered to the department, it shall, with the consent of any holder of any lien noted on the certificate, enter a cancellation upon its records. Upon cancellation of a certificate of title in the manner prescribed by this section, the county treasurer and the department may cancel and destroy all certificates and all memorandum certificates in that chain of title.

Source: Laws 1994, LB 123, § 13; Laws 1996, LB 464, § 21; Laws 2012, LB751, § 4; Laws 2012, LB801, § 21; Laws 2018, LB909, § 4.

37-1285.01 Electronic certificate of title; changes authorized.

Beginning on the implementation date designated by the Director of Motor Vehicles pursuant to subsection (2) of section 60-1508, if a motorboat certificate of title is an electronic certificate of title record, upon application by an owner or a lienholder and payment of the fee prescribed in section 37-1287, the following changes may be made to a certificate of title electronically and without printing a certificate of title:

(1) Changing the name of an owner to reflect a legal change of name;

(2) Removing the name of an owner with the consent of all owners and lienholders;

(3) Adding an additional owner with the consent of all owners and lienholders; or

(4) Beginning on an implementation date designated by the director on or before January 1, 2022, adding, changing, or removing a transfer-on-death beneficiary designation.

Source: Laws 2017, LB263, § 3; Laws 2018, LB909, § 5; Laws 2021, LB113, § 1.

37-1287 Fees; disposition.

(1) The county treasurers or the Department of Motor Vehicles shall charge a fee of six dollars for each certificate of title and a fee of three dollars for each notation of any lien on a certificate of title. The county treasurers shall retain for the county four dollars of the six dollars charged for each certificate of title and two dollars for each notation of lien. The remaining amount of the fee charged for the certificate of title and notation of lien under this subsection shall be remitted to the State Treasurer for credit to the General Fund.

(2) The county treasurers or the department shall charge a fee of ten dollars for each replacement or duplicate copy of a certificate of title, and the duplicate copy issued shall show only those unreleased liens of record. Such fees shall be remitted by the county or the department to the State Treasurer for credit to the General Fund.

(3) In addition to the fees prescribed in subsections (1) and (2) of this section, the county treasurers or the department shall charge a fee of four dollars for each certificate of title, each replacement or duplicate copy of a certificate of title, and each notation of lien on a certificate of title. The county treasurers or the department shall remit the fee charged under this subsection to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

(4) The county treasurers shall remit fees due the State Treasurer under this section monthly and not later than the twentieth day of the month following collection. The county treasurers shall credit fees not due to the State Treasurer to their respective county general fund.

Source: Laws 1994, LB 123, § 15; Laws 1995, LB 467, § 1; Laws 1996, LB 464, § 23; Laws 2009, LB202, § 8; Laws 2011, LB135, § 1; Laws 2012, LB801, § 23; Laws 2017, LB263, § 6.

37-1292 Salvage certificate of title; terms, defined.

For purposes of this section and sections 37-1293 to 37-1298:

(1) Cost of repairs means the estimated or actual retail cost of parts needed to repair a motorboat plus the cost of labor computed by using the hourly labor rate and time allocations for repair that are customary and reasonable. Retail cost of parts and labor rates may be based upon collision estimating manuals or electronic computer estimating systems customarily used in the insurance industry;

(2) Late model motorboat means a motorboat which has (a) a manufacturer's model year designation of, or later than, the year in which the motorboat was wrecked, damaged, or destroyed, or any of the six preceding years, or (b) a retail value of more than ten thousand dollars until January 1, 2006, a retail value of more than ten thousand five hundred dollars until January 1, 2010, and a retail value of more than ten thousand five hundred dollars increased by five hundred dollars every five years thereafter;

(3) Previously salvaged means the designation of a rebuilt motorboat which was previously required to be issued a salvage branded certificate of title;

(4) Retail value means the actual cash value, fair market value, or retail value of a motorboat as (a) set forth in a current edition of any nationally recognized compilation, including automated databases, of retail values or (b) determined pursuant to a market survey of comparable motorboats with respect to condition and equipment; and

(5) Salvage means the designation of a motorboat which is:

(a) A late model motorboat which has been wrecked, damaged, or destroyed to the extent that the estimated total cost of repair to rebuild or reconstruct the motorboat to its condition immediately before it was wrecked, damaged, or destroyed and to restore the motorboat to a condition for legal operation, meets or exceeds seventy-five percent of the retail value of the motorboat at the time it was wrecked, damaged, or destroyed; or

(b) Voluntarily designated by the owner of the motorboat as a salvage motorboat by obtaining a salvage branded certificate of title, without respect to the damage to, age of, or value of the motorboat.

Source: Laws 2004, LB 560, § 5; Laws 2019, LB270, § 4.

37-1293 Salvage branded certificate of title; when issued; procedure.

When an insurance company acquires a salvage motorboat through payment of a total loss settlement on account of damage, the company shall obtain the certificate of title from the owner, surrender such certificate of title to the county treasurer, and make application for a salvage branded certificate of title which shall be assigned when the company transfers ownership. An insurer shall take title to a salvage motorboat for which a total loss settlement is made unless the owner of the motorboat elects to retain the motorboat. If the owner elects to retain the motorboat, the insurance company shall notify the Department of Motor Vehicles of such fact in a format prescribed by the department. Beginning on the implementation date designated by the Director of Motor Vehicles pursuant to subsection (3) of section 60-1508, the insurance company shall report electronically to the department using the electronic reporting system. The department shall immediately enter the salvage brand onto the computerized record of the motorboat. The insurance company shall also notify the owner of the owner's responsibility to comply with this section. The owner shall, within thirty days after the settlement of the loss, forward the properly endorsed acceptable certificate of title to the county treasurer. Upon receipt of the certificate of title, the county treasurer shall issue a salvage branded certificate of title for the motorboat unless the motorboat has been rebuilt or reconstructed, in which case the county treasurer shall issue a previously salvaged branded certificate of title for the motorboat.

Source: Laws 2004, LB 560, § 6; Laws 2012, LB801, § 26; Laws 2018, LB909, § 6; Laws 2019, LB270, § 5.

ARTICLE 14
NEBRASKA INVASIVE SPECIES COUNCIL

Section
37-1402. Invasive species, defined.

37-1402 Invasive species, defined.

For purposes of sections 37-1401 to 37-1406, invasive species means aquatic or terrestrial organisms not native to the region that cause economic or biological harm and are capable of spreading to new areas, and invasive species does not include livestock as defined in sections 54-1902 and 54-2921, honey bees, domestic pets, intentionally planted agronomic crops, or nonnative organisms that do not cause economic or biological harm.

Source: Laws 2012, LB391, § 12; Laws 2020, LB344, § 63.

ARTICLE 16
INTERSTATE WILDLIFE VIOLATOR COMPACT

Section
37-1601. Interstate Wildlife Violator Compact.

37-1601 Interstate Wildlife Violator Compact.

The Legislature hereby adopts the Interstate Wildlife Violator Compact and enters into such compact with all states legally joining the compact in the form substantially as contained in this section.

Article I
Definitions

For purposes of the Interstate Wildlife Violator Compact:

(1) Citation means any summons, complaint, summons and complaint, ticket, penalty assessment, or other official document that is issued to a person by a wildlife officer or other peace officer for a wildlife violation and that contains an order requiring the person to respond;

(2) Collateral means any cash or other security deposited to secure an appearance for trial in connection with the issuance by a wildlife officer or other peace officer of a citation for a wildlife violation;

(3) Compliance means, with respect to a citation, the act of answering a citation through an appearance in a court or tribunal, or through the payment of fines, costs, and surcharges, if any;

(4) Conviction means a conviction, including any court conviction, for any offense that is related to the preservation, protection, management, or restoration of wildlife and that is prohibited by state statute, law, regulation, commission order, ordinance, or administrative rule. The term also includes the forfeiture of any bail, bond, or other security deposited to secure appearance by a person charged with having committed any such offense, the payment of a penalty assessment, a plea of nolo contendere, and the imposition of a deferred or suspended sentence by the court;

(5) Court means a court of law, including magistrate's court and the justice of the peace court, if any;

(6) Home state means the state of primary residence of a person;

(7) Issuing state means the participating state which issues a wildlife citation to the violator;

(8) License means any license, permit, or other public document that conveys to the person to whom it was issued the privilege of pursuing, possessing, or taking any wildlife regulated by statute, law, regulation, commission order, ordinance, or administrative rule of a participating state;

(9) Licensing authority means the Game and Parks Commission or the department or division within each participating state that is authorized by law to issue or approve licenses or permits to hunt, fish, trap, or possess wildlife;

(10) Participating state means any state that enacts legislation to become a member of the Interstate Wildlife Violator Compact;

(11) Personal recognizance means an agreement by a person made at the time of issuance of the wildlife citation that such person will comply with the terms of the citation;

(12) State means any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the provinces of Canada, and other countries;

(13) Suspension means any revocation, denial, or withdrawal of any or all license privileges, including the privilege to apply for, purchase, or exercise the benefits conferred by any license;

(14) Terms of the citation means those conditions and options expressly stated in the citation;

(15) Wildlife means all species of animals including mammals, birds, fish, reptiles, amphibians, mollusks, and crustaceans, which are defined as wildlife and are protected or otherwise regulated by statute, law, regulation, commission order, ordinance, or administrative rule in a participating state. Species included in the definition of wildlife for purposes of the Interstate Wildlife Violator Compact are based on state or local law;

(16) Wildlife law means the Game Law or any statute, law, regulation, commission order, ordinance, or administrative rule developed and enacted for the management of wildlife resources and the uses thereof;

(17) Wildlife officer means any conservation officer and any individual authorized by a participating state to issue a citation for a wildlife violation; and

(18) Wildlife violation means any cited violation of a statute, law, regulation, commission order, ordinance, or administrative rule developed and enacted for the management of wildlife resources and the uses thereof.

Article II

Procedures for Issuing State

When issuing a citation for a wildlife violation, a wildlife officer shall issue a citation to any person whose primary residence is in a participating state in the same manner as though the person were a resident of the issuing state and may not require such person to post collateral to secure appearance if the officer receives the personal recognizance of such person that the person will comply with the terms of the citation.

Personal recognizance is acceptable:

(1) If not prohibited by state or local law or the compact manual; and

(2) If the violator provides adequate proof of identification to the wildlife officer.

Upon conviction or failure of a person to comply with the terms of a wildlife citation, the appropriate official shall report the conviction or failure to comply to the licensing authority of the issuing state.

Upon receipt of the report of conviction or noncompliance, the licensing authority of the issuing state shall transmit such information to the licensing authority of the home state of the violator.

Article III

Procedures for Home State

Upon receipt of a report from the licensing authority of the issuing state reporting the failure of a violator to comply with the terms of a citation, the licensing authority of the home state shall notify the violator and may initiate a suspension action in accordance with the home state's suspension procedures

and may suspend the violator's license privileges until satisfactory evidence of compliance with the terms of the wildlife citation has been furnished by the issuing state to the home state licensing authority. Due process safeguards shall be accorded.

Upon receipt of a report of conviction from the licensing authority of the issuing state, the licensing authority of the home state may enter such conviction in its records and may treat such conviction as though it had occurred in the home state for the purposes of the suspension of license privileges if the violation resulting in such conviction could have been the basis for suspension of license privileges in the home state.

The licensing authority of the home state shall maintain a record of actions taken and shall make reports to issuing states.

Article IV

Reciprocal Recognition of Suspension

All participating states may recognize the suspension of license privileges of any person by any participating state as though the violation resulting in the suspension had occurred in their state and could have been the basis for suspension of license privileges in their state.

Each participating state shall communicate suspension information to other participating states.

Article V

Applicability of Other Laws

Except as expressly required by the Interstate Wildlife Violator Compact, nothing in the compact may be construed to affect the right of any participating state to apply any of its laws relating to license privileges to any person or circumstance or to invalidate or prevent any agreement or other cooperative arrangement between a participating state and a nonparticipating state concerning wildlife law enforcement.

Article VI

Withdrawal from Compact

A participating state may withdraw from participation in the Interstate Wildlife Violator Compact by enacting a statute repealing the compact and by official written notice to each participating state. Withdrawal shall not become effective until ninety days after the notice of withdrawal is given. The notice shall be directed to the compact administrator of each participating state. Withdrawal of any state does not affect the validity of the compact as to the remaining participating states.

Article VII

Construction and Severability

The Interstate Wildlife Violator Compact shall be liberally construed so as to effectuate its purposes. The provisions of the compact are severable, and if any phrase, clause, sentence, or provision of the compact is declared to be contrary to the constitution of any participating state or the United States, or the applicability thereof to any government, agency, individual, or circumstance is held invalid, the validity of the remainder of the compact is not affected thereby. If the compact is held contrary to the constitution of any participating state, the compact remains in full force and effect as to the remaining states

and in full force and effect as to the participating state affected as to all severable matters.

Article VIII

Responsible State Entity

The Game and Parks Commission is authorized on behalf of the state to enter into the Interstate Wildlife Violator Compact. The commission shall enforce the compact and shall do all things within the jurisdiction of the commission that are appropriate in order to effectuate the purposes and the intent of the compact. The commission may adopt and promulgate rules and regulations necessary to carry out and consistent with the compact.

The commission may suspend the hunting, trapping, or fishing privileges of any resident of this state who has failed to comply with the terms of a citation issued for a wildlife violation in any participating state. The suspension shall remain in effect until the commission receives satisfactory evidence of compliance from the participating state. The commission shall send notice of the suspension to the resident, who shall surrender all current Nebraska hunting, trapping, or fishing licenses to the commission within ten days.

The resident may, within twenty days of the notice, request a review or hearing in accordance with section 37-618. Following the review or hearing, the commission, through its authorized agent, may, based on the evidence, affirm, modify, or rescind the suspension of privileges.

Source: Laws 2017, LB566, § 1.

Cross References

Game Law, see section 37-201.

ARTICLE 17

STATE PARK SYSTEM CONSTRUCTION ALTERNATIVES ACT

Section
37-1701. Act, how cited.
37-1702. Definitions, where found.
37-1703. Alternative technical concept, defined.
37-1704. Best value-based selection process, defined.
37-1705. Commission, defined.
37-1706. Construction manager, defined.
37-1707. Construction manager-general contractor contract, defined.
37-1708. Construction services, defined.
37-1709. Design-build contract, defined.
37-1710. Design-builder, defined.
37-1711. Preconstruction services, defined.
37-1712. Project performance criteria, defined.
37-1713. Proposal, defined.
37-1714. Qualification-based selection process, defined.
37-1715. Request for proposals, defined.
37-1716. Request for qualifications, defined.
37-1717. Purpose.
37-1718. Contracts authorized.
37-1719. Architect; engineer; hiring authorized.
37-1720. Guidelines for entering into contracts.
37-1721. Process for selecting design-builder and entering into contract.
37-1722. Request for qualifications; prequalify design-builders; publication in newspaper; short list.
37-1723. Design-build contract; request for proposals; contents.

Section
37-1724. Stipend.
37-1725. Alternative technical concepts; evaluation of proposals; commission; power to negotiate.
37-1726. Process for selection of construction manager and entering into construction manager-general contractor contract.
37-1727. Construction manager-general contractor contract; request for proposals; contents.
37-1728. Submission of proposals; procedure; evaluation of proposals; commission; power to negotiate.
37-1729. Commission; duties; powers.
37-1730. Contract changes authorized.
37-1731. Insurance requirements.
37-1732. Rules and regulations.

37-1701 Act, how cited.

Sections 37-1701 to 37-1732 shall be known and may be cited as the State Park System Construction Alternatives Act.

Source: Laws 2018, LB775, § 2.

37-1702 Definitions, where found.

For purposes of the State Park System Construction Alternatives Act, unless the context otherwise requires, the definitions found in sections 37-1703 to 37-1716 are used.

Source: Laws 2018, LB775, § 3.

37-1703 Alternative technical concept, defined.

Alternative technical concept means changes suggested by a qualified, eligible, short-listed design-builder to the commission's basic configurations, project scope, design, or construction criteria.

Source: Laws 2018, LB775, § 4.

37-1704 Best value-based selection process, defined.

Best value-based selection process means a process of selecting a design-builder using price, schedule, and qualifications for evaluation factors.

Source: Laws 2018, LB775, § 5.

37-1705 Commission, defined.

Commission means the Game and Parks Commission.

Source: Laws 2018, LB775, § 6.

37-1706 Construction manager, defined.

Construction manager means the legal entity which proposes to enter into a construction manager-general contractor contract pursuant to the State Park System Construction Alternatives Act.

Source: Laws 2018, LB775, § 7.

37-1707 Construction manager-general contractor contract, defined.

Construction manager-general contractor contract means a contract which is subject to a qualification-based selection process between the commission and a

construction manager to furnish preconstruction services during the design development phase of the project and, if an agreement can be reached which is satisfactory to the commission, construction services for the construction phase of the project.

Source: Laws 2018, LB775, § 8.

37-1708 Construction services, defined.

Construction services means activities associated with building the project.

Source: Laws 2018, LB775, § 9.

37-1709 Design-build contract, defined.

Design-build contract means a contract between the commission and a design-builder which is subject to a best value-based selection process to furnish (1) architectural, engineering, and related design services and (2) labor, materials, supplies, equipment, and construction services.

Source: Laws 2018, LB775, § 10.

37-1710 Design-builder, defined.

Design-builder means the legal entity which proposes to enter into a design-build contract.

Source: Laws 2018, LB775, § 11.

37-1711 Preconstruction services, defined.

Preconstruction services means all nonconstruction-related services that a construction manager performs in relation to the design of the project before execution of a contract for construction services. Preconstruction services includes, but is not limited to, cost estimating, value engineering studies, constructability reviews, delivery schedule assessments, and life-cycle analysis.

Source: Laws 2018, LB775, § 12.

37-1712 Project performance criteria, defined.

Project performance criteria means the performance requirements of the project suitable to allow the design-builder to make a proposal. Performance requirements shall include, but are not limited to, the following, if required by the project: Capacity, durability, standards, ingress and egress requirements, description of the site, surveys, soil and environmental information concerning the site, material quality standards, design and milestone dates, site development requirements, compliance with applicable law, and other criteria for the intended use of the project.

Source: Laws 2018, LB775, § 13.

37-1713 Proposal, defined.

Proposal means an offer in response to a request for proposals (1) by a design-builder to enter into a design-build contract or (2) by a construction manager to enter into a construction manager-general contractor contract.

Source: Laws 2018, LB775, § 14.

37-1714 Qualification-based selection process, defined.

Qualification-based selection process means a process of selecting a construction manager based on qualifications.

Source: Laws 2018, LB775, § 15.

37-1715 Request for proposals, defined.

Request for proposals means the documentation by which the commission solicits proposals.

Source: Laws 2018, LB775, § 16.

37-1716 Request for qualifications, defined.

Request for qualifications means the documentation or publication by which the commission solicits qualifications.

Source: Laws 2018, LB775, § 17.

37-1717 Purpose.

The purpose of the State Park System Construction Alternatives Act is to provide the commission alternative methods of contracting for public projects for buildings in the state park system. The alternative methods of contracting shall be available to the commission for use on any project regardless of the funding source. Notwithstanding any other provision of state law to the contrary, the State Park System Construction Alternatives Act shall govern the design-build and construction manager-general contractor procurement process for the commission.

Source: Laws 2018, LB775, § 18.

37-1718 Contracts authorized.

The commission, in accordance with the State Park System Construction Alternatives Act, may solicit and execute a design-build contract or a construction manager-general contractor contract for a public project in the state park system.

Source: Laws 2018, LB775, § 19.

37-1719 Architect; engineer; hiring authorized.

The commission may hire an architect licensed pursuant to the Engineers and Architects Regulation Act or an engineer licensed pursuant to the act to assist the commission with the development of project performance criteria and requests for proposals, with evaluation of proposals, with evaluation of the construction to determine adherence to the project performance criteria, and with any additional services requested by the commission to represent its interests in relation to a project. The procedures used to hire such person or organization shall comply with the Nebraska Consultants' Competitive Negotiation Act. The person or organization hired shall be ineligible to be included as a provider of other services in a proposal for the project for which he or she has been hired and shall not be employed by or have a financial or other interest in a design-builder or construction manager who will submit a proposal.

Source: Laws 2018, LB775, § 20.

Cross References

Engineers and Architects Regulation Act, see section 81-3401.
Nebraska Consultants' Competitive Negotiation Act, see section 81-1702.

37-1720 Guidelines for entering into contracts.

The commission shall adopt guidelines for entering into a design-build contract or construction manager-general contractor contract. The guidelines shall include the following:

(1) Preparation and content of requests for qualifications;

(2) Preparation and content of requests for proposals;

(3) Qualification and short-listing of design-builders and construction managers. The guidelines shall provide that the commission will evaluate prospective design-builders and construction managers based on the information submitted to the commission in response to a request for qualifications and will select a short list of design-builders or construction managers who shall be considered qualified and eligible to respond to the request for proposals;

(4) Preparation and submittal of proposals;

(5) Procedures and standards for evaluating proposals;

(6) Procedures for negotiations between the commission and the design-builders or construction managers submitting proposals prior to the acceptance of a proposal if any such negotiations are contemplated; and

(7) Procedures for the evaluation of construction under a design-build contract to determine adherence to the project performance criteria.

Source: Laws 2018, LB775, § 21.

37-1721 Process for selecting design-builder and entering into contract.

The process for selecting a design-builder and entering into a design-build contract shall be in accordance with sections 37-1722 to 37-1725.

Source: Laws 2018, LB775, § 22.

37-1722 Request for qualifications; prequalify design-builders; publication in newspaper; short list.

(1) The commission shall prepare a request for qualifications for design-build proposals and shall prequalify design-builders. The request for qualifications shall describe the project in sufficient detail to permit a design-builder to respond. The request for qualifications shall identify the maximum number of design-builders the commission will place on a short list as qualified and eligible to receive a request for proposals.

(2) A person or organization hired by the commission under section 37-1719 shall be ineligible to compete for a design-build contract on the same project for which the person or organization was hired.

(3) The request for qualifications shall be (a) published in a newspaper of statewide circulation at least thirty days prior to the deadline for receiving the request for qualifications and (b) sent by first-class mail to any design-builder upon request.

(4) The commission shall create a short list of qualified and eligible design-builders in accordance with the guidelines adopted pursuant to section 37-1720. The commission shall select at least two prospective design-builders,

except that if only one design-builder has responded to the request for qualifications, the commission may, in its discretion, proceed or cancel the procurement. The request for proposals shall be sent only to the design-builders placed on the short list.

Source: Laws 2018, LB775, § 23.

37-1723 Design-build contract; request for proposals; contents.

The commission shall prepare a request for proposals for each design-build contract. The request for proposals shall contain, at a minimum, the following elements:

(1) The guidelines adopted by the commission in accordance with section 37-1720. The identification of a publicly accessible location of the guidelines, either physical or electronic, shall be considered compliance with this subdivision;

(2) The proposed terms and conditions of the design-build contract, including any terms and conditions which are subject to further negotiation;

(3) A project statement which contains information about the scope and nature of the project;

(4) A statement regarding alternative technical concepts including the process and time period in which such concepts may be submitted, confidentiality of the concepts, and ownership of the rights to the intellectual property contained in such concepts;

(5) Project performance criteria;

(6) Budget parameters for the project;

(7) Any bonding and insurance required by law or as may be additionally required by the commission;

(8) The criteria for evaluation of proposals and the relative weight of each criterion. The criteria shall include, but are not limited to, the cost of the work, construction experience, design experience, and the financial, personnel, and equipment resources available for the project. The relative weight to apply to any criterion shall be at the discretion of the commission based on each project, except that in all cases, the cost of the work shall be given a relative weight of at least fifty percent;

(9) A requirement that the design-builder provide a written statement of the design-builder's proposed approach to the design and construction of the project, which may include graphic materials illustrating the proposed approach to design and construction and shall include price proposals;

(10) A requirement that the design-builder agree to the following conditions:

(a) At the time of the design-build proposal, the design-builder must furnish to the commission a written statement identifying the architect or engineer who will perform the architectural or engineering work for the project. The architect or engineer engaged by the design-builder to perform the architectural or engineering work with respect to the project must have direct supervision of such work and may not be removed by the design-builder prior to the completion of the project without the written consent of the commission;

(b) At the time of the design-build proposal, the design-builder must furnish to the commission a written statement identifying the general contractor who will provide the labor, material, supplies, equipment, and construction services.

The general contractor identified by the design-builder may not be removed by the design-builder prior to completion of the project without the written consent of the commission;

(c) A design-builder offering design-build services with its own employees who are design professionals licensed to practice in Nebraska must (i) comply with the Engineers and Architects Regulation Act by procuring a certificate of authorization to practice architecture or engineering and (ii) submit proof of sufficient professional liability insurance in the amount required by the commission; and

(d) The rendering of architectural or engineering services by a licensed architect or engineer employed by the design-builder must conform to the Engineers and Architects Regulation Act; and

(11) Other information or requirements which the commission, in its discretion, chooses to include in the request for proposals.

Source: Laws 2018, LB775, § 24.

Cross References

Engineers and Architects Regulation Act, see section 81-3401.

37-1724 Stipend.

The commission shall pay a stipend to qualified design-builders that submit responsive proposals but are not selected. Payment of the stipend shall give the commission ownership of the intellectual property contained in the proposals and alternative technical concepts. The amount of the stipend shall be at the discretion of the commission. The refusal to pay or accept the stipend shall leave the intellectual property contained in the proposals and alternative technical concepts in the possession of the creator of the proposals and alternative technical concepts.

Source: Laws 2018, LB775, § 25.

37-1725 Alternative technical concepts; evaluation of proposals; commission; power to negotiate.

(1) Design-builders shall submit proposals as required by the request for proposals. The commission may meet with individual design-builders prior to the time of submitting the proposal and may have discussions concerning alternative technical concepts. If an alternative technical concept provides a solution that is equal to or better than the requirements in the request for proposals and the alternative technical concept is acceptable to the commission, it may be incorporated as part of the proposal by the design-builder. Notwithstanding any other provision of state law to the contrary, alternative technical concepts shall be confidential and not disclosed to other design-builders or members of the public from the time the proposals are submitted until such proposals are opened by the commission.

(2) Proposals shall be sealed and shall not be opened until expiration of the time established for making the proposals as set forth in the request for proposals.

(3) Proposals may be withdrawn at any time prior to the opening of such proposals in which case no stipend shall be paid. The commission shall have the right to reject any and all proposals at no cost to the commission other than any stipend for design-builders who have submitted responsive proposals. The

commission may thereafter solicit new proposals using the same or different project performance criteria or may cancel the design-build solicitation.

(4) The commission shall rank the design-builders in order of best value pursuant to the criteria in the request for proposals. The commission may meet with design-builders prior to ranking.

(5) The commission may attempt to negotiate a design-build contract with the highest ranked design-builder selected by the commission and may enter into a design-build contract after negotiations. If the commission is unable to negotiate a satisfactory design-build contract with the highest ranked design-builder, the commission may terminate negotiations with that design-builder. The commission may then undertake negotiations with the second highest ranked design-builder and may enter into a design-build contract after negotiations. If the commission is unable to negotiate a satisfactory contract with the second highest ranked design-builder, the commission may undertake negotiations with the third highest ranked design-builder, if any, and may enter into a design-build contract after negotiations.

(6) If the commission is unable to negotiate a satisfactory contract with any of the ranked design-builders, the commission may either revise the request for proposals and solicit new proposals or cancel the design-build process under the State Park System Construction Alternatives Act.

Source: Laws 2018, LB775, § 26.

37-1726 Process for selection of construction manager and entering into construction manager-general contractor contract.

(1) The process for selecting a construction manager and entering into a construction manager-general contractor contract shall be in accordance with this section and sections 37-1727 to 37-1729.

(2) The commission shall prepare a request for qualifications for construction manager-general contractor contract proposals and shall prequalify construction managers. The request for qualifications shall describe the project in sufficient detail to permit a construction manager to respond. The request for qualifications shall identify the maximum number of eligible construction managers the commission will place on a short list as qualified and eligible to receive a request for proposals.

(3) The request for qualifications shall be (a) published in a newspaper of statewide circulation at least thirty days prior to the deadline for receiving the request for qualifications and (b) sent by first-class mail to any construction manager upon request.

(4) The commission shall create a short list of qualified and eligible construction managers in accordance with the guidelines adopted pursuant to section 37-1720. The commission shall select at least two construction managers, except that if only one construction manager has responded to the request for qualifications, the commission may, in its discretion, proceed or cancel the procurement. The request for proposals shall be sent only to the construction managers placed on the short list.

Source: Laws 2018, LB775, § 27.

37-1727 Construction manager-general contractor contract; request for proposals; contents.

The commission shall prepare a request for proposals for each construction manager-general contractor contract. The request for proposals shall contain, at a minimum, the following elements:

(1) The guidelines adopted by the commission in accordance with section 37-1720. The identification of a publicly accessible location of the guidelines, either physical or electronic, shall be considered compliance with this subdivision;

(2) The proposed terms and conditions of the contract, including any terms and conditions which are subject to further negotiation;

(3) Any bonding and insurance required by law or as may be additionally required by the commission;

(4) General information about the project which will assist the commission in its selection of the construction manager, including a project statement which contains information about the scope and nature of the project, the project site, the schedule, and the estimated budget;

(5) The criteria for evaluation of proposals and the relative weight of each criterion;

(6) A statement that the construction manager shall not be allowed to sublet, assign, or otherwise dispose of any portion of the contract without consent of the commission. In no case shall the commission allow the construction manager to sublet more than seventy percent of the work, excluding specialty items; and

(7) Other information or requirements which the commission, in its discretion, chooses to include in the request for proposals.

Source: Laws 2018, LB775, § 28.

37-1728 Submission of proposals; procedure; evaluation of proposals; commission; power to negotiate.

(1) Construction managers shall submit proposals as required by the request for proposals.

(2) Proposals shall be sealed and shall not be opened until expiration of the time established for making the proposals as set forth in the request for proposals.

(3) Proposals may be withdrawn at any time prior to signing a contract for preconstruction services. The commission shall have the right to reject any and all proposals at no cost to the commission. The commission may thereafter solicit new proposals or may cancel the construction manager-general contractor procurement process.

(4) The commission shall rank the construction managers in accordance with the qualification-based selection process and pursuant to the criteria in the request for proposals. The commission may meet with construction managers prior to the ranking.

(5) The commission may attempt to negotiate a contract for preconstruction services with the highest ranked construction manager and may enter into a contract for preconstruction services after negotiations. If the commission is unable to negotiate a satisfactory contract for preconstruction services with the highest ranked construction manager, the commission may terminate negotiations with that construction manager. The commission may then undertake

negotiations with the second highest ranked construction manager and may enter into a contract for preconstruction services after negotiations. If the commission is unable to negotiate a satisfactory contract with the second highest ranked construction manager, the commission may undertake negotiations with the third highest ranked construction manager, if any, and may enter into a contract for preconstruction services after negotiations.

(6) If the commission is unable to negotiate a satisfactory contract for preconstruction services with any of the ranked construction managers, the commission may either revise the request for proposals and solicit new proposals or cancel the construction manager-general contractor contract process under the State Park System Construction Alternatives Act.

Source: Laws 2018, LB775, § 29.

37-1729 Commission; duties; powers.

(1) Before the construction manager begins any construction services, the commission shall:

(a) Conduct an independent cost estimate for the project; and

(b) Conduct contract negotiations with the construction manager to develop a construction manager-general contractor contract for construction services.

(2) If the construction manager and the commission are unable to negotiate a contract, the commission may use other contract procurement processes as provided by law. Persons or organizations who submitted proposals but were unable to negotiate a contract with the commission shall be eligible to compete in the other contract procurement processes.

Source: Laws 2018, LB775, § 30.

37-1730 Contract changes authorized.

A design-build contract and a construction manager-general contractor contract may be conditioned upon later refinements in scope and price and may permit the commission in agreement with the design-builder or construction manager to make changes in the project without invalidating the contract.

Source: Laws 2018, LB775, § 31.

37-1731 Insurance requirements.

Nothing in the State Park System Construction Alternatives Act shall limit or reduce statutory or regulatory requirements regarding insurance.

Source: Laws 2018, LB775, § 32.

37-1732 Rules and regulations.

The commission may adopt and promulgate rules and regulations to carry out the State Park System Construction Alternatives Act.

Source: Laws 2018, LB775, § 33.

ARTICLE 18

WATER RECREATION ENHANCEMENT

Section
37-1801. Act, how cited.
37-1802. Legislative findings and declarations.

Section
37-1803. Act; purposes; Game and Parks Commission; powers; legislative intent; contracts; conflict-of-interest provisions.
37-1804. Water Recreation Enhancement Fund; created; use; investment.

37-1801 Act, how cited.

Sections 37-1801 to 37-1803 shall be known and may be cited as the Water Recreation Enhancement Act.

Source: Laws 2022, LB1023, § 5.

37-1802 Legislative findings and declarations.

The Legislature finds and declares as follows:

(1) The future vibrancy of the people, communities, and businesses of Nebraska depends on reliable sources of water;

(2) While it is in the state's best interest to retain control over its water supplies, much of the state's water resources are currently underutilized;

(3) In 2019, the state experienced historic flooding along the Platte River which caused loss of life and over one billion dollars in damage to private and public property and infrastructure;

(4) Well-planned flood control is critical to the future of the people, communities, and businesses of Nebraska;

(5) In light of the disruption from the COVID-19 pandemic and the trend toward a remote workforce around the country, people around the country are rethinking where they want to work, live, and raise a family. As people consider where to live, access to sustainable water resources and outdoor recreational opportunities will be important considerations in making Nebraska a competitive choice for the future;

(6) The state's lakes and rivers help Nebraskans enjoy the water resources in our state and make Nebraska an even more attractive place to live and raise a family;

(7) The state's water resources provide economic benefits to the people, communities, and businesses of Nebraska by helping to attract visitors from other states and boosting local economies;

(8) In 2021, the Legislature passed LB406, which established the Statewide Tourism And Recreational Water Access and Resource Sustainability Special Committee of the Legislature. The committee was tasked with conducting studies on:

(a) The need to protect public and private property, including use of levee systems, enhance economic development, and promote private investment and the creation of jobs along the Platte River and its tributaries from Columbus, Nebraska, to Plattsmouth, Nebraska;

(b) The need to provide for public safety, public infrastructure, land-use planning, recreation, and economic development in the Lake McConaughy region of Keith County, Nebraska; and

(c) The socioeconomic conditions, recreational and tourism opportunities, and public investment necessary to enhance economic development and to catalyze private investment in the region in Knox County, Nebraska, that lies north of State Highway 12 and extends to the South Dakota border and includes Lewis and Clark Lake and Niobrara State Park;

(9) After considerable study, the Statewide Tourism And Recreational Water Access and Resource Sustainability Special Committee identified the following potential opportunities:

(a) Marina construction projects to expand water access and recreational opportunities at Lake McConaughy and the Lewis and Clark State Recreation Area; and

(b) A project to increase access to and the enjoyment of Niobrara State Park through the construction of an event center and lodge;

(10) It is in the public interest to expand water access and recreational opportunities at Lake McConaughy and the Lewis and Clark State Recreation Area through the construction of new marinas; and

(11) It is in the public interest to increase access to and the enjoyment of Niobrara State Park through the construction of an event center and lodge.

Source: Laws 2022, LB1023, § 6.

37-1803 Act; purposes; Game and Parks Commission; powers; legislative intent; contracts; conflict-of-interest provisions.

(1) The purposes of the Water Recreation Enhancement Act are to administer and carry out the following projects:

(a) Marina construction projects to expand water access and recreational opportunities at Lake McConaughy and the Lewis and Clark State Recreation Area; and

(b) A project to increase access to and the enjoyment of Niobrara State Park through the construction of an event center and lodge.

(2) The Game and Parks Commission is granted all power necessary to carry out the purposes of the Water Recreation Enhancement Act, including, but not limited to, the power to:

(a) Enter into contracts, including, but not limited to, contracts relating to the provision of construction services, management services, legal services, auditor services, and other consulting services or advice as the commission may require in the performance of its duties; and

(b) Enter into public-private partnerships to carry out the purposes of the act.

(3) It is the intent of the Legislature that the Game and Parks Commission engage local stakeholders as the commission carries out the projects authorized in this section.

(4) It is also the intent of the Legislature to encourage political subdivisions that hold a Federal Energy Regulatory Commission license and that own land in and around the projects authorized in this section to enter into contracts with public and private entities for the use, lease, and purchase of such land whenever possible in order to increase economic development and recreational opportunities, particularly when covenants, easements, and other instruments can ensure such economic development complies with the rules and regulations of the Federal Energy Regulatory Commission.

(5) No member of the Game and Parks Commission or any employee of the commission shall have a financial interest, either personally or through an immediate family member, in any purchase, sale, or lease of real property relating to a project authorized in this section or in any contract entered into by the commission relating to a project authorized in this section. For purposes of

this subsection, immediate family member means a spouse, child, sibling, parent, grandparent, or grandchild.

Source: Laws 2022, LB1023, § 7.

37-1804 Water Recreation Enhancement Fund; created; use; investment.

(1) The Water Recreation Enhancement Fund is created. The fund shall be administered by the Game and Parks Commission. The State Treasurer shall credit to the fund any money transferred to the fund by the Legislature and such donations, gifts, bequests, or other money received from any federal or state agency or public or private source. Except as otherwise provided in subsection (2) of this section, the fund shall be used for water and recreational projects pursuant to the Water Recreation Enhancement Act. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Water Recreation Enhancement 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. Prior to October 1, 2024, any investment earnings from investment of money in the fund shall be credited to the fund. Beginning October 1, 2024, any investment earnings from investment of money in the fund shall be credited to the General Fund.

(2) For any amount credited to the Water Recreation Enhancement Fund from a source other than a transfer authorized by the Legislature, the State Treasurer shall transfer an equal amount from the Water Recreation Enhancement Fund to the Jobs and Economic Development Initiative Fund at the end of the fiscal year in which such funds were credited, on such dates as directed by the budget administrator of the budget division of the Department of Administrative Services to be used pursuant to section 61-405.

Source: Laws 2022, LB1012, § 8; Laws 2023, LB818, § 9; Laws 2024, LB1413, § 34; Laws 2024, First Spec. Sess., LB3, § 10.

Note: Changes made by Laws 2024, LB1413, became effective April 2, 2024.

Note: Changes made by Laws 2024, First Spec. Sess., LB3, became effective August 21, 2024.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.
Water Recreation Enhancement Act, see section 37-1801.

CHAPTER 38
HEALTH OCCUPATIONS AND PROFESSIONS

Article.

ARTICLE 1
UNIFORM CREDENTIALING ACT

Section

Section

38-101 Act, how cited.

Sections 38-101 to 38-1,148 and the following practice acts shall be known and may be cited as the Uniform Credentialing Act:

(1) The Advanced Practice Registered Nurse Practice Act;

(2) The Alcohol and Drug Counseling Practice Act;

(3) The Athletic Training Practice Act;

(4) The Audiology and Speech-Language Pathology Practice Act;

(5) The Behavior Analyst Practice Act;

(6) The Certified Nurse Midwifery Practice Act;

(7) The Certified Registered Nurse Anesthetist Practice Act;

(8) The Chiropractic Practice Act;

(9) The Clinical Nurse Specialist Practice Act;

(10) The Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act;

(11) The Dentistry Practice Act;

(12) The Dialysis Patient Care Technician Registration Act;

(13) The Emergency Medical Services Practice Act;

(14) The Environmental Health Specialists Practice Act;

(15) The Funeral Directing and Embalming Practice Act;

(16) The Genetic Counseling Practice Act;

(17) The Hearing Instrument Specialists Practice Act;

(18) The Licensed Practical Nurse-Certified Practice Act until November 1, 2017;

(19) The Massage Therapy Practice Act;

(20) The Medical Nutrition Therapy Practice Act;

(21) The Medical Radiography Practice Act;

(22) The Medicine and Surgery Practice Act;

(23) The Mental Health Practice Act;

(24) The Nurse Practice Act;

(25) The Nurse Practitioner Practice Act;

(26) The Nursing Home Administrator Practice Act;

(27) The Occupational Therapy Practice Act;

(28) The Optometry Practice Act;

(29) The Perfusion Practice Act;

(30) The Pharmacy Practice Act;

(31) The Physical Therapy Practice Act;

(32) The Podiatry Practice Act;

(33) The Psychology Practice Act;

(34) The Respiratory Care Practice Act;

(35) The Surgical First Assistant Practice Act; and

(36) The Veterinary Medicine and Surgery Practice Act.

If there is any conflict between any provision of sections 38-101 to 38-1,148 and any provision of a practice act, the provision of the practice act shall prevail except as otherwise specifically provided in section 38-129.02.

Source: Laws 1927, c. 167, § 1, p. 454; C.S.1929, § 71-101; R.S.1943, § 71-101; Laws 1972, LB 1067, § 1; Laws 1984, LB 481, § 5; Laws 1986, LB 277, § 2; Laws 1986, LB 286, § 23; Laws 1986, LB 355, § 8; Laws 1986, LB 579, § 15; Laws 1986, LB 926, § 1; Laws 1987, LB 473, § 3; Laws 1988, LB 557, § 12; Laws 1988, LB 1100, § 4; Laws 1989, LB 323, § 2; Laws 1989, LB 344, § 4; Laws 1991, LB 456, § 4; Laws 1993, LB 48, § 1; Laws 1993, LB 187, § 3; Laws 1993, LB 429, § 1; Laws 1993, LB 536, § 43; Laws 1993, LB 669, § 2; Laws 1994, LB 900, § 1; Laws 1994, LB 1210, § 9; Laws 1994, LB 1223, § 2; Laws 1995, LB 406, § 10; Laws 1996, LB 1044, § 371; Laws 1997, LB 622, § 77; Laws 1999, LB 178, § 1; Laws 1999, LB 366, § 7; Laws 1999, LB 828, § 7; Laws 2001, LB 25, § 1; Laws 2001, LB 209, § 1; Laws 2001, LB 270, § 1; Laws 2001, LB 398, § 19; Laws 2002, LB 1021, § 4; Laws 2002, LB 1062, § 11; Laws 2003, LB 242, § 13; Laws 2004, LB 1005, § 8; Laws 2004, LB 1083, § 103; Laws 2005, LB 306, § 1; Laws 2006, LB 994, § 79; R.S.Supp.,2006, § 71-101; Laws 2007, LB236, § 1; Laws 2007, LB247, § 23; Laws 2007, LB247, § 58; Laws 2007, LB296, § 296; Laws 2007, LB463, § 1; Laws 2007, LB481, § 1; Laws 2008, LB928, § 2; Laws 2009, LB195, § 5; Laws 2012, LB831, § 26; Laws 2015, LB264, § 1; Laws 2016, LB721, § 18; Laws 2016, LB750, § 1; Laws 2017, LB88, § 28; Laws 2017, LB255, § 8; Laws 2017, LB417, § 3; Laws 2018, LB701, § 1; Laws 2019, LB29, § 1; Laws 2019, LB112, § 1; Laws 2019, LB556, § 1; Laws 2021, LB148, § 41; Laws 2021, LB390, § 1; Laws 2021, LB583, § 3; Laws 2022, LB752, § 5; Laws 2023, LB227, § 15.

Cross References

Advanced Practice Registered Nurse Practice Act, see section 38-201.
Alcohol and Drug Counseling Practice Act, see section 38-301.
Athletic Training Practice Act, see section 38-401.
Audiology and Speech-Language Pathology Practice Act, see section 38-501.
Certified Nurse Midwifery Practice Act, see section 38-601.
Certified Registered Nurse Anesthetist Practice Act, see section 38-701.
Chiropractic Practice Act, see section 38-801.
Clinical Nurse Specialist Practice Act, see section 38-901.
Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act, see section 38-1001.
Dentistry Practice Act, see section 38-1101.
Dialysis Patient Care Technician Registration Act, see section 38-3701.
Emergency Medical Services Practice Act, see section 38-1201.
Environmental Health Specialists Practice Act, see section 38-1301.
Funeral Directing and Embalming Practice Act, see section 38-1401.
Genetic Counseling Practice Act, see section 38-3401.
Hearing Instrument Specialists Practice Act, see section 38-1501.
Massage Therapy Practice Act, see section 38-1701.
Medical Nutrition Therapy Practice Act, see section 38-1801.
Medical Radiography Practice Act, see section 38-1901.
Medicine and Surgery Practice Act, see section 38-2001.
Mental Health Practice Act, see section 38-2101.
Nurse Practice Act, see section 38-2201.
Nurse Practitioner Practice Act, see section 38-2301.
Nursing Home Administrator Practice Act, see section 38-2401.
Occupational Therapy Practice Act, see section 38-2501.
Optometry Practice Act, see section 38-2601.
Perfusion Practice Act, see section 38-2701.
Pharmacy Practice Act, see section 38-2801.
Physical Therapy Practice Act, see section 38-2901.

Podiatry Practice Act, see section 38-3001.
Psychology Practice Act, see section 38-3101.
Respiratory Care Practice Act, see section 38-3201.
Surgical First Assistant Practice Act, see section 38-3501.
Veterinary Medicine and Surgery Practice Act, see section 38-3301.

38-105 Definitions, where found.

For purposes of the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-106 to 38-120.03 apply.

Source: Laws 2007, LB463, § 5; Laws 2017, LB88, § 29; Laws 2018, LB701, § 2; Laws 2019, LB112, § 2.

38-108 Board, defined; no board established by statute; effect.

Board means one of the boards appointed by the State Board of Health pursuant to section 38-158 or appointed by the Governor pursuant to the Emergency Medical Services Practice Act. For professions for which there is no board established by statute, the duties normally carried out by a board are the responsibility of the department.

Source: Laws 2007, LB463, § 8; Laws 2021, LB148, § 42.

Cross References

Emergency Medical Services Practice Act, see section 38-1201.

38-117.01 Low-income individual, defined.

Low-income individual means an individual enrolled in a state or federal public assistance program, including, but not limited to, the medical assistance program established pursuant to the Medical Assistance Act, the federal Supplemental Nutrition Assistance Program, or the federal Temporary Assistance for Needy Families program, or whose household adjusted gross income is below one hundred thirty percent of the federal income poverty guideline or a higher threshold to be set by the Licensure Unit of the Division of Public Health of the Department of Health and Human Services.

Source: Laws 2019, LB112, § 3.

Cross References

Medical Assistance Act, see section 68-901.

38-117.02 Military families, defined.

Military families means active duty service members in the armed services of the United States, military spouses, honorably discharged veterans of the armed services of the United States, spouses of such honorably discharged veterans, and unremarried surviving spouses of deceased service members of the armed services of the United States.

Source: Laws 2019, LB112, § 4.

38-118.01 Military spouse, defined.

Military spouse means the spouse of an active duty service member in the armed forces of the United States.

Source: Laws 2017, LB88, § 30; Laws 2019, LB112, § 5.

38-120.01 Telehealth, defined.

Telehealth means the use of medical information electronically exchanged from one site to another, whether synchronously or asynchronously, to aid a credential holder in the diagnosis or treatment of a patient. Telehealth includes services originating from a patient's home or any other location where such patient is located, asynchronous services involving the acquisition and storage of medical information at one site that is then forwarded to or retrieved by a credential holder at another site for medical evaluation, and telemonitoring.

Source: Laws 2018, LB701, § 3.

38-120.02 Telemonitoring, defined.

Telemonitoring means the remote monitoring of a patient's vital signs, biometric data, or subjective data by a monitoring device which transmits such data electronically to a credential holder for analysis and storage.

Source: Laws 2018, LB701, § 4.

38-120.03 Young worker, defined.

Young worker means (1) for an initial credential under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act, except for a body art license, an applicant who is between the ages of seventeen and twenty-five years or (2) for an initial credential issued under any other provision of the Uniform Credentialing Act, including a body art license, an applicant who is between the ages of eighteen and twenty-five years.

Source: Laws 2019, LB112, § 6.

Cross References

Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act, see section 38-1001.

38-121 Practices; credential required.

(1) No individual shall engage in the following practices unless such individual has obtained a credential under the Uniform Credentialing Act:

(a) Acupuncture;

(b) Advanced practice nursing;

(c) Alcohol and drug counseling;

(d) Asbestos abatement, inspection, project design, and training;

(e) Athletic training;

(f) Audiology;

(g) Speech-language pathology;

(h) Beginning one year after September 2, 2023, behavior analysis;

(i) Body art;

(j) Chiropractic;

(k) Cosmetology;

(l) Dentistry;

(m) Dental hygiene;

(n) Electrology;

(o) Emergency medical services;

(p) Esthetics;

(q) Funeral directing and embalming;

(r) Genetic counseling;

(s) Hearing instrument dispensing and fitting;

(t) Lead-based paint abatement, inspection, project design, and training;

(u) Licensed practical nurse-certified until November 1, 2017;

(v) Massage therapy;

(w) Medical nutrition therapy;

(x) Medical radiography;

(y) Medicine and surgery;

(z) Mental health practice;

(aa) Nail technology;

(bb) Nursing;

(cc) Nursing home administration;

(dd) Occupational therapy;

(ee) Optometry;

(ff) Osteopathy;

(gg) Perfusion;

(hh) Pharmacy;

(ii) Physical therapy;

(jj) Podiatry;

(kk) Psychology;

(ll) Radon detection, measurement, and mitigation;

(mm) Respiratory care;

(nn) Surgical assisting; and

(oo) Veterinary medicine and surgery.

(2) No individual shall hold himself or herself out as any of the following until such individual has obtained a credential under the Uniform Credentialing Act for that purpose:

(a) Registered environmental health specialist;

(b) Certified marriage and family therapist;

(c) Certified professional counselor;

(d) Certified art therapist;

(e) Social worker; or

(f) Dialysis patient care technician.

(3) No business shall operate for the provision of any of the following services unless such business has obtained a credential under the Uniform Credentialing Act:

(a) Body art;

(b) Cosmetology;

(c) Emergency medical services;

(d) Esthetics;

(e) Funeral directing and embalming;

(f) Massage therapy; or

(g) Nail technology.

Source: Laws 1927, c. 167, § 2, p. 455; C.S.1929, § 71-201; Laws 1935, c. 142, § 27, p. 529; C.S.Supp.,1941, § 71-201; R.S.1943, § 71-102; Laws 1957, c. 298, § 5, p. 1076; Laws 1961, c. 337, § 3, p. 1051; Laws 1971, LB 587, § 1; Laws 1978, LB 406, § 1; Laws 1980, LB 94, § 2; Laws 1984, LB 481, § 6; Laws 1985, LB 129, § 1; Laws 1986, LB 277, § 3; Laws 1986, LB 286, § 24; Laws 1986, LB 355, § 9; Laws 1986, LB 579, § 16; Laws 1988, LB 557, § 13; Laws 1988, LB 1100, § 5; Laws 1989, LB 342, § 4; Laws 1993, LB 669, § 3; Laws 1995, LB 406, § 11; Laws 1996, LB 1044, § 372; Laws 2001, LB 270, § 2; Laws 2004, LB 1083, § 104; R.S.Supp.,2006, § 71-102; Laws 2007, LB236, § 2; Laws 2007, LB247, § 59; Laws 2007, LB296, § 297; Laws 2007, LB463, § 21; Laws 2009, LB195, § 6; Laws 2012, LB831, § 27; Laws 2016, LB721, § 19; Laws 2017, LB88, § 31; Laws 2017, LB255, § 9; Laws 2021, LB148, § 43; Laws 2023, LB227, § 17; Laws 2024, LB605, § 1.
Operative date January 1, 2025.

38-122 Credential; form.

Every initial credential to practice a profession or engage in a business shall be in the form of a document under the name of the department.

Source: Laws 1927, c. 167, § 5, p. 455; C.S.1929, § 71-204; R.S.1943, § 71-105; Laws 1994, LB 1210, § 12; Laws 1996, LB 1044, § 374; Laws 1999, LB 828, § 9; R.S.1943, (2003), § 71-105; Laws 2007, LB296, § 299; Laws 2007, LB463, § 22; Laws 2018, LB1034, § 4.

38-123 Record of credentials issued under act; department; duties; contents.

(1) The department shall establish and maintain a record of all credentials issued pursuant to the Uniform Credentialing Act. The record shall contain identifying information for each credential holder and the credential issued pursuant to the act.

(2) For individual credential holders engaged in a profession:

(a) The record information shall include:

(i) The name, date and place of birth, and social security number;

(ii) The street, rural route, or post office address;

(iii) The school and date of graduation;

(iv) The name of examination, date of examination, and ratings or grades received, if any;

(v) The type of credential issued, the date the credential was issued, the identifying name and number assigned to the credential, and the basis on which the credential was issued;

(vi) The status of the credential; and

(vii) A description of any disciplinary action against the credential, including, but not limited to, the type of disciplinary action, the effective date of the disciplinary action, and a description of the basis for any such disciplinary action;

(b) The record may contain any additional information the department deems appropriate to advance or support the purpose of the Uniform Credentialing Act;

(c) The record may be maintained in computer files or paper copies and may be stored on microfilm or in similar form; and

(d) The record is a public record, except that social security numbers shall not be public information but may be shared as specified in subsection (5) of section 38-130.

(3) For credential holders engaged in a business:

(a) The record information shall include:

(i) The full name and address of the business;

(ii) The type of credential issued, the date the credential was issued, the identifying name and number assigned to the credential, and the basis on which the credential was issued;

(iii) The status of the credential; and

(iv) A description of any disciplinary action against the credential, including, but not limited to, the type of disciplinary action, the effective date of the disciplinary action, and a description of the basis for any such disciplinary action;

(b) The record may contain any additional information the department deems appropriate to advance or support the purpose of the Uniform Credentialing Act;

(c) The record may be maintained in computer files or paper copies and may be stored on microfilm or in similar form; and

(d) The record is a public record.

(4) Except as otherwise specifically provided, if the department is required to provide notice or notify an applicant or credential holder under the Uniform Credentialing Act, such requirements shall be satisfied by sending a notice to such applicant or credential holder at his or her last address of record.

Source: Laws 2007, LB463, § 23; Laws 2017, LB417, § 4.

38-126 Rules and regulations; board and department; adopt.

To protect the health, safety, and welfare of the public and to insure to the greatest extent possible the efficient, adequate, and safe practice of health services, health-related services, and environmental services:

(1)(a) The appropriate board may adopt rules and regulations to:

(i) Specify minimum standards required for a credential, including education, experience, and eligibility for taking the credentialing examination, specify methods to meet the minimum standards through military service as provided in section 38-1,141, and on or before December 15, 2017, specify standards and procedures for issuance of temporary credentials for military spouses as provided in section 38-129.01;

(ii) Designate credentialing examinations, specify the passing score on credentialing examinations, and specify standards, if any, for accepting examination results from other jurisdictions;

(iii) Set continuing competency requirements in conformance with section 38-145;

(iv) Set standards for waiver of continuing competency requirements in conformance with section 38-146;

(v) Set standards for courses of study; and

(vi) Specify acts in addition to those set out in section 38-179 that constitute unprofessional conduct; and

(b) The department shall promulgate and enforce such rules and regulations;

(2) For professions or businesses that do not have a board created by statute:

(a) The department may adopt, promulgate, and enforce such rules and regulations; and

(b) The department shall carry out any statutory powers and duties of the board;

(3) The department, with the recommendation of the appropriate board, if any, may adopt, promulgate, and enforce rules and regulations for the respective profession, other than those specified in subdivision (1) of this section, to carry out the Uniform Credentialing Act; and

(4) The department may adopt, promulgate, and enforce rules and regulations with general applicability to carry out the Uniform Credentialing Act.

Source: Laws 1927, c. 167, § 68, p. 472; C.S.1929, § 71-902; R.S.1943, § 71-169; Laws 1996, LB 1044, § 401; R.S.1943, (2003), § 71-169; Laws 2007, LB296, § 321; Laws 2007, LB463, § 26; Laws 2015, LB264, § 2; Laws 2017, LB88, § 32.

38-129 Issuance of credential; qualifications.

(1) No individual shall be issued a credential under the Uniform Credentialing Act until he or she has furnished satisfactory evidence to the department that he or she is of good character and has attained the age of nineteen years except as otherwise specifically provided by statute, rule, or regulation.

(2) A credential may only be issued to (a) a citizen of the United States, (b) an alien lawfully admitted into the United States who is eligible for a credential under the Uniform Credentialing Act, (c) a nonimmigrant lawfully present in the United States who is eligible for a credential under the Uniform Credentialing Act, or (d) a person 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. Such credential shall be valid only for the period of time during which such person's employment authorization document is valid.

Source: Laws 1927, c. 167, § 3, p. 455; C.S.1929, § 71-202; R.S.1943, § 71-103; Laws 1969, c. 560, § 1, p. 2278; Laws 1974, LB 811, § 6; Laws 1986, LB 286, § 25; Laws 1986, LB 579, § 17; Laws 1986, LB 926, § 2; Laws 1994, LB 1210, § 10; R.S.1943, (2003), § 71-103; Laws 2007, LB463, § 29; Laws 2011, LB225, § 1; Laws 2016, LB947, § 3; Laws 2020, LB944, § 4.

38-129.01 Temporary credential to military spouse; issuance; period valid.

(1) The department, with the recommendation of the appropriate board, shall issue a temporary credential to a military spouse who complies with and meets the requirements of this section pending issuance of the applicable credential under the Uniform Credentialing Act. This section shall not apply to a license to practice dentistry, including a resident license under section 38-1123.

(2) A military spouse shall submit the following with his or her application for the applicable credential:

(a) A copy of his or her military dependent identification card which identifies him or her as the spouse of an active duty member of the United States Armed Forces;

(b) A copy of his or her spouse's military orders reflecting an active-duty assignment in Nebraska;

(c) A copy of his or her credential from another jurisdiction and the applicable statutes, rules, and regulations governing the credential; and

(d) A copy of his or her fingerprints for a criminal background check if required under section 38-131.

(3) If the department, with the recommendation of the appropriate board, determines that the applicant is the spouse of an active duty member of the United States Armed Forces who is assigned to a duty station in Nebraska, holds a valid credential in another jurisdiction which has similar standards for the profession to the Uniform Credentialing Act and the rules and regulations adopted and promulgated under the act, and has submitted fingerprints for a criminal background check if required under section 38-131, the department shall issue a temporary credential to the applicant. The applicant shall not be required to pay any fees pursuant to the Uniform Credentialing Act for the temporary credential or the initial regular credential except the actual cost of the fingerprinting and criminal background check for an initial license under section 38-131.

(4) A temporary credential issued under this section shall be valid until the application for the regular credential is approved or rejected, not to exceed one year.

Source: Laws 2017, LB88, § 33; Laws 2019, LB112, § 7; Laws 2021, LB390, § 2; Laws 2024, LB834, § 1.
Effective date July 19, 2024.

38-129.02 Credential; additional method of issuance based on reciprocity; eligibility; requirements; applicability.

(1) This section provides an additional method of issuing a credential based on reciprocity and is supplemental to the methods of credentialing found in the various practice acts within the Uniform Credentialing Act. Any person required to be credentialed under any of the various practice acts who meets the requirements of this section shall be issued a credential subject to the provisions of this section.

(2) A person who has a credential that is current and valid in another state, a territory of the United States, or the District of Columbia may apply to the department for the equivalent credential under the Uniform Credentialing Act. The department, with the recommendation of the board with jurisdiction over the equivalent credential, shall determine the appropriate level of credential for

which the applicant qualifies under this section. The department shall determine the documentation required to comply with subsection (3) of this section. The department shall issue the credential if the applicant meets the requirements of subsections (3) and (4) of this section and section 38-129 and submits the appropriate fees for issuance of the credential, including fees for a criminal background check if required for the profession. A credential issued under this section shall not be valid for purposes of an interstate compact or for reciprocity provisions of any practice act under the Uniform Credentialing Act.

(3) The applicant shall provide documentation of the following:

(a) The credential held in the other state, territory, or District of Columbia, the level of such credential, and the profession for which credentialed;

(b) Such credential is valid and current and has been valid for at least one year;

(c) Educational requirements;

(d) The minimum work experience and clinical supervision requirements, if any, required for such credential and verification of the applicant's completion of such requirements;

(e) The passage of an examination for such credential if such passage is required to obtain the credential in the other jurisdiction;

(f) Such credential is not and has not been subject to revocation or any other disciplinary action or voluntarily surrendered while the applicant was under investigation for unprofessional conduct or any other conduct which would be subject to section 38-178 if the conduct occurred in Nebraska;

(g) Such credential has not been subject to disciplinary action. If another jurisdiction has taken disciplinary action against the applicant on any credential the applicant has held, the appropriate board under the Uniform Credentialing Act shall determine if the cause for the disciplinary action was corrected and the matter resolved. If the matter has not been resolved, the applicant is not eligible for a credential under this section until the matter is resolved; and

(h) Receipt of a passing score on a credentialing examination specific to the laws of Nebraska if required by the appropriate board under the Uniform Credentialing Act.

(4) An applicant who obtains a credential upon compliance with subsections (2) and (3) of this section shall establish residency in Nebraska within one hundred eighty days after the issuance of the credential and shall provide proof of residency in a manner and within the time period required by the department. The department shall automatically revoke the credential of any credential holder who fails to comply with this subsection.

(5) In addition to failure to submit the required documentation in subsection (3) of this section, an applicant shall not be eligible for a credential under this section if:

(a) The applicant had a credential revoked, subject to any other disciplinary action, or voluntarily surrendered due to an investigation in any jurisdiction for unprofessional conduct or any other conduct which would be subject to section 38-178 if the conduct occurred in Nebraska;

(b) The applicant has a complaint, allegation, or investigation pending before any jurisdiction that relates to unprofessional conduct or any other conduct which would be subject to section 38-178 if the conduct occurred in Nebraska.

If the matter has not been resolved, the applicant is not eligible for a credential under this section until the matter is resolved; or

(c) The person has a disqualifying criminal history as determined by the appropriate board pursuant to the Uniform Credentialing Act and rules and regulations adopted and promulgated under the act.

(6) A person who holds a credential under this section shall be subject to the Uniform Credentialing Act and other laws of this state relating to the person's practice under the credential and shall be subject to the jurisdiction of the appropriate board.

(7) This section applies to credentials for:

(a) Professions governed by the Advanced Practice Registered Nurse Practice Act, the Behavior Analyst Practice Act, the Certified Nurse Midwifery Practice Act, the Certified Registered Nurse Anesthetist Practice Act, the Clinical Nurse Specialist Practice Act, the Dentistry Practice Act, the Dialysis Patient Care Technician Registration Act, the Emergency Medical Services Practice Act, the Medical Nutrition Therapy Practice Act, the Medical Radiography Practice Act, the Nurse Practitioner Practice Act, the Optometry Practice Act, the Perfusion Practice Act, the Pharmacy Practice Act, the Psychology Practice Act, and the Surgical First Assistant Practice Act; and

(b) Physician assistants and acupuncturists credentialed pursuant to the Medicine and Surgery Practice Act.

Source: Laws 2021, LB390, § 3; Laws 2023, LB227, § 18.

Cross References

Advanced Practice Registered Nurse Practice Act, see section 38-201.
Behavior Analyst Practice Act, see section 38-4401.
Certified Nurse Midwifery Practice Act, see section 38-601.
Certified Registered Nurse Anesthetist Practice Act, see section 38-701.
Clinical Nurse Specialist Practice Act, see section 38-901.
Dentistry Practice Act, see section 38-1101.
Dialysis Patient Care Technician Registration Act, see section 38-3701.
Emergency Medical Services Practice Act, see section 38-1201.
Medical Nutrition Therapy Practice Act, see section 38-1801.
Medical Radiography Practice Act, see section 38-1901.
Medicine and Surgery Practice Act, see section 38-2001.
Nurse Practitioner Practice Act, see section 38-2301.
Optometry Practice Act, see section 38-2601.
Perfusion Practice Act, see section 38-2701.
Pharmacy Practice Act, see section 38-2801.
Psychology Practice Act, see section 38-3101.
Surgical First Assistant Practice Act, see section 38-3501.

38-130 Credential; application; contents.

(1) An individual shall file an application for a credential to practice a profession with the department accompanied by the fee set pursuant to the Uniform Credentialing Act. The application may be submitted up to ninety days prior to the date of the applicant's graduation from the required course of study and shall contain:

(a) The legal name of the applicant;

(b) The date and place of birth of the applicant;

(c) The address of the applicant;

(d) The social security number of the applicant or the resident identification number of the applicant if the applicant is not a citizen of the United States and is otherwise eligible to be credentialed under section 38-129; and

(e) Any other information required by the department.

(2) A business shall file an application for a credential with the department accompanied by the fee set pursuant to the Uniform Credentialing Act. The application shall contain:

(a) The full name and address of the business;

(b) The full name and address of the owner of the business;

(c) The name of each person in control of the business;

(d) The social security number of the business if the applicant is a sole proprietorship; and

(e) Any other information required by the department.

(3) The applicant shall sign the application. If the applicant is a business, the application shall be signed by:

(a) The owner or owners if the applicant is a sole proprietorship, a partnership, or a limited liability company that has only one member;

(b) Two of its members if the applicant is a limited liability company that has more than one member;

(c) Two of its officers if the applicant is a corporation;

(d) The head of the governmental unit having jurisdiction over the business if the applicant is a governmental unit; or

(e) If the applicant is not an entity described in subdivisions (a) through (d) of this subsection, the owner or owners or, if there is no owner, the chief executive officer or comparable official.

(4) Each credential holder under the Uniform Credentialing Act shall notify the department of any change to the address of record so that the department can update the record of the credential holder under section 38-123.

(5) Social security numbers obtained under this section shall not be public information but may be shared by the department for administrative purposes if necessary and only under appropriate circumstances to ensure against any unauthorized access to such information.

Source: Laws 1927, c. 167, § 8, p. 456; C.S.1929, § 71-207; R.S.1943, § 71-108; Laws 1979, LB 427, § 1; Laws 1986, LB 286, § 29; Laws 1986, LB 579, § 21; Laws 1986, LB 926, § 3; Laws 1987, LB 473, § 4; Laws 1991, LB 456, § 5; Laws 1994, LB 1210, § 15; Laws 1997, LB 752, § 156; Laws 1999, LB 828, § 11; R.S.1943, (2003), § 71-108; Laws 2007, LB463, § 30; Laws 2024, LB932, § 3.
Operative date July 19, 2024.

38-131 Criminal background check; when required.

(1) An applicant for an initial license to practice as a registered nurse, a licensed practical nurse, a physical therapist, a physical therapy assistant, a psychologist, an advanced emergency medical technician, an emergency medical technician, an audiologist, a speech-language pathologist, a licensed independent mental health practitioner, an occupational therapist, an occupational therapy assistant, a dietitian, a certified social worker, a certified master social worker, a licensed clinical social worker, a paramedic, a physician, an osteopathic physician, a physician or osteopathic physician who is an applicant for a

temporary educational permit, a physician or osteopathic physician who is an applicant for a temporary visiting faculty permit, a physician assistant, a dentist, an optometrist, a podiatrist, a veterinarian, an advanced practice registered nurse-nurse practitioner, an advanced practice registered nurse-certified nurse midwife, or an advanced practice registered nurse-certified registered nurse anesthetist shall be subject to a criminal background check. Except as provided in subsection (4) of this section, such an applicant for an initial license shall submit a full set of fingerprints to the Nebraska State Patrol for a criminal history record information check. The applicant shall authorize release of the results of the national criminal history record information check by the Federal Bureau of Investigation to the department. The applicant shall pay the actual cost of the fingerprinting and criminal background check.

(2) The Nebraska State Patrol is authorized to submit the fingerprints of such applicants to the Federal Bureau of Investigation and to issue a report to the department that includes the criminal history record information concerning the applicant. The Nebraska State Patrol shall forward submitted fingerprints to the Federal Bureau of Investigation for a national criminal history record information check. The Nebraska State Patrol shall issue a report to the department that includes the criminal history record information concerning the applicant.

(3) This section shall not apply to a dentist who is an applicant for a dental locum tenens under section 38-1122, to a physician or osteopathic physician who is an applicant for a physician locum tenens under section 38-2036, or to a veterinarian who is an applicant for a veterinarian locum tenens under section 38-3335.

(4) A physician or osteopathic physician who is an applicant for a temporary educational permit shall have ninety days from the issuance of the permit to comply with subsection (1) of this section and shall have such permit suspended after such ninety-day period if the criminal background check is not complete or revoked if the criminal background check reveals that the applicant was not qualified for the permit.

(5) The department and the Nebraska State Patrol may adopt and promulgate rules and regulations concerning costs associated with the fingerprinting and the national criminal history record information check.

(6) For purposes of interpretation by the Federal Bureau of Investigation, the term department in this section means the Division of Public Health of the Department of Health and Human Services.

Source: Laws 2005, LB 306, § 2; Laws 2005, LB 382, § 15; Laws 2006, LB 833, § 1; R.S.Supp.,2006, § 71-104.01; Laws 2007, LB247, § 60; Laws 2007, LB463, § 31; Laws 2007, LB481, § 2; Laws 2011, LB687, § 1; Laws 2015, LB129, § 1; Laws 2018, LB731, § 1; Laws 2018, LB1034, § 5; Laws 2022, LB752, § 7; Laws 2023, LB227, § 19; Laws 2024, LB932, § 4; Laws 2024, LB1214, § 1; Laws 2024, LB1215, § 5.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB932, section 4, with LB1214, section 1, and LB1215, section 5, to reflect all amendments.

Note: Changes made by LB932 became operative January 1, 2025. Changes made by LB1214 became effective July 19, 2024. Changes made by LB1215 became operative January 1, 2025.

38-142 Credential; expiration date; renewal; reinstatement; inactive status.

(1) The credential to practice a profession shall be renewed biennially upon request of the credentialed person and upon documentation of continuing competency pursuant to sections 38-145 and 38-146. The renewals provided for in this section shall be accomplished in such manner and on such date as the department, with the recommendation of the appropriate board, may establish.

The request for renewal shall be accompanied by the renewal fee and include all information required by the department. Requests to renew licenses for licensed practical nurses, registered nurses, and advanced practice registered nurses shall include evidence that the licensee has registered with the electronic database utilized by the department for the purpose of providing the licensee with current license status and nursing workforce data collection. The renewal fee shall be paid not later than the date of the expiration of such credential, except that persons actively engaged in the military service of the United States, as defined in the Servicemembers Civil Relief Act, 50 U.S.C. App. 501 et seq., as the act existed on January 1, 2007, shall not be required to pay the renewal fee.

(2) At least thirty days before the expiration of a credential, the department shall notify each credentialed person at his or her last address of record. If a credentialed person fails to notify the department of his or her desire to have his or her credential placed on inactive status upon its expiration, fails to meet the requirements for renewal on or before the date of expiration of his or her credential, or otherwise fails to renew his or her credential, it shall expire. When a person's credential expires, the right to represent himself or herself as a credentialed person and to practice the profession in which a credential is required shall terminate. Any credentialed person who fails to renew the credential by the expiration date and desires to resume practice of the profession shall apply to the department for reinstatement of the credential.

(3) When a person credentialed pursuant to the Uniform Credentialing Act desires to have his or her credential placed on inactive status, he or she shall notify the department of such desire in writing. The department shall notify the credentialed person in writing of the acceptance or denial of the request to allow the credential to be placed on inactive status. When the credential is placed on inactive status, the credentialed person shall not engage in the practice of such profession, but he or she may represent himself or herself as having an inactive credential. A credential may remain on inactive status for an indefinite period of time.

Source: Laws 1927, c. 167, § 10, p. 456; C.S.1929, § 71-209; Laws 1933, c. 122, § 1, p. 492; Laws 1935, c. 142, § 29, p. 529; C.S.Supp.,1941, § 71-209; Laws 1943, c. 151, § 1, p. 551; R.S. 1943, § 71-110; Laws 1953, c. 238, § 2, p. 824; Laws 1957, c. 298, § 7, p. 1077; Laws 1961, c. 337, § 5, p. 1051; Laws 1978, LB 406, § 3; Laws 1979, LB 427, § 3; Laws 1979, LB 428, § 1; Laws 1984, LB 481, § 8; Laws 1985, LB 129, § 4; Laws 1986, LB 277, § 4; Laws 1986, LB 286, § 30; Laws 1986, LB 579, § 22; Laws 1986, LB 926, § 4; Laws 1986, LB 355, § 10; Laws 1987, LB 473, § 5; Laws 1988, LB 1100, § 7; Laws 1988, LB 557, § 15; Laws 1989, LB 342, § 6; Laws 1990, LB 1064, § 1; Laws 1993, LB 187, § 4; Laws 1993, LB 669, § 5; Laws 1994, LB 1210, § 16; Laws 1994, LB 1223, § 3; Laws 1995, LB 406, § 13; Laws 1997, LB 197, § 1; Laws 1999, LB 828, § 12; Laws 2001, LB 270, § 3; Laws 2002, LB 1021, § 5; Laws 2003, LB 242, § 14; Laws 2004,

LB 1083, § 106; R.S.Supp.,2006, § 71-110; Laws 2007, LB236, § 4; Laws 2007, LB463, § 42; Laws 2024, LB1215, § 6.
Operative date July 19, 2024.

38-145 Continuing competency requirements; board; duties.

(1) The appropriate board shall establish continuing competency requirements for persons seeking renewal of a credential.

(2) The purposes of continuing competency requirements are to ensure (a) the maintenance by a credential holder of knowledge and skills necessary to competently practice his or her profession, (b) the utilization of new techniques based on scientific and clinical advances, and (c) the promotion of research to assure expansive and comprehensive services to the public.

(3) Each board shall consult with the department and the appropriate professional academies, professional societies, and professional associations in the development of such requirements.

(4)(a) For a profession for which there are no continuing education requirements on December 31, 2002, the requirements may include, but not be limited to, any one or a combination of the continuing competency activities listed in subsection (5) of this section.

(b) For a profession for which there are continuing education requirements on December 31, 2002, continuing education is sufficient to meet continuing competency requirements. The requirements may also include, but not be limited to, any one or a combination of the continuing competency activities listed in subdivisions (5)(b) through (5)(p) of this section which a credential holder may select as an alternative to continuing education.

(5) Continuing competency activities may include, but not be limited to, any one or a combination of the following:

(a) Continuing education;

(b) Clinical privileging in an ambulatory surgical center or hospital as defined in section 71-405 or 71-419;

(c) Board certification in a clinical specialty area;

(d) Professional certification;

(e) Self-assessment;

(f) Peer review or evaluation;

(g) Professional portfolio;

(h) Practical demonstration;

(i) Audit;

(j) Exit interviews with consumers;

(k) Outcome documentation;

(l) Testing;

(m) Refresher courses;

(n) Inservice training;

(o) Practice requirement; or

(p) Any other similar modalities.

(6) Beginning with the first license renewal period which begins on or after October 1, 2018, the continuing competency requirements for a nurse midwife,

dentist, physician, physician assistant, nurse practitioner, podiatrist, and veterinarian who prescribes controlled substances shall include at least three hours of continuing education biennially regarding prescribing opiates as defined in section 28-401. The continuing education may include, but is not limited to, education regarding prescribing and administering opiates, the risks and indicators regarding development of addiction to opiates, and emergency opiate situations. One-half hour of the three hours of continuing education shall cover the prescription drug monitoring program described in sections 71-2454 to 71-2456. This subsection terminates on January 1, 2029.

Source: Laws 1976, LB 877, § 14; Laws 1984, LB 481, § 21; Laws 1985, LB 250, § 4; Laws 1986, LB 286, § 62; Laws 1986, LB 579, § 54; Laws 1992, LB 1019, § 38; Laws 1994, LB 1210, § 41; Laws 1999, LB 828, § 47; Laws 2002, LB 1021, § 12; R.S.1943, (2003), § 71-161.09; Laws 2007, LB463, § 45; Laws 2018, LB731, § 2.

38-151 Credentialing system; administrative costs; how paid; patient safety fee.

(1) It is the intent of the Legislature that the revenue to cover the cost of the credentialing system administered by the department is to be derived from General Funds, cash funds, federal funds, gifts, grants, or fees from individuals or businesses seeking credentials except as otherwise provided in section 38-155. The credentialing system includes the totality of the credentialing infrastructure and the process of issuance and renewal of credentials, examinations, inspections, investigations, continuing competency, compliance assurance, the periodic review under section 38-128, and the activities conducted under the Nebraska Regulation of Health Professions Act, for individuals and businesses that provide health services, health-related services, and environmental services.

(2) The department shall determine the cost of the credentialing system for such individuals and businesses by calculating the total of the base costs, the variable costs, and any adjustments as provided in sections 38-152 to 38-154.

(3) When fees are to be established pursuant to section 38-155 for individuals or businesses, the department, with the recommendation of the appropriate board if applicable, shall base the fees on the cost of the credentialing system and shall include usual and customary cost increases, a reasonable reserve, and the cost of any new or additional credentialing activities. All such fees shall be used as provided in section 38-157.

(4) In addition to the fees established under section 38-155, each applicant for the initial issuance and renewal of a credential to practice as a physician or an osteopathic physician under the Medicine and Surgery Practice Act shall pay a patient safety fee of fifty dollars and to practice as a physician assistant under the Medicine and Surgery Practice Act shall pay a patient safety fee of twenty dollars, which fee shall be collected biennially with the initial or renewal fee for the credential. Revenue from such fee shall be remitted to the State Treasurer for credit to the Patient Safety Cash Fund. The patient safety fee shall terminate on January 1, 2026, unless extended by the Legislature.

Source: Laws 1927, c. 167, § 61, p. 469; C.S.1929, § 71-701; Laws 1935, c. 142, § 34, p. 531; Laws 1937, c. 157, § 1, p. 615; Laws 1941, c. 141, § 1, p. 555; C.S.Supp.,1941, § 71-701; Laws 1943, c. 150, § 16, p. 545; R.S.1943, § 71-162; Laws 1953, c. 238, § 3, p. 825;

Laws 1955, c. 270, § 2, p. 850; Laws 1957, c. 292, § 1, p. 1048; Laws 1957, c. 298, § 12, p. 1080; Laws 1959, c. 318, § 2, p. 1166; Laws 1961, c. 337, § 8, p. 1054; Laws 1963, c. 409, § 1, p. 1314; Laws 1965, c. 412, § 1, p. 1319; Laws 1967, c. 438, § 4, p. 1350; Laws 1967, c. 439, § 17, p. 1364; Laws 1969, c. 560, § 6, p. 2281; Laws 1969, c. 562, § 1, p. 2288; Laws 1971, LB 300, § 1; Laws 1971, LB 587, § 9; Laws 1973, LB 515, § 3; Laws 1975, LB 92, § 1; Laws 1978, LB 689, § 1; Laws 1978, LB 406, § 12; Laws 1979, LB 4, § 6; Laws 1979, LB 428, § 3; Laws 1981, LB 451, § 8; Laws 1982, LB 263, § 1; Laws 1982, LB 448, § 2; Laws 1982, LB 449, § 2; Laws 1982, LB 450, § 2; Laws 1984, LB 481, § 22; Laws 1985, LB 129, § 12; Laws 1986, LB 277, § 8; Laws 1986, LB 286, § 72; Laws 1986, LB 579, § 64; Laws 1986, LB 926, § 36; Laws 1986, LB 355, § 14; Laws 1987, LB 473, § 18; Laws 1988, LB 1100, § 26; Laws 1988, LB 557, § 20; Laws 1989, LB 342, § 12; Laws 1990, LB 1064, § 9; Laws 1991, LB 703, § 17; Laws 1992, LB 1019, § 39; Laws 1993, LB 187, § 7; Laws 1993, LB 669, § 12; Laws 1994, LB 1210, § 46; Laws 1994, LB 1223, § 9; Laws 1995, LB 406, § 18; Laws 1997, LB 622, § 80; Laws 1999, LB 828, § 54; Laws 2001, LB 270, § 7; Laws 2003, LB 242, § 23; Laws 2004, LB 906, § 2; Laws 2004, LB 1005, § 10; Laws 2004, LB 1083, § 113; Laws 2006, LB 994, § 81; R.S.Supp.,2006, § 71-162; Laws 2007, LB236, § 6; Laws 2007, LB283, § 1; Laws 2007, LB463, § 51; Laws 2012, LB834, § 1; Laws 2019, LB25, § 1; Laws 2019, LB112, § 8; Laws 2021, LB148, § 44.

Cross References

Fees of state boards, see sections 33-151 and 33-152.
Medicine and Surgery Practice Act, see section 38-2001.
Nebraska Regulation of Health Professions Act, see section 71-6201.

38-154 Adjustments to the cost of credentialing.

Adjustments to the cost of credentialing include, but are not limited to:

(1) Revenue from sources that include, but are not limited to:

(a) Interest earned on the Professional and Occupational Credentialing Cash Fund, if any;

(b) Certification and verification of credentials;

(c) Administrative fees;

(d) Reinstatement fees;

(e) General Funds and federal funds;

(f) Fees for miscellaneous services, such as production of photocopies, lists, labels, and diskettes;

(g) Gifts; and

(h) Grants;

(2) Transfers to other funds for costs related to the Nebraska Regulation of Health Professions Act and section 38-128; and

(3) Costs associated with subsection (3) of section 38-155.

Source: Laws 2003, LB 242, § 26; R.S.1943, (2003), § 71-162.03; Laws 2007, LB463, § 54; Laws 2019, LB112, § 9.

Cross References

Nebraska Regulation of Health Professions Act, see section 71-6201.

38-155 Credentialing fees; establishment and collection.

(1) Subject to subsection (3) of this section, the department, with the recommendation of the appropriate board if applicable, shall adopt and promulgate rules and regulations to establish and collect the fees for the following credentials:

(a) Initial credentials, which include, but are not limited to:

(i) Licensure, certification, or registration;

(ii) Add-on or specialty credentials;

(iii) Temporary, provisional, or training credentials; and

(iv) Supervisory or collaborative relationship credentials;

(b) Applications to renew licenses, certifications, and registrations;

(c) Approval of continuing education courses and other methods of continuing competency; and

(d) Inspections and reinspections.

(2) When a credential will expire within one hundred eighty days after its initial issuance date or its reinstatement date and the initial credentialing or renewal fee is twenty-five dollars or more, the department shall collect twenty-five dollars or one-fourth of the initial credentialing or renewal fee, whichever is greater, for the initial or reinstated credential. The initial or reinstated credential shall be valid until the next subsequent renewal date.

(3) All fees for initial credentials under the Uniform Credentialing Act for low-income individuals, military families, and young workers shall be waived except the actual cost of the fingerprinting and criminal background check for an initial license under section 38-131.

Source: Laws 2003, LB 242, § 27; R.S.1943, (2003), § 71-162.04; Laws 2007, LB463, § 55; Laws 2012, LB773, § 1; Laws 2019, LB112, § 10; Laws 2021, LB148, § 45.

38-157 Professional and Occupational Credentialing Cash Fund; created; use; investment.

(1) The Professional and Occupational Credentialing Cash Fund is created. Except as provided in section 71-17,113, the fund shall consist of all fees, gifts, grants, and other money, excluding fines and civil penalties, received or collected by the department under sections 38-151 to 38-156 and the Nebraska Regulation of Health Professions Act.

(2) The department shall use the fund for the administration and enforcement of such laws regulating the individuals and businesses listed in section 38-121. Transfers may be made from the fund to the General Fund at the direction of the Legislature. The State Treasurer shall transfer any money in the Professional and Occupational Credentialing Cash Fund for licensing activities under the

Water Well Standards and Contractors' Practice Act on July 1, 2021, to the Water Well Standards and Contractors' Licensing Fund.

(3) Any money in the Professional and Occupational Credentialing Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Beginning October 1, 2024, any investment earnings from investment of money in the fund shall be credited to the General Fund.

Source: Laws 1927, c. 167, § 62, p. 471; C.S.1929, § 71-702; R.S.1943, § 71-163; Laws 1986, LB 926, § 37; Laws 1988, LB 1100, § 27; Laws 1994, LB 1210, § 47; Laws 2003, LB 242, § 30; Laws 2005, LB 146, § 10; R.S.Supp.,2006, § 71-163; Laws 2007, LB463, § 57; Laws 2009, First Spec. Sess., LB3, § 19; Laws 2012, LB834, § 2; Laws 2021, LB148, § 46; Laws 2024, First Spec. Sess., LB3, § 11.
Effective date August 21, 2024.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska Regulation of Health Professions Act, see section 71-6201.
Nebraska State Funds Investment Act, see section 72-1260.
Water Well Standards and Contractors' Practice Act, see section 46-1201.

38-158 Boards; appointment; vacancy.

(1) The State Board of Health shall appoint members to the boards designated in section 38-167 except the Board of Emergency Medical Services.

(2) Any vacancy in the membership of a board caused by death, resignation, removal, or otherwise shall be filled for the unexpired term in the same manner as original appointments are made.

Source: Laws 1927, c. 167, § 11, p. 457; C.S.1929, § 71-301; R.S.1943, § 71-111; Laws 1979, LB 427, § 4; Laws 1981, LB 451, § 2; Laws 1986, LB 286, § 31; Laws 1986, LB 579, § 23; Laws 1987, LB 473, § 6; Laws 1989, LB 342, § 7; Laws 1994, LB 1210, § 17; Laws 1999, LB 828, § 13; Laws 2001, LB 270, § 4; Laws 2002, LB 1021, § 6; R.S.1943, (2003), § 71-111; Laws 2007, LB463, § 58; Laws 2021, LB148, § 47.

38-167 Boards; designated; change in name; effect.

(1) Boards shall be designated as follows:

(a) Board of Advanced Practice Registered Nurses;

(b) Board of Alcohol and Drug Counseling;

(c) Board of Athletic Training;

(d) Board of Audiology and Speech-Language Pathology;

(e) Board of Behavior Analysts;

(f) Board of Chiropractic;

(g) Board of Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art;

(h) Board of Dentistry;

(i) Board of Emergency Medical Services;

(j) Board of Registered Environmental Health Specialists;

(k) Board of Funeral Directing and Embalming;

(l) Board of Hearing Instrument Specialists;

(m) Board of Massage Therapy;

(n) Board of Medical Nutrition Therapy;

(o) Board of Medical Radiography;

(p) Board of Medicine and Surgery;

(q) Board of Mental Health Practice;

(r) Board of Nursing;

(s) Board of Nursing Home Administration;

(t) Board of Occupational Therapy Practice;

(u) Board of Optometry;

(v) Board of Pharmacy;

(w) Board of Physical Therapy;

(x) Board of Podiatry;

(y) Board of Psychology;

(z) Board of Respiratory Care Practice; and

(aa) Board of Veterinary Medicine and Surgery.

(2) Any change made by the Legislature of the names of boards listed in this section shall not change the membership of such boards or affect the validity of any action taken by or the status of any action pending before any of such boards. Any such board newly named by the Legislature shall be the direct and only successor to the board as previously named.

Source: Laws 1927, c. 167, § 12, p. 457; C.S.1929, § 71-302; Laws 1935, c. 142, § 30, p. 530; C.S.Supp.,1941, § 71-302; Laws 1943, c. 150, § 4, p. 540; R.S.1943, § 71-112; Laws 1957, c. 298, § 8, p. 1078; Laws 1961, c. 337, § 6, p. 1053; Laws 1978, LB 406, § 4; Laws 1979, LB 427, § 5; Laws 1981, LB 451, § 3; Laws 1984, LB 481, § 9; Laws 1985, LB 129, § 5; Laws 1986, LB 277, § 5; Laws 1986, LB 286, § 32; Laws 1986, LB 355, § 11; Laws 1986, LB 579, § 24; Laws 1988, LB 557, § 16; Laws 1988, LB 1100, § 8; Laws 1989, LB 342, § 8; Laws 1993, LB 187, § 5; Laws 1993, LB 669, § 6; Laws 1995, LB 406, § 14; Laws 1999, LB 828, § 14; Laws 2000, LB 833, § 1; Laws 2001, LB 270, § 5; Laws 2002, LB 1021, § 7; Laws 2004, LB 1083, § 107; R.S.Supp.,2006, § 71-112; Laws 2007, LB236, § 5; Laws 2007, LB463, § 67; Laws 2009, LB195, § 7; Laws 2021, LB148, § 48; Laws 2023, LB227, § 20.

38-170 Board; business; how transacted.

The department shall, as far as practicable, provide for the conducting of the business of the boards by mail and may hold meetings by virtual conferencing subject to the Open Meetings Act. Any official action or vote of the members of a board taken by mail shall be preserved in the records of the department and shall be recorded in the board's minutes by the department.

Source: Laws 1927, c. 167, § 21, p. 459; C.S.1929, § 71-311; Laws 1943, c. 150, § 9, p. 541; R.S.1943, § 71-121; Laws 1978, LB 406, § 8; Laws 1979, LB 427, § 11; Laws 1985, LB 129, § 9; Laws 1986,

LB 926, § 8; Laws 1988, LB 1100, § 12; Laws 1997, LB 307, § 114; Laws 1999, LB 828, § 25; Laws 2004, LB 821, § 16; R.S.Supp.,2006, § 71-121; Laws 2007, LB463, § 70; Laws 2021, LB83, § 4.

Cross References

Open Meetings Act, see section 84-1407.

38-178 Disciplinary actions; grounds.

Except as otherwise provided in sections 38-1,119 to 38-1,123, a credential to practice a profession may be issued subject to discipline, denied, refused renewal, or have other disciplinary measures taken against it in accordance with section 38-183, 38-185, or 38-186 on any of the following grounds:

(1) Misrepresentation of material facts in procuring or attempting to procure a credential;

(2) Immoral or dishonorable conduct evidencing unfitness to practice the profession in this state;

(3) Abuse of, dependence on, or active addiction to alcohol, any controlled substance, or any mind-altering substance;

(4) Failure to comply with a treatment program or an aftercare program, including, but not limited to, a program entered into under the Licensee Assistance Program established pursuant to section 38-175;

(5) Conviction of (a) a misdemeanor or felony under Nebraska law or federal law, or (b) a crime in any jurisdiction which, if committed within this state, would have constituted a misdemeanor or felony under Nebraska law and which has a rational connection with the fitness or capacity of the applicant or credential holder to practice the profession;

(6) Practice of the profession (a) fraudulently, (b) beyond its authorized scope, (c) with gross incompetence or gross negligence, or (d) in a pattern of incompetent or negligent conduct;

(7) Practice of the profession while the ability to practice is impaired by alcohol, controlled substances, drugs, mind-altering substances, physical disability, mental disability, or emotional disability;

(8) Physical or mental incapacity to practice the profession as evidenced by a legal judgment or a determination by other lawful means;

(9) Illness, deterioration, or disability that impairs the ability to practice the profession;

(10) Permitting, aiding, or abetting the practice of a profession or the performance of activities requiring a credential by a person not credentialed to do so;

(11) Performing or offering to perform scleral tattooing as defined in section 38-10,172 by a person not credentialed to do so;

(12) Having had his or her credential denied, refused renewal, limited, suspended, revoked, or disciplined in any manner similar to section 38-196 by another state or jurisdiction based upon acts by the applicant or credential holder similar to acts described in this section;

(13) Use of untruthful, deceptive, or misleading statements in advertisements, including failure to comply with section 38-124;

(14) Conviction of fraudulent or misleading advertising or conviction of a violation of the Uniform Deceptive Trade Practices Act;

(15) Distribution of intoxicating liquors, controlled substances, or drugs for any other than lawful purposes;

(16) Violations of the Uniform Credentialing Act or the rules and regulations relating to the particular profession;

(17) Unlawful invasion of the field of practice of any profession regulated by the Uniform Credentialing Act which the credential holder is not credentialed to practice;

(18) Violation of the Uniform Controlled Substances Act or any rules and regulations adopted pursuant to the act;

(19) Failure to file a report required by section 38-1,124, 38-1,125, or 71-552;

(20) Failure to maintain the requirements necessary to obtain a credential;

(21) Violation of an order issued by the department;

(22) Violation of an assurance of compliance entered into under section 38-1,108;

(23) Failure to pay an administrative penalty;

(24) Unprofessional conduct as defined in section 38-179;

(25) Violation of the Automated Medication Systems Act;

(26) Failure to comply with section 38-1,147; or

(27) Violation of the Preborn Child Protection Act.

Source: Laws 1927, c. 167, § 46, p. 466; C.S.1929, § 71-601; Laws 1943, c. 150, § 10, p. 541; R.S.1943, § 71-147; Laws 1976, LB 877, § 1; Laws 1979, LB 95, § 1; Laws 1986, LB 286, § 45; Laws 1986, LB 579, § 37; Laws 1986, LB 926, § 24; Laws 1987, LB 473, § 15; Laws 1988, LB 1100, § 16; Laws 1991, LB 456, § 7; Laws 1992, LB 1019, § 37; Laws 1993, LB 536, § 44; Laws 1994, LB 1210, § 25; Laws 1994, LB 1223, § 6; Laws 1997, LB 622, § 79; Laws 1999, LB 366, § 8; Laws 2001, LB 398, § 20; Laws 2005, LB 301, § 9; R.S.Supp.,2006, § 71-147; Laws 2007, LB463, § 78; Laws 2008, LB308, § 10; Laws 2011, LB591, § 2; Laws 2015, LB452, § 2; Laws 2019, LB449, § 1; Laws 2022, LB752, § 8; Laws 2023, LB574, § 7.

Cross References

Automated Medication Systems Act, see section 71-2444.
Preborn Child Protection Act, see section 71-6912.
Uniform Controlled Substances Act, see section 28-401.01.
Uniform Deceptive Trade Practices Act, see section 87-306.

38-179 Disciplinary actions; unprofessional conduct, defined.

For purposes of section 38-178, unprofessional conduct means any departure from or failure to conform to the standards of acceptable and prevailing practice of a profession or the ethics of the profession, regardless of whether a person, consumer, or entity is injured, or conduct that is likely to deceive or defraud the public or is detrimental to the public interest, including, but not limited to:

(1) Receipt of fees on the assurance that an incurable disease can be permanently cured;

(2) Division of fees, or agreeing to split or divide the fees, received for professional services with any person for bringing or referring a consumer other than (a) with a partner or employee of the applicant or credential holder or his or her office or clinic, (b) with a landlord of the applicant or credential holder pursuant to a written agreement that provides for payment of rent based on gross receipts, or (c) with a former partner or employee of the applicant or credential holder based on a retirement plan or separation agreement;

(3) Obtaining any fee for professional services by fraud, deceit, or misrepresentation, including, but not limited to, falsification of third-party claim documents;

(4) Cheating on or attempting to subvert the credentialing examination;

(5) Assisting in the care or treatment of a consumer without the consent of such consumer or his or her legal representative;

(6) Use of any letters, words, or terms, either as a prefix, affix, or suffix, on stationery, in advertisements, or otherwise, indicating that such person is entitled to practice a profession for which he or she is not credentialed;

(7) Performing, procuring, or aiding and abetting in the performance or procurement of a criminal abortion;

(8) Knowingly disclosing confidential information except as otherwise permitted by law;

(9) Commission of any act of sexual abuse, misconduct, or exploitation related to the practice of the profession of the applicant or credential holder;

(10) Failure to keep and maintain adequate records of treatment or service;

(11) Prescribing, administering, distributing, dispensing, giving, or selling any controlled substance or other drug recognized as addictive or dangerous for other than a medically accepted therapeutic purpose;

(12) Prescribing any controlled substance to (a) oneself or (b) except in the case of a medical emergency (i) one's spouse, (ii) one's child, (iii) one's parent, (iv) one's sibling, or (v) any other person living in the same household as the prescriber;

(13) Failure to comply with any federal, state, or municipal law, ordinance, rule, or regulation that pertains to the applicable profession;

(14) Disruptive behavior, whether verbal or physical, which interferes with consumer care or could reasonably be expected to interfere with such care;

(15) Violation of the Preborn Child Protection Act;

(16) Beginning October 1, 2023, performing gender-altering procedures for an individual younger than nineteen years of age in violation of section 71-7304; and

(17) Such other acts as may be defined in rules and regulations.

Nothing in this section shall be construed to exclude determination of additional conduct that is unprofessional by adjudication in individual contested cases.

Source: Laws 1927, c. 167, § 47, p. 466; C.S.1929, § 71-602; Laws 1935, c. 141, § 1, p. 518; C.S.Supp.,1941, § 71-602; Laws 1943, c. 146, § 11, p. 542; R.S.1943, § 71-148; Laws 1979, LB 95, § 2; Laws 1981, LB 466, § 1; Laws 1986, LB 286, § 46; Laws 1986, LB 579, § 38; Laws 1986, LB 926, § 25; Laws 1987, LB 473, § 16; Laws

1988, LB 273, § 9; Laws 1988, LB 1100, § 17; Laws 1991, LB 425, § 11; Laws 1991, LB 456, § 11; Laws 1993, LB 536, § 45; Laws 1994, LB 1210, § 27; Laws 1997, LB 23, § 5; R.S.1943, (2003), § 71-148; Laws 2007, LB463, § 79; Laws 2021, LB148, § 49; Laws 2023, LB574, § 8.

Cross References

Preborn Child Protection Act, see section 71-6912.

38-180 Disciplinary actions; evidence of discipline by another state or jurisdiction.

For purposes of subdivision (12) of section 38-178, a certified copy of the record of denial, refusal of renewal, limitation, suspension, or revocation of a license, certificate, registration, or other similar credential or the taking of other disciplinary measures against it by another state or jurisdiction shall be conclusive evidence of a violation.

Source: Laws 2007, LB463, § 80; Laws 2019, LB449, § 2.

38-186 Credential; discipline; petition by Attorney General; hearing; department; powers and duties.

(1) A petition shall be filed by the Attorney General in order for the director to discipline a credential obtained under the Uniform Credentialing Act to:

(a) Practice or represent oneself as being certified under any of the practice acts enumerated in section 38-101 other than subdivision (21) of section 38-101; or

(b) Operate as a business for the provision of services in body art; cosmetology; emergency medical services; esthetics; funeral directing and embalming; massage therapy; and nail technology in accordance with subsection (3) of section 38-121.

(2) The petition shall be filed in the office of the director. The department may withhold a petition for discipline or a final decision from public access for a period of five days from the date of filing the petition or the date the decision is entered or until service is made, whichever is earliest.

(3) The proceeding shall be summary in its nature and triable as an equity action and shall be heard by the director or by a hearing officer designated by the director under rules and regulations of the department. Affidavits may be received in evidence in the discretion of the director or hearing officer. The department shall have the power to administer oaths, to subpoena witnesses and compel their attendance, and to issue subpoenas duces tecum and require the production of books, accounts, and documents in the same manner and to the same extent as the district courts of the state. Depositions may be used by either party.

Source: Laws 2007, LB463, § 86; Laws 2012, LB831, § 28; Laws 2017, LB88, § 34; Laws 2017, LB255, § 10; Laws 2023, LB227, § 21.

38-192 Credential; disciplinary action; director; sanctions; powers.

(1) If the director determines upon completion of a hearing under section 38-183 or 38-186 that a violation has occurred, the director may, at his or her discretion, consult with the appropriate board concerning sanctions to be imposed or terms and conditions of the sanctions. When the director consults

with a board, the credential holder and the Attorney General shall be provided with a copy of the director's request, the recommendation of the board, and an opportunity to respond in such manner as the director determines.

(2) Except as provided in subsection (3) of this section, the director shall have the authority through entry of an order to exercise in his or her discretion any or all of the sanctions authorized under subsection (1) of section 38-196.

(3) If the director determines upon completion of a hearing under section 38-183 or 38-186 that a licensee has performed or induced an unlawful abortion in violation of section 71-6915, the director shall enter an order imposing a sanction authorized under subsection (2) of section 38-196.

Source: Laws 2007, LB463, § 92; Laws 2023, LB574, § 9.

38-193 Credential; disciplinary action; partial-birth abortion; violation of Preborn Child Protection Act; director; powers and duties.

(1) If the petition is brought with respect to subdivision (3) of section 38-2021, the director shall make findings as to whether the licensee's conduct was necessary to save the life of a mother whose life was endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself. The director shall have the authority through entry of an order to exercise in his or her discretion any or all of the sanctions authorized under section 38-196, irrespective of the petition.

(2) If the petition is brought with respect to subdivision (5) of section 38-2021, the director shall make findings as to whether the licensee performed or induced an unlawful abortion in violation of section 71-6915. If the director finds such a violation, the director shall enter an order revoking the licensee's credential to practice pursuant to the Uniform Credentialing Act in the State of Nebraska in accordance with subsection (2) of section 38-196 and section 38-1,100.

Source: Laws 2007, LB463, § 93; Laws 2023, LB574, § 10.

38-196 Credential; disciplinary action; sanctions authorized.

(1) Except as provided in subsection (2) of this section, upon the completion of any hearing held regarding discipline of a credential, the director may dismiss the action or impose any of the following sanctions:

(a) Censure;

(b) Probation;

(c) Limitation;

(d) Civil penalty;

(e) Suspension; or

(f) Revocation.

(2) Upon completion of any hearing regarding discipline of a credential for performing or inducing an unlawful abortion in violation of section 71-6915, if the director determines that such violation occurred, the director shall impose a sanction of revocation in accordance with section 38-1,100.

Source: Laws 1927, c. 167, § 54, p. 468; C.S.1929, § 71-609; Laws 1943, c. 150, § 13, p. 544; R.S.1943, § 71-155; Laws 1976, LB 877, § 3; Laws 1984, LB 481, § 20; Laws 1986, LB 286, § 52; Laws 1986,

LB 579, § 44; Laws 1986, LB 926, § 28; Laws 1988, LB 1100, § 20; Laws 1991, LB 456, § 14; Laws 1994, LB 1210, § 33; Laws 1994, LB 1223, § 7; Laws 1996, LB 1044, § 384; Laws 1997, LB 23, § 6; Laws 1999, LB 828, § 43; R.S.1943, (2003), § 71-155; Laws 2007, LB296, § 307; Laws 2007, LB463, § 96; Laws 2023, LB574, § 11.

38-1,107 Violations; department; Attorney General; powers and duties; applicability of section.

(1) Except as provided in subsection (2) of this section, the department shall provide the Attorney General with a copy of all complaints it receives and advise the Attorney General of investigations it makes which may involve any possible violation of statutes or rules and regulations by a credential holder. The Attorney General shall then determine which, if any, statutes, rules, or regulations the credential holder has violated and the appropriate legal action to take. The Attorney General may (a) elect to file a petition under section 38-186 or not to file a petition, (b) negotiate a voluntary surrender or voluntary limitation pursuant to section 38-1,109, or (c) in cases involving a minor or insubstantial violation, refer the matter to the appropriate board for the opportunity to resolve the matter by recommending to the Attorney General that he or she enter into an assurance of compliance with the credential holder in lieu of filing a petition. An assurance of compliance shall not constitute discipline against a credential holder.

(2) This section does not apply to the following professions or businesses: Asbestos abatement, inspection, project design, and training; lead-based paint abatement, inspection, project design, and training; medical radiography; and radon detection, measurement, and mitigation.

Source: Laws 1984, LB 481, § 2; Laws 1986, LB 286, § 76; Laws 1986, LB 579, § 68; Laws 1991, LB 456, § 25; Laws 1994, LB 1210, § 52; Laws 1999, LB 828, § 58; R.S.1943, (2003), § 71-171.01; Laws 2007, LB463, § 107; Laws 2021, LB148, § 50.

38-1,115 Prima facie evidence of practice without being credentialed; conditions.

It shall be prima facie evidence of practice without being credentialed when any of the following conditions exist:

(1) The person admits to engaging in practice;

(2) Staffing records or other reports from the employer of the person indicate that the person was engaged in practice;

(3) Billing or payment records document the provision of service, care, or treatment by the person;

(4) Service, care, or treatment records document the provision of service, care, or treatment by the person;

(5) Appointment records indicate that the person was engaged in practice;

(6) Government records indicate that the person was engaged in practice; and

(7) The person opens a business or practice site and announces or advertises that the business or site is open to provide service, care, or treatment.

Source: Laws 2007, LB463, § 115; Laws 2021, LB148, § 51.

38-1,119 Certain professions and businesses; sections applicable; initial credential; renewal of credential; denial or refusal to renew; department; powers.

(1) Sections 38-1,119 to 38-1,123 apply to the following professions and businesses: Asbestos abatement, inspection, project design, and training; lead-based paint abatement, inspection, project design, and training; medical radiography; and radon detection, measurement, and mitigation.

(2) If an applicant for an initial credential to practice a profession or operate a business does not meet all of the requirements for the credential, the department shall deny issuance of the credential. If an applicant for an initial credential or a credential holder applying for renewal of the credential has committed any of the acts set out in section 38-178 or 38-182, as applicable, the department may deny issuance or refuse renewal of the credential or may issue or renew the credential subject to any of the terms imposed under section 38-196 in order to protect the public.

Source: Laws 2007, LB463, § 119; Laws 2021, LB148, § 52.

38-1,124 Enforcement; investigations; violations; credential holder; duty to report; cease and desist order; violation; penalty; loss or theft of controlled substance; duty to report.

(1) The department shall enforce the Uniform Credentialing Act and for that purpose shall make necessary investigations. Every credential holder and every member of a board shall furnish the department such evidence as he or she may have relative to any alleged violation which is being investigated.

(2) Every credential holder shall report to the department the name of every person without a credential that he or she has reason to believe is engaged in practicing any profession or operating any business for which a credential is required by the Uniform Credentialing Act. The department may, along with the Attorney General and other law enforcement agencies, investigate such reports or other complaints of unauthorized practice. The director, with the recommendation of the appropriate board, may issue an order to cease and desist the unauthorized practice of such profession or the unauthorized operation of such business as a measure to obtain compliance with the applicable credentialing requirements by the person prior to referral of the matter to the Attorney General for action. Practice of such profession or operation of such business without a credential after receiving a cease and desist order is a Class III felony.

(3) Any credential holder who is required to file a report of loss or theft of a controlled substance to the federal Drug Enforcement Administration shall provide a copy of such report to the department. This subsection shall not apply to pharmacist interns or pharmacy technicians.

Source: Laws 1927, c. 167, § 67, p. 472; C.S.1929, § 71-901; R.S.1943, § 71-168; Laws 1986, LB 286, § 74; Laws 1986, LB 579, § 66; Laws 1991, LB 456, § 23; Laws 1994, LB 1210, § 50; Laws 1994, LB 1223, § 10; Laws 1995, LB 563, § 2; Laws 1996, LB 414, § 1;

Laws 1997, LB 138, § 42; Laws 1997, LB 222, § 4; Laws 1999, LB 828, § 55; Laws 2000, LB 1115, § 12; Laws 2005, LB 256, § 21; Laws 2005, LB 306, § 3; Laws 2005, LB 361, § 32; Laws 2005, LB 382, § 5; R.S.Supp.,2006, § 71-168; Laws 2007, LB236, § 7; Laws 2007, LB463, § 124; Laws 2016, LB859, § 2; Laws 2017, LB166, § 7.

38-1,125 Credential holder except pharmacist intern and pharmacy technician; incompetent, gross negligent, or unprofessional conduct; impaired or disabled person; duty to report.

(1) Except as otherwise provided in section 38-2897, every credential holder shall, within thirty days of an occurrence described in this subsection, report to the department in such manner and form as the department may require whenever he or she:

(a) Has first-hand knowledge of facts giving him or her reason to believe that any person in his or her profession:

(i) Has acted with gross incompetence or gross negligence;

(ii) Has engaged in a pattern of incompetent or negligent conduct as defined in section 38-177;

(iii) Has engaged in unprofessional conduct as defined in section 38-179;

(iv) Has been practicing while his or her ability to practice is impaired by alcohol, controlled substances, mind-altering substances, or physical, mental, or emotional disability; or

(v) Has otherwise violated the regulatory provisions governing the practice of the profession;

(b) Has first-hand knowledge of facts giving him or her reason to believe that any person in another profession:

(i) Has acted with gross incompetence or gross negligence; or

(ii) Has been practicing while his or her ability to practice is impaired by alcohol, controlled substances, mind-altering substances, or physical, mental, or emotional disability; or

(c) Has been the subject of any of the following actions:

(i) Loss of privileges in a hospital or other health care facility due to alleged incompetence, negligence, unethical or unprofessional conduct, or physical, mental, or chemical impairment or the voluntary limitation of privileges or resignation from the staff of any health care facility when that occurred while under formal or informal investigation or evaluation by the facility or a committee of the facility for issues of clinical competence, unprofessional conduct, or physical, mental, or chemical impairment;

(ii) Loss of employment due to alleged incompetence, negligence, unethical or unprofessional conduct, or physical, mental, or chemical impairment;

(iii) An adverse judgment, settlement, or award arising out of a professional liability claim, including a settlement made prior to suit in which the consumer releases any professional liability claim against the credentialed person, or adverse action by an insurance company affecting professional liability coverage. The department may define what constitutes a settlement that would be reportable when a credential holder refunds or reduces a fee or makes no charge for reasons related to a consumer complaint other than costs;

(iv) Denial of a credential or other form of authorization to practice by any jurisdiction due to alleged incompetence, negligence, unethical or unprofessional conduct, or physical, mental, or chemical impairment;

(v) Disciplinary action against any credential or other form of permit he or she holds taken by any jurisdiction, the settlement of such action, or any voluntary surrender of or limitation on any such credential or other form of permit;

(vi) Loss of membership in, or discipline of a credential related to the applicable profession by, a professional organization due to alleged incompetence, negligence, unethical or unprofessional conduct, or physical, mental, or chemical impairment; or

(vii) Conviction of any misdemeanor or felony in this or any other jurisdiction.

(2) The requirement to file a report under subdivision (1)(a) or (b) of this section shall not apply:

(a) To the spouse of the credential holder;

(b) To a practitioner who is providing treatment to such credential holder in a practitioner-consumer relationship concerning information obtained or discovered in the course of treatment unless the treating practitioner determines that the condition of the credential holder may be of a nature which constitutes a danger to the public health and safety by the credential holder's continued practice;

(c) When a credential holder who is chemically impaired enters the Licensee Assistance Program authorized by section 38-175 except as otherwise provided in such section; or

(d) To a credential holder who is providing coaching, training, or mentoring services to another credential holder through a physician wellness program as defined in section 38-1,148 except as otherwise provided in section 38-1,148.

(3) A report submitted by a professional liability insurance company on behalf of a credential holder within the thirty-day period prescribed in subsection (1) of this section shall be sufficient to satisfy the credential holder's reporting requirement under subsection (1) of this section.

Source: Laws 2007, LB247, § 61; Laws 2007, LB463, § 125; Laws 2017, LB166, § 8; Laws 2023, LB227, § 22.

38-1,143 Telehealth; provider-patient relationship; prescription authority; applicability of section.

(1) Except as otherwise provided in subsection (4) of this section, any credential holder under the Uniform Credentialing Act may establish a provider-patient relationship through telehealth.

(2) Any credential holder under the Uniform Credentialing Act who is providing a telehealth service to a patient may prescribe the patient a drug if the credential holder is authorized to prescribe under state and federal law.

(3) The department may adopt and promulgate rules and regulations pursuant to section 38-126 that are consistent with this section.

(4) This section does not apply to a credential holder under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act, the Dialysis Patient Care Technician Registration Act, the Environmental Health Specialists

Practice Act, the Funeral Directing and Embalming Practice Act, the Massage Therapy Practice Act, the Medical Radiography Practice Act, the Nursing Home Administrator Practice Act, the Perfusion Practice Act, the Surgical First Assistant Practice Act, or the Veterinary Medicine and Surgery Practice Act.

Source: Laws 2019, LB29, § 2; Laws 2021, LB148, § 53.

Cross References

Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act, see section 38-1001.
Dialysis Patient Care Technician Registration Act, see section 38-3701.
Environmental Health Specialists Practice Act, see section 38-1301.
Funeral Directing and Embalming Practice Act, see section 38-1401.
Massage Therapy Practice Act, see section 38-1701.
Medical Radiography Practice Act, see section 38-1901.
Nursing Home Administrator Practice Act, see section 38-2401.
Perfusion Practice Act, see section 38-2701.
Surgical First Assistant Practice Act, see section 38-3501.
Veterinary Medicine and Surgery Practice Act, see section 38-3301.

38-1,144 Schedule II controlled substance or other opiate; practitioner; duties.

(1) For purposes of this section, practitioner means a physician, a physician assistant, a dentist, a pharmacist, a podiatrist, an optometrist, a certified nurse midwife, a certified registered nurse anesthetist, and a nurse practitioner.

(2) When prescribing a controlled substance listed in Schedule II of section 28-405 or any other opiate as defined in section 28-401 not listed in Schedule II, prior to issuing the practitioner's initial prescription for a course of treatment for acute or chronic pain, a practitioner involved in the course of treatment as the primary prescribing practitioner or as a member of the patient's care team who is under the direct supervision or in consultation with the primary prescribing practitioner shall discuss with the patient, or the patient's parent or guardian if the patient is younger than eighteen years of age and is not emancipated, unless the discussion has already occurred with another member of the patient's care team within the previous sixty days:

(a) The risks of addiction and overdose associated with the controlled substance or opiate being prescribed, including, but not limited to:

(i) Controlled substances and opiates are highly addictive even when taken as prescribed;

(ii) There is a risk of developing a physical or psychological dependence on the controlled substance or opiate; and

(iii) Taking more controlled substances or opiates than prescribed, or mixing sedatives, benzodiazepines, or alcohol with controlled substances or opiates, can result in fatal respiratory depression;

(b) The reasons why the prescription is necessary; and

(c) Alternative treatments that may be available.

(3) This section does not apply to a prescription for a hospice patient or for a course of treatment for cancer or palliative care.

(4) This section terminates on January 1, 2029.

Source: Laws 2018, LB931, § 3; R.S.Supp.,2018, § 28-473; Laws 2019, LB556, § 2.

38-1,145 Opiates; legislative findings; limitation on certain prescriptions; practitioner; duties.

(1) For purposes of this section, practitioner means a physician, a physician assistant, a dentist, a pharmacist, a podiatrist, an optometrist, a certified nurse midwife, a certified registered nurse anesthetist, and a nurse practitioner.

(2) The Legislature finds that:

(a) In most cases, acute pain can be treated effectively with nonopiate or nonpharmacological options;

(b) With a more severe or acute injury, short-term use of opiates may be appropriate;

(c) Initial opiate prescriptions for children should not exceed seven days for most situations, and two or three days of opiates will often be sufficient;

(d) If a patient needs medication beyond three days, the prescriber should reevaluate the patient prior to issuing another prescription for opiates; and

(e) Physical dependence on opiates can occur within only a few weeks of continuous use, so great caution needs to be exercised during this critical recovery period.

(3) A practitioner who is prescribing an opiate as defined in section 28-401 for a patient younger than eighteen years of age for outpatient use for an acute condition shall not prescribe more than a seven-day supply except as otherwise provided in subsection (4) of this section and, if the practitioner has not previously prescribed an opiate for such patient, shall discuss with a parent or guardian of such patient, or with the patient if the patient is an emancipated minor, the risks associated with use of opiates and the reasons why the prescription is necessary.

(4) If, in the professional medical judgment of the practitioner, more than a seven-day supply of an opiate is required to treat such patient's medical condition or is necessary for the treatment of pain associated with a cancer diagnosis or for palliative care, the practitioner may issue a prescription for the quantity needed to treat such patient's medical condition or pain. The practitioner shall document the medical condition triggering the prescription of more than a seven-day supply of an opiate in the patient's medical record and shall indicate that a nonopiate alternative was not appropriate to address the medical condition.

(5) This section does not apply to controlled substances prescribed pursuant to section 28-412.

(6) This section terminates on January 1, 2029.

Source: Laws 2018, LB931, § 4; R.S.Supp.,2018, § 28-474; Laws 2019, LB556, § 3.

38-1,146 Prescription; issuance; requirements; applicability.

(1) For purposes of this section, prescriber means a health care practitioner authorized to prescribe controlled substances in the practice for which credentialed under the Uniform Credentialing Act.

(2) Except as otherwise provided in subsection (3) or (6) of this section, no prescriber shall, in this state, issue any prescription as defined in section 38-2840 for a controlled substance as defined in section 28-401 unless such prescription is issued (a) using electronic prescription technology, (b) from the prescriber issuing the prescription to a pharmacy, and (c) in accordance with

all requirements of state law and the rules and regulations adopted and promulgated pursuant to such state law.

(3) The requirements of subsection (2) of this section shall not apply to prescriptions:

(a) Issued by veterinarians;

(b) Issued in circumstances where electronic prescribing is not available due to temporary technological or electrical failure;

(c) Issued when the prescriber and the dispenser are the same entity;

(d) Issued that include elements that are not supported by the Prescriber/Pharmacist Interface SCRIPT Standard of the National Council for Prescription Drug Programs as such standard existed on January 1, 2021;

(e) Issued for a drug for which the federal Food and Drug Administration requires the prescription to contain certain elements that are not able to be accomplished with electronic prescribing;

(f) Issued for dispensing a non-patient-specific prescription which is (i) an approved protocol for drug therapy or (ii) in response to a public health emergency;

(g) Issued for a drug for purposes of a research protocol;

(h) Issued under circumstances in which, notwithstanding the prescriber's ability to make an electronic prescription as required by this section, such prescriber reasonably determines (i) that it would be impractical for the patient to obtain substances prescribed by electronic prescription in a timely manner and (ii) that such delay would adversely impact the patient's medical condition;

(i) Issued for drugs requiring compounding; or

(j) Issued by a prescriber who issues fewer than fifty prescriptions in one calendar year otherwise subject to subsection (2) of this section.

(4) A pharmacist who receives a written, oral, or faxed prescription is not required to verify that the prescription falls under one of the exceptions listed in subsection (3) of this section. A pharmacist may continue to dispense medication from any otherwise valid written, oral, or faxed prescription consistent with the law and rules and regulations as they existed prior to January 1, 2022.

(5) A violation of this section shall not be grounds for disciplinary action under the Uniform Credentialing Act.

(6) A dentist shall not be subject to this section until January 1, 2024.

Source: Laws 2021, LB583, § 4; Laws 2024, LB1215, § 7.
Operative date July 19, 2024.

38-1,147 Stem-cell-based therapy; informed written consent; required.

(1) For purposes of this section:

(a) Health care practitioner means a person licensed or certified under the Uniform Credentialing Act;

(b) Human stem cells means human cells, tissues, or cellular or tissue-based products, as defined in 21 C.F.R. 1271.3 as amended August 31, 2016, as published in the Federal Register at 81 Fed. Reg. 60223;

(c) Informed written consent related to stem-cell-based therapy means a signed writing executed by a patient that confirms that (i) a health care

practitioner has explained the treatment, (ii) the treatment has not received the approval of the United States Food and Drug Administration, including for experimental use, and (iii) the patient understands that the treatment has not received such approval; and

(d) Stem-cell-based therapy means treatment using products derived from human stem cells.

(2) Any health care practitioner who performs stem-cell-based therapy shall, by informed written consent, communicate to any patient seeking stem-cell-based therapy from such practitioner that it is not approved by the United States Food and Drug Administration.

(3) This section does not apply to a health care practitioner using stem-cell-based therapy products that are approved by the United States Food and Drug Administration or stem-cell-based therapy for which the health care practitioner obtained approval for an investigational new drug or device from the United States Food and Drug Administration for use of human cells, tissues, or cellular or tissue-based products.

Source: Laws 2022, LB752, § 6.

38-1,148 Physician wellness program; participation; record; confidential; exception; disclosure not required, when.

(1) For purposes of this section:

(a) Physician peer coach means any health care provider licensed to practice medicine or surgery who provides coaching, training, or mentoring through a physician wellness program to another health care provider licensed to practice medicine or surgery under the Uniform Credentialing Act or to a student of an accredited school or college of medicine; and

(b) Physician wellness program means a program that (i) provides coaching, training, and mentoring services by physician peer coaches or coaches certified by a nationally recognized credentialing program for coach practitioners for the purpose of addressing issues related to career fatigue and wellness for individuals licensed to practice medicine and surgery under the Uniform Credentialing Act and students of an accredited school or college of medicine and (ii) is established, organized, or contracted by any statewide association exempt from taxation under section 501(c)(6) of the Internal Revenue Code of 1986 that primarily represents health care providers in multiple specialties who are licensed to practice medicine and surgery under the Uniform Credentialing Act. A physician wellness program does not include a program of evaluation, monitoring, treatment, or referral.

(2) Any record of a person's participation in a physician wellness program is confidential and not subject to discovery, subpoena, or a reporting requirement to the department unless the person voluntarily requests release of the information in writing or the physician peer coach determines that the person's condition constitutes a danger to the public health and safety by the person's continued practice of medicine or surgery.

(3) A person who contacts or participates in a physician wellness program shall not be required to disclose such contact or participation to any health care facility, hospital, medical staff person, accreditation organization, graduate medical education oversight body, health insurer, government agency, or other

entity as a condition of participation, employment, credentialing, payment, licensure, compliance, or other requirement.

Source: Laws 2023, LB227, § 16.

ARTICLE 2

ADVANCED PRACTICE REGISTERED NURSE PRACTICE ACT

Section
38-201. Act, how cited.
38-203. Definitions, where found.
38-204.01. Perinatal mental health disorder, defined.
38-204.02. Postnatal care, defined.
38-204.03. Prenatal care, defined.
38-204.04. Questionnaire, defined.
38-208. License; qualifications; military spouse; temporary license.
38-213. Perinatal mental health disorders; referral network; questionnaire.

38-201 Act, how cited.

Sections 38-201 to 38-213 shall be known and may be cited as the Advanced Practice Registered Nurse Practice Act.

Source: Laws 2005, LB 256, § 36; R.S.Supp.,2006, § 71-17,131; Laws 2007, LB463, § 140; Laws 2022, LB905, § 1.

38-203 Definitions, where found.

For purposes of the Advanced Practice Registered Nurse Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-204 to 38-204.04 apply.

Source: Laws 2005, LB 256, § 38; R.S.Supp.,2006, § 71-17,133; Laws 2007, LB463, § 142; Laws 2022, LB905, § 2.

38-204.01 Perinatal mental health disorder, defined.

Perinatal mental health disorder means a mental health condition that occurs during pregnancy or during the postpartum period, including depression, anxiety, or postpartum psychosis.

Source: Laws 2022, LB905, § 3.

38-204.02 Postnatal care, defined.

Postnatal care means an office visit to an advanced practice registered nurse occurring after birth, with reference to the infant or mother.

Source: Laws 2022, LB905, § 4.

38-204.03 Prenatal care, defined.

Prenatal care means an office visit to an advanced practice registered nurse for pregnancy-related care occurring before birth.

Source: Laws 2022, LB905, § 5.

38-204.04 Questionnaire, defined.

Questionnaire means a screening tool administered by an advanced practice registered nurse to detect perinatal mental health disorders, such as the Edinburgh Postnatal Depression Scale, the Postpartum Depression Screening

Scale, the Beck Depression Inventory, the Patient Health Questionnaire, or other validated screening methods.

Source: Laws 2022, LB905, § 6.

38-208 License; qualifications; military spouse; temporary license.

(1) An applicant for initial licensure as an advanced practice registered nurse shall:

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

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

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

(d) Provide evidence as required by rules and regulations; and

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

(2) The department may issue a license under this section to an applicant who holds a license from another jurisdiction if the licensure requirements of such other jurisdiction meet or exceed the requirements for licensure as an advanced practice registered nurse under the Advanced Practice Registered Nurse Practice Act. An applicant under this subsection shall submit documentation as required by rules and regulations.

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

(4) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 2005, LB 256, § 42; R.S.Supp.,2006, § 71-17,137; Laws 2007, LB185, § 38; Laws 2007, LB463, § 147; Laws 2017, LB88, § 35.

Cross References

Certified Nurse Midwifery Practice Act, see section 38-601.
Certified Registered Nurse Anesthetist Practice Act, see section 38-701.
Clinical Nurse Specialist Practice Act, see section 38-901.
Credentialing, general requirements and issuance procedures, see section 38-121 et seq.
Nurse Licensure Compact, see sections 71-1795 to 71-1795.02.
Nurse Practice Act, see section 38-2201.
Nurse Practitioner Practice Act, see section 38-2301.

38-213 Perinatal mental health disorders; referral network; questionnaire.

The board may work with accredited hospitals, advanced practice registered nurses, and licensed health care professionals and may create a referral network in Nebraska to develop policies, procedures, information, and educational materials to meet each of the following requirements concerning perinatal mental health disorders:

(1) An advanced practice registered nurse providing prenatal care may:

(a) Provide education to a pregnant patient and, if possible and with permission, to the patient's family about perinatal mental health disorders in accordance with the formal opinions and recommendations of the American College of Obstetricians and Gynecologists; and

(b) Invite each pregnant patient to complete a questionnaire in accordance with the formal opinions and recommendations of the American College of Obstetricians and Gynecologists. Screening for perinatal mental health disorders may be repeated when, in the professional judgment of the advanced practice registered nurse, the patient is at increased risk for developing a perinatal mental health disorder;

(2) An advanced practice registered nurse providing postnatal care may invite each postpartum patient to complete a questionnaire and, if completed, shall review the questionnaire in accordance with the formal opinions and recommendations of the American College of Obstetricians and Gynecologists; and

(3) An advanced practice registered nurse providing pediatric care to an infant may invite the infant's mother to complete a questionnaire at any well-child checkup occurring during the first year of life at which the mother is present and, if completed, shall review the questionnaire in accordance with the formal opinions and recommendations of the American Academy of Pediatrics, in order to ensure that the health and well-being of the infant are not compromised by an undiagnosed perinatal mental health disorder in the mother.

Source: Laws 2022, LB905, § 7.

ARTICLE 3

ALCOHOL AND DRUG COUNSELING PRACTICE ACT

Section
38-316. Alcohol and drug counselor; license requirements.
38-318. Licensure; substitute requirements.
38-319. Reciprocity; military spouse; temporary license.
38-321. Rules and regulations.

38-316 Alcohol and drug counselor; license requirements.

(1) To be licensed to practice as an alcohol and drug counselor, an applicant shall meet the requirements for licensure as a provisional alcohol and drug counselor under section 38-314, shall receive a passing score on an examination approved by the board, and shall have six thousand hours of supervised clinical work experience providing alcohol and drug counseling services to alcohol and other drug clients for remuneration. The experience shall be polydrug counseling experience.

(2) The experience shall include carrying a client caseload as the primary alcohol and drug counselor performing the core functions of assessment,

treatment planning, counseling, case management, referral, reports and record keeping, and consultation with other professionals for those clients. The experience shall also include responsibility for performance of the five remaining core functions although these core functions need not be performed by the applicant with each client in their caseload.

(3) Experience that shall not count towards licensure shall include, but not be limited to:

(a) Providing services to individuals who do not have a diagnosis of alcohol and drug abuse or dependence such as prevention, intervention, and codependency services or other mental health disorder counseling services, except that this shall not exclude counseling services provided to a client's significant others when provided in the context of treatment for the diagnosed alcohol or drug client; and

(b) Providing services when the experience does not include primary case responsibility for alcohol or drug treatment or does not include responsibility for the performance of all of the core functions.

(4) The maximum number of hours of experience that may be accrued are forty hours per week or two thousand hours per year.

(5)(a) A postsecondary educational degree may be substituted for part of the supervised clinical work experience. The degree shall be from an accredited postsecondary educational institution or the educational program.

(b) An associate's degree in addictions or chemical dependency may be substituted for one thousand hours of supervised clinical work experience.

(c) A bachelor's degree with a major in counseling, addictions, social work, sociology, or psychology may be substituted for two thousand hours of supervised clinical work experience.

(d) A master's degree or higher in counseling, addictions, social work, sociology, or psychology may be substituted for four thousand hours of supervised clinical work experience.

(e) A substitution shall not be made for more than one degree.

Source: Laws 2004, LB 1083, § 121; R.S.Supp.,2006, § 71-1,357; Laws 2007, LB463, § 167; Laws 2021, LB528, § 6.

Cross References

Credentialing, general requirements and issuance procedures, see section 38-121 et seq.

38-318 Licensure; substitute requirements.

(1) An individual who is licensed as a provisional alcohol and drug counselor at the time of application for licensure as an alcohol and drug counselor is deemed to have met the requirements of a high school diploma or its equivalent, the two hundred seventy hours of education related to alcohol and drug counseling, and the supervised practical training requirement.

(2) An applicant who is licensed as a provisional mental health practitioner or a mental health practitioner or who holds a privilege to practice in Nebraska as a professional counselor under the Licensed Professional Counselors Interstate Compact at the time of application for licensure is deemed to have met the requirements of subdivisions (2)(a), (b), (c), (d), and (f) of section 38-314.

Source: Laws 2004, LB 1083, § 123; R.S.Supp.,2006, § 71-1,359; Laws 2007, LB463, § 169; Laws 2022, LB752, § 9.

Cross References

Licensed Professional Counselors Interstate Compact, see section 38-4201.

38-319 Reciprocity; military spouse; temporary license.

The department, with the recommendation of the board, may issue a license based on licensure in another jurisdiction to an individual who (1) meets the requirements of the Alcohol and Drug Counseling Practice Act, (2) meets substantially equivalent requirements as determined by the department, with the recommendation of the board, or (3) holds a license or certification that is current in another jurisdiction that authorizes the applicant to provide alcohol and drug counseling, has at least two hundred seventy hours of alcohol and drug counseling education, has at least three years of full-time alcohol and drug counseling practice following initial licensure or certification in the other jurisdiction, and has passed an alcohol and drug counseling examination. An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 2007, LB463, § 170; Laws 2017, LB88, § 36; Laws 2018, LB1034, § 6.

38-321 Rules and regulations.

The department, with the recommendation of the board, shall adopt and promulgate rules and regulations to administer the Alcohol and Drug Counseling Practice Act, including rules and regulations governing:

(1) Ways of clearly identifying students, interns, and other persons providing alcohol and drug counseling under supervision;

(2) The rights of persons receiving alcohol and drug counseling;

(3) The rights of clients to gain access to their records, except that records relating to substance abuse may be withheld from a client if an alcohol and drug counselor determines, in his or her professional opinion, that release of the records to the client would not be in the best interest of the client or would pose a threat to another person, unless the release of the records is required by court order;

(4) The contents and methods of distribution of disclosure statements to clients of alcohol and drug counselors; and

(5) Standards of professional conduct and a code of ethics.

Source: Laws 2004, LB 1083, § 125; R.S.Supp.,2006, § 71-1,361; Laws 2007, LB463, § 172; Laws 2018, LB1034, § 7.

ARTICLE 4

ATHLETIC TRAINING PRACTICE ACT

Section
38-401. Act, how cited.
38-402. Definitions, where found.
38-403. Repealed. Laws 2022, LB436, § 12.
38-404. Athletic trainer, defined.
38-405. Repealed. Laws 2022, LB436, § 12.
38-406.01. Condition, defined.
38-407. Repealed. Laws 2022, LB436, § 12.
38-407.01. Impression, defined.
38-407.02. Injuries and illnesses, defined.

Section
38-408. Athletic training; scope of practice; department; duties.
38-409. License required; exceptions.
38-410. Licensure requirements; exemptions.
38-411. Applicant for licensure; qualifications; examination.
38-413. Reciprocity; continuing competency requirements; military spouse; temporary license.

38-401 Act, how cited.

Sections 38-401 to 38-414 shall be known and may be cited as the Athletic Training Practice Act.

Source: Laws 2007, LB463, § 173; Laws 2022, LB436, § 1.

38-402 Definitions, where found.

For purposes of the Athletic Training Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-404 to 38-407.02 apply.

Source: Laws 1986, LB 355, § 1; Laws 1996, LB 1044, § 477; Laws 1999, LB 178, § 2; Laws 1999, LB 828, § 140; Laws 2003, LB 242, § 65; R.S.1943, (2003), § 71-1,238; Laws 2007, LB296, § 359; Laws 2007, LB463, § 174; Laws 2022, LB436, § 2.

38-403 Repealed. Laws 2022, LB436, § 12.

38-404 Athletic trainer, defined.

Athletic trainer means a health care professional who is licensed to practice athletic training under the Athletic Training Practice Act and who, under guidelines established with a licensed physician, performs the functions outlined in section 38-408 except as otherwise provided in subsection (5) of section 38-408.

Source: Laws 2007, LB463, § 176; Laws 2022, LB436, § 3.

38-405 Repealed. Laws 2022, LB436, § 12.

38-406.01 Condition, defined.

Condition means a disease, illness, or injury.

Source: Laws 2022, LB436, § 4.

38-407 Repealed. Laws 2022, LB436, § 12.

38-407.01 Impression, defined.

Impression means a summation of information or an opinion formed, which is the outcome of the examination and assessment process.

Source: Laws 2022, LB436, § 5.

38-407.02 Injuries and illnesses, defined.

Injuries and illnesses means injuries or common illnesses and conditions which are related to, or which limit participation in, exercise, athletic activities, recreational activities, or activities requiring physical strength, agility, flexibility, range of motion, speed, or stamina, and for which athletic trainers as a

result of their education and training are qualified to provide care and make referrals to the appropriate health care professionals.

Source: Laws 2022, LB436, § 6.

38-408 Athletic training; scope of practice; department; duties.

(1) As set forth in the Athletic Training Practice Act, the practice of athletic training includes providing the following regarding injuries and illnesses:

(a) Prevention and wellness promotion;

(b) Examination, assessment, and impression;

(c) Immediate and emergency care, including the administration of emergency drugs as prescribed by a licensed physician and dispensed by a pharmacy for emergency use, subject to subsection (2) of this section;

(d) Therapeutic intervention or rehabilitation of injuries and illnesses in the manner, means, and methods deemed necessary to affect care, rehabilitation, or function;

(e) Therapeutic modalities. For purposes of this subdivision, and except as provided in subsection (9) of this section, therapeutic modalities includes, but is not limited to:

(i) Physical modalities; and

(ii) Mechanical modalities, including, but not limited to, dry needling; and

(f) Health care administration, risk management, and professional responsibility.

(2) The department shall adopt and promulgate rules and regulations regarding the administration of emergency drugs as authorized in this section, including drugs, medicines, and medicinal substances as defined in section 38-2819 except for controlled substances listed in section 28-405.

(3) The department shall adopt and promulgate rules and regulations regarding the use of dry needling by athletic trainers.

(4) The scope of practice of athletic trainers does not include the use of joint manipulation, grade V mobilization/manipulation, thrust joint manipulation, high velocity/low amplitude thrust, nor any other procedure intended to result in joint cavitation. Joint manipulation commences where grades one through four mobilization ends.

(5) When athletic training is provided in a hospital outpatient department or clinic, or an outpatient-based medical facility or clinic, the athletic trainer shall perform the functions described in this section with a referral from a licensed physician, osteopathic physician, podiatrist, nurse practitioner, physician assistant, dentist, or chiropractor. The referral shall state the diagnosis and, if deemed necessary, identify any instructions or protocols by the referring provider. In these instances, for each patient under his or her care, the athletic trainer shall ensure documentation is complete, accurate, and timely and shall include the following:

(a) Provide and document the initial examination, assessment, and impression;

(b) Provide periodic reexamination with documentation of the reexamination, assessment, and impression;

(c) Establish a plan of care following either the initial examination or reexamination that is in accordance with the diagnosis and any instructions or protocols indicated by the referring provider;

(d) Communicate to the referring provider changes in the patient's condition that may require altering instructions and protocols indicated by the referral from the referring provider;

(e) Be responsible for accurate documentation of each followup visit and billing for athletic training services provided; and

(f) Provide documentation upon discharge, including patient response to athletic training intervention at the time of discharge.

(6) In all other instances, the athletic trainer shall maintain documentation consistent with the guidelines established with a licensed physician and specific to the setting in which the athletic trainer is practicing.

(7) An individual who is licensed as an athletic trainer may not provide, offer to provide, or represent that he or she is qualified to provide any care or services that he or she lacks the education, training, or experience to provide or that he or she is otherwise prohibited by law from providing.

(8) Pursuant to subdivision (18) of section 38-2025, no athletic trainer shall hold himself or herself out to be a physician or surgeon or qualified to prescribe medications.

(9) The application of heat, cold, air, water, or exercise shall not be restricted by the Athletic Training Practice Act.

Source: Laws 2007, LB463, § 180; Laws 2022, LB436, § 7.

38-409 License required; exceptions.

No person shall be authorized to perform the functions outlined in section 38-408 unless the person first obtains a license as an athletic trainer or unless such person is licensed as a physician, osteopathic physician, chiropractor, nurse, physical therapist, or podiatrist. No person shall hold himself or herself out as an athletic trainer in this state unless such person is licensed under the Athletic Training Practice Act.

Source: Laws 1986, LB 355, § 3; Laws 1989, LB 342, § 27; Laws 1999, LB 178, § 3; Laws 2003, LB 242, § 67; R.S.1943, (2003), § 71-1,240; Laws 2007, LB463, § 181; Laws 2022, LB436, § 8.

38-410 Licensure requirements; exemptions.

(1) An individual who accompanies an athletic team or organization from another state or jurisdiction as the athletic trainer is exempt from the licensure requirements of the Athletic Training Practice Act.

(2) An athletic training student who is enrolled in an athletic training education program accredited by an accrediting body approved by the board is exempt from the licensure requirements of the Athletic Training Practice Act.

Source: Laws 1999, LB 178, § 4; Laws 2003, LB 242, § 66; R.S.1943, (2003), § 71-1,239.01; Laws 2007, LB463, § 182; Laws 2022, LB436, § 9.

38-411 Applicant for licensure; qualifications; examination.

(1) An applicant for licensure as an athletic trainer shall at the time of application provide proof to the department that the applicant meets one or more of the following qualifications:

(a) For any person who graduated prior to January 1, 2004:

(i) Graduation after successful completion of the curriculum requirements of an accredited athletic training education program at an accredited college or university approved by the board; or

(ii) Graduation with a four-year degree from an accredited college or university and completion of at least two consecutive years, military duty excepted, as an athletic training student under the supervision of an athletic trainer approved by the board; and

(b) For any person who graduated after January 1, 2004, graduation after successful completion of the curriculum requirements of an accredited athletic training education program at an accredited college or university approved by the board.

(2) In order to be licensed as an athletic trainer, an applicant shall, in addition to the requirements of subsection (1) of this section, successfully complete an examination approved by the board.

Source: Laws 1986, LB 355, § 4; R.S.1943, (2003), § 71-1,241; Laws 2007, LB463, § 183; Laws 2022, LB436, § 10.

Cross References

Credentialing, general requirements and issuance procedures, see section 38-121 et seq.

38-413 Reciprocity; continuing competency requirements; military spouse; temporary license.

(1) An applicant for licensure as an athletic trainer who has met the standards set by the board pursuant to section 38-126 for a license based on licensure in another jurisdiction but is not practicing at the time of application for licensure shall present proof satisfactory to the department that he or she has within the three years immediately preceding the application for licensure completed continuing competency requirements approved by the board pursuant to section 38-145.

(2) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 2007, LB463, § 185; Laws 2017, LB88, § 37.

ARTICLE 5

AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY PRACTICE ACT

Section

38-513 Licensed professional; nonresident; practice of audiology or speech-language pathology; act, how construed.

Nothing in the Audiology and Speech-Language Pathology Practice Act shall be construed to prevent or restrict (1) a qualified person licensed in this state from engaging in the profession for which he or she is licensed if he or she does not present himself or herself to be an audiologist or speech-language pathologist or (2) the performance of audiology or speech-language pathology services in this state by any person not a resident of this state who is not licensed either under the act or in a member state of the Audiology and Speech-Language Pathology Interstate Compact, if (a) such services are performed for not more than thirty days in any calendar year, (b) such person meets the qualifications and requirements for application for licensure under the act, (c) such person is working under the supervision of a person licensed in Nebraska to practice speech-language pathology or audiology or under the supervision of a person licensed in a member state practicing speech-language pathology or audiology in Nebraska under the compact privilege, and (d) such person registers with the board prior to initiation of professional services.

Source: Laws 1978, LB 406, § 15; Laws 1985, LB 129, § 16; Laws 1990, LB 828, § 2; R.S.1943, (2003), § 71-1,188; Laws 2007, LB463, § 198; Laws 2021, LB14, § 1.

Cross References

Audiology and Speech-Language Pathology Interstate Compact, see section 38-4101.

38-515 Practice of audiology or speech-language pathology; license or privilege to practice; applicant; requirements.

(1) Every applicant for a license to practice audiology shall (a)(i) for applicants graduating prior to September 1, 2007, present proof of a master's degree, a doctoral degree, or the equivalent of a master's degree or doctoral degree in audiology from an academic program approved by the board, and (ii) for applicants graduating on or after September 1, 2007, present proof of a doctoral degree or its equivalent in audiology, (b) present proof of no less than thirty-six weeks of full-time professional experience or equivalent half-time professional experience in audiology, supervised in the area in which licensure is sought, and (c) successfully complete an examination approved by the board.

(2) Every applicant for a license to practice speech-language pathology shall (a) present proof of a master's degree, a doctoral degree, or the equivalent of a master's degree or doctoral degree in speech-language pathology from an academic program approved by the board, (b) present proof of no less than thirty-six weeks of full-time professional experience or equivalent half-time professional experience in speech-language pathology, supervised in the area in which licensure is sought, and (c) successfully complete an examination approved by the board.

(3) Presentation of official documentation of certification by a nationwide professional accrediting organization approved by the board shall be deemed equivalent to the requirements of this section.

(4) Every applicant for a privilege to practice audiology or speech-language pathology under the Audiology and Speech-Language Pathology Interstate Compact shall present proof of authorization from a member state, as defined in section 38-4101, to practice as an audiologist or speech-language pathologist.

Source: Laws 1978, LB 406, § 17; Laws 1985, LB 129, § 18; Laws 1988, LB 1100, § 67; R.S.1943, (2003), § 71-1,190; Laws 2007, LB463, § 200; Laws 2007, LB463, § 1178; Laws 2021, LB14, § 2.

Cross References

Audiology and Speech-Language Pathology Interstate Compact, see section 38-4101.
Credentialing, general requirements and issuance procedures, see section 38-121 et seq.

38-517 Reciprocity; continuing competency requirements; military spouse; temporary license.

(1) An applicant for licensure to practice audiology or speech-language pathology who has met the standards set by the board pursuant to section 38-126 for a license based on licensure in another jurisdiction but is not practicing at the time of application for licensure shall present proof satisfactory to the department that he or she has within the three years immediately preceding the application for licensure completed continuing competency requirements approved by the board pursuant to section 38-145.

(2) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 2007, LB463, § 202; Laws 2017, LB88, § 38.

38-518 Practice of audiology or speech-language pathology; temporary license; granted; when.

A temporary license to practice audiology or speech-language pathology may be granted to:

(1) A military spouse as provided in section 38-129.01; or

(2) A person who establishes residence in Nebraska, or a person who is a resident of a member state of the Audiology and Speech-Language Pathology Interstate Compact, if such person:

(a) Meets all the requirements for a license except passage of the examination required by section 38-515, which temporary license shall be valid only until the date on which the results of the next licensure examination are available to the department and shall not be renewed; or

(b) Meets all the requirements for a license except completion of the professional experience required by section 38-515, which temporary license shall be valid only until the sooner of completion of such professional experience or eighteen months and shall not be renewed.

Source: Laws 1978, LB 406, § 21; Laws 1985, LB 129, § 22; Laws 1988, LB 1100, § 68; Laws 1991, LB 456, § 28; Laws 2001, LB 209, § 12; Laws 2003, LB 242, § 59; R.S.1943, (2003), § 71-1,194; Laws 2007, LB463, § 203; Laws 2017, LB88, § 39; Laws 2021, LB14, § 3.

Cross References

Audiology and Speech-Language Pathology Interstate Compact, see section 38-4101.

38-520 Audiologist or speech-language pathology assistant; supervision; termination.

(1) The department, with the recommendation of the board, shall approve an application submitted by an audiologist or speech-language pathologist for supervision of an audiology or speech-language pathology assistant when:

(a) The audiology or speech-language pathology assistant meets the requirements for registration pursuant to section 38-519;

(b) The audiologist or speech-language pathologist has a valid Nebraska license or a privilege to practice audiology or speech-language pathology under the Audiology and Speech-Language Pathology Interstate Compact; and

(c) The audiologist or speech-language pathologist practices in Nebraska.

(2) Any audiologist or speech-language pathologist seeking approval for supervision of an audiology or speech-language pathology assistant shall submit an application which is signed by the audiology or speech-language pathology assistant and the audiologist or speech-language pathologist with whom he or she is associated. Such application shall (a) identify the settings within which the audiology or speech-language pathology assistant is authorized to practice, (b) describe the agreed-upon functions that the audiology or speech-language pathology assistant may perform as provided in section 38-523, and (c) describe the provision for supervision by an alternate audiologist or speech-language pathologist when necessary.

(3) If the supervision of an audiology or speech-language pathology assistant is terminated by the audiologist, speech-language pathologist, or audiology or speech-language pathology assistant, the audiologist or speech-language pathologist shall notify the department of such termination. An audiologist or speech-language pathologist who thereafter assumes the responsibility for such supervision shall obtain a certificate of approval to supervise an audiology or speech-language pathology assistant from the department prior to the use of the audiology or speech-language pathology assistant in the practice of audiology or speech-language pathology.

Source: Laws 1985, LB 129, § 24; Laws 1987, LB 473, § 30; Laws 1988, LB 1100, § 70; R.S.1943, (2003), § 71-1,195.02; Laws 2007, LB247, § 30; Laws 2007, LB463, § 205; Laws 2021, LB14, § 4.

Cross References

Audiology and Speech-Language Pathology Interstate Compact, see section 38-4101.

ARTICLE 6
CERTIFIED NURSE MIDWIFERY PRACTICE ACT

Section
38-615. Licensure as nurse midwife; application; requirements; temporary licensure.

38-615 Licensure as nurse midwife; application; requirements; temporary licensure.

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

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

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

(3) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.

(4) If more than five years have elapsed since the completion of the nurse midwifery program or since the applicant has practiced as a nurse midwife, the applicant shall meet the requirements in subsection (1) of this section and provide evidence of continuing competency, as may be determined by the board, either by means of a reentry program, references, supervised practice, examination, or one or more of the continuing competency activities listed in section 38-145.

Source: Laws 1984, LB 761, § 18; Laws 1993, LB 536, § 76; Laws 1997, LB 752, § 175; Laws 2002, LB 1021, § 63; Laws 2003, LB 242, § 107; Laws 2005, LB 256, § 89; R.S.Supp.,2006, § 71-1755; Laws 2007, LB185, § 23; Laws 2007, LB463, § 227; Laws 2017, LB88, § 40.

Cross References

Advanced Practice Registered Nurse Practice Act, see section 38-201.
Credentialing, general requirements and issuance procedures, see section 38-121 et seq.
Nurse Licensure Compact, see sections 71-1795 to 71-1795.02.

ARTICLE 7

CERTIFIED REGISTERED NURSE ANESTHETIST PRACTICE ACT

Section
38-708. Certified registered nurse anesthetist; temporary license; permit.

38-708 Certified registered nurse anesthetist; temporary license; permit.

(1) The department may, with the approval of the board, grant a temporary license in the practice of anesthesia for up to one hundred twenty days upon application (a) to graduates of an accredited school of nurse anesthesia pending results of the first certifying examination following graduation and (b) to registered nurse anesthetists currently licensed in another state pending completion of the application for a Nebraska license. A temporary license issued pursuant to this subsection may be extended at the discretion of the board with the approval of the department.

(2) An applicant for a license to practice as a certified registered nurse anesthetist who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 1981, LB 379, § 28; Laws 1984, LB 724, § 30; Laws 1992, LB 1019, § 75; Laws 1996, LB 414, § 45; Laws 1999, LB 828, § 156; Laws 2005, LB 256, § 79; R.S.Supp.,2006, § 71-1731; Laws 2007, LB185, § 16; Laws 2007, LB463, § 238; Laws 2017, LB88, § 41.

ARTICLE 8

CHIROPRACTIC PRACTICE ACT

Section
38-809. Reciprocity; continuing competency requirements; military spouse; temporary license.

38-809 Reciprocity; continuing competency requirements; military spouse; temporary license.

(1) An applicant for licensure to practice chiropractic who has met the standards set by the board pursuant to section 38-126 for a license based on licensure in another jurisdiction but is not practicing at the time of application for licensure shall present proof satisfactory to the department that he or she has within the two years immediately preceding the application for licensure completed continuing competency requirements approved by the board pursuant to section 38-145.

(2) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 1927, c. 167, § 80, p. 475; C.S.1929, § 71-1105; R.S.1943, § 71-181; Laws 1996, LB 1044, § 406; R.S.1943, (2003), § 71-181; Laws 2007, LB296, § 324; Laws 2007, LB463, § 250; Laws 2017, LB88, § 42.

ARTICLE 10

COSMETOLOGY, ELECTROLOGY, ESTHETICS, NAIL TECHNOLOGY, AND BODY ART PRACTICE ACT

Section

Section

38-1001 Act, how cited.

Sections 38-1001 to 38-10,172 shall be known and may be cited as the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act.

Source: Laws 1986, LB 318, § 1; Laws 1995, LB 83, § 1; Laws 1999, LB 68, § 1; Laws 2001, LB 209, § 13; Laws 2002, LB 241, § 1; Laws 2004, LB 906, § 3; R.S.Supp.,2006, § 71-340; Laws 2007, LB463, § 263; Laws 2016, LB898, § 1; Laws 2018, LB731, § 3; Laws 2019, LB449, § 3.

38-1004 Definitions, where found.

For purposes of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-1005 to 38-1056 apply.

Source: Laws 1986, LB 318, § 4; Laws 1995, LB 83, § 4; Laws 1999, LB 68, § 4; Laws 2002, LB 241, § 4; Laws 2004, LB 906, § 6; R.S.Supp.,2006, § 71-343; Laws 2007, LB463, § 266; Laws 2016, LB898, § 2; Laws 2018, LB731, § 4.

38-1005 Apprentice, defined.

Apprentice means a person engaged in the study of any or all of the practices of cosmetology under the supervision of an instructor in an apprentice salon.

Source: Laws 1986, LB 318, § 5; R.S.1943, (2003), § 71-344; Laws 2007, LB463, § 267; Laws 2018, LB731, § 5.

38-1013 Repealed. Laws 2018, LB731, § 106.

38-1014 Repealed. Laws 2018, LB731, § 106.

38-1017 Cosmetology establishment, defined.

Cosmetology establishment means a cosmetology salon, a mobile cosmetology salon, an esthetics salon, a school of cosmetology, a school of esthetics, an apprentice salon, or any other place in which any or all of the practices of cosmetology are performed on members of the general public for compensation or in which instruction or training in any or all of the practices of cosmetology is given, except when such practices constitute nonvocational training.

Source: Laws 1986, LB 318, § 13; Laws 1999, LB 68, § 7; Laws 2002, LB 241, § 7; R.S.1943, (2003), § 71-352; Laws 2007, LB463, § 279; Laws 2018, LB731, § 6.

38-1018 Cosmetology salon, defined.

Cosmetology salon means a fixed structure or part thereof licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to serve as the site for the performance of any or all of the practices of cosmetology by persons licensed under such act.

Source: Laws 1986, LB 318, § 14; R.S.1943, (2003), § 71-353; Laws 2007, LB463, § 280; Laws 2018, LB731, § 7.

38-1022 Repealed. Laws 2018, LB731, § 106.

38-1028 Esthetics salon, defined.

Esthetics salon means a fixed structure or part thereof licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to serve as the site for the performance of any or all of the practices of esthetics by persons licensed under such act.

Source: Laws 1986, LB 318, § 28; R.S.1943, (1996), § 71-367; Laws 2002, LB 241, § 11; R.S.1943, (2003), § 71-357.03; Laws 2007, LB463, § 290; Laws 2018, LB731, § 8.

38-1029 Repealed. Laws 2018, LB731, § 106.

38-1030 Repealed. Laws 2018, LB731, § 106.

38-1033.01 Mobile cosmetology salon, defined.

Mobile cosmetology salon means a self-contained, self-supporting, enclosed mobile unit licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act as a mobile site for the performance of the practices of cosmetology by persons licensed under the act.

Source: Laws 2018, LB731, § 9.

38-1033.02 Mobile nail technology salon, defined.

Mobile nail technology salon means a self-contained, self-supporting, enclosed mobile unit licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to serve as a mobile site for the performance of the practices of nail technology by persons licensed under the act.

Source: Laws 2018, LB731, § 10.

38-1036 Nail technology establishment, defined.

Nail technology establishment means a nail technology salon, a mobile nail technology salon, a nail technology school, or any other place in which the practices of nail technology are performed on members of the general public for compensation or in which instruction or training in the practices of nail technology is given, except when such practices constitute nonvocational training.

Source: Laws 1999, LB 68, § 11; R.S.1943, (2003), § 71-361.03; Laws 2007, LB463, § 298; Laws 2018, LB731, § 11.

38-1038 Nail technology salon, defined.

Nail technology salon means a fixed structure or part thereof licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to serve as the site for the performance of the practices of nail technology by persons licensed under the act.

Source: Laws 1999, LB 68, § 13; R.S.1943, (2003), § 71-361.05; Laws 2007, LB463, § 300; Laws 2018, LB731, § 12.

38-1043 Nonvocational training, defined.

Nonvocational training means the act of imparting knowledge of or skills in any or all of the practices of cosmetology, nail technology, esthetics, or

electrology to persons not licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act for the purpose of noncommercial use by those receiving such training.

Source: Laws 1986, LB 318, § 23; Laws 1995, LB 83, § 11; Laws 1999, LB 68, § 18; Laws 2002, LB 241, § 12; R.S.1943, (2003), § 71-362; Laws 2007, LB463, § 305; Laws 2018, LB731, § 13.

38-1058 Cosmetology; licensure required.

It shall be unlawful for any person, group, company, or other entity to engage in any of the following acts without being duly licensed as required by the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act, unless specifically excepted by such act:

(1) To engage in or follow or to advertise or hold oneself out as engaging in or following any of the practices of cosmetology or to act as a practitioner;

(2) To engage in or advertise or hold oneself out as engaging in the teaching of any of the practices of cosmetology; or

(3) To operate or advertise or hold oneself out as operating a cosmetology establishment in which any of the practices of cosmetology or the teaching of any of the practices of cosmetology are carried out.

Source: Laws 1986, LB 318, § 46; R.S.1943, (2003), § 71-385; Laws 2007, LB463, § 320; Laws 2018, LB731, § 14.

38-1061 Licensure; categories; use of titles prohibited; practice in licensed establishment or facility.

(1) All practitioners shall be licensed by the department under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act in a category or categories appropriate to their practice.

(2) Licensure shall be required before any person may engage in the full, unsupervised practice or teaching of cosmetology, electrology, esthetics, nail technology, or body art, and no person may assume the title of cosmetologist, electrologist, esthetician, instructor, nail technician, nail technology instructor, esthetics instructor, permanent color technician, tattoo artist, body piercer, or body brander without first being licensed by the department.

(3) All licensed practitioners shall practice in an appropriate licensed establishment or facility.

Source: Laws 1986, LB 318, § 47; Laws 1995, LB 83, § 21; Laws 1999, LB 68, § 27; Laws 2002, LB 241, § 22; Laws 2004, LB 906, § 19; R.S.Supp.,2006, § 71-386; Laws 2007, LB463, § 323; Laws 2018, LB731, § 15.

38-1062 Licensure by examination; requirements.

In order to be licensed by the department by examination, an individual shall meet, and present to the department evidence of meeting, the following requirements:

(1) Has attained the age of seventeen years on or before the beginning date of the examination for which application is being made;

(2) Has completed formal education equivalent to a United States high school education;

(3) Possesses a minimum competency in the knowledge and skills necessary to perform the practices for which licensure is sought, as evidenced by successful completion of an examination in the appropriate practices approved by the board and administered by the department;

(4) Possesses sufficient ability to read the English language to permit the applicant to practice in a safe manner, as evidenced by successful completion of the written examination; and

(5) Has graduated from a school of cosmetology or an apprentice salon in or outside of Nebraska, a school of esthetics in or outside of Nebraska, or a school of electrolysis upon completion of a program of studies appropriate to the practices for which licensure is being sought, as evidenced by a diploma or certificate from the school or apprentice salon to the effect that the applicant has complied with the following:

(a) For licensure as a cosmetologist, the program of studies shall consist of a minimum of one thousand eight hundred hours;

(b) For licensure as an esthetician, the program of studies shall consist of a minimum of six hundred hours;

(c) For licensure as a cosmetology instructor, the program of studies shall consist of a minimum of six hundred hours beyond the program of studies required for licensure as a cosmetologist;

(d) For licensure as a cosmetology instructor, be currently licensed as a cosmetologist in Nebraska, as evidenced by possession of a valid Nebraska cosmetology license;

(e) For licensure as an electrologist, the program of studies shall consist of a minimum of six hundred hours;

(f) For licensure as an electrology instructor, be currently licensed as an electrologist in Nebraska and have practiced electrology actively for at least two years immediately before the application; and

(g) For licensure as an esthetics instructor, completion of a program of studies consisting of a minimum of three hundred hours beyond the program of studies required for licensure as an esthetician and current licensure as an esthetician in Nebraska.

Source: Laws 1986, LB 318, § 48; Laws 1987, LB 543, § 6; Laws 1995, LB 83, § 22; Laws 1996, LB 1155, § 26; Laws 1997, LB 752, § 168; Laws 2002, LB 241, § 23; Laws 2004, LB 1005, § 26; R.S.Supp.,2006, § 71-387; Laws 2007, LB463, § 324; Laws 2018, LB731, § 16.

Cross References

Credentialing, general requirements and issuance procedures, see section 38-121 et seq.

38-1063 Application for examination.

No application for any type of licensure shall be considered complete unless all information requested in the application has been supplied, all seals and signatures required have been obtained, and all supporting and documentary evidence has been received by the department.

Source: Laws 1986, LB 318, § 49; Laws 1989, LB 344, § 8; Laws 2003, LB 242, § 82; R.S.1943, (2003) § 71-388; Laws 2007, LB463, § 325; Laws 2018, LB731, § 17.

38-1065 Examinations; requirements; grades.

(1) Examinations approved by the board may be national standardized examinations, but in all cases the examinations shall be related to the knowledge and skills necessary to perform the practices being examined and shall be related to the curricula required to be taught in schools of cosmetology, schools of esthetics, or schools of electrolysis.

(2) Practical examinations may be offered as either written or hands-on and shall be conducted in such a manner that the identity of the applicant is not disclosed to the examiners in any way.

(3) In order to successfully complete the examination, an applicant shall obtain an average grade of seventy-five percent on all examinations.

Source: Laws 1986, LB 318, § 51; Laws 1987, LB 543, § 8; Laws 1995, LB 83, § 24; Laws 1997, LB 307, § 134; R.S.1943, (2003), § 71-390; Laws 2007, LB296, § 366; Laws 2007, LB463, § 327; Laws 2018, LB731, § 18.

38-1066 Reciprocity; requirements; military spouse; temporary license.

(1) The department may grant a license based on licensure in another jurisdiction to any person who meets the requirements of subdivisions (1) and (2) of section 38-1062 and who presents proof of the following:

(a) That he or she is currently licensed in the appropriate category in another jurisdiction and that he or she has never been disciplined or had his or her license revoked. An applicant seeking licensure as an instructor in the manner provided in this section shall be licensed as an instructor in another jurisdiction. An applicant seeking licensure as a cosmetologist in the manner provided in this section shall be licensed as a cosmetologist in another jurisdiction. An applicant seeking licensure as an esthetician in the manner provided in this section shall be licensed as a cosmetologist, an esthetician, or an equivalent title in another jurisdiction. An applicant seeking licensure as an esthetics instructor in the manner provided in this section shall be licensed as a cosmetology instructor, esthetics instructor, or the equivalent in another jurisdiction. An applicant seeking licensure as an electrologist or an electrology instructor in the manner provided in this section shall be licensed as an electrologist or an electrology instructor, respectively, in another jurisdiction;

(b) That such license was issued on the basis of an examination and the results of the examination. If an examination was not required for licensure in the other jurisdiction, the applicant shall take the Nebraska examination; and

(c) That the applicant complies with the hour requirements of subdivision (5) of section 38-1062 through any combination of hours earned as a student or apprentice in a cosmetology establishment licensed or approved by the jurisdiction in which it was located and hour-equivalents granted for recent work experience, with hour-equivalents recognized as follows:

(i) Each month of full-time practice as an instructor within the five years immediately preceding application shall be valued as one hundred hour-equivalents toward an instructor's license;

(ii) Each month of full-time practice as a cosmetologist within the five years immediately preceding application shall be valued as one hundred hour-equivalents toward a cosmetology license;

(iii) Each month of full-time practice as an esthetician within the five years immediately preceding application shall be valued as one hundred hour-equivalents toward an esthetician's license;

(iv) Each month of full-time practice as an esthetics instructor within the five years immediately preceding application shall be valued as one hundred hour-equivalents toward an esthetics instructor's license; and

(v) Each month of full-time practice as an electrologist within the five years immediately preceding application shall be valued as one hundred hour-equivalents toward an electrologist's license.

(2) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01 and may practice under the temporary license without supervision.

Source: Laws 1986, LB 318, § 55; Laws 1987, LB 543, § 9; Laws 1995, LB 83, § 26; Laws 2002, LB 241, § 24; R.S.1943, (2003), § 71-394; Laws 2007, LB463, § 328; Laws 2017, LB88, § 43; Laws 2018, LB731, § 19.

38-1067 Foreign-trained applicants; examination requirements.

(1) Applicants for Nebraska licensure who received their training in foreign countries may not be licensed by waiver of examination except as provided in section 38-129.01. In order to be considered eligible to take the examination, they shall meet the requirements of subdivisions (1) and (2) of section 38-1062 and, in order to establish equivalency with subdivision (5) of section 38-1062, shall present proof satisfactory to the department of one of the following:

(a) Current licensure or equivalent official recognition of the right to practice in a foreign country; or

(b) At least five years of practice within the eight years immediately preceding the application.

(2) In all cases such applicants shall take the examination for licensure in the State of Nebraska.

Source: Laws 1986, LB 318, § 56; Laws 1987, LB 543, § 10; Laws 1995, LB 83, § 27; R.S.1943, (2003), § 71-395; Laws 2007, LB463, § 329; Laws 2017, LB88, § 44.

38-1069 License; when required; temporary practitioner; license.

A license as a temporary practitioner shall be required before any person may act as a temporary practitioner, and no person shall assume any title indicative of being a temporary practitioner without first being so licensed by the department under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act.

Source: Laws 1986, LB 318, § 59; Laws 2004, LB 906, § 22; R.S.Supp.,2006, § 71-398; Laws 2007, LB463, § 331; Laws 2018, LB731, § 20.

Cross References

Credentialing, general requirements and issuance procedures, see section 38-121 et seq.

38-1070 Temporary license; general requirements.

An individual making application for a temporary license, other than a temporary license issued as provided in section 38-129.01, shall meet, and present to the department evidence of meeting, the requirements for the specific type of license applied for.

Source: Laws 1986, LB 318, § 60; R.S.1943, (2003), § 71-399; Laws 2007, LB463, § 332; Laws 2017, LB88, § 45; Laws 2018, LB731, § 21.

38-1071 Repealed. Laws 2018, LB731, § 106.

38-1072 Repealed. Laws 2018, LB731, § 106.

38-1073 Licensure as temporary practitioner; requirements.

An applicant for licensure as a temporary practitioner shall show evidence that his or her completed application for regular licensure has been accepted by the department, that he or she has not failed any portion of the licensure examination, and that he or she has been accepted for work in a licensed cosmetology establishment under the supervision of a licensed practitioner.

Source: Laws 1986, LB 318, § 65; R.S.1943, (2003), § 71-3,104; Laws 2007, LB463, § 335; Laws 2018, LB731, § 22.

38-1074 Temporary licensure; expiration dates; extension.

Licensure as a temporary practitioner shall expire eight weeks following the date of issuance or upon receipt of examination results, whichever occurs first. The department may extend the license an additional eight weeks.

Source: Laws 1986, LB 318, § 66; Laws 1987, LB 543, § 13; Laws 1995, LB 83, § 32; Laws 2002, LB 241, § 28; Laws 2004, LB 906, § 24; Laws 2004, LB 1005, § 29; R.S.Supp.,2006, § 71-3,105; Laws 2007, LB463, § 336; Laws 2018, LB731, § 23.

38-1075 Act; activities exempt.

The Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act does not apply to or restrict the activities of the following:

(1) Any person holding a current license or certificate issued pursuant to the Uniform Credentialing Act when engaged in the usual and customary practice of his or her profession or occupation;

(2) Any person engaging solely in earlobe piercing;

(3) Any person engaging solely in natural hair braiding;

(4) Any person when engaged in domestic or charitable administration;

(5) Any person performing any of the practices of cosmetology or nail technology solely for theatrical presentations or other entertainment functions;

(6) Any person practicing cosmetology, electrology, esthetics, or nail technology within the confines of a hospital, nursing home, massage therapy establishment, funeral establishment, or other similar establishment or facility licensed or otherwise regulated by the department, except that no unlicensed person may accept compensation for such practice;

(7) Any person providing services during a bona fide emergency;

(8) Any retail or wholesale establishment or any person engaged in the sale of cosmetics, nail technology products, or other beauty products when the prod-

ucts are applied by the customer or when the application of the products is in direct connection with the sale or attempted sale of such products at retail;

(9) Any person when engaged in nonvocational training;

(10) A person demonstrating on behalf of a manufacturer or distributor any cosmetology, nail technology, electrolysis, or body art equipment or supplies if such demonstration is performed without charge;

(11) Any person or licensee engaged in the practice or teaching of manicuring;

(12) Any person or licensee engaged in the practice of airbrush tanning or temporary, nonpermanent airbrush tattooing; and

(13) Any person applying cosmetics.

Source: Laws 1986, LB 318, § 67; Laws 1987, LB 543, § 14; Laws 1988, LB 1100, § 97; Laws 1995, LB 83, § 33; Laws 1999, LB 68, § 44; Laws 2001, LB 209, § 16; Laws 2004, LB 906, § 28; Laws 2005, LB 256, § 33; R.S.Supp.,2006, § 71-3,106; Laws 2007, LB463, § 337; Laws 2016, LB898, § 4; Laws 2018, LB731, § 24.

38-1086 Licensed salon; operating requirements.

In order to maintain its license in good standing, each salon shall operate in accordance with the following requirements:

(1) The salon shall at all times comply with all applicable provisions of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act and all rules and regulations adopted and promulgated under such act;

(2) The salon owner or his or her agent shall notify the department at least thirty days prior to any change of ownership, name, or address, and within one week if a salon is permanently closed, except in emergency circumstances as determined by the department;

(3) No salon shall permit any unlicensed person to perform any of the practices of cosmetology within its confines or employment;

(4) The salon shall display a name upon, over, or near the entrance door distinguishing it as a salon;

(5) The salon shall permit any duly authorized agent of the department to conduct an operation inspection or investigation at any time during the normal operating hours of the salon, without prior notice, and the owner and manager shall assist the inspector by providing access to all areas of the salon, all personnel, and all records requested by the inspector;

(6) The salon shall display in a conspicuous place the following records:

(a) The current license or certificate of consideration to operate a salon;

(b) The current licenses of all persons employed by or working in the salon; and

(c) The rating sheet from the most recent operation inspection;

(7) At no time shall a salon employ more employees than permitted by the square footage requirements of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act; and

(8) The salon shall not knowingly permit its employees to use or consume intoxicating beverages upon its premises.

Source: Laws 1986, LB 318, § 85; R.S.1943, (2003), § 71-3,124; Laws 2007, LB463, § 348; Laws 2018, LB731, § 25.

38-1091 Repealed. Laws 2018, LB731, § 106.

38-1092 Repealed. Laws 2018, LB731, § 106.

38-1093 Repealed. Laws 2018, LB731, § 106.

38-1094 Repealed. Laws 2018, LB731, § 106.

38-1095 Repealed. Laws 2018, LB731, § 106.

38-1096 Repealed. Laws 2018, LB731, § 106.

38-1097 School of cosmetology; license; requirements.

In order to be licensed as a school of cosmetology by the department, an applicant shall meet and present to the department evidence of meeting the following requirements:

(1) The proposed school shall be a fixed permanent structure or part of one;

(2) The proposed school shall have a contracted enrollment of at least ten full-time or part-time students;

(3) The proposed school shall contain at least three thousand five hundred square feet of floor space and facilities, staff, apparatus, and equipment appropriate to its projected enrollment in accordance with the standards established by rule and regulation; and

(4) The proposed school shall not have the same entrance as or direct access to a cosmetology salon, esthetics salon, or nail technology salon.

A school of cosmetology is not required to be licensed as a school of esthetics in order to provide an esthetics training program or as a school of nail technology in order to provide a nail technology training program.

Source: Laws 1986, LB 318, § 97; Laws 2002, LB 241, § 33; R.S.1943, (2003), § 71-3,136; Laws 2007, LB463, § 359; Laws 2018, LB731, § 26.

38-1099 School of cosmetology license; school of esthetics license; application; additional information.

Along with the application the applicant for a license to operate a school of cosmetology or school of esthetics shall submit:

(1) A detailed floor plan or blueprint of the proposed school building sufficient to show compliance with the relevant rules and regulations;

(2) Evidence of minimal property damage, personal injury, and liability insurance coverage for the proposed school;

(3) A copy of the curriculum to be taught for all courses;

(4) A copy of the school catalog, handbook, or policies and the student contract; and

(5) A list of the names and credentials of all licensees to be employed by the school.

Source: Laws 1986, LB 318, § 99; Laws 2002, LB 241, § 36; R.S.1943, (2003), § 71-3,138; Laws 2007, LB463, § 361; Laws 2018, LB731, § 27.

38-10,100 School of esthetics license; application; additional information.

In order to be licensed as a school of esthetics by the department, an applicant shall meet and present to the department evidence of meeting the following requirements:

(1) The proposed school shall be a fixed permanent structure or part of one;

(2) The proposed school shall have a contracted enrollment of at least four full-time or part-time students;

(3) The proposed school shall contain at least one thousand square feet of floor space and facilities, staff, apparatus, and equipment appropriate to its projected enrollment in accordance with the standards established by rule and regulation; and

(4) The proposed school shall not have the same entrance as or direct access to a cosmetology salon, an esthetics salon, or a nail technology salon.

Source: Laws 2002, LB 241, § 34; R.S.1943, (2003), § 71-3,138.02; Laws 2007, LB463, § 362; Laws 2018, LB731, § 28.

38-10,102 Licensed school; operating requirements.

In order to maintain its license in good standing, each school of cosmetology or school of esthetics shall operate in accordance with the following requirements:

(1) The school shall at all times comply with all applicable provisions of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act and all rules and regulations adopted and promulgated under such act;

(2) The school owner or owners or the authorized agent thereof shall notify the department at least thirty days prior to any change of ownership, name, or address, and at least sixty days prior to closure, except in emergency circumstances as determined by the department;

(3) No school shall permit anyone other than a student, student instructor, or instructor to perform any of the practices of cosmetology or esthetics within its confines or employ, except that such restriction shall not prevent a school from inviting guest educators who are not licensed to provide education to students or student instructors if the guest educator does not perform any of the practices of cosmetology or esthetics;

(4) The school shall display a name upon or near the entrance door designating it as a school of cosmetology or a school of esthetics;

(5) The school shall display in a conspicuous place within the clinic area a sign reading: All services in this school are performed by students who are training in cosmetology or esthetics, as applicable. A notice to such effect shall also appear in all advertising conducted by the school for its clinic services;

(6) The school shall permit any duly authorized agent of the department to conduct an operation inspection or investigation at any time during the normal operating hours of the school without prior notice, and the owner or manager

shall assist the inspector by providing access to all areas of the school, all personnel, and all records requested by the inspector;

(7) The school shall display in a conspicuous place the following records:

(a) The current license to operate a school of cosmetology or school of esthetics;

(b) The current licenses of all persons licensed under the act, except students, employed by or working in the school; and

(c) The rating sheet from the most recent accreditation inspection;

(8) At no time shall a school enroll more students than permitted by the act or the rules and regulations adopted and promulgated under the act;

(9) The school shall not knowingly permit its students, employees, or clients to use, consume, serve, or in any other manner possess or distribute intoxicating beverages or controlled substances upon its premises;

(10) No instructor or student instructor shall perform, and no school shall permit such person to perform, any of the practices of cosmetology or esthetics on the public in a school of cosmetology or school of esthetics other than that part of the practical work which pertains directly to the teaching of practical subjects to students or student instructors and in no instance shall complete cosmetology or esthetics services be provided for a client unless done in a demonstration class of theoretical or practical studies;

(11) The school shall maintain space, staff, library, teaching apparatus, and equipment as established by rules and regulations adopted and promulgated under the act;

(12) The school shall keep a daily record of the attendance and clinical performance of each student and student instructor;

(13) The school shall maintain regular class and instructor hours and shall require the minimum curriculum;

(14) The school shall establish and maintain criteria and standards for student grading, evaluation, and performance and shall award a certificate or diploma to a student only upon completing a full course of study in compliance with such standards, except that no student shall receive such certificate or diploma until he or she has satisfied or made an agreement with the school to satisfy all outstanding financial obligations to the school;

(15) The school shall maintain on file the enrollment of each student;

(16) The school shall maintain a report indicating the students and student instructors enrolled, the hours earned, the instructors employed, the hours of operation, and such other pertinent information as required by the department; and

(17) The school shall print and provide to each student a copy of the school rules, which shall not be inconsistent with the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act, the Uniform Credentialing Act, or the rules and regulations adopted and promulgated under either act and which shall include policies of the school with respect to tuition, reimbursement, conduct, attendance, grading, earning of hours, demerits, penalties, dismissal, graduation requirements, dress, and other information sufficient to advise the student of the standards he or she will be required to maintain. The department may review any school's rules to determine their consistency with the intent and content of the Cosmetology, Electrology, Esthetics, Nail Technol-

ogy, and Body Art Practice Act and the rules and regulations and may overturn any school rules found not to be in accord.

Source: Laws 1986, LB 318, § 101; Laws 1987, LB 543, § 20; Laws 1995, LB 83, § 42; Laws 2002, LB 241, § 38; Laws 2004, LB 1005, § 33; R.S.Supp.,2006, § 71-3,140; Laws 2007, LB463, § 364; Laws 2018, LB731, § 29.

38-10,103 School or apprentice salon; operation; student; apprentice; student instructor; requirements.

In order to maintain a school or apprentice salon license in good standing, each school or apprentice salon shall operate in accordance with the following:

(1) Every person accepted for enrollment as a standard student or apprentice shall show evidence that he or she attained the age of seventeen years on or before the date of his or her enrollment in a school of cosmetology, a school of esthetics, or an apprentice salon, has completed the equivalent of a high school education, has been accepted for enrollment at a school of cosmetology, a school of esthetics, or an apprentice salon, and has not undertaken any training in cosmetology or esthetics without being enrolled as a student or apprentice;

(2)(a) Every person accepted for enrollment as a special study student or apprentice shall show evidence that he or she:

(i) Has attained the age of seventeen years on or before the date of enrollment in a school of cosmetology, a school of esthetics, or an apprentice salon;

(ii) Has completed the tenth grade;

(iii) Has been accepted for enrollment at a school of cosmetology, a school of esthetics, or an apprentice salon; and

(iv) Is actively continuing his or her formal high school education on a full-time basis as determined by the department.

(b) An applicant for enrollment as a special study student or apprentice shall not have undertaken any training in cosmetology or esthetics without being enrolled as a student or apprentice.

(c) Special study students shall be limited to attending a school of cosmetology, a school of esthetics, or an apprentice salon for no more than eight hours per week during the school year;

(3) Every person accepted for enrollment as a student instructor shall show evidence of current licensure as a cosmetologist or esthetician in Nebraska and completion of formal education equivalent to a United States high school education; and

(4) No school of cosmetology, school of esthetics, or apprentice salon shall accept an individual for enrollment who does not provide evidence of meeting the age and education requirements.

Source: Laws 1986, LB 318, § 63; Laws 1987, LB 543, § 11; Laws 1995, LB 83, § 31; Laws 2002, LB 241, § 26; Laws 2004, LB 1005, § 28; R.S.Supp.,2006, § 71-3,102; Laws 2007, LB463, § 365; Laws 2018, LB731, § 30.

38-10,104 Licensed school; additional operating requirements.

In order to maintain its license in good standing, each school of cosmetology or school of esthetics shall operate in accordance with the following requirements:

(1) All persons accepted for enrollment as students shall meet the qualifications established in section 38-10,103;

(2) The school shall, at all times the school is in operation, have at least one instructor in the school for each twenty students or fraction thereof enrolled in the school, except that freshman and advanced students shall be taught by different instructors in separate classes;

(3) The school shall not permit any student to render clinical services on members of the public with or without fees until such student has satisfactorily completed the freshman curriculum, except that the board may establish guidelines by which it may approve such practices as part of the freshman curriculum;

(4) No school shall pay direct compensation to any of its students. Student instructors may be paid as determined by the school;

(5) All students and student instructors shall be under the supervision of an instructor at all times, except that students shall be under the direct supervision of an instructor or student instructor at all times when cosmetology or esthetics services are being taught or performed and student instructors may independently supervise students after successfully completing at least one-half of the required instructor program;

(6) No student shall be permitted by the school to train or work in a school in any manner for more than ten hours a day; and

(7) The school shall not credit a student or student instructor with hours except when such hours were earned in the study or practice of cosmetology, esthetics, nail technology, or barbering in accordance with the required curriculum. Hours shall be credited on a daily basis. Once credited, hours cannot be removed or disallowed except by the department upon a finding that the hours have been wrongfully allowed.

Source: Laws 1986, LB 318, § 102; Laws 1987, LB 543, § 21; Laws 1995, LB 83, § 43; Laws 2002, LB 241, § 39; Laws 2004, LB 1005, § 34; R.S.Supp.,2006, § 71-3,141; Laws 2007, LB463, § 366; Laws 2018, LB731, § 31.

38-10,105 Transfer of cosmetology student; requirements.

A student may transfer from one school of cosmetology to another school at any time without penalty if all tuition obligations to the school from which the student is transferring have been honored and if the student secures a letter from the school from which he or she is transferring stating that the student has not left any unfulfilled tuition obligations and stating the number of hours earned by the student at such school, including any hours the student transferred into that school, and the dates of attendance of the student at that school. The student may not begin training at the new school until such conditions have been fulfilled. The school to which the student is transferring shall be entitled to receive from the student's previous school, upon request, all records pertaining to the student.

Source: Laws 1986, LB 318, § 103; R.S.1943, (2003), § 71-3,142; Laws 2007, LB463, § 367; Laws 2018, LB731, § 32.

38-10,106 Repealed. Laws 2018, LB731, § 106.

38-10,107 Licensed barber; licensed cosmetologist; waiver of course requirements; conditions.

(1) Barbers licensed in the State of Nebraska attending a school of cosmetology may be given credit of one thousand hours of training applied toward the course hours required for graduation.

(2) Cosmetologists licensed in the State of Nebraska attending a barber school or college may be given credit of one thousand hours of training applied toward the course hours required for graduation.

Source: Laws 1986, LB 318, § 105; R.S.1943, (2003), § 71-3,144; Laws 2007, LB463, § 369; Laws 2018, LB731, § 33.

Cross References

Barbering license under the Barber Act, see section 71-224.

38-10,108 School of cosmetology; student instructors; limitation.

No school of cosmetology shall at any time enroll more than three student instructors for each full-time instructor actively working in and employed by the school.

Source: Laws 1986, LB 318, § 107; R.S.1943, (2003), § 71-3,146; Laws 2007, LB463, § 370; Laws 2018, LB731, § 34.

38-10,109 School licenses; renewal; requirements; inactive status; revocation; effect.

(1) The procedure for renewing a school license shall be in accordance with section 38-143, except that in addition to all other requirements, the school of cosmetology or school of esthetics shall provide evidence of minimal property damage, bodily injury, and liability insurance coverage and shall receive a satisfactory rating on an accreditation inspection conducted by the department within the six months immediately prior to the date of license renewal.

(2) Any school of cosmetology or school of esthetics which has current accreditation from an accrediting organization approved by the board shall be considered to satisfy the accreditation requirements outlined in this section, except that successful completion of an operation inspection shall be required. Each school of cosmetology or school of esthetics, whether or not it is accredited, shall satisfy all curriculum and sanitation requirements outlined in the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to maintain its license.

(3) Any school not able to meet the requirements for license renewal shall have its license placed on inactive status until all deficiencies have been corrected, and the school shall not operate in any manner during the time its license is inactive. If the deficiencies are not corrected within six months of the date of license renewal, the license may be revoked unless the department approves an extension of the time limit. The license of a school that has been revoked or expired for any reason shall not be reinstated. An original applica-

tion for licensure shall be submitted and approved before such school may reopen.

Source: Laws 1986, LB 318, § 108; Laws 1995, LB 83, § 45; Laws 2002, LB 241, § 41; Laws 2003, LB 242, § 88; Laws 2004, LB 1005, § 36; R.S.1943, (2003), § 71-3,147; Laws 2007, LB463, § 371; Laws 2021, LB528, § 7.

38-10,112 School; owner; liability; manager required.

(1) The owner of each school of cosmetology or school of esthetics shall have full responsibility for ensuring that the school is operated in compliance with all applicable laws and rules and regulations and shall be liable for any and all violations occurring in the school.

(2) Each school of cosmetology or school of esthetics shall be operated by a manager who shall be present on the premises of the school no less than thirty-five hours each week. The manager may have responsibility for the daily operation of the school or satellite classroom.

Source: Laws 1986, LB 318, § 111; Laws 1995, LB 83, § 46; Laws 2002, LB 241, § 42; Laws 2004, LB 1005, § 37; R.S.Supp.,2006, § 71-3,150; Laws 2007, LB463, § 374; Laws 2018, LB731, § 35.

38-10,120 Home services permit; issuance.

(1) A licensed cosmetology salon or esthetics salon may employ licensed cosmetologists and estheticians, according to the licensed activities of the salon, to perform home services by meeting the following requirements:

(a) In order to be issued a home services permit by the department, an applicant shall hold a current active salon license; and

(b) Any person seeking a home services permit shall submit a complete application at least ten days before the proposed date for beginning home services. Along with the application the applicant shall submit evidence of liability insurance or bonding.

(2) The department shall issue a home services permit to each applicant meeting the requirements set forth in this section.

Source: Laws 1986, LB 318, § 120; Laws 1995, LB 83, § 47; Laws 2002, LB 241, § 46; R.S.1943, (2003), § 71-3,159; Laws 2007, LB463, § 382; Laws 2018, LB731, § 36.

38-10,121 Home services permit; requirements.

In order to maintain in good standing or renew its home services permit, a salon shall at all times operate in accordance with all requirements for operation, maintain its license in good standing, and comply with the following requirements:

(1)(a) Clients receiving home services shall be in emergency or persistent circumstances which shall generally be defined as any condition sufficiently immobilizing to prevent the client from leaving his or her residence regularly to conduct routine affairs of daily living such as grocery shopping, visiting friends and relatives, attending social events, attending worship services, and other similar activities.

(b) Emergency or persistent circumstances may include such conditions or situations as:

(i) Chronic illness or injury leaving the client bedridden or with severely restricted mobility;

(ii) Extreme general infirmity such as that associated with the aging process;

(iii) Temporary conditions including, but not limited to, immobilizing injury and recuperation from serious illness or surgery;

(iv) Having sole responsibility for the care of an invalid dependent or a mentally disabled person requiring constant attention;

(v) Mental disability that significantly limits the client in areas of functioning described in subdivision (1)(a) of this section; or

(vi) Any other conditions that, in the opinion of the department, meet the general definition of emergency or persistent circumstances;

(2) The salon shall determine that each person receiving home services meets the requirements of subdivision (1) of this section and shall:

(a) Complete a client information form supplied by the department before home services may be provided to any client; and

(b) Keep on file the client information forms of all clients it is currently providing with home services or to whom it has provided such services within the past two years;

(3) The salon shall employ or contract with persons licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to provide home services and shall not permit any person to perform any home services under its authority for which he or she is not licensed;

(4) No client shall be left unattended while any chemical service is in progress or while any electrical appliance is in use; and

(5) Each salon providing home services shall post a daily itinerary for each licensee providing home services. The kit for each licensee shall be available for inspection at the salon or at the home of the client receiving services.

Source: Laws 1986, LB 318, § 121; Laws 1995, LB 83, § 48; R.S.1943, (2003), § 71-3,160; Laws 2007, LB463, § 383; Laws 2020, LB755, § 1.

38-10,125.01 Mobile cosmetology salon; license; requirements.

In order to be licensed as a mobile cosmetology salon by the department, an applicant shall meet, and present to the department evidence of meeting, the following requirements:

(1) The proposed salon is a self-contained, self-supporting, enclosed mobile unit;

(2)(a)(i) The mobile unit has a global positioning system tracking device that enables the department to track the location of the salon over the Internet;

(ii) The device is on board the mobile unit and functioning at all times the salon is in operation or open for business; and

(iii) The owner of the salon provides the department with all information necessary to track the salon over the Internet; or

(b) The owner of the salon submits to the department, in a manner specified by the department, a weekly itinerary showing the dates, exact locations, and

times that cosmetology services are scheduled to be provided. The owner shall submit the itinerary not less than seven calendar days prior to the beginning of the service described in the itinerary and shall submit to the department any changes in the itinerary not less than twenty-four hours prior to the change. A salon shall follow the itinerary in providing service and notify the department of any changes;

(3) The salon has insurance coverage which meets the requirements of the department for the mobile unit;

(4) The salon is clearly identified as such to the public by a sign;

(5) The salon complies with the sanitary requirements of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act;

(6) The entrance into the proposed salon used by the general public provides safe access by the public;

(7) The proposed salon has at least one hundred fifty square feet of floor space. If more than one practitioner is to be employed in the salon at the same time, the salon shall contain an additional space of at least fifty square feet for each additional practitioner; and

(8) The proposed salon includes a functional sink and toilet facilities and maintains an adequate supply of clean water and wastewater storage capacity.

Source: Laws 2018, LB731, § 37.

38-10,125.02 Mobile cosmetology salon license; application.

Any person seeking a license to operate a mobile cosmetology salon shall submit a completed application to the department, and along with the application, the applicant shall submit a detailed floor plan or blueprint of the proposed salon sufficient to demonstrate compliance with the requirements of section 38-10,125.01.

Source: Laws 2018, LB731, § 38.

38-10,125.03 Mobile cosmetology salon; application; review; denial; inspection.

Each application for a license to operate a mobile cosmetology salon shall be reviewed by the department for compliance with the requirements of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act. If an application is denied, the applicant shall be informed in writing of the grounds for denial, and such denial shall not prejudice future applications by the applicant. If an application is approved, the department shall issue the applicant a certificate of consideration to operate a mobile cosmetology salon pending an operation inspection. The department shall conduct an operation inspection of each salon issued a certificate of consideration within six months after the issuance of such certificate. A salon which passes the inspection shall be issued a permanent license. A salon which fails the inspection shall submit within fifteen days evidence of corrective action taken to improve those aspects of operation found deficient. If evidence is not submitted within fifteen days or if after a second inspection the salon does not receive a satisfactory rating, it shall immediately relinquish its certificate of consideration and cease operation.

Source: Laws 2018, LB731, § 39.

38-10,125.04 Mobile cosmetology salon; operating requirements.

In order to maintain its license in good standing, each mobile cosmetology salon shall operate in accordance with the following requirements:

(1) The salon shall at all times comply with all applicable provisions of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act and all rules and regulations adopted and promulgated under the act;

(2) The salon owner or his or her agent shall notify the department of any change of ownership, name, or office address and if a salon is permanently closed;

(3) No salon shall permit any unlicensed person to perform any of the practices of cosmetology within its confines or employment;

(4) The salon shall display a name upon, over, or near the entrance door distinguishing it as a salon;

(5) The salon shall permit any duly authorized agent of the department to conduct an operation inspection or investigation at any time during the normal operating hours of the salon, without prior notice, and the owner and manager shall assist the inspector by providing access to all areas of the salon, all personnel, and all records requested by the inspector;

(6) The salon shall display in a conspicuous place the following records:

(a) The current license or certificate of consideration to operate a salon;

(b) The current licenses of all persons licensed under the act who are employed by or working in the salon; and

(c) The rating sheet from the most recent operation inspection;

(7) At no time shall a salon employ more employees than permitted by the square footage requirements of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act;

(8) No cosmetology services may be performed in a salon while the salon is moving. The salon must be safely and legally parked in a legal parking space at all times while clients are present inside the salon. A salon shall not park or conduct business within three hundred feet of another licensed cosmetology establishment. The department is not responsible for monitoring for enforcement of this subdivision but may discipline a license for a reported and verified violation;

(9) The owner of the salon shall maintain a permanent business address at which correspondence from the department may be received and records of appointments, license numbers, and vehicle identification numbers shall be kept for each salon being operated by the owner. The owner shall make such records available for verification and inspection by the department; and

(10) The salon shall not knowingly permit its employees or clients to use, consume, serve, or in any manner possess or distribute intoxicating beverages or controlled substances upon its premises.

Source: Laws 2018, LB731, § 40.

38-10,125.05 Mobile cosmetology salon license; renewal.

The procedure for renewing a mobile cosmetology salon license shall be in accordance with section 38-143, except that in addition to all other requirements, the salon shall submit evidence of minimal property damage, bodily injury, and liability insurance coverage for the salon and evidence of coverage

which meets the requirements of the Motor Vehicle Registration Act for the salon.

Source: Laws 2018, LB731, § 41.

Cross References

Motor Vehicle Registration Act, see section 60-301.

38-10,125.06 Mobile cosmetology salon license; revocation or expiration; effect.

The license of a mobile cosmetology salon that has been revoked or expired for any reason shall not be reinstated. An original application for licensure shall be submitted and approved before such salon may reopen for business.

Source: Laws 2018, LB731, § 42.

38-10,125.07 Mobile cosmetology salon license; change of ownership or mobile unit; effect.

Each mobile cosmetology salon license issued shall be in effect solely for the owner or owners and the mobile unit named thereon and shall expire automatically upon any change of ownership or mobile unit. An original application for licensure shall be submitted and approved before such salon may reopen for business.

Source: Laws 2018, LB731, § 43.

38-10,125.08 Mobile cosmetology salon; owner liability.

The owner of each mobile cosmetology salon shall have full responsibility for ensuring that the salon is operated in compliance with all applicable laws, rules, and regulations and shall be liable for any and all violations occurring in the salon.

Source: Laws 2018, LB731, § 44.

38-10,128 Nail technician or instructor; licensure by examination; requirements.

In order to be licensed as a nail technician or nail technology instructor by examination, an individual shall meet, and present to the department evidence of meeting, the following requirements:

(1) He or she has attained the age of seventeen years on or before the beginning date of the examination for which application is being made;

(2) He or she has completed formal education equivalent to a United States high school education;

(3) He or she possesses sufficient ability to read the English language to permit the applicant to practice in a safe manner, as evidenced by successful completion of the written examination; and

(4) He or she has graduated from a school of cosmetology or nail technology school providing a nail technology program. Evidence of graduation shall include documentation of the total number of hours of training earned and a diploma or certificate from the school to the effect that the applicant has complied with the following:

(a) For licensure as a nail technician, the program of studies shall consist of three hundred hours; and

(b) For licensure as a nail technology instructor, the program of studies shall consist of three hundred hours beyond the program of studies required for licensure as a nail technician and the individual shall be currently licensed as a nail technician in Nebraska as evidenced by possession of a valid Nebraska nail technician license.

The department shall grant a license in the appropriate category to any person meeting the requirements specified in this section.

Source: Laws 1999, LB 68, § 31; R.S.1943, (2003), § 71-3,183; Laws 2007, LB463, § 390; Laws 2018, LB731, § 45.

Cross References

Credentialing, general requirements and issuance procedures, see section 38-121 et seq.

38-10,129 Application for nail technology licensure; procedure.

No application for any type of licensure shall be considered complete unless all information requested on the application form has been supplied, all seals and signatures required have been obtained, and all supporting and documentary evidence has been received by the department.

Source: Laws 1999, LB 68, § 32; Laws 2003, LB 242, § 91; R.S.1943, (2003), § 71-3,184; Laws 2007, LB463, § 391; Laws 2018, LB731, § 46.

38-10,131 Examinations; requirements; grades.

(1) Examinations approved by the board may be national standardized examinations, but in all cases the examinations shall be related to the knowledge and skills necessary to perform the practices being examined and shall be related to the curricula required to be taught in nail technology programs.

(2) In order to successfully complete the examination, an applicant shall obtain an average grade of seventy-five percent on the written examination.

Source: Laws 1999, LB 68, § 35; R.S.1943, (2003), § 71-3,187; Laws 2007, LB463, § 393; Laws 2018, LB731, § 47.

38-10,132 Nail technician or instructor; reciprocity; requirements; military spouse; temporary license.

(1) The department may grant a license based on licensure in another jurisdiction to a nail technician or nail technology instructor who presents proof of the following:

(a) He or she has attained the age of seventeen years;

(b) He or she has completed formal education equivalent to a United States high school education;

(c) He or she is currently licensed as a nail technician or its equivalent or as a nail technology instructor or its equivalent in another jurisdiction and he or she has never been disciplined or had his or her license revoked;

(d) For licensure as a nail technician, evidence of completion of a program of nail technician studies consisting of three hundred hours and successful passage of a written examination. If a written examination was not required for licensure in another jurisdiction, the applicant must take the Nebraska written examination. Each month of full-time practice as a nail technician within the

five years immediately preceding application shall be valued as equivalent to one hundred hours toward a nail technician license; and

(e) For licensure as a nail technology instructor, evidence of completion of a program of studies consisting of three hundred hours beyond the program of studies required for licensure in another jurisdiction as a nail technician, successful passage of a written examination, and current licensure as a nail technician in Nebraska as evidenced by possessing a valid Nebraska nail technician license. If a written examination was not required for licensure as a nail technology instructor, the applicant must take the Nebraska written examination. Each month of full-time practice as a nail technology instructor within the five years immediately preceding application shall be valued as equivalent to one hundred hours toward a nail technology instructor license.

(2) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 1999, LB 68, § 39; R.S.1943, (2003), § 71-3,191; Laws 2007, LB463, § 394; Laws 2017, LB88, § 46; Laws 2018, LB731, § 48.

38-10,133 Nail technology license; display.

Every person holding a license in nail technology issued by the department under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act shall display it in a conspicuous place in his or her principal place of employment, and every nail technology establishment shall so display the then current licenses of all practitioners there employed.

Source: Laws 1999, LB 68, § 40; R.S.1943, (2003), § 71-3,192; Laws 2007, LB463, § 395; Laws 2018, LB731, § 49.

38-10,135 Nail technology temporary practitioner; application; qualifications.

An applicant for licensure as a nail technology temporary practitioner shall show evidence that his or her completed application for regular licensure has been accepted by the department, that he or she has not failed any portion of the licensure examination, and that he or she has been accepted for work in a licensed nail technology or cosmetology establishment under the supervision of a licensed nail technician or licensed cosmetologist.

Source: Laws 1999, LB 68, § 42; R.S.1943, (2003), § 71-3,194; Laws 2007, LB463, § 397; Laws 2018, LB731, § 50.

38-10,142 Nail technology salon; operating requirements.

In order to maintain its license in good standing, each nail technology salon shall operate in accordance with the following requirements:

(1) The nail technology salon shall at all times comply with all applicable provisions of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act and all rules and regulations adopted and promulgated under such act;

(2) The nail technology salon owner or his or her agent shall notify the department at least thirty days prior to any change of ownership, name, or address, and at least one week prior to closure, except in emergency circumstances as determined by the department;

(3) No nail technology salon shall permit any unlicensed person to perform any of the practices of nail technology within its confines or employment;

(4) The nail technology salon shall display a name upon, over, or near the entrance door distinguishing it as a nail technology salon;

(5) The nail technology salon shall permit any duly authorized agent of the department to conduct an operation inspection or investigation at any time during the normal operating hours of the nail technology salon, without prior notice, and the owner and manager shall assist the inspector by providing access to all areas of the nail technology salon, all personnel, and all records requested by the inspector;

(6) The nail technology salon shall display in a conspicuous place the following records:

(a) The current license or certificate of consideration to operate a nail technology salon;

(b) The current licenses of all persons licensed under the act who are employed by or working in the nail technology salon; and

(c) The rating sheet from the most recent operation inspection;

(7) At no time shall a nail technology salon employ more employees than permitted by the square footage requirements of the act; and

(8) The nail technology salon shall not knowingly permit its employees to use or consume intoxicating beverages upon its premises.

Source: Laws 1999, LB 68, § 62; R.S.1943, (2003), § 71-3,213; Laws 2007, LB463, § 404; Laws 2018, LB731, § 51.

38-10,147 Nail technology school; license; requirements.

In order to be licensed as a nail technology school by the department, an applicant shall meet, and present to the department evidence of meeting, the following requirements:

(1) The proposed school shall be a fixed, permanent structure or part of one;

(2) The proposed school shall have a contracted enrollment of students;

(3) The proposed school shall contain at least five hundred square feet of floor space and facilities, staff, apparatus, and equipment appropriate to its projected enrollment in accordance with the standards established by rule and regulation; and

(4) The proposed school shall not have the same entrance as or direct access to a cosmetology salon or nail technology salon.

Source: Laws 1999, LB 68, § 67; R.S.1943, (2003), § 71-3,218; Laws 2007, LB463, § 409; Laws 2018, LB731, § 52.

38-10,150 Nail technology school; license; application; requirements.

Along with the application, an applicant for a license to operate a nail technology school shall submit:

(1) A detailed floor plan or blueprint of the proposed school building sufficient to show compliance with the relevant rules and regulations;

(2) Evidence of minimal property damage, personal injury, and liability insurance coverage for the proposed school;

(3) A copy of the curriculum to be taught for all courses;

(4) A copy of the school catalog, handbook, or policies and the student contract; and

(5) A list of the names and credentials of all persons licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to be employed by the school.

A nail technology school's license shall be valid only for the location named in the application. When a school desires to change locations, it shall comply with section 38-10,158.

Source: Laws 1999, LB 68, § 70; Laws 2003, LB 242, § 95; R.S.1943, (2003), § 71-3,221; Laws 2007, LB463, § 412; Laws 2018, LB731, § 53.

38-10,152 Nail technology school; operating requirements.

In order to maintain its license in good standing, each nail technology school shall operate in accordance with the following requirements:

(1) The school shall at all times comply with all applicable provisions of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act and all rules and regulations adopted and promulgated under such act;

(2) The school owner or owners or their authorized agent shall notify the department at least thirty days prior to any change of ownership, name, or address, and at least sixty days prior to closure, except in emergency circumstances as determined by the department;

(3) No school shall permit anyone other than a nail technology student, nail technology student instructor, or nail technology instructor to perform any of the practices of nail technology within its confines or employment, except that such restriction shall not prevent a school from inviting guest educators who are not licensed to provide education to students or student instructors if the guest educator does not perform any of the practices of nail technology;

(4) The school shall display a name upon or near the entrance door designating it as a nail technology school;

(5) The school shall display in a conspicuous place within the clinic area a sign reading: All services in this school are performed by students who are training in nail technology. A notice to such effect shall also appear in all advertising conducted by the school for its clinic services;

(6) The school shall permit any duly authorized agent of the department to conduct an operation inspection or investigation at any time during the normal operating hours of the school without prior notice, and the owner or manager shall assist the inspector by providing access to all areas of the school, all personnel, and all records requested by the inspector;

(7) The school shall display in a conspicuous place the following records:

(a) The current license to operate a nail technology school;

(b) The current licenses of all persons licensed under the act, except students, employed by or working in the school; and

(c) The rating sheet from the most recent accreditation inspection;

(8) At no time shall a school enroll more students than permitted by the act or the rules and regulations adopted and promulgated under the act;

(9) The school shall not knowingly permit its students, employees, or clients to use, consume, serve, or in any other manner possess or distribute intoxicating beverages or controlled substances upon its premises;

(10) No nail technology instructor or nail technology student instructor shall perform, and no school shall permit such person to perform, any of the practices of nail technology on the public in a nail technology school other than that part of the practical work which pertains directly to the teaching of practical subjects to nail technology students or nail technology student instructors, and complete nail technology services shall not be provided for a client unless done in a demonstration class of theoretical or practical studies;

(11) The school shall maintain space, staff, library, teaching apparatus, and equipment as established by rules and regulations adopted and promulgated under the act;

(12) The school shall keep a daily record of the attendance and clinical performance of each student and student instructor;

(13) The school shall maintain regular class and instructor hours and shall require the minimum curriculum;

(14) The school shall establish and maintain criteria and standards for student grading, evaluation, and performance and shall award a certificate or diploma to a student only upon completing a full course of study in compliance with such standards, except that no student shall receive such certificate or diploma until he or she has satisfied or made an agreement with the school to satisfy all outstanding financial obligations to the school;

(15) The school shall maintain on file the enrollment of each student; and

(16) The school shall print and provide to each student a copy of the school rules, which shall not be inconsistent with the act or with the rules and regulations adopted and promulgated under such act and which shall include policies of the school with respect to tuition, reimbursement, conduct, attendance, grading, earning of hours and credits, demerits, penalties, dismissal, graduation requirements, dress, and other information sufficient to advise the student of the standards he or she will be required to maintain. The department may review any school's rules to determine their consistency with the intent and content of the act and the rules and regulations and may overturn any school rules found not to be in accord.

Source: Laws 1999, LB 68, § 72; R.S.1943, (2003), § 71-3,223; Laws 2007, LB463, § 414; Laws 2018, LB731, § 54.

38-10,153 Nail technology school; students; requirements.

In order to maintain its license in good standing, each nail technology school shall operate in accordance with the following requirements:

(1) Every person accepted for enrollment as a standard student shall meet the following qualifications:

(a) He or she has attained the age of seventeen years on or before the date of his or her enrollment in a nail technology school;

(b) He or she has completed the equivalent of a high school education; and

(c) He or she has not undertaken any training in nail technology in this state after January 1, 2000, without being enrolled as a nail technology student;

(2)(a) Every person accepted for enrollment as a special study nail technology student shall meet the following requirements:

(i) He or she has attained the age of seventeen years on or before the date of enrollment in a nail technology school;

(ii) He or she has completed the tenth grade; and

(iii) He or she is actively continuing his or her formal high school education on a full-time basis as determined by the department.

(b) Special study nail technology students shall be limited to attending a nail technology school for no more than eight hours per week during the school year;

(3) No nail technology school shall accept an individual for enrollment who does not provide evidence of meeting the age and education requirements;

(4) Every person accepted for enrollment as a nail technology student instructor shall show evidence of current licensure as a nail technician in Nebraska and completion of formal education equivalent to a United States high school education;

(5) The school shall, at all times the school is in operation, have at least one nail technology instructor in the school for each twenty students or fraction thereof enrolled in the school;

(6) The school shall not permit any nail technology student to render clinical services on members of the public with or without fees until such student has satisfactorily completed the beginning curriculum, except that the department may establish guidelines by which it may approve such practices as part of the beginning curriculum;

(7) No school shall pay direct compensation to any of its nail technology students. Nail technology student instructors may be paid as determined by the school;

(8) All nail technology students and nail technology student instructors shall be under the supervision of a cosmetology instructor, nail technology instructor, or nail technology student instructor at all times when nail technology services are being taught or performed;

(9) No student shall be permitted by the school to train or work in a school in any manner for more than ten hours a day; and

(10) The school shall not credit a nail technology student or nail technology student instructor with hours except when such hours were earned in the study or practice of nail technology in accordance with the required curriculum. Hours shall be credited on a daily basis. Once credited, hours cannot be removed or disallowed except by the department upon a finding that the hours have been wrongfully allowed.

Source: Laws 1999, LB 68, § 73; Laws 2001, LB 209, § 17; R.S.1943, (2003), § 71-3,224; Laws 2007, LB463, § 415; Laws 2018, LB731, § 55.

38-10,154 Nail technology school; transfer of students.

Nail technology students or nail technology student instructors may transfer from one nail technology school to another school at any time.

The school to which the student is transferring shall be entitled to receive from the student's previous school, upon request, any and all records pertaining

to the student after all financial obligations of the student to the previous school are met.

Source: Laws 1999, LB 68, § 74; R.S.1943, (2003), § 71-3,225; Laws 2007, LB463, § 416; Laws 2018, LB731, § 56.

38-10,155 Repealed. Laws 2018, LB731, § 106.

38-10,156 Nail technology school; student instructor limit.

No nail technology school shall at any time enroll more than two nail technology student instructors for each full-time nail technology instructor or cosmetology instructor actively working in and employed by the school.

Source: Laws 1999, LB 68, § 76; R.S.1943, (2003), § 71-3,227; Laws 2007, LB463, § 418; Laws 2018, LB731, § 57.

38-10,158.01 Mobile nail technology salon; license; requirements.

In order to be licensed as a mobile nail technology salon by the department, an applicant shall meet, and present to the department evidence of meeting, the following requirements:

(1) The proposed salon is a self-contained, self-supporting, enclosed mobile unit;

(2)(a)(i) The mobile unit has a global positioning system tracking device that enables the department to track the location of the salon over the Internet;

(ii) The device is on board the mobile unit and functioning at all times the salon is in operation or open for business; and

(iii) The owner of the salon provides the department with all information necessary to track the salon over the Internet; or

(b) The owner of the salon submits to the department, in a manner specified by the department, a weekly itinerary showing the dates, exact locations, and times that nail technology services are scheduled to be provided. The owner shall submit the itinerary not less than seven calendar days prior to the beginning of the service described in the itinerary and shall submit to the department any changes in the itinerary not less than twenty-four hours prior to the change. A salon shall follow the itinerary in providing service and notify the department of any changes;

(3) The salon has insurance coverage which meets the requirements of the department for the mobile unit;

(4) The salon is clearly identified as such to the public by a sign;

(5) The salon complies with the sanitary requirements of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act;

(6) The entrance into the proposed salon used by the general public provides safe access by the public;

(7) The proposed salon has at least one hundred fifty square feet of floor space. If more than one practitioner is to be employed in the salon at the same time, the salon shall contain an additional space of at least fifty square feet for each additional practitioner; and

(8) The proposed salon includes a functional sink and toilet facilities and maintains an adequate supply of clean water and wastewater storage capacity.

Source: Laws 2018, LB731, § 58.

38-10,158.02 Mobile nail technology salon license; application.

Any person seeking a license to operate a mobile nail technology salon shall submit a completed application to the department, and along with the application, the applicant shall submit a detailed floor plan or blueprint of the proposed salon sufficient to demonstrate compliance with the requirements of section 38-10,158.01.

Source: Laws 2018, LB731, § 59.

38-10,158.03 Mobile nail technology salon; application; review; denial; inspection.

Each application for a license to operate a mobile nail technology salon shall be reviewed by the department for compliance with the requirements of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act. If an application is denied, the applicant shall be informed in writing of the grounds for denial, and such denial shall not prejudice future applications by the applicant. If an application is approved, the department shall issue the applicant a certificate of consideration to operate a mobile nail technology salon pending an operation inspection. The department shall conduct an operation inspection of each salon issued a certificate of consideration within six months after the issuance of such certificate. A salon which passes the inspection shall be issued a permanent license. A salon which fails the inspection shall submit within fifteen days evidence of corrective action taken to improve those aspects of operation found deficient. If evidence is not submitted within fifteen days or if after a second inspection the salon does not receive a satisfactory rating, it shall immediately relinquish its certificate of consideration and cease operation.

Source: Laws 2018, LB731, § 60.

38-10,158.04 Mobile nail technology salon; operating requirements.

In order to maintain its license in good standing, each mobile nail technology salon shall operate in accordance with the following requirements:

(1) The salon shall at all times comply with all applicable provisions of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act and all rules and regulations adopted and promulgated under the act;

(2) The salon owner or his or her agent shall notify the department of any change of ownership, name, or office address and if a salon is permanently closed;

(3) No salon shall permit any unlicensed person to perform any of the practices of nail technology within its confines or employment;

(4) The salon shall display a name upon, over, or near the entrance door distinguishing it as a salon;

(5) The salon shall permit any duly authorized agent of the department to conduct an operation inspection or investigation at any time during the normal operating hours of the salon, without prior notice, and the owner and manager shall assist the inspector by providing access to all areas of the salon, all personnel, and all records requested by the inspector;

(6) The salon shall display in a conspicuous place the following records:

(a) The current license or certificate of consideration to operate a salon;

(b) The current licenses of all persons licensed under the act who are employed by or working in the salon; and

(c) The rating sheet from the most recent operation inspection;

(7) At no time shall a salon employ more employees than permitted by the square footage requirements of the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act;

(8) No nail technology services may be performed in a salon while the salon is moving. The salon must be safely and legally parked in a legal parking space at all times while clients are present inside the salon. A salon shall not park or conduct business within three hundred feet of another licensed nail technology establishment. The department is not responsible for monitoring for enforcement of this subdivision but may discipline a license for a reported and verified violation;

(9) The owner of the salon shall maintain a permanent business address at which correspondence from the department may be received and records of appointments, license numbers, and vehicle identification numbers shall be kept for each salon being operated by the owner. The owner shall make such records available for verification and inspection by the department; and

(10) The salon shall not knowingly permit its employees or clients to use, consume, serve, or in any manner possess or distribute intoxicating beverages or controlled substances upon its premises.

Source: Laws 2018, LB731, § 61.

38-10,158.05 Mobile nail technology salon license; renewal.

The procedure for renewing a mobile nail technology salon license shall be in accordance with section 38-143, except that in addition to all other requirements, the salon shall submit evidence of minimal property damage, bodily injury, and liability insurance coverage for the salon and evidence of coverage which meets the requirements of the Motor Vehicle Registration Act for the salon.

Source: Laws 2018, LB731, § 62.

Cross References

Motor Vehicle Registration Act, see section 60-301.

38-10,158.06 Mobile nail technology salon license; revocation or expiration; effect.

The license of a mobile nail technology salon that has been revoked or expired for any reason shall not be reinstated. An original application for licensure shall be submitted and approved before such salon may reopen for business.

Source: Laws 2018, LB731, § 63.

38-10,158.07 Mobile nail technology salon license; change of ownership or mobile unit; effect.

Each mobile nail technology salon license issued shall be in effect solely for the owner or owners and the mobile unit named thereon and shall expire automatically upon any change of ownership or mobile unit. An original

application for licensure shall be submitted and approved before such salon may reopen for business.

Source: Laws 2018, LB731, § 64.

38-10,158.08 Mobile nail technology salon; owner liability.

The owner of each mobile nail technology salon shall have full responsibility for ensuring that the salon is operated in compliance with all applicable laws, rules, and regulations and shall be liable for any and all violations occurring in the salon.

Source: Laws 2018, LB731, § 65.

38-10,160 Nail technology home services permit; salon operating requirements.

In order to maintain in good standing or renew its nail technology home services permit, a nail technology salon shall at all times operate in accordance with all requirements for operation, maintain its license in good standing, and comply with the following requirements:

(1)(a) Clients receiving nail technology home services shall be in emergency or persistent circumstances which shall generally be defined as any condition sufficiently immobilizing to prevent the client from leaving his or her residence regularly to conduct routine affairs of daily living such as grocery shopping, visiting friends and relatives, attending social events, attending worship services, and other similar activities.

(b) Emergency or persistent circumstances may include such conditions or situations as:

(i) Chronic illness or injury leaving the client bedridden or with severely restricted mobility;

(ii) Extreme general infirmity such as that associated with the aging process;

(iii) Temporary conditions including, but not limited to, immobilizing injury and recuperation from serious illness or surgery;

(iv) Having sole responsibility for the care of an invalid dependent or a mentally disabled person requiring constant attention;

(v) Mental disability that significantly limits the client in areas of functioning described in subdivision (1)(a) of this section; or

(vi) Any other conditions that, in the opinion of the department, meet the general definition of emergency or persistent circumstances;

(2) The nail technology salon shall determine that each person receiving nail technology home services meets the requirements of subdivision (1) of this section and shall:

(a) Complete a client information form supplied by the department before nail technology home services may be provided to any client; and

(b) Keep on file the client information forms of all clients it is currently providing with nail technology home services or to whom it has provided such services within the past two years;

(3) The nail technology salon shall employ or contract with persons licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act to provide nail technology home services and shall not permit any

person to perform any home services under its authority for which he or she is not licensed;

(4) No client shall be left unattended while any chemical service is in progress or while any electrical appliance is in use; and

(5) Each nail technology salon providing nail technology home services shall post a daily itinerary for each licensee providing home services. The kit for each licensee shall be available for inspection at the salon or at the home of the client receiving services.

Source: Laws 1999, LB 68, § 80; R.S.1943, (2003), § 71-3,231; Laws 2007, LB463, § 422; Laws 2020, LB755, § 2.

38-10,171 Unprofessional conduct; acts enumerated.

Each of the following may be considered an act of unprofessional conduct when committed by a person licensed under the Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act:

(1) Performing any of the practices regulated under the act for which an individual is not licensed or operating an establishment or facility without the appropriate license;

(2) Obstructing, interfering, or failing to cooperate with an inspection or investigation conducted by an authorized representative of the department when acting in accordance with the act;

(3) Failing to report to the department a suspected violation of the act;

(4) Aiding and abetting an individual to practice any of the practices regulated under the act for which he or she is not licensed;

(5) Engaging in any of the practices regulated under the act for compensation in an unauthorized location;

(6) Engaging in the practice of any healing art or profession for which a license is required without holding such a license;

(7) Enrolling a student or an apprentice without obtaining the appropriate documents prior to enrollment;

(8) Knowingly falsifying any student or apprentice record or report;

(9) Initiating or continuing home services to a client who does not meet the criteria established in the act;

(10) Knowingly issuing a certificate of completion or diploma to a student or an apprentice who has not completed all requirements for the issuance of such document;

(11) Failing, by a school of cosmetology, a nail technology school, a school of esthetics, or an apprentice salon, to follow its published rules;

(12) Violating, by a school of cosmetology, nail technology school, or school of esthetics, any federal or state law involving the operation of a vocational school or violating any federal or state law involving participation in any federal or state loan or grant program;

(13) Knowingly permitting any person under supervision to violate any law, rule, or regulation or knowingly permitting any establishment or facility under supervision to operate in violation of any law, rule, or regulation;

(14) Receiving two unsatisfactory inspection reports within any sixty-day period;

(15) Engaging in any of the practices regulated under the act while afflicted with any active case of a serious contagious disease, infection, or infestation, as determined by the department, or in any other circumstances when such practice might be harmful to the health or safety of clients;

(16) Violating any rule or regulation relating to the practice of body art; and

(17) Performing body art on or to any person under eighteen years of age (a) without the prior written consent of the parent or court-appointed guardian of such person, (b) without the presence of such parent or guardian during the procedure, or (c) without retaining a copy of such consent for a period of five years.

Source: Laws 1986, LB 318, § 138; Laws 1995, LB 83, § 54; Laws 1999, LB 68, § 88; Laws 2002, LB 241, § 49; Laws 2004, LB 906, § 32; Laws 2004, LB 1005, § 39; R.S.Supp.,2006, § 71-3,177; Laws 2007, LB463, § 433; Laws 2018, LB731, § 66.

38-10,172 Scleral tattooing; prohibited acts; civil penalty.

(1) For purposes of this section, scleral tattooing means the practice of using needles, scalpels, or other related equipment to produce an indelible mark or figure on the human eye by scarring or inserting a pigment on, in, or under:

(a) The fornix conjunctiva;

(b) The bulbar conjunctiva;

(c) The ocular conjunctiva; or

(d) Another ocular surface.

(2) Except as provided in subsection (3) of this section, a person shall not perform or offer to perform scleral tattooing on another person.

(3) This section does not apply to a person licensed to practice medicine and surgery or osteopathic medicine and surgery pursuant to the Uniform Credentialing Act when the licensee is performing a procedure within the scope of her or his practice.

(4) In addition to the remedies authorized in section 38-140 or 38-1,124, a person who performs scleral tattooing without being authorized to do so under the Uniform Credentialing Act shall be subject to a civil penalty not to exceed ten thousand dollars for each violation. If a violation continues after notification, this constitutes a separate offense. The civil penalties shall be assessed in a civil action brought for such purpose by the Attorney General in the district court of the county in which the violation occurred. Any civil penalty assessed and unpaid under this section shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in any proper form of action in the name of the State of Nebraska in the district court of the county in which the violator resides or owns property. The department may also collect in such action attorney's fees and costs incurred in the collection of the civil penalty. The department shall, within thirty days after receipt, transmit any collected civil penalty to the State Treasurer to be disposed of in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 2019, LB449, § 4.

ARTICLE 11
DENTISTRY PRACTICE ACT

Section

38-1101 Act, how cited.

Sections 38-1101 to 38-1152 shall be known and may be cited as the Dentistry Practice Act.

Source: Laws 2007, LB463, § 434; Laws 2015, LB80, § 1; Laws 2017, LB18, § 1.

38-1102 Definitions, where found.

For purposes of the Dentistry Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-1102.01 to 38-1113 apply.

Source: Laws 2007, LB463, § 435; Laws 2015, LB80, § 2; Laws 2017, LB18, § 2.

38-1102.01 Accredited dental assisting program, defined.

Accredited dental assisting program means a program that is accredited by the American Dental Association Commission on Dental Accreditation, which is an agency recognized by the United States Department of Education as an

accrediting body, that is within a school or college approved by the board, and that requires a dental assisting curriculum of not less than one academic year.

Source: Laws 2017, LB18, § 3.

38-1107 Dental assistant, defined.

Dental assistant means a person who does not hold a license under the Dentistry Practice Act and who is employed for the purpose of assisting a licensed dentist in the performance of his or her clinical and clinical-related duties as described in section 38-1135.

Source: Laws 1986, LB 267, § 1; Laws 1999, LB 800, § 2; Laws 2001, LB 209, § 4; Laws 2002, LB 1062, § 14; R.S.1943, (2003), § 71-183.02; Laws 2007, LB463, § 440; Laws 2017, LB18, § 4.

38-1107.01 Expanded function dental assistant, defined.

Expanded function dental assistant means a licensed dental assistant who has met the requirements to practice as an expanded function dental assistant pursuant to section 38-1118.03.

Source: Laws 2017, LB18, § 6.

38-1107.02 Expanded function dental hygienist, defined.

Expanded function dental hygienist means a licensed dental hygienist who has met the requirements to practice as an expanded function dental hygienist pursuant to section 38-1118.01.

Source: Laws 2017, LB18, § 8.

38-1111.01 Licensed dental assistant, defined.

Licensed dental assistant means a dental assistant who holds a license to practice as a dental assistant under the Dentistry Practice Act.

Source: Laws 2017, LB18, § 5.

38-1111.02 Licensed dental hygienist, defined.

Licensed dental hygienist means a person who holds a license to practice dental hygiene under the Dentistry Practice Act.

Source: Laws 2017, LB18, § 7.

38-1116 Dentistry practice; exceptions.

The Dentistry Practice Act shall not require licensure as a dentist under the act for:

(1) The practice of his or her profession by a physician or surgeon licensed as such under the laws of this state unless he or she practices dentistry as a specialty;

(2) The giving by a qualified anesthetist or registered nurse of an anesthetic for a dental operation under the direct supervision of a licensed dentist or physician;

(3) The practice of dentistry by graduate dentists or dental surgeons who serve in the armed forces of the United States or the United States Public Health Service or who are employed by the United States Department of

Veterans Affairs or other federal agencies, if their practice is limited to that service or employment;

(4) The practice of dentistry by a licensed dentist of other states or countries at meetings of the Nebraska Dental Association or components thereof, or other like dental organizations approved by the Board of Dentistry, while appearing as clinicians;

(5) The filling of work authorizations of a licensed and registered dentist as provided in this subdivision by any person or persons, association, corporation, or other entity for the construction, reproduction, or repair of prosthetic dentures, bridges, plates, or appliances to be used or worn as substitutes for natural teeth if such person or persons, association, corporation, or other entity does not solicit or advertise, directly or indirectly by mail, card, newspaper, pamphlet, radio, or otherwise, to the general public to construct, reproduce, or repair prosthetic dentures, bridges, plates, or other appliances to be used or worn as substitutes for natural teeth;

(6) The use of roentgen or X-ray machines or other rays for making radiograms or similar records of dental or oral tissues under the supervision of a licensed dentist or physician if such service is not advertised by any name whatever as an aid or inducement to secure dental patronage, and no person shall advertise that he or she has, leases, owns, or operates a roentgen or X-ray machine for the purpose of making dental radiograms of the human teeth or tissues or the oral cavity or administering treatment thereto for any disease thereof;

(7) The performance by a licensed dental hygienist, under the supervision of a licensed dentist, of the oral prophylaxis procedure which shall include the scaling and polishing of teeth and such additional procedures as are prescribed in accordance with rules and regulations adopted by the department;

(8) The performance, under the supervision of a licensed dentist, by a dental assistant, a licensed dental assistant, or an expanded function dental assistant, of duties prescribed in accordance with rules and regulations adopted by the department;

(9) The performance by a licensed dental hygienist or an expanded function dental hygienist, by virtue of training and professional ability, under the supervision of a licensed dentist, of taking dental roentgenograms. Any other person is hereby authorized, under the supervision of a licensed dentist, to take dental roentgenograms but shall not be authorized to do so until he or she has satisfactorily completed a course in dental radiology recommended by the board and approved by the department;

(10) Students of dentistry who practice dentistry upon patients in clinics in the regular course of instruction at an accredited school or college of dentistry;

(11) Licensed physicians and surgeons who extract teeth or treat diseases of the oral cavity, gums, teeth, or maxillary bones as an incident to the general practice of their profession;

(12) Dental hygiene students who practice dental hygiene or expanded function dental hygiene upon patients in clinics in the regular course of instruction at an accredited dental hygiene program. Such dental hygiene students are also not engaged in the unauthorized practice of dental hygiene or expanded function dental hygiene; or

(13) Dental assisting students who practice dental assisting or expanded function dental assisting upon patients in clinics in the regular course of instruction at an accredited dental assisting program. Such dental assisting students are also not engaged in the unauthorized practice of dental assisting, expanded function dental assisting, dental hygiene, or expanded function dental hygiene.

Source: Laws 1951, c. 226, § 2, p. 823; Laws 1951, c. 227, § 2, p. 827; Laws 1971, LB 587, § 11; Laws 1984, LB 470, § 5; Laws 1991, LB 2, § 10; Laws 1996, LB 1044, § 407; Laws 1999, LB 800, § 1; Laws 1999, LB 828, § 68; Laws 2005, LB 89, § 1; R.S.Supp.,2006, § 71-183.01; Laws 2007, LB463, § 449; Laws 2017, LB18, § 9.

38-1118.01 Expanded function dental hygiene; application for permit; qualifications.

(1) Every applicant for a permit to practice expanded function dental hygiene shall (a) present proof of current, valid licensure under the Dentistry Practice Act as a licensed dental hygienist at the time of application, (b) present proof of at least one thousand five hundred hours of experience as a licensed dental hygienist, (c) present proof of successful completion of courses and examinations in expanded function dental hygiene approved by the board, (d) pass a jurisprudence examination approved by the board that is based on the Nebraska statutes, rules, and regulations governing the practice of expanded function dental hygiene, and (e) complete continuing education as a condition of the permit if required by the board.

(2) Upon completion of these requirements, the department, with the recommendation of the board, shall issue the applicant the applicable permit to practice expanded function dental hygiene.

Source: Laws 2017, LB18, § 10.

38-1118.02 Licensed dental assistant; application for license; qualifications.

(1) Every applicant for a license to practice as a licensed dental assistant shall (a) have a high school diploma or its equivalent, (b) present proof of (i) graduation from an accredited dental assisting program or (ii) a minimum of one thousand five hundred hours of experience as a dental assistant during the five-year period prior to the application for a license, (c) pass the examination to become a certified dental assistant administered by the Dental Assisting National Board or an equivalent examination approved by the Board of Dentistry, (d) pass a jurisprudence examination approved by the board that is based on the Nebraska statutes, rules, and regulations governing the practice of dental assisting, and (e) complete continuing education as a condition of licensure if required by the board.

(2) Upon completion of these requirements, the department, with the recommendation of the board, shall issue the applicant a license to practice as a licensed dental assistant.

Source: Laws 2017, LB18, § 11.

38-1118.03 Expanded function dental assistant; application for permit; qualifications.

(1) Every applicant for a permit to practice as an expanded function dental assistant shall (a) present proof of current, valid licensure under the Dentistry Practice Act as a licensed dental assistant at the time of application, (b) present proof of at least one thousand five hundred hours of experience as a licensed dental assistant, (c) present proof of successful completion of courses and examinations in expanded function dental assisting approved by the board, (d) pass a jurisprudence examination approved by the board that is based on the Nebraska statutes, rules, and regulations governing the practice of expanded function dental assisting, and (e) complete continuing education as a condition of the permit if required by the board.

(2) Upon completion of these requirements, the department, with the recommendation of the board, shall issue the applicant the applicable permit to practice as an expanded function dental assistant.

Source: Laws 2017, LB18, § 12.

38-1119 Reexamination; requirements.

Any person who applies for a license to practice dentistry, dental hygiene, or dental assisting and who has failed on two occasions to pass any part of the practical examination shall be required to complete a course in clinical dentistry, dental hygiene, or dental assisting approved by the board before the department may consider the results of a third examination as a valid qualification for a license to practice dentistry, dental hygiene, or dental assisting in the State of Nebraska.

Source: Laws 2007, LB463, § 452; Laws 2017, LB18, § 13.

38-1121 Dental hygienist; licensed dental assistant; reciprocity; requirements; military license; temporary license.

(1) Every applicant for a license to practice dental hygiene based on a license in another state or territory of the United States or the District of Columbia shall meet the standards set by the board pursuant to section 38-126 and shall have been actively engaged in the practice of dental hygiene for at least three years, one of which must be within the three years immediately preceding the application, under a license in another state or territory of the United States or the District of Columbia. Practice in an accredited dental hygiene program for the purpose of completing a postgraduate or residency program in dental hygiene also serves as active practice toward meeting this requirement.

(2) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.

(3) Every applicant for a license to practice as a licensed dental assistant based on a license in another state or territory of the United States or the District of Columbia shall meet the standards set by the board pursuant to section 38-126 and shall have been actively engaged in practice as a licensed dental assistant for at least three years, one of which must be within the three years immediately preceding the application, under a license in another state or territory of the United States or the District of Columbia. Practice in an accredited dental assisting program for the purpose of completing a postgradu-

ate or residency program in dental assisting also serves as active practice toward meeting this requirement.

Source: Laws 2007, LB463, § 454; Laws 2017, LB18, § 14; Laws 2017, LB88, § 47.

38-1123 Dentist; resident license; requirements; term; renewal.

(1) The department, with the recommendation of the board, shall issue a resident license to any person who (a)(i) presents proof of graduation with a doctorate degree in dental surgery or dental medicine from an accredited school or college of dentistry, (ii) is enrolled in an accredited school or college of dentistry for the purpose of completing a postgraduate or residency program in dentistry, (iii) passes an examination approved by the board, which shall consist of the National Board Dental Examination, Parts I and II, or the Integrated National Board Dental Examination, as constructed and administered by the American Dental Association Joint Commission on National Dental Examinations, (iv) passes the practical examination administered by the Central Regional Dental Testing Service, ADEX, or any other regional or state practical examination approved by the board, and (v) passes a jurisprudence examination based on Nebraska law and administrative rules and regulations governing the practice of dentistry and dental hygiene, or (b)(i) is licensed in another jurisdiction under conditions which the board finds equivalent to the requirements of the State of Nebraska for obtaining a license to practice dentistry and (ii) passes a jurisprudence examination based on Nebraska law and administrative rules and regulations governing the practice of dentistry and dental hygiene.

(2) An accredited school or college of dentistry shall provide input to the board annually for purposes of approving regional or state practical examinations.

(3) Any person who desires a resident license shall make application to the department. Such application shall be accompanied by the required fee.

(4) The resident license shall be issued for a period of one year and, upon application to the department, renewed annually without the licensee having to pay a renewal fee.

(5) The resident licensee shall be entitled to practice dentistry, including prescribing legend drugs and controlled substances, only under the auspices of the postgraduate or residency program in which he or she is enrolled.

(6) An applicant who is licensed pursuant to this section and has completed a postgraduate or residency program in dentistry at an accredited school or college of dentistry shall have demonstrated the applicant's skill in clinical dentistry for purposes of section 38-1117.

Source: Laws 1988, LB 1100, § 31; Laws 1999, LB 828, § 71; Laws 2003, LB 242, § 35; R.S.1943, (2003), § 71-185.02; Laws 2007, LB463, § 456; Laws 2024, LB834, § 2.
Effective date July 19, 2024.

38-1124 Faculty license; practice; limitations; requirements; renewal; continuing competency.

(1) The department, with the recommendation of the board, shall issue a faculty license to any person who meets the requirements of subsection (3) or

(4) of this section. A faculty licensee may practice dentistry as a faculty member at an accredited school or college of dentistry in the State of Nebraska. A faculty licensee may also teach dentistry, conduct research, and participate in an institutionally administered faculty practice. A faculty licensee eligible for licensure under subsection (4) of this section shall limit practice under such license to the clinical disciplines in which the licensee has received education at an accredited school or college of dentistry or, with the approval of the board, the clinical disciplines in which the licensee has practiced under a license, including a faculty license or teaching permit, to practice dentistry within the past three years in another jurisdiction.

(2) Any person who desires a faculty license shall make a written application to the department. The application shall include information regarding the applicant's professional qualifications, experience, and licensure. The application shall be accompanied by a copy of the applicant's dental degree, any other degrees or certificates for postgraduate education of the applicant, the required fee, and certification from the dean of an accredited school or college of dentistry in the State of Nebraska at which the applicant has a contract to be employed as a full-time faculty member.

(3) An individual who graduated from an accredited school or college of dentistry shall be eligible for a faculty license if the individual:

(a) Has or had a license, including a faculty license or teaching permit, to practice dentistry within the past three years in another jurisdiction; and

(b) Passes a jurisprudence examination administered by the board.

(4) An individual who graduated from a nonaccredited school or college of dentistry shall be eligible for a faculty license if the individual:

(a)(i) Has or had a license, including a faculty license or teaching permit, to practice dentistry within the past three years in another jurisdiction;

(ii) Has completed at least two years of postgraduate education at an accredited school or college of dentistry recognized by the national commission and received a certificate or degree from such school or college of dentistry; or

(iii) Has additional education in dentistry at an accredited school or college of dentistry that is determined by the board to be equivalent to a program recognized by the national commission, including, but not limited to, a postgraduate certificate or degree in operative dentistry;

(b) Passes a jurisprudence examination administered by the board; and

(c) Has passed at least one of the following:

(i) Part I and Part II of the National Board Dental Examinations administered by the joint commission;

(ii) The Integrated National Board Dental Examination administered by the joint commission;

(iii) A specialty board examination recognized by the national commission;

(iv) An examination administered by the National Dental Examining Board of Canada; or

(v) An equivalent examination as determined by the Board of Dentistry.

(5) A faculty license shall expire at the same time and be subject to the same renewal requirements as a regular dental license, except that such license shall remain valid and may only be renewed if the faculty licensee completes continuing education as required by the rules and regulations adopted and

promulgated under the Dentistry Practice Act and demonstrates continued employment at an accredited school or college of dentistry in the State of Nebraska.

(6) In order for an applicant to qualify for a faculty license pursuant to subdivision (4)(a)(iii) of this section, the applicant shall present, for review and approval by the board, a portfolio which includes, but is not limited to, academic achievements, credentials and certifications, letters of recommendation, and a list of publications.

(7) For purposes of this section:

(a) Another jurisdiction means some other state in the United States, a territory or jurisdiction of the United States, or a Canadian province;

(b) Joint commission means the American Dental Association Joint Commission on National Dental Examinations; and

(c) National commission means the National Commission on Recognition of Dental Specialties and Certifying Boards.

Source: Laws 2002, LB 1062, § 16; Laws 2003, LB 242, § 36; Laws 2004, LB 1005, § 11; R.S.Supp.,2006, § 71-185.03; Laws 2007, LB463, § 457; Laws 2021, LB628, § 1.

38-1127.01 Expanded function dental assistant; expanded function dental hygienist; display of permit.

Every person who owns, operates, or controls a facility in which an expanded function dental assistant or an expanded function dental hygienist is practicing shall display the permit of such person issued by the board for expanded functions in a conspicuous place in such facility.

Source: Laws 2017, LB18, § 15.

38-1130 Licensed dental hygienist; functions authorized; when; department; duties; Health and Human Services Committee; report; hearing.

(1) Except as otherwise provided in this section, a licensed dental hygienist shall perform the dental hygiene functions listed in section 38-1131 only when authorized to do so by a licensed dentist who shall be responsible for the total oral health care of the patient.

(2) The department may authorize a licensed dental hygienist to perform the following functions in the conduct of public health-related services in a public health setting or in a health care or related facility: Preliminary charting and screening examinations; oral health education, including workshops and in-service training sessions on dental health; and all of the duties that a dental assistant who is not licensed is authorized to perform.

(3)(a) Except for periodontal scaling, root planing, and the administration of local anesthesia and nitrous oxide, the department may authorize a licensed dental hygienist to perform all of the authorized functions within the scope of practice of a licensed dental hygienist in the conduct of public health-related services in a public health setting or in a health care or related facility. In addition, the department may authorize a licensed dental hygienist to perform the following functions in such a setting or facility or for such a patient:

(i) Upon completion of education and testing approved by the board, writing prescriptions for mouth rinses and fluoride products that help decrease risk for tooth decay; and

(ii) Upon completion of education and testing approved by the board, minor denture adjustments.

(b) Authorization shall be granted by the department under this subsection upon (i) filing an application with the department and (ii) providing evidence of current licensure and professional liability insurance coverage. Authorization may be limited by the department as necessary to protect the public health and safety upon good cause shown and may be renewed in connection with renewal of the licensed dental hygienist's license.

(c) A licensed dental hygienist performing dental hygiene functions as authorized under this subsection shall (i) report authorized functions performed by him or her to the department on a form developed and provided by the department and (ii) advise the patient or recipient of services or his or her authorized representative that such services are preventive in nature and do not constitute a comprehensive dental diagnosis and care.

(4) The department shall compile the data from the reports provided under subdivision (3)(c)(i) of this section and provide an annual report to the Board of Dentistry and the State Board of Health. The department shall annually evaluate the delivery of dental hygiene services in the state and, on or before September 15 of each year beginning in 2021, provide a report electronically to the Clerk of the Legislature regarding such evaluation. The Health and Human Services Committee of the Legislature shall hold a hearing at least once every three years to assess the reports submitted pursuant to this subsection.

(5) For purposes of this section:

(a) Health care or related facility means a hospital, a nursing facility, an assisted-living facility, a correctional facility, a tribal clinic, or a school-based preventive health program; and

(b) Public health setting means a federal, state, or local public health department or clinic, community health center, rural health clinic, or other similar program or agency that serves primarily public health care program recipients.

Source: Laws 1986, LB 572, § 2; Laws 1996, LB 1044, § 415; Laws 1999, LB 800, § 5; R.S.1943, (2003), § 71-193.15; Laws 2007, LB247, § 24; Laws 2007, LB296, § 328; Laws 2007, LB463, § 463; Laws 2013, LB484, § 1; Laws 2017, LB18, § 16; Laws 2020, LB312, § 1.

38-1131 Licensed dental hygienist; procedures and functions authorized; enumerated.

When authorized by and under the general supervision of a licensed dentist, a licensed dental hygienist may perform the following intra and extra oral procedures and functions:

(1) Oral prophylaxis, periodontal scaling, and root planing which includes supragingival and subgingival debridement;

(2) Polish all exposed tooth surfaces, including restorations;

(3) Conduct and assess preliminary charting, probing, screening examinations, and indexing of dental and periodontal disease, with referral, when appropriate, for a dental diagnosis by a licensed dentist;

(4) Brush biopsies;

(5) Pulp vitality testing;

(6) Gingival curettage;

(7) Removal of sutures;

(8) Preventive measures, including the application of fluorides, sealants, and other recognized topical agents for the prevention of oral disease;

(9) Impressions for study casts;

(10) Application of topical and subgingival agents;

(11) Radiographic exposures;

(12) Oral health education, including conducting workshops and inservice training sessions on dental health;

(13) Application or administration of antimicrobial rinses, fluorides, and other anticariogenic agents;

(14) Upon completion of education and testing approved by the board, interim therapeutic restoration technique; and

(15) All of the duties that a dental assistant who is not licensed is authorized to perform.

Upon completion of education and testing approved by the board and when authorized by and under the general supervision of a licensed dentist, a licensed dental hygienist may write prescriptions for mouth rinses and fluoride products that help decrease the risk for tooth decay.

Source: Laws 1986, LB 572, § 3; Laws 1999, LB 800, § 7; R.S.1943, (2003), § 71-193.17; Laws 2007, LB247, § 25; Laws 2007, LB463, § 464; Laws 2017, LB18, § 17.

38-1132 Licensed dental hygienist; activities related to analgesia authorized; administer local anesthesia; when.

(1)(a) A licensed dental hygienist may monitor nitrous oxide analgesia under the indirect supervision of a licensed dentist.

(b) Upon completion of education and testing approved by the board, a licensed dental hygienist may administer and titrate nitrous oxide analgesia under the indirect supervision of a licensed dentist.

(2) A licensed dental hygienist may be approved by the department, with the recommendation of the board, to administer local anesthesia under the indirect supervision of a licensed dentist. The board may prescribe by rule and regulation: The necessary education and preparation, which shall include, but not be limited to, instruction in the areas of head and neck anatomy, osteology, physiology, pharmacology, medical emergencies, and clinical techniques; the necessary clinical experience; and the necessary examination for purposes of determining the competence of licensed dental hygienists to administer local anesthesia. The board may approve successful completion after July 1, 1994, of a course of instruction to determine competence to administer local anesthesia. The course of instruction must be at an accredited school or college of dentistry or an accredited dental hygiene program. The course of instruction must be

taught by a faculty member or members of the school or college of dentistry or dental hygiene program presenting the course. The board may approve for purposes of this subsection a course of instruction if such course includes:

(a) At least twelve clock hours of classroom lecture, including instruction in (i) medical history evaluation procedures, (ii) anatomy of the head, neck, and oral cavity as it relates to administering local anesthetic agents, (iii) pharmacology of local anesthetic agents, vasoconstrictor, and preservatives, including physiologic actions, types of anesthetics, and maximum dose per weight, (iv) systemic conditions which influence selection and administration of anesthetic agents, (v) signs and symptoms of reactions to local anesthetic agents, including monitoring of vital signs, (vi) management of reactions to or complications associated with the administration of local anesthetic agents, (vii) selection and preparation of the armamentaria for administering various local anesthetic agents, and (viii) methods of administering local anesthetic agents;

(b) At least twelve clock hours of clinical instruction during which time at least three injections of each of the anterior, middle, and posterior superior alveolar, naso and greater palatine, inferior alveolar, lingual, mental, long buccal, and infiltration injections are administered; and

(c) Procedures, which shall include an examination, for purposes of determining whether the licensed dental hygienist has acquired the necessary knowledge and proficiency to administer local anesthetic agents.

Source: Laws 1986, LB 572, § 4; Laws 1995, LB 449, § 1; Laws 1996, LB 1044, § 416; Laws 1999, LB 800, § 8; Laws 1999, LB 828, § 75; Laws 2003, LB 242, § 37; R.S.1943, (2003), § 71-193.18; Laws 2007, LB296, § 329; Laws 2007, LB463, § 465; Laws 2017, LB18, § 18.

38-1135 Dental assistants, licensed dental assistants, and expanded function dental assistants; employment; duties performed; rules and regulations.

(1) Any licensed dentist, public institution, or school may employ dental assistants, licensed dental assistants, and expanded function dental assistants. Such dental assistants, under the supervision of a licensed dentist, may perform such duties as are prescribed in the Dentistry Practice Act in accordance with rules and regulations adopted and promulgated by the department, with the recommendation of the board.

(2) The department, with the recommendation of the board, shall adopt and promulgate rules and regulations pursuant to section 38-126 governing the performance of duties by dental assistants, licensed dental assistants, and expanded function dental assistants. The rules and regulations shall include the degree of supervision which must be provided by a licensed dentist and the education and proof of competency requirements that must be met for any procedures performed by a dental assistant, a licensed dental assistant, or an expanded function dental assistant.

(3) A dental assistant may perform duties delegated by a licensed dentist for the purpose of assisting the licensed dentist in the performance of the dentist's clinical and clinical-related duties as allowed in the rules and regulations adopted and promulgated under the Dentistry Practice Act.

(4) Under the indirect supervision of a licensed dentist, a dental assistant may (a) monitor nitrous oxide if the dental assistant has current and valid certifica-

tion for cardiopulmonary resuscitation approved by the board and (b) place topical local anesthesia.

(5) Upon completion of education and testing approved by the board, a dental assistant may:

(a) Take X-rays under the general supervision of a licensed dentist; and

(b) Perform coronal polishing under the indirect supervision of a licensed dentist.

(6) A licensed dental assistant may perform all procedures authorized for a dental assistant. Upon completion of education and testing approved by the board and with a permit from the department for the respective competency, a licensed dental assistant may, under the indirect supervision of a licensed dentist, (a) take dental impressions for fixed prostheses, (b) take dental impressions and make minor adjustments for removable prostheses, (c) cement prefabricated fixed prostheses on primary teeth, and (d) monitor and administer nitrous oxide analgesia.

(7) Upon completion of education and testing approved by the board and with a permit from the department for the respective competency, an expanded function dental assistant may, under the indirect supervision of a licensed dentist, place (a) restorative level one simple restorations (one surface) and (b) restorative level two complex restorations (multiple surfaces).

(8) A dental assistant may be a graduate of an accredited dental assisting program or may be trained on the job.

(9) No person shall practice as a licensed dental assistant in this state unless he or she holds a license as a licensed dental assistant under the Dentistry Practice Act.

(10) No person shall practice as an expanded function dental assistant in this state unless he or she holds a permit as an expanded function dental assistant under the act.

(11) A licensed dentist shall only delegate duties to a dental assistant, a licensed dental assistant, or an expanded function dental assistant in accordance with rules and regulations adopted and promulgated pursuant to the Dentistry Practice Act. The licensed dentist supervising a dental assistant, a licensed dental assistant, or an expanded function dental assistant shall be responsible for patient care for each patient regardless of whether the patient care is rendered personally by the dentist or by a dental assistant, a licensed dental assistant, or an expanded function dental assistant.

Source: Laws 1971, LB 587, § 13; Laws 1986, LB 572, § 1; Laws 1996, LB 1044, § 413; Laws 1999, LB 800, § 3; R.S.1943, (2003), § 71-193.13; Laws 2007, LB296, § 327; Laws 2007, LB463, § 468; Laws 2017, LB18, § 20.

38-1136 Licensed dental hygienists and expanded function dental hygienists; employment authorized; performance of duties; rules and regulations; license or permit required.

(1) Any licensed dentist, public institution, or school may employ licensed dental hygienists and expanded function dental hygienists.

(2) The department, with the recommendation of the board, shall adopt and promulgate rules and regulations governing the performance of duties by

licensed dental hygienists and expanded function dental hygienists. The rules and regulations shall include the degree of supervision which must be provided by a licensed dentist and the education and proof of competency requirements that must be met for any procedures performed by a licensed dental hygienist or an expanded function dental hygienist.

(3) No person shall practice dental hygiene in this state unless he or she holds a license as a licensed dental hygienist under the Dentistry Practice Act.

(4) No person shall practice expanded function dental hygiene in this state unless he or she holds a permit as an expanded function dental hygienist under the act.

(5) A licensed dentist shall only delegate duties to a licensed dental hygienist or an expanded function dental hygienist in accordance with rules and regulations adopted and promulgated pursuant to the Dentistry Practice Act. The licensed dentist supervising a licensed dental hygienist or an expanded function dental hygienist shall be responsible for patient care for each patient regardless of whether the patient care is rendered personally by the dentist or by a licensed dental hygienist or an expanded function dental hygienist.

Source: Laws 1971, LB 587, § 14; Laws 1996, LB 1044, § 414; Laws 1999, LB 800, § 4; Laws 1999, LB 828, § 74; R.S.1943, (2003), § 71-193.14; Laws 2007, LB463, § 469; Laws 2017, LB18, § 21.

38-1136.01 Licensed dental assistant; additional functions, procedures, and services.

The department, with the recommendation of the board, may, by rule and regulation, prescribe functions, procedures, and services in addition to those in section 38-1135 which may be performed by a licensed dental assistant under the supervision of a licensed dentist when intended to attain or maintain optimal oral health.

Source: Laws 2017, LB18, § 19.

38-1152 Expanded function dental hygienist; authorized activities.

An expanded function dental hygienist may perform all the procedures authorized for a licensed dental hygienist. Upon completion of education and testing approved by the board and with a permit from the department for the respective competency, an expanded function dental hygienist may, under the indirect supervision of a licensed dentist, place (1) restorative level one simple restorations (one surface) and (2) restorative level two complex restorations (multiple surfaces).

Source: Laws 2017, LB18, § 22.

ARTICLE 12

EMERGENCY MEDICAL SERVICES PRACTICE ACT

Section

Section

38-1201 Act, how cited.

Sections 38-1201 to 38-1239 shall be known and may be cited as the Emergency Medical Services Practice Act.

Source: Laws 1997, LB 138, § 1; Laws 2003, LB 242, § 128; R.S.1943, (2003), § 71-5172; Laws 2007, LB463, § 485; Laws 2018, LB1034, § 8; Laws 2020, LB1002, § 11; Laws 2024, LB910, § 1; Laws 2024, LB1355, § 1.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB910, section 1, with LB1355, section 1, to reflect all amendments.

Note: Changes made by LB910 became operative July 1, 2025. Changes made by LB1355 became operative April 17, 2024.

38-1202 Legislative intent; act; how construed.

It is the intent of the Legislature in enacting the Emergency Medical Services Practice Act to (1) effectuate the delivery of quality emergency medical care in the state, (2) provide for the appropriate licensure of persons providing emergency medical care and licensure of organizations providing emergency medical services, (3) provide for the establishment of educational requirements and

permitted practices for persons providing emergency medical care, (4) provide a system for regulation of emergency medical care which encourages emergency care providers and emergency medical services to provide the highest degree of care which they are capable of providing, and (5) provide a flexible system for the regulation of emergency care providers and emergency medical services that protects public health and safety.

The act shall be liberally construed to effect the purposes of, carry out the intent of, and discharge the responsibilities prescribed in the act.

Source: Laws 1997, LB 138, § 2; R.S.1943, (2003), § 71-5173; Laws 2007, LB463, § 486; Laws 2020, LB1002, § 12.

38-1203 Legislative findings.

The Legislature finds:

(1) That emergency medical care is a primary and essential health care service and that the presence of an adequately equipped ambulance and trained emergency care providers may be the difference between life and death or permanent disability to those persons in Nebraska making use of such services in an emergency;

(2) That effective delivery of emergency medical care may be assisted by a program of training and licensure of emergency care providers and licensure of emergency medical services in accordance with rules and regulations adopted by the board;

(3) That the Emergency Medical Services Practice Act is essential to aid in advancing the quality of care being provided by emergency care providers and by emergency medical services and the provision of effective, practical, and economical delivery of emergency medical care in the State of Nebraska;

(4) That the services to be delivered by emergency care providers are complex and demanding and that training and other requirements appropriate for delivery of the services must be constantly reviewed and updated; and

(5) That the enactment of a regulatory system that can respond to changing needs of patients and emergency care providers and emergency medical services is in the best interests of the residents of Nebraska.

Source: Laws 1997, LB 138, § 3; R.S.1943, (2003), § 71-5174; Laws 2007, LB463, § 487; Laws 2020, LB1002, § 13.

38-1204 Definitions, where found.

For purposes of the Emergency Medical Services Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-1204.01 to 38-1214 apply.

Source: Laws 1997, LB 138, § 4; R.S.1943, (2003), § 71-5175; Laws 2007, LB296, § 602; Laws 2007, LB463, § 488; Laws 2018, LB1034, § 9; Laws 2020, LB1002, § 14.

38-1204.01 Advanced emergency medical technician practice of emergency medical care, defined.

Advanced emergency medical technician practice of emergency medical care means care provided in accordance with the knowledge and skill acquired through successful completion of an approved program for an advanced emer-

gency medical technician. Such care includes, but is not limited to, (1) all of the acts that an emergency medical technician is authorized to perform and (2) complex interventions, treatments, and pharmacological interventions.

Source: Laws 2018, LB1034, § 10; Laws 2020, LB1002, § 15.

38-1205 Ambulance, defined.

Ambulance means any privately or publicly owned motor vehicle or aircraft that is especially designed, constructed or modified, and equipped and is intended to be used and is maintained or operated for the overland or air transportation of patients upon the streets, roads, highways, airspace, or public ways in this state or any other motor vehicles or aircraft used for such purposes.

Source: Laws 2007, LB463, § 489; Laws 2018, LB1034, § 11.

38-1206.01 Emergency medical responder practice of emergency medical care, defined.

Emergency medical responder practice of emergency medical care means care provided in accordance with the knowledge and skill acquired through successful completion of an approved program for an emergency medical responder. Such care includes, but is not limited to, (1) contributing to the assessment of the health status of an individual, (2) simple, noninvasive interventions, and (3) minimizing secondary injury to an individual.

Source: Laws 2018, LB1034, § 12; Laws 2020, LB1002, § 19.

38-1206.02 Community paramedic practice of emergency medical care, defined.

Community paramedic practice of emergency medical care means care provided by an advanced emergency medical technician, emergency medical technician, emergency medical technician-intermediate, or paramedic in accordance with the knowledge and skill acquired through successful completion of an approved program for a community paramedic at the respective licensure classification of the emergency care provider except for an emergency medical responder. Such care includes, but is not limited to, (1) the provision of telephone triage, advice, or other assistance to nonurgent 911 calls, (2) the provision of assistance or education to patients with chronic disease management, including posthospital discharge followup to prevent hospital admission or readmission, and (3) all of the acts that the respective licensure classification of an emergency care provider is authorized to perform.

Source: Laws 2020, LB1002, § 16.

38-1206.03 Critical care paramedic practice of emergency medical care, defined.

Critical care paramedic practice of emergency medical care means care provided by a paramedic in accordance with the knowledge and skill acquired through successful completion of an approved program for a critical care paramedic. Such care includes, but is not limited to, (1) all of the acts that a paramedic is licensed to perform, (2) advanced clinical patient assessment, (3) intravenous infusions, and (4) complex interventions, treatments, and pharma-

cological interventions used to treat critically ill or injured patients within the critical care environment, including transport.

Source: Laws 2020, LB1002, § 17.

38-1206.04 Emergency care provider, defined.

Emergency care provider includes all licensure classifications of emergency care providers established pursuant to the Emergency Medical Services Practice Act. Prior to December 31, 2025, emergency care provider includes advanced emergency medical technician, community paramedic, critical care paramedic, emergency medical responder, emergency medical technician, emergency medical technician-intermediate, and paramedic. On and after December 31, 2025, emergency care provider includes advanced emergency medical technician, community paramedic, critical care paramedic, emergency medical responder, emergency medical technician, and paramedic.

Source: Laws 2007, LB463, § 492; Laws 2018, LB1034, § 15; R.S.Supp.,2018, § 38-1208; Laws 2020, LB1002, § 18.

38-1207.01 Emergency medical technician practice of emergency medical care, defined.

Emergency medical technician practice of emergency medical care means care provided in accordance with the knowledge and skill acquired through successful completion of an approved program for an emergency medical technician. Such care includes, but is not limited to, (1) all of the acts that an emergency medical responder can perform, and (2) simple invasive interventions, management and transportation of individuals, and nonvisualized intubation.

Source: Laws 2018, LB1034, § 13; Laws 2020, LB1002, § 20.

38-1207.02 Emergency medical technician-intermediate practice of emergency medical care, defined.

Emergency medical technician-intermediate practice of emergency medical care means care provided in accordance with the knowledge and skill acquired through successful completion of an approved program for an emergency medical technician-intermediate. Such care includes, but is not limited to, (1) all of the acts that an advanced emergency medical technician can perform, and (2) visualized intubation. This section terminates on December 31, 2025.

Source: Laws 2018, LB1034, § 14; Laws 2020, LB1002, § 21.

38-1208 Transferred to section 38-1206.04.

38-1208.01 Paramedic practice of emergency medical care, defined.

Paramedic practice of emergency medical care means care provided in accordance with the knowledge and skill acquired through successful completion of an approved program for a paramedic. Such care includes, but is not limited to, (1) all of the acts that an emergency medical technician-intermediate can perform, and (2) surgical cricothyrotomy.

Source: Laws 2018, LB1034, § 16; Laws 2020, LB1002, § 22.

38-1208.02 Practice of emergency medical care, defined.

Practice of emergency medical care means the performance of any act using judgment or skill based upon the United States Department of Transportation education standards and guideline training requirements, the National Highway Traffic Safety Administration's National Emergency Medical Service Scope of Practice Model and National Emergency Medical Services Education Standards, an education program for a community paramedic or a critical care paramedic that is approved by the board and the Department of Health and Human Services, and permitted practices and procedures for the level of licensure listed in section 38-1217. Such acts include the identification of and intervention in actual or potential health problems of individuals and are directed toward addressing such problems based on actual or perceived traumatic or medical circumstances. Such acts are provided under therapeutic regimens ordered by a physician medical director or through protocols as provided by the Emergency Medical Services Practice Act.

Source: Laws 2018, LB1034, § 17; Laws 2020, LB1002, § 23.

38-1209 Patient, defined.

Patient means an individual who either identifies himself or herself as being in need of medical attention or upon assessment by an emergency care provider has an injury or illness requiring treatment.

Source: Laws 2007, LB463, § 493; Laws 2020, LB1002, § 24.

38-1210 Physician medical director, defined.

Physician medical director means a qualified physician who is responsible for the medical supervision of emergency care providers and verification of skill proficiency of emergency care providers pursuant to section 38-1217.

Source: Laws 2007, LB463, § 494; Laws 2020, LB1002, § 25.

38-1211 Protocol, defined.

Protocol means a set of written policies, procedures, and directions from a physician medical director to an emergency care provider concerning the medical procedures to be performed in specific situations.

Source: Laws 2007, LB463, § 495; Laws 2020, LB1002, § 26.

38-1213 Qualified physician surrogate, defined.

Qualified physician surrogate means a qualified, trained medical person designated by a qualified physician in writing to act as an agent for the physician in directing the actions or renewal of licensure of emergency care providers.

Source: Laws 2007, LB463, § 497; Laws 2020, LB1002, § 27.

38-1215 Board; members; terms; meetings; removal.

(1) The board shall have seventeen members appointed by the Governor with the approval of a majority of the Legislature. The appointees may begin to serve immediately following appointment and prior to approval by the Legislature.

(2)(a) Seven members of the board shall be active emergency care providers at the time of and for the duration of their appointment, and each shall have at least five years of experience in his or her level of licensure at the time of his or

her appointment or reappointment. Of the seven members who are emergency care providers, two shall be emergency medical responders, two shall be emergency medical technicians, one shall be an advanced emergency medical technician, and two shall be paramedics.

(b) Three of the members shall be qualified physicians actively involved in emergency medical care. At least one of the physician members shall be a board-certified emergency physician, and at least one of the physician members shall specialize in pediatrics.

(c) Five members shall be appointed to include one member who is a representative of an approved training agency, one member who is a physician assistant with at least five years of experience and active in emergency medical care education, one member who is a registered nurse with at least five years of experience and active in emergency medical care education, and two public members who meet the requirements of section 38-165 and who have an expressed interest in the provision of emergency medical care.

(d) The remaining two members shall have any of the qualifications listed in subdivision (a), (b), or (c) of this subsection.

(e) In addition to any other criteria for appointment, among the members of the board appointed after January 1, 2017, there shall be at least three members who are volunteer emergency medical care providers, at least one member who is a paid emergency medical care provider, at least one member who is a firefighter, at least one member who is a law enforcement officer, and at least one member who is active in the Critical Incident Stress Management Program. If a person appointed to the board is qualified to serve as a member in more than one capacity, all qualifications of such person shall be taken into consideration to determine whether or not the diversity in qualifications required in this subsection has been met.

(f) At least five members of the board shall be appointed from each congressional district, and at least one of such members shall be a physician member described in subdivision (b) of this subsection.

(3) Members shall serve five-year terms beginning on December 1 and may serve for any number of such terms. The terms of the members of the board appointed prior to December 1, 2008, shall be extended by two years and until December 1 of such year. Each member shall hold office until the expiration of his or her term. Any vacancy in membership, other than by expiration of a term, shall be filled within ninety days by the Governor by appointment as provided in subsection (2) of this section.

(4) Special meetings of the board may be called by the department or upon the written request of any six members of the board explaining the reason for such meeting. The place of the meetings shall be set by the department.

(5) The Governor upon recommendation of the department shall have power to remove from office at any time any member of the board for physical or mental incapacity to carry out the duties of a board member, for continued neglect of duty, for incompetency, for acting beyond the individual member's scope of authority, for malfeasance in office, for any cause for which a professional credential may be suspended or revoked pursuant to the Uniform Credentialing Act, or for a lack of license required by the Emergency Medical Services Practice Act.

(6) Except as provided in subsection (5) of this section and notwithstanding subsection (2) of this section, a member of the board who changes his or her licensure classification after appointment or has a licensure classification which is terminated under section 38-1207.02 or 38-1217 when such licensure classification was a qualification for appointment shall be permitted to continue to serve as a member of the board until the expiration of his or her term.

Source: Laws 1997, LB 138, § 5; Laws 1998, LB 1073, § 146; Laws 2004, LB 821, § 18; R.S.Supp.,2006, § 71-5176; Laws 2007, LB463, § 499; Laws 2009, LB195, § 12; Laws 2016, LB952, § 1; Laws 2018, LB1034, § 18; Laws 2020, LB1002, § 28.

Cross References

Critical Incident Stress Management Program, see section 71-7104.

38-1216 Board; duties.

In addition to any other responsibilities prescribed by the Emergency Medical Services Practice Act, the board shall:

(1) Promote the dissemination of public information and education programs to inform the public about emergency medical service and other medical information, including appropriate methods of medical self-help, first aid, and the availability of emergency medical services training programs in the state;

(2) Provide for the collection of information for evaluation of the availability and quality of emergency medical care, evaluate the availability and quality of emergency medical care, and serve as a focal point for discussion of the provision of emergency medical care;

(3) Establish model procedures for patient management in medical emergencies that do not limit the authority of law enforcement and fire protection personnel to manage the scene during a medical emergency;

(4) Not less than once each five years, undertake a review and evaluation of the act and its implementation together with a review of the emergency medical care needs of the residents of the State of Nebraska and submit electronically a report to the Legislature with any recommendations which it may have; and

(5) Identify communication needs of emergency medical services and make recommendations for development of a communications plan for a communications network for emergency care providers and emergency medical services.

Source: Laws 1997, LB 138, § 6; R.S.1943, (2003), § 71-5177; Laws 2007, LB463, § 500; Laws 2012, LB782, § 38; Laws 2018, LB1034, § 19; Laws 2020, LB1002, § 29.

38-1217 Rules and regulations.

The board shall adopt rules and regulations necessary to:

(1) Create licensure requirements for advanced emergency medical technicians, community paramedics, critical care paramedics, emergency medical responders, emergency medical technicians, and paramedics and, until December 31, 2025, create renewal requirements for emergency medical technicians-intermediate. The rules and regulations shall include all criteria and qualifications for each classification determined to be necessary for protection of public health and safety;

(2) Provide for temporary licensure of an emergency care provider who has completed the educational requirements for a licensure classification enumerated in subdivision (1) of this section but has not completed the testing requirements for licensure under such subdivision. A temporary license shall allow the person to practice only in association with a licensed emergency care provider under physician medical direction and shall be valid until the date on which the results of the next licensure examination are available to the department. The temporary license shall expire immediately if the applicant has failed the examination. In no case may a temporary license be issued for a period extending beyond one year. The rules and regulations shall include qualifications and training necessary for issuance of such temporary license, the practices and procedures authorized for a temporary licensee under this subdivision, and supervision required for a temporary licensee under this subdivision. The requirements of this subdivision and the rules and regulations adopted and promulgated pursuant to this subdivision do not apply to a temporary license issued as provided in section 38-129.01;

(3) Provide for temporary licensure of an emergency care provider relocating to Nebraska, if such emergency care provider is lawfully authorized to practice in another state that has adopted the licensing standards of the EMS Personnel Licensure Interstate Compact. Such temporary licensure shall be valid for one year or until a license is issued and shall not be subject to renewal. The requirements of this subdivision do not apply to a temporary license issued as provided in section 38-129.01;

(4) Set standards for the licensure of basic life support services and advanced life support services. The rules and regulations providing for licensure shall include standards and requirements for: Vehicles, equipment, maintenance, sanitation, inspections, personnel, training, medical direction, records maintenance, practices and procedures to be provided by employees or members of each classification of service, and other criteria for licensure established by the board;

(5) Authorize emergency medical services to provide differing practices and procedures depending upon the qualifications of emergency care providers available at the time of service delivery. No emergency medical service shall be licensed to provide practices or procedures without the use of personnel licensed to provide the practices or procedures;

(6) Authorize emergency care providers to perform any practice or procedure which they are authorized to perform with an emergency medical service other than the service with which they are affiliated when requested by the other service and when the patient for whom they are to render services is in danger of loss of life;

(7) Provide for the approval of training agencies, provide for disciplinary or corrective action against training agencies, and establish minimum standards for services provided by training agencies;

(8) Provide for the minimum qualifications of a physician medical director in addition to the licensure required by section 38-1212;

(9) Provide for the use of physician medical directors, qualified physician surrogates, model protocols, standing orders, operating procedures, and guidelines which may be necessary or appropriate to carry out the purposes of the Emergency Medical Services Practice Act. The model protocols, standing orders, operating procedures, and guidelines may be modified by the physician

medical director for use by any emergency care provider or emergency medical service before or after adoption;

(10) Establish renewal and reinstatement requirements for emergency care providers and establish continuing competency requirements. Continuing education is sufficient to meet continuing competency requirements. The requirements may also include, but not be limited to, one or more of the continuing competency activities listed in section 38-145 which a licensed person may select as an alternative to continuing education. The reinstatement requirements for emergency care providers shall allow reinstatement at the same or any lower level of licensure for which the emergency care provider is determined to be qualified;

(11) Create licensure, renewal, and reinstatement requirements for emergency medical service instructors. The rules and regulations shall include the practices and procedures for licensure, renewal, and reinstatement;

(12) Establish criteria for emergency medical technicians-intermediate, advanced emergency medical technicians, emergency medical technicians, community paramedics, critical care paramedics, or paramedics performing activities within their scope of practice and as determined by a licensed health care practitioner as defined in section 38-1224; and

(13) Establish model protocols for compliance with the Stroke System of Care Act by an emergency medical service and an emergency care provider.

Source: Laws 1997, LB 138, § 7; Laws 1999, LB 498, § 2; Laws 2001, LB 238, § 1; Laws 2002, LB 1021, § 87; Laws 2002, LB 1033, § 1; R.S.1943, (2003), § 71-5178; Laws 2007, LB463, § 501; Laws 2009, LB195, § 13; Laws 2016, LB722, § 10; Laws 2017, LB88, § 48; Laws 2018, LB1034, § 20; Laws 2020, LB1002, § 30.

Cross References

EMS Personnel Licensure Interstate Compact, see section 38-3801.
Stroke System of Care Act, see section 71-4201.

38-1218 Curricula for licensure classification; board; powers; military spouse; temporary license.

(1) The board may approve curricula for the licensure classifications listed in the Emergency Medical Services Practice Act.

(2) The department and the board shall consider the following factors, in addition to other factors required or permitted by the Emergency Medical Services Practice Act, when adopting rules and regulations for a licensure classification:

(a) Whether the initial training required for licensure in the classification is sufficient to enable the emergency care provider to perform the practices and procedures authorized for the classification in a manner which is beneficial to the patient and protects public health and safety;

(b) Whether the practices and procedures to be authorized are necessary to the efficient and effective delivery of emergency medical care;

(c) Whether morbidity can be reduced or recovery enhanced by the use of the practices and procedures to be authorized for the classification; and

(d) Whether continuing competency requirements are sufficient to maintain the skills authorized for the classification.

(3) An applicant for licensure for a licensure classification listed in subdivision (1) of section 38-1217 who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 1997, LB 138, § 8; Laws 2002, LB 1021, § 88; R.S.1943, (2003), § 71-5179; Laws 2007, LB463, § 502; Laws 2009, LB195, § 14; Laws 2017, LB88, § 49; Laws 2018, LB1034, § 21; Laws 2020, LB1002, § 31.

38-1218.01 Decisions of Interstate Commission for Emergency Medical Services Personnel Practice; board; duties.

The board shall review decisions of the Interstate Commission for Emergency Medical Services Personnel Practice established pursuant to the EMS Personnel Licensure Interstate Compact. Upon approval by the commission of any action that will have the result of increasing the cost to the state for membership in the compact, the board may recommend to the Legislature that Nebraska withdraw from the compact.

Source: Laws 2018, LB1034, § 22.

Cross References

EMS Personnel Licensure Interstate Compact, see section 38-3801.

38-1219 Department; additional rules and regulations.

The department, with the recommendation of the board, shall adopt and promulgate rules and regulations necessary to:

(1) Administer the Emergency Medical Services Practice Act;

(2) Establish procedures and requirements for applications for licensure, renewal, and reinstatement in any of the licensure classifications created pursuant to the Emergency Medical Services Practice Act;

(3) Provide for the inspection, review, and termination of approval of training agencies. All training for licensure shall be provided through an approved training agency; and

(4) Provide for the inspection, review, and termination of basic life support emergency medical services and advanced life support emergency medical services.

Source: Laws 2007, LB463, § 503; Laws 2009, LB195, § 15; Laws 2018, LB1034, § 23.

38-1220 Act; exemptions.

The following are exempt from the licensing requirements of the Emergency Medical Services Practice Act:

(1) The occasional use of a vehicle or aircraft not designated as an ambulance and not ordinarily used in transporting patients or operating emergency care, rescue, or resuscitation services;

(2) Vehicles or aircraft rendering services as an ambulance in case of a major catastrophe or emergency when licensed ambulances based in the localities of the catastrophe or emergency are incapable of rendering the services required;

(3) Ambulances from another state which are operated from a location or headquarters outside of this state in order to transport patients across state

lines, but no such ambulance shall be used to pick up patients within this state for transportation to locations within this state except in case of an emergency;

(4) Ambulances or emergency vehicles owned and operated by an agency of the United States Government and the personnel of such agency;

(5) Except for the provisions of section 38-1232, physicians, physician assistants, registered nurses, or advanced practice registered nurses, who hold current Nebraska licenses and are exclusively engaged in the practice of their respective professions;

(6) Persons authorized to perform emergency care in other states when incidentally working in Nebraska in response to an emergency situation; and

(7) Students under the supervision of (a) a licensed emergency care provider performing emergency medical services that are an integral part of the training provided by an approved training agency or (b) an organization accredited by the Commission on Accreditation of Allied Health Education Programs for the level of training the student is completing.

Source: Laws 1997, LB 138, § 20; Laws 2000, LB 1115, § 76; Laws 2005, LB 256, § 94; R.S.Supp.,2006, § 71-5191; Laws 2007, LB463, § 504; Laws 2019, LB135, § 1; Laws 2020, LB1002, § 32.

38-1221 License; requirements.

To be eligible for a license under the Emergency Medical Services Practice Act, an individual shall have attained the age of eighteen years and met the requirements established in accordance with section 38-1217.

Source: Laws 2007, LB463, § 505; Laws 2009, LB195, § 16; Laws 2016, LB722, § 11; Laws 2018, LB1034, § 24.

Cross References

Credentialing, general requirements and issuance procedures, see section 38-121 et seq.

38-1224 Duties and activities authorized; limitations.

(1) An emergency care provider other than an emergency medical responder may not assume the duties incident to the title or practice the skills of an emergency care provider unless he or she is acting under the supervision of a licensed health care practitioner.

(2) An emergency care provider may only practice the skills he or she is authorized to employ and which are covered by the license issued to such provider pursuant to the Emergency Medical Services Practice Act or as authorized pursuant to the EMS Personnel Licensure Interstate Compact.

(3) A registered nurse may provide for the direction of an emergency care provider in any setting other than an emergency medical service.

(4) For purposes of this section, licensed health care practitioner means (a) a physician medical director or physician surrogate for purposes of supervision of an emergency care provider for an emergency medical service or (b) a physician, a physician assistant, or an advanced practice registered nurse for purposes of supervision of an emergency care provider in a setting other than an emergency medical service.

Source: Laws 1997, LB 138, § 13; Laws 1998, LB 1073, § 147; Laws 2002, LB 1033, § 2; R.S.1943, (2003), § 71-5184; Laws 2007, LB463, § 508; Laws 2009, LB195, § 17; Laws 2018, LB1034, § 25; Laws 2020, LB1002, § 33.

Cross References

EMS Personnel Licensure Interstate Compact, see section 38-3801.

38-1225 Patient data; confidentiality; immunity.

(1) No patient data received or recorded by an emergency medical service or an emergency care provider shall be divulged, made public, or released by an emergency medical service or an emergency care provider, except that patient data may be released (a) for purposes of treatment, payment, and other health care operations as defined and permitted under the federal Health Insurance Portability and Accountability Act of 1996, as such act existed on January 1, 2024, (b) as required by section 38-1238, or (c) as otherwise permitted by law. Such data shall be provided to the department for public health purposes pursuant to rules and regulations of the department. For purposes of this section, patient data means any data received or recorded as part of the records maintenance requirements of the Emergency Medical Services Practice Act.

(2) Patient data received by the department shall be confidential with release only (a) in aggregate data reports created by the department on a periodic basis or at the request of an individual, (b) as case-specific data to approved researchers for specific research projects, (c) as protected health information to a public health authority, as such terms are defined under the federal Health Insurance Portability and Accountability Act of 1996, as such act existed on January 1, 2024, and (d) as protected health information, as defined under the federal Health Insurance Portability and Accountability Act of 1996, as such act existed on January 1, 2024, to an emergency medical service, to an emergency care provider, or to a licensed health care facility for purposes of treatment. A record may be shared with the emergency medical service or emergency care provider that reported that specific record. Approved researchers shall maintain the confidentiality of the data, and researchers shall be approved in the same manner as described in section 81-666. Aggregate reports shall be public documents.

(3) No civil or criminal liability of any kind or character for damages or other relief or penalty shall arise or be enforced against any person or organization by reason of having provided patient data pursuant to this section.

Source: Laws 1997, LB 138, § 14; Laws 2003, LB 667, § 11; R.S.1943, (2003), § 71-5185; Laws 2007, LB185, § 42; Laws 2007, LB463, § 509; Laws 2018, LB1034, § 26; Laws 2020, LB1002, § 34; Laws 2024, LB1355, § 2.
Operative date April 17, 2024.

38-1226 Ambulance; transportation requirements.

No ambulance shall transport any patient upon any street, road, highway, airspace, or public way in the State of Nebraska unless such ambulance, when so transporting patients, is occupied by at least one licensed emergency care provider. Such requirement shall be met if any of the individuals providing the service is a licensed physician, registered nurse, or licensed physician assistant functioning within the scope of practice of his or her license.

Source: Laws 1997, LB 138, § 15; R.S.1943, (2003), § 71-5186; Laws 2007, LB463, § 510; Laws 2020, LB1002, § 35.

38-1228 Department; waive rule, regulation, or standard; when.

The department, with the approval of the board, may, whenever it deems appropriate, waive any rule, regulation, or standard relating to the licensure of emergency medical services or emergency care providers when the lack of a licensed emergency medical service in a municipality or other area will create an undue hardship in the municipality or other area in meeting the emergency medical service needs of the residents thereof.

Source: Laws 1997, LB 138, § 17; R.S.1943, (2003), § 71-5188; Laws 2007, LB463, § 512; Laws 2020, LB1002, § 36.

38-1229 License; person on national registry.

The department may issue a license to any individual who has a current certificate from the National Registry of Emergency Medical Technicians.

Source: Laws 1997, LB 138, § 18; R.S.1943, (2003), § 71-5189; Laws 2007, LB463, § 513; Laws 2018, LB1034, § 27.

38-1232 Individual liability.

(1) No emergency care provider, physician assistant, registered nurse, or licensed practical nurse who provides public emergency care shall be liable in any civil action to respond in damages as a result of his or her acts of commission or omission arising out of and in the course of his or her rendering in good faith any such care. Nothing in this subsection shall be deemed to grant any such immunity for liability arising out of the operation of any motor vehicle, aircraft, or boat or while such person was impaired by alcoholic liquor or any controlled substance enumerated in section 28-405 in connection with such care, nor shall immunity apply to any person causing damage or injury by his or her willful, wanton, or grossly negligent act of commission or omission.

(2) No qualified physician or qualified physician surrogate who gives orders, either orally or by communication equipment, to any emergency care provider at the scene of an emergency, no emergency care provider following such orders within the limits of his or her licensure, and no emergency care provider trainee in an approved training program following such orders, shall be liable civilly or criminally by reason of having issued or followed such orders but shall be subject to the rules of law applicable to negligence.

(3) No physician medical director shall incur any liability by reason of his or her use of any unmodified protocol, standing order, operating procedure, or guideline provided by the board pursuant to subdivision (9) of section 38-1217.

Source: Laws 1997, LB 138, § 23; R.S.1943, (2003), § 71-5194; Laws 2007, LB463, § 516; Laws 2009, LB195, § 18; Laws 2018, LB1034, § 28; Laws 2020, LB1002, § 37.

38-1233 Emergency care provider; liability relating to consent.

No emergency care provider shall be subject to civil liability based solely upon failure to obtain consent in rendering emergency medical, surgical, hospital, or health services to any individual regardless of age when the patient is unable to give his or her consent for any reason and there is no other person reasonably available who is legally authorized to consent to the providing of such care.

Source: Laws 1997, LB 138, § 24; R.S.1943, (2003), § 71-5195; Laws 2007, LB463, § 517; Laws 2020, LB1002, § 38.

38-1234 Emergency care provider; liability within scope of practice.

No act of commission or omission of any emergency care provider while rendering emergency medical care within the limits of his or her licensure or status as a trainee to a person who is deemed by the provider to be in immediate danger of injury or loss of life shall impose any liability on any other person, and this section shall not relieve the emergency care provider from personal liability, if any.

Source: Laws 1997, LB 138, § 25; R.S.1943, (2003), § 71-5196; Laws 2007, LB463, § 518; Laws 2020, LB1002, § 39.

38-1237 Prohibited acts.

It shall be unlawful for any person who has not been licensed pursuant to the Emergency Medical Services Practice Act or authorized pursuant to the EMS Personnel Licensure Interstate Compact to hold himself or herself out as an emergency care provider, to use any other term to indicate or imply that he or she is an emergency care provider, or to act as such a provider without a license therefor. It shall be unlawful for any person to operate a training agency for the initial training or renewal or reinstatement of licensure of emergency care providers unless the training agency is approved pursuant to rules and regulations of the department. It shall be unlawful for any person to operate an emergency medical service unless such service is licensed.

Source: Laws 1997, LB 138, § 28; R.S.1943, (2003), § 71-5199; Laws 2007, LB463, § 521; Laws 2018, LB1034, § 29; Laws 2020, LB1002, § 40.

Cross References

EMS Personnel Licensure Interstate Compact, see section 38-3801.

38-1238 Overdose; emergency medical service; report; department; report; prohibited acts.

(1) An emergency medical service that treats and releases, or transports to a medical facility, an individual experiencing a suspected overdose or an actual overdose shall report the incident to the department. A report of an overdose made under this section shall include the information required by the department for occurrences requiring a response to perceived individual need for medical care.

(2) An emergency medical service that reports an overdose under this section shall make best efforts to submit the report within seventy-two hours after responding to the incident.

(3) When the department receives a report pursuant to subsection (1) of this section, it shall report such information using the Washington/Baltimore High Intensity Drug Trafficking Area Overdose Mapping and Application Program or other similar secure access information technology platform.

(4) Overdose information reported pursuant to subsection (1) or (3) of this section shall not be (a) used for a criminal investigation or prosecution or (b) obtained by a law enforcement officer as part of a criminal investigation or prosecution.

Source: Laws 2024, LB1355, § 3.
Operative date April 17, 2024.

38-1239 Law enforcement canine; transportation and emergency medical care; authorized, when; immune from liability.

(1) For purposes of this section, law enforcement canine means any canine that is owned or employed in the service of any state or local law enforcement agency, the Department of Correctional Services, any local fire department, or the State Fire Marshal for the purpose of aiding in the detection of criminal activity, flammable materials, or missing persons; the enforcement of laws; the investigation of fires; or the apprehension of criminal offenders.

(2) An emergency medical service validly licensed for emergency transport may transport a law enforcement canine injured in the line of duty to a veterinary clinic or similar facility if there is no person requiring medical attention or transport at that time.

(3) An emergency care provider may provide emergency medical care to a law enforcement canine injured in the line of duty while at the scene of an emergency or while a law enforcement canine is being transported to a veterinary clinic or similar facility if there is no person requiring medical attention or transport at that time.

(4) An emergency care provider who acts in good faith to provide emergency medical care to an injured law enforcement canine pursuant to subsection (2) or (3) of this section shall be immune from criminal or civil liability.

(5) The department may adopt and promulgate rules and regulations to implement the provisions of this section.

Source: Laws 2024, LB910, § 2.
Operative date July 1, 2025.

ARTICLE 13

ENVIRONMENTAL HEALTH SPECIALISTS PRACTICE ACT

Section
38-1312. Registered environmental health specialist; reciprocity; continuing competency requirements; military spouse; temporary certification.

38-1312 Registered environmental health specialist; reciprocity; continuing competency requirements; military spouse; temporary certification.

(1) An applicant for certification as a registered environmental health specialist who has met the standards set by the board pursuant to section 38-126 for certification based on a credential in another jurisdiction but is not practicing at the time of application for certification shall present proof satisfactory to the department that he or she has within the three years immediately preceding the application for certification completed continuing competency requirements approved by the board pursuant to section 38-145.

(2) An applicant who is a military spouse may apply for temporary certification as provided in section 38-129.01.

Source: Laws 2007, LB463, § 533; Laws 2017, LB88, § 50.

ARTICLE 14

FUNERAL DIRECTING AND EMBALMING PRACTICE ACT

Section
38-1414. Funeral directing and embalming; license; requirements.
38-1416. Apprenticeship; apprentice license; examination.

Section
38-1421. Reciprocity; military spouse; temporary license.

38-1414 Funeral directing and embalming; license; requirements.

(1) The department shall issue a single license to practice funeral directing and embalming to applicants who meet the requirements of this section. An applicant for a license as a funeral director and embalmer shall:

(a) Present satisfactory proof that the applicant has earned the equivalent of forty semester hours of college credit in addition to a full course of instruction in an accredited school of mortuary science. Such hours shall include the equivalent of (i) six semester hours of English, (ii) twelve semester hours of business, (iii) four semester hours of chemistry, (iv) twelve semester hours of a biological science relating to the human body, and (v) six semester hours of psychology or counseling; and

(b) Present proof to the department that he or she has completed the following training:

(i) A full course of instruction in an accredited school of mortuary science;

(ii) A twelve-month apprenticeship under the supervision of a licensed funeral director and embalmer practicing in the State of Nebraska, which apprenticeship shall consist of arterially embalming twenty-five bodies and assisting with twenty-five funerals; and

(iii) Successful completion of the licensure examination approved by the board.

(2) Any person holding a valid license as an embalmer on January 1, 1994, may continue to provide services as an embalmer after such date. Upon expiration of such valid license, the person may apply for renewal thereof, and the department shall renew such license to practice embalming.

(3) Any person holding a valid license as a funeral director on January 1, 1994, may continue to provide services as a funeral director after such date. Upon expiration of such valid license, the person may apply for renewal thereof, and the department shall renew such license to practice funeral directing.

Source: Laws 1927, c. 167, § 93, p. 480; C.S.1929, § 71-1302; Laws 1931, c. 123, § 1, p. 355; Laws 1937, c. 155, § 1, p. 612; C.S.Supp.,1941, § 71-1302; R.S.1943, § 71-195; Laws 1955, c. 271, § 1, p. 852; Laws 1986, LB 926, § 43; Laws 1987, LB 473, § 19; Laws 1988, LB 1100, § 35; R.S.1943, (1990), § 71-195; Laws 1993, LB 187, § 14; R.S.1943, (2003), § 71-1302; Laws 2007, LB463, § 550; Laws 2022, LB704, § 1.

Cross References

Credentialing, general requirements and issuance procedures, see section 38-121 et seq.

38-1416 Apprenticeship; apprentice license; examination.

(1) Before beginning an apprenticeship, an applicant shall apply for an apprentice license. The applicant shall show that he or she has completed twenty of the forty hours required in subdivision (1)(a) of section 38-1414. The applicant may complete the twelve-month apprenticeship in either a split apprenticeship or a full apprenticeship as provided in this section.

(2) A split apprenticeship shall be completed in the following manner:

(a) Application for an apprentice license to complete a six-month apprenticeship prior to or while attending an accredited school of mortuary science, which license shall be valid for six months from the date of issuance and shall not be extended by the board. The apprenticeship shall be completed over a continuous six-month period;

(b) Successful completion of a full course of study in an accredited school of mortuary science;

(c) Successful passage of the national standardized examination; and

(d) Application for an apprentice license to complete the final six-month apprenticeship, which license shall be valid for six months from the date of issuance and shall not be extended by the board. The apprenticeship shall be completed over a continuous six-month period.

(3) A full apprenticeship shall be completed in the following manner:

(a) Successful completion of a full course of study in an accredited school of mortuary science;

(b) Successful passage of the national standardized examination; and

(c) Application for an apprentice license to complete a twelve-month apprenticeship. This license shall be valid for twelve months from the date of issuance and shall not be extended by the board. The apprenticeship shall be completed over a continuous twelve-month period.

(4) An individual registered as an apprentice on December 1, 2008, shall be deemed to be licensed as an apprentice for the term of the apprenticeship on such date.

Source: Laws 1927, c. 167, § 96, p. 481; C.S.1929, § 71-1305; Laws 1931, c. 123, § 1, p. 357; Laws 1937, c. 155, § 3, p. 613; C.S.Supp.,1941, § 71-1305; R.S.1943, § 71-198; Laws 1986, LB 926, § 44; Laws 1987, LB 473, § 20; Laws 1988, LB 1100, § 36; R.S.1943, (1990), § 71-198; Laws 1993, LB 187, § 16; Laws 2003, LB 242, § 97; R.S.1943, (2003), § 71-1304; Laws 2007, LB463, § 552; Laws 2022, LB704, § 2; Laws 2023, LB227, § 23.

Cross References

Credentialing, general requirements and issuance procedures, see section 38-121 et seq.

38-1421 Reciprocity; military spouse; temporary license.

The department, with the recommendation of the board, may issue a license based on licensure in another jurisdiction to an individual who meets the requirements of the Funeral Directing and Embalming Practice Act or substantially equivalent requirements as determined by the department, with the recommendation of the board. An applicant for licensure under the act who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 2007, LB463, § 557; Laws 2017, LB88, § 51.

ARTICLE 15

HEARING INSTRUMENT SPECIALISTS PRACTICE ACT

Section
38-1507. Temporary training license, defined.
38-1509. Sale or fitting of hearing instruments; license required; exceptions.

Section
38-1512. License; examination; conditions.
38-1513. Temporary training license; issuance; supervision; renewal.
38-1516. Applicant for licensure; reciprocity; continuing competency requirements; military spouse; temporary license.

38-1507 Temporary training license, defined.

Temporary training license means a hearing instrument specialist license issued while the applicant is in training to become a licensed hearing instrument specialist.

Source: Laws 2007, LB463, § 571; Laws 2009, LB195, § 25; Laws 2017, LB88, § 52.

38-1509 Sale or fitting of hearing instruments; license required; exceptions.

(1) Except as otherwise provided in this section, no person shall engage in the sale of or practice of fitting hearing instruments or display a sign or in any other way advertise or represent himself or herself as a person who practices the fitting and sale or dispensing of hearing instruments unless he or she holds an unsuspended, unrevoked hearing instrument specialist license issued by the department as provided in the Hearing Instrument Specialists Practice Act. A hearing instrument specialist license shall confer upon the holder the right to select, fit, and sell hearing instruments. A person holding a license issued under the act prior to August 30, 2009, may continue to practice under such license until it expires under the terms of the license.

(2) A licensed audiologist who maintains a practice pursuant to (a) licensure as an audiologist, or (b) a privilege to practice audiology under the Audiology and Speech-Language Pathology Interstate Compact, in which hearing instruments are regularly dispensed, or who intends to maintain such a practice, shall be exempt from the requirement to be licensed as a hearing instrument specialist.

(3) Nothing in the act shall prohibit a corporation, partnership, limited liability company, trust, association, or other like organization maintaining an established business address from engaging in the business of selling or offering for sale hearing instruments at retail without a license if it employs only properly licensed natural persons in the direct sale and fitting of such products.

(4) Nothing in the act shall prohibit the holder of a hearing instrument specialist license from the fitting and sale of wearable instruments or devices designed for or offered for the purpose of conservation or protection of hearing.

Source: Laws 1969, c. 767, § 2, p. 2904; Laws 1986, LB 701, § 2; Laws 1988, LB 1100, § 149; Laws 1992, LB 1019, § 79; Laws 1993, LB 121, § 438; R.S.1943, (2003), § 71-4702; Laws 2007, LB247, § 52; Laws 2007, LB247, § 70; Laws 2007, LB463, § 573; Laws 2009, LB195, § 27; Laws 2017, LB88, § 53; Laws 2021, LB14, § 5.

Cross References

Audiology and Speech-Language Pathology Interstate Compact, see section 38-4101.

38-1512 License; examination; conditions.

(1) Any person may obtain a hearing instrument specialist license under the Hearing Instrument Specialists Practice Act by successfully passing a qualifying examination if the applicant:

(a) Is at least twenty-one years of age; and

(b) Has an education equivalent to a four-year course in an accredited high school.

(2) The qualifying examination shall consist of written and practical tests. The examination shall not be conducted in such a manner that college training is required in order to pass. Nothing in this examination shall imply that the applicant is required to possess the degree of medical competence normally expected of physicians.

(3) The department shall give examinations approved by the board. A minimum of two examinations shall be offered each calendar year.

Source: Laws 1969, c. 767, § 7, p. 2907; Laws 1986, LB 701, § 6; Laws 1987, LB 473, § 53; Laws 1988, LB 1100, § 153; R.S.1943, (2003), § 71-4707; Laws 2007, LB247, § 53; Laws 2007, LB247, § 71; Laws 2007, LB463, § 576; Laws 2009, LB195, § 30; Laws 2017, LB88, § 54.

Cross References

Credentialing, general requirements and issuance procedures, see section 38-121 et seq.

38-1513 Temporary training license; issuance; supervision; renewal.

(1) The department, with the recommendation of the board, shall issue a temporary training license to any person who has met the requirements for licensure as a hearing instrument specialist pursuant to subsection (1) of section 38-1512. Previous experience or a waiting period shall not be required to obtain a temporary training license.

(2) Any person who desires a temporary training license shall make application to the department. The temporary training license shall be issued for a period of one year. A person holding a valid license as a hearing instrument specialist shall be responsible for the supervision and training of such applicant and shall maintain adequate personal contact with him or her.

(3) If a person who holds a temporary training license under this section has not successfully passed the licensing examination within twelve months of the date of issuance of the temporary training license, the temporary training license may be renewed or reissued for a twelve-month period. In no case may a temporary training license be renewed or reissued more than once. A renewal or reissuance may take place any time after the expiration of the first twelve-month period.

Source: Laws 1969, c. 767, § 8, p. 2907; Laws 1973, LB 515, § 22; Laws 1986, LB 701, § 7; Laws 1987, LB 473, § 55; Laws 1988, LB 1100, § 154; Laws 1991, LB 456, § 36; Laws 1997, LB 752, § 185; Laws 2003, LB 242, § 125; R.S.1943, (2003), § 71-4708; Laws 2007, LB463, § 577; Laws 2009, LB195, § 31; Laws 2017, LB88, § 55.

38-1516 Applicant for licensure; reciprocity; continuing competency requirements; military spouse; temporary license.

(1) An applicant for licensure as a hearing instrument specialist who has met the standards set by the board pursuant to section 38-126 for a license based on licensure in another jurisdiction but is not practicing at the time of application for licensure shall present proof satisfactory to the department that he or she has within the three years immediately preceding the application for licensure completed continuing competency requirements approved by the board pursuant to section 38-145.

(2) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 2007, LB463, § 580; Laws 2009, LB195, § 34; Laws 2017, LB88, § 56.

ARTICLE 16

LICENSED PRACTICAL NURSE-CERTIFIED PRACTICE ACT

Section

38-1601 Repealed. Laws 2017, LB88, § 96.

38-1602 Repealed. Laws 2017, LB88, § 96.

38-1603 Repealed. Laws 2017, LB88, § 96.

38-1604 Repealed. Laws 2017, LB88, § 96.

38-1605 Repealed. Laws 2017, LB88, § 96.

38-1606 Repealed. Laws 2017, LB88, § 96.

38-1607 Repealed. Laws 2017, LB88, § 96.

38-1608 Repealed. Laws 2017, LB88, § 96.

38-1609 Repealed. Laws 2017, LB88, § 96.

38-1610 Repealed. Laws 2017, LB88, § 96.

38-1611 Repealed. Laws 2017, LB88, § 96.

38-1612 Repealed. Laws 2017, LB88, § 96.

38-1613 Repealed. Laws 2017, LB88, § 96.

38-1614 Repealed. Laws 2017, LB88, § 96.

38-1615 Repealed. Laws 2017, LB88, § 96.

38-1616 Repealed. Laws 2017, LB88, § 96.

38-1617 Repealed. Laws 2017, LB88, § 96.

38-1618 Repealed. Laws 2017, LB88, § 96.

38-1619 Repealed. Laws 2017, LB88, § 96.

38-1620 Repealed. Laws 2017, LB88, § 96.

38-1621 Repealed. Laws 2017, LB88, § 96.

38-1622 Repealed. Laws 2017, LB88, § 96.

38-1623 Repealed. Laws 2017, LB88, § 96.

38-1624 Repealed. Laws 2017, LB88, § 96.

38-1625 Repealed. Laws 2017, LB88, § 96.

ARTICLE 17

MASSAGE THERAPY PRACTICE ACT

Section

38-1701 Act, how cited.

Sections 38-1701 to 38-1725 shall be known and may be cited as the Massage Therapy Practice Act.

Source: Laws 2007, LB463, § 608; Laws 2019, LB244, § 1.

38-1702 Definitions, where found.

For purposes of the Massage Therapy Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-1703 to 38-1707.01 apply.

Source: Laws 1955, c. 273, § 1, p. 861; Laws 1987, LB 473, § 42; R.S.Supp.,1987, § 71-2701; Laws 1988, LB 1100, § 132; Laws 1990, LB 1064, § 14; Laws 1991, LB 10, § 2; Laws 1993, LB 48, § 2; Laws 1999, LB 828, § 142; Laws 2003, LB 242, § 69; R.S.1943, (2003), § 71-1,278; Laws 2007, LB463, § 609; Laws 2019, LB244, § 2.

38-1706 Massage therapy, defined.

Massage therapy means a health care service involving the physical, mechanical, or electrical manipulation of soft tissue for therapeutic purposes or to enhance wellness and may include the use of oil, salt glows, heat lamps, and hydrotherapy. Massage therapy does not include diagnosis or treatment or use of procedures for which a license to practice medicine or surgery, chiropractic, or podiatry is required nor the use of microwave diathermy, shortwave diathermy, ultrasound, transcutaneous electrical nerve stimulation, electrical stimulation of over thirty-five volts, neurological hyperstimulation, or spinal and joint adjustments.

Source: Laws 2007, LB463, § 613; Laws 2024, LB78, § 1.
Effective date July 19, 2024.

38-1707 Massage therapy establishment, defined.

Massage therapy establishment means any duly licensed place in which a massage therapist practices his or her profession of massage therapy. Massage therapy establishment includes a mobile massage therapy establishment.

Source: Laws 2007, LB463, § 614; Laws 2019, LB244, § 3.

38-1707.01 Mobile massage therapy establishment, defined.

Mobile massage therapy establishment means a self-contained, self-supporting, enclosed mobile unit licensed under the Massage Therapy Practice Act as a mobile site for the performance of the practices of massage therapy by persons licensed under the act.

Source: Laws 2019, LB244, § 4.

38-1711 Massage therapy; temporary license; requirements; applicability of section.

(1) A temporary license to practice massage therapy may be granted to any person who meets all the requirements for a license except passage of the licensure examination required by section 38-1710. A temporary licensee shall

be supervised in his or her practice by a licensed massage therapist. A temporary license shall be valid for sixty days or until the temporary licensee takes the examination, whichever occurs first. In the event a temporary licensee fails the examination required by such section, the temporary license shall be null and void, except that the department, with the recommendation of the board, may extend the temporary license upon a showing of good cause why such license should be extended. A temporary license may not be extended beyond six months. A temporary license shall not be issued to any person failing the examination if such person did not hold a valid temporary license prior to his or her failure to pass the examination.

(2) This section shall not apply to a temporary license issued as provided under section 38-129.01.

Source: Laws 1993, LB 48, § 3; Laws 1999, LB 828, § 144; Laws 2003, LB 242, § 70; R.S.1943, (2003), § 71-1,281.01; Laws 2007, LB463, § 618; Laws 2017, LB88, § 57.

38-1712 Reciprocity; military spouse; temporary license.

The department, with the recommendation of the board, may issue a license based on licensure in another jurisdiction to an individual who meets the requirements of the Massage Therapy Practice Act or substantially equivalent requirements as determined by the department, with the recommendation of the board. An applicant for a license to practice under the act who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 2007, LB463, § 619; Laws 2017, LB88, § 58.

38-1715 Transferred to section 38-1725.

38-1716 Massage therapy establishment; license required.

No person shall operate or profess or attempt to operate a massage therapy establishment unless such establishment is licensed by the department under the Massage Therapy Practice Act. The department shall not issue or renew a license for a massage therapy establishment until all requirements of the act have been complied with. No person shall engage in any of the practices of massage therapy in any location or premises other than a licensed massage therapy establishment except as specifically permitted in the act.

Source: Laws 2019, LB244, § 5.

38-1717 Mobile massage therapy establishment; applicant; requirements.

In order to be licensed as a mobile massage therapy establishment by the department, an applicant shall meet the following requirements:

(1) The proposed establishment is a self-contained, self-supporting, enclosed mobile unit;

(2) The establishment has an automobile insurance liability policy which meets the requirements of the department for the mobile unit;

(3) The establishment is clearly identified as such to the public by a sign placed on the outside of the establishment which includes the establishment's license number;

(4) The establishment complies with the sanitary requirements of the Massage Therapy Practice Act and the rules and regulations adopted and promulgated by the department under the act;

(5) The entrance into the proposed establishment used by the general public provides safe access by the public;

(6) The proposed establishment has at least forty-four square feet of floor space. If more than one practitioner is to be employed in the establishment at the same time, the establishment shall contain an additional space of at least fifty square feet for each additional practitioner; and

(7) The proposed establishment includes a functional sink and toilet facilities and maintains an adequate supply of clean water and wastewater storage capacity.

Source: Laws 2019, LB244, § 6.

38-1718 Mobile massage therapy establishment; application; floor plan or blueprint.

Any person seeking a license to operate a mobile massage therapy establishment shall submit a completed application to the department, and along with the application, the applicant shall submit a detailed floor plan or blueprint of the proposed establishment sufficient to demonstrate compliance with the requirements of section 38-1717.

Source: Laws 2019, LB244, § 7.

38-1719 Mobile massage therapy establishment; application; review; denial; inspection; issuance of permanent license.

Each application for a license to operate a mobile massage therapy establishment shall be reviewed by the department for compliance with the requirements of the Massage Therapy Practice Act and the rules and regulations adopted and promulgated by the department under the act. If an application is denied, the applicant shall be informed in writing of the grounds for denial, and such denial shall not prejudice future applications by the applicant. If an application is approved, the department shall issue the applicant a certificate of consideration to operate a mobile massage therapy establishment. The department shall conduct an operation inspection of each establishment issued a certificate of consideration within six months after the issuance of such certificate. An establishment which passes the inspection shall be issued a permanent license. An establishment which fails the inspection shall submit within fifteen days evidence of corrective action taken to improve those aspects of operation found deficient. If evidence is not submitted within fifteen days or if after a second inspection the establishment does not receive a satisfactory rating, it shall immediately relinquish its certificate of consideration and cease operation.

Source: Laws 2019, LB244, § 8.

38-1720 Mobile massage therapy establishment; operation; requirements.

In order to maintain its license in good standing, each mobile massage therapy establishment shall operate in accordance with the following requirements:

(1) The establishment shall at all times comply with all applicable provisions of the Massage Therapy Practice Act and all rules and regulations adopted and promulgated under the act;

(2) The establishment owner or his or her agent shall notify the department of any change of ownership, name, or office address and if an establishment is permanently closed;

(3) No establishment shall permit any unlicensed person to perform any of the practices of massage therapy within its confines or employment;

(4) The establishment shall display a name upon, over, or near the entrance door distinguishing it as a mobile massage therapy establishment;

(5) The establishment shall permit any duly authorized agent of the department to conduct an operation inspection or investigation at any time during the normal operating hours of the establishment, without prior notice, and the owner and manager shall assist the inspector by providing access to all areas of the establishment, all personnel, and all records requested by the inspector;

(6) The establishment shall display in a conspicuous place the following records:

(a) The current license or certificate of consideration to operate an establishment;

(b) The current licenses of all persons licensed under the act who are employed by or working in the establishment; and

(c) The rating sheet from the most recent operation inspection;

(7) At no time shall an establishment employ more employees than permitted by the square footage requirements of the Massage Therapy Practice Act;

(8) No massage therapy services may be performed in an establishment while the establishment is moving. The establishment must be safely and legally parked in a legal parking space at all times while clients are present inside the establishment. An establishment shall not park or conduct business within three hundred feet of another brick and mortar licensed massage therapy establishment. The department is not responsible for monitoring for enforcement of this subdivision but may discipline a license for a reported and verified violation;

(9) The owner of the establishment shall maintain a permanent business address at which correspondence from the department may be received and records of appointments, license numbers, and vehicle identification numbers shall be kept for each establishment being operated by the owner. The owner shall make such records available for verification and inspection by the department; and

(10) The establishment shall not knowingly permit its employees or clients to use, consume, serve, or in any manner possess or distribute intoxicating beverages or controlled substances upon its premises.

Source: Laws 2019, LB244, § 9.

38-1721 Mobile massage therapy establishment license; renewal; procedure; insurance.

The procedure for renewing a mobile massage therapy establishment license shall be in accordance with section 38-143, except that in addition to all other requirements, the establishment shall submit evidence of minimal property damage, bodily injury, and liability insurance coverage for the establishment

and evidence of coverage which meets the requirements of the Motor Vehicle Registration Act for the establishment.

Source: Laws 2019, LB244, § 10.

Cross References

Motor Vehicle Registration Act, see section 60-301.

38-1722 Mobile massage therapy establishment license revoked or expired; not reinstated.

The license of a mobile massage therapy establishment that has been revoked or expired for any reason shall not be reinstated. An original application for licensure shall be submitted and approved before such establishment may reopen for business.

Source: Laws 2019, LB244, § 11.

38-1723 Mobile massage therapy establishment license; change of ownership or mobile unit; effect.

Each mobile massage therapy establishment license issued shall be in effect solely for the owner or owners and the mobile unit named thereon and shall expire automatically upon any change of ownership or mobile unit. An original application for licensure shall be submitted and approved before such establishment may reopen for business.

Source: Laws 2019, LB244, § 12.

38-1724 Mobile massage therapy establishment; owner; duties.

The owner of each mobile massage therapy establishment shall have full responsibility for ensuring that the establishment is operated in compliance with all applicable laws, rules, and regulations and shall be liable for any and all violations occurring in the establishment.

Source: Laws 2019, LB244, § 13.

38-1725 Rules and regulations.

The department may adopt and promulgate rules and regulations as it may deem necessary with reference to the conditions under which the practice of massage therapy shall be carried on and the precautions necessary to be employed to prevent the spread of infectious and contagious diseases, other than the practice of massage in mobile massage therapy establishments. The department may, if it deems necessary, adopt and promulgate rules and regulations related to mobile massage therapy establishments. The department shall have the power to enforce the Massage Therapy Practice Act and all necessary inspections in connection therewith.

Source: Laws 2007, LB463, § 622; R.S.1943, (2016), § 38-1715; Laws 2019, LB244, § 14.

ARTICLE 18

MEDICAL NUTRITION THERAPY PRACTICE ACT

Section
38-1801. Act, how cited.
38-1802. Legislative findings.

Section

38-1801 Act, how cited.

Sections 38-1801 to 38-1823 shall be known and may be cited as the Medical Nutrition Therapy Practice Act.

Source: Laws 2007, LB463, § 623; Laws 2023, LB227, § 24; Laws 2024, LB1215, § 8.
Operative date January 1, 2025.

38-1802 Legislative findings.

(1) The Legislature finds that:

(a) The unregulated practice of medical nutrition therapy can clearly harm or endanger the health, safety, and welfare of the public;

(b) The public can reasonably be expected to benefit from an assurance of initial and continuing professional ability; and

(c) The public cannot be effectively protected by a less cost-effective means than state regulation of the practice of medical nutrition therapy. The Legislature also finds that dietitians and nutritionists must exercise independent judgment and that professional education, training, and experience are required to make such judgment.

(2) The Legislature further finds that the practice of medical nutrition therapy in the State of Nebraska is not sufficiently regulated for the protection of the health, safety, and welfare of the public. It declares that this is a matter of statewide concern and it shall be the policy of the State of Nebraska to promote high standards of professional performance by those persons representing themselves as licensed dietitian nutritionists and licensed nutritionists.

Source: Laws 1988, LB 557, § 1; Laws 1995, LB 406, § 20; R.S.1943, (2003), § 71-1,285; Laws 2007, LB463, § 624; Laws 2023, LB227, § 25.

38-1803 Definitions, where found.

For purposes of the Medical Nutrition Therapy Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-1803.01 to 38-1810.05 apply.

Source: Laws 1988, LB 557, § 2; Laws 1995, LB 406, § 21; Laws 1999, LB 828, § 146; R.S.1943, (2003), § 71-1,286; Laws 2007, LB463, § 625; Laws 2023, LB227, § 26.

38-1803.01 Appropriate supervision, defined.

Appropriate supervision means the specific type, intensity, and frequency of supervision determined by an assessment of a combination of factors, which include discipline, level of education and experience of the supervisee, and assigned level of responsibility.

Source: Laws 2023, LB227, § 27.

38-1804 Repealed. Laws 2023, LB227, § 121.

38-1806 Consultation, defined.

Consultation means conferring with a physician, nurse practitioner, or physician assistant regarding the provision of medical nutrition therapy. In the inpatient setting, consultation may be satisfied by practicing under clinical privileges or following facility-established protocols. In the outpatient setting, consultation may be satisfied by conferring with a consulting physician or the referring primary care practitioner or physician of the patient.

Source: Laws 2007, LB463, § 628; Laws 2023, LB227, § 28.

38-1807 General nonmedical nutrition information, defined.

General nonmedical nutrition information means information on any of the following:

(1) Principles of good nutrition and food preparation;

(2) Food that should be included in the normal diet;

(3) Essential nutrients needed by the human body;

(4) Recommended amounts of essential nutrients required by the human body;

(5) Actions of nutrients in the human body; and

(6) Food and supplements that are good sources of essential nutrients required by the human body.

Source: Laws 2007, LB463, § 629; Laws 2023, LB227, § 29.

38-1807.01 General supervision for the purpose of post-degree clinical practice experience, defined.

General supervision for the purpose of post-degree clinical practice experience means the qualified supervisor is onsite and present at the location where nutrition-care services are provided or is immediately available by means of electronic communications to the supervisee providing the services and both maintains continued involvement in the appropriate aspects of patient care and has primary responsibility for all nutrition-care services rendered by the supervisee.

Source: Laws 2023, LB227, § 30.

38-1808 Licensed dietitian nutritionist, defined.

Licensed dietitian nutritionist means a person who is licensed to practice medical nutrition therapy pursuant to the Uniform Credentialing Act and who holds a current license issued by the department pursuant to section 38-1813.

Source: Laws 2007, LB463, § 630; Laws 2023, LB227, § 31.

38-1808.01 Licensed nutritionist, defined.

Licensed nutritionist means a person who is licensed to practice medical nutrition therapy pursuant to the Uniform Credentialing Act and who holds a current license issued by the department pursuant to section 38-1817.

Source: Laws 2023, LB227, § 32.

38-1809 Medical nutrition therapy, defined.

Medical nutrition therapy means the assessment of the nutritional status of patients and the provision of the following nutrition-care services for the treatment or management of a disease or medical condition by:

(1) Assessing and evaluating the nutritional needs of people and groups and determining resources and constraints in the practice setting, including ordering laboratory tests to check and track nutrition status, creating dietary plans and orders, and monitoring the effectiveness of such plans and orders;

(2) Establishing priorities, goals, and objectives that meet nutritional needs and are consistent with available resources and constraints;

(3) Providing nutrition counseling; and

(4) Ordering therapeutic diets.

Source: Laws 2007, LB463, § 631; Laws 2023, LB227, § 33.

38-1809.01 Nutrition-care services, defined.

Nutrition-care services means any or all of the following services provided within a systematic process:

(1) Assessing and evaluating the nutritional needs of people and groups and determining resources and constraints in the practice setting, including ordering laboratory tests to check and track nutrition status, creating dietary plans and orders, and monitoring the effectiveness of such plans and orders;

(2) Establishing priorities, goals, and objectives that meet nutritional needs and are consistent with available resources and constraints;

(3) Providing nutrition counseling, including in health and disease;

(4) Developing, implementing, and managing nutrition-care systems;

(5) Evaluating, changing, and maintaining appropriate standards of quality in food and nutrition services; and

(6) Ordering therapeutic diets.

Source: Laws 2023, LB227, § 34.

38-1809.02 Nutrition counseling, defined.

Nutrition counseling means a supportive process, characterized by a collaborative counselor-patient or counselor-client relationship with individuals or groups, to establish food and nutrition priorities, goals, and individualized action plans and general physical activity guidance that acknowledge and foster responsibility for self-care to treat or manage an existing disease or medical condition or to promote health and wellness.

Source: Laws 2023, LB227, § 35.

38-1810 Patient, defined.

Patient means an individual recipient of medical nutrition therapy, whether in the outpatient or inpatient setting.

Source: Laws 2007, LB463, § 632; Laws 2023, LB227, § 41.

38-1810.01 Practice of dietetics and nutrition, defined.

Practice of dietetics and nutrition means the integration and application of scientific principles derived from the study of food, nutrition, biochemistry, metabolism, nutrigenomics, physiology, food management, and behavioral and social sciences in achieving and maintaining health throughout the life span and in providing nutrition care in person or by telehealth, including medical nutrition therapy, for the purpose of disease management and prevention, or to treat or rehabilitate an illness, injury, or condition. The primary functions of the practice of dietetics and nutrition are the provision of medical nutrition therapy for the purpose of disease management or to treat or rehabilitate an illness, injury, or condition and the provision of other nutrition-care services for health and wellness and as primary prevention of chronic disease.

Source: Laws 2023, LB227, § 36.

38-1810.02 Primary care practitioner, defined.

Primary care practitioner means a physician licensed pursuant to section 38-2026 or sections 38-2029 to 38-2033 who provides primary care services, a nurse practitioner licensed pursuant to section 38-2317 who provides primary care services, or a physician assistant licensed pursuant to section 38-2049 who provides primary care services under a collaborative agreement with the supervision of a physician.

Source: Laws 2023, LB227, § 37.

38-1810.03 Qualified supervisor, defined; qualifications; licensure; required, when.

(1) Qualified supervisor means:

(a) When supervising the provision of medical nutrition therapy by a person who is completing post-degree clinical practice experience, a person who either:

(i) Is a licensed dietitian nutritionist, a licensed nutritionist, or a health care provider licensed in any state or territory, including licensed or certified dietitian nutritionists and licensed nutritionists, whose scope of practice includes the provision of medical nutrition therapy; or

(ii) In the case of a person in a state that does not provide for such licensure or certification, meets such other criteria as the board may establish, including by a registered dietitian nutritionist or a certified nutrition specialist, or is a health care provider authorized in another state or territory to provide medical nutrition therapy; and

(b) When supervising the provision of nutrition-care services that does not constitute medical nutrition therapy, a person who:

(i) Meets the qualifications of subdivision (1)(a) of this section; or

(ii) Has worked in the field of clinical nutrition for at least three of the last five years immediately preceding commencement of the applicant's supervised practice experience and holds a master's or doctoral degree with a major course of study in dietetics, human nutrition, foods and nutrition, clinical nutrition, applied clinical nutrition, community nutrition, public health nutrition, naturopathic medicine, nutrition education, nutrition counseling, nutrition science, nutrition and functional medicine, nutritional biochemistry, or nutrition and integrative health, or an equivalent course of study as approved by the board.

(2) In order to qualify as a qualified supervisor in Nebraska, a supervisor obtaining a doctoral degree outside the United States or its territories shall have such degree validated by the board as equivalent to the doctoral degree conferred by an accredited college or university in the United States or its territories.

(3) A qualified supervisor shall be licensed under the Uniform Credentialing Act to provide medical nutrition therapy if supervising an applicant providing medical nutrition therapy to a person in this state.

Source: Laws 2023, LB227, § 38.

38-1810.04 Registered dietitian or registered dietitian nutritionist, defined.

Registered dietitian or registered dietitian nutritionist means a person who is currently registered as a registered dietitian or a registered dietitian nutritionist by the Commission on Dietetic Registration of the Academy of Nutrition and Dietetics or a similar successor entity approved by the department.

Source: Laws 2023, LB227, § 39.

38-1810.05 Therapeutic diet, defined.

Therapeutic diet means a diet intervention prescribed by a physician or other health care professional that provides food or nutrients via oral, enteral, or parenteral routes as part of the treatment of a disease or diagnosed clinical condition to modify, eliminate, decrease, or increase identified micronutrients

or macronutrients in the diet or to provide mechanically altered food when indicated.

Source: Laws 2023, LB227, § 40.

38-1811 Board; membership; qualifications.

(1) The board shall consist of three professional members, one physician, and one public member appointed pursuant to section 38-158 until December 1, 2023.

(2) Beginning on December 1, 2023, the board shall consist of five members as follows: Three professional members, of which one shall be a licensed nutritionist or a licensed dietitian nutritionist and two shall be licensed dietitian nutritionists; one physician; and one public member.

(3) The members shall meet the requirements of sections 38-164 and 38-165.

Source: Laws 2007, LB463, § 633; Laws 2023, LB227, § 42.

38-1812 License or Compact Privilege required; consultation required for practice; activities not subject to licensure.

No person shall practice medical nutrition therapy unless such person is licensed for such purpose pursuant to the Uniform Credentialing Act or holds a Compact Privilege under the Dietitian Licensure Compact. The practice of medical nutrition therapy shall be provided with the consultation of a physician licensed pursuant to section 38-2026 or sections 38-2029 to 38-2033, a nurse practitioner licensed pursuant to section 38-2317, or a physician assistant licensed pursuant to section 38-2049. The Medical Nutrition Therapy Practice Act shall not be construed to require a license under the act in order to:

(1) Practice medical nutrition therapy within the scope of the official duties of an employee of the state or federal government or while serving in the armed forces of the United States;

(2) Engage in practice within the scope of a credential issued under the Uniform Credentialing Act;

(3) Practice medical nutrition therapy as a student while pursuing a course of study leading to a degree in dietetics, nutrition, or an equivalent major course of study from an accredited school or program as part of a supervised course of study, if all of the following apply: (a) The person is not engaged in the unrestricted practice of medical nutrition therapy; (b) the person uses a title clearly indicating the person's status as a student or trainee; and (c) the person is in compliance with appropriate supervision requirements developed by the board, including the requirement that the supervised practice experience must be under the order, control, and full professional responsibility of such supervisor. Nothing in this subdivision shall be construed to permit students, trainees, or supervisees to practice medical nutrition therapy other than as specifically allowed in this subdivision and as provided in section 38-1822;

(4) Be employed as a nutrition or dietetic technician or other food service professional who is working in a hospital setting or other regulated health care facility or program and who has been trained and is supervised while engaged in the provision of medical nutrition therapy by an individual licensed pursuant to the Medical Nutrition Therapy Practice Act whose services are retained by that facility or program on a full-time or regular, part-time, or consultant basis;

(5) Provide individualized nutrition information, guidance, motivation, nutrition recommendations, behavior change management, health coaching, holistic and wellness education, or other nutrition-care services that do not constitute medical nutrition therapy as long as such activity is being performed by a person who is not licensed under the Medical Nutrition Therapy Practice Act and who is not acting in the capacity of or claiming to be a licensed dietitian nutritionist or licensed nutritionist;

(6) Accept or transmit written, verbal, delegated, or electromagnetically transmitted orders for medical nutrition therapy from a referring provider by a registered nurse or licensed practical nurse;

(7) Provide medical nutrition therapy without remuneration to family members;

(8) Aid in the provision of medical nutrition therapy if:

(a) The person performs nutrition-care services at the direction of an individual licensed under the Uniform Credentialing Act whose scope of practice includes provision of medical nutrition therapy; and

(b) The person performs only support activities of medical nutrition therapy that do not require the exercise of independent judgment for which a license under the Medical Nutrition Therapy Practice Act is required;

(9) Practice medical nutrition therapy if the practitioner is licensed in another state, United States territory, or country, has received at least a baccalaureate degree, and is in this state for the purpose of:

(a) Consultation, if the practice in this state is limited to consultation; or

(b) Conducting a teaching clinical demonstration in connection with a program of basic clinical education, graduate education, or postgraduate education which is sponsored by a dietetic education program or a major course of study in human nutrition, food and nutrition, or dietetics, or an equivalent major course of study approved by the board;

(10) Perform individualized general nutrition-care services, not constituting medical nutrition therapy, incidental to the practice of the profession insofar as it does not exceed the scope of the person's education and training;

(11) Market or distribute food, food materials, or dietary supplements, advise regarding the use of those products or the preparation of those products, or counsel individuals or groups in the selection of products to meet general nutrition needs;

(12) Conduct classes or disseminate general nonmedical nutrition information;

(13) Provide care for the sick in accordance with the tenets and practices of any bona fide church or religious denomination;

(14) Practice medical nutrition therapy for the limited purpose of education and research by any person with a master's or doctoral degree from a United States accredited college or university with a major course of study in nutrition or an equivalent course of study as approved by the department;

(15) Provide information and instructions regarding food intake or exercise as a part of a weight control program;

(16) Participate in academic teaching or research with an advanced postgraduate degree; and

(17) Present a general program of instruction for medical weight control for an individual with prediabetes or obesity if the program has been approved in writing by, consultation is available from, and no program change is initiated without prior approval from, any one of the following:

(a) A licensed dietitian nutritionist or a licensed nutritionist;

(b) A registered dietitian or registered dietitian nutritionist;

(c) A certified nutritionist specialist; or

(d) A licensed health care practitioner acting within the scope of such practitioner's license as part of a plan of care.

Source: Laws 1988, LB 557, § 3; Laws 1995, LB 406, § 22; R.S.1943, (2003), § 71-1,287; Laws 2007, LB463, § 634; Laws 2023, LB227, § 43; Laws 2024, LB1215, § 10.
Operative date January 1, 2025.

38-1813 Licensed dietitian nutritionist; eligibility; qualifications; prior licensure; how treated.

(1) A person shall be eligible to be a licensed dietitian nutritionist if such person is eighteen years of age or older, submits a completed application as required by the board, submits fees required by the board, and furnishes evidence of:

(a) A current, valid registration as a registered dietitian nutritionist with the Commission on Dietetic Registration or a similar successor entity approved by the department; or

(b)(i)(A) A master's or doctoral degree from a college or university accredited at the time of graduation from the appropriate accrediting agency recognized by the Council for Higher Education Accreditation and the United States Department of Education with a major course of study in human nutrition, foods and nutrition, dietetics, food systems management, nutrition education, nutrition, nutrition science, clinical nutrition, applied clinical nutrition, nutrition counseling, nutrition and functional medicine, nutritional biochemistry, nutrition and integrative health, or an equivalent course of study that, as approved by the board, meets the competency requirements of an accredited didactic program in dietetics of the Accreditation Council for Education in Nutrition and Dietetics or a similar successor entity approved by the Department of Health and Human Services; or

(B) An academic degree from a foreign country that has been validated as equivalent by a credential evaluation agency recognized by the United States Department of Education and that, as approved by the board, meets the competency requirements of an accredited didactic program in dietetics of the Accreditation Council for Education in Nutrition and Dietetics;

(ii) Successful completion of a planned clinical program in an approved practice of dietetics and nutrition that, as approved by the board, meets the competency requirements of an accredited supervised practice experience in dietetics of the Accreditation Council for Education in Nutrition and Dietetics comprised of not less than one thousand hours of practice under the supervision of a registered dietitian nutritionist. A supervisor who obtained a doctoral degree outside of the United States and territories of the United States shall have the degree validated as equivalent to a doctoral degree conferred by an accredited college or university in the United States by a credential evaluation

agency recognized by the United States Department of Education as approved by the Department of Health and Human Services; and

(iii) Successful completion of the examination for dietitian nutritionists administered by the Commission on Dietetic Registration of the Academy of Nutrition and Dietetics or a similar successor entity approved by the Department of Health and Human Services.

(2) A person licensed as a licensed medical nutrition therapist and credentialed as a registered dietitian nutritionist by the Commission on Dietetic Registration or a similar successor entity recognized by the board on September 2, 2023, shall be deemed to be licensed as a licensed dietitian nutritionist for the term of the license. A person licensed as a licensed medical nutrition therapist who is not credentialed as a registered dietitian on September 2, 2023, shall be deemed to be licensed as a licensed nutritionist for the term of the license.

Source: Laws 1988, LB 557, § 5; Laws 1995, LB 406, § 24; R.S.1943, (2003), § 71-1,289; Laws 2007, LB463, § 635; Laws 2020, LB1002, § 41; Laws 2021, LB528, § 8; Laws 2023, LB227, § 44.

Cross References

Credentialing, general requirements and issuance procedures, see section 38-121 et seq.

38-1814 Reciprocity; military spouse; temporary license.

The department, with the recommendation of the board, may issue a license based on licensure in another jurisdiction to an individual who meets the requirements of the Medical Nutrition Therapy Practice Act or substantially equivalent requirements as determined by the department, with the recommendation of the board. An applicant for a license to practice under the act who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 2007, LB463, § 636; Laws 2017, LB88, § 59.

38-1816 Act, how construed; assisted-living facilities or nursing facilities; provision of medical nutrition therapy.

(1) Nothing in the Medical Nutrition Therapy Practice Act shall be construed to permit a licensed dietitian nutritionist or a licensed nutritionist to practice any other profession regulated under the Uniform Credentialing Act.

(2) Nothing in the Medical Nutrition Therapy Practice Act shall require assisted-living facilities or nursing facilities to provide medical nutrition therapy, unless otherwise required by law, or employ or consult with licensed dietitian nutritionists or licensed nutritionists, so long as any medical nutrition therapy provided in such facilities is provided under an exemption listed under section 38-1812.

Source: Laws 1988, LB 557, § 9; Laws 1994, LB 853, § 1; Laws 1995, LB 406, § 29; R.S.1943, (2003), § 71-1,293; Laws 2007, LB463, § 638; Laws 2023, LB227, § 51.

38-1817 Licensed nutritionist; eligibility; qualifications.

A person shall be eligible to be a licensed nutritionist if such person is eighteen years of age or older, submits a completed application as required by the board, submits fees required by the board, and furnishes evidence of:

(1) Certification as a certified nutrition specialist or proof of successful completion of the examination administered by the board for Certification of Nutrition Specialists of the American Nutrition Association or a similar successor entity approved by the department or an equivalent examination dealing with all aspects of the practice of dietetics and nutrition approved by the department;

(2)(a) A master's or doctoral degree from a college or university accredited at the time of graduation from the appropriate accrediting agency recognized by the Council on Higher Education Accreditation and the United States Department of Education with a major course of study as approved by the board that provides the knowledge requirements necessary for the competent provision of medical nutrition therapy; or

(b) An academic degree from a foreign country that has been validated as equivalent to the degree and course of study described in subdivision (a) of this subdivision as determined by the board;

(3) Successful completion of coursework leading to competence in medical nutrition therapy which includes (a) fifteen semester hours of clinical or life sciences, including such courses as chemistry, organic chemistry, biology, molecular biology, biotechnology, botany, genetics, genomics, neuroscience, experimental science, immunotherapy, pathology, pharmacology, toxicology, research methods, applied statistics, biostatistics, epidemiology, energy production, molecular pathways, hormone and transmitter regulations and imbalance, and pathophysiologic base of disease, with at least three semester hours in human anatomy and physiology or the equivalent, and (b) fifteen semester hours of nutrition and metabolism, with at least six semester hours in biochemistry or an equivalent approved by the board; and

(4) Successful completion of a board-approved, planned, continuous internship or a documented, planned, continuous, supervised practice experience with a qualified supervisor, demonstrating competency in nutrition-care services and the provision of medical nutrition therapy comprised of not less than one thousand hours involving at least two hundred hours of nutrition assessment and nutrition diagnosis, two hundred hours of nutrition intervention or counseling, and two hundred hours of nutrition monitoring and evaluation. A minimum of seven hundred hours of the supervised practice experience is required in professional work settings, and no more than three hundred hours may be in alternate supervised experiences such as observational interactions between patient and practitioner, simulation, case studies, or role playing. This experience shall be under the supervision of a qualified supervisor. Qualified supervisors shall provide general supervision of an applicant's supervised practice experience in the provision of medical nutrition therapy and provide appropriate supervision of an applicant's provision of other nutrition-care services that do not constitute medical nutrition therapy. For purposes of this subdivision, a supervisor shall be licensed in this state if supervising an applicant providing medical nutrition therapy to a person in this state. A supervisor who obtained a doctoral degree outside of the United States and territories of the United States shall have the degree validated as equivalent to a doctoral degree conferred by an accredited college or university in the United States by a credential evaluation agency recognized by the United States Department of Education.

Source: Laws 2023, LB227, § 45.

38-1818 Appropriate supervision; requirements.

The board shall develop requirements for appropriate supervision consistent with prevailing professional standards considering factors that include, but are not limited to, level of education, experience, and level of responsibility. The requirements shall include:

(1) Adequate, active, and continuing review of the supervisee's activities to assure that the supervisee is performing as directed and complying with the statutes and all related administrative regulations;

(2) Personal review by the qualified supervisor of the supervisee's practice on a regular basis and regularly scheduled, face-to-face, education and review conferences between the qualified supervisor and the supervisee;

(3) Personal review of all charts, records, and clinical notes of the supervisee on a regular basis;

(4) Designation of an alternate qualified supervisor to supervise any services provided in the event of a qualified supervisor's absence; and

(5) Knowledge of, and adherence to, by each supervisee and qualified supervisor, the assigned level of responsibility and the permissible types of supervision and documentation as determined by the board in supervision requirements.

Source: Laws 2023, LB227, § 46.

38-1819 Temporary license.

(1) A temporary license to practice medical nutrition therapy may be granted to any person who meets all the requirements for a license except passage of the examination required by section 38-1813 or 38-1817. A temporary licensee shall be supervised by a qualified supervisor. A temporary license shall be valid for one year or until the temporary licensee takes the examination, whichever occurs first. The temporary licensee shall be designated by a title clearly indicating such licensee's status as a student or trainee. If a temporary licensee fails the examination required by section 38-1813 or 38-1817, the temporary license shall be null and void, except that the department, with the recommendation of the board, may extend the temporary license upon a showing of good cause for up to six months. A temporary license shall not be issued to any person who fails to pass the examination if such person did not hold a valid temporary license prior to the failure to pass the examination.

(2) This section shall not apply to a temporary license issued as provided under section 38-129.01.

Source: Laws 2023, LB227, § 47.

38-1820 Medical nutrition therapy; authorized; use of titles, abbreviations, words; limitations.

(1) Unless otherwise authorized or exempted under the Medical Nutrition Therapy Practice Act:

(a) Only a licensed dietitian nutritionist or licensed nutritionist may provide medical nutrition therapy; and

(b) No person shall use the title dietitian nutritionist, nutritionist, dietitian, licensed dietitian nutritionist, licensed medical nutrition therapist, licensed nutritionist, medical nutrition therapist, or licensed nutrition specialist, or the

abbreviation LDN or LN, or any other title, designation, word, letter, abbreviation, or insignia indicating that the person is a provider of medical nutrition therapy or licensed under the Medical Nutrition Therapy Practice Act unless the person is a licensed dietitian nutritionist or a licensed nutritionist.

(2) Only a person who is issued a license as a dietitian nutritionist under the act may use the words licensed dietitian nutritionist, dietitian nutritionist, or dietitian or the letters LDN in connection with such person's name. Only a person who is issued a license as a nutritionist under the act may use the words licensed nutritionist or the letters LN in connection with such person's name. Only a person licensed under the act may use the word nutritionist in connection with such person's name. A person may use any lawfully earned federally trademarked title, and the following persons may use the following words, titles, or letters: (a) A registered dietitian nutritionist may use registered dietitian, registered dietitian nutritionist, rd, or rdn; (b) a person who is credentialed by the Board for Certification of Nutrition Specialists as a certified nutrition specialist may use certified nutrition specialist or cns; or (c) a board-certified nutrition pharmacist may use the title nutrition specialist.

Source: Laws 2023, LB227, § 48.

38-1821 Licensed dietitian nutritionist; licensed nutritionist; practice requirements; authorized activities; limitations.

(1) A licensed dietitian nutritionist or a licensed nutritionist, unless otherwise exempt, shall:

(a) Provide medical nutrition therapy using evidence-based practice and the nutrition-care services process for patients and clients in clinical and community settings for the purpose of treatment or management of a diagnosed medical disease or medical condition. The nutrition-care services process involves application of the scientific method to medical nutrition therapy and consists of four distinct, but interrelated, steps of nutrition assessment, nutrition diagnosis, nutrition intervention, and nutrition monitoring and evaluation;

(b) Use specialized knowledge and skill to apply the systematic problem-solving method to make diagnostic judgments when providing medical nutrition therapy for safe, effective, and high-quality care; and

(c) Use critical thinking to collect relevant data, determine nutrition diagnosis based upon interpreted data, establish patient and client goals, determine a nutrition plan and interventions to solve the problem, and evaluate the effectiveness of interventions and progress toward the desired goals or outcomes.

(2) A licensed dietitian nutritionist or a licensed nutritionist may:

(a) Accept or transmit written, verbal, delegated, or electromagnetically transmitted orders from a referring provider consistent with the Medical Nutrition Therapy Practice Act and rules and regulations adopted and promulgated pursuant to the act and with any controlling protocols established to implement medical nutrition therapy;

(b) Recommend and order patient diets, including therapeutic diets, oral nutrition supplements, and dietary supplements, in accordance with the Medical Nutrition Therapy Practice Act and the rules and regulations adopted and promulgated pursuant to the act. Therapeutic diets may include oral, enteral, or parenteral nutrition therapy. Enteral and parenteral nutrition therapy consists of enteral feedings or specialized intravenous solutions and associated nutri-

tion-related services as part of a therapeutic diet and shall only be ordered, initiated, or performed by a licensed dietitian nutritionist or licensed nutritionist who also meets one of the following criteria:

(i) The licensee is a registered dietitian nutritionist;

(ii) The licensee is a certified nutrition support clinician certified by the National Board of Nutrition Support Certification; or

(iii) The licensee meets other requirements demonstrating competency as determined by the board in evaluating and ordering enteral and parenteral therapy and administering enteral therapy;

(c) Order medical or laboratory tests related to nutritional therapeutic treatments;

(d) Implement prescription drug dose adjustments for specific disease treatment protocols within the limits of such licensee's knowledge, skills, judgment, and clinical practice guidelines pursuant to any applicable and controlling facility-approved protocol and as approved and delegated by the licensed prescriber, physician, or other authorized health care provider who prescribed the drug or drugs to be adjusted. Nothing in this subdivision shall be construed to permit individuals licensed under the Medical Nutrition Therapy Practice Act to independently prescribe or initiate drug treatment. A licensed dietitian nutritionist or a licensed nutritionist may recommend and order or discontinue vitamin and mineral supplements; and

(e) Develop, implement, and manage nutrition-care services systems and evaluate, change, and maintain appropriate standards of quality in food and nutrition-care services.

(3)(a) Nothing in this section shall be construed to limit the ability of any other licensed health care professional to order therapeutic diets if ordering therapeutic diets falls within the scope of practice of the licensed health care professional.

(b) Nothing in this section shall be construed to limit the ability of persons who are not licensed dietitian nutritionists or licensed nutritionists from providing services which they are lawfully able to provide.

Source: Laws 2023, LB227, § 49.

38-1822 Student; accredited course on dietetics and nutrition; practice; limitations.

A student enrolled in an accredited course on dietetics and nutrition recognized by the board may perform any action necessary to complete the student's course of study and engage in the practice of medical nutrition therapy under the appropriate supervision of a supervisor in accordance with section 38-1813 or 38-1817 for a period of no more than five years after the student completes the course of study. The board may, in its discretion, grant a limited extension to such five-year period in the event of extraordinary circumstances to allow the student to satisfy the qualifications for licensure under section 38-1813 or 38-1817. For purposes of this section, extraordinary circumstances may include circumstances in which a person who legally provides medical nutrition therapy in another state has not met the qualifications for licensure under section 38-1813 or 38-1817 within the five-year period after completion of the course of study.

Source: Laws 2023, LB227, § 50.

38-1823 Compact Privilege.

(1) A person holding a Compact Privilege under the Dietitian Licensure Compact may engage in the Practice of Dietetics in Nebraska as authorized pursuant to such compact.

(2) The board may approve, and the department may adopt and promulgate, rules and regulations as necessary to carry out this section.

Source: Laws 2024, LB1215, § 9.
Operative date January 1, 2025.

ARTICLE 19

MEDICAL RADIOGRAPHY PRACTICE ACT

Section

38-1917 Student; provisions not applicable; temporary medical radiographer license; term; applicability of section.

(1) The requirements of sections 38-1915 and 38-1916 do not apply to a student while enrolled and participating in an educational program in medical radiography who, as a part of an educational program, applies X-rays to humans while under the supervision of the licensed practitioners or medical radiographers associated with the educational program. Students who have completed at least twelve months of the training course described in subsection (1) of section 38-1918 may apply for licensure as a temporary medical radiographer. Temporary medical radiographer licenses issued under this section shall expire eighteen months after issuance and shall not be renewed. Persons licensed under this section as temporary medical radiographers shall be permitted to perform the duties of a limited radiographer licensed in all anatomical regions of subdivision (2)(b) of section 38-1918 and Abdomen.

(2) This section shall not apply to a temporary credential issued as provided under section 38-129.01.

Source: Laws 2007, LB463, § 655; Laws 2017, LB88, § 60.

38-1917.02 Student; provisions not applicable; temporary limited computed tomography radiographer license; term; applicability of section.

(1) The requirements of section 38-1917.01 do not apply to a student while enrolled and participating in an educational program in nuclear medicine technology who, as part of the educational program, applies X-rays to humans using a computed tomography system while under the supervision of the licensed practitioners, medical radiographers, or limited computed tomography radiographers associated with the educational program. A person registered by the Nuclear Medicine Technology Certification Board or the American Registry of Radiologic Technologists in nuclear medicine technology may apply for a license as a temporary limited computed tomography radiographer. Temporary limited computed tomography radiographer licenses issued under this section shall expire twenty-four months after issuance and shall not be renewed. Persons licensed under this section as temporary limited computed tomography radiographers shall be permitted to perform medical radiography restricted to

computed tomography while under the direct supervision and in the physical presence of licensed practitioners, medical radiographers, or limited computed tomography radiographers.

(2) This section shall not apply to a temporary credential issued as provided under section 38-129.01.

Source: Laws 2008, LB928, § 12; Laws 2017, LB88, § 61.

ARTICLE 20

MEDICINE AND SURGERY PRACTICE ACT

Section

38-2001 Act, how cited.

Sections 38-2001 to 38-2064 shall be known and may be cited as the Medicine and Surgery Practice Act.

Source: Laws 2007, LB463, § 659; Laws 2009, LB394, § 1; Laws 2011, LB406, § 1; Laws 2018, LB701, § 5; Laws 2019, LB29, § 3; Laws 2020, LB755, § 3; Laws 2022, LB905, § 8; Laws 2024, LB1215, § 11.
Operative date January 1, 2025.

38-2002 Definitions, where found.

For the purposes of the Medicine and Surgery Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-2003 to 38-2022 apply.

Source: Laws 1969, c. 560, § 7, p. 2283; Laws 1971, LB 150, § 4; Laws 1989, LB 342, § 17; Laws 1996, LB 1044, § 425; Laws 1999, LB 828, § 83; R.S.1943, (2003), § 71-1,107.01; Laws 2007, LB463, § 660; Laws 2020, LB755, § 4; Laws 2022, LB905, § 9.

38-2008 Approved program, defined.

Approved program means a program for the education of physician assistants which is accredited by the Accreditation Review Commission on Education for the Physician Assistant or its predecessor or successor agency and which the board formally approves.

Source: Laws 2007, LB463, § 666; Laws 2009, LB195, § 37; Laws 2020, LB755, § 5.

38-2013.01 Licensed health care professional, defined.

Licensed health care professional means a physician, an osteopathic physician, or a physician assistant licensed pursuant to the Uniform Credentialing Act.

Source: Laws 2022, LB905, § 10.

38-2013.02 Perinatal mental health disorder, defined.

Perinatal mental health disorder means a mental health condition that occurs during pregnancy or during the postpartum period, including depression, anxiety, or postpartum psychosis.

Source: Laws 2022, LB905, § 11.

38-2014 Physician assistant, defined.

Physician assistant means any person who graduates from an approved program, who has passed a proficiency examination, and who the department, with the recommendation of the board, approves to perform medical services under a collaborative agreement with the supervision of a physician or under a collaborative agreement with the supervision of a podiatrist as provided by section 38-3013.

Source: Laws 1973, LB 101, § 2; R.S.Supp.,1973, § 85-179.05; Laws 1985, LB 132, § 2; Laws 1993, LB 316, § 1; Laws 1996, LB 1044, § 436; Laws 1996, LB 1108, § 8; Laws 1999, LB 828, § 92; Laws 2001, LB 209, § 8; R.S.1943, (2003), § 71-1,107.16; Laws 2007, LB296, § 338; Laws 2007, LB463, § 672; Laws 2009, LB195, § 38; Laws 2020, LB755, § 6.

38-2014.01 Physician group, defined.

Physician group means two or more physicians practicing medicine within or employed by the same business entity.

Source: Laws 2020, LB755, § 7.

38-2014.02 Postnatal care, defined.

Postnatal care means an office visit to a licensed health care professional occurring after birth, with reference to the infant or mother.

Source: Laws 2022, LB905, § 12.

38-2014.03 Prenatal care, defined.

Prenatal care means an office visit to a licensed health care professional for pregnancy-related care occurring before birth.

Source: Laws 2022, LB905, § 13.

38-2015.01 Questionnaire, defined.

Questionnaire means a screening tool administered by a licensed health care professional to detect perinatal mental health disorders, such as the Edinburgh Postnatal Depression Scale, the Postpartum Depression Screening Scale, the Beck Depression Inventory, the Patient Health Questionnaire, or other validated screening methods.

Source: Laws 2022, LB905, § 14.

38-2017 Supervising physician, defined.

Supervising physician means a licensed physician who supervises a physician assistant under a collaborative agreement.

Source: Laws 2007, LB463, § 675; Laws 2009, LB195, § 40; Laws 2020, LB755, § 8.

38-2018 Supervision, defined.

Supervision means the ready availability of the supervising physician for consultation and collaboration on the activities of the physician assistant.

Source: Laws 2007, LB463, § 676; Laws 2009, LB195, § 41; Laws 2020, LB755, § 9.

38-2021 Unprofessional conduct, defined.

Unprofessional conduct means any departure from or failure to conform to the standards of acceptable and prevailing practice of medicine and surgery or the ethics of the profession, regardless of whether a person, patient, or entity is injured, or conduct that is likely to deceive or defraud the public or is detrimental to the public interest, including, but not limited to:

(1) Performance by a physician of an abortion as defined in subdivision (1) of section 28-326 under circumstances when he or she will not be available for a period of at least forty-eight hours for postoperative care unless such postoperative care is delegated to and accepted by another physician;

(2) Performing an abortion upon a minor without having satisfied the requirements of sections 71-6901 to 71-6911;

(3) The intentional and knowing performance of a partial-birth abortion as defined in subdivision (8) of section 28-326, unless such procedure is necessary to save the life of the mother whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself;

(4) Performance by a physician of an abortion in violation of the Pain-Capable Unborn Child Protection Act; and

(5) Violation of the Preborn Child Protection Act.

Source: Laws 2007, LB463, § 679; Laws 2010, LB594, § 16; Laws 2010, LB1103, § 12; Laws 2011, LB690, § 1; Laws 2020, LB814, § 10; Laws 2023, LB574, § 12.

Cross References

Pain-Capable Unborn Child Protection Act, see section 28-3,102.
Preborn Child Protection Act, see section 71-6912.

38-2023 Board; membership; qualifications.

The board shall consist of eight members, including at least two public members. Two of the six professional members of the board shall be officials or members of the instructional staff of an accredited medical school in this state. One of the six professional members of the board shall be a person who has a license to practice osteopathic medicine and surgery in this state. Beginning December 1, 2020, one of the six professional members of the board shall be a physician with experience in practice with physician assistants.

Source: Laws 2007, LB463, § 681; Laws 2020, LB755, § 10.

38-2025 Medicine and surgery; practice; persons excepted.

The following classes of persons shall not be construed to be engaged in the unauthorized practice of medicine:

(1) Persons rendering gratuitous services in cases of emergency;

(2) Persons administering ordinary household remedies;

(3) The members of any church practicing its religious tenets, except that they shall not prescribe or administer drugs or medicines, perform surgical or physical operations, nor assume the title of or hold themselves out to be physicians, and such members shall not be exempt from the quarantine laws of this state;

(4) Students of medicine who are studying in an accredited school or college of medicine and who gratuitously prescribe for and treat disease under the supervision of a licensed physician;

(5) Physicians who serve in the armed forces of the United States or the United States Public Health Service or who are employed by the United States Department of Veterans Affairs or other federal agencies, if their practice is limited to that service or employment;

(6) Physicians who are licensed in good standing to practice medicine under the laws of another state when incidentally called into this state or contacted via electronic or other medium for consultation with a physician licensed in this state. For purposes of this subdivision, consultation means evaluating the medical data of the patient as provided by the treating physician and rendering a recommendation to such treating physician as to the method of treatment or analysis of the data. The interpretation of a radiological image by a physician who specializes in radiology is not a consultation;

(7) Physicians who are licensed in good standing to practice medicine in another state but who, from such other state, order diagnostic or therapeutic services on an irregular or occasional basis, to be provided to an individual in

this state, if such physicians do not maintain and are not furnished for regular use within this state any office or other place for the rendering of professional services or the receipt of calls;

(8) Physicians who are licensed in good standing to practice medicine in another state and who, on an irregular and occasional basis, are granted temporary hospital privileges to practice medicine and surgery at a hospital or other medical facility licensed in this state;

(9) Persons providing or instructing as to use of braces, prosthetic appliances, crutches, contact lenses, and other lenses and devices prescribed by a physician licensed to practice medicine while working under the direction of such physician;

(10) Dentists practicing their profession when licensed and practicing in accordance with the Dentistry Practice Act;

(11) Optometrists practicing their profession when licensed and practicing under and in accordance with the Optometry Practice Act;

(12) Osteopathic physicians practicing their profession if licensed and practicing under and in accordance with sections 38-2029 to 38-2033;

(13) Chiropractors practicing their profession if licensed and practicing under the Chiropractic Practice Act;

(14) Podiatrists practicing their profession when licensed to practice in this state and practicing under and in accordance with the Podiatry Practice Act;

(15) Psychologists practicing their profession when licensed to practice in this state and practicing under and in accordance with the Psychology Interjurisdictional Compact or the Psychology Practice Act;

(16) Advanced practice registered nurses practicing in their clinical specialty areas when licensed under the Advanced Practice Registered Nurse Practice Act and practicing under and in accordance with their respective practice acts;

(17) Surgical first assistants practicing in accordance with the Surgical First Assistant Practice Act;

(18) Persons licensed or certified under the laws of this state to practice a limited field of the healing art, not specifically named in this section, when confining themselves strictly to the field for which they are licensed or certified, not assuming the title of physician, surgeon, or physician and surgeon, and not professing or holding themselves out as qualified to prescribe drugs in any form or to perform operative surgery;

(19) Persons obtaining blood specimens while working under an order of or protocols and procedures approved by a physician, registered nurse, or other independent health care practitioner licensed to practice by the state if the scope of practice of that practitioner permits the practitioner to obtain blood specimens;

(20) Physicians who are licensed in good standing to practice medicine under the laws of another state or jurisdiction who accompany an athletic team or organization into this state for an event from the state or jurisdiction of licensure. This exemption is limited to treatment provided to such athletic team or organization while present in Nebraska;

(21) Persons who are not licensed, certified, or registered under the Uniform Credentialing Act, to whom are assigned tasks by a physician or osteopathic physician licensed under the Medicine and Surgery Practice Act, if such

assignment of tasks is in a manner consistent with accepted medical standards and appropriate to the skill and training, on the job or otherwise, of the persons to whom the tasks are assigned. For purposes of this subdivision, assignment of tasks means the routine care, activities, and procedures that (a) are part of the routine functions of such persons who are not so licensed, certified, or registered, (b) reoccur frequently in the care of a patient or group of patients, (c) do not require such persons who are not so licensed, certified, or registered to exercise independent clinical judgment, (d) do not require the performance of any complex task, (e) have results which are predictable and have minimal potential risk, and (f) utilize a standard and unchanging procedure; and

(22) Other trained persons employed by a licensed health care facility or health care service defined in the Health Care Facility Licensure Act or clinical laboratory certified pursuant to the federal Clinical Laboratories Improvement Act of 1967, as amended, or Title XVIII or XIX of the federal Social Security Act to withdraw human blood for scientific or medical purposes.

Any person who has held or applied for a license to practice medicine and surgery in this state, and such license or application has been denied or such license has been refused renewal or disciplined by order of limitation, suspension, or revocation, shall be ineligible for the exceptions described in subdivisions (5) through (8) of this section until such license or application is granted or such license is renewed or reinstated. Every act or practice falling within the practice of medicine and surgery as defined in section 38-2024 and not specially excepted in this section shall constitute the practice of medicine and surgery and may be performed in this state only by those licensed by law to practice medicine in Nebraska.

Source: Laws 1927, c. 167, § 101, p. 482; C.S.1929, § 71-1402; Laws 1943, c. 150, § 19, p. 547; R.S.1943, § 71-1,103; Laws 1961, c. 337, § 12, p. 1056; Laws 1969, c. 563, § 2, p. 2291; Laws 1969, c. 564, § 1, p. 2297; Laws 1971, LB 150, § 1; Laws 1984, LB 724, § 1; Laws 1989, LB 342, § 15; Laws 1991, LB 2, § 11; Laws 1992, LB 291, § 17; Laws 1992, LB 1019, § 40; Laws 1994, LB 1210, § 55; Laws 1996, LB 414, § 3; Laws 1996, LB 1044, § 420; Laws 1997, LB 452, § 2; Laws 1999, LB 366, § 9; Laws 1999, LB 828, § 78; Laws 2000, LB 819, § 86; Laws 2000, LB 1115, § 14; Laws 2002, LB 1062, § 17; Laws 2005, LB 256, § 23; Laws 2006, LB 833, § 3; R.S.Supp.,2006, § 71-1,103; Laws 2007, LB463, § 683; Laws 2016, LB721, § 20; Laws 2018, LB1034, § 30; Laws 2020, LB783, § 1.

Cross References

Advanced Practice Registered Nurse Practice Act, see section 38-201.
Chiropractic Practice Act, see section 38-801.
Dentistry Practice Act, see section 38-1101.
Health Care Facility Licensure Act, see section 71-401.
Optometry Practice Act, see section 38-2601.
Podiatry Practice Act, see section 38-3001.
Psychology Interjurisdictional Compact, see section 38-3901.
Psychology Practice Act, see section 38-3101.
Surgical First Assistant Practice Act, see section 38-3501.

38-2026 Medicine and surgery; license; qualifications; foreign medical graduates; requirements.

Except as otherwise provided in sections 38-2026.01 and 38-2027, each applicant for a license to practice medicine and surgery shall:

(1)(a) Present proof that he or she is a graduate of an accredited school or college of medicine, (b) if a foreign medical graduate, provide a copy of a permanent certificate issued by the Educational Commission for Foreign Medical Graduates that is currently effective and relates to such applicant or provide such credentials as are necessary to certify that such foreign medical graduate has successfully passed the Visa Qualifying Examination or its successor or equivalent examination required by the United States Department of Health and Human Services and the United States Citizenship and Immigration Services, or (c) if a graduate of a foreign medical school who has successfully completed a program of American medical training designated as the Fifth Pathway and who additionally has successfully passed the Educational Commission for Foreign Medical Graduates examination but has not yet received the permanent certificate attesting to the same, provide such credentials as certify the same to the Division of Public Health of the Department of Health and Human Services;

(2) Present proof that he or she has served at least one year of graduate medical education approved by the board or, if a foreign medical graduate, present proof that he or she has served at least two years of graduate medical education approved by the board;

(3) Pass a licensing examination approved by the board covering appropriate medical subjects; and

(4) Present proof satisfactory to the department that he or she, within the three years immediately preceding the application for licensure, (a) has been in the active practice of the profession of medicine and surgery in some other state, a territory, the District of Columbia, or Canada for a period of one year, (b) has had at least one year of graduate medical education as described in subdivision (2) of this section, (c) has completed continuing education in medicine and surgery approved by the board, (d) has completed a refresher course in medicine and surgery approved by the board, or (e) has completed the special purposes examination approved by the board.

Source: Laws 1927, c. 167, § 102, p. 483; C.S.1929, § 71-1403; Laws 1943, c. 150, § 20, p. 548; R.S.1943, § 71-1,104; Laws 1963, c. 408, § 6, p. 1312; Laws 1969, c. 563, § 3, p. 2293; Laws 1971, LB 150, § 2; Laws 1975, LB 92, § 3; Laws 1976, LB 877, § 25; Laws 1978, LB 761, § 1; Laws 1985, LB 250, § 13; Laws 1987, LB 390, § 1; Laws 1990, LB 1064, § 13; Laws 1991, LB 400, § 22; Laws 1994, LB 1210, § 56; Laws 1994, LB 1223, § 14; Laws 1996, LB 1044, § 421; Laws 1999, LB 828, § 79; Laws 2002, LB 1062, § 18; Laws 2003, LB 242, § 39; R.S.1943, (2003), § 71-1,104; Laws 2007, LB296, § 332; Laws 2007, LB463, § 684; Laws 2011, LB406, § 2; Laws 2018, LB1034, § 31.

Cross References

Credentialing, general requirements and issuance procedures, see section 38-121 et seq.

38-2028 Reciprocity; requirements; military spouse; temporary license.

(1) An applicant for a license to practice medicine and surgery based on a license in another state or territory of the United States or the District of Columbia shall comply with the requirements of the Interstate Medical Licensure Compact beginning on the effective date of the compact or meet the standards set by the board pursuant to section 38-126, except that an applicant

who has not passed one of the licensing examinations specified in the rules and regulations but has been duly licensed to practice medicine and surgery in some other state or territory of the United States of America or in the District of Columbia and obtained that license based upon a state examination, as approved by the board, may be issued a license by the department, with the recommendation of the board, to practice medicine and surgery.

(2) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 2007, LB463, § 686; Laws 2017, LB88, § 62.

Cross References

Interstate Medical Licensure Compact, see section 38-3601.

38-2034 Applicant; reciprocity; requirements; military spouse; temporary license.

(1) An applicant for a license to practice osteopathic medicine and surgery based on a license in another state or territory of the United States or the District of Columbia shall comply with the requirements of the Interstate Medical Licensure Compact beginning on the effective date of the compact or meet the standards set by the board pursuant to section 38-126, except that an applicant who has not passed one of the licensing examinations specified in the rules and regulations but has been duly licensed to practice osteopathic medicine and surgery in some other state or territory of the United States of America or in the District of Columbia and obtained that license based upon a state examination, as approved by the board, may be issued a license by the department, upon the recommendation of the board, to practice osteopathic medicine and surgery.

(2) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 2007, LB463, § 692; Laws 2017, LB88, § 63.

Cross References

Interstate Medical Licensure Compact, see section 38-3601.

38-2046 Physician assistants; legislative findings.

The Legislature finds that:

(1) In its concern with the geographic maldistribution of health care services in Nebraska it is essential to develop additional health personnel; and

(2) It is essential to encourage the more effective utilization of the skills of physicians and podiatrists by enabling them to delegate health care tasks to qualified physician assistants when such delegation is consistent with the patient's health and welfare.

It is the intent of the Legislature to encourage the utilization of physician assistants.

Source: Laws 1973, LB 101, § 1; R.S.Supp.,1973, § 85-179.04; Laws 1985, LB 132, § 1; R.S.1943, (2003), § 71-1,107.15; Laws 2007, LB463, § 704; Laws 2020, LB755, § 11.

Cross References

Student loan program, Rural Health Systems and Professional Incentive Act, see section 71-5650.

38-2047 Physician assistants; services performed; supervision requirements.

(1) A physician assistant may perform medical services that (a) are delegated by and provided under the supervision of a licensed physician who meets the requirements of section 38-2050, (b) are appropriate to the level of education, experience, and training of the physician assistant, (c)(i) form a component of the supervising physician's scope of practice or (ii) form a component of the scope of practice of a physician who meets the requirements of section 38-2050 working in the same physician group as the physician assistant if delegated by and provided under the supervision of and collaboration with such physician, (d) are medical services for which the physician assistant has been prepared by education, experience, and training and that the physician assistant is competent to perform, and (e) are not otherwise prohibited by law.

(2) A physician assistant shall have at least one supervising physician for each employer. If the employer is a multispecialty practice, the physician assistant shall have a supervising physician for each specialty practice area in which the physician assistant performs medical services.

(3) Each physician assistant and his or her supervising physician shall be responsible to ensure that (a) the scope of practice of the physician assistant is identified, (b) the delegation of medical tasks is appropriate to the level of education, experience, and training of the physician assistant, (c) the relationship of and access to the supervising physician is defined, and (d) a process for evaluation of the performance of the physician assistant is established.

(4) A physician assistant may pronounce death and may complete and sign death certificates and any other forms if such acts are within the scope of practice of the physician assistant.

(5) A physician assistant may practice under the supervision of a podiatrist as provided in section 38-3013.

Source: Laws 1973, LB 101, § 3; R.S.Supp.,1973, § 85-179.06; Laws 1985, LB 132, § 3; Laws 1993, LB 316, § 2; Laws 1996, LB 1108, § 9; R.S.1943, (2003), § 71-1,107.17; Laws 2007, LB463, § 705; Laws 2009, LB195, § 43; Laws 2020, LB755, § 12.

Cross References

Liability limitations:
Malpractice, Nebraska Hospital-Medical Liability Act, see section 44-2801 et seq.
Rendering emergency aid, see section 25-21,186.

38-2049 Physician assistants; licenses; temporary licenses; issuance; military spouse; temporary license.

(1) The department, with the recommendation of the board, shall issue licenses to persons who are graduates of an approved program and have passed a proficiency examination.

(2) The department, with the recommendation of the board, shall issue temporary licenses under this subsection to persons who have successfully completed an approved program but who have not yet passed a proficiency examination. Any temporary license issued pursuant to this subsection shall be issued for a period not to exceed one year and under such conditions as determined by the department, with the recommendation of the board. The temporary license issued under this subsection may be extended by the department, with the recommendation of the board.

(3) Physician assistants approved by the board prior to April 16, 1985, shall not be required to complete the proficiency examination.

(4) An applicant who is a military spouse applying for a license to practice as a physician assistant may apply for a temporary license as provided in section 38-129.01.

Source: Laws 1973, LB 101, § 5; R.S.Supp.,1973, § 85-179.08; Laws 1985, LB 132, § 5; Laws 1996, LB 1108, § 10; R.S.1943, (2003), § 71-1,107.19; Laws 2007, LB463, § 707; Laws 2009, LB195, § 44; Laws 2017, LB88, § 64.

Cross References

Credentialing, general requirements and issuance procedures, see section 38-121 et seq.

38-2050 Physician assistants; supervision; supervising physician; requirements; collaborative agreement.

(1) To be a supervising physician, a person shall:

(a) Be licensed to practice medicine and surgery under the Uniform Credentialing Act;

(b) Have no restriction imposed by the board on his or her ability to supervise or collaborate with a physician assistant; and

(c) Be a party to a collaborative agreement with the physician assistant.

(2) The supervising physician shall keep the collaborative agreement on file at his or her primary practice site, shall keep a copy of the collaborative agreement on file at each practice site where the physician assistant provides medical services, and shall make the collaborative agreement available to the board and the department upon request.

(3) Supervision of a physician assistant by a supervising physician shall be continuous but shall not require the physical presence of the supervising physician at the time and place that the services are rendered. A physician assistant may render services in a setting that is geographically remote from the supervising physician.

(4) A supervising physician may supervise no more than four physician assistants at any one time. The board may consider an application for waiver of this limit and may waive the limit upon a showing that the supervising physician meets the minimum requirements for the waiver. The department may adopt and promulgate rules and regulations establishing minimum requirements for such waivers.

Source: Laws 1973, LB 101, § 6; R.S.Supp.,1973, § 85-179.09; Laws 1985, LB 132, § 6; Laws 1993, LB 316, § 3; R.S.1943, (2003), § 71-1,107.20; Laws 2007, LB463, § 708; Laws 2009, LB195, § 45; Laws 2020, LB755, § 13.

38-2051 Physician assistants; compact privilege.

A person holding a compact privilege to practice in Nebraska under the Physician Assistant (PA) Licensure Compact may act as a physician assistant as authorized pursuant to such compact.

Source: Laws 2024, LB1215, § 12.
Operative date January 1, 2025.

38-2053 Physician assistants; negligent acts; liability.

Any physician or physician groups utilizing physician assistants shall be liable for any negligent acts or omissions of physician assistants while acting under their supervision.

Source: Laws 1973, LB 101, § 14; R.S.Supp.,1973, § 85-179.17; Laws 1985, LB 132, § 13; R.S.1943, (2003), § 71-1,107.28; Laws 2007, LB463, § 711; Laws 2020, LB755, § 14.

38-2054 Physician assistants; licensed; not engaged in unauthorized practice of medicine.

Any physician assistant who is licensed and who renders services under the supervision of a licensed physician as provided by the Medicine and Surgery Practice Act shall not be construed to be engaged in the unauthorized practice of medicine.

Source: Laws 1973, LB 101, § 15; R.S.Supp.,1973, § 85-179.18; Laws 1985, LB 132, § 14; Laws 1996, LB 1108, § 13; R.S.1943, (2003), § 71-1,107.29; Laws 2007, LB463, § 712; Laws 2020, LB755, § 15.

38-2055 Physician assistants; prescribe drugs and devices; restrictions; therapeutic regimen; powers.

(1) A physician assistant, under a collaborative agreement with a supervising physician, may prescribe drugs and devices.

(2) All such prescriptions and prescription container labels shall bear the name of the physician assistant. A physician assistant who prescribes controlled substances listed in Schedule II, III, IV, or V of section 28-405 shall obtain a federal Drug Enforcement Administration registration number. A physician assistant may dispense drug samples to patients and may request, receive, or sign for drug samples.

(3) A physician assistant, under a collaborative agreement with a supervising physician, may plan and initiate a therapeutic regimen, which includes ordering and prescribing nonpharmacological interventions, including, but not limited to, durable medical equipment, nutrition, blood and blood products, and diagnostic support services, such as home health care, hospice, physical therapy, and occupational therapy.

Source: Laws 1985, LB 132, § 15; Laws 1992, LB 1019, § 41; Laws 1999, LB 379, § 4; Laws 1999, LB 828, § 94; Laws 2005, LB 175, § 1; R.S.Supp.,2006, § 71-1,107.30; Laws 2007, LB463, § 713; Laws 2009, LB195, § 46; Laws 2020, LB755, § 16.

Cross References

Schedules of controlled substances, see section 28-405.

38-2056 Physician Assistant Committee; created; membership; powers and duties; per diem; expenses.

(1) There is hereby created the Physician Assistant Committee which shall review and make recommendations to the board regarding all matters relating to physician assistants that come before the board. Such matters shall include, but not be limited to, (a) applications for licensure, (b) physician assistant education, (c) scope of practice, (d) proceedings arising pursuant to sections

38-178 and 38-179, (e) physician assistant licensure requirements, and (f) continuing competency. The committee shall be directly responsible to the board.

(2) The committee shall be appointed by the State Board of Health. The committee shall be composed of two physician assistants, one supervising physician, one member of the Board of Medicine and Surgery who shall be a nonvoting member of the committee, and one public member. The chairperson of the committee shall be elected by a majority vote of the committee members.

(3) At the expiration of the four-year terms of the members serving on December 1, 2008, appointments shall be for five-year terms. Members shall serve no more than two consecutive full five-year terms. Reappointments shall be made by the State Board of Health.

(4) The committee shall meet on a regular basis and committee members shall, in addition to necessary traveling and lodging expenses, receive a per diem for each day actually engaged in the discharge of his or her duties, including compensation for the time spent in traveling to and from the place of conducting business. Traveling and lodging expenses shall be reimbursed on the same basis as provided in sections 81-1174 to 81-1177. The compensation shall not exceed fifty dollars per day and shall be determined by the committee with the approval of the department.

Source: Laws 1973, LB 101, § 11; R.S.Supp.,1973, § 85-179.14; Laws 1985, LB 132, § 10; Laws 1996, LB 1108, § 11; Laws 1999, LB 828, § 93; Laws 2002, LB 1021, § 18; R.S.1943, (2003), § 71-1,107.25; Laws 2007, LB463, § 714; Laws 2020, LB755, § 17.

38-2058 Acupuncture; license required; standard of care.

It is unlawful to practice acupuncture on a person in this state unless the acupuncturist is licensed to practice acupuncture under the Uniform Credentialing Act. An acupuncturist licensed under the Uniform Credentialing Act shall provide the same standard of care to patients as that provided by a person licensed under the Uniform Credentialing Act to practice medicine and surgery, osteopathy, or osteopathic medicine and surgery. An acupuncturist licensed under the Uniform Credentialing Act shall refer a patient to an appropriate practitioner when the problem of the patient is beyond the training, experience, or competence of the acupuncturist.

Source: Laws 2001, LB 270, § 10; R.S.1943, (2003), § 71-1,346; Laws 2007, LB463, § 716; Laws 2017, LB19, § 1.

38-2063 Repealed. Laws 2019, LB29, § 5.

38-2064 Perinatal mental health disorders; referral network; questionnaire.

The board may work with accredited hospitals and licensed health care professionals and may create a referral network in Nebraska to develop policies, procedures, information, and educational materials to meet each of the following requirements concerning perinatal mental health disorders:

(1) A licensed health care professional providing prenatal care may:

(a) Provide education to a pregnant patient and, if possible and with permission, to the patient's family about perinatal mental health disorders in accor-

dance with the formal opinions and recommendations of the American College of Obstetricians and Gynecologists; and

(b) Invite each pregnant patient to complete a questionnaire in accordance with the formal opinions and recommendations of the American College of Obstetricians and Gynecologists. Screening for perinatal mental health disorders may be repeated when, in the professional judgment of the licensed health care professional, the patient is at increased risk for developing a perinatal mental health disorder;

(2) A licensed health care professional providing postnatal care may invite each postpartum patient to complete a questionnaire and, if completed, shall review the questionnaire in accordance with the formal opinions and recommendations of the American College of Obstetricians and Gynecologists; and

(3) A licensed health care professional providing pediatric care to an infant may invite the infant's mother to complete a questionnaire at any well-child checkup occurring during the first year of life at which the mother is present and, if completed, shall review the questionnaire in accordance with the formal opinions and recommendations of the American Academy of Pediatrics, in order to ensure that the health and well-being of the infant are not compromised by an undiagnosed perinatal mental health disorder in the mother.

Source: Laws 2022, LB905, § 15.

ARTICLE 21

MENTAL HEALTH PRACTICE ACT

Section

Section

38-2101 Act, how cited.

Sections 38-2101 to 38-2147 shall be known and may be cited as the Mental Health Practice Act.

Source: Laws 2007, LB247, § 72; Laws 2007, LB463, § 720; Laws 2022, LB752, § 10; Laws 2024, LB605, § 2; Laws 2024, LB932, § 5. Operative date January 1, 2025.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB605, section 2, with LB932, section 5, to reflect all amendments.

38-2102 Legislative findings.

The Legislature finds that, because many mental health practitioners are not regulated in this state, anyone may offer mental health services by using an unrestricted title and that there is no means for identifying qualified practitioners, for enforcing professional standards, or for holding such practitioners accountable for their actions. As a result, the Legislature determines that, in the interest of consumer protection and for the protection of public health, safety, and welfare, individuals should be provided a means by which they can be assured that their selection of a mental health practitioner is based on sound criteria and that the activities of those persons who by any title may offer or deliver therapeutic mental health services should be regulated.

The purpose of licensing mental health practitioners is to provide for an omnibus title for such persons and to provide for associated certification of social workers, master social workers, professional counselors, marriage and family therapists, and art therapists.

Source: Laws 1993, LB 669, § 14; R.S.1943, (2003), § 71-1,295; Laws 2007, LB463, § 721; Laws 2024, LB605, § 3. Operative date January 1, 2025.

38-2103 Definitions, where found.

For purposes of the Mental Health Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-2104 to 38-2119 apply.

Source: Laws 1993, LB 669, § 15; R.S.1943, (2003), § 71-1,296; Laws 2007, LB247, § 38; Laws 2007, LB463, § 722; Laws 2024, LB605, § 4. Operative date January 1, 2025.

38-2104 Approved educational program, defined.

(1) Approved educational program means a program of education and training accredited by an agency listed in subsection (2) of this section or

approved by the board. Such approval may be based on the program's accreditation by an accrediting agency with requirements similar to an agency listed in subsection (2) of this section or on standards established by the board in the manner and form provided in section 38-133.

(2) Approved educational program includes a program of education and training accredited by:

(a) The Commission on Accreditation for Marriage and Family Therapy Education;

(b) The Council for Accreditation of Counseling and Related Educational Programs;

(c) The Council on Rehabilitation Education;

(d) The Council on Social Work Education;

(e) The American Psychological Association for a doctoral degree program enrolled in by a person who has a master's degree or its equivalent in psychology; or

(f) The American Art Therapy Association or the Commission on Accreditation of Allied Health Education Programs for a master's degree program in art therapy.

Source: Laws 1986, LB 286, § 12; R.S.1943, (1990), § 71-1,255; Laws 1993, LB 669, § 16; R.S.1943, (2003), § 71-1,297; Laws 2007, LB463, § 723; Laws 2018, LB1034, § 32; Laws 2024, LB605, § 5.
Operative date January 1, 2025.

38-2104.01 Art media, defined.

Art media means the materials used by an individual to create tangible representations of private experiences, thoughts, and emotions. Art media includes, but is not limited to, traditional art making materials such as paint, clay, drawing implements, photography, and collage, as well as, crafts, found objects, and nontraditional materials that can be utilized to make personal art.

Source: Laws 2024, LB605, § 6.
Operative date January 1, 2025.

38-2104.02 Art therapy, defined.

(1) Art therapy means the integrative application of psychotherapeutic principles and methods with specialized training in strategic use of art media, the neurobiological implications of art-making, and art-based assessment models in the evaluation, assessment, and treatment of normal and abnormal cognitive, developmental, emotional, and behavioral disorders and conditions in individuals, families, and groups.

(2) Subject to subsection (3) of this section, art therapy includes, but is not limited to:

(a) Appraisal activities involving selecting, administering, and interpreting art-based appraisal tools and standard diagnostic instruments designed to assess levels of functioning, aptitudes, abilities, and personal characteristics to determine treatment plans and appropriate art-based interventions;

(b) Use of art media and the creative process to assess a client's inner fears, conflicts, and core issues with the goal of improving physical, cognitive, and emotional functioning and increasing self-awareness and self-esteem;

(c) Strategic application of therapeutic interventions in individual and group sessions to facilitate visual, nonverbal, and verbal receptive and expressive communication and engagement;

(d) Use of art-making and the verbal processing of produced imagery to help clients improve cognitive and sensory-motor functions and reduce symptoms of depression, anxiety, post-traumatic stress, and attachment disorders;

(e) Implementation of treatment plans to help clients resolve conflicts and distress, manage anger, cope with traumatic experience and grief, develop interpersonal skills, and improve educational performance, vocational performance, and social functioning;

(f) Adjustment of appraisal and evaluation techniques and treatments to address multicultural and diversity issues;

(g) Referral activities which evaluate data to identify clients or groups that may be better served by other specialists; and

(h) Provision of consultation, crisis intervention, client advocacy, and education services to clients.

(3) Nothing in this section shall be construed to authorize a certified art therapist to engage in the practice of clinical psychology as provided in section 38-3111.

Source: Laws 2024, LB605, § 7.
Operative date January 1, 2025.

38-2105.01 Certified art therapist, defined.

Certified art therapist means a person who is certified to practice art therapy pursuant to the Uniform Credentialing Act and who holds a current certificate issued by the department.

Source: Laws 2024, LB605, § 8.
Operative date January 1, 2025.

38-2112 Consultation, defined.

Consultation means a professional collaborative relationship which is between a licensed mental health practitioner and a consultant who is a psychologist licensed to engage in the practice of psychology in this state as provided in section 38-3111 or as provided in similar provisions of the Psychology Interjurisdictional Compact, a qualified physician, a licensed independent mental health practitioner, or a professional counselor holding a privilege to practice in Nebraska under the Licensed Professional Counselors Interstate Compact and in which (1) the consultant makes a diagnosis based on information supplied by the licensed mental health practitioner and any additional assessment deemed necessary by the consultant and (2) the consultant and the licensed mental health practitioner jointly develop a treatment plan which indicates the responsibility of each professional for implementing elements of the plan, updating the plan, and assessing the client's progress.

Source: Laws 1993, LB 669, § 24; Laws 1994, LB 1210, § 95; R.S.1943, (2003), § 71-1,305; Laws 2007, LB463, § 731; Laws 2008, LB1108, § 1; Laws 2018, LB1034, § 33; Laws 2022, LB752, § 11.

Cross References

Licensed Professional Counselors Interstate Compact, see section 38-4201.
Psychology Interjurisdictional Compact, see section 38-3901.

38-2115 Mental health practice, defined; limitation on practice.

(1) Mental health practice means the provision of treatment, assessment, psychotherapy, counseling, or equivalent activities to individuals, couples, families, or groups for behavioral, cognitive, social, mental, or emotional disorders, including interpersonal or personal situations.

(2) Mental health practice does not include:

(a) The practice of psychology or medicine;

(b) Prescribing drugs or electroconvulsive therapy;

(c) Treating physical disease, injury, or deformity;

(d) Diagnosing major mental illness or disorder except in consultation with a qualified physician, a psychologist licensed to engage in the practice of psychology in this state as provided in section 38-3111 or as provided in similar provisions of the Psychology Interjurisdictional Compact, a licensed independent mental health practitioner, or a professional counselor holding a privilege to practice in Nebraska under the Licensed Professional Counselors Interstate Compact;

(e) Measuring personality or intelligence for the purpose of diagnosis or treatment planning;

(f) Using psychotherapy with individuals suspected of having major mental or emotional disorders except in consultation with a qualified physician, a licensed psychologist, or a licensed independent mental health practitioner; or

(g) Using psychotherapy to treat the concomitants of organic illness except in consultation with a qualified physician or licensed psychologist.

(3) Mental health practice includes the initial assessment of organic mental or emotional disorders for the purpose of referral or consultation.

(4) Nothing in sections 38-2114, 38-2118, and 38-2119 shall be deemed to constitute authorization to engage in activities beyond those described in this section. Persons who are certified under the Mental Health Practice Act but who do not hold a license under section 38-2122 or a privilege to practice in Nebraska as a professional counselor under the Licensed Professional Counselors Interstate Compact shall not engage in mental health practice.

Source: Laws 1993, LB 669, § 26; Laws 1994, LB 1210, § 96; R.S.1943, (2003), § 71-1,307; Laws 2007, LB247, § 40; Laws 2007, LB463, § 733; Laws 2008, LB1108, § 2; Laws 2018, LB1034, § 34; Laws 2022, LB752, § 12.

Cross References

Licensed Professional Counselors Interstate Compact, see section 38-4201.
Psychology Interjurisdictional Compact, see section 38-3901.

38-2116 Mental health practitioner, independent mental health practitioner, defined; use of titles.

(1)(a) Mental health practitioner means a person who holds himself or herself out as a person qualified to engage in mental health practice or a person who offers or renders mental health practice services.

(b) Independent mental health practitioner means a person who holds himself or herself out as a person qualified to engage in independent mental health practice or a person who offers or renders independent mental health practice services.

(2)(a) A person who (i) is licensed as a mental health practitioner and certified as a master social worker or (ii) holds a multistate authorization to practice in Nebraska under the Social Worker Licensure Compact under the relevant category, as designated by the board, may use the title licensed clinical social worker.

(b) A person who is licensed as a mental health practitioner and certified as a professional counselor may use the title licensed professional counselor.

(c) A person who is licensed as a mental health practitioner and certified as a marriage and family therapist may use the title licensed marriage and family therapist.

(d) A person who is licensed as a mental health practitioner and certified as an art therapist may use the title licensed art therapist.

(e) No person shall use the title licensed clinical social worker, licensed professional counselor, licensed marriage and family therapist, or licensed art therapist unless such person is licensed and certified or holds a multistate authorization to practice as provided in this subsection.

(3)(a) A person who (i) is licensed as an independent mental health practitioner and certified as a master social worker or (ii) holds a multistate authorization to practice in Nebraska under the Social Worker Licensure Compact under the relevant category, as designated by the board, may use the title licensed independent clinical social worker.

(b) A person who is licensed as an independent mental health practitioner and certified as a professional counselor or who holds a privilege to practice in Nebraska as a professional counselor under the Licensed Professional Counselors Interstate Compact may use the title licensed independent professional counselor.

(c) A person who is licensed as an independent mental health practitioner and certified as a marriage and family therapist may use the title licensed independent marriage and family therapist.

(d) A person who is licensed as an independent mental health practitioner and certified as an art therapist may use the title licensed independent art therapist.

(e) No person shall use the title licensed independent clinical social worker, licensed independent professional counselor, licensed independent marriage and family therapist, or licensed independent art therapist unless such person is licensed and certified or holds a privilege or multistate authorization as provided in this subsection.

(4) A mental health practitioner shall not represent himself or herself as a physician or psychologist and shall not represent his or her services as being medical or psychological in nature. An independent mental health practitioner shall not represent himself or herself as a physician or psychologist.

Source: Laws 1993, LB 669, § 27; R.S.1943, (2003), § 71-1,308; Laws 2007, LB247, § 41; Laws 2007, LB463, § 734; Laws 2008,

LB1108, § 3; Laws 2022, LB752, § 13; Laws 2024, LB605, § 9; Laws 2024, LB932, § 6.
Operative date January 1, 2025.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB605, section 9, with LB932, section 6, to reflect all amendments.

Cross References

Licensed Professional Counselors Interstate Compact, see section 38-4201.
Social Worker Licensure Compact, see section 38-4501.

38-2117 Mental health program, defined.

Mental health program means an approved educational program in a field such as, but not limited to, social work, professional counseling, marriage and family therapy, human development, psychology, family relations, or art therapy, the content of which contains an emphasis on therapeutic mental health and course work in psychotherapy and the assessment of mental disorders.

Source: Laws 1993, LB 669, § 28; R.S.1943, (2003), § 71-1,309; Laws 2007, LB463, § 735; Laws 2018, LB1034, § 35; Laws 2024, LB605, § 10.
Operative date January 1, 2025.

38-2120 Board; membership; qualifications.

The board shall consist of nine professional members and two public members appointed pursuant to section 38-158. The members shall meet the requirements of sections 38-164 and 38-165. Two professional members shall be certified master social workers, two professional members shall be certified professional counselors, two professional members shall be certified marriage and family therapists, one professional member shall be a certified art therapist, and two professional members shall be licensed mental health practitioners that do not hold an associated certification.

Source: Laws 2007, LB463, § 738; Laws 2024, LB605, § 11.
Operative date January 1, 2025.

38-2121 License; required; exceptions.

The requirement to be licensed as a mental health practitioner pursuant to the Uniform Credentialing Act in order to engage in mental health practice shall not be construed to prevent:

(1) Qualified members of other professions who are licensed, certified, or registered by this state from practice of any mental health activity consistent with the scope of practice of their respective professions;

(2) Alcohol and drug counselors who are licensed by the Division of Public Health of the Department of Health and Human Services and problem gambling counselors who are certified by the Department of Health and Human Services prior to July 1, 2013, or by the Nebraska Commission on Problem Gambling beginning on July 1, 2013, from practicing their profession. Such exclusion shall include students training and working under the supervision of an individual qualified under section 38-315;

(3) Any person employed by an agency, bureau, or division of the federal government from discharging his or her official duties, except that if such person engages in mental health practice in this state outside the scope of such

official duty or represents himself or herself as a licensed mental health practitioner, he or she shall be licensed;

(4) Teaching or the conduct of research related to mental health services or consultation with organizations or institutions if such teaching, research, or consultation does not involve the delivery or supervision of mental health services to individuals or groups of individuals who are themselves, rather than a third party, the intended beneficiaries of such services;

(5) The delivery of mental health services by:

(a) Students, interns, or residents whose activities constitute a part of the course of study for medicine, psychology, nursing, school psychology, social work, clinical social work, counseling, marriage and family therapy, art therapy, or other health care or mental health service professions; or

(b) Individuals seeking to fulfill postgraduate requirements for licensure when those individuals are supervised by a licensed professional consistent with the applicable regulations of the appropriate professional board;

(6) Duly recognized members of the clergy from providing mental health services in the course of their ministerial duties and consistent with the codes of ethics of their profession if they do not represent themselves to be mental health practitioners;

(7) The incidental exchange of advice or support by persons who do not represent themselves as engaging in mental health practice, including participation in self-help groups when the leaders of such groups receive no compensation for their participation and do not represent themselves as mental health practitioners or their services as mental health practice;

(8) Any person providing emergency crisis intervention or referral services or limited services supporting a service plan developed by and delivered under the supervision of a licensed mental health practitioner, licensed physician, or a psychologist licensed to engage in the practice of psychology if such persons are not represented as being licensed mental health practitioners or their services are not represented as mental health practice;

(9) Staff employed in a program designated by an agency of state government to provide rehabilitation and support services to individuals with mental illness from completing a rehabilitation assessment or preparing, implementing, and evaluating an individual rehabilitation plan; or

(10) A person who holds a privilege to practice in Nebraska as a professional counselor under the Licensed Professional Counselors Interstate Compact from acting as authorized by such privilege.

Source: Laws 1993, LB 669, § 31; Laws 1994, LB 1210, § 99; Laws 1995, LB 275, § 5; Laws 1996, LB 1044, § 479; Laws 2004, LB 1083, § 114; R.S.Supp.,2006, § 71-1,312; Laws 2007, LB296, § 361; Laws 2007, LB463, § 739; Laws 2013, LB6, § 11; Laws 2022, LB752, § 14; Laws 2024, LB605, § 12.
Operative date January 1, 2025.

Cross References

Licensed Professional Counselors Interstate Compact, see section 38-4201.

38-2122 Mental health practitioner; qualifications.

A person shall be qualified to be a licensed mental health practitioner if such person:

(1) Has received a master's degree, a doctoral degree, or the equivalent of a master's degree, as determined by the board, that consists of course work and training which was primarily therapeutic mental health in content and included a practicum or internship and was from an approved educational program. Practicums or internships completed after September 1, 1995, must include a minimum of three hundred clock hours of direct client contact under the supervision of a qualified physician, a licensed psychologist, or a licensed mental health practitioner;

(2) Has successfully completed three thousand hours of supervised experience in mental health practice of which fifteen hundred hours were in direct client contact in a setting where mental health services were being offered and the remaining fifteen hundred hours included, but were not limited to, review of client records, case conferences, direct observation, and video observation. For purposes of this subdivision, supervised means monitored by a qualified physician, a licensed clinical psychologist, or a certified master social worker, certified professional counselor, or marriage and family therapist qualified for certification on September 1, 1994, for any hours completed before such date or by a qualified physician, a psychologist licensed to engage in the practice of psychology, or a licensed mental health practitioner for any hours completed after such date, including evaluative face-to-face contact for a minimum of one hour per week. Such three thousand hours shall be accumulated after completion of the master's degree, doctoral degree, or equivalent of the master's degree; and

(3) Has satisfactorily passed an examination approved by the board. An individual who by reason of educational background is eligible for certification as a certified master social worker, a certified professional counselor, a certified marriage and family therapist, or a certified art therapist shall take and pass a certification examination approved by the board before becoming licensed as a mental health practitioner.

Source: Laws 1993, LB 669, § 33; Laws 1994, LB 1210, § 100; Laws 1995, LB 406, § 31; Laws 1997, LB 622, § 84; Laws 1997, LB 752, § 160; R.S.1943, (2003), § 71-1,314; Laws 2007, LB463, § 740; Laws 2018, LB1034, § 36; Laws 2024, LB605, § 13. Operative date January 1, 2025.

Cross References

Credentialing, general requirements and issuance procedures, see section 38-121 et seq.

38-2123 Provisional mental health practitioner license; qualifications; application; expiration; disclosure required.

(1) A person who needs to obtain the required three thousand hours of supervised experience in mental health practice as specified in section 38-2122 to qualify for a mental health practitioner license shall obtain a provisional mental health practitioner license. To qualify for a provisional mental health practitioner license, such person shall:

(a) Have a master's degree, a doctoral degree, or the equivalent of a master's degree, as determined by the board, that consists of course work and training which was primarily therapeutic mental health in content and included a

practicum or internship and was from a mental health program as specified in section 38-2122;

(b) Apply prior to earning the three thousand hours of supervised experience; and

(c) Pay the provisional mental health practitioner license fee.

(2) The rules and regulations approved by the board and adopted and promulgated by the department shall not require that the applicant have a supervisor in place at the time of application for a provisional mental health practitioner license.

(3) A provisional mental health practitioner license shall expire upon receipt of licensure as a mental health practitioner or five years after the date of issuance, whichever comes first.

(4) A person who holds a provisional mental health practitioner license shall inform all clients that he or she holds a provisional license and is practicing mental health under supervision and shall identify the supervisor. Failure to make such disclosure is a ground for discipline as set forth in section 38-2139.

Source: Laws 1997, LB 622, § 81; Laws 2003, LB 242, § 73; R.S.1943, (2003), § 71-1,314.01; Laws 2007, LB463, § 741; Laws 2018, LB1034, § 37.

38-2124 Independent mental health practitioner; qualifications.

(1) No person shall hold himself or herself out as an independent mental health practitioner unless he or she is licensed as such by the department or unless he or she holds a privilege to practice in Nebraska as a professional counselor under the Licensed Professional Counselors Interstate Compact. A person shall be qualified to be a licensed independent mental health practitioner if he or she:

(a)(i)(A) Graduated with a master's or doctoral degree from an educational program which is accredited, at the time of graduation or within four years after graduation, by the Council for Accreditation of Counseling and Related Educational Programs, the Commission on Accreditation for Marriage and Family Therapy Education, or the Council on Social Work Education, (B) graduated with a master's or doctoral degree which was either approved by the American Art Therapy Association or accredited by the Commission on Accreditation of Allied Health Education Programs at the time of graduation, or (C) graduated with a master's or doctoral degree from an educational program deemed by the board to be equivalent in didactic content and supervised clinical experience to an accredited program;

(ii)(A) Is licensed as a licensed mental health practitioner or (B) is licensed as a provisional mental health practitioner and has satisfactorily passed an examination approved by the board pursuant to subdivision (3) of section 38-2122; and

(iii) Has three thousand hours of experience supervised by a licensed physician, a licensed psychologist, or a licensed independent mental health practitioner, one-half of which is comprised of experience with clients diagnosed under the major mental illness or disorder category; or

(b)(i) Graduated from an educational program which does not meet the requirements of subdivision (a)(i) of this subsection;

(ii)(A) Is licensed as a licensed mental health practitioner or (B) is licensed as a provisional mental health practitioner and has satisfactorily passed an examination approved by the board pursuant to subdivision (3) of section 38-2122; and

(iii) Has seven thousand hours of experience obtained in a period of not less than ten years and supervised by a licensed physician, a licensed psychologist, or a licensed independent mental health practitioner, one-half of which is comprised of experience with clients diagnosed under the major mental illness or disorder category.

(2) The experience required under this section shall be documented in a reasonable form and manner as prescribed by the board, which may consist of sworn statements from the applicant and his or her employers and supervisors. The board shall not in any case require the applicant to produce individual case records.

(3) The application for an independent mental health practitioner license shall include the applicant's social security number.

Source: Laws 2007, LB247, § 42; R.S.Supp.,2007, § 71-1,314.02; Laws 2008, LB1108, § 4; Laws 2018, LB1034, § 38; Laws 2022, LB752, § 15; Laws 2024, LB605, § 14.
Operative date January 1, 2025.

Cross References

Credentialing, general requirements and issuance procedures, see section 38-121 et seq.
Licensed Professional Counselors Interstate Compact, see section 38-4201.

38-2125 Reciprocity; privilege to practice under compact; military spouse; temporary license.

(1) The department, with the recommendation of the board, may issue a license based on licensure in another jurisdiction to an individual who:

(a) Meets the licensure requirements of the Mental Health Practice Act or substantially equivalent requirements as determined by the department, with the recommendation of the board; or

(b) Has been in active practice in the appropriate discipline for at least five years following initial licensure or certification in another jurisdiction and has passed the Nebraska jurisprudence examination.

(2) The department may issue a license based on a privilege to practice in Nebraska under the Licensed Professional Counselors Interstate Compact as provided in section 5 of such compact.

(3) An applicant for a license who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 2007, LB463, § 742; Laws 2017, LB88, § 65; Laws 2018, LB1034, § 39; Laws 2022, LB752, § 17.

Cross References

Licensed Professional Counselors Interstate Compact, see section 38-4201.

38-2130 Certified marriage and family therapist, certified professional counselor, social worker, certified art therapist; reciprocity; military spouse; temporary certificate.

The department, with the recommendation of the board, may issue a certificate based on licensure in another jurisdiction to represent oneself as a certified marriage and family therapist, a certified professional counselor, a social worker, or a certified art therapist to an individual who meets the requirements of the Mental Health Practice Act relating to marriage and family therapy, professional counseling, social work, or art therapy, as appropriate, or substantially equivalent requirements as determined by the department, with the recommendation of the board. An applicant for a certificate who is a military spouse may apply for a temporary certificate as provided in section 38-129.01.

Source: Laws 2007, LB463, § 747; Laws 2017, LB88, § 66; Laws 2024, LB605, § 15.
Operative date January 1, 2025.

38-2132.01 Certified professional counselor; eligibility for licensure under compact.

The only persons credentialed pursuant to the Mental Health Practice Act that are eligible to be licensed professional counselors under the Licensed Professional Counselors Interstate Compact are licensed independent mental health practitioners with a certification in professional counseling.

Source: Laws 2022, LB752, § 16.

Cross References

Licensed Professional Counselors Interstate Compact, see section 38-4201.

38-2136 Mental health practitioners; confidentiality; exception.

No person who is licensed or certified pursuant to the Mental Health Practice Act or who holds a privilege to practice in Nebraska as a professional counselor under the Licensed Professional Counselors Interstate Compact shall disclose any information he or she may have acquired from any person consulting him or her in his or her professional capacity except:

(1) With the written consent of the person or, in the case of death or disability, of the person's personal representative, any other person authorized to sue on behalf of the person, or the beneficiary of an insurance policy on the person's life, health, or physical condition. When more than one person in a family receives therapy conjointly, each such family member who is legally competent to execute a waiver shall agree to the waiver referred to in this subdivision. Without such a waiver from each family member legally competent to execute a waiver, a practitioner shall not disclose information received from any family member who received therapy conjointly;

(2) As such privilege against disclosure is limited by the laws of the State of Nebraska or as the board may determine by rule and regulation;

(3) When the person waives the privilege against disclosure by bringing charges against the licensee;

(4) When there is a duty to warn under the limited circumstances set forth in section 38-2137; or

(5) When the disclosure of information is permitted under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, or as otherwise permitted by law.

Source: Laws 1993, LB 669, § 54; Laws 1994, LB 1210, § 109; Laws 1999, LB 828, § 150; R.S.1943, (2003), § 71-1,335; Laws 2007, LB247, § 46; Laws 2007, LB463, § 753; Laws 2022, LB752, § 18; Laws 2023, LB50, § 20.

Cross References

Licensed Professional Counselors Interstate Compact, see section 38-4201.

38-2137 Mental health practitioner; duty to warn of patient's threatened violent behavior; limitation on liability.

(1) There shall be no monetary liability on the part of, and no cause of action shall arise against, any person who is licensed or certified pursuant to the Mental Health Practice Act or who holds a privilege to practice in Nebraska as a professional counselor under the Licensed Professional Counselors Interstate Compact for failing to warn of and protect from a patient's threatened violent behavior or failing to predict and warn of and protect from a patient's violent behavior except when the patient has communicated to the mental health practitioner a serious threat of physical violence against himself, herself, or a reasonably identifiable victim or victims.

(2) The duty to warn of or to take reasonable precautions to provide protection from violent behavior shall arise only under the limited circumstances specified in subsection (1) of this section. The duty shall be discharged by the mental health practitioner if reasonable efforts are made to communicate the threat to the victim or victims and to a law enforcement agency.

(3) No monetary liability and no cause of action shall arise under section 38-2136 against a licensee or certificate or privilege holder for information disclosed to third parties in an effort to discharge a duty arising under subsection (1) of this section according to the provisions of subsection (2) of this section.

Source: Laws 1993, LB 669, § 55; R.S.1943, (2003), § 71-1,336; Laws 2007, LB247, § 47; Laws 2007, LB463, § 754; Laws 2022, LB752, § 19.

Cross References

Licensed Professional Counselors Interstate Compact, see section 38-4201.

38-2138 Code of ethics; board; duties; duty to report violations.

(1) The board shall adopt a code of ethics which is essentially in agreement with the current code of ethics of the national and state associations of the specialty professions included in mental health practice and which the board deems necessary to assure adequate protection of the public in the provision of mental health services to the public. A violation of the code of ethics shall be considered an act of unprofessional conduct.

(2) The board shall ensure through the code of ethics and the rules and regulations adopted and promulgated under the Mental Health Practice Act that persons licensed or certified pursuant to the act or holding privileges to practice in Nebraska as professional counselors under the Licensed Professional Counselors Interstate Compact limit their practice to demonstrated areas of

competence as documented by relevant professional education, training, and experience.

(3) Intentional failure by a mental health practitioner to report known acts of unprofessional conduct by a mental health practitioner to the department or the board shall be considered an act of unprofessional conduct and shall be grounds for disciplinary action under appropriate sections of the Uniform Credentialing Act unless the mental health practitioner has acquired such knowledge in a professional relationship otherwise protected by confidentiality.

Source: Laws 1993, LB 669, § 56; Laws 1999, LB 828, § 151; R.S.1943, (2003), § 71-1,337; Laws 2007, LB247, § 48; Laws 2007, LB463, § 755; Laws 2022, LB752, § 20.

Cross References

Licensed Professional Counselors Interstate Compact, see section 38-4201.

38-2139 Additional grounds for disciplinary action.

In addition to the grounds for disciplinary action found in sections 38-178 and 38-179, a credential or privilege to practice or multistate authorization in Nebraska subject to the Mental Health Practice Act may be denied, refused renewal, limited, revoked, or suspended or have other disciplinary measures taken against it in accordance with section 38-196 when the applicant, licensee, or privilege holder fails to disclose the information required by section 38-2123, 38-2129, or 38-2142, the Licensed Professional Counselors Interstate Compact, or the Social Worker Licensure Compact.

Source: Laws 2007, LB463, § 756; Laws 2022, LB752, § 21; Laws 2024, LB605, § 23; Laws 2024, LB932, § 8.
Operative date January 1, 2025.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB605, section 23, with LB932, section 8, to reflect all amendments.

Cross References

Licensed Professional Counselors Interstate Compact, see section 38-4201.
Social Worker Licensure Compact, see section 38-4501.

38-2140 Art therapist; certification; qualifications.

(1) For purposes of this section, qualified supervisor means a qualified physician, a psychologist licensed to engage in the practice of psychology, a licensed mental health practitioner, a licensed independent mental health practitioner, or a certified art therapist who has met standards for supervision specified in rules and regulations approved by the board and adopted and promulgated by the department.

(2) A person who submits a complete application to the department for certification as an art therapist shall be qualified for such certification if such person:

(a) Provides evidence to the department that such person:

(i) Has a master's or doctoral degree in art therapy from an approved educational program or a master's degree in a related mental health field and graduate-level course work determined by the board to be equivalent in didactic content and supervised clinical experience to an approved educational program in art therapy; and

(ii) Has had at least three thousand hours of experience in art therapy supervised by a qualified supervisor following receipt of such graduate degree

and at least one-half of such hours were supervised by a certified art therapist acting as the qualified supervisor. The three thousand hours of experience shall include at least one thousand five hundred hours of direct client contact, and at least one-half of such hours shall be supervised by a certified art therapist acting as the qualified supervisor. The direct-client-contact hours shall include at least one hundred hours of supervisor-supervisee-contact hours supervised by a qualified supervisor, with supervision provided at least one hour per week or two hours every two weeks, and at least one-half of such hours shall be supervised by a certified art therapist acting as the qualified supervisor; and

(b) Passes an examination approved by the board.

(3) An applicant for certification as a certified art therapist who has completed all or part of such applicant's qualifying experience in art therapy in another state or jurisdiction shall have completed not less than one-half of the required three thousand hours of experience and not less than one-half of the direct-client-contact hours and supervisor-supervisee-contact hours supervised by a certified art therapist or a person holding a credential as a Board Certified Art Therapist from the Art Therapy Credentials Board, Inc., as determined by the Board of Mental Health Practice acting as the qualified supervisor.

Source: Laws 2024, LB605, § 16.
Operative date January 1, 2025.

38-2141 Certified art therapist; reciprocity or prior experience; credential issued, when.

(1) The department, with the recommendation of the board, may issue a credential under the Mental Health Practice Act as a certified art therapist based on licensure in another state or jurisdiction to an individual who meets the requirements of section 38-2140 or substantially equivalent requirements as determined by the department, with the recommendation of the board.

(2) A person practicing art therapy in Nebraska before January 1, 2025, may apply for certification as an art therapist under the Mental Health Practice Act if such person completes an application and provides satisfactory evidence to the department that such person:

(a) Holds a credential in good standing as a Board Certified Art Therapist from the Art Therapy Credentials Board, Inc.;

(b) Has engaged in the practice of art therapy during at least three of the five years preceding submission of the application; and

(c) Has met any additional requirements as determined by the department, with the recommendation of the board.

Source: Laws 2024, LB605, § 17.
Operative date January 1, 2025.

38-2142 Provisional certification as art therapist; qualifications; application; expiration; disclosure required.

(1) A person who needs to obtain the required three thousand hours of supervised experience in art therapy as specified in section 38-2140 to qualify for certification as an art therapist shall obtain a provisional certification as an art therapist. To qualify for a provisional certification as an art therapist, such person shall:

(a) Have a minimum of a master's degree in art therapy from an approved educational program; and

(b) Apply prior to earning the three thousand hours of supervised experience.

(2) A provisional art therapist certification shall expire upon receipt of certification as a certified art therapist or five years after the date of issuance, whichever comes first.

(3) A person who holds a provisional certification as an art therapist shall inform all clients that such person holds a provisional certification and is practicing art therapy under supervision and shall identify the supervisor. Failure to make such disclosure is a ground for discipline as set forth in section 38-2139.

Source: Laws 2024, LB605, § 18.
Operative date January 1, 2025.

38-2143 Art therapy; act, how construed.

Nothing in the Mental Health Practice Act shall be construed to prevent or restrict any person who has obtained a credential under the Uniform Credentialing Act from engaging in any activity or practice, including use of art and art materials, that is consistent with such person's licensed scope of practice and professional training, as long as such person does not use the title licensed art therapist or certified art therapist.

Source: Laws 2024, LB605, § 19.
Operative date January 1, 2025.

38-2144 Certified art therapist; confidentiality.

Except as otherwise provided in section 38-2136, a certified art therapist shall not disclose any information, including, but not limited to, client records, artwork, verbal or artistic expressions, assessment results, or assessment interpretations, that such certified art therapist may have acquired from any person consulting such certified art therapist in a professional capacity.

Source: Laws 2024, LB605, § 20.
Operative date January 1, 2025.

38-2145 Art therapist advisory committee; appointment; develop standards.

(1) The board may appoint an art therapist advisory committee, as provided in section 38-161, to assist the board in carrying out its duties under the Mental Health Practice Act.

(2) An advisory committee appointed pursuant to this section shall develop recommendations for adoption by the board and promulgation by the department on topics determined by the board as necessary to carry out its duties under the Mental Health Practice Act, including, but not limited to:

(a) Standards of competency and procedures for qualifying art therapists as licensed mental health practitioners and certified art therapists and for certification as provisional art therapists;

(b) Education standards for determining if an applicant's academic training and supervised clinical experience are substantially equivalent to an approved educational program in art therapy;

(c) Standards pertaining to the supervised practice of art therapy by certified provisional art therapists and requirements for approved supervisors;

(d) A code of ethics for the practice of art therapy for approval by the board pursuant to section 38-2138; and

(e) Standards for continuing competency and procedures for compliance with the continuing education requirements and approval of providers of continuing education.

Source: Laws 2024, LB605, § 21.
Operative date January 1, 2025.

38-2146 Certified art therapists; act, how construed.

Nothing in the Mental Health Practice Act shall be construed to require the State of Nebraska, any agency of the State of Nebraska, or any of the entities which operate under rules and regulations of a state agency, which employ or contract for the services of art therapists, to employ or contract with only persons certified pursuant to the act for the performance of any of the professional activities enumerated in section 38-2104.02.

Source: Laws 2024, LB605, § 22.
Operative date January 1, 2025.

38-2147 Social work; multistate license; multistate authorization to practice.

(1) The department, with the recommendation of the board, shall issue multistate licenses to practice social work as provided in the Social Worker Licensure Compact.

(2) The department shall establish and collect fees for issuance of a multistate license as provided in sections 38-151 to 38-157.

(3) A person holding a multistate authorization to practice in Nebraska issued by another state under the Social Worker Licensure Compact may engage in the practice of social work in Nebraska as authorized pursuant to such compact.

(4) The board may approve, and the department may adopt and promulgate, rules and regulations as necessary to carry out this section.

Source: Laws 2024, LB932, § 7.
Operative date January 1, 2025.

Cross References

Social Worker Licensure Compact, see section 38-4501.

ARTICLE 22
NURSE PRACTICE ACT

Section

Section
38-2238. Licenses issued under Licensed Practical Nurse-Certified Practice Act; how treated.

38-2201 Act, how cited.

Sections 38-2201 to 38-2238 shall be known and may be cited as the Nurse Practice Act.

Source: Laws 1995, LB 563, § 4; Laws 2000, LB 523, § 2; R.S.1943, (2003), § 71-1,132.01; Laws 2007, LB463, § 757; Laws 2017, LB88, § 67.

38-2211 Practice of nursing by a licensed practical nurse, defined.

(1) Practice of nursing by a licensed practical nurse means the assumption of responsibilities and accountability for nursing practice in accordance with knowledge and skills acquired through an approved program of practical nursing. A licensed practical nurse may function at the direction of a licensed practitioner or a registered nurse.

(2) Such responsibilities and performances of acts must utilize procedures leading to predictable outcomes and must include, but not be limited to:

(a) Contributing to the assessment of the health status of individuals and groups;

(b) Participating in the development and modification of a plan of care;

(c) Implementing the appropriate aspects of the plan of care;

(d) Maintaining safe and effective nursing care rendered directly or indirectly;

(e) Participating in the evaluation of response to interventions;

(f) Providing intravenous therapy if the licensed practical nurse meets the requirements of section 38-2237; and

(g) Assigning and directing nursing interventions that may be performed by others and that do not conflict with the Nurse Practice Act.

Source: Laws 2007, LB463, § 767; Laws 2017, LB88, § 68.

38-2216 Board; rules and regulations; powers and duties; enumerated.

In addition to the duties listed in sections 38-126 and 38-161, the board shall:

(1) Adopt reasonable and uniform standards for nursing practice and nursing education;

(2) If requested, issue or decline to issue advisory opinions defining acts which in the opinion of the board are or are not permitted in the practice of nursing. Such opinions shall be considered informational only and are nonbinding. Practice-related information provided by the board to registered nurses or licensed practical nurses licensed under the Nurse Practice Act shall be made available by the board on request to nurses practicing in this state under a license issued by a state that is a party to the Nurse Licensure Compact;

(3) Establish rules and regulations for approving and classifying programs preparing nurses, taking into consideration administrative and organizational patterns, the curriculum, students, student services, faculty, and instructional resources and facilities, and provide surveys for each educational program as determined by the board;

(4) Approve educational programs which meet the requirements of the Nurse Practice Act;

(5) Keep a record of all its proceedings and compile an annual report for distribution;

(6) Adopt rules and regulations establishing standards for delegation of nursing activities, including training or experience requirements, competency determination, and nursing supervision;

(7) Collect data regarding nursing;

(8) Provide consultation and conduct conferences, forums, studies, and research on nursing practice and education;

(9) Join organizations that develop and regulate the national nursing licensure examinations and exclusively promote the improvement of the legal standards of the practice of nursing for the protection of the public health, safety, and welfare; and

(10) Administer the Nurse Licensure Compact. In reporting information to the coordinated licensure information system under Article VII of the compact, the department may disclose personal identifying information about a nurse, including his or her social security number.

Source: Laws 1953, c. 245, § 5, p. 839; Laws 1959, c. 310, § 3, p. 1172; Laws 1965, c. 414, § 1, p. 1322; Laws 1975, LB 422, § 6; Laws 1976, LB 692, § 1; Laws 1978, LB 653, § 24; Laws 1978, LB 658, § 1; Laws 1980, LB 847, § 3; Laws 1981, LB 379, § 36; Laws 1991, LB 703, § 19; Laws 1995, LB 563, § 15; Laws 1996, LB 414, § 6; Laws 1999, LB 594, § 36; Laws 2000, LB 523, § 6; Laws 2000, LB 1115, § 17; Laws 2002, LB 1021, § 19; Laws 2002, LB 1062, § 22; Laws 2005, LB 256, § 27; R.S.Supp.,2006, § 71-1,132.11; Laws 2007, LB463, § 772; Laws 2017, LB88, § 70.

Cross References

Nurse Licensure Compact, see sections 71-1795 to 71-1795.02.

38-2220 Nursing; license; application; requirements.

An applicant for a license to practice as a registered nurse shall submit satisfactory proof that the applicant has completed four years of high school study or its equivalent as determined by the board and has completed the basic professional curriculum in and holds a diploma from an accredited program of registered nursing approved by the board. There is no minimum age requirement for licensure as a registered nurse. Graduates of foreign nursing programs shall pass a board-approved examination and, unless a graduate of a nursing program in Canada, provide a satisfactory evaluation of the education program attended by the applicant from a board-approved foreign credentials evaluation service.

Source: Laws 1953, c. 245, § 7, p. 841; Laws 1965, c. 414, § 2, p. 1323; Laws 1974, LB 811, § 12; Laws 1975, LB 422, § 8; Laws 1980, LB 847, § 4; Laws 1989, LB 344, § 6; Laws 1995, LB 563, § 17; Laws 1997, LB 752, § 157; Laws 1999, LB 594, § 37; Laws 2002, LB 1062, § 23; Laws 2003, LB 242, § 44; R.S.1943, (2003), § 71-1,132.13; Laws 2007, LB463, § 776; Laws 2017, LB88, § 71.

Cross References

Credentialing, general requirements and issuance procedures, see section 38-121 et seq.

38-2223 Registered nurse; licensed practical nurse; reciprocity; continuing competency requirements; military spouse; temporary license.

(1) An applicant for a license as a registered nurse or a licensed practical nurse based on licensure in another jurisdiction shall meet the continuing competency requirements as specified in rules and regulations adopted and promulgated by the board in addition to the standards set by the board pursuant to section 38-126.

(2) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 1953, c. 245, § 8(2), p. 841; Laws 1975, LB 422, § 10; Laws 1980, LB 847, § 6; Laws 1995, LB 563, § 19; R.S.1943, (2003), § 71-1,132.15; Laws 2007, LB463, § 779; Laws 2017, LB88, § 72.

38-2225 Nursing; temporary license; issuance; conditions; how long valid; extension.

(1) A temporary license to practice nursing may be issued to:

(a) An individual seeking to obtain licensure or reinstatement of his or her license as a registered nurse or licensed practical nurse when he or she has not practiced nursing in the last five years. A temporary license issued under this subdivision is valid only for the duration of the review course of study and only for nursing practice required for the review course of study;

(b) Graduates of approved programs of nursing who have passed the licensure examination, pending the completion of application for Nebraska licensure as a registered nurse or licensed practical nurse. A temporary license issued under this subdivision is valid for a period not to exceed sixty days;

(c) Nurses currently licensed in another state as either a registered nurse or a licensed practical nurse who have graduated from an educational program approved by the board, pending completion of application for Nebraska licensure as a registered nurse or licensed practical nurse. A temporary license issued under this subdivision shall be valid for a period not to exceed sixty days; or

(d) Military spouses as provided in section 38-129.01.

(2) A temporary license issued pursuant to subdivision (1)(a), (b), or (c) of this section may be extended by the department, with the recommendation of the board.

Source: Laws 1953, c. 245, § 8(3), p. 841; Laws 1975, LB 422, § 11; Laws 1980, LB 847, § 7; Laws 1994, LB 1210, § 58; Laws 1995, LB 563, § 20; Laws 2002, LB 1062, § 24; R.S.1943, (2003), § 71-1,132.16; Laws 2007, LB463, § 781; Laws 2017, LB88, § 73.

38-2237 Intravenous therapy; requirements.

(1) A licensed practical nurse may provide intravenous therapy if he or she (a) holds a valid license issued before May 1, 2016, by the department pursuant to the Licensed Practical Nurse-Certified Practice Act as such act existed on such date, (b) graduates from an approved program of practical nursing on or after May 1, 2016, or (c) holds a valid license as a licensed practical nurse

issued on or before May 1, 2016, and completes, within five years after August 24, 2017, (i) an eight-hour didactic course in intravenous therapy which shall include, but not be limited to, peripheral intravenous lines, central lines, and legal aspects of intravenous therapy and (ii) an approved employer-specific intravenous therapy skills course.

(2) This section does not require a licensed practical nurse who does not provide intravenous therapy in the course of employment to complete the course described in subdivision (1)(c)(ii) of this section.

Source: Laws 2017, LB88, § 69.

38-2238 Licenses issued under Licensed Practical Nurse-Certified Practice Act; how treated.

On and after November 1, 2017, all licenses issued pursuant to the Licensed Practical Nurse-Certified Practice Act before such date shall be renewed as licenses to practice as a licensed practical nurse pursuant to section 38-2221.

Source: Laws 2017, LB88, § 74.

ARTICLE 23

NURSE PRACTITIONER PRACTICE ACT

Section
38-2305. Approved nurse practitioner program, defined.
38-2314.01. Transition-to-practice agreement, defined.
38-2316. Unlicensed person; acts permitted.
38-2317. Nurse practitioner; licensure; requirements.
38-2318. Nurse practitioner; temporary license; requirements; military spouse; temporary license.
38-2322. Nurse practitioner; licensed on or before August 30, 2015; requirements; transition-to-practice agreement; contents.

38-2305 Approved nurse practitioner program, defined.

Approved nurse practitioner program means a program which:

(1) Is a graduate-level program accredited by a national accrediting body recognized by the United States Department of Education;

(2) Includes, but is not limited to, instruction in biological, behavioral, and health sciences relevant to practice as a nurse practitioner in a specific clinical area; and

(3) For the specialties of women's health and neonatal, grants a post-master certificate, master's degree, or doctoral degree for all applicants who graduated on or after July 1, 2007, and for all other specialties, grants a post-master certificate, master's degree, or doctoral degree for all applicants who graduated on or after July 19, 1996.

Source: Laws 1981, LB 379, § 14; Laws 1984, LB 724, § 12; Laws 1993, LB 536, § 67; Laws 1996, LB 414, § 22; Laws 2000, LB 1115, § 41; Laws 2005, LB 256, § 56; R.S.Supp.,2006, § 71-1717; Laws 2007, LB463, § 797; Laws 2017, LB88, § 75.

38-2314.01 Transition-to-practice agreement, defined.

Transition-to-practice agreement means a collaborative agreement for two thousand hours of initial practice between a nurse practitioner and a supervis-

ing provider which provides for the delivery of health care through a collaborative practice and which meets the requirements of section 38-2322.

Source: Laws 1984, LB 724, § 9; Laws 1996, LB 414, § 21; Laws 2000, LB 1115, § 39; Laws 2005, LB 256, § 54; R.S.Supp.,2006, § 71-1716.03; Laws 2007, LB463, § 802; R.S.1943, (2008), § 38-2310; Laws 2015, LB107, § 4; Laws 2017, LB88, § 76.

38-2316 Unlicensed person; acts permitted.

The Nurse Practitioner Practice Act does not prohibit the performance of activities of a nurse practitioner by a person who does not have a license or temporary license under the act if performed:

(1) In an emergency situation;

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

(3) By a person enrolled in an approved nurse practitioner program for the preparation of nurse practitioners as part of that approved program.

Source: Laws 1984, LB 724, § 25; Laws 1996, LB 414, § 40; Laws 2000, LB 1115, § 58; Laws 2005, LB 256, § 71; R.S.Supp.,2006, § 71-1726.01; Laws 2007, LB185, § 12; Laws 2007, LB463, § 808; Laws 2017, LB88, § 77.

38-2317 Nurse practitioner; licensure; requirements.

(1) An applicant for licensure under the Advanced Practice Registered Nurse Practice Act to practice as a nurse practitioner shall have:

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

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

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

(d) Evidence of completion of two thousand hours of practice as a nurse practitioner which have been completed under a transition-to-practice agreement, under a collaborative agreement, under an integrated practice agreement, through independent practice, or under any combination of such agreements and practice, as allowed in this state or another state.

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

Source: Laws 1981, LB 379, § 19; Laws 1984, LB 724, § 20; Laws 1986, LB 926, § 55; Laws 1993, LB 536, § 70; Laws 1996, LB 414,

§ 30; Laws 1997, LB 752, § 173; Laws 2000, LB 1115, § 46; Laws 2002, LB 1021, § 57; Laws 2003, LB 242, § 101; Laws 2005, LB 256, § 59; R.S.Supp.,2006, § 71-1722; Laws 2007, LB185, § 6; Laws 2007, LB463, § 809; Laws 2017, LB88, § 78.

Cross References

Advanced Practice Registered Nurse Practice Act, see section 38-201.
Credentialing, general requirements and issuance procedures, see section 38-121 et seq.
Nurse Licensure Compact, see sections 71-1795 to 71-1795.02.

38-2318 Nurse practitioner; temporary license; requirements; military spouse; temporary license.

(1)(a) The department may grant a temporary license to practice as a nurse practitioner for up to one hundred twenty days upon application:

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

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

(iii) To applicants for purposes of a reentry program or supervised practice as part of continuing competency activities established by the board.

(b) A temporary license issued pursuant to this subsection may be extended for up to one year with the approval of the board.

(2) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 1984, LB 724, § 22; Laws 1993, LB 536, § 72; Laws 1996, LB 414, § 37; Laws 2000, LB 1115, § 53; Laws 2002, LB 1021, § 59; Laws 2005, LB 256, § 66; R.S.Supp.,2006, § 71-1724.01; Laws 2007, LB185, § 11; Laws 2007, LB463, § 810; Laws 2017, LB88, § 79.

38-2322 Nurse practitioner; licensed on or before August 30, 2015; requirements; transition-to-practice agreement; contents.

(1)(a) A transition-to-practice agreement shall be a formal written agreement that provides that the nurse practitioner and the supervising provider practice collaboratively within the framework of their respective scopes of practice.

(b) The nurse practitioner and the supervising provider shall each be responsible for his or her individual decisions in managing the health care of patients through consultation, collaboration, and referral. The nurse practitioner and the supervising provider shall have joint responsibility for the delivery of health care to a patient based upon the scope of practice of the nurse practitioner and the supervising provider.

(c) The supervising provider shall be responsible for supervision of the nurse practitioner to ensure the quality of health care provided to patients.

(d) In order for a nurse practitioner to be a supervising provider for purposes of a transition-to-practice agreement, the nurse practitioner shall submit to the department evidence of completion of ten thousand hours of practice as a nurse practitioner which have been completed under a transition-to-practice agreement, under a collaborative agreement, under an integrated practice agreement, through independent practice, or under any combination of such agreements or practice, as allowed in this state or another state.

(2) A nurse practitioner who was licensed in good standing in Nebraska on or before August 30, 2015, and had attained the equivalent of an initial two thousand hours of practice supervised by a physician or osteopathic physician shall be allowed to practice without a transition-to-practice agreement.

(3) For purposes of this section:

(a) Supervising provider means a physician, osteopathic physician, or nurse practitioner licensed and practicing in Nebraska and practicing in the same practice specialty, related specialty, or field of practice as the nurse practitioner being supervised; and

(b) Supervision means the ready availability of the supervising provider for consultation and direction of the activities of the nurse practitioner being supervised within such nurse practitioner's defined scope of practice.

Source: Laws 1996, LB 414, § 33; Laws 2000, LB 1115, § 49; Laws 2002, LB 1062, § 46; Laws 2005, LB 256, § 62; R.S.Supp.,2006, § 71-1723.02; Laws 2007, LB185, § 9; Laws 2007, LB463, § 814; Laws 2015, LB107, § 6; Laws 2017, LB88, § 80.

ARTICLE 24

NURSING HOME ADMINISTRATOR PRACTICE ACT

Section
38-2421. License; reciprocity; military spouse; temporary license.

38-2421 License; reciprocity; military spouse; temporary license.

The department may issue a license to any person who holds a current nursing home administrator license from another jurisdiction and is at least nineteen years old. An applicant for a license who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 1988, LB 693, § 5; Laws 1989, LB 733, § 3; R.S.Supp.,1989, § 71-2041.04; Laws 1991, LB 455, § 2; Laws 1992, LB 1019, § 85; Laws 1999, LB 411, § 4; Laws 2002, LB 1062, § 57; R.S.1943, (2003), § 71-6056; Laws 2007, LB463, § 836; Laws 2017, LB88, § 81.

ARTICLE 25

OCCUPATIONAL THERAPY PRACTICE ACT

Section
38-2516. Occupational therapist; therapy assistant; licensure required; activities and services not prohibited.
38-2517. Occupational therapist; therapy assistant; temporary license; applicability of section.
38-2518. Occupational therapist; license; application; requirements.
38-2519. Occupational therapy assistant; license; application; requirements; term.
38-2521. Continuing competency requirements; waiver.
38-2523. Applicant for licensure; reciprocity; continuing competency requirements; military spouse; temporary license.

38-2516 Occupational therapist; therapy assistant; licensure required; activities and services not prohibited.

(1) No person may represent himself or herself to be a licensed occupational therapist or occupational therapy assistant unless the person is licensed in

accordance with the Occupational Therapy Practice Act or has a compact privilege to practice in accordance with the Occupational Therapy Practice Interstate Compact.

(2) Nothing in the Occupational Therapy Practice Act shall be construed to prevent:

(a) Any person licensed in this state pursuant to the Uniform Credentialing Act from engaging in the profession or occupation for which he or she is licensed;

(b) The activities and services of any person employed as an occupational therapist or occupational therapy assistant who serves in the armed forces of the United States or the United States Public Health Service or who is employed by the United States Department of Veterans Affairs or other federal agencies, if their practice is limited to that service or employment;

(c) The activities and services of any person pursuing an accredited course of study leading to a degree or certificate in occupational therapy if such activities and services constitute a part of a supervised course of study and if such a person is designated by a title which clearly indicates his or her status as a student or trainee;

(d) The activities and services of any person fulfilling the supervised fieldwork experience requirements of sections 38-2518 and 38-2519 if such activities and services constitute a part of the experience necessary to meet the requirements of such sections; or

(e) Qualified members of other professions or occupations, including, but not limited to, recreation specialists or therapists, special education teachers, independent living specialists, work adjustment trainers, caseworkers, and persons pursuing courses of study leading to a degree or certification in such fields, from doing work similar to occupational therapy which is consistent with their training if they do not represent themselves by any title or description to be occupational therapists.

Source: Laws 1984, LB 761, § 32; Laws 1991, LB 2, § 14; Laws 2004, LB 1005, § 122; R.S.Supp.,2006, § 71-6104; Laws 2007, LB463, § 856; Laws 2022, LB752, § 22.

Cross References

Occupational Therapy Practice Interstate Compact, see section 38-4301.

38-2517 Occupational therapist; therapy assistant; temporary license; applicability of section.

(1) Any person who has applied to take the examination under section 38-2518 or 38-2519 and who has completed the education and experience requirements of the Occupational Therapy Practice Act may be granted a temporary license to practice as an occupational therapist or an occupational therapy assistant. A temporary license shall allow the person to practice only in association with a licensed occupational therapist and shall be valid until the date on which the results of the next licensure examination are available to the department. The temporary license shall not be renewed if the applicant has failed the examination. The temporary license may be extended by the department, with the recommendation of the board. In no case may a temporary license be extended beyond one year.

(2) This section does not apply to a temporary license issued as provided in section 38-129.01.

Source: Laws 1984, LB 761, § 33; Laws 1988, LB 1100, § 175; R.S.1943, (2003), § 71-6105; Laws 2007, LB463, § 857; Laws 2017, LB88, § 82.

38-2518 Occupational therapist; license; application; requirements.

(1) An applicant applying for a license as an occupational therapist shall show to the satisfaction of the department that he or she:

(a) Has successfully completed the academic requirements of an educational program in occupational therapy recognized by the department and accredited by a nationally recognized medical association or nationally recognized occupational therapy association;

(b) Has successfully completed a period of supervised fieldwork experience at an educational institution approved by the department and where the applicant's academic work was completed or which is part of a training program approved by such educational institution. A minimum of six months of supervised fieldwork experience shall be required for an occupational therapist; and

(c) Has passed an examination as provided in section 38-2520.

(2) In the case of an applicant who has been trained as an occupational therapist in a foreign country, the applicant shall:

(a) Present documentation of completion of an educational program in occupational therapy that is substantially equivalent to an approved program accredited by the Accreditation Council for Occupational Therapy Education or by an equivalent accrediting agency as determined by the board;

(b) Present proof of proficiency in the English language; and

(c) Have passed an examination as provided in section 38-2520.

(3) Residency in this state shall not be a requirement of licensure. A corporation, partnership, limited liability company, or association shall not be licensed as an occupational therapist pursuant to the Occupational Therapy Practice Act.

Source: Laws 1984, LB 761, § 34; Laws 1989, LB 344, § 33; Laws 1993, LB 121, § 452; Laws 1997, LB 752, § 194; Laws 2003, LB 242, § 139; R.S.1943, (2003), § 71-6106; Laws 2007, LB463, § 858; Laws 2018, LB1034, § 40.

Cross References

Credentialing, general requirements and issuance procedures, see section 38-121 et seq.

38-2519 Occupational therapy assistant; license; application; requirements; term.

(1) An applicant applying for a license as an occupational therapy assistant shall show to the satisfaction of the department that he or she:

(a) Has successfully completed the academic requirements of an educational program in occupational therapy recognized by the department and accredited by a nationally recognized medical association or nationally recognized occupational therapy association;

(b) Has successfully completed a period of supervised fieldwork experience at an educational institution approved by the department and where the applicant's academic work was completed or which is part of a training program approved by such educational institution. A minimum of two months of supervised fieldwork experience shall be required for an occupational therapy assistant; and

(c) Has passed an examination as provided in section 38-2520.

(2) In the case of an applicant who has been trained as an occupational therapy assistant in a foreign country, the applicant shall:

(a) Present documentation of completion of an educational program for occupational therapy assistants that is substantially equivalent to an approved program accredited by the Accreditation Council for Occupational Therapy Education or by an equivalent accrediting agency as determined by the board;

(b) Present proof of proficiency in the English language; and

(c) Have passed an examination as provided in section 38-2520.

(3) Residency in this state shall not be a requirement of licensure as an occupational therapy assistant. A corporation, partnership, limited liability company, or association shall not be licensed as an occupational therapy assistant pursuant to the Occupational Therapy Practice Act.

Source: Laws 1984, LB 761, § 35; Laws 1989, LB 344, § 34; Laws 1993, LB 121, § 453; Laws 2003, LB 242, § 140; R.S.1943, (2003), § 71-6107; Laws 2007, LB463, § 859; Laws 2018, LB1034, § 41.

Cross References

Credentialing, general requirements and issuance procedures, see section 38-121 et seq.

38-2521 Continuing competency requirements; waiver.

The department, with the recommendation of the board, may waive continuing competency requirements, in part or in total, for any two-year licensing period when a licensee submits documentation that circumstances beyond his or her control prevented completion of such requirements as provided in section 38-146. In addition to circumstances determined by the department to be beyond the licensee's control pursuant to such section, such circumstances shall include situations in which:

(1) The licensee holds a Nebraska license but does not reside or practice in Nebraska;

(2) The licensee has submitted proof that he or she was suffering from a serious or disabling illness or physical disability which prevented completion of the required continuing competency activities during the twenty-four months preceding the license renewal date; and

(3) The licensee has successfully completed two or more semester hours of formal credit instruction biennially offered by a school or college approved by the board which contributes to meeting the requirements of an advanced degree in a postgraduate program relating to occupational therapy.

Source: Laws 1984, LB 761, § 41; Laws 1994, LB 1223, § 77; Laws 2001, LB 346, § 2; Laws 2002, LB 1021, § 96; Laws 2003, LB 242, § 142; Laws 2004, LB 1005, § 129; R.S.Supp.,2006, § 71-6113; Laws 2007, LB463, § 861; Laws 2018, LB1034, § 42.

38-2523 Applicant for licensure; reciprocity; continuing competency requirements; military spouse; temporary license.

(1) An applicant for licensure to practice as an occupational therapist or to practice as an occupational therapy assistant who has met the standards set by the board pursuant to section 38-126 for a license based on licensure in another jurisdiction but is not practicing at the time of application for licensure shall present proof satisfactory to the department that he or she has within the three years immediately preceding the application for licensure completed continuing competency requirements approved by the board pursuant to section 38-145.

(2) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 2007, LB463, § 863; Laws 2017, LB88, § 83.

ARTICLE 26

OPTOMETRY PRACTICE ACT

Section

38-2609 Applicant for licensure based on license outside the state; requirements; military spouse; temporary license.

(1) In addition to the standards set by the board pursuant to section 38-126, an applicant for licensure based on a license in another state or territory of the United States or the District of Columbia must have been actively engaged in the practice of optometry for at least two of the three years immediately preceding the application for licensure in Nebraska and must provide satisfactory evidence of being credentialed in such other jurisdiction at a level with requirements that are at least as stringent as or more stringent than the requirements for the comparable credential being applied for in this state.

(2) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 2007, LB463, § 881; Laws 2008, LB972, § 1; Laws 2017, LB88, § 84.

38-2613 Optometrist; diagnostic pharmaceutical agents; use; certification.

(1) An optometrist licensed in this state may use topical ocular pharmaceutical agents for diagnostic purposes authorized under subdivision (1)(b) of section 38-2605, if such person is certified by the department, with the recommendation of the board, as qualified to use topical ocular pharmaceutical agents for diagnostic purposes.

(2) Such certification shall require (a) satisfactory completion of a pharmacology course at an institution accredited by an accrediting organization which is recognized by the United States Department of Education and approved by the board and passage of an examination approved by the board or (b) evidence provided by the optometrist of certification in another state for use of diagnos-

tic pharmaceutical agents which is deemed by the board as satisfactory validation of such qualifications.

Source: Laws 1979, LB 9, § 5; Laws 1986, LB 131, § 3; Laws 1987, LB 116, § 2; Laws 1988, LB 1100, § 41; Laws 1994, LB 987, § 1; Laws 1996, LB 1044, § 439; Laws 1998, LB 369, § 5; Laws 1999, LB 828, § 96; Laws 2003, LB 242, § 50; R.S.1943, (2003), § 71-1,135.02; Laws 2007, LB236, § 23; Laws 2007, LB247, § 73; Laws 2007, LB296, § 341; Laws 2007, LB463, § 885; Laws 2021, LB528, § 9.

38-2616 Optometry; approved schools; requirements.

No school of optometry shall be approved by the board as an accredited school unless the school is accredited by an accrediting organization which is recognized by the United States Department of Education.

Source: Laws 1927, c. 167, § 114, p. 488; C.S.1929, § 71-1604; R.S.1943, § 71-1,136; Laws 1965, c. 415, § 1, p. 1325; Laws 1979, LB 9, § 8; Laws 1994, LB 987, § 3; Laws 1996, LB 1044, § 440; R.S.1943, (2003), § 71-1,136; Laws 2007, LB236, § 26; Laws 2007, LB296, § 342; Laws 2007, LB463, § 889; Laws 2021, LB528, § 10.

ARTICLE 27

PERFUSION PRACTICE ACT

Section
38-2701. Act, how cited.
38-2703. Terms, defined.
38-2707. Temporary license.
38-2712. Repealed. Laws 2017, LB644, § 21.

38-2701 Act, how cited.

Sections 38-2701 to 38-2711 shall be known and may be cited as the Perfusion Practice Act.

Source: Laws 2007, LB236, § 8; R.S.Supp.,2007, § 71-1,390; Laws 2007, LB247, § 76; Laws 2017, LB644, § 4.

38-2703 Terms, defined.

For purposes of the Perfusion Practice Act:

(1) Board means the Board of Medicine and Surgery;

(2) Extracorporeal circulation means the diversion of a patient's blood through a heart-lung machine or a similar device that assumes the functions of the patient's heart, lungs, kidney, liver, or other organs;

(3) Perfusion means the functions necessary for the support, treatment, measurement, or supplementation of the cardiovascular, circulatory, and respiratory systems or other organs, or a combination of such activities, and to ensure the safe management of physiologic functions by monitoring and analyzing the parameters of the systems under an order and under the supervision of a licensed physician, including:

(a) The use of extracorporeal circulation, long-term cardiopulmonary support techniques including extracorporeal carbon dioxide removal and extracorpore-

al membrane oxygenation, and associated therapeutic and diagnostic technologies;

(b) Counterpulsation, ventricular assistance, autotransfusion, blood conservation techniques, myocardial and organ preservation, extracorporeal life support, and isolated limb perfusion;

(c) The use of techniques involving blood management, advanced life support, and other related functions; and

(d) In the performance of the acts described in subdivisions (a) through (c) of this subdivision:

(i) The administration of:

(A) Pharmacological and therapeutic agents; and

(B) Blood products or anesthetic agents through the extracorporeal circuit or through an intravenous line as ordered by a physician;

(ii) The performance and use of:

(A) Anticoagulation monitoring and analysis;

(B) Physiologic monitoring and analysis;

(C) Blood gas and chemistry monitoring and analysis;

(D) Hematologic monitoring and analysis;

(E) Hypothermia and hyperthermia;

(F) Hemoconcentration and hemodilution; and

(G) Hemodialysis; and

(iii) The observation of signs and symptoms related to perfusion services, the determination of whether the signs and symptoms exhibit abnormal characteristics, and the implementation of appropriate reporting, clinical perfusion protocols, or changes in, or the initiation of, emergency procedures; and

(4) Perfusionist means a person who is licensed to practice perfusion pursuant to the Perfusion Practice Act.

Source: Laws 2007, LB236, § 10; R.S.Supp.,2007, § 71-1,392; Laws 2017, LB644, § 5.

38-2707 Temporary license.

(1) The department shall issue a temporary license to a person who has applied for licensure pursuant to the Perfusion Practice Act and who, in the judgment of the department, with the recommendation of the board, is eligible for examination. An applicant with a temporary license issued under this subsection may practice only under the direct supervision of a perfusionist. The board may adopt and promulgate rules and regulations governing such direct supervision which do not require the immediate physical presence of the supervising perfusionist. A temporary license issued under this subsection shall expire one year after the date of issuance and may be renewed for a subsequent one-year period, subject to the rules and regulations adopted under the act. A temporary license issued under this subsection shall be surrendered to the department upon its expiration.

(2) An applicant for licensure pursuant to the act who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 2007, LB236, § 14; R.S.Supp.,2007, § 71-1,396; Laws 2017, LB88, § 85.

38-2712 Repealed. Laws 2017, LB644, § 21.

ARTICLE 28

PHARMACY PRACTICE ACT

Section

Section
38-28,110. Transferred to section 38-2807.01.
38-28,111. Drug product selection; when; pharmacist; duty.
38-28,112. Pharmacist; drug product selection; effect on reimbursement; label; price.
38-28,113. Drug product selection; pharmacist; practitioner; negligence; what constitutes.
38-28,116. Drug product selection; rules and regulations; department; duty.
38-28,117. Pharmacy; hospital pharmacy; inspection; requirements.

38-2801 Act, how cited.

Sections 38-2801 to 38-28,117 and the Nebraska Drug Product Selection Act shall be known and may be cited as the Pharmacy Practice Act.

Source: Laws 2007, LB247, § 79; Laws 2007, LB463, § 897; Laws 2009, LB195, § 47; Laws 2009, LB604, § 1; Laws 2011, LB179, § 2; Laws 2015, LB37, § 29; Laws 2017, LB166, § 9; Laws 2017, LB481, § 1; Laws 2018, LB731, § 67; Laws 2019, LB74, § 1; Laws 2023, LB227, § 52; Laws 2024, LB1215, § 13.
Operative date July 19, 2024.

Cross References

Nebraska Drug Product Selection Act, see section 38-28,108.

38-2802 Definitions, where found.

For purposes of the Pharmacy Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-2803 to 38-2848 apply.

Source: Laws 2007, LB463, § 898; Laws 2009, LB195, § 48; Laws 2009, LB604, § 2; Laws 2011, LB179, § 3; Laws 2015, LB37, § 30; Laws 2017, LB166, § 10; Laws 2017, LB481, § 2; Laws 2018, LB731, § 68; Laws 2019, LB74, § 2.

38-2807.01 Bioequivalent, defined.

Bioequivalent means drug products: (1) That are legally marketed under regulations promulgated by the federal Food and Drug Administration; (2) that are the same dosage form of the identical active ingredients in the identical amounts as the drug product prescribed; (3) that comply with compendial standards and are consistent from lot to lot with respect to (a) purity of ingredients, (b) weight variation, (c) uniformity of content, and (d) stability; and (4) for which the federal Food and Drug Administration has established bioequivalent standards or has determined that no bioequivalence problems exist.

Source: Laws 1977, LB 103, § 2; Laws 1983, LB 476, § 21; Laws 1989, LB 342, § 36; Laws 1996, LB 1044, § 720; Laws 1998, LB 1073, § 148; Laws 2001, LB 398, § 76; Laws 2003, LB 667, § 15; Laws 2005, LB 382, § 11; Laws 2007, LB296, § 622; Laws 2007, LB463, § 1232; R.S.1943, (2009), § 71-5402; Laws 2015, LB37, § 61; R.S.1943, (2016), § 38-28,110; Laws 2017, LB481, § 3.

38-2807.02 Biological product, defined.

Biological product has the same meaning as in 42 U.S.C. 262, as such section existed on January 1, 2017.

Source: Laws 2017, LB481, § 4.

38-2807.03 Brand name, defined.

Brand name means the proprietary or trade name selected by the manufacturer, distributor, or packager for a drug product and placed upon the labeling of such product at the time of packaging.

Source: Laws 2017, LB481, § 5.

38-2810.01 Chemically equivalent, defined.

Chemically equivalent means drug products that contain amounts of the identical therapeutically active ingredients in the identical strength, quantity, and dosage form and that meet present compendial standards.

Source: Laws 2017, LB481, § 6.

38-2818.02 Drug product, defined.

Drug product means any drug or device as defined in section 38-2841.

Source: Laws 2017, LB481, § 7.

38-2818.03 Drug product select, defined.

Drug product select means to dispense, without the practitioner's express authorization, an equivalent drug product or an interchangeable biological product in place of the brand-name drug or the biological product contained in a medical order of such practitioner.

Source: Laws 2017, LB481, § 8.

38-2821.01 Equivalent, defined.

Equivalent means drug products that are both chemically equivalent and bioequivalent.

Source: Laws 2017, LB481, § 9.

38-2823.01 Generic name, defined.

Generic name means the official title of a drug or drug combination as determined by the United States Adopted Names Council and accepted by the federal Food and Drug Administration of those drug products having the same active chemical ingredients in the same strength and quantity.

Source: Laws 2017, LB481, § 10.

38-2825.02 Interchangeable biological product, defined.

Interchangeable biological product means a biological product that the federal Food and Drug Administration:

(1) Has licensed and has determined meets the standards for interchangeability pursuant to 42 U.S.C. 262(k)(4), as such section existed on January 1, 2017, or as set forth in the Lists of Licensed Biological Products with Reference Product Exclusivity and Biosimilarity or Interchangeability Evaluations pub-

lished by the federal Food and Drug Administration, as such publication existed on January 1, 2017; or

(2) Has determined is therapeutically equivalent as set forth in the Approved Drug Products with Therapeutic Equivalence Evaluations of the federal Food and Drug Administration, as such publication existed on January 1, 2017.

Source: Laws 2017, LB481, § 11.

38-2826 Labeling, defined.

Labeling means the process of preparing and affixing a label to any drug container or device container, exclusive of the labeling by a manufacturer, packager, or distributor of a nonprescription drug or commercially packaged legend drug or device. Any such label shall include all information required by federal and state law or regulation. Compliance with labeling requirements under federal law for devices described in subsection (2) of section 38-2841, medical gases, and medical gas devices constitutes compliance with state law and regulations for purposes of this section. Labeling does not include affixing an auxiliary sticker or other such notation to a container after a drug has been dispensed when the sticker or notation is affixed by a person credentialed under the Uniform Credentialing Act in a facility licensed under the Health Care Facility Licensure Act.

Source: Laws 2007, LB463, § 922; Laws 2009, LB604, § 6; Laws 2010, LB849, § 8; Laws 2020, LB1052, § 2.

Cross References

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

38-2826.01 Long-term care facility, defined.

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.

Source: Laws 2009, LB195, § 49; Laws 2013, LB23, § 8; Laws 2018, LB1034, § 43.

Cross References

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

38-2833 Pharmacist in charge, defined.

Pharmacist in charge means a pharmacist who is designated on a pharmacy license or a remote dispensing pharmacy license or designated by a hospital as being responsible for the practice of pharmacy in the pharmacy for which a pharmacy license or a remote dispensing pharmacy license is issued or in a hospital pharmacy and who works within the physical confines of such pharmacy or hospital pharmacy, except that the pharmacist in charge is not required to work within the physical confines of a remote dispensing pharmacy unless otherwise required by law.

Source: Laws 2007, LB463, § 929; Laws 2015, LB37, § 37; Laws 2018, LB731, § 69.

38-2836.01 Practice agreement, defined.

Practice agreement means a document signed by a pharmacist and a practitioner with independent prescribing authority, in which the pharmacist agrees to design, implement, and monitor a therapeutic plan based on a written protocol.

Source: Laws 2017, LB166, § 11.

38-2843.01 Repackage, defined.

Repackage means the act of taking a drug product from the container in which it was distributed by the manufacturer and placing it into a different container without further manipulation of the drug. Repackaging also includes the act of placing the contents of multiple containers, such as vials, of the same finished drug product into one container so long as the container does not contain other ingredients or is not further manipulated to change the drug product in any way.

Source: Laws 2017, LB166, § 12.

38-2843.02 Remote dispensing, defined.

Remote dispensing has the same meaning as in section 71-427.02.

Source: Laws 2018, LB731, § 70.

38-2843.03 Remote dispensing pharmacy, defined.

Remote dispensing pharmacy has the same meaning as in section 71-427.03.

Source: Laws 2018, LB731, § 71.

38-2843.04 Supervising pharmacy, defined.

Supervising pharmacy has the same meaning as in section 71-427.04.

Source: Laws 2018, LB731, § 72.

38-2845 Supervision, defined.

Supervision means the personal guidance and direction by a pharmacist of the performance by a pharmacy technician of authorized activities or functions subject to (1) verification by such pharmacist or (2) validation by a certified pharmacy technician subject to section 38-2891.01. Supervision of a pharmacy technician may occur by means of a real-time audiovisual communication system.

Source: Laws 2007, LB463, § 941; Laws 2013, LB326, § 1; Laws 2019, LB74, § 3.

38-2846.01 Validation, defined.

Validation means the action of a certified pharmacy technician checking the accuracy and completeness of the acts, tasks, or functions undertaken by another certified pharmacy technician as provided in section 38-2891.01.

Source: Laws 2019, LB74, § 4.

38-2847 Verification, defined.

(1) Verification means the confirmation by a supervising pharmacist of the accuracy and completeness of the acts, tasks, or functions undertaken by a pharmacy technician to assist the pharmacist in the practice of pharmacy.

(2) Verification shall occur by a pharmacist on duty in the facility, except that verification may occur by means of a real-time audiovisual communication system if (a) a pharmacy technician performs authorized activities or functions to assist a pharmacist and the prescribed drugs or devices will be administered to persons who are patients or residents of a facility by a credentialed individual authorized to administer medications, (b) a pharmacy technician is engaged in remote dispensing in compliance with section 71-436.02, or (c) all of the following conditions are met: (i) The pharmacist performing the verification is located in Nebraska, (ii) the physical product verification occurs in person at the location where the prescription is prepared, and (iii) the pharmacy maintains manual or electronic records that identify, individually for each order processed, the name, initials, or identification code of each pharmacist, pharmacist intern, or pharmacy technician who took part in all acts, tasks, or functions undertaken to fulfill a prescription.

Source: Laws 2007, LB463, § 943; Laws 2013, LB326, § 2; Laws 2018, LB731, § 73; Laws 2024, LB1215, § 15.
Operative date April 3, 2024.

38-2848 Written protocol, defined.

Written protocol means a written template, agreed to by pharmacists and practitioners with independent prescribing authority, working in concert, which directs how the pharmacists will implement and monitor a therapeutic plan.

Source: Laws 2017, LB166, § 13.

38-2852 Examinations; grade.

Every applicant for licensure as a pharmacist shall be required to attain a grade to be determined by the board in an examination in pharmacy and in an examination in jurisprudence of pharmacy.

Source: Laws 2007, LB463, § 948; Laws 2023, LB227, § 54.

38-2853 Repealed. Laws 2017, LB166, § 27.

38-2854 Pharmacist intern; qualifications; registration; powers.

(1) A pharmacist intern shall be (a) at least eighteen years of age and (b)(i) a student currently enrolled in an accredited pharmacy program, (ii) a graduate of an accredited pharmacy program serving his or her internship, or (iii) a graduate of a pharmacy program located outside the United States which is not accredited and who has successfully passed equivalency examinations approved by the board. Intern registration based on enrollment in or graduation from an accredited pharmacy program shall expire not later than fifteen months after the date of graduation or at the time of professional licensure, whichever comes first. Intern registration based on graduation from a pharmacy program located outside of the United States which is not accredited shall expire not later than fifteen months after the date of issuance of the registration or at the time of professional licensure, whichever comes first.

(2) A pharmacist intern may compound and dispense drugs or devices and fill prescriptions only in the presence of and under the immediate personal supervision of a licensed pharmacist. Such licensed pharmacist shall either be (a) the person to whom the pharmacy license is issued or a person in the actual employ of the pharmacy licensee or (b) the delegating pharmacist designated in a delegated dispensing agreement by a hospital with a delegated dispensing permit.

(3) Performance as a pharmacist intern under the supervision of a licensed pharmacist shall be predominantly related to the practice of pharmacy and shall include the keeping of records and the making of reports required under state and federal statutes. The department, with the recommendation of the board, shall adopt and promulgate rules and regulations as may be required to establish standards for internship.

Source: Laws 2004, LB 1005, § 14; R.S.Supp.,2006, § 71-1,144; Laws 2007, LB463, § 950; Laws 2011, LB179, § 6; Laws 2024, LB1215, § 16.
Operative date July 19, 2024.

Cross References

Credentialing, general requirements and issuance procedures, see section 38-121 et seq.

38-2866.01 Pharmacist; supervision of pharmacy technicians and pharmacist interns.

A pharmacist may supervise any combination of pharmacy technicians and pharmacist interns at any time up to a total of three people. A pharmacist intern shall be supervised at all times while performing the functions of a pharmacist intern which may include all aspects of the practice of pharmacy unless otherwise restricted. This section does not apply to a pharmacist intern who is receiving experiential training directed by the accredited pharmacy program in which he or she is enrolled.

Source: Laws 2015, LB37, § 43; Laws 2017, LB166, § 14.

38-2867.01 Authority to compound; standards; labeling; prohibited acts.

(1) Any person authorized to compound shall compound in compliance with the standards of chapters 795 and 797 of The United States Pharmacopeia and The National Formulary, as such chapters existed on January 1, 2023, and shall compound (a) as the result of a practitioner's medical order or initiative occurring in the course of practice based upon the relationship between the practitioner, patient, and pharmacist, (b) for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale or dispensing, or (c) for office use only and not for resale.

(2) Compounding in a hospital pharmacy may occur for any hospital which is part of the same health care system under common ownership or which is a member of or an affiliated member of a formal network or partnership agreement.

(3)(a) Any authorized person may reconstitute a commercially available drug product in accordance with directions contained in approved labeling provided by the product's manufacturer and other manufacturer directions consistent with labeling.

(b) Any authorized person using beyond-use dating must follow the approved product manufacturer's labeling or the standards of The United States Pharmacopeia and The National Formulary if the product manufacturer's labeling does not specify beyond-use dating.

(c) Any authorized person engaged in activities listed in this subsection is not engaged in compounding, except that any variance from the approved product manufacturer's labeling will result in the person being engaged in compounding.

(4) Any authorized person splitting a scored tablet along scored lines or adding flavoring to a commercially available drug product is not engaged in compounding.

(5) No person shall compound:

(a) A drug that has been identified by the federal Food and Drug Administration as withdrawn or removed from the market because the drug was found to be unsafe or ineffective;

(b) A drug that is essentially a copy of an approved drug unless there is a drug shortage as determined by the board or unless a patient has an allergic reaction to the approved drug; or

(c) A drug that has been identified by the federal Food and Drug Administration or the board as a product which may not be compounded.

Source: Laws 2015, LB37, § 45; Laws 2023, LB227, § 55.

38-2867.03 Pharmacist; practice agreement; notice; contents; form; pharmacist intern participation.

(1) A pharmacist may enter into a practice agreement as provided in this section with a licensed health care practitioner authorized to prescribe independently to provide pharmaceutical care according to written protocols. The pharmacist shall notify the board of any practice agreement at the initiation of the agreement and at the time of any change in parties to the agreement or written protocols. The notice shall be given to both the Board of Pharmacy and the board which licensed the health care practitioner. The notice shall contain the name of each pharmacist participating in the agreement and each licensed health care practitioner authorized to prescribe independently participating in the agreement and a description of the therapy being monitored or initiated.

(2) A copy of the practice agreement and written protocols shall be available for review by a representative of the department. A copy of the practice agreement shall be sent to the Board of Pharmacy upon request by the board.

(3) A practice agreement shall be in writing. Each pharmacist participating in the agreement and each licensed health care practitioner authorized to prescribe independently participating in the agreement shall sign the agreement and the written protocols at the initiation of the agreement and shall review, sign, and date the documents every two years thereafter. A practice agreement is active after it is signed by all the parties listed in the agreement.

(4) A practice agreement and written protocols cease immediately upon (a) the death of either the pharmacist or the practitioner, (b) the loss of license to practice by either the pharmacist or the practitioner, (c) a disciplinary action limiting the ability of either the pharmacist or practitioner to enter into practice agreement, or (d) the individual decision of either the pharmacist or practitioner or mutual agreement by the parties to terminate the agreement.

(5) A pharmacist intern may participate in a practice agreement without expressly being mentioned in the agreement if the pharmacist intern is supervised by a pharmacist who is a party to the agreement.

Source: Laws 2017, LB166, § 15.

38-2870 Prescriptions for controlled substances; requirements; medical order; duration; dispensing; transmission.

(1) Beginning January 1, 2022, prescriptions for controlled substances listed in section 28-405 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.

(2) All medical orders shall be written, oral, or electronic and shall be valid for the period stated in the medical order, except that (a) if the medical order is for a controlled substance listed in section 28-405, such period shall not exceed six months from the date of issuance at which time the medical order shall expire and (b) if the medical order is for a drug or device which is not a controlled substance listed in section 28-405 or is an order issued by a practitioner for pharmaceutical care, such period shall not exceed twelve months from the date of issuance at which time the medical order shall expire.

(3) Prescription drugs or devices may only be dispensed by a pharmacist or pharmacist intern pursuant to a medical order, by an individual dispensing pursuant to a delegated dispensing permit, or as otherwise provided in section 38-2850. Notwithstanding any other provision of law to the contrary, a pharmacist or a pharmacist intern may dispense drugs or devices pursuant to a medical order or an individual dispensing pursuant to a delegated dispensing permit may dispense drugs or devices pursuant to a medical order. The Pharmacy Practice Act shall not be construed to require any pharmacist or pharmacist intern to dispense, compound, administer, or prepare for administration any drug or device pursuant to any medical order. A pharmacist or pharmacist intern shall retain the professional right to refuse to dispense.

(4) Except as otherwise provided in sections 28-414 and 28-414.01, a practitioner or the practitioner's agent may transmit a medical order to a pharmacist or pharmacist intern and an authorized refill to a pharmacist, pharmacist intern, or pharmacy technician by the following means: (a) In writing, (b) orally, (c) by facsimile transmission of a written medical order or electronic transmission of a medical order signed by the practitioner, or (d) by facsimile transmission of a written medical order or electronic transmission of a medical order which is not signed by the practitioner. Such an unsigned medical order shall be verified with the practitioner.

(5)(a) Except as otherwise provided in sections 28-414 and 28-414.01, any medical order transmitted by facsimile or electronic transmission shall:

(i) Be transmitted by the practitioner or the practitioner's agent directly to a pharmacist or pharmacist intern in a licensed pharmacy of the patient's choice; and any authorized refill transmitted by facsimile or electronic transmission shall be transmitted by the practitioner or the practitioner's agent directly to a pharmacist, pharmacist intern, or pharmacy technician. No intervening person shall be permitted access to the medical order to alter such order or the licensed pharmacy chosen by the patient. Such medical order may be transmitted through a third-party intermediary who shall facilitate the transmission of the order from the practitioner or practitioner's agent to the pharmacy;

(ii) Identify the transmitter's telephone number or other suitable information necessary to contact the transmitter for written or oral confirmation, the time and date of the transmission, the identity of the pharmacy intended to receive the transmission, and other information as required by law; and

(iii) Serve as the original medical order if all other requirements of this subsection are satisfied.

(b) Medical orders transmitted by electronic transmission shall be signed by the practitioner either with an electronic signature for legend drugs which are not controlled substances or a digital signature for legend drugs which are controlled substances.

(6) The pharmacist shall exercise professional judgment regarding the accuracy, validity, and authenticity of any medical order transmitted by facsimile or electronic transmission.

(7) The quantity of drug indicated in a medical order for a resident of a long-term care facility shall be sixty days unless otherwise limited by the prescribing practitioner.

Source: Laws 2001, LB 398, § 35; Laws 2005, LB 382, § 7; R.S.Supp.,2006, § 71-1,146.01; Laws 2007, LB463, § 966; Laws 2014, LB811, § 26; Laws 2015, LB37, § 48; Laws 2017, LB166, § 16; Laws 2018, LB731, § 74; Laws 2021, LB583, § 5.

38-2890 Pharmacy technicians; registration; requirements; certification.

(1) All pharmacy technicians employed by a health care facility licensed under the Health Care Facility Licensure Act shall be registered with the Pharmacy Technician Registry created in section 38-2893. In order to be employed as a pharmacy technician in such a health care facility, a pharmacy technician (a) shall be certified by a state or national certifying body which is approved by the board (i) by January 1, 2017, if the pharmacy technician was registered with the Pharmacy Technician Registry on January 1, 2016, or (ii) within one year after being registered with the Pharmacy Technician Registry, if the pharmacy technician was so registered after January 1, 2016, and (b) upon being so certified, shall maintain current certification during the time the pharmacy technician is so registered.

(2) To register as a pharmacy technician, an individual shall (a) be at least eighteen years of age, (b) be a high school graduate or be officially recognized by the State Department of Education as possessing the equivalent degree of education, (c) not have been convicted of any nonalcohol, drug-related felony, (d) not have been convicted of any nonalcohol, drug-related misdemeanor within five years prior to application, (e) file an application with the Division of Public Health of the Department of Health and Human Services, and (f) pay the applicable fee.

Source: Laws 2007, LB236, § 31; R.S.Supp.,2007, § 71-1,147.65; Laws 2015, LB37, § 51; Laws 2016, LB680, § 1; Laws 2024, LB1215, § 17.
Operative date July 19, 2024.

Cross References

Credentialing, general requirements and issuance procedures, see section 38-121 et seq.
Health Care Facility Licensure Act, see section 71-401.

38-2891 Pharmacy technicians; authorized functions and tasks.

(1) A pharmacy technician shall only perform tasks which do not require the professional judgment of a pharmacist and which are subject to verification to assist a pharmacist in the practice of pharmacy.

(2) A pharmacy technician may administer vaccines, and such administration shall not be considered to be performing a task requiring the professional judgment of a pharmacist, when:

(a) The vaccines are verified by the pharmacist responsible for the supervision and verification of the activities of the pharmacy technician prior to administration;

(b) Administration is limited to intra-muscular in the deltoid muscle or subcutaneous on the arm to a person three years of age or older;

(c) The pharmacy technician is certified as required by section 38-2890;

(d) The pharmacy technician has completed certificate training in vaccine administration that includes, at a minimum, vaccine administration, bloodborne pathogen exposure, safety measures during administration, and biohazard handling;

(e) The pharmacy technician is currently certified in basic life-support skills for health care providers as determined by the board; and

(f) The pharmacist responsible for the supervision and verification of the activities of the pharmacy technician is on site.

(3) The functions and tasks which shall not be performed by pharmacy technicians include, but are not limited to:

(a) Receiving oral medical orders from a practitioner or his or her agent except as otherwise provided in subsection (4) of section 38-2870;

(b) Providing patient counseling;

(c) Performing any evaluation or necessary clarification of a medical order or performing any functions other than strictly clerical functions involving a medical order;

(d) Supervising or verifying the tasks and functions of pharmacy technicians;

(e) Interpreting or evaluating the data contained in a patient's record maintained pursuant to section 38-2869;

(f) Releasing any confidential information maintained by the pharmacy;

(g) Performing any professional consultations; and

(h) Drug product selection, with regard to an individual medical order, in accordance with the Nebraska Drug Product Selection Act.

(4) The director shall, with the recommendation of the board, waive any of the limitations in subsection (2) of this section for purposes of a scientific study of the role of pharmacy technicians approved by the board. Such study shall be based upon providing improved patient care or enhanced pharmaceutical care. Any such waiver shall state the length of the study and shall require that all study data and results be made available to the board upon the completion of the study. Nothing in this subsection requires the board to approve any study proposed under this subsection.

Source: Laws 2007, LB236, § 32; R.S.Supp.,2007, § 71-1,147.66; Laws 2007, LB247, § 82; Laws 2018, LB731, § 75; Laws 2021, LB583, § 6; Laws 2023, LB227, § 56.

Cross References

Nebraska Drug Product Selection Act, see section 38-28,108.

38-2891.01 Pharmacy technician; validate acts, tasks, and functions of pharmacy technician; policies and procedures.

(1) A pharmacy technician may validate the acts, tasks, and functions of another pharmacy technician only if:

(a) Both pharmacy technicians are certified by a state or national certifying body which is approved by the board;

(b) Both certified pharmacy technicians are working within the confines of a hospital preparing medications for administration in the hospital;

(c) Using bar code technology, radio frequency identification technology, or similar technology to validate the accuracy of medication;

(d) Validating medication that is prepackaged by the manufacturer or prepackaged and verified by a pharmacist; and

(e) Acting in accordance with policies and procedures applicable in the hospital established by the pharmacist in charge.

(2) The pharmacist in charge in a hospital shall establish policies and procedures for validation of medication by two or more certified pharmacy technicians before such validation process is implemented in the hospital.

Source: Laws 2019, LB74, § 5.

38-2892 Pharmacy technicians; responsibility for supervision and performance.

(1) The pharmacist in charge of a pharmacy, remote dispensing pharmacy, or hospital pharmacy employing pharmacy technicians shall be responsible for the supervision and performance of the pharmacy technicians.

(2) Except as otherwise provided in the Automated Medication Systems Act, the supervision of pharmacy technicians at a pharmacy shall be performed by the pharmacist who is on duty in the facility with the pharmacy technicians or located in pharmacies that utilize a real-time, online database and have a pharmacist in all pharmacies. The supervision of pharmacy technicians at a remote dispensing pharmacy or hospital pharmacy shall be performed by the pharmacist assigned by the pharmacist in charge to be responsible for the supervision and verification of the activities of the pharmacy technicians.

Source: Laws 2007, LB236, § 33; R.S.Supp.,2007, § 71-1,147.67; Laws 2015, LB37, § 52; Laws 2017, LB166, § 17; Laws 2018, LB731, § 76.

Cross References

Automated Medication Systems Act, see section 71-2444.

38-2894 Pharmacy technician; registration; disciplinary measures; procedure; Licensee Assistance Program; participation.

(1) A registration to practice as a pharmacy technician may be denied, refused renewal, removed, or suspended or have other disciplinary measures taken against it by the department, with the recommendation of the board, for failure to meet the requirements of or for violation of any of the provisions of subdivisions (1) through (18) and (20) through (27) of section 38-178 and

sections 38-2890 to 38-2897 or the rules and regulations adopted under such sections.

(2) If the department proposes to deny, refuse renewal of, or remove or suspend a registration, it shall send the applicant or registrant a notice setting forth the action to be taken and the reasons for the determination. The denial, refusal to renew, removal, or suspension shall become final thirty days after mailing the notice unless the applicant or registrant gives written notice to the department of his or her desire for an informal conference or for a formal hearing.

(3) Notice may be served by any method specified in section 25-505.01, or the department may permit substitute or constructive service as provided in section 25-517.02 when service cannot be made with reasonable diligence by any of the methods specified in section 25-505.01.

(4) Pharmacy technicians may participate in the Licensee Assistance Program described in section 38-175.

Source: Laws 2007, LB236, § 35; R.S.Supp.,2007, § 71-1,147.69; Laws 2007, LB247, § 83; Laws 2009, LB288, § 3; Laws 2019, LB449, § 5; Laws 2022, LB752, § 23; Laws 2023, LB574, § 13.

38-2897 Duty to report impaired practitioner; immunity.

(1) The requirement to file a report under subsection (1) of section 38-1,125 shall not apply to pharmacist interns or pharmacy technicians, except that a pharmacy technician shall, within thirty days after having first-hand knowledge of facts giving him or her reason to believe that any person in his or her profession, or any person in another profession under the regulatory provisions of the department, may be practicing while his or her ability to practice is impaired by alcohol, controlled substances, or narcotic drugs, report to the department in such manner and form as the department may require. A report made to the department under this section shall be confidential. The identity of any person making such report or providing information leading to the making of such report shall be confidential.

(2) A pharmacy technician making a report to the department under this section, except for self-reporting, shall be completely immune from criminal or civil liability of any nature, whether direct or derivative, for filing a report or for disclosure of documents, records, or other information to the department under this section. The immunity granted under this section shall not apply to any person causing damage or injury by his or her willful, wanton, or grossly negligent act of commission or omission.

(3) A report submitted by a professional liability insurance company on behalf of a credential holder within the thirty-day period prescribed in this section shall be sufficient to satisfy the credential holder's reporting requirement under this section.

(4) Persons who are members of committees established under the Health Care Quality Improvement Act, the Patient Safety Improvement Act, or section 25-12,123 or witnesses before such committees shall not be required to report under this section. Any person who is a witness before such a committee shall not be excused from reporting matters of first-hand knowledge that would otherwise be reportable under this section only because he or she attended or testified before such committee.

(5) Documents from original sources shall not be construed as immune from discovery or use in actions under this section.

Source: Laws 2007, LB236, § 38; R.S.Supp.,2007, § 71-1,147.72; Laws 2017, LB166, § 18.

Cross References

Health Care Quality Improvement Act, see section 71-7904.
Patient Safety Improvement Act, see section 71-8701.

38-28,102 Prescribing practitioner; loss of ability to prescribe; effect on validity of prescription; pharmacist; use professional judgment; applicability.

A prescription that is valid when written remains valid for the period stated in the medical order notwithstanding the prescribing practitioner's subsequent death or retirement or the suspension or revocation of the prescribing practitioner's credential by the appropriate board, and a pharmacist may use professional judgment to fill or refill such a prescription which has sufficient fills remaining. This section shall not apply to a prescription issued by a veterinarian.

Source: Laws 2023, LB227, § 53.

38-28,104 Prescription; contents.

A prescription for a legend drug which is not a controlled substance must contain the following information prior to being filled by a pharmacist or a practitioner who holds a pharmacy license under subdivision (1) of section 38-2850: Patient's name, or if not issued for a specific patient, the words ''for emergency use'' or ''for use in immunizations''; name of the drug, device, or biological; strength of the drug or biological, if applicable; dosage form of the drug or biological; quantity of drug, device, or biological prescribed; number of authorized refills; directions for use; date of issuance; prescribing practitioner's name; and if the prescription is written, prescribing practitioner's signature. Prescriptions for controlled substances must meet the requirements of sections 28-414 and 28-414.01.

Source: Laws 2015, LB37, § 55; Laws 2024, LB1215, § 18.
Operative date July 19, 2024.

38-28,106 Communication of prescription, chart order, or refill authorization; limitation.

An employee or agent of a prescribing practitioner may communicate a prescription, chart order, or refill authorization issued by the prescribing practitioner to a pharmacist or a pharmacist intern except for an emergency oral authorization for a controlled substance listed in Schedule II of section 28-405. An employee or agent of a prescribing practitioner may communicate a refill authorization issued by the prescribing practitioner to a pharmacy technician.

Source: Laws 2015, LB37, § 57; Laws 2018, LB731, § 77.

38-28,107 Collection or return of dispensed drugs and devices; conditions; fee; liability; professional disciplinary action.

(1) To protect the public safety, dispensed drugs or devices:

(a) May be collected in a pharmacy for disposal;

(b) May be returned to a pharmacy in response to a recall by the manufacturer, packager, or distributor or if a device is defective or malfunctioning;

(c) Shall not be returned to saleable inventory nor made available for subsequent relabeling and redispensing, except as provided in subdivision (1)(d) of this section; or

(d) May be accepted from a long-term care facility by the pharmacy from which they were dispensed for credit or for relabeling and redispensing, except that:

(i) No controlled substance may be returned;

(ii) No prescription drug or medical device that has restricted distribution by the federal Food and Drug Administration may be returned;

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

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

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

(vi) Tablets or capsules shall have been dispensed in a unit dose container which is impermeable to moisture and approved by the board.

(2) Pharmacies may charge a fee for collecting dispensed drugs or devices for disposal or from a long-term care facility for credit or for relabeling and redispensing.

(3) Any person or entity which exercises reasonable care in collecting dispensed drugs or devices for disposal or from a long-term care facility for credit or for relabeling and redispensing pursuant to this section shall be immune from civil or criminal liability or professional disciplinary action of any kind for any injury, death, or loss to person or property relating to such activities.

(4) A drug manufacturer which exercises reasonable care shall be immune from civil or criminal liability for any injury, death, or loss to persons or property relating to the relabeling and redispensing of drugs returned from a long-term care facility.

(5) Notwithstanding subsection (4) of this section, the relabeling and redispensing of drugs returned from a long-term care facility does not absolve a drug manufacturer of any criminal or civil liability that would have existed but for the relabeling and redispensing and such relabeling and redispensing does not increase the liability of such drug manufacturer that would have existed but for the relabeling and redispensing.

(6) The pharmacist may package drugs and devices at the request of a patient or patient's caregiver if the drugs and devices were originally dispensed from a different pharmacy.

Source: Laws 1999, LB 333, § 1; Laws 2001, LB 398, § 74; Laws 2002, LB 1062, § 53; Laws 2007, LB247, § 51; Laws 2007, LB463, § 1199; Laws 2011, LB274, § 1; R.S.Supp.,2014, § 71-2421; Laws 2015, LB37, § 58; Laws 2020, LB1052, § 3.

38-28,109 Drug product selection; purposes of act.

The purposes of the Nebraska Drug Product Selection Act are to provide for the drug product selection of equivalent drug products or interchangeable biological products and to promote the greatest possible use of such products.

Source: Laws 2003, LB 667, § 14; R.S.1943, (2009), § 71-5401.02; Laws 2015, LB37, § 60; Laws 2017, LB481, § 12.

38-28,110 Transferred to section 38-2807.01.

38-28,111 Drug product selection; when; pharmacist; duty.

(1) A pharmacist may drug product select except when:

(a) A practitioner designates that drug product selection is not permitted by specifying in the written, oral, or electronic prescription that there shall be no drug product selection. For written or electronic prescriptions, the practitioner shall specify ''no drug product selection'', ''dispense as written'', ''brand medically necessary'', or ''no generic substitution'' or the notation ''N.D.P.S.'', ''D.A.W.'', or ''B.M.N.'' or words or notations of similar import to indicate that drug product selection is not permitted. The pharmacist shall note ''N.D.P.S.'', ''D.A.W.'', ''B.M.N.'', ''no drug product selection'', ''dispense as written'', ''brand medically necessary'', ''no generic substitution'', or words or notations of similar import on the prescription to indicate that drug product selection is not permitted if such is communicated orally by the prescribing practitioner; or

(b) A patient or designated representative or caregiver of such patient instructs otherwise.

(2) A pharmacist shall not drug product select unless:

(a) The drug product, if it is in solid dosage form, has been marked with an identification code or monogram directly on the dosage unit;

(b) The drug product has been labeled with an expiration date;

(c) The manufacturer, distributor, or packager of the drug product provides reasonable services, as determined by the board, to accept the return of drug products that have reached their expiration date; and

(d) The manufacturer, distributor, or packager maintains procedures for the recall of unsafe or defective drug products.

(3) If a pharmacist receives a prescription for a biological product and chooses to dispense an interchangeable biological product for the prescribed product, the pharmacist must advise the patient or the patient's caregiver that drug product selection has occurred.

(4) Within three business days after the dispensing of a biological product, the dispensing pharmacist or the pharmacist's designee shall make an entry of the specific product provided to the patient, including the name of the product and the manufacturer. The communication shall be conveyed by making an entry that is electronically accessible to the prescriber through an interoperable electronic medical records system, electronic prescribing technology, a pharmacy benefit management system, or a pharmacy record. Entry into an electronic records system described in this subsection is presumed to provide notice to the prescriber. Otherwise, the pharmacist shall communicate the biological product dispensed to the prescriber using facsimile, telephone, electronic transmission, or other prevailing means, except that communication shall not be required if (a) there is no interchangeable biological product

approved by the federal Food and Drug Administration for the product prescribed or (b) a refill prescription is not changed from the product dispensed on the prior filling.

Source: Laws 1977, LB 103, § 3; Laws 1978, LB 689, § 2; Laws 1983, LB 476, § 22; Laws 1989, LB 353, § 1; Laws 1991, LB 363, § 1; Laws 1998, LB 1073, § 149; Laws 1999, LB 828, § 174; Laws 2003, LB 667, § 16; Laws 2005, LB 382, § 12; Laws 2007, LB247, § 54; Laws 2009, LB195, § 83; R.S.1943, (2009), § 71-5403; Laws 2015, LB37, § 62; Laws 2017, LB481, § 13.

38-28,112 Pharmacist; drug product selection; effect on reimbursement; label; price.

(1) Whenever a drug product has been prescribed with the notation that no drug product selection is permitted for a patient who has a contract whereunder he or she is reimbursed for the cost of health care, directly or indirectly, the party that has contracted to reimburse the patient, directly or indirectly, shall make reimbursements on the basis of the price of the brand-name drug product and not on the basis of the equivalent drug product or interchangeable biological product, unless the contract specifically requires generic reimbursement under the Code of Federal Regulations.

(2) A prescription drug or device when dispensed shall bear upon the label the name of the drug or device in the container unless the practitioner writes do not label or words of similar import in the prescription or so designates orally.

(3) Nothing in this section shall (a) require a pharmacy to charge less than its established minimum price for the filling of any prescription or (b) prohibit any hospital from developing, using, and enforcing a formulary.

Source: Laws 1977, LB 103, § 4; Laws 1983, LB 476, § 23; Laws 1996, LB 1044, § 721; Laws 1998, LB 1073, § 150; Laws 2003, LB 667, § 17; Laws 2005, LB 382, § 13; R.S.1943, (2009), § 71-5404; Laws 2015, LB37, § 63; Laws 2017, LB481, § 14.

38-28,113 Drug product selection; pharmacist; practitioner; negligence; what constitutes.

(1) Drug product selection by a pharmacist pursuant to the Nebraska Drug Product Selection Act shall not constitute the practice of medicine.

(2) Drug product selection by a pharmacist pursuant to the act or any rules and regulations adopted and promulgated under the act shall not constitute evidence of negligence if the drug product selection was made within the reasonable and prudent practice of pharmacy.

(3) When drug product selection by a pharmacist is permissible under the act, such drug product selection shall not constitute evidence of negligence on the part of the prescribing practitioner. The failure of a prescribing practitioner to provide that there shall be no drug product selection in any case shall not constitute evidence of negligence or malpractice on the part of such prescribing practitioner.

Source: Laws 1977, LB 103, § 5; Laws 2001, LB 398, § 77; Laws 2003, LB 667, § 18; R.S.1943, (2009), § 71-5405; Laws 2015, LB37, § 64; Laws 2017, LB481, § 15.

38-28,116 Drug product selection; rules and regulations; department; duty.

(1) The department may adopt and promulgate rules and regulations necessary to implement the Nebraska Drug Product Selection Act upon the joint recommendation of the Board of Medicine and Surgery and the Board of Pharmacy.

(2) The department shall maintain a link on its website to the current list of all biological products that the federal Food and Drug Administration has determined to be interchangeable biological products.

Source: Laws 2003, LB 667, § 21; R.S.1943, (2009), § 71-5409; Laws 2015, LB37, § 67; Laws 2017, LB481, § 16.

38-28,117 Pharmacy; hospital pharmacy; inspection; requirements.

Effective January 1, 2025, any self-inspection of a pharmacy or a hospital pharmacy shall be made using a form authorized by the board. The board shall authorize the form for use beginning January 1, 2025, on or before November 1, 2024, and such form shall remain in effect for a period of at least one year. Any updates to the form for subsequent years shall be authorized on or before November 1 of that year. If the board fails to authorize the form on or before November 1 of any year, any inspection of a pharmacy or hospital pharmacy for the following calendar year shall be conducted by the board or department, as applicable.

Source: Laws 2024, LB1215, § 14.
Operative date July 19, 2024.

ARTICLE 29

PHYSICAL THERAPY PRACTICE ACT

Section
38-2924. Applicant; reciprocity; continuing competency requirements; military spouse; temporary license.

38-2924 Applicant; reciprocity; continuing competency requirements; military spouse; temporary license.

(1) An applicant for licensure to practice as a physical therapist or to practice as a physical therapist assistant who has met the standards set by the board pursuant to section 38-126 for a license based on licensure in another jurisdiction but is not practicing at the time of application for licensure shall present proof satisfactory to the department that he or she has within the three years immediately preceding the application for licensure completed continuing competency requirements approved by the board pursuant to section 38-145.

(2) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 2007, LB463, § 1017; Laws 2017, LB88, § 87.

ARTICLE 30

PODIATRY PRACTICE ACT

Section
38-3001. Act, how cited.
38-3002. Definitions, where found.
38-3005.01. Supervising podiatrist, defined.

Section
38-3005.02. Supervision, defined.
38-3013. Physician assistants; services performed; collaborative agreement; supervision; requirements.
38-3014. Physician assistants; supervision; supervising podiatrist; requirements; collaborative agreement.

38-3001 Act, how cited.

Sections 38-3001 to 38-3014 shall be known and may be cited as the Podiatry Practice Act.

Source: Laws 2007, LB463, § 1023; Laws 2020, LB755, § 18.

38-3002 Definitions, where found.

For purposes of the Podiatry Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-3003 to 38-3005.02 apply.

Source: Laws 2007, LB463, § 1024; Laws 2020, LB755, § 19.

38-3005.01 Supervising podiatrist, defined.

Supervising podiatrist means a licensed podiatrist who supervises a physician assistant under a collaborative agreement.

Source: Laws 2020, LB755, § 20.

38-3005.02 Supervision, defined.

Supervision means the ready availability of the supervising podiatrist for consultation and collaboration on the activities of the physician assistant.

Source: Laws 2020, LB755, § 21.

38-3013 Physician assistants; services performed; collaborative agreement; supervision; requirements.

Under a collaborative agreement with a supervising podiatrist, a physician assistant may perform services that (1) are delegated by and provided under the supervision of a licensed podiatrist who meets the requirements of section 38-3014, (2) are appropriate to the level of education, experience, and training of the physician assistant, (3) form a component of the supervising podiatrist's scope of practice, (4) are medical services for which the physician assistant has been prepared by education, experience, and training and that the physician assistant is competent to perform within the scope of practice of the supervising podiatrist, and (5) are not otherwise prohibited by law. A physician assistant shall have at least one supervising podiatrist for each employer.

Source: Laws 2020, LB755, § 22.

38-3014 Physician assistants; supervision; supervising podiatrist; requirements; collaborative agreement.

(1) To supervise a physician assistant, a podiatrist shall:

(a) Be licensed to practice podiatry under the Podiatry Practice Act;

(b) Have no restriction imposed by the board on such podiatrist's ability to supervise a physician assistant; and

(c) Maintain a collaborative agreement with the physician assistant.

(2) The podiatrist shall keep the collaborative agreement on file at the podiatrist's primary practice site, shall keep a copy of the collaborative agreement on file at each practice site where the physician assistant provides podiatry services, and shall make the collaborative agreement available to the board and the department upon request.

(3) Supervision of a physician assistant by a supervising podiatrist shall be continuous but shall not require the physical presence of the supervising podiatrist at the time and place that the services are rendered. A physician assistant may render services in a setting that is geographically remote from the supervising podiatrist.

(4) A supervising podiatrist may supervise no more than four physician assistants at any one time. The board may consider an application for waiver of this limit and may waive the limit upon a showing that the supervising podiatrist meets the minimum requirements for the waiver. The department may adopt and promulgate rules and regulations establishing minimum requirements for such waivers.

Source: Laws 2020, LB755, § 23.

ARTICLE 31

PSYCHOLOGY PRACTICE ACT

Section
38-3101. Act, how cited.
38-3106. Institution of higher education, defined.
38-3111. Psychology; references; how construed.
38-3113. Other practices and activities; act, how construed.
38-3120. Temporary practice pending licensure permitted; when; military spouse; temporary license.
38-3133. Administrator of Psychology Interjurisdictional Compact; duties.

38-3101 Act, how cited.

Sections 38-3101 to 38-3133 shall be known and may be cited as the Psychology Practice Act.

Source: Laws 2007, LB463, § 1035; Laws 2018, LB1034, § 44.

38-3106 Institution of higher education, defined.

Institution of higher education means a university, professional school, or other institution of higher learning that:

(1) In the United States, is accredited by an accrediting organization recognized by the United States Department of Education;

(2) In Canada, holds a membership in the Association of Universities and Colleges of Canada; or

(3) In other countries, is accredited by the respective official organization having such authority.

Source: Laws 1994, LB 1210, § 68; R.S.1943, (2003), § 71-1,206.06; Laws 2007, LB463, § 1040; Laws 2021, LB528, § 11.

38-3111 Psychology; references; how construed.

(1) Unless otherwise expressly stated, references to licensed psychologists in the Nebraska Mental Health Commitment Act, in the Psychology Practice Act,

in the Sex Offender Commitment Act, and in section 44-513 means only psychologists licensed to practice psychology in this state under section 38-3114 or under similar provisions of the Psychology Interjurisdictional Compact and does not mean persons holding a special license under section 38-3116 or holding a provisional license under the Psychology Practice Act.

(2) Any reference to a person certified to practice clinical psychology under the law in effect immediately prior to September 1, 1994, and any equivalent reference under the law of another jurisdiction, including, but not limited to, certified clinical psychologist, health care practitioner in psychology, or certified health care provider, shall be construed to refer to a psychologist licensed under the Uniform Credentialing Act except for persons licensed under section 38-3116 or holding a provisional license under the Psychology Practice Act.

Source: Laws 1994, LB 1210, § 76; Laws 1999, LB 366, § 12; Laws 2006, LB 1199, § 32; R.S.Supp.,2006, § 71-1,206.14; Laws 2007, LB463, § 1045; Laws 2018, LB1034, § 45.

Cross References

Nebraska Mental Health Commitment Act, see section 71-901.
Psychology Interjurisdictional Compact, see section 38-3901.
Sex Offender Commitment Act, see section 71-1201.

38-3113 Other practices and activities; act, how construed.

Nothing in the Psychology Practice Act shall be construed to prevent:

(1) The teaching of psychology, the conduct of psychological research, or the provision of psychological services or consultation to organizations or institutions if such teaching, research, or service does not involve the delivery or supervision of direct psychological services to individuals or groups of individuals who are themselves, rather than a third party, the intended beneficiaries of such services, without regard to the source or extent of payment for services rendered. Nothing in the act shall prevent the provision of expert testimony by psychologists who are otherwise exempted by the act. Persons holding a doctoral degree in psychology from an institution of higher education may use the title psychologist in conjunction with the activities permitted by this subdivision;

(2) Members of other recognized professions that are licensed, certified, or regulated under the laws of this state from rendering services consistent with their professional training and code of ethics and within the scope of practice as set out in the statutes regulating their professional practice if they do not represent themselves to be psychologists;

(3) Duly recognized members of the clergy from functioning in their ministerial capacity if they do not represent themselves to be psychologists or their services as psychological;

(4) Persons who are certified as school psychologists by the State Board of Education from using the title school psychologist and practicing psychology as defined in the Psychology Practice Act if (a) such practice is restricted to regular employment within a setting under the jurisdiction of the State Board of Education. Such individuals shall be employees of the educational setting and not independent contractors providing psychological services to educational settings, or (b) employed through a service agency with special education programs and rates approved by the State Department of Education; or

(5) Any of the following persons from engaging in activities defined as the practice of psychology if they do not represent themselves by the title psychologist, if they do not use terms other than psychological trainee, psychological intern, psychological resident, or psychological assistant to refer to themselves, and if they perform their activities under the supervision and responsibility of a psychologist in accordance with the rules and regulations adopted and promulgated under the Psychology Practice Act:

(a) A matriculated graduate student in psychology whose activities constitute a part of the course of study for a graduate degree in psychology at an institution of higher education;

(b) An individual pursuing postdoctoral training or experience in psychology, including persons seeking to fulfill the requirements for licensure under the act; or

(c) An individual with a master's degree in clinical, counseling, or educational psychology or an educational specialist degree in school psychology who administers and scores and may develop interpretations of psychological testing under the supervision of a psychologist. Such individuals shall be deemed to be conducting their duties as an extension of the legal and professional authority of the supervising psychologist and shall not independently provide interpretive information or treatment recommendations to clients or other health care professionals prior to obtaining appropriate supervision. The department, with the recommendation of the board, may adopt and promulgate rules and regulations governing the conduct and supervision of persons referred to in this subdivision, including the number of such persons that may be supervised by a licensed psychologist. Persons who have carried out the duties described in this subdivision as part of their employment in institutions accredited by the Department of Health and Human Services, the State Department of Education, or the Department of Correctional Services for a period of two years prior to September 1, 1994, may use the title psychologist associate in the context of their employment in such settings. Use of the title shall be restricted to duties described in this subdivision, and the title shall be used in its entirety. Partial or abbreviated use of the title and use of the title beyond what is specifically authorized in this subdivision shall constitute the unlicensed practice of psychology.

Source: Laws 1994, LB 1210, § 87; Laws 1996, LB 1044, § 475; Laws 1999, LB 366, § 13; R.S.1943, (2003), § 71-1,206.25; Laws 2007, LB463, § 1047; Laws 2024, LB1284, § 3.
Operative date July 19, 2024.

38-3120 Temporary practice pending licensure permitted; when; military spouse; temporary license.

(1) A psychologist licensed under the laws of another jurisdiction may be authorized by the department to practice psychology for a maximum of one year if the psychologist has made application to the department for licensure and has met the educational and experience requirements for licensure in Nebraska, if the requirements for licensure in the former jurisdiction are equal to or exceed the requirements for licensure in Nebraska, and if the psychologist is not the subject of a past or pending disciplinary action in another jurisdiction. Denial of licensure shall terminate this authorization.

(2) An applicant for licensure as a psychologist who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 1994, LB 1210, § 85; R.S.1943, (2003), § 71-1,206.23; Laws 2007, LB463, § 1054; Laws 2017, LB88, § 88.

38-3133 Administrator of Psychology Interjurisdictional Compact; duties.

The chairperson of the board or his or her designee shall serve as the administrator of the Psychology Interjurisdictional Compact for the State of Nebraska. The administrator shall give notice of withdrawal to the executive heads of all other party states within thirty days after the effective date of any statute repealing the compact enacted by the Legislature pursuant to Article XIII of the compact.

Source: Laws 2018, LB1034, § 46.

Cross References

Psychology Interjurisdictional Compact, see section 38-3901.

ARTICLE 32

RESPIRATORY CARE PRACTICE ACT

Section
38-3205. Respiratory care, defined.
38-3208. Practices not requiring licensure.
38-3212. Applicant for licensure; reciprocity; continuing competency requirements; military spouse; temporary license.

38-3205 Respiratory care, defined.

Respiratory care means the health specialty responsible for the treatment, management, diagnostic testing, and care of patients with deficiencies and abnormalities associated with the cardiopulmonary system. Respiratory care is not limited to a hospital setting and includes the therapeutic and diagnostic management and maintenance of medical gases, administering apparatus, humidification and aerosols, ventilatory management, postural drainage, chest physiotherapy and breathing exercises, cardiopulmonary resuscitation and rehabilitation, and maintenance and insertion of lines, drains, and artificial and nonartificial airways without cutting tissues. Respiratory care also includes the administration of all pharmacologic, diagnostic, and therapeutic agents for the treatment and diagnosis of cardiopulmonary disease for which the respiratory care practitioner has been professionally trained or has obtained advance education or certification, including specific testing techniques employed in respiratory care to assist in diagnosis, monitoring, treatment, and research of how specific cardiopulmonary disease affects the patient. Such techniques include management of ventilatory volumes, pressures, and flows, measurement of physiologic partial pressures, pulmonary function testing, hemodynamic insertion of lines, and related physiological monitoring of the cardiopulmonary system.

Source: Laws 2007, LB463, § 1071; Laws 2022, LB752, § 24.

38-3208 Practices not requiring licensure.

The Respiratory Care Practice Act shall not prohibit:

(1) The practice of respiratory care which is an integral part of the program of study by students enrolled in approved respiratory care education programs;

(2) The gratuitous care, including the practice of respiratory care, of the ill by a friend or member of the family or by a person who is not licensed to practice respiratory care if such person does not represent himself or herself as a respiratory care practitioner;

(3) The practice of respiratory care by nurses, physicians, physician assistants, physical therapists, or any other professional required to be licensed under the Uniform Credentialing Act when such practice is within the scope of practice for which that person is licensed to practice in this state;

(4) The practice of any respiratory care practitioner of this state or any other state or territory while employed by the federal government or any bureau or division thereof while in the discharge of his or her official duties;

(5) Techniques defined as pulmonary function testing and the administration of aerosol and inhalant medications to the cardiorespiratory system as it relates to pulmonary function technology administered by a registered pulmonary function technologist credentialed by the National Board for Respiratory Care or a certified pulmonary function technologist credentialed by the National Board for Respiratory Care; or

(6) The performance of oxygen therapy or the initiation of noninvasive positive pressure ventilation by a registered polysomnographic technologist relating to the study of sleep disorders if such procedures are performed or initiated under the supervision of a licensed physician at a facility accredited by the American Academy of Sleep Medicine.

Source: Laws 1986, LB 277, § 17; Laws 1997, LB 622, § 83; Laws 2003, LB 242, § 64; Laws 2003, LB 667, § 5; R.S.1943, (2003), § 71-1,235; Laws 2007, LB463, § 1074; Laws 2018, LB731, § 78.

38-3212 Applicant for licensure; reciprocity; continuing competency requirements; military spouse; temporary license.

(1) An applicant for licensure to practice respiratory care who has met the standards set by the board pursuant to section 38-126 for a license based on licensure in another jurisdiction but is not practicing at the time of application for licensure shall present proof satisfactory to the department that he or she has within the three years immediately preceding the application for licensure completed continuing competency requirements approved by the board pursuant to section 38-145.

(2) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 2007, LB463, § 1078; Laws 2017, LB88, § 89.

ARTICLE 33

VETERINARY MEDICINE AND SURGERY PRACTICE ACT

Section
38-3301. Act, how cited.
38-3302. Definitions, where found.
38-3307.02. Equine, cat, and dog massage practice, defined.
38-3314. Unlicensed assistant, defined.
38-3321. Veterinarian; veterinary technician; animal therapist; license; required; exceptions.

Section
38-3327. Applicant; reciprocity; requirements; military spouse; temporary license.

38-3301 Act, how cited.

Sections 38-3301 to 38-3335 shall be known and may be cited as the Veterinary Medicine and Surgery Practice Act.

Source: Laws 1967, c. 439, § 1, p. 1353; Laws 1988, LB 1100, § 54; Laws 2000, LB 833, § 3; R.S.1943, (2003), § 71-1,153; Laws 2007, LB463, § 1083; Laws 2009, LB463, § 2; Laws 2011, LB687, § 2; Laws 2018, LB596, § 1.

38-3302 Definitions, where found.

For purposes of the Veterinary Medicine and Surgery Practice Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definitions found in sections 38-3303 to 38-3318 apply.

Source: Laws 2007, LB463, § 1084; Laws 2009, LB463, § 3; Laws 2018, LB596, § 2.

38-3307.02 Equine, cat, and dog massage practice, defined.

Equine, cat, and dog massage practice means the application of hands-on massage techniques for the purpose of increasing circulation, relaxing muscle spasms, relieving tension, enhancing muscle tone, and increasing range of motion in equines, cats, and dogs.

Source: Laws 2018, LB596, § 3.

38-3314 Unlicensed assistant, defined.

Unlicensed assistant means an individual who is not a licensed veterinarian, a licensed veterinary technician, or a licensed animal therapist and who is working in veterinary medicine. Unlicensed assistant does not include a person engaged in equine, cat, and dog massage practice.

Source: Laws 2007, LB463, § 1096; Laws 2009, LB463, § 6; Laws 2018, LB596, § 4.

38-3321 Veterinarian; veterinary technician; animal therapist; license; required; exceptions.

No person may practice veterinary medicine and surgery in the state who is not a licensed veterinarian, no person may perform delegated animal health care tasks in the state who is not a licensed veterinary technician or an unlicensed assistant performing such tasks within the limits established under subdivision (2) of section 38-3326, and no person may perform health care therapy on animals in the state who is not a licensed animal therapist. The Veterinary Medicine and Surgery Practice Act shall not be construed to prohibit:

(1) An employee of the federal, state, or local government from performing his or her official duties;

(2) A person who is a student in a veterinary school from performing duties or actions assigned by his or her instructors or from working under the direct supervision of a licensed veterinarian;

(3) A person who is a student in an approved veterinary technician program from performing duties or actions assigned by his or her instructors or from working under the direct supervision of a licensed veterinarian or a licensed veterinary technician;

(4) Any merchant or manufacturer from selling feed or feeds whether medicated or nonmedicated;

(5) A veterinarian regularly licensed in another state from consulting with a licensed veterinarian in this state;

(6) Any merchant or manufacturer from selling from his or her established place of business medicines, appliances, or other products used in the prevention or treatment of animal diseases or any merchant or manufacturer's representative from conducting educational meetings to explain the use of his or her products or from investigating and advising on problems developing from the use of his or her products;

(7) An owner of livestock or a bona fide farm or ranch employee from performing any act of vaccination, surgery, pregnancy testing, retrievable transplantation of embryos on bovine, including recovering, freezing, and transferring embryos on bovine, or the administration of drugs in the treatment of domestic animals under his or her custody or ownership nor the exchange of services between persons or bona fide employees who are principally farm or ranch operators or employees in the performance of these acts;

(8) A member of the faculty of a veterinary school or veterinary science department from performing his or her regular functions, or a person lecturing or giving instructions or demonstrations at a veterinary school or veterinary science department or in connection with a continuing competency activity;

(9) Any person from selling or applying any pesticide, insecticide, or herbicide;

(10) Any person from engaging in bona fide scientific research which reasonably requires experimentation involving animals;

(11) Any person from treating or in any manner caring for domestic chickens, turkeys, or waterfowl, which are specifically exempted from the Veterinary Medicine and Surgery Practice Act;

(12) Any person from performing dehorning or castrating livestock, not to include equidae. For purposes of the Veterinary Medicine and Surgery Practice Act, castration shall be limited to the removal or destruction of male testes;

(13) Any person who holds a valid credential in the State of Nebraska in a health care profession or occupation regulated under the Uniform Credentialing Act from consulting with a licensed veterinarian or performing collaborative animal health care tasks on an animal under the care of such veterinarian if all such tasks are performed under the immediate supervision of such veterinarian;

(14) A person from performing a retrievable transplantation of embryos on bovine, including recovering, freezing, and transferring embryos on bovine, if the procedure is being performed by a person who (a) holds a doctorate degree in animal science with an emphasis in reproductive physiology from an accredited college or university and (b) has and can show proof of valid professional liability insurance;

(15) Any person engaging solely in equine, cat, and dog massage practice; or

(16) An emergency care provider providing emergency medical care to a law enforcement canine injured in the line of duty as described in section 38-1239.

Source: Laws 1967, c. 439, § 3, p. 1354; Laws 1986, LB 926, § 47; Laws 1988, LB 1100, § 56; Laws 2002, LB 1021, § 23; Laws 2004, LB 1005, § 18; Laws 2005, LB 301, § 11; R.S.Supp.,2006, § 71-1,155; Laws 2007, LB463, § 1103; Laws 2008, LB928, § 13; Laws 2009, LB463, § 7; Laws 2012, LB686, § 1; Laws 2018, LB596, § 5; Laws 2024, LB910, § 3.
Operative date July 1, 2025.

38-3327 Applicant; reciprocity; requirements; military spouse; temporary license.

(1) An applicant for a license to practice veterinary medicine and surgery based on a license in another state or territory of the United States, the District of Columbia, or a Canadian province shall meet the standards set by the board pursuant to section 38-126 and shall have been actively engaged in the practice of such profession at least one of the three years immediately preceding the application under a license in another state or territory of the United States, the District of Columbia, or a Canadian province.

(2) An applicant for a license to practice as a licensed veterinary technician based on a license in another state or territory of the United States, the District of Columbia, or a Canadian province shall meet the standards set by the board pursuant to section 38-126 and shall have been actively engaged in the practice of such profession at least one of the three years immediately preceding the application under a license in another state or territory of the United States, the District of Columbia, or a Canadian province.

(3) An applicant who is a military spouse may apply for a temporary license to practice veterinary medicine and surgery or to practice as a licensed veterinary technician as provided in section 38-129.01.

Source: Laws 2007, LB463, § 1109; Laws 2017, LB88, § 90.

ARTICLE 34

GENETIC COUNSELING PRACTICE ACT

Section
38-3419. Reciprocity; individual practicing before January 1, 2013; licensure; qualification; military spouse; temporary license.

38-3419 Reciprocity; individual practicing before January 1, 2013; licensure; qualification; military spouse; temporary license.

(1) The department, with the recommendation of the state board, may issue a license under the Genetic Counseling Practice Act based on licensure in another jurisdiction to an individual who meets the requirements of the Genetic Counseling Practice Act or substantially equivalent requirements as determined by the department, with the recommendation of the state board.

(2) An individual practicing genetic counseling in Nebraska before January 1, 2013, may apply for licensure under the act if, on or before July 1, 2013, he or she:

(a) Provides satisfactory evidence to the state board that he or she (i) has practiced genetic counseling for a minimum of ten years preceding January 1,

2013, (ii) has a postbaccalaureate degree at the master's level or higher in genetics or a related field of study, and (iii) has never failed the certification examination;

(b) Submits three letters of recommendation from at least one individual practicing genetic counseling who qualifies for licensure under the Genetic Counseling Practice Act and either a clinical geneticist or medical geneticist certified by the national medical genetics board. An individual submitting a letter of recommendation shall have worked with the applicant in an employment setting during at least five of the ten years preceding submission of the letter and be able to attest to the applicant's competency in providing genetic counseling; and

(c) Provides documentation of attending approved continuing education programs within the five years preceding application.

(3) An applicant who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 2012, LB831, § 19; Laws 2017, LB88, § 91.

ARTICLE 36

INTERSTATE MEDICAL LICENSURE COMPACT

Section

38-3601 Compact; citation.

Sections 38-3601 to 38-3625 shall be known and may be cited as the Interstate Medical Licensure Compact.

Source: Laws 2017, LB88, § 1.

38-3602 Purposes of Interstate Medical Licensure Compact.

The purposes of the Interstate Medical Licensure Compact are, through means of joint and cooperative action among the member states of the compact (1) to develop a comprehensive process that complements the existing licensing and regulatory authority of state medical boards and that provides a streamlined process that allows physicians to become licensed in multiple states, thereby enhancing the portability of a medical license and ensuring the safety of patients, (2) to create another pathway for licensure that does not otherwise change a state's existing medicine and surgery practice act, (3) to adopt the prevailing standard for licensure, affirm that the practice of medicine occurs where the patient is located at the time of the physician-patient encounter, and require the physician to be under the jurisdiction of the state medical board where the patient is located, (4) to ensure that state medical boards that participate in the compact retain the jurisdiction to impose an adverse action against a license to practice medicine in that state issued to a physician through the procedures in the compact, and (5) to create the Interstate Medical Licensure Compact Commission.

Source: Laws 2017, LB88, § 2.

38-3603 Terms, defined.

For purposes of the Interstate Medical Licensure Compact:

(a) Bylaws means those bylaws established by the interstate commission pursuant to section 38-3612 for its governance or for directing and controlling its actions and conduct;

(b) Commissioner means the voting representative appointed by each member board pursuant to section 38-3612;

(c) Conviction means a finding by a court that an individual is guilty of a criminal offense through adjudication or entry of a plea of guilty or no contest to the charge by the offender. Evidence of an entry of a conviction of a criminal offense by the court shall be considered final for purposes of disciplinary action by a member board;

(d) Expedited license means a full and unrestricted medical license granted by a member state to an eligible physician through the process set forth in the compact;

(e) Interstate commission means the interstate commission created pursuant to section 38-3612;

(f) License means authorization by a state for a physician to engage in the practice of medicine, which would be unlawful without the authorization;

(g) Medicine and surgery practice act means laws and regulations governing the practice of medicine within a member state;

(h) Member board means a state agency in a member state that acts in the sovereign interests of the state by protecting the public through licensure, regulation, and education of physicians as directed by the state government;

(i) Member state means a state that has enacted the compact;

(j) Practice of medicine means the clinical prevention, diagnosis, or treatment of human disease, injury, or condition requiring a physician to obtain and maintain a license in compliance with the medicine and surgery practice act of a member state;

(k) Physician means any person who:

(1) Is a graduate of a medical school accredited by the Liaison Committee on Medical Education, the Commission on Osteopathic College Accreditation, or a medical school listed in the International Medical Education Directory or its equivalent;

(2) Passed each component of the United States Medical Licensing Examination or the Comprehensive Osteopathic Medical Licensing Examination within three attempts, or any of its predecessor examinations accepted by a state medical board as an equivalent examination for licensure purposes;

(3) Successfully completed graduate medical education approved by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association;

(4) Holds specialty certification or a time-unlimited specialty certificate recognized by the American Board of Medical Specialties or the American Osteopathic Association's Bureau of Osteopathic Specialists;

(5) Possesses a full and unrestricted license to engage in the practice of medicine issued by a member board;

(6) Has never been convicted, received adjudication, deferred adjudication, community supervision, or deferred disposition for any offense by a court of appropriate jurisdiction;

(7) Has never had a license authorizing the practice of medicine subjected to discipline by a licensing agency in any state, federal, or foreign jurisdiction, excluding any action related to nonpayment of fees related to a license;

(8) Has never had a controlled substance license or permit suspended or revoked by a state or the United States Drug Enforcement Administration; and

(9) Is not under active investigation by a licensing agency or law enforcement authority in any state, federal, or foreign jurisdiction;

(l) Offense means a felony, gross misdemeanor, or crime of moral turpitude;

(m) Rule means a written statement by the interstate commission promulgated pursuant to section 38-3613 that is of general applicability, implements, interprets, or prescribes a policy or provision of the compact, or an organizational, procedural, or practice requirement of the interstate commission, and has the force and effect of statutory law in a member state, and includes the amendment, repeal, or suspension of an existing rule;

(n) State means any state, commonwealth, district, or territory of the United States; and

(o) State of principal license means a member state where a physician holds a license to practice medicine and which has been designated as such by the physician for purposes of registration and participation in the compact.

Source: Laws 2017, LB88, § 3.

38-3604 Physician; expedited license; eligibility requirements; failure to meet requirements; effect.

(a) A physician must meet the eligibility requirements as defined in subdivision (k) of section 38-3603 to receive an expedited license under the terms and provisions of the Interstate Medical Licensure Compact.

(b) A physician who does not meet the requirements of subdivision (k) of section 38-3603 may obtain a license to practice medicine in a member state if the individual complies with all laws and requirements, other than the compact, relating to the issuance of a license to practice medicine in that state.

Source: Laws 2017, LB88, § 4.

38-3605 Physician; designate state of principal license.

(a) A physician shall designate a member state as the state of principal license for purposes of registration for expedited licensure through the Interstate Medical Licensure Compact if the physician possesses a full and unrestricted license to practice medicine in that state, and the state is:

(1) The state of primary residence for the physician;

(2) The state where at least twenty-five percent of the practice of medicine occurs;

(3) The location of the physician's employer;

(4) If no state qualifies under subdivision (1), (2), or (3) of this subsection, the state designated as state of residence for purpose of federal income tax.

(b) A physician may redesignate a member state as state of principal license at any time, as long as the state meets the requirements in subsection (a) of this section.

(c) The interstate commission is authorized to develop rules to facilitate redesignation of another member state as the state of principal license.

Source: Laws 2017, LB88, § 5.

38-3606 Physician; file application; member board; duties; criminal background check; fees; issuance of license.

(a) A physician seeking licensure through the Interstate Medical Licensure Compact shall file an application for an expedited license with the member board of the state selected by the physician as the state of principal license.

(b) Upon receipt of an application for an expedited license, the member board within the state selected as the state of principal license shall evaluate whether the physician is eligible for expedited licensure and issue a letter of qualification, verifying or denying the physician's eligibility, to the interstate commission.

(i) Static qualifications, which include verification of medical education, graduate medical education, results of any medical or licensing examination, and other qualifications as determined by the interstate commission through

rule, shall not be subject to additional primary source verification where already primary source verified by the state of principal license.

(ii) The member board within the state selected as the state of principal license shall, in the course of verifying eligibility, perform a criminal background check of an applicant, including the use of the results of fingerprint or other biometric data checks compliant with the requirements of the Federal Bureau of Investigation, with the exception of federal employees who have suitability determination in accordance with 5 C.F.R. 731.202.

(iii) Appeal on the determination of eligibility shall be made to the member state where the application was filed and shall be subject to the law of that state.

(c) Upon verification in subsection (b) of this section, physicians eligible for an expedited license shall complete the registration process established by the interstate commission to receive a license in a member state selected pursuant to subsection (a) of this section, including the payment of any applicable fees.

(d) After receiving verification of eligibility under subsection (b) of this section and any fees under subsection (c) of this section, a member board shall issue an expedited license to the physician. This license shall authorize the physician to practice medicine in the issuing state consistent with the medicine and surgery practice act and all applicable laws and regulations of the issuing member board and member state.

(e) An expedited license shall be valid for a period consistent with the licensure period in the member state and in the same manner as required for other physicians holding a full and unrestricted license within the member state.

(f) An expedited license obtained through the compact shall be terminated if a physician fails to maintain a license in the state of principal licensure for a nondisciplinary reason, without redesignation of a new state of principal licensure.

(g) The interstate commission is authorized to develop rules regarding the application process, including payment of any applicable fees, and the issuance of an expedited license.

Source: Laws 2017, LB88, § 6.

38-3607 Fee; rules.

(a) A member state issuing an expedited license authorizing the practice of medicine in that state may impose a fee for a license issued or renewed through the Interstate Medical Licensure Compact.

(b) The interstate commission is authorized to develop rules regarding fees for expedited licenses.

Source: Laws 2017, LB88, § 7.

38-3608 Physician; renewal of expedited license; renewal process; fees; rules.

(a) A physician seeking to renew an expedited license granted in a member state shall complete a renewal process with the interstate commission if the physician:

(1) Maintains a full and unrestricted license in a state of principal license;

(2) Has not been convicted, received adjudication, deferred adjudication, community supervision, or deferred disposition for any offense by a court of appropriate jurisdiction;

(3) Has not had a license authorizing the practice of medicine subject to discipline by a licensing agency in any state, federal, or foreign jurisdiction, excluding any action related to nonpayment of fees related to a license; and

(4) Has not had a controlled substance license or permit suspended or revoked by a state or the United States Drug Enforcement Administration.

(b) Physicians shall comply with all continuing professional development or continuing medical education requirements for renewal of a license issued by a member state.

(c) The interstate commission shall collect any renewal fees charged for the renewal of a license and distribute the fees to the applicable member board.

(d) Upon receipt of any renewal fees collected in subsection (c) of this section, a member board shall renew the physician's license.

(e) Physician information collected by the interstate commission during the renewal process will be distributed to all member boards.

(f) The interstate commission is authorized to develop rules to address renewal of licenses obtained through the Interstate Medical Licensure Compact.

Source: Laws 2017, LB88, § 8.

38-3609 Database; contents; public action or complaints; member boards; duties; confidentiality.

(a) The interstate commission shall establish a database of all physicians licensed, or who have applied for licensure, under section 38-3606.

(b) Notwithstanding any other provision of law, member boards shall report to the interstate commission any public action or complaints against a licensed physician who has applied or received an expedited license through the Interstate Medical Licensure Compact.

(c) Member boards shall report disciplinary or investigatory information determined as necessary and proper by rule of the interstate commission.

(d) Member boards may report any nonpublic complaint, disciplinary, or investigatory information not required by subsection (c) of this section to the interstate commission.

(e) Member boards shall share complaint or disciplinary information about a physician upon request of another member board.

(f) All information provided to the interstate commission or distributed by member boards shall be confidential, filed under seal, and used only for investigatory or disciplinary matters.

(g) The interstate commission is authorized to develop rules for mandated or discretionary sharing of information by member boards.

Source: Laws 2017, LB88, § 9.

38-3610 Member board; joint investigations; powers.

(a) Licensure and disciplinary records of physicians are deemed investigative.

(b) In addition to the authority granted to a member board by its respective medicine and surgery practice act or other applicable state law, a member board may participate with other member boards in joint investigations of physicians licensed by the member boards.

(c) A subpoena issued by a member state shall be enforceable in other member states.

(d) Member boards may share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the Interstate Medical Licensure Compact.

(e) Any member state may investigate actual or alleged violations of the statutes authorizing the practice of medicine in any other member state in which a physician holds a license to practice medicine.

Source: Laws 2017, LB88, § 10.

38-3611 Disciplinary action; unprofessional conduct; reinstatement of license; procedure.

(a) Any disciplinary action taken by any member board against a physician licensed through the Interstate Medical Licensure Compact shall be deemed unprofessional conduct which may be subject to discipline by other member boards, in addition to any violation of the medicine and surgery practice act or regulations in that state.

(b) If a license granted to a physician by the member board in the state of principal license is revoked, surrendered or relinquished in lieu of discipline, or suspended, then all licenses issued to the physician by member boards shall automatically be placed, without further action necessary by any member board, on the same status. If the member board in the state of principal license subsequently reinstates the physician's license, a license issued to the physician by any other member board shall remain encumbered until that respective member board takes action to reinstate the license in a manner consistent with the medicine and surgery practice act of that state.

(c) If disciplinary action is taken against a physician by a member board not in the state of principal license, any other member board may deem the action conclusive as to matter of law and fact decided, and:

(i) Impose the same or lesser sanction against the physician so long as such sanctions are consistent with the medicine and surgery practice act of that state; or

(ii) Pursue separate disciplinary action against the physician under its respective medicine and surgery practice act, regardless of the action taken in other member states.

(d) If a license granted to a physician by a member board is revoked, surrendered or relinquished in lieu of discipline, or suspended, then any license issued to the physician by any other member board shall be suspended, automatically and immediately without further action necessary by the other member board, for ninety days upon entry of the order by the disciplining board, to permit the member board to investigate the basis for the action under the medicine and surgery practice act of that state. A member board may terminate the automatic suspension of the license it issued prior to the comple-

tion of the ninety-day suspension period in a manner consistent with the medicine and surgery practice act of that state.

Source: Laws 2017, LB88, § 11.

38-3612 Interstate Medical Licensure Compact Commission; created; representatives; qualifications; meetings; notice; minutes; executive committee.

(a) The member states hereby create the Interstate Medical Licensure Compact Commission.

(b) The purpose of the interstate commission is the administration of the Interstate Medical Licensure Compact, which is a discretionary state function.

(c) The interstate commission shall be a body corporate and joint agency of the member states and shall have all the responsibilities, powers, and duties set forth in the compact, and such additional powers as may be conferred upon it by a subsequent concurrent action of the respective legislatures of the member states in accordance with the terms of the compact.

(d) The interstate commission shall consist of two voting representatives appointed by each member state who shall serve as commissioners. In states where allopathic and osteopathic physicians are regulated by separate member boards, or if the licensing and disciplinary authority is split between multiple member boards within a member state, the member state shall appoint one representative from each member board. A commissioner shall be:

(1) A physician appointed to a member board;

(2) An executive director, executive secretary, or similar executive of a member board; or

(3) A member of the public appointed to a member board.

(e) The interstate commission shall meet at least once each calendar year. A portion of this meeting shall be a business meeting to address such matters as may properly come before the commission, including the election of officers. The chairperson may call additional meetings and shall call for a meeting upon the request of a majority of the member states.

(f) The bylaws may provide for meetings of the interstate commission to be conducted by telecommunication or electronic communication.

(g) Each commissioner participating at a meeting of the interstate commission is entitled to one vote. A majority of commissioners shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the interstate commission. A commissioner shall not delegate a vote to another commissioner. In the absence of its commissioner, a member state may delegate voting authority for a specified meeting to another person from that state who shall meet the requirements of subsection (d) of this section.

(h) The interstate commission shall provide public notice of all meetings and all meetings shall be open to the public. The interstate commission may close a meeting, in full or in portion, where it determines by a two-thirds vote of the commissioners present that an open meeting would be likely to:

(1) Relate solely to the internal personnel practices and procedures of the interstate commission;

(2) Discuss matters specifically exempted from disclosure by federal statute;

(3) Discuss trade secrets, commercial, or financial information that is privileged or confidential;

(4) Involve accusing a person of a crime, or formally censuring a person;

(5) Discuss information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(6) Discuss investigative records compiled for law enforcement purposes; or

(7) Specifically relate to the participation in a civil action or other legal proceeding.

(i) The interstate commission shall keep minutes which shall fully describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, including record of any roll call votes.

(j) The interstate commission shall make its information and official records, to the extent not otherwise designated in the compact or by its rules, available to the public for inspection.

(k) The interstate commission shall establish an executive committee, which shall include officers, members, and others as determined by the bylaws. The executive committee shall have the power to act on behalf of the interstate commission, with the exception of rulemaking, during periods when the interstate commission is not in session. When acting on behalf of the interstate commission, the executive committee shall oversee the administration of the compact including enforcement and compliance with the provisions of the compact, its bylaws and rules, and other such duties as necessary.

(l) The interstate commission may establish other committees for governance and administration of the compact.

Source: Laws 2017, LB88, § 12.

38-3613 Interstate commission; duty and power.

The interstate commission shall have the duty and power to:

(a) Oversee and maintain the administration of the Interstate Medical Licensure Compact;

(b) Promulgate rules which shall be binding to the extent and in the manner provided for in the compact;

(c) Issue, upon the request of a member state or member board, advisory opinions concerning the meaning or interpretation of the compact, its bylaws, rules, and actions;

(d) Enforce compliance with compact provisions, the rules promulgated by the interstate commission, and the bylaws, using all necessary and proper means, including, but not limited to, the use of judicial process;

(e) Establish and appoint committees including, but not limited to, an executive committee as required by section 38-3612, which shall have the power to act on behalf of the interstate commission in carrying out its powers and duties;

(f) Pay, or provide for the payment of, the expenses related to the establishment, organization, and ongoing activities of the interstate commission;

(g) Establish and maintain one or more offices;

(h) Borrow, accept, hire, or contract for services of personnel;

(i) Purchase and maintain insurance and bonds;

(j) Employ an executive director who shall have such powers to employ, select or appoint employees, agents, or consultants, and to determine their qualifications, define their duties, and fix their compensation;

(k) Establish personnel policies and programs relating to conflicts of interest, rates of compensation, and qualifications of personnel;

(l) Accept donations and grants of money, equipment, supplies, materials and services, and to receive, utilize, and dispose of it in a manner consistent with the conflict of interest policies established by the interstate commission;

(m) Lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use, any property, real, personal, or mixed;

(n) Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;

(o) Establish a budget and make expenditures;

(p) Adopt a seal and bylaws governing the management and operation of the interstate commission;

(q) Report annually to the legislatures and governors of the member states concerning the activities of the interstate commission during the preceding year. Such reports shall also include reports of financial audits and any recommendations that may have been adopted by the interstate commission;

(r) Coordinate education, training, and public awareness regarding the compact, its implementation, and its operation;

(s) Maintain records in accordance with the bylaws;

(t) Seek and obtain trademarks, copyrights, and patents; and

(u) Perform such functions as may be necessary or appropriate to achieve the purposes of the compact.

Source: Laws 2017, LB88, § 13.

38-3614 Annual assessment; levy; rule; audit.

(a) The interstate commission may levy on and collect an annual assessment from each member state to cover the cost of the operations and activities of the interstate commission and its staff. The total assessment must be sufficient to cover the annual budget approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated upon a formula to be determined by the interstate commission, which shall promulgate a rule binding upon all member states.

(b) The interstate commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same.

(c) The interstate commission shall not pledge the credit of any of the member states, except by, and with the authority of, the member state.

(d) The interstate commission shall be subject to a yearly financial audit conducted by a certified or licensed public accountant and the report of the audit shall be included in the annual report of the interstate commission.

Source: Laws 2017, LB88, § 14.

38-3615 Interstate commission; adopt bylaws; officers; immunity; duty to defend; hold harmless.

(a) The interstate commission shall, by a majority of commissioners present and voting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the Interstate Medical Licensure Compact within twelve months of the first interstate commission meeting.

(b) The interstate commission shall elect or appoint annually from among its commissioners a chairperson, a vice-chairperson, and a treasurer, each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson, or in the chairperson's absence or disability, the vice-chairperson, shall preside at all meetings of the interstate commission.

(c) Officers selected in subsection (b) of this section shall serve without remuneration from the interstate commission.

(d) The officers and employees of the interstate commission shall be immune from suit and liability, either personally or in their official capacity, for a claim for damage to or loss of property or personal injury or other civil liability caused or arising out of, or relating to, an actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred, within the scope of interstate commission employment, duties, or responsibilities; provided that such person shall not be protected from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

(1) The liability of the executive director and employees of the interstate commission or representatives of the interstate commission, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within such person's state, may not exceed the limits of liability set forth under the constitution and laws of that state for state officials, employees, and agents. The interstate commission is considered to be an instrumentality of the states for the purposes of any such action. Nothing in this subsection shall be construed to protect such person from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

(2) The interstate commission shall defend the executive director, its employees, and subject to the approval of the attorney general or other appropriate legal counsel of the member state represented by an interstate commission representative, shall defend such interstate commission representative in any civil action seeking to impose liability arising out of an actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

(3) To the extent not covered by the state involved, member state, or the interstate commission, the representatives or employees of the interstate commission shall be held harmless in the amount of a settlement or judgment, including attorney's fees and costs, obtained against such persons arising out of an actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, provided that the

actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

Source: Laws 2017, LB88, § 15.

38-3616 Rules; promulgation; judicial review.

(a) The interstate commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purposes of the Interstate Medical Licensure Compact. Notwithstanding the foregoing, in the event the interstate commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of the compact, or the powers granted hereunder, then such an action by the interstate commission shall be invalid and have no force or effect.

(b) Rules deemed appropriate for the operations of the interstate commission shall be made pursuant to a rulemaking process that substantially conforms to the Revised Model State Administrative Procedure Act of 2010 and subsequent amendments thereto.

(c) Not later than thirty days after a rule is promulgated, any person may file a petition for judicial review of the rule in the United States District Court for the District of Columbia or the federal district where the interstate commission has its principal offices. The filing of such a petition shall not stay or otherwise prevent the rule from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the interstate commission consistent with applicable law and shall not find the rule to be unlawful if the rule represents a reasonable exercise of the authority granted to the interstate commission.

Source: Laws 2017, LB88, § 16.

38-3617 Enforcement of Interstate Medical Licensure Compact; interstate commission; receive service of process.

(a) The executive, legislative, and judicial branches of state government in each member state shall enforce the Interstate Medical Licensure Compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of the compact and the rules promulgated under the compact shall have standing as statutory law but shall not override existing state authority to regulate the practice of medicine.

(b) All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of the compact which may affect the powers, responsibilities or actions of the interstate commission.

(c) The interstate commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes. Failure to provide service of process to the interstate commission shall render a judgment or order void as to the interstate commission, the compact, or promulgated rules.

Source: Laws 2017, LB88, § 17.

38-3618 Interstate commission; enforcement powers; initiate legal action; remedies available.

(a) The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of the Interstate Medical Licensure Compact.

(b) The interstate commission may, by majority vote of the commissioners, initiate legal action in the United States District Court for the District of Columbia, or, at the discretion of the interstate commission, in the federal district where the interstate commission has its principal offices, to enforce compliance with the provisions of the compact, and its promulgated rules and bylaws, against a member state in default. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

(c) The remedies in the compact shall not be the exclusive remedies of the interstate commission. The interstate commission may avail itself of any other remedies available under state law or the regulation of a profession.

Source: Laws 2017, LB88, § 18.

38-3619 Grounds for default; notice; failure to cure; termination from compact; costs; appeal.

(a) The grounds for default include, but are not limited to, failure of a member state to perform such obligations or responsibilities imposed upon it by the Interstate Medical Licensure Compact, or the rules and bylaws of the interstate commission promulgated under the compact.

(b) If the interstate commission determines that a member state has defaulted in the performance of its obligations or responsibilities under the compact, or the bylaws or promulgated rules, the interstate commission shall:

(1) Provide written notice to the defaulting state and other member states, of the nature of the default, the means of curing the default, and any action taken by the interstate commission. The interstate commission shall specify the conditions by which the defaulting state must cure its default; and

(2) Provide remedial training and specific technical assistance regarding the default.

(c) If the defaulting state fails to cure the default, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the commissioners and all rights, privileges, and benefits conferred by the compact shall terminate on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of the default.

(d) Termination of membership in the compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to terminate shall be given by the interstate commission to the governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.

(e) The interstate commission shall establish rules and procedures to address licenses and physicians that are materially impacted by the termination of a member state, or the withdrawal of a member state.

(f) The member state which has been terminated is responsible for all dues, obligations, and liabilities incurred through the effective date of termination

including obligations, the performance of which extends beyond the effective date of termination.

(g) The interstate commission shall not bear any costs relating to any state that has been found to be in default or which has been terminated from the compact, unless otherwise mutually agreed upon in writing between the interstate commission and the defaulting state.

(h) The defaulting state may appeal the action of the interstate commission by petitioning the United States District Court for the District of Columbia or the federal district where the interstate commission has its principal offices. The prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

Source: Laws 2017, LB88, § 19.

38-3620 Disputes; interstate commission; duties; rules.

(a) The interstate commission shall attempt, upon the request of a member state, to resolve disputes which are subject to the Interstate Medical Licensure Compact and which may arise among member states or member boards.

(b) The interstate commission shall promulgate rules providing for both mediation and binding dispute resolution as appropriate.

Source: Laws 2017, LB88, § 20.

38-3621 Eligibility to become member state; when compact effective; amendments to compact.

(a) Any state is eligible to become a member state of the Interstate Medical Licensure Compact.

(b) The compact shall become effective and binding upon legislative enactment of the compact into law by no less than seven states. Thereafter, it shall become effective and binding on a state upon enactment of the compact into law by that state.

(c) The governors of nonmember states, or their designees, shall be invited to participate in the activities of the interstate commission on a nonvoting basis prior to adoption of the compact by all states.

(d) The interstate commission may propose amendments to the compact for enactment by the member states. No amendment shall become effective and binding upon the interstate commission and the member states unless and until it is enacted into law by unanimous consent of the member states.

Source: Laws 2017, LB88, § 21.

38-3622 Withdrawal from Interstate Medical Licensure Compact; procedure; responsibilities; reinstatement; rules.

(a) Once effective, the Interstate Medical Licensure Compact shall continue in force and remain binding upon each and every member state, except that a member state may withdraw from the compact by specifically repealing the statute which enacted the compact into law.

(b) Withdrawal from the compact shall be by the enactment of a statute repealing the same, but shall not take effect until one year after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other member state.

(c) The withdrawing state shall immediately notify the chairperson of the interstate commission in writing upon the introduction of legislation repealing the compact in the withdrawing state.

(d) The interstate commission shall notify the other member states of the withdrawing state's intent to withdraw within sixty days of its receipt of notice provided under subsection (c) of this section.

(e) The withdrawing state is responsible for all dues, obligations, and liabilities incurred through the effective date of withdrawal, including obligations, the performance of which extend beyond the effective date of withdrawal.

(f) Reinstatement following withdrawal of a member state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the interstate commission.

(g) The interstate commission is authorized to develop rules to address the impact of the withdrawal of a member state on licenses granted in other member states to physicians who designated the withdrawing member state as the state of principal license.

Source: Laws 2017, LB88, § 22.

38-3623 Dissolution of Interstate Medical Licensure Compact; effect.

(a) The Interstate Medical Licensure Compact shall dissolve effective upon the date of the withdrawal or default of the member state which reduces the membership in the compact to one member state.

(b) Upon the dissolution of the compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the interstate commission shall be concluded and surplus funds shall be distributed in accordance with the bylaws.

Source: Laws 2017, LB88, § 23.

38-3624 Severability; construction.

(a) The provisions of the Interstate Medical Licensure Compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

(b) The provisions of the compact shall be liberally construed to effectuate its purposes.

(c) Nothing in the compact shall be construed to prohibit the applicability of other interstate compacts to which the states are members.

Source: Laws 2017, LB88, § 24.

38-3625 Effect on other laws of member state.

(a) Nothing in the Interstate Medical Licensure Compact prevents the enforcement of any other law of a member state that is not inconsistent with the compact.

(b) All laws in a member state in conflict with the compact are superseded to the extent of the conflict.

(c) All lawful actions of the interstate commission, including all rules and bylaws promulgated by the commission, are binding upon the member states.

(d) All agreements between the interstate commission and the member states are binding in accordance with their terms.

(e) In the event any provision of the compact exceeds the constitutional limits imposed on the legislature of any member state, such provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state.

Source: Laws 2017, LB88, § 25.

ARTICLE 37

DIALYSIS PATIENT CARE TECHNICIAN REGISTRATION ACT

Section
38-3701. Act, how cited.
38-3702. Purpose of act.
38-3703. Terms, defined.
38-3704. Dialysis patient care technician; powers.
38-3705. Dialysis patient care technician; qualifications.
38-3706. Dialysis patient care technician; registration; application; fee; duties; licensure as nurse; effect.
38-3707. Dialysis Patient Care Technician Registry; contents.

38-3701 Act, how cited.

Sections 38-3701 to 38-3707 shall be known and may be cited as the Dialysis Patient Care Technician Registration Act.

Source: Laws 2017, LB255, § 1.

38-3702 Purpose of act.

The purpose of the Dialysis Patient Care Technician Registration Act is to ensure the health, safety, and welfare of the public by providing for the accurate, cost-effective, efficient, and safe utilization of dialysis patient care technicians in the administration of hemodialysis. The act applies to dialysis facilities in which hemodialysis is provided.

Source: Laws 2017, LB255, § 2.

38-3703 Terms, defined.

For purposes of the Dialysis Patient Care Technician Registration Act:

(1) Dialysis patient care technician means a person who meets the requirements of section 38-3705; and

(2) Facility means a health care facility as defined in section 71-413 providing hemodialysis services.

Source: Laws 2017, LB255, § 3.

38-3704 Dialysis patient care technician; powers.

A dialysis patient care technician may administer hemodialysis under the authority of a registered nurse licensed pursuant to the Nurse Practice Act who may delegate tasks based on nursing judgment to a dialysis patient care technician based on the technician's education, knowledge, training, and skill.

Source: Laws 2017, LB255, § 4.

Cross References

Nurse Practice Act, see section 38-2201.

38-3705 Dialysis patient care technician; qualifications.

The minimum requirements for a dialysis patient care technician are as follows: (1) Possession of a high school diploma or a general educational development certificate, (2) training which follows national recommendations for dialysis patient care technicians and is conducted primarily in the work setting, (3) obtaining national certification by successful passage of a certification examination within eighteen months after becoming employed as a dialysis patient care technician, and (4) recertification at intervals required by the organization providing the certification examination including no fewer than thirty and no more than forty patient contact hours since the previous certification or recertification.

Source: Laws 2017, LB255, § 5.

38-3706 Dialysis patient care technician; registration; application; fee; duties; licensure as nurse; effect.

(1) To register as a dialysis patient care technician, an individual shall (a) possess a high school diploma or a general educational development certificate, (b) demonstrate that he or she is (i) employed as a dialysis patient care technician or (ii) enrolled in a training course as described in subdivision (2) of section 38-3705, (c) file an application with the department, and (d) pay the applicable fee.

(2) An applicant or a dialysis patient care technician shall report to the department, in writing, any conviction for a felony or misdemeanor. A conviction is not a disqualification for placement on the registry unless it relates to the standards identified in section 38-3705 or it reflects on the moral character of the applicant or dialysis patient care technician.

(3) An applicant or a dialysis patient care technician may report any pardon or setting aside of a conviction to the department. If a pardon or setting aside has been obtained, the conviction for which it was obtained shall not be maintained on the Dialysis Patient Care Technician Registry.

(4) If a person registered as a dialysis patient care technician becomes licensed as a registered nurse or licensed practical nurse, his or her registration as a dialysis patient care technician becomes null and void as of the date of licensure as a registered nurse or a licensed practical nurse.

Source: Laws 2017, LB255, § 6.

38-3707 Dialysis Patient Care Technician Registry; contents.

(1) The department shall list each dialysis patient care technician registration on the Dialysis Patient Care Technician Registry. A listing in the registry shall be valid for the term of the registration and upon renewal unless such listing is refused renewal or is removed.

(2) The registry shall contain the following information on each registrant: (a) The individual's full name; (b) any conviction of a felony or misdemeanor reported to the department; (c) a certificate showing completion of a nationally recognized training program; and (d) a certificate of completion of a nationally

commercially available dialysis patient care technician certification examination.

(3) Nothing in the Dialysis Patient Care Technician Registration Act shall be construed to require a dialysis patient care technician to register in the Medication Aide Registry.

Source: Laws 2017, LB255, § 7.

Cross References

Medication Aide Registry, see section 71-6727.

ARTICLE 38
EMS PERSONNEL LICENSURE INTERSTATE COMPACT

Section
38-3801. EMS Personnel Licensure Interstate Compact.

38-3801 EMS Personnel Licensure Interstate Compact.

The State of Nebraska adopts the EMS Personnel Licensure Interstate Compact in the form substantially as follows:

ARTICLE 1
PURPOSE

In order to protect the public through verification of competency and ensure accountability for patient-care-related activities, all states license emergency medical services personnel, such as emergency medical technicians, advanced emergency medical technicians, and paramedics. The EMS Personnel Licensure Interstate Compact is intended to facilitate the day-to-day movement of emergency medical services personnel across state boundaries in the performance of their emergency medical services duties as assigned by an appropriate authority and authorize state emergency medical services offices to afford immediate legal recognition to emergency medical services personnel licensed in a member state. This compact recognizes that states have a vested interest in protecting the public's health and safety through their licensing and regulation of emergency medical services personnel and that such state regulation shared among the member states will best protect public health and safety. This compact is designed to achieve the following purposes and objectives:

1. Increase public access to emergency medical services personnel;

2. Enhance the states' ability to protect the public's health and safety, especially patient safety;

3. Encourage the cooperation of member states in the areas of emergency medical services personnel licensure and regulation;

4. Support licensing of military members who are separating from an active duty tour and their spouses;

5. Facilitate the exchange of information between member states regarding emergency medical services personnel licensure, adverse action, and significant investigatory information;

6. Promote compliance with the laws governing emergency medical services personnel practice in each member state; and

7. Invest all member states with the authority to hold emergency medical services personnel accountable through the mutual recognition of member state licenses.

ARTICLE 2
DEFINITIONS

In the EMS Personnel Licensure Interstate Compact:

A. Advanced emergency medical technician (AEMT) means an individual licensed with cognitive knowledge and a scope of practice that corresponds to that level in the National EMS Education Standards and National EMS Scope of Practice Model.

B. Adverse action means any administrative, civil, equitable, or criminal action permitted by a state's laws which may be imposed against licensed EMS personnel by a state EMS authority or state court, including, but not limited to, actions against an individual's license such as revocation, suspension, probation, consent agreement, monitoring, or other limitation or encumbrance on the individual's practice, letters of reprimand or admonition, fines, criminal convictions, and state court judgments enforcing adverse actions by the state EMS authority.

C. Alternative program means a voluntary, nondisciplinary substance abuse recovery program approved by a state EMS authority.

D. Certification means the successful verification of entry-level cognitive and psychomotor competency using a reliable, validated, and legally defensible examination.

E. Commission means the national administrative body of which all states that have enacted the compact are members.

F. Emergency medical services (EMS) means services provided by emergency medical services personnel.

G. Emergency medical services (EMS) personnel includes emergency medical technicians, advanced emergency medical technicians, and paramedics.

H. Emergency medical technician (EMT) means an individual licensed with cognitive knowledge and a scope of practice that corresponds to that level in the National EMS Education Standards and National EMS Scope of Practice Model.

I. Home state means a member state where an individual is licensed to practice emergency medical services.

J. License means the authorization by a state for an individual to practice as an EMT, an AEMT, or a paramedic.

K. Medical director means a physician licensed in a member state who is accountable for the care delivered by EMS personnel.

L. Member state means a state that has enacted the EMS Personnel Licensure Interstate Compact.

M. Privilege to practice means an individual's authority to deliver emergency medical services in remote states as authorized under this compact.

N. Paramedic means an individual licensed with cognitive knowledge and a scope of practice that corresponds to that level in the National EMS Education Standards and National EMS Scope of Practice Model.

O. Remote state means a member state in which an individual is not licensed.

P. Restricted means the outcome of an adverse action that limits a license or the privilege to practice.

Q. Rule means a written statement by the commission promulgated pursuant to Article 12 of this compact that is of general applicability; implements, interprets, or prescribes a policy or provision of this compact; or is an organizational, procedural, or practice requirement of the commission and has the force and effect of statutory law in a member state and includes the amendment, repeal, or suspension of an existing rule.

R. Scope of practice means defined parameters of various duties or services that may be provided by an individual with specific credentials. Whether regulated by rule, statute, or court decision, it tends to represent the limits of services an individual may perform.

S. Significant investigatory information means:

1. Investigative information that a state EMS authority, after a preliminary inquiry that includes notification and an opportunity to respond if required by state law, has reason to believe, if proved true, would result in the imposition of an adverse action on a license or privilege to practice; or

2. Investigative information that indicates that the individual represents an immediate threat to public health and safety regardless of whether the individual has been notified and had an opportunity to respond.

T. State means any state, commonwealth, district, or territory of the United States.

U. State EMS authority means the board, office, or other agency with the legislative mandate to license EMS personnel.

ARTICLE 3
HOME STATE LICENSURE

A. Any member state in which an individual holds a current license shall be deemed a home state for purposes of the EMS Personnel Licensure Interstate Compact.

B. Any member state may require an individual to obtain and retain a license to be authorized to practice in the member state under circumstances not authorized by the privilege to practice under the terms of this compact.

C. A home state's license authorizes an individual to practice in a remote state under the privilege to practice only if the home state:

1. Currently requires the use of the National Registry of Emergency Medical Technicians examination as a condition of issuing initial licenses at the EMT and paramedic levels;

2. Has a mechanism in place for receiving and investigating complaints about individuals;

3. Notifies the commission, in compliance with the terms of this compact, of any adverse action or significant investigatory information regarding an individual;

4. No later than five years after activation of this compact, requires a criminal background check of all applicants for initial licensure, including the use of the results of fingerprint or other biometric data checks compliant with the requirements of the Federal Bureau of Investigation with the exception of federal employees who have suitability determination in accordance with 5

C.F.R. 731.202 and submit documentation of such as promulgated in the rules of the commission; and

5. Complies with the rules of the commission.

ARTICLE 4
COMPACT PRIVILEGE TO PRACTICE

A. Member states shall recognize the privilege to practice of an individual license in another member state that is in conformance with Article 3 of the EMS Personnel Licensure Interstate Compact.

B. To exercise the privilege to practice under the terms and provisions of this compact, an individual must:

1. Be at least eighteen years of age;

2. Possess a current unrestricted license in a member state as an EMT, AEMT, paramedic, or state recognized and licensed level with a scope of practice and authority between EMT and paramedic; and

3. Practice under the supervision of a medical director.

C. An individual providing patient care in a remote state under the privilege to practice shall function within the scope of practice authorized by the home state unless and until modified by an appropriate authority in the remote state as may be defined in the rules of the commission.

D. Except as provided in section C of this Article, an individual practicing in a remote state will be subject to the remote state's authority and laws. A remote state may, in accordance with due process and that state's laws, restrict, suspend, or revoke an individual's privilege to practice in the remote state and may take any other necessary actions to protect the health and safety of its citizens. If a remote state takes action, it shall promptly notify the home state and the commission.

E. If an individual's license in any home state is restricted or suspended, the individual shall not be eligible to practice in a remote state under the privilege to practice until the individual's home state license is restored.

F. If an individual's privilege to practice in any remote state is restricted, suspended, or revoked, the individual shall not be eligible to practice in any remote state until the individual's privilege to practice is restored.

ARTICLE 5
CONDITIONS OF PRACTICE IN A REMOTE STATE

An individual may practice in a remote state under a privilege to practice only in the performance of the individual's EMS duties as assigned by an appropriate authority, as defined in the rules of the commission, and under the following circumstances:

1. The individual originates a patient transport in a home state and transports the patient to a remote state;

2. The individual originates in the home state and enters a remote state to pick up a patient and provide care and transport of the patient to the home state;

3. The individual enters a remote state to provide patient care or transport within that remote state;

4. The individual enters a remote state to pick up a patient and provide care and transport to a third member state;

5. Other conditions as determined by rules promulgated by the commission.

ARTICLE 6
RELATIONSHIP TO EMERGENCY MANAGEMENT ASSISTANCE COMPACT

Upon a member state's governor's declaration of a state of emergency or disaster that activates the Emergency Management Assistance Compact, all relevant terms and provisions of the compact shall apply and to the extent any terms or provisions of the EMS Personnel Licensure Interstate Compact conflict with the Emergency Management Assistance Compact, the terms of the Emergency Management Assistance Compact shall prevail with respect to any individual practicing in the remote state in response to such declaration.

ARTICLE 7
VETERANS, SERVICE MEMBERS SEPARATING FROM ACTIVE DUTY MILITARY, AND THEIR SPOUSES

A. Member states shall consider a veteran, an active military service member, and a member of the National Guard and Reserves separating from an active duty tour, and a spouse thereof, who holds a current valid and unrestricted National Registry of Emergency Medical Technicians certification at or above the level of the state license being sought as satisfying the minimum training and examination requirements for such licensure.

B. Member states shall expedite the processing of licensure applications submitted by veterans, active military service members, and members of the National Guard and Reserves separating from an active duty tour and their spouses.

C. All individuals functioning with a privilege to practice under this Article remain subject to the adverse actions provisions of Article 8 of the EMS Personnel Licensure Interstate Compact.

ARTICLE 8
ADVERSE ACTIONS

A. A home state shall have exclusive power to impose adverse action against an individual's license issued by the home state.

B. If an individual's license in any home state is restricted or suspended, the individual shall not be eligible to practice in a remote state under the privilege to practice until the individual's home state license is restored.

1. All home state adverse action orders shall include a statement that the individual's compact privileges are inactive. The order may allow the individual to practice in remote states with prior written authorization from the state EMS authority of both the home state and the remote state.

2. An individual currently subject to adverse action in the home state shall not practice in any remote state without prior written authorization from the state EMS authority of both the home state and the remote state.

C. A member state shall report adverse actions and any occurrences that the individual's compact privileges are restricted, suspended, or revoked to the commission in accordance with the rules of the commission.

D. A remote state may take adverse action on an individual's privilege to practice within that state.

E. Any member state may take adverse action against an individual's privilege to practice in that state based on the factual findings of another member

state, so long as each state follows its own procedures for imposing such adverse action.

F. A home state's state EMS authority shall investigate and take appropriate action with respect to reported conduct in a remote state as it would if such conduct had occurred within the home state. In such cases, the home state's law shall control in determining the appropriate adverse action.

G. Nothing in the EMS Personnel Licensure Interstate Compact shall override a member state's decision that participation in an alternative program may be used in lieu of adverse action and that such participation shall remain nonpublic if required by the member state's laws. Member states must require individuals who enter any alternative programs to agree not to practice in any other member state during the term of the alternative program without prior authorization from such other member state.

ARTICLE 9

ADDITIONAL POWERS INVESTED IN A MEMBER STATE'S STATE EMS AUTHORITY

A member state's state EMS authority, in addition to any other powers granted under state law, is authorized under the EMS Personnel Licensure Interstate Compact to:

1. Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses and the production of evidence. Subpoenas issued by a member state's state EMS authority for the attendance and testimony of witnesses, or the production of evidence from another member state, shall be enforced in the remote state by any court of competent jurisdiction, according to that court's practice and procedure in considering subpoenas issued in its own proceedings. The issuing state EMS authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state where the witnesses or evidence is located; and

2. Issue cease and desist orders to restrict, suspend, or revoke an individual's privilege to practice in the state.

ARTICLE 10

ESTABLISHMENT OF THE INTERSTATE COMMISSION FOR EMS PERSONNEL PRACTICE

A. The member states hereby create and establish a joint public agency known as the Interstate Commission for EMS Personnel Practice.

1. The commission is a body politic and an instrumentality of the member states.

2. Venue is proper and judicial proceedings by or against the commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located. The commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

3. Nothing in the EMS Personnel Licensure Interstate Compact shall be construed to be a waiver of sovereign immunity.

B. Membership, Voting, and Meetings

1. Each member state shall have and be limited to one delegate. The responsible official of the state EMS authority or his or her designee shall be the delegate to this compact for each member state. Any delegate may be

removed or suspended from office as provided by the law of the state from which the delegate is appointed. Any vacancy occurring in the commission shall be filled in accordance with the laws of the member state in which the vacancy exists. In the event that more than one board, office, or other agency with the legislative mandate to license EMS personnel at and above the level of EMT exists, the Governor of the member state will determine which entity will be responsible for assigning the delegate.

2. Each delegate shall be entitled to one vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the commission. A delegate shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for delegates' participation in meetings by telephone or other means of communication.

3. The commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

4. All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rulemaking provisions in Article 12 of this compact.

5. The commission may convene in a closed, nonpublic meeting if the commission must discuss:

a. Noncompliance of a member state with its obligations under this compact;

b. The employment, compensation, discipline, or other personnel matters, practices, or procedures related to specific employees or other matters related to the commission's internal personnel practices and procedures;

c. Current, threatened, or reasonably anticipated litigation;

d. Negotiation of contracts for the purchase or sale of goods, services, or real estate;

e. Accusing any person of a crime or formally censuring any person;

f. Disclosure of trade secrets or commercial or financial information that is privileged or confidential;

g. Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

h. Disclosure of investigatory records compiled for law enforcement purposes;

i. Disclosure of information related to any investigatory reports prepared by or on behalf of or for use of the commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the compact; or

j. Matters specifically exempted from disclosure by federal or member state statute.

6. If a meeting, or portion of a meeting, is closed pursuant to this Article, the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision. The commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons for the actions, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under

seal, subject to release by a majority vote of the commission or order of a court of competent jurisdiction.

C. The commission shall, by a majority vote of the delegates, prescribe bylaws or rules to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of this compact, including, but not limited to:

1. Establishing the fiscal year of the commission;

2. Providing reasonable standards and procedures:

a. For the establishment and meetings of other committees; and

b. Governing any general or specific delegation of any authority or function of the commission;

3. Providing reasonable procedures for calling and conducting meetings of the commission, ensuring reasonable advance notice of all meetings, and providing an opportunity for attendance of such meetings by interested parties, with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and proprietary information, including trade secrets. The commission may meet in closed session only after a majority of the membership votes to close a meeting in whole or in part. As soon as practicable, the commission must make public a copy of the vote to close the meeting revealing the vote of each member with no proxy votes allowed;

4. Establishing the titles, duties and authority and reasonable procedures for the election of the officers of the commission;

5. Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the commission. Notwithstanding any civil service or other similar laws of any member state, the bylaws shall exclusively govern the personnel policies and programs of the commission;

6. Promulgating a code of ethics to address permissible and prohibited activities of commission members and employees;

7. Providing a mechanism for winding up the operations of the commission and the equitable disposition of any surplus funds that may exist after the termination of this compact after the payment or reserving of all of its debts and obligations;

8. The commission shall publish its bylaws and file a copy thereof, and a copy of any amendment thereto, with the appropriate agency or officer in each of the member states, if any.

9. The commission shall maintain its financial records in accordance with the bylaws.

10. The commission shall meet and take such actions as are consistent with this compact and the bylaws.

D. The commission shall have the following powers:

1. The authority to promulgate uniform rules to facilitate and coordinate implementation and administration of this compact. The rules shall have the force and effect of law and shall be binding in all member states;

2. To bring and prosecute legal proceedings or actions in the name of the commission. The standing of any state EMS authority or other regulatory body responsible for EMS personnel licensure to sue or be sued under applicable law shall not be affected;

3. To purchase and maintain insurance and bonds;

4. To borrow, accept, or contract for services of personnel, including, but not limited to, employees of a member state;

5. To hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of this compact, and establish the commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;

6. To accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of the same. At all times the commission shall strive to avoid any appearance of impropriety or conflict of interest;

7. To lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve, or use, any property, real, personal, or mixed. At all times the commission shall strive to avoid any appearance of impropriety;

8. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed;

9. To establish a budget and make expenditures;

10. To borrow money;

11. To appoint committees, including advisory committees comprised of members, state regulators, state legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in this compact and the bylaws;

12. To provide and receive information from, and to cooperate with, law enforcement agencies;

13. To adopt and use an official seal; and

14. To perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of EMS personnel licensure and practice.

E. Financing of the Commission

1. The commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

2. The commission may accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services.

3. The commission may levy on and collect an annual assessment from each member state or impose fees on other parties to cover the cost of the operations and activities of the commission and its staff, which must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the commission, which shall promulgate a rule binding upon all member states.

4. The commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the commission pledge the credit of any of the member states, except by and with the authority of the member state.

5. The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the

audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the commission.

F. Qualified Immunity, Defense, and Indemnification

1. The members, officers, executive director, employees, and representatives of the commission shall have no greater liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred, within the scope of commission employment, duties, or responsibilities, than a state employee would have under the same or similar circumstances. Nothing in this paragraph shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person.

2. The commission shall defend any member, officer, executive director, employee, or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities. Nothing in this paragraph shall be construed to prohibit that person from retaining his or her own counsel. The commission shall provide such defense if the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct.

3. The commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, if the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

ARTICLE 11
COORDINATED DATABASE

A. The commission shall provide for the development and maintenance of a coordinated database and reporting system containing licensure, adverse action, and significant investigatory information on all licensed individuals in member states.

B. A member state shall submit a uniform data set to the coordinated database on all individuals to whom the EMS Personnel Licensure Interstate Compact is applicable as required by the rules of the commission, including:

1. Identifying information;

2. Licensure data;

3. Significant investigatory information;

4. Adverse actions against an individual's license;

5. An indicator that an individual's privilege to practice is restricted, suspended, or revoked;

6. Nonconfidential information related to alternative program participation;

7. Any denial of application for licensure, and the reason for such denial; and

8. Other information that may facilitate the administration of this compact, as determined by the rules of the commission.

C. The coordinated database administrator shall promptly notify all member states of any adverse action taken against, or significant investigative information on, any individual in a member state.

D. Member states contributing information to the coordinated database may designate information that may not be shared with the public without the express permission of the contributing state.

E. Any information submitted to the coordinated database that is subsequently required to be expunged by the laws of the member state contributing the information shall be removed from the coordinated database.

ARTICLE 12
RULEMAKING

A. The commission shall exercise its rulemaking powers pursuant to the criteria set forth in this Article and the rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment.

B. If a majority of the legislatures of the member states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the EMS Personnel Licensure Interstate Compact, then such rule shall have no further force and effect in any member state.

C. Rules or amendments to the rules shall be adopted at a regular or special meeting of the commission.

D. Prior to promulgation and adoption of a final rule or rules by the commission, and at least sixty days in advance of the meeting at which the rule will be considered and voted upon, the commission shall file a notice of proposed rulemaking:

1. On the website of the commission; and

2. On the website of each member state's state EMS authority or the publication in which each state would otherwise publish proposed rules.

E. The notice of proposed rulemaking shall include:

1. The proposed time, date, and location of the meeting in which the rule will be considered and voted upon;

2. The text of the proposed rule or amendment and the reason for the proposed rule;

3. A request for comments on the proposed rule from any interested person; and

4. The manner in which interested persons may submit notice to the commission of their intention to attend the public hearing and any written comments.

F. Prior to adoption of a proposed rule, the commission shall allow persons to submit written data, facts, opinions, and arguments, which shall be made available to the public.

G. The commission shall grant an opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by:

1. At least twenty-five persons;

2. A governmental subdivision or agency; or

3. An association having at least twenty-five members.

H. If a hearing is held on the proposed rule or amendment, the commission shall publish the place, time, and date of the scheduled public hearing.

1. All persons wishing to be heard at the hearing shall notify the executive director of the commission or other designated member in writing of their desire to appear and testify at the hearing not less than five business days before the scheduled date of the hearing.

2. Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.

3. No transcript of the hearing is required, unless a written request for a transcript is made, in which case the person requesting the transcript shall bear the cost of producing the transcript. A recording may be made in lieu of a transcript under the same terms and conditions as a transcript. This subsection shall not preclude the commission from making a transcript or recording of the hearing if it so chooses.

4. Nothing in this Article shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the commission at hearings required by this Article.

I. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the commission shall consider all written and oral comments received.

J. The commission shall, by majority vote of all members, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

K. If no written notice of intent to attend the public hearing by interested parties is received, the commission may proceed with promulgation of the proposed rule without a public hearing.

L. Upon determination that an emergency exists, the commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing. The usual rulemaking procedures provided in this compact and in this Article shall be retroactively applied to the rule as soon as reasonably possible, in no event later than ninety days after the effective date of the rule. For purposes of this paragraph, an emergency rule is one that must be adopted immediately in order to:

1. Meet an imminent threat to public health, safety, or welfare;

2. Prevent a loss of commission or member state funds;

3. Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule; or

4. Protect public health and safety.

M. The commission or an authorized committee of the commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or

grammatical errors. Public notice of any revisions shall be posted on the website of the commission. The revision shall be subject to challenge by any person for a period of thirty days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing and delivered to the chair of the commission prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the commission.

ARTICLE 13
OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

A. Oversight

1. The executive, legislative, and judicial branches of state government in each member state shall enforce the EMS Personnel Licensure Interstate Compact and take all actions necessary and appropriate to effectuate this compact's purposes and intent. This compact and the rules promulgated under this compact shall have standing as statutory law.

2. All courts shall take judicial notice of this compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact which may affect the powers, responsibilities, or actions of the commission.

3. The commission shall be entitled to receive service of process in any such proceeding and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the commission shall render a judgment or order void as to the commission, this compact, or promulgated rules.

B. Default, Technical Assistance, and Termination

1. If the commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact or the promulgated rules, the commission shall:

a. Provide written notice to the defaulting state and other member states of the nature of the default, the proposed means of curing the default, or any other action to be taken by the commission; and

b. Provide remedial training and specific technical assistance regarding the default.

2. If a state in default fails to cure the default, the defaulting state may be terminated from this compact upon an affirmative vote of a majority of the member states, and all rights, privileges, and benefits conferred by this compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

3. Termination of membership in this compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the commission to the governor, the majority and minority leaders of the defaulting state's legislature or the speaker if no such leaders exist, and each of the member states.

4. A state that has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

5. The commission shall not bear any costs related to a state that is found to be in default or that has been terminated from this compact, unless agreed upon in writing between the commission and the defaulting state.

6. The defaulting state may appeal the action of the commission by petitioning the United States District Court for the District of Columbia or the federal district where the commission has its principal offices. The prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

C. Dispute Resolution

1. Upon request by a member state, the commission shall attempt to resolve disputes related to this compact that arise among member states and between member and nonmember states.

2. The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

D. Enforcement

1. The commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.

2. By majority vote, the commission may initiate legal action in the United States District Court for the District of Columbia or the federal district where the commission has its principal offices against a member state in default to enforce compliance with this compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

3. The remedies in this Article shall not be the exclusive remedies of the commission. The commission may pursue any other remedies available under federal or state law.

ARTICLE 14

DATE OF IMPLEMENTATION OF THE INTERSTATE COMMISSION FOR EMS PERSONNEL PRACTICE AND ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENT

A. The EMS Personnel Licensure Interstate Compact shall come into effect on the date on which the compact statute is enacted into law in the tenth member state. The provisions, which become effective at that time, shall be limited to the powers granted to the commission relating to assembly and the promulgation of rules. Thereafter, the commission shall meet and exercise rulemaking powers necessary to the implementation and administration of this compact.

B. Any state that joins the compact subsequent to the commission's initial adoption of the rules shall be subject to the rules as they exist on the date on which the compact becomes law in that state. Any rule that has been previously adopted by the commission shall have the full force and effect of law on the day the compact becomes law in that state.

C. Any member state may withdraw from this compact by enacting a statute repealing the same.

1. A member state's withdrawal shall not take effect until six months after enactment of the repealing statute.

2. Withdrawal shall not affect the continuing requirement of the withdrawing state's state EMS authority to comply with the investigative and adverse action reporting requirements of this compact prior to the effective date of withdrawal.

D. Nothing contained in this compact shall be construed to invalidate or prevent any EMS personnel licensure agreement or other cooperative arrangement between a member state and a nonmember state that does not conflict with this compact.

E. This compact may be amended by the member states. No amendment to this compact shall become effective and binding upon any member state until it is enacted into the laws of all member states.

ARTICLE 15
CONSTRUCTION AND SEVERABILITY

The EMS Personnel Licensure Interstate Compact shall be liberally construed so as to effectuate the purposes thereof. If this compact shall be held contrary to the constitution of any member state, the compact shall remain in full force and effect as to the remaining member states. Nothing in this compact supersedes state law or rules related to licensure of EMS agencies.

Source: Laws 2018, LB1034, § 69.

Cross References

Emergency Management Assistance Compact, see section 1-124, Appendix, Nebraska Revised Statutes, Volume 2A.

ARTICLE 39
PSYCHOLOGY INTERJURISDICTIONAL COMPACT

Section
38-3901. Psychology Interjurisdictional Compact.

38-3901 Psychology Interjurisdictional Compact.

The State of Nebraska adopts the Psychology Interjurisdictional Compact substantially as follows:

ARTICLE I
PURPOSE

States license psychologists in order to protect the public through verification of education, training, and experience and ensure accountability for professional practice.

The Psychology Interjurisdictional Compact is intended to regulate the day-to-day practice of telepsychology, the provision of psychological services using telecommunication technologies, by psychologists across state boundaries in the performance of their psychological practice as assigned by an appropriate authority.

The Compact is intended to regulate the temporary in-person, face-to-face practice of psychology by psychologists across state boundaries for thirty days within a calendar year in the performance of their psychological practice as assigned by an appropriate authority.

The Compact is intended to authorize state psychology regulatory authorities to afford legal recognition, in a manner consistent with the terms of the Compact, to psychologists licensed in another state.

The Compact recognizes that states have a vested interest in protecting the public's health and safety through licensing and regulation of psychologists and that such state regulation will best protect public health and safety.

The Compact does not apply when a psychologist is licensed in both the home and receiving states.

The Compact does not apply to permanent in-person, face-to-face practice; it does allow for authorization of temporary psychological practice.

Consistent with these principles, the Compact is designed to achieve the following purposes and objectives:

1. Increase public access to professional psychological services by allowing for telepsychological practice across state lines as well as temporary in-person, face-to-face services into a state which the psychologist is not licensed to practice psychology;

2. Enhance the states' ability to protect the public's health and safety, especially client or patient safety;

3. Encourage the cooperation of compact states in the areas of psychology licensure and regulation;

4. Facilitate the exchange of information between compact states regarding psychologist licensure, adverse actions, and disciplinary history;

5. Promote compliance with the laws governing psychological practice in each compact state; and

6. Invest all compact states with the authority to hold licensed psychologists accountable through the mutual recognition of compact state licenses.

ARTICLE II

DEFINITIONS

A. Adverse action means any action taken by a state psychology regulatory authority which finds a violation of a statute or regulation that is identified by the state psychology regulatory authority as discipline and is a matter of public record.

B. Association of State and Provincial Psychology Boards means the recognized membership organization composed of State and Provincial Psychology Regulatory Authorities responsible for the licensure and registration of psychologists throughout the United States and Canada.

C. Authority to practice interjurisdictional telepsychology means a licensed psychologist's authority to practice telepsychology, within the limits authorized under the Psychology Interjurisdictional Compact, in another compact state.

D. Bylaws means those bylaws established by the Commission pursuant to Article X for its governance, or for directing and controlling its actions and conduct.

E. Client or patient means the recipient of psychological services, whether psychological services are delivered in the context of health care, corporate, supervision, and/or consulting services.

F. Commission means the Psychology Interjurisdictional Compact Commission which is the national administration of which all compact states are members.

G. Commissioner means the voting representative appointed by each state psychology regulatory authority pursuant to Article X.

H. Compact state means a state, the District of Columbia, or a United States territory that has enacted the Compact and which has not withdrawn pursuant to Article XIII, subsection C or been terminated pursuant to Article XII, subsection B.

I. Coordinated Licensure Information System means an integrated process for collecting, storing, and sharing information on psychologists' licensure and enforcement activities related to psychology licensure laws, which is administered by the recognized membership organization composed of state and provincial psychology regulatory authorities.

J. Confidentiality means the principle that data or information is not made available or disclosed to unauthorized persons or processes.

K. Day means any part of a day in which psychological work is performed.

L. Distant state means the compact state where a psychologist is physically present, not through using telecommunications technologies, to provide temporary in-person, face-to-face psychological services.

M. E.Passport means a certificate issued by the Association of State and Provincial Psychology Boards that promotes the standardization in the criteria of interjurisdictional telepsychology practice and facilitates the process for licensed psychologists to provide telepsychological services across state lines.

N. Executive board means a group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the commission.

O. Home state means a compact state where a psychologist is licensed to practice psychology. If the psychologist is licensed in more than one compact state and is practicing under the authorization to practice interjurisdictional telepsychology, the home state is the compact state where the psychologist is physically present when the telepsychology services are delivered. If the psychologist is licensed in more than one compact state and is practicing under the temporary authorization to practice, the home state is any compact state where the psychologist is licensed.

P. Identity history summary means a summary of information retained by the Federal Bureau of Investigation, or other designee with similar authority, in connection with arrests and, in some instances, federal employment, naturalization, or military service.

Q. In-person, face-to-face means interactions in which the psychologist and the client or patient are in the same physical space and which does not include interactions that may occur through the use of telecommunication technologies.

R. Interjurisdictional Practice Certificate means a certificate issued by the Association of State and Provincial Psychology Boards that grants temporary authority to practice based on notification to the state psychology regulatory authority of intention to practice temporarily and verification of one's qualifications for such practice.

S. License means authorization by a state psychology regulatory authority to engage in the independent practice of psychology, which would be unlawful without the authorization.

T. Noncompact state means any state which is not at the time a compact state.

U. Psychologist means an individual licensed for the independent practice of psychology.

V. Receiving state means a compact state where the client or patient is physically located when the telepsychology services are delivered.

W. Rule means a written statement by the Commission promulgated pursuant to Article XI that is of general applicability, implements, interprets, or prescribes a policy or provision of the Compact, or an organizational, procedural, or practice requirement of the Commission and has the force and effect of statutory law in a compact state, and includes the amendment, repeal, or suspension of an existing rule.

X. Significant investigatory information means:

1. Investigative information that a state psychology regulatory authority, after a preliminary inquiry that includes notification and an opportunity to respond if required by state law, has reason to believe, if proven true, would indicate more than a violation of state statute or ethics code that would be considered more substantial than minor infraction; or

2. Investigative information that indicates that the psychologist represents an immediate threat to public health and safety regardless of whether the psychologist has been notified or had an opportunity to respond.

Y. State means a state, commonwealth, territory, or possession of the United States or the District of Columbia.

Z. State psychology regulatory authority means the board, office, or other agency with the legislative mandate to license and regulate the practice of psychology.

AA. Telepsychology means the provision of psychological services using telecommunication technologies.

BB. Temporary authorization to practice means a licensed psychologist's authority to conduct temporary in-person, face-to-face practice, within the limits authorized under the Compact, in another compact state.

CC. Temporary in-person, face-to-face practice means the practice of psychology in which a psychologist is physically present, not through using telecommunications technologies, in the distant state to provide for the practice of psychology for thirty days within a calendar year and based on notification to the distant state.

ARTICLE III

HOME STATE LICENSURE

A. The home state shall be a compact state where a psychologist is licensed to practice psychology.

B. A psychologist may hold one or more compact state licenses at a time. If the psychologist is licensed in more than one compact state, the home state is the compact state where the psychologist is physically present when the services are delivered as authorized by the authority to practice interjurisdictional telepsychology under the terms of the Psychology Interjurisdictional Compact.

C. Any compact state may require a psychologist not previously licensed in a compact state to obtain and retain a license to be authorized to practice in the compact state under circumstances not authorized by the authority to practice interjurisdictional telepsychology under the terms of the Psychology Interjurisdictional Compact.

D. Any compact state may require a psychologist to obtain and retain a license to be authorized to practice in a compact state under circumstances not authorized by temporary authorization to practice under the terms of the Compact.

E. A home state's license authorizes a psychologist to practice in a receiving state under the authority to practice interjurisdictional telepsychology only if the compact state:

1. Currently requires the psychologist to hold an active E.Passport;

2. Has a mechanism in place for receiving and investigating complaints about licensed individuals;

3. Notifies the Commission, in compliance with the terms of the Compact, of any adverse action or significant investigatory information regarding a licensed individual;

4. Requires an identity history summary of all applicants at initial licensure, including the use of the results of fingerprints or other biometric data checks compliant with the requirements of the Federal Bureau of Investigation, or other designee with similar authority, no later than ten years after activation of the Compact; and

5. Complies with the bylaws and rules of the Commission.

F. A home state's license grants temporary authorization to practice to a psychologist in a distant state only if the compact state:

1. Currently requires the psychologist to hold an active Interjurisdictional Practice Certificate;

2. Has a mechanism in place for receiving and investigating complaints about licensed individuals;

3. Notifies the Commission, in compliance with the terms of the Compact, of any adverse action or significant investigatory information regarding a licensed individual;

4. Requires an identity history summary of all applicants at initial licensure, including the use of the results of fingerprints or other biometric data checks compliant with the requirements of the Federal Bureau of Investigation, or other designee with similar authority, no later than ten years after activation of the Compact; and

5. Complies with the bylaws and rules of the Commission.

ARTICLE IV

COMPACT PRIVILEGE TO PRACTICE TELEPSYCHOLOGY

A. Compact states shall recognize the right of a psychologist, licensed in a compact state in conformance with Article III, to practice telepsychology in other compact states (receiving states) in which the psychologist is not licensed, under the authority to practice interjurisdictional telepsychology as provided in the Psychology Interjurisdictional Compact.

B. To exercise the authority to practice interjurisdictional telepsychology under the terms and provisions of the Compact, a psychologist licensed to practice in a compact state must:

1. Hold a graduate degree in psychology from an institute of higher education that was, at the time the degree was awarded:

a. Regionally accredited by an accrediting body recognized by the United States Department of Education to grant graduate degrees, or authorized by provincial statute or Royal Charter to grant doctoral degrees; or

b. A foreign college or university deemed to be equivalent to subdivision 1a of this subsection by a foreign credential evaluation service that is a member of the National Association of Credential Evaluation Services or by a recognized foreign credential evaluation service; and

2. Hold a graduate degree in psychology that meets the following criteria:

a. The program, wherever it may be administratively housed, must be clearly identified and labeled as a psychology program. Such a program must specify in pertinent institutional catalogues and brochures its intent to educate and train professional psychologists;

b. The psychology program must stand as a recognizable, coherent, organizational entity within the institution;

c. There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines;

d. The program must consist of an integrated, organized sequence of study;

e. There must be an identifiable psychology faculty sufficient in size and breadth to carry out its responsibilities;

f. The designated director of the program must be a psychologist and a member of the core faculty;

g. The program must have an identifiable body of students who are matriculated in that program for a degree;

h. The program must include supervised practicum, internship, or field training appropriate to the practice of psychology;

i. The curriculum shall encompass a minimum of three academic years of full-time graduate study for doctoral degrees and a minimum of one academic year of full-time graduate study for master's degrees;

j. The program includes an acceptable residency as defined by the rules of the Commission.

3. Possess a current, full, and unrestricted license to practice psychology in a home state which is a compact state;

4. Have no history of adverse action that violates the rules of the Commission;

5. Have no criminal record history reported on an identity history summary that violates the rules of the Commission;

6. Possess a current, active E.Passport;

7. Provide attestations in regard to areas of intended practice, conformity with standards of practice, competence in telepsychology technology; criminal background; and knowledge and adherence to legal requirements in the home and receiving states, and provide a release of information to allow for primary source verification in a manner specified by the Commission; and

8. Meet other criteria as defined by the rules of the Commission.

C. The home state maintains authority over the license of any psychologist practicing into a receiving state under the authority to practice interjurisdictional telepsychology.

D. A psychologist practicing into a receiving state under the authority to practice interjurisdictional telepsychology will be subject to the receiving state's authority and laws. A receiving state may, in accordance with that state's due process law, limit or revoke a psychologist's authority to practice interjurisdictional telepsychology in the receiving state and may take any other necessary actions under the receiving state's applicable law to protect the health and safety of the receiving state's citizens. If a receiving state takes action, the state shall promptly notify the home state and the Commission.

E. If a psychologist's license in any home state, another compact state, or any authority to practice interjurisdictional telepsychology in any receiving state, is restricted, suspended, or otherwise limited, the E.Passport shall be revoked and therefor the psychologist shall not be eligible to practice telepsychology in a compact state under the authority to practice interjurisdictional telepsychology.

ARTICLE V

COMPACT TEMPORARY AUTHORIZATION TO PRACTICE

A. Compact states shall also recognize the right of a psychologist, licensed in a compact state in conformance with Article III, to practice temporarily in other compact states (distant states) in which the psychologist is not licensed, as provided in the Psychology Interjurisdictional Compact.

B. To exercise the temporary authorization to practice under the terms and provisions of the Compact, a psychologist licensed to practice in a compact state must:

1. Hold a graduate degree in psychology from an institute of higher education that was, at the time the degree was awarded:

a. Regionally accredited by an accrediting body recognized by the United States Department of Education to grant graduate degrees, or authorized by provincial statute or Royal Charter to grant doctoral degrees; or

b. A foreign college or university deemed to be equivalent to subdivision 1a of this subsection by a foreign credential evaluation service that is a member of the National Association of Credential Evaluation Services or by a recognized foreign credential evaluation service; and

2. Hold a graduate degree in psychology that meets the following criteria:

a. The program, wherever it may be administratively housed, must be clearly identified and labeled as a psychology program. Such a program must specify in pertinent institutional catalogues and brochures its intent to educate and train professional psychologists;

b. The psychology program must stand as a recognizable, coherent, organizational entity within the institution;

c. There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines;

d. The program must consist of an integrated, organized sequence of study;

e. There must be an identifiable psychology faculty sufficient in size and breadth to carry out its responsibilities;

f. The designated director of the program must be a psychologist and a member of the core faculty;

g. The program must have an identifiable body of students who are matriculated in that program for a degree;

h. The program must include supervised practicum, internship, or field training appropriate to the practice of psychology;

i. The curriculum shall encompass a minimum of three academic years of full-time graduate study for doctoral degrees and a minimum of one academic year of full-time graduate study for master's degrees;

j. The program includes an acceptable residency as defined by the rules of the Commission.

3. Possess a current, full, and unrestricted license to practice psychology in a home state which is a compact state;

4. No history of adverse action that violates the rules of the Commission;

5. No criminal record history that violates the rules of the Commission;

6. Possess a current, active Interjurisdictional Practice Certificate;

7. Provide attestations in regard to areas of intended practice and work experience and provide a release of information to allow for primary source verification in a manner specified by the Commission; and

8. Meet other criteria as defined by the rules of the Commission.

C. A psychologist practicing into a distant state under the temporary authorization to practice shall practice within the scope of practice authorized by the distant state.

D. A psychologist practicing into a distant state under the temporary authorization to practice will be subject to the distant state's authority and law. A distant state may, in accordance with that state's due process law, limit or revoke a psychologist's temporary authorization to practice in the distant state and may take any other necessary actions under the distant state's applicable law to protect the health and safety of the distant state's citizens. If a distant state takes action, the state shall promptly notify the home state and the Commission.

E. If a psychologist's license in any home state, another compact state, or any temporary authorization to practice in any distant state, is restricted, suspended, or otherwise limited, the Interjurisdictional Practice Certificate shall be revoked and therefor the psychologist shall not be eligible to practice in a compact state under the temporary authorization to practice.

ARTICLE VI

CONDITIONS OF TELEPSYCHOLOGY PRACTICE IN A RECEIVING STATE

A psychologist may practice in a receiving state under the authority to practice interjurisdictional telepsychology only in the performance of the scope of practice for psychology as assigned by an appropriate state psychology regulatory authority, as defined in the rules of the Commission, and under the following circumstances:

1. The psychologist initiates a client or patient contact in a home state via telecommunications technologies with a client or patient in a receiving state;

2. Other conditions regarding telepsychology as determined by rules promulgated by the Commission.

ARTICLE VII

ADVERSE ACTIONS

A. A home state shall have the power to impose adverse action against a psychologist's license issued by the home state. A distant state shall have the

power to take adverse action on a psychologist's temporary authorization to practice within that distant state.

B. A receiving state may take adverse action on a psychologist's authority to practice interjurisdictional telepsychology within that receiving state. A home state may take adverse action against a psychologist based on an adverse action taken by a distant state regarding temporary in-person, face-to-face practice.

C. If a home state takes adverse action against a psychologist's license, that psychologist's authority to practice interjurisdictional telepsychology is terminated and the E.Passport is revoked. Furthermore, that psychologist's temporary authorization to practice is terminated and the Interjurisdictional Practice Certificate is revoked.

1. All home state disciplinary orders which impose adverse action shall be reported to the Commission in accordance with the rules promulgated by the Commission. A compact state shall report adverse actions in accordance with the rules of the Commission.

2. In the event discipline is reported on a psychologist, the psychologist will not be eligible for telepsychology or temporary in-person, face-to-face practice in accordance with the rules of the Commission.

3. Other actions may be imposed as determined by the rules promulgated by the Commission.

D. A home state's state psychology regulatory authority shall investigate and take appropriate action with respect to reported inappropriate conduct engaged in by a licensee which occurred in a receiving state as it would if such conduct had occurred by a licensee within the home state. In such cases, the home state's law shall control in determining any adverse action against a psychologist's license.

E. A distant state's state psychology regulatory authority shall investigate and take appropriate action with respect to reported inappropriate conduct engaged in by a psychologist practicing under temporary authorization practice which occurred in that distant state as it would if such conduct had occurred by a licensee within the home state. In such cases, distant state's law shall control in determining any adverse action against a psychologist's temporary authorization to practice.

F. Nothing in the Psychology Interjurisdictional Compact shall override a compact state's decision that a psychologist's participation in an alternative program may be used in lieu of adverse action and that such participation shall remain nonpublic if required by the compact state's law. Compact states must require psychologists who enter any alternative programs to not provide telepsychology services under the authority to practice interjurisdictional telepsychology or provide temporary psychological services under the temporary authorization to practice in any other compact state during the term of the alternative program.

G. No other judicial or administrative remedies shall be available to a psychologist in the event a compact state imposes an adverse action pursuant to subsection C of this Article.

ARTICLE VIII

ADDITIONAL AUTHORITIES INVESTED IN A COMPACT STATE'S STATE PSYCHOLOGY REGULATORY AUTHORITY

In addition to any other powers granted under state law, a compact state's state psychology regulatory authority shall have the authority under the Psychology Interjurisdictional Compact to:

1. Issue subpoenas, for both hearings and investigations, which require the attendance and testimony of witnesses and the production of evidence. Subpoenas issued by a compact state's state psychology regulatory authority for the attendance and testimony of witnesses, or the production of evidence from another compact state shall be enforced in the latter state by any court of competent jurisdiction, according to that court's practice and procedure in considering subpoenas issued in its own proceedings. The issuing state psychology regulatory authority shall pay any witness fees, travel expenses, mileage fees, and other fees required by the service statutes of the state where the witnesses or evidence are located; and

2. Issue cease and desist orders, injunctive relief orders, or both to revoke a psychologist's authority to practice interjurisdictional telepsychology, temporary authorization to practice, or both.

3. During the course of any investigation, a psychologist may not change his or her home state licensure. A home state's state psychology regulatory authority is authorized to complete any pending investigations of a psychologist and to take any actions appropriate under its law. The home state's state psychology regulatory authority shall promptly report the conclusions of such investigations to the Commission. Once an investigation has been completed, and pending the outcome of the investigation, the psychologist may change his or her home state licensure. The Commission shall promptly notify the new home state of any such decisions as provided in the rules of the Commission. All information provided to the Commission or distributed by compact states pursuant to the psychologist shall be confidential, filed under seal, and used for investigatory or disciplinary matters. The Commission may create additional rules for mandated or discretionary sharing of information by compact states.

ARTICLE IX

COORDINATED LICENSURE INFORMATION SYSTEM

A. The Commission shall provide for the development and maintenance of a Coordinated Licensure Information System (Coordinated Database) and reporting system containing licensure and disciplinary action information on all psychologists or individuals to whom the Psychology Interjurisdictional Compact is applicable in all compact states as defined by the rules of the Commission.

B. Notwithstanding any other provision of state law to the contrary, a compact state shall submit a uniform data set to the Coordinated Database on all licensees as required by the rules of the Commission, including:

1. Identifying information;

2. Licensure data;

3. Significant investigatory information;

4. Adverse actions against a psychologist's license;

5. An indicator that a psychologist's authority to practice interjurisdictional telepsychology or temporary authorization to practice is revoked;

6. Nonconfidential information related to alternative program participation information;

7. Any denial of application for licensure, and the reasons for such denial; and

8. Other information which may facilitate the administration of the Compact, as determined by the rules of the Commission.

C. The Coordinated Database administrator shall promptly notify all compact states of any adverse action taken against, or significant investigative information on, any licensee in a compact state.

D. Compact states reporting information to the Coordinated Database may designate information that may not be shared with the public without the express permission of the compact state reporting the information.

E. Any information submitted to the Coordinated Database that is subsequently required to be expunged by the law of the compact state reporting the information shall be removed from the Coordinated Database.

ARTICLE X

ESTABLISHMENT OF THE PSYCHOLOGY INTERJURISDICTIONAL COMPACT COMMISSION

A. The compact states hereby create and establish a joint public agency known as the Psychology Interjurisdictional Compact Commission.

1. The Commission is a body politic and an instrumentality of the compact states.

2. Venue is proper and judicial proceedings by or against the Commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the Commission is located. The Commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

3. Nothing in the Psychology Interjurisdictional Compact shall be construed to be a waiver of sovereign immunity.

B. Membership, Voting, and Meetings

1. The Commission shall consist of one voting representative appointed by each compact state who shall serve as that state's Commissioner. The state psychology regulatory authority shall appoint the state's delegate. This delegate shall be empowered to act on behalf of the compact state. This delegate shall be limited to:

a. Executive director, executive secretary, or similar executive;

b. Current member of the state psychology regulatory authority of a compact state; or

c. Designee empowered with the appropriate delegate authority to act on behalf of the compact state.

2. Any Commissioner may be removed or suspended from office as provided by the law of the state from which the Commissioner is appointed. Any vacancy occurring in the Commission shall be filled in accordance with the laws of the compact state in which the vacancy exists.

3. Each Commissioner shall be entitled to one vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the Commission. A Commissioner shall vote in person or by such other means as provided in the

bylaws. The bylaws may provide for Commissioners' participation in meetings by telephone or other means of communication.

4. The Commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

5. All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rulemaking provisions in Article XI.

6. The Commission may convene in a closed, nonpublic meeting if the Commission must discuss:

a. Noncompliance of a compact state with its obligations under the Compact;

b. The employment, compensation, discipline, or other personnel matters, practices, or procedures related to specific employees or other matters related to the Commission's internal personnel practices and procedures;

c. Current, threatened, or reasonably anticipated litigation against the Commission;

d. Negotiation of contracts for the purchase or sale of goods, services, or real estate;

e. Accusation against any person of a crime or formally censuring any person;

f. Disclosure of trade secrets or commercial or financial information which is privileged or confidential;

g. Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

h. Disclosure of investigatory records compiled for law enforcement purposes;

i. Disclosure of information related to any investigatory reports prepared by or on behalf of or for use of the Commission or other committee charged with responsibility for investigation or determination of compliance issues pursuant to the Compact; or

j. Matters specifically exempted from disclosure by federal and state statute.

7. If a meeting, or portion of a meeting, is closed pursuant to this Article, the Commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision. The Commission shall keep minutes which fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, of any person participating in the meeting, and the reasons therefore, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release only by a majority vote of the Commission or order of a court of competent jurisdiction.

C. The Commission shall, by a majority vote of the Commissioners, prescribe bylaws or rules to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of the Compact, including, but not limited to:

1. Establishing the fiscal year of the Commission;

2. Providing reasonable standards and procedures:

a. For the establishment and meetings of other committees; and

b. Governing any general or specific delegation of any authority or function of the Commission;

3. Providing reasonable procedures for calling and conducting meetings of the Commission, ensuring reasonable advance notice of all meetings and providing an opportunity for attendance of such meetings by interested parties, with enumerated exceptions designed to protect the public's interest, the privacy of individuals of such proceedings, and proprietary information, including trade secrets. The Commission may meet in closed session only after a majority of the Commissioners vote to close a meeting to the public in whole or in part. As soon as practicable, the Commission must make public a copy of the vote to close the meeting revealing the vote of each Commissioner with no proxy votes allowed;

4. Establishing the titles, duties, and authority and reasonable procedures for the election of the officers of the Commission;

5. Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the Commission. Notwithstanding any civil service or other similar law of any compact state, the bylaws shall exclusively govern the personnel policies and programs of the Commission;

6. Promulgating a code of ethics to address permissible and prohibited activities of Commission members and employees;

7. Providing a mechanism for concluding the operations of the Commission and the equitable disposition of any surplus funds that may exist after the termination of the Compact after the payment, reserving, or both of all of its debts and obligations;

8. The Commission shall publish its bylaws in a convenient form and file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the compact states;

9. The Commission shall maintain its financial records in accordance with the bylaws; and

10. The Commission shall meet and take such actions as are consistent with the provisions of the Compact and the bylaws.

D. The Commission shall have the following powers:

1. The authority to promulgate uniform rules to facilitate and coordinate implementation and administration of the Compact. The rules shall have the force and effect of law and shall be binding in all compact states;

2. To bring and prosecute legal proceedings or actions in the name of the Commission, provided that the standing of any state psychology regulatory authority or other regulatory body responsible for psychology licensure to sue or be sued under applicable law shall not be affected;

3. To purchase and maintain insurance and bonds;

4. To borrow, accept, or contract for services of personnel, including, but not limited to, employees of a compact state;

5. To hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of the Compact, and to establish the Commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;

6. To accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of the same; provided that at all times the Commission shall strive to avoid any appearance of impropriety or conflict of interest;

7. To lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use, any property, real, personal, or mixed; provided that at all times the Commission shall strive to avoid any appearance of impropriety;

8. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed;

9. To establish a budget and make expenditures;

10. To borrow money;

11. To appoint committees, including advisory committees comprised of members, state regulators, state legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in the Compact and the bylaws;

12. To provide and receive information from, and to cooperate with, law enforcement agencies;

13. To adopt and use an official seal; and

14. To perform such other functions as may be necessary or appropriate to achieve the purposes of the Compact consistent with the state regulation of psychology licensure, temporary in-person, face-to-face practice, and telepsychology practice.

E. The Executive Board

The elected officers shall serve as the Executive Board, which shall have the power to act on behalf of the Commission according to the terms of the Compact.

1. The Executive Board shall be comprised of six members:

a. Five voting members who are elected from the current membership of the Commission by the Commission; and

b. One ex officio, nonvoting member from the recognized membership organization composed of State and Provincial Psychology Regulatory Authorities.

2. The ex officio member must have served as staff or member on a state psychology regulatory authority and will be selected by its respective organization.

3. The Commission may remove any member of the Executive Board as provided in bylaws.

4. The Executive Board shall meet at least annually.

5. The Executive Board shall have the following duties and responsibilities:

a. Recommend to the entire Commission changes to the rules or bylaws, changes to the Compact, fees paid by compact states such as annual dues, and any other applicable fees;

b. Ensure Compact administration services are appropriately provided, contractual or otherwise;

c. Prepare and recommend the budget;

d. Maintain financial records on behalf of the Commission;

e. Monitor Compact compliance of member states and provide compliance reports to the Commission;

f. Establish additional committees as necessary; and

g. Other duties as provided in rules or bylaws.

F. Financing of the Commission

1. The Commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

2. The Commission may accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services.

3. The Commission may levy on and collect an annual assessment from each compact state or impose fees on other parties to cover the cost of the operations and activities of the Commission and its staff which must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Commission which shall promulgate a rule binding upon all compact states.

4. The Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Commission pledge the credit of any of the compact states, except by and with the authority of the compact state.

5. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Commission.

G. Qualified Immunity, Defense, and Indemnification

1. The members, officers, executive director, employees, and representatives of the Commission shall have no greater liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred, within the scope of Commission employment, duties, or responsibilities, than a state employee would have under the same or similar circumstances; provided that nothing in this paragraph shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person.

2. The Commission shall defend any member, officer, executive director, employee, or representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided that nothing in this paragraph shall be construed to prohibit that person from retaining his or her own counsel; and provided

further, that the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct.

3. The Commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the Commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

ARTICLE XI

RULEMAKING

A. The Commission shall exercise its rulemaking powers pursuant to the criteria set forth in this Article and the rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment.

B. If a majority of the legislatures of the compact states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the Psychology Interjurisdictional Compact, then such rule shall have no further force and effect in any compact state.

C. Rules or amendments to the rules shall be adopted at a regular or special meeting of the Commission.

D. Prior to promulgation and adoption of a final rule or rules by the Commission, and at least sixty days in advance of the meeting at which the rule will be considered and voted upon, the Commission shall file a notice of proposed rulemaking:

1. On the website of the Commission; and

2. On the website of each compact state's state psychology regulatory authority or the publication in which each state would otherwise publish proposed rules.

E. The notice of proposed rulemaking shall include:

1. The proposed time, date, and location of the meeting in which the rule will be considered and voted upon;

2. The text of the proposed rule or amendment and the reason for the proposed rule;

3. A request for comments on the proposed rule from any interested person; and

4. The manner in which interested persons may submit notice to the Commission of their intention to attend the public hearing and any written comments.

F. Prior to adoption of a proposed rule, the Commission shall allow persons to submit written data, facts, opinions, and arguments, which shall be made available to the public.

G. The Commission shall grant an opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by:

1. At least twenty-five persons who submit comments independently of each other;

2. A governmental subdivision or agency; or

3. A duly appointed person in an association that has at least twenty-five members.

H. If a hearing is held on the proposed rule or amendment, the Commission shall publish the place, time, and date of the scheduled public hearing.

1. All persons wishing to be heard at the hearing shall notify the executive director of the Commission or other designated member in writing of their desire to appear and testify at the hearing not less than five business days before the scheduled date of the hearing.

2. Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.

3. No transcript of the hearing is required, unless a written request for a transcript is made, in which case the person requesting the transcript shall bear the cost of producing the transcript. A recording may be made in lieu of a transcript under the same terms and conditions as a transcript. This subsection shall not preclude the Commission from making a transcript or recording of the hearing if it so chooses.

4. Nothing in this Article shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the Commission at hearings required by this Article.

I. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the Commission shall consider all written and oral comments received.

J. The Commission shall, by majority vote of all members, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

K. If no written notice of intent to attend the public hearing by interested parties is received, the Commission may proceed with promulgation of the proposed rule without a public hearing.

L. Upon determination that an emergency exists, the Commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rulemaking procedures provided in the Compact and in this section shall be retroactively applied to the rule as soon as reasonably possible, in no event later than ninety days after the effective date of the rule. For the purposes of this paragraph, an emergency rule is one that must be adopted immediately in order to:

1. Meet an imminent threat to public health, safety, or welfare;

2. Prevent a loss of Commission or compact state funds;

3. Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule; or

4. Protect public health and safety.

M. The Commission or an authorized committee of the Commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the website of the Commission. The revision shall be subject to challenge by any person for a period of thirty days after posting. The revision may be challenged

only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing, and delivered to the chair of the Commission prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the Commission.

ARTICLE XII

OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

A. Oversight

1. The executive, legislative, and judicial branches of state government in each compact state shall enforce the Psychology Interjurisdictional Compact and take all actions necessary and appropriate to effectuate the Compact's purposes and intent. The Compact and the rules promulgated under the Compact shall have standing as statutory law.

2. All courts shall take judicial notice of the Compact and the rules in any judicial or administrative proceeding in a compact state pertaining to the subject matter of the Compact which may affect the powers, responsibilities, or actions of the Commission.

3. The Commission shall be entitled to receive service of process in any such proceeding and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the Commission shall render a judgment or order void as to the Commission, the Compact, or promulgated rules.

B. Default, Technical Assistance, and Termination

1. If the Commission determines that a compact state has defaulted in the performance of its obligations or responsibilities under the Compact or the promulgated rules, the Commission shall:

a. Provide written notice to the defaulting state and other compact states of the nature of the default, the proposed means of remedying the default, or any other action to be taken by the Commission; and

b. Provide remedial training and specific technical assistance regarding the default.

2. If a state in default fails to remedy the default, the defaulting state may be terminated from the Compact upon an affirmative vote of a majority of the compact states, and all rights, privileges, and benefits conferred by the Compact shall be terminated on the effective date of termination. A remedy of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

3. Termination of membership in the Compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be submitted by the Commission to the Governor, the majority and minority leaders of the defaulting state's legislature or the Speaker if no such leaders exist, and each of the compact states.

4. A compact state which has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations which extend beyond the effective date of termination.

5. The Commission shall not bear any costs incurred by the state which is found to be in default or which has been terminated from the Compact, unless agreed upon in writing between the Commission and the defaulting state.

6. The defaulting state may appeal the action of the Commission by petitioning the United States District Court for the State of Georgia or the federal district where the Compact has its principal offices. The prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

C. Dispute Resolution

1. Upon request by a compact state, the Commission shall attempt to resolve disputes related to the Compact which arise among compact states and between compact and noncompact states.

2. The Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes that arise before the Commission.

D. Enforcement

1. The Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of the Compact.

2. By majority vote, the Commission may initiate legal action in the United States District Court for the State of Georgia or the federal district where the Compact has its principal offices against a compact state in default to enforce compliance with the provisions of the Compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

3. The remedies in this Article shall not be the exclusive remedies of the Commission. The Commission may pursue any other remedies available under federal or state law.

ARTICLE XIII

DATE OF IMPLEMENTATION OF THE PSYCHOLOGY INTERJURISDICTIONAL COMPACT COMMISSION AND ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENTS

A. The Psychology Interjurisdictional Compact shall come into effect on the date on which the Compact is enacted into law in the seventh compact state. The provisions which become effective at that time shall be limited to the powers granted to the Commission relating to assembly and the promulgation of rules. Thereafter, the Commission shall meet and exercise rulemaking powers necessary to the implementation and administration of the Compact.

B. Any state which joins the Compact subsequent to the Commission's initial adoption of the rules shall be subject to the rules as they exist on the date on which the Compact becomes law in that state. Any rule which has been previously adopted by the Commission shall have the full force and effect of law on the day the Compact becomes law in that state.

C. Any compact state may withdraw from this Compact by enacting a statute repealing the same.

1. A compact state's withdrawal shall not take effect until six months after enactment of the repealing statute.

2. Withdrawal shall not affect the continuing requirement of the withdrawing state's state psychology regulatory authority to comply with the investigative

and adverse action reporting requirements of the Compact prior to the effective date of withdrawal.

D. Nothing contained in the Compact shall be construed to invalidate or prevent any psychology licensure agreement or other cooperative arrangement between a compact state and a noncompact state which does not conflict with the Compact.

E. The Compact may be amended by the compact states. No amendment to the Compact shall become effective and binding upon any compact state until it is enacted into the law of all compact states.

ARTICLE XIV

CONSTRUCTION AND SEVERABILITY

The Psychology Interjurisdictional Compact shall be liberally construed so as to effectuate the purposes of the Compact. If the Compact shall be held contrary to the constitution of any state which is a member of the Compact, the Compact shall remain in full force and effect as to the remaining compact states.

Source: Laws 2018, LB1034, § 70.

ARTICLE 40

PHYSICAL THERAPY LICENSURE COMPACT

Section
38-4001. Physical Therapy Licensure Compact.

38-4001 Physical Therapy Licensure Compact.

The State of Nebraska adopts the Physical Therapy Licensure Compact in the form substantially as follows:

ARTICLE I

PURPOSE

a. The purpose of the Physical Therapy Licensure Compact is to facilitate interstate practice of physical therapy with the goal of improving public access to physical therapy services. The practice of physical therapy occurs in the state where the patient or client is located at the time of the patient or client encounter. The Compact preserves the regulatory authority of states to protect public health and safety through the current system of state licensure.

b. This Compact is designed to achieve the following objectives:

1. Increase public access to physical therapy services by providing for the mutual recognition of other member state licenses;

2. Enhance the states' ability to protect the public's health and safety;

3. Encourage the cooperation of member states in regulating multistate physical therapy practice;

4. Support spouses of relocating military members;

5. Enhance the exchange of licensure, investigative, and disciplinary information between member states; and

6. Allow a remote state to hold a provider of services with a compact privilege in that state accountable to that state's practice standards.

ARTICLE II

DEFINITIONS

As used in the Physical Therapy Licensure Compact, and except as otherwise provided, the following definitions shall apply:

1. Active duty military means full-time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. 1209 and 1211.

2. Adverse action means disciplinary action taken by a physical therapy licensing board based upon misconduct, unacceptable performance, or a combination of both.

3. Alternative program means a nondisciplinary monitoring or practice remediation process approved by a physical therapy licensing board. This includes, but is not limited to, substance abuse issues.

4. Commission means the Physical Therapy Compact Commission which is the national administrative body whose membership consists of all states that have enacted the Compact.

5. Compact privilege means the authorization granted by a remote state to allow a licensee from another member state to practice as a physical therapist or work as a physical therapist assistant in the remote state under its laws and rules. The practice of physical therapy occurs in the member state where the patient or client is located at the time of the patient or client encounter.

6. Continuing competence means a requirement, as a condition of license renewal, to provide evidence of participation in, or completion of, educational and professional activities relevant to practice or area of work.

7. Data system means a repository of information about licensees, including examination, licensure, investigative, compact privilege, and adverse action.

8. Encumbered license means a license that a physical therapy licensing board has limited in any way.

9. Executive board means a group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the Commission.

10. Home state means the member state that is the licensee's primary state of residence.

11. Investigative information means information, records, and documents received or generated by a physical therapy licensing board pursuant to an investigation.

12. Jurisprudence requirement means the assessment of an individual's knowledge of the laws and rules governing the practice of physical therapy in a state.

13. Licensee means an individual who currently holds an authorization from the state to practice as a physical therapist or to work as a physical therapist assistant.

14. Member state means a state that has enacted the Compact.

15. Party state means any member state in which a licensee holds a current license or compact privilege or is applying for a license or compact privilege.

16. Physical therapist means an individual who is licensed by a state to practice physical therapy.

17. Physical therapist assistant means an individual who is licensed or certified by a state and who assists the physical therapist in selected components of physical therapy.

18. Physical therapy, physical therapy practice, and the practice of physical therapy mean the care and services provided by or under the direction and supervision of a licensed physical therapist.

19. Physical therapy licensing board means the agency of a state that is responsible for the licensing and regulation of physical therapists and physical therapist assistants.

20. Remote state means a member state, other than the home state, where a licensee is exercising or seeking to exercise the compact privilege.

21. Rule means a regulation, principle, or directive promulgated by the Commission that has the force of law.

22. State means any state, commonwealth, district, or territory of the United States that regulates the practice of physical therapy.

ARTICLE III

STATE PARTICIPATION IN THE COMPACT

a. To participate in the Physical Therapy Licensure Compact, a state must:

1. Participate fully in the Commission's data system, including using the Commission's unique identifier as defined in rules;

2. Have a mechanism in place for receiving and investigating complaints about licensees;

3. Notify the Commission, in compliance with the terms of the Compact and rules, of any adverse action or the availability of investigative information regarding a licensee;

4. Fully implement a criminal background check requirement, within a timeframe established by rule, by receiving the results of the Federal Bureau of Investigation record search on criminal background checks and use the results in making licensure decisions in accordance with this Article;

5. Comply with the rules of the Commission;

6. Utilize a recognized national examination as a requirement for licensure pursuant to the rules of the Commission; and

7. Have continuing competence requirements as a condition for license renewal.

b. Upon adoption of this statute, the member state shall have the authority to obtain biometric-based information from each physical therapy licensure applicant and submit this information to the Federal Bureau of Investigation for a criminal background check in accordance with 28 U.S.C. 534 and 34 U.S.C. 40316.

c. A member state shall grant the compact privilege to a licensee holding a valid unencumbered license in another member state in accordance with the terms of the Compact and rules.

d. Member states may charge a fee for granting a compact privilege.

ARTICLE IV

COMPACT PRIVILEGE

a. To exercise the compact privilege under the terms and provisions of the Physical Therapy Licensure Compact, the licensee shall:

1. Hold a license in the home state;

2. Have no encumbrance on any state license;

3. Be eligible for a compact privilege in any member state in accordance with paragraphs d, g, and h of this Article;

4. Have not had any adverse action against any license or compact privilege within the previous two years;

5. Notify the Commission that the licensee is seeking the compact privilege within a remote state;

6. Pay any applicable fees, including any state fee, for the compact privilege;

7. Meet any jurisprudence requirements established by the remote state in which the licensee is seeking a compact privilege; and

8. Report to the Commission adverse action taken by any nonmember state within thirty days from the date the adverse action is taken.

b. The compact privilege is valid until the expiration date of the home license. The licensee must comply with the requirements of paragraph a of this Article to maintain the compact privilege in the remote state.

c. A licensee providing physical therapy in a remote state under the compact privilege shall function within the laws and regulations of the remote state.

d. A licensee providing physical therapy in a remote state is subject to that state's regulatory authority. A remote state may, in accordance with due process and that state's laws, remove a licensee's compact privilege in the remote state for a specific period of time, impose fines, or take any other necessary actions to protect the health and safety of its citizens. The licensee is not eligible for a compact privilege in any state until the specific time for removal has passed and all fines are paid.

e. If a home state license is encumbered, the licensee shall lose the compact privilege in any remote state until the following occur:

1. The home state license is no longer encumbered; and

2. Two years have elapsed from the date of the adverse action.

f. Once an encumbered license in the home state is restored to good standing, the licensee must meet the requirements of paragraph a of this Article to obtain a compact privilege in any remote state.

g. If a licensee's compact privilege in any remote state is removed, the individual shall lose the compact privilege in any remote state until the following occur:

1. The specific period of time for which the compact privilege was removed has ended;

2. All fines have been paid; and

3. Two years have elapsed from the date of the adverse action.

h. Once the requirements of paragraph g of this Article have been met, the licensee must meet the requirements in paragraph a of this Article to obtain a compact privilege in a remote state.

ARTICLE V

ACTIVE DUTY MILITARY PERSONNEL OR THEIR SPOUSES

A licensee who is active duty military or is the spouse of an individual who is active duty military may designate one of the following as the home state:

a. Home of record;

b. Permanent change of station (PCS); or

c. State of current residence if it is different than the PCS state or home of record.

ARTICLE VI

ADVERSE ACTIONS

a. A home state shall have exclusive power to impose adverse action against a license issued by the home state.

b. A home state may take adverse action based on the investigative information of a remote state, so long as the home state follows its own procedures for imposing adverse action.

c. Nothing in the Physical Therapy Licensure Compact shall override a member state's decision that participation in an alternative program may be used in lieu of adverse action and that such participation shall remain nonpublic if required by the member state's laws. Member states must require licensees who enter any alternative programs in lieu of discipline to agree not to practice in any other member state during the term of the alternative program without prior authorization from such other member state.

d. Any member state may investigate actual or alleged violations of the statutes and rules authorizing the practice of physical therapy in any other member state in which a physical therapist or physical therapist assistant holds a license or compact privilege.

e. A remote state shall have the authority to:

1. Take adverse actions as set forth in paragraph d of Article IV against a licensee's compact privilege in the state;

2. Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses, and the production of evidence. Subpoenas issued by a physical therapy licensing board in a party state for the attendance and testimony of witnesses, or the production of evidence from another party state, shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state where the witnesses or evidence are located; and

3. If otherwise permitted by state law, recover from the licensee the costs of investigations and disposition of cases resulting from any adverse action taken against that licensee.

f. Joint Investigations

1. In addition to the authority granted to a member state by its respective physical therapy practice act or other applicable state law, a member state may participate with other member states in joint investigations of licensees.

2. Member states shall share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the Compact.

ARTICLE VII

ESTABLISHMENT OF THE PHYSICAL THERAPY COMPACT COMMISSION

a. The member states hereby create and establish a joint public agency known as the Physical Therapy Compact Commission:

1. The Commission is an instrumentality of the Compact states.

2. Venue is proper and judicial proceedings by or against the Commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the Commission is located. The Commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

3. Nothing in the Physical Therapy Licensure Compact shall be construed to be a waiver of sovereign immunity.

b. Membership, Voting, and Meetings

1. Each member state shall have and be limited to one delegate selected by that member state's physical therapy licensing board.

2. The delegate shall be a current member of the physical therapy licensing board, who is a physical therapist, a physical therapist assistant, a public member, or the administrator of the physical therapy licensing board.

3. Any delegate may be removed or suspended from office as provided by the law of the state from which the delegate is appointed.

4. The member state physical therapy licensing board shall fill any vacancy occurring in the Commission.

5. Each delegate shall be entitled to one vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the Commission.

6. A delegate shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for delegates' participation in meetings by telephone or other means of communication.

7. The Commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

c. The Commission shall have the following powers and duties:

1. Establish the fiscal year of the Commission;

2. Establish bylaws;

3. Maintain its financial records in accordance with the bylaws;

4. Meet and take such actions as are consistent with the Compact and the bylaws;

5. Promulgate uniform rules to facilitate and coordinate implementation and administration of the Compact. The rules shall have the force and effect of law and shall be binding in all member states;

6. Bring and prosecute legal proceedings or actions in the name of the Commission, provided that the standing of any state physical therapy licensing board to sue or be sued under applicable law shall not be affected;

7. Purchase and maintain insurance and bonds;

8. Borrow, accept, or contract for services of personnel, including, but not limited to, employees of a member state;

9. Hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of the Compact, and to establish the Commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;

10. Accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of the same; provided that at all times the Commission shall avoid any appearance of impropriety or conflict of interest;

11. Lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve, or use, any property, real, personal, or mixed; provided that at all times the Commission shall avoid any appearance of impropriety;

12. Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed;

13. Establish a budget and make expenditures;

14. Borrow money;

15. Appoint committees, including standing committees composed of members, state regulators, state legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in the Compact and the bylaws;

16. Provide and receive information from, and cooperate with, law enforcement agencies;

17. Establish and elect an executive board; and

18. Perform such other functions as may be necessary or appropriate to achieve the purposes of the Compact consistent with the state regulation of physical therapy licensure and practice.

d. The Executive Board

The executive board shall have the power to act on behalf of the Commission according to the terms of the Compact.

1. The executive board shall be composed of nine members:

A. Seven voting members who are elected by the Commission from the current membership of the Commission;

B. One ex officio, nonvoting member from the recognized national physical therapy professional association; and

C. One ex officio, nonvoting member from the recognized membership organization of the physical therapy licensing boards.

2. The ex officio members will be selected by their respective organizations.

3. The Commission may remove any member of the executive board as provided in bylaws.

4. The executive board shall meet at least annually.

5. The executive board shall have the following duties and responsibilities:

A. Recommend to the entire Commission changes to the rules or bylaws, changes to the Compact, fees paid by Compact member states such as annual dues, and any commission Compact fee charged to licensees for the compact privilege;

B. Ensure Compact administration services are appropriately provided, contractual or otherwise;

C. Prepare and recommend the budget;

D. Maintain financial records on behalf of the Commission;

E. Monitor Compact compliance of member states and provide compliance reports to the Commission;

F. Establish additional committees as necessary; and

G. Other duties as provided in rules or bylaws.

e. Meetings of the Commission

1. All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rulemaking provisions in Article IX.

2. The Commission or the executive board or other committees of the Commission may convene in a closed, nonpublic meeting if the Commission or executive board or other committees of the Commission must discuss:

A. Noncompliance of a member state with its obligations under the Compact;

B. The employment, compensation, discipline, or other matters, practices or procedures related to specific employees or other matters related to the Commission's internal personnel practices and procedures;

C. Current, threatened, or reasonably anticipated litigation;

D. Negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate;

E. Accusing any person of a crime or formally censuring any person;

F. Disclosure of trade secrets or commercial or financial information that is privileged or confidential;

G. Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

H. Disclosure of investigative records compiled for law enforcement purposes;

I. Disclosure of information related to any investigative reports prepared by or on behalf of or for use of the Commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the Compact; or

J. Matters specifically exempted from disclosure by federal or member state statute.

3. If a meeting, or portion of a meeting, is closed pursuant to this Article, the Commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision.

4. The Commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the Commission or order of a court of competent jurisdiction.

f. Financing of the Commission

1. The Commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

2. The Commission may accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services.

3. The Commission may levy on and collect an annual assessment from each member state or impose fees on other parties to cover the cost of the operations and activities of the Commission and its staff, which must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Commission, which shall promulgate a rule binding upon all member states.

4. The Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Commission pledge the credit of any of the member states, except by and with the authority of the member state.

5. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the Commission.

g. Qualified Immunity, Defense, and Indemnification

1. The members, officers, executive director, employees, and representatives of the Commission shall have no greater liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred, within the scope of Commission employment, duties, or responsibilities, than a state employee would have under the same or similar circumstances; provided that nothing in this paragraph shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person.

2. The Commission shall defend any member, officer, executive director, employee, or representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided that nothing in this paragraph shall be construed to prohibit that person from retaining his or her own counsel; and provided further, that the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct.

3. The Commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the Commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of Commission

employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

ARTICLE VIII

DATA SYSTEM

a. The Commission shall provide for the development, maintenance, and utilization of a coordinated database and reporting system containing licensure, adverse action, and investigative information on all licensed individuals in member states.

b. Notwithstanding any other provision of state law to the contrary, a member state shall submit a uniform data set to the data system on all individuals to whom the Physical Therapy Licensure Compact is applicable as required by the rules of the Commission, including:

1. Identifying information;

2. Licensure data;

3. Adverse actions against a license or compact privilege;

4. Nonconfidential information related to alternative program participation;

5. Any denial of application for licensure, and the reason for such denial; and

6. Other information that may facilitate the administration of the Compact, as determined by the rules of the Commission.

c. Investigative information pertaining to a licensee in any member state will only be available to other party states.

d. The Commission shall promptly notify all member states of any adverse action taken against a licensee or an individual applying for a license. Adverse action information pertaining to a licensee in any member state will be available to any other member state.

e. Member states contributing information to the data system may designate information that may not be shared with the public without the express permission of the contributing state.

f. Any information submitted to the data system that is subsequently required to be expunged by the laws of the member state contributing the information shall be removed from the data system.

ARTICLE IX

RULEMAKING

a. The Commission shall exercise its rulemaking powers pursuant to the criteria set forth in this Article and the rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment.

b. If a majority of the legislatures of the member states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the Physical Therapy Licensure Compact within four years of the date of adoption of the rule, then such rule shall have no further force and effect in any member state.

c. Rules or amendments to the rules shall be adopted at a regular or special meeting of the Commission.

d. Prior to promulgation and adoption of a final rule or rules by the Commission, and at least thirty days in advance of the meeting at which the

rule will be considered and voted upon, the Commission shall file a notice of proposed rulemaking:

1. On the website of the Commission or other publicly accessible platform; and

2. On the website of each member state physical therapy licensing board or other publicly accessible platform or the publication in which each state would otherwise publish proposed rules.

e. The notice of proposed rulemaking shall include:

1. The proposed time, date, and location of the meeting in which the rule will be considered and voted upon;

2. The text of the proposed rule or amendment and the reason for the proposed rule;

3. A request for comments on the proposed rule from any interested person; and

4. The manner in which interested persons may submit notice to the Commission of their intention to attend the public hearing and any written comments.

f. Prior to adoption of a proposed rule, the Commission shall allow persons to submit written data, facts, opinions, and arguments, which shall be made available to the public.

g. The Commission shall grant an opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by:

1. At least twenty-five persons;

2. A state or federal governmental subdivision or agency; or

3. An association having at least twenty-five members.

h. If a hearing is held on the proposed rule or amendment, the Commission shall publish the place, time, and date of the scheduled public hearing. If the hearing is held via electronic means, the Commission shall publish the mechanism for access to the electronic hearing.

1. All persons wishing to be heard at the hearing shall notify the executive director of the Commission or other designated member in writing of their desire to appear and testify at the hearing not less than five business days before the scheduled date of the hearing.

2. Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.

3. All hearings will be recorded. A copy of the recording will be made available on request.

4. Nothing in this section shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the Commission at hearings required by this Article.

i. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the Commission shall consider all written and oral comments received.

j. If no written notice of intent to attend the public hearing by interested parties is received, the Commission may proceed with promulgation of the proposed rule without a public hearing.

k. The Commission shall, by majority vote of all members, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

l. Upon determination that an emergency exists, the Commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rulemaking procedures provided in the Compact and in this section shall be retroactively applied to the rule as soon as reasonably possible, in no event later than ninety days after the effective date of the rule. For the purposes of this paragraph, an emergency rule is one that must be adopted immediately in order to:

1. Meet an imminent threat to public health, safety, or welfare;

2. Prevent a loss of Commission or member state funds;

3. Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule; or

4. Protect public health and safety.

m. The Commission or an authorized committee of the Commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the website of the Commission. The revision shall be subject to challenge by any person for a period of thirty days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing, and delivered to the chair of the Commission prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the Commission.

ARTICLE X

OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

a. Oversight

1. The executive, legislative, and judicial branches of state government in each member state shall enforce the Physical Therapy Licensure Compact and take all actions necessary and appropriate to effectuate the Compact's purposes and intent. The provisions of the Compact and the rules promulgated under the Compact shall have standing as statutory law.

2. All courts shall take judicial notice of the Compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of the Compact which may affect the powers, responsibilities, or actions of the Commission.

3. The Commission shall be entitled to receive service of process in any such proceeding and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the Commission shall render a judgment or order void as to the Commission, the Compact, or promulgated rules.

b. Default, Technical Assistance, and Termination

1. If the Commission determines that a member state has defaulted in the performance of its obligations or responsibilities under the Compact or the promulgated rules, the Commission shall:

A. Provide written notice to the defaulting state and other member states of the nature of the default, the proposed means of curing the default, or any other action to be taken by the Commission; and

B. Provide remedial training and specific technical assistance regarding the default.

2. If a state in default fails to cure the default, the defaulting state may be terminated from the Compact upon an affirmative vote of a majority of the member states, and all rights, privileges, and benefits conferred by the Compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

3. Termination of membership in the Compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the Commission to the governor, the majority and minority leaders of the defaulting state's legislature or the Speaker if no such leaders exist, and each of the member states.

4. A state that has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

5. The Commission shall not bear any costs related to a state that is found to be in default or that has been terminated from the Compact, unless agreed upon in writing between the Commission and the defaulting state.

6. The defaulting state may appeal the action of the Commission by petitioning the United States District Court for the District of Columbia or the federal district where the Commission has its principal offices. The prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

c. Dispute Resolution

1. Upon request by a member state, the Commission shall attempt to resolve disputes related to the Compact that arise among member states and between member and nonmember states.

2. The Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

d. Enforcement

1. The Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of the Compact.

2. By majority vote, the Commission may initiate legal action in the United States District Court for the District of Columbia or the federal district where the Commission has its principal offices against a member state in default to enforce compliance with the Compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

3. The remedies in this Article shall not be the exclusive remedies of the Commission. The Commission may pursue any other remedies available under federal or state law.

ARTICLE XI

DATE OF IMPLEMENTATION OF THE INTERSTATE COMMISSION FOR PHYSICAL THERAPY PRACTICE AND ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENT

a. The Physical Therapy Licensure Compact shall come into effect on the date on which the Compact is enacted into law in the tenth member state. The provisions, which become effective at that time, shall be limited to the powers granted to the Commission relating to assembly and the promulgation of rules. Thereafter, the Commission shall meet and exercise rulemaking powers necessary to the implementation and administration of the Compact.

b. Any state that joins the Compact subsequent to the Commission's initial adoption of the rules shall be subject to the rules as they exist on the date on which the Compact becomes law in that state. Any rule that has been previously adopted by the Commission shall have the full force and effect of law on the day the Compact becomes law in that state.

c. Any member state may withdraw from the Compact by enacting a statute repealing the same.

1. A member state's withdrawal shall not take effect until six months after enactment of the repealing statute.

2. Withdrawal shall not affect the continuing requirement of the withdrawing state's physical therapy licensing board to comply with the investigative and adverse action reporting requirements of the Compact prior to the effective date of withdrawal.

d. Nothing contained in the Compact shall be construed to invalidate or prevent any physical therapy licensure agreement or other cooperative arrangement between a member state and a nonmember state that does not conflict with the Compact.

e. The Compact may be amended by the member states. No amendment to the Compact shall become effective and binding upon any member state until it is enacted into the laws of all member states.

ARTICLE XII

CONSTRUCTION AND SEVERABILITY

The Physical Therapy Licensure Compact shall be liberally construed so as to effectuate the purposes of the Compact. The provisions of the Compact shall be severable and if any phrase, clause, sentence, or provision of the Compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of the Compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If the Compact shall be held contrary to the constitution of any party state, the Compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters.

Source: Laws 2018, LB731, § 101.

ARTICLE 41

AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY INTERSTATE COMPACT

Section
38-4101. Audiology and Speech-Language Pathology Interstate Compact.

38-4101 Audiology and Speech-Language Pathology Interstate Compact.

The State of Nebraska adopts the Audiology and Speech-Language Pathology Interstate Compact in the form substantially as follows:

Article 1
PURPOSE

The purpose of this Compact is to facilitate interstate practice of audiology and speech-language pathology with the goal of improving public access to audiology and speech-language pathology services. The practice of audiology and speech-language pathology occurs in the state where the patient, client, or student is located at the time of the patient, client, or student encounter. The Compact preserves the regulatory authority of states to protect public health and safety through the current system of state licensure.

This Compact is designed to achieve the following objectives:

(1) Increase public access to audiology and speech-language pathology services by providing for the mutual recognition of other member state licenses;

(2) Enhance the states' ability to protect the public's health and safety;

(3) Encourage the cooperation of member states in regulating multistate audiology and speech-language pathology practice;

(4) Support spouses of relocating active duty military personnel;

(5) Enhance the exchange of licensure, investigative, and disciplinary information between member states;

(6) Allow a remote state to hold a provider of services with a compact privilege in that state accountable to that state's practice standards; and

(7) Allow for the use of telehealth technology to facilitate increased access to audiology and speech-language pathology services.

Article 2
DEFINITIONS

As used in this Compact, and except as otherwise provided, the following definitions shall apply:

A. Active duty military means full-time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. Chapters 1209 and 1211.

B. Adverse action means any administrative, civil, equitable, or criminal action permitted by a state's laws which is imposed by a licensing board or other authority against an audiologist or speech-language pathologist, including actions against an individual's license or privilege to practice such as revocation, suspension, probation, monitoring of the licensee, or restriction on the licensee's practice.

C. Alternative program means a nondisciplinary monitoring process approved by an audiology or speech-language pathology licensing board to address impaired practitioners.

D. Audiologist means an individual who is licensed by a state to practice audiology.

E. Audiology means the care and services provided by a licensed audiologist as set forth in the member state's statutes and rules.

F. Audiology and Speech-Language Pathology Compact Commission or Commission means the national administrative body whose membership consists of all states that have enacted the Compact.

G. Audiology and speech-language pathology licensing board, audiology licensing board, speech-language pathology licensing board, or licensing board each means the agency of a state that is responsible for the licensing and regulation of audiologists or speech-language pathologists.

H. Compact privilege means the authorization granted by a remote state to allow a licensee from another member state to practice as an audiologist or speech-language pathologist in the remote state under its laws and rules. The practice of audiology or speech-language pathology occurs in the member state where the patient, client, or student is located at the time of the patient, client, or student encounter.

I. Current significant investigative information means investigative information that a licensing board, after an inquiry or investigation that includes notification and an opportunity for the audiologist or speech-language pathologist to respond, if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction.

J. Data system means a repository of information about licensees, including, but not limited to, continuing education, examination, licensure, investigative, compact privilege, and adverse action.

K. Encumbered license means a license in which an adverse action restricts the practice of audiology or speech-language pathology by the licensee and such adverse action has been reported to the National Practitioner Data Bank.

L. Executive Committee means a group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the Commission.

M. Home state means the member state that is the licensee's primary state of residence.

N. Impaired practitioner means an individual whose professional practice is adversely affected by substance abuse, addiction, or other health-related conditions.

O. Licensee means an individual who currently holds an authorization from the state licensing board to practice as an audiologist or speech-language pathologist.

P. Member state means a state that has enacted the Compact.

Q. Privilege to practice means a legal authorization permitting the practice of audiology or speech-language pathology in a remote state.

R. Remote state means a member state other than the home state where a licensee is exercising or seeking to exercise the compact privilege.

S. Rule means a regulation, principle, or directive promulgated by the Commission that has the force of law.

T. Single-state license means an audiology or speech-language pathology license issued by a member state that authorizes practice only within the

issuing state and does not include a privilege to practice in any other member state.

U. Speech-language pathologist means an individual who is licensed by a state to practice speech-language pathology.

V. Speech-language pathology means the care and services provided by a licensed speech-language pathologist as set forth in the member state's statutes and rules.

W. State means any state, commonwealth, district, or territory of the United States that regulates the practice of audiology and speech-language pathology.

X. State practice laws means a member state's laws, rules, and regulations that govern the practice of audiology or speech-language pathology, define the scope of audiology or speech-language pathology practice, and create the methods and grounds for imposing discipline.

Y. Telehealth means the application of telecommunication technology to deliver audiology or speech-language pathology services at a distance for assessment, intervention, or consultation.

Article 3
STATE PARTICIPATION IN THE COMPACT

A. A license issued to an audiologist or speech-language pathologist by a home state to a resident in that state shall be recognized by each member state as authorizing an audiologist or speech-language pathologist to practice audiology or speech-language pathology, under a privilege to practice, in each member state.

B. A state must implement or utilize procedures for considering the criminal history records of applicants for initial privilege to practice. These procedures shall include the submission of fingerprints or other biometric-based information by applicants for the purpose of obtaining an applicant's criminal history record information from the Federal Bureau of Investigation and the agency responsible for retaining that state's criminal records.

1. A member state must fully implement a criminal background check requirement, within a timeframe established by rule, by receiving the results of the Federal Bureau of Investigation record search on criminal background checks and use the results in making licensure decisions.

2. Communication between a member state, the Commission, and among member states regarding the verification of eligibility for licensure through the Compact shall not include any information received from the Federal Bureau of Investigation relating to a federal criminal records check performed by a member state under Public Law 92-544.

C. Upon application for a privilege to practice, the licensing board in the issuing remote state shall ascertain, through the data system, whether the applicant has ever held, or is the holder of, a license issued by any other state, whether there are any encumbrances on any license or privilege to practice held by the applicant, or whether any adverse action has been taken against any license or privilege to practice held by the applicant.

D. Each member state shall require an applicant to obtain or retain a license in the home state and meet the home state's qualifications for licensure or renewal of licensure, as well as all other applicable state laws.

E. For an audiologist:

1. Must meet one of the following educational requirements:

a. On or before December 31, 2007, has graduated with a master's degree or doctorate in audiology, or equivalent degree regardless of degree name, from a program that is accredited by an accrediting agency recognized by the Council for Higher Education Accreditation, or its successor, or by the United States Department of Education and operated by a college or university accredited by a regional or national accrediting organization recognized by the licensing board;

b. On or after January 1, 2008, has graduated with a doctoral degree in audiology, or equivalent degree, regardless of degree name, from a program that is accredited by an accrediting agency recognized by the Council for Higher Education Accreditation, or its successor, or by the United States Department of Education and operated by a college or university accredited by a regional or national accrediting organization recognized by the licensing board; or

c. Has graduated from an audiology program that is housed in an institution of higher education outside of the United States (a) for which the program and institution have been approved by the authorized accrediting body in the applicable country and (b) the degree program has been verified by an independent credentials review agency to be comparable to a state licensing board-approved program;

2. Has completed a supervised clinical practicum experience from an accredited educational institution or its cooperating programs as required by the Commission;

3. Has successfully passed a national examination approved by the Commission;

4. Holds an active, unencumbered license;

5. Has not been convicted or found guilty, and has not entered into an agreed disposition, of a felony related to the practice of audiology, under applicable state or federal criminal law; and

6. Has a valid United States social security number or National Practitioner Identification number.

F. For a speech-language pathologist:

1. Must meet one of the following educational requirements:

a. Has graduated with a master's degree from a speech-language pathology program that is accredited by an organization recognized by the United States Department of Education and operated by a college or university accredited by a regional or national accrediting organization recognized by the licensing board; or

b. Has graduated from a speech-language pathology program that is housed in an institution of higher education outside of the United States (a) for which the program and institution have been approved by the authorized accrediting body in the applicable country and (b) the degree program has been verified by an independent credentials review agency to be comparable to a state licensing board-approved program;

2. Has completed a supervised clinical practicum experience from an educational institution or its cooperating programs as required by the Commission;

3. Has completed a supervised postgraduate professional experience as required by the Commission;

4. Has successfully passed a national examination approved by the Commission;

5. Holds an active, unencumbered license;

6. Has not been convicted or found guilty, and has not entered into an agreed disposition, of a felony related to the practice of speech-language pathology, under applicable state or federal criminal law; and

7. Has a valid United States social security number or National Practitioner Identification number.

G. The privilege to practice is derived from the home state license.

H. An audiologist or speech-language pathologist practicing in a member state must comply with the state practice laws of the state in which the client is located at the time service is provided. The practice of audiology and speech-language pathology shall include all audiology and speech-language pathology practice as defined by the state practice laws of the member state in which the client is located. The practice of audiology and speech-language pathology in a member state under a privilege to practice shall subject an audiologist or speech-language pathologist to the jurisdiction of the licensing board, the courts, and the laws of the member state in which the client is located at the time service is provided.

I. Individuals not residing in a member state shall continue to be able to apply for a member state's single-state license as provided under the laws of each member state. However, the single-state license granted to these individuals shall not be recognized as granting the privilege to practice audiology or speech-language pathology in any other member state. Nothing in this Compact shall affect the requirements established by a member state for the issuance of a single-state license.

J. Member states may charge a fee for granting a compact privilege.

K. Member states must comply with the bylaws and rules and regulations of the Commission.

Article 4
COMPACT PRIVILEGE

A. To exercise the compact privilege under the terms and provisions of the Compact, the audiologist or speech-language pathologist shall:

1. Hold an active license in the home state;

2. Have no encumbrance on any state license;

3. Be eligible for a compact privilege in any member state in accordance with Article 3;

4. Have not had any adverse action against any license or compact privilege within the previous two years from date of application;

5. Notify the Commission that the licensee is seeking the compact privilege within one or more remote states;

6. Pay any applicable fees, including any state fee, for the compact privilege;

7. Report to the Commission adverse action taken by any nonmember state within thirty days from the date the adverse action is taken.

B. For the purposes of the compact privilege, an audiologist or speech-language pathologist shall only hold one home state license at a time.

C. Except as provided in Article 6, if an audiologist or speech-language pathologist changes primary state of residence by moving between two member states, the audiologist or speech-language pathologist must apply for licensure in the new home state, and the license issued by the prior home state shall be deactivated in accordance with applicable rules adopted by the Commission.

D. The audiologist or speech-language pathologist may apply for licensure in advance of a change in primary state of residence.

E. A license shall not be issued by the new home state until the audiologist or speech-language pathologist provides satisfactory evidence of a change in primary state of residence to the new home state and satisfies all applicable requirements to obtain a license from the new home state.

F. If an audiologist or speech-language pathologist changes primary state of residence by moving from a member state to a nonmember state, the license issued by the prior home state shall convert to a single-state license, valid only in the former home state.

G. The compact privilege is valid until the expiration date of the home state license. The licensee must comply with the requirements of section A of this Article to maintain the compact privilege in the remote state.

H. A licensee providing audiology or speech-language pathology services in a remote state under the compact privilege shall function within the laws and regulations of the remote state.

I. A licensee providing audiology or speech-language pathology services in a remote state is subject to that state's regulatory authority. A remote state may, in accordance with due process and that state's laws, remove a licensee's compact privilege in the remote state for a specific period of time, impose fines, or take any other necessary actions to protect the health and safety of its citizens.

J. If a home state license is encumbered, the licensee shall lose the compact privilege in any remote state until the following occur:

1. The home state license is no longer encumbered; and

2. Two years have elapsed from the date of the adverse action.

K. Once an encumbered license in the home state is restored to good standing, the licensee must meet the requirements of section A of this Article to obtain a compact privilege in any remote state.

L. Once the requirements of section J of this Article have been met, the licensee must meet the requirements in section A of this Article to obtain a compact privilege in a remote state.

Article 5
COMPACT PRIVILEGE TO PRACTICE TELEHEALTH

Member states shall recognize the right of an audiologist or speech-language pathologist, licensed by a home state in accordance with Article 3 and under rules promulgated by the Commission, to practice audiology or speech-language pathology in any member state via telehealth under a privilege to practice as provided in the Compact and rules promulgated by the Commission.

Article 6
ACTIVE DUTY MILITARY PERSONNEL OR THEIR SPOUSES

Active duty military personnel, or their spouse, shall designate a home state where the individual has a current license in good standing. The individual may retain the home state designation during the period the service member is on active duty. Subsequent to designating a home state, the individual shall only change the home state through application for licensure in the new state.

Article 7
ADVERSE ACTIONS

A. In addition to the other powers conferred by state law, a remote state shall have the authority, in accordance with existing state due process law, to:

1. Take adverse action against an audiologist's or speech-language pathologist's privilege to practice within that member state.

2. Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses as well as the production of evidence. Subpoenas issued by a licensing board in a member state for the attendance and testimony of witnesses or the production of evidence from another member state shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state in which the witnesses or evidence are located.

3. Only the home state shall have the power to take adverse action against an audiologist's or speech-language pathologist's license issued by the home state.

B. For purposes of taking adverse action, the home state shall give the same priority and effect to reported conduct received from a member state as it would if the conduct had occurred within the home state. In so doing, the home state shall apply its own state laws to determine appropriate action.

C. The home state shall complete any pending investigations of an audiologist or speech-language pathologist who changes primary state of residence during the course of the investigations. The home state shall also have the authority to take appropriate action and shall promptly report the conclusions of the investigations to the administrator of the data system. The administrator of the coordinated licensure information system shall promptly notify the new home state of any adverse action.

D. If otherwise permitted by state law, the member state may recover from the affected audiologist or speech-language pathologist the costs of investigations and disposition of cases resulting from any adverse action taken against that audiologist or speech-language pathologist.

E. The member state may take adverse action based on the factual findings of the remote state, provided that the member state follows the member state's own procedures for taking the adverse action.

F. Joint Investigations

1. In addition to the authority granted to a member state by its respective audiology or speech-language pathology practice act or other applicable state law, any member state may participate with other member states in joint investigations of licensees.

2. Member states shall share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the Compact.

G. If adverse action is taken by the home state against an audiologist's or speech-language pathologist's license, the audiologist's or speech-language pathologist's privilege to practice in all other member states shall be deactivated until all encumbrances have been removed from the state license. All home state disciplinary orders that impose adverse action against an audiologist's or speech-language pathologist's license shall include a statement that the audiologist's or speech-language pathologist's privilege to practice is deactivated in all member states during the pendency of the order.

H. If a member state takes adverse action, it shall promptly notify the administrator of the data system. The administrator of the data system shall promptly notify the home state of any adverse actions by remote states.

I. Nothing in this Compact shall override a member state's decision that participation in an alternative program may be used in lieu of adverse action.

Article 8

ESTABLISHMENT OF THE AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY COMPACT COMMISSION

A. The Compact member states hereby create and establish a joint public agency known as the Audiology and Speech-Language Pathology Compact Commission:

1. The Commission is an instrumentality of the Compact states.

2. Venue is proper and judicial proceedings by or against the Commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the Commission is located. The Commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

3. Nothing in this Compact shall be construed to be a waiver of sovereign immunity.

B. Membership, Voting, and Meetings

1. Each member state shall have two delegates selected by that member state's licensing board. The delegates shall be current members of the licensing board. One shall be an audiologist and one shall be a speech-language pathologist.

2. An additional five delegates, who are either a public member or board administrator from a state licensing board, shall be chosen by the Executive Committee from a pool of nominees provided by the Commission at large.

3. Any delegate may be removed or suspended from office as provided by the law of the state from which the delegate is appointed.

4. The member state board shall fill any vacancy occurring on the Commission, within ninety days.

5. Each delegate shall be entitled to one vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the Commission.

6. A delegate shall vote in person or by other means as provided in the bylaws. The bylaws may provide for delegates' participation in meetings by telephone or other means of communication.

7. The Commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

C. The Commission shall have the following powers and duties:

1. Establish the fiscal year of the Commission;

2. Establish bylaws;

3. Establish a Code of Ethics;

4. Maintain its financial records in accordance with the bylaws;

5. Meet and take actions as are consistent with the provisions of this Compact and the bylaws;

6. Promulgate uniform rules to facilitate and coordinate implementation and administration of this Compact. The rules shall have the force and effect of law and shall be binding in all member states;

7. Bring and prosecute legal proceedings or actions in the name of the Commission, provided that the standing of any state audiology or speech-language pathology licensing board to sue or be sued under applicable law shall not be affected;

8. Purchase and maintain insurance and bonds;

9. Borrow, accept, or contract for services of personnel, including, but not limited to, employees of a member state;

10. Hire employees, elect or appoint officers, fix compensation, define duties, grant individuals appropriate authority to carry out the purposes of the Compact, and to establish the Commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;

11. Accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize and dispose of the same; provided that at all times the Commission shall avoid any appearance of impropriety or conflict of interest;

12. Lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use, any property, real, personal or mixed; provided that at all times the Commission shall avoid any appearance of impropriety;

13. Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed;

14. Establish a budget and make expenditures;

15. Borrow money;

16. Appoint committees, including standing committees composed of members and other interested persons as may be designated in this Compact and the bylaws;

17. Provide and receive information from, and cooperate with, law enforcement agencies;

18. Establish and elect an Executive Committee; and

19. Perform other functions as may be necessary or appropriate to achieve the purposes of this Compact consistent with the state regulation of audiology and speech-language pathology licensure and practice.

D. The Executive Committee

The Executive Committee shall have the power to act on behalf of the Commission according to the terms of this Compact:

1. The Executive Committee shall be composed of ten members:

a. Seven voting members who are elected by the Commission from the current membership of the Commission;

b. Two ex officios, consisting of one nonvoting member from a recognized national audiology professional association and one nonvoting member from a recognized national speech-language pathology association; and

c. One ex officio, nonvoting member from the recognized membership organization of the audiology and speech-language pathology licensing boards.

E. The ex officio members shall be selected by their respective organizations.

1. The Commission may remove any member of the Executive Committee as provided in the bylaws.

2. The Executive Committee shall meet at least annually.

3. The Executive Committee shall have the following duties and responsibilities:

a. Recommend to the entire Commission changes to the rules or bylaws, changes to this Compact legislation, fees paid by Compact member states such as annual dues, and any commission Compact fee charged to licensees for the compact privilege;

b. Ensure Compact administration services are appropriately provided, contractual or otherwise;

c. Prepare and recommend the budget;

d. Maintain financial records on behalf of the Commission;

e. Monitor Compact compliance of member states and provide compliance reports to the Commission;

f. Establish additional committees as necessary; and

g. Other duties as provided in rules or bylaws.

4. Meetings of the Commission

All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rulemaking provisions in Article 10.

5. The Commission or the Executive Committee or other committees of the Commission may convene in a closed, nonpublic meeting if the Commission or Executive Committee or other committees of the Commission must discuss:

a. Noncompliance of a member state with its obligations under the Compact;

b. The employment, compensation, discipline or other matters, practices or procedures related to specific employees or other matters related to the Commission's internal personnel practices and procedures;

c. Current, threatened, or reasonably anticipated litigation;

d. Negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate;

e. Accusing any person of a crime or formally censuring any person;

f. Disclosure of trade secrets or commercial or financial information that is privileged or confidential;

g. Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

h. Disclosure of investigative records compiled for law enforcement purposes;

i. Disclosure of information related to any investigative reports prepared by or on behalf of or for use of the Commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the Compact; or

j. Matters specifically exempted from disclosure by federal or member state statute.

6. If a meeting, or portion of a meeting, is closed pursuant to this provision, the Commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision.

7. The Commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefor, including a description of the views expressed. All documents considered in connection with an action shall be identified in minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the Commission or order of a court of competent jurisdiction.

8. Financing of the Commission

a. The Commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

b. The Commission may accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services.

c. The Commission may levy on and collect an annual assessment from each member state or impose fees on other parties to cover the cost of the operations and activities of the Commission and its staff, which must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Commission, which shall promulgate a rule binding upon all member states.

9. The Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Commission pledge the credit of any of the member states, except by and with the authority of the member state.

10. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the Commission.

F. Qualified Immunity, Defense, and Indemnification

1. The members, officers, executive director, employees and representatives of the Commission shall have no greater liability than a state employee would have under the same or similar circumstances, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred, within the scope of Commission employment, duties, or responsibilities; provided that nothing in this paragraph shall be construed to protect any such person from suit or

liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person.

2. The Commission shall defend any member, officer, executive director, employee or representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and provided further, that the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct.

3. The Commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the Commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

Article 9
DATA SYSTEM

A. The Commission shall provide for the development, maintenance, and utilization of a coordinated database and reporting system containing licensure, adverse action, and investigative information on all licensed individuals in member states.

B. Notwithstanding any other provision of state law to the contrary, a member state shall submit a uniform data set to the data system on all individuals to whom this Compact is applicable as required by the rules of the Commission, including:

1. Identifying information;

2. Licensure data;

3. Adverse actions against a license or compact privilege;

4. Nonconfidential information related to alternative program participation;

5. Any denial of application for licensure, and any reason for denial; and

6. Other information that may facilitate the administration of this Compact, as determined by the rules of the Commission.

C. Investigative information pertaining to a licensee in any member state shall only be available to other member states.

D. The Commission shall promptly notify all member states of any adverse action taken against a licensee or an individual applying for a license. Adverse action information pertaining to a licensee in any member state shall be available to any other member state.

E. Member states contributing information to the data system may designate information that may not be shared with the public without the express permission of the contributing state.

F. Any information submitted to the data system that is subsequently required to be expunged by the laws of the member state contributing the information shall be removed from the data system.

Article 10
RULEMAKING

A. The Commission shall exercise its rulemaking powers pursuant to the criteria set forth in this Article and the rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment.

B. If a majority of the legislatures of the member states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the Compact within four years of the date of adoption of the rule, the rule shall have no further force and effect in any member state.

C. Rules or amendments to the rules shall be adopted at a regular or special meeting of the Commission.

D. Prior to promulgation and adoption of a final rule or rules by the Commission, and at least thirty days in advance of the meeting at which the rule shall be considered and voted upon, the Commission shall file a Notice of Proposed Rulemaking:

1. On the website of the Commission or other publicly accessible platform; and

2. On the website of each member state audiology or speech-language pathology licensing board or other publicly accessible platform or the publication in which each state would otherwise publish proposed rules.

E. The Notice of Proposed Rulemaking shall include:

1. The proposed time, date, and location of the meeting in which the rule shall be considered and voted upon;

2. The text of the proposed rule or amendment and the reason for the proposed rule;

3. A request for comments on the proposed rule from any interested person; and

4. The manner in which interested persons may submit notice to the Commission of their intention to attend the public hearing and any written comments.

F. Prior to the adoption of a proposed rule, the Commission shall allow persons to submit written data, facts, opinions and arguments, which shall be made available to the public.

G. The Commission shall grant an opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by:

1. At least twenty-five persons;

2. A state or federal governmental subdivision or agency; or

3. An association having at least twenty-five members.

H. If a hearing is held on the proposed rule or amendment, the Commission shall publish the place, time, and date of the scheduled public hearing. If the hearing is held via electronic means, the Commission shall publish the mechanism for access to the electronic hearing.

1. All persons wishing to be heard at the hearing shall notify the executive director of the Commission or other designated member in writing of their

desire to appear and testify at the hearing not less than five business days before the scheduled date of the hearing.

2. Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.

3. All hearings shall be recorded. A copy of the recording shall be made available on request.

4. Nothing in this Article shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the Commission at hearings required by this Article.

I. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the Commission shall consider all written and oral comments received.

J. If no written notice of intent to attend the public hearing by interested parties is received, the Commission may proceed with promulgation of the proposed rule without a public hearing.

K. The Commission shall, by majority vote of all members, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

L. Upon determination that an emergency exists, the Commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rulemaking procedures provided in the Compact and in this Article shall be retroactively applied to the rule as soon as reasonably possible, in no event later than ninety days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:

1. Meet an imminent threat to public health, safety, or welfare;

2. Prevent a loss of Commission or member state funds; or

3. Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule.

M. The Commission or an authorized committee of the Commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the website of the Commission. The revision shall be subject to challenge by any person for a period of thirty days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing and delivered to the chairperson of the Commission prior to the end of the notice period. If no challenge is made, the revision shall take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the Commission.

Article 11
OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

A. Dispute Resolution

1. Upon request by a member state, the Commission shall attempt to resolve disputes related to the Compact that arise among member states and between member and nonmember states.

2. The Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

B. Enforcement

1. The Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this Compact.

2. By majority vote, the Commission may initiate legal action in the United States District Court for the District of Columbia or the federal district where the Commission has its principal offices against a member state in default to enforce compliance with the provisions of the Compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member shall be awarded all costs of litigation, including reasonable attorney's fees.

3. The remedies herein shall not be the exclusive remedies of the Commission. The Commission may pursue any other remedies available under federal or state law.

Article 12

DATE OF IMPLEMENTATION OF THE INTERSTATE COMMISSION FOR AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY PRACTICE AND ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENT

A. The Compact shall come into effect on the date on which the Compact statute is enacted into law in the tenth member state. The provisions, which become effective at that time, shall be limited to the powers granted to the Commission relating to assembly and the promulgation of rules. Thereafter, the Commission shall meet and exercise rulemaking powers necessary to the implementation and administration of the Compact.

B. Any state that joins the Compact subsequent to the Commission's initial adoption of the rules shall be subject to the rules as they exist on the date on which the Compact becomes law in that state. Any rule that has been previously adopted by the Commission shall have the full force and effect of law on the day the Compact becomes law in that state.

C. Any member state may withdraw from this Compact by enacting a statute repealing the same.

1. A member state's withdrawal shall not take effect until six months after enactment of the repealing statute.

2. Withdrawal shall not affect the continuing requirement of the withdrawing state's audiology or speech-language pathology licensing board to comply with the investigative and adverse action reporting requirements of this Compact prior to the effective date of withdrawal.

D. Nothing contained in this Compact shall be construed to invalidate or prevent any audiology or speech-language pathology licensure agreement or other cooperative arrangement between a member state and a nonmember state that does not conflict with the provisions of this Compact.

E. This Compact may be amended by the member states. No amendment to this Compact shall become effective and binding upon any member state until it is enacted into the laws of all member states.

Article 13

CONSTRUCTION AND SEVERABILITY

This Compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Compact shall be severable and if any phrase, clause, sentence, or provision of this Compact is declared to be contrary to the constitution of any member state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any member state, the Compact shall remain in full force and effect as to the remaining member states and in full force and effect as to the member state affected as to all severable matters.

Article 14

BINDING EFFECT OF COMPACT AND OTHER LAWS

A. Nothing herein prevents the enforcement of any other law of a member state that is not inconsistent with the Compact.

B. All laws in a member state in conflict with the Compact are superseded to the extent of the conflict.

C. All lawful actions of the Commission, including all rules and bylaws promulgated by the Commission, are binding upon the member states.

D. All agreements between the Commission and the member states are binding in accordance with their terms.

E. In the event any provision of the Compact exceeds the constitutional limits imposed on the legislature of any member state, the provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state.

Source: Laws 2021, LB14, § 6.

ARTICLE 42

LICENSED PROFESSIONAL COUNSELORS INTERSTATE COMPACT

Section
38-4201. Licensed Professional Counselors Interstate Compact.

38-4201 Licensed Professional Counselors Interstate Compact.

The State of Nebraska adopts the Licensed Professional Counselors Interstate Compact in the form substantially as follows:

Licensed Professional Counselors Interstate Compact

SECTION 1: PURPOSE

The purpose of this Compact is to facilitate interstate practice of Licensed Professional Counselors with the goal of improving public access to Professional Counseling services. The practice of Professional Counseling occurs in the State where the client is located at the time of the counseling services. The Compact preserves the regulatory authority of States to protect public health and safety through the current system of State licensure.

This Compact is designed to achieve the following objectives:

A. Increase public access to Professional Counseling services by providing for the mutual recognition of other Member State licenses;

B. Enhance the States' ability to protect the public's health and safety;

C. Encourage the cooperation of Member States in regulating multistate practice for Licensed Professional Counselors;

D. Support spouses of relocating Active Duty Military personnel;

E. Enhance the exchange of licensure, investigative, and disciplinary information among Member States;

F. Allow for the use of Telehealth technology to facilitate increased access to Professional Counseling services;

G. Support the uniformity of Professional Counseling licensure requirements throughout the States to promote public safety and public health benefits;

H. Invest all Member States with the authority to hold a Licensed Professional Counselor accountable for meeting all State practice laws in the State in which the client is located at the time care is rendered through the mutual recognition of Member State licenses;

I. Eliminate the necessity for licenses in multiple States; and

J. Provide opportunities for interstate practice by Licensed Professional Counselors who meet uniform licensure requirements.

SECTION 2. DEFINITIONS

As used in this Compact, and except as otherwise provided, the following definitions shall apply:

A. ''Active Duty Military'' means full-time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. Chapters 1209 and 1211.

B. ''Adverse Action'' means any administrative, civil, equitable or criminal action permitted by a State's laws which is imposed by a licensing board or other authority against a Licensed Professional Counselor, including actions against an individual's license or Privilege to Practice such as revocation, suspension, probation, monitoring of the licensee, limitation on the licensee's practice, or any other Encumbrance on licensure affecting a Licensed Professional Counselor's authorization to practice, including issuance of a cease and desist action.

C. ''Alternative Program'' means a nondisciplinary monitoring or practice remediation process approved by a Professional Counseling Licensing Board to address Impaired Practitioners.

D. ''Continuing Competence/Education'' means a requirement, as a condition of license renewal, to provide evidence of participation in, and/or completion of, educational and professional activities relevant to practice or area of work.

E. ''Counseling Compact Commission'' or ''Commission'' means the national administrative body whose membership consists of all States that have enacted the Compact.

F. ''Current Significant Investigative Information'' means:

1. Investigative Information that a Licensing Board, after a preliminary inquiry that includes notification and an opportunity for the Licensed Professional Counselor to respond, if required by State law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction; or

2. Investigative Information that indicates that the Licensed Professional Counselor represents an immediate threat to public health and safety regardless

of whether the Licensed Professional Counselor has been notified and had an opportunity to respond.

G. ''Data System'' means a repository of information about Licensees, including, but not limited to, continuing education, examination, licensure, investigative, Privilege to Practice and Adverse Action information.

H. ''Encumbered License'' means a license in which an Adverse Action restricts the practice of licensed Professional Counseling by the Licensee and said Adverse Action has been reported to the National Practitioners Data Bank (NPDB).

I. ''Encumbrance'' means a revocation or suspension of, or any limitation on, the full and unrestricted practice of Licensed Professional Counseling by a Licensing Board.

J. ''Executive Committee'' means a group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the Commission.

K. ''Home State'' means the Member State that is the Licensee's primary State of residence.

L. ''Impaired Practitioner'' means an individual who has a condition(s) that may impair their ability to practice as a Licensed Professional Counselor without some type of intervention and may include, but are not limited to, alcohol and drug dependence, mental health impairment, and neurological or physical impairments.

M. ''Investigative Information'' means information, records, and documents received or generated by a Professional Counseling Licensing Board pursuant to an investigation.

N. ''Jurisprudence Requirement'' if required by a Member State, means the assessment of an individual's knowledge of the laws and Rules governing the practice of Professional Counseling in a State.

O. ''Licensed Professional Counselor'' means a counselor licensed by a Member State, regardless of the title used by that State, to independently assess, diagnose, and treat behavioral health conditions.

P. ''Licensee'' means an individual who currently holds an authorization from the State to practice as a Licensed Professional Counselor.

Q. ''Licensing Board'' means the agency of a State, or equivalent, that is responsible for the licensing and regulation of Licensed Professional Counselors.

R. ''Member State'' means a State that has enacted the Compact.

S. ''Privilege to Practice'' means a legal authorization, which is equivalent to a license, permitting the practice of Professional Counseling in a Remote State.

T. ''Professional Counseling'' means the assessment, diagnosis, and treatment of behavioral health conditions by a Licensed Professional Counselor.

U. ''Remote State'' means a Member State other than the Home State, where a Licensee is exercising or seeking to exercise the Privilege to Practice.

V. ''Rule'' means a regulation promulgated by the Commission that has the force of law.

W. ''Single State License'' means a Licensed Professional Counselor license issued by a Member State that authorizes practice only within the issuing State and does not include a Privilege to Practice in any other Member State.

X. ''State'' means any state, commonwealth, district, or territory of the United States of America that regulates the practice of Professional Counseling.

Y. ''Telehealth'' means the application of telecommunication technology to deliver Professional Counseling services remotely to assess, diagnose, and treat behavioral health conditions.

Z. ''Unencumbered License'' means a license that authorizes a Licensed Professional Counselor to engage in the full and unrestricted practice of Professional Counseling.

SECTION 3. STATE PARTICIPATION IN THE COMPACT

A. To Participate in the Compact, a State must currently:

1. License and regulate Licensed Professional Counselors;

2. Require Licensees to pass a nationally recognized examination approved by the Commission;

3. Require Licensees to have a sixty-semester-hour (or ninety-quarter-hour) master's degree in counseling or sixty semester-hours (or ninety quarter-hours) of graduate course work including the following topic areas:

a. Professional Counseling Orientation and Ethical Practice;

b. Social and Cultural Diversity;

c. Human Growth and Development;

d. Career Development;

e. Counseling and Helping Relationships;

f. Group Counseling and Group Work;

g. Diagnosis and Treatment; Assessment and Testing;

h. Research and Program Evaluation; and

i. Other areas as determined by the Commission.

4. Require Licensees to complete a supervised postgraduate professional experience as defined by the Commission;

5. Have a mechanism in place for receiving and investigating complaints about Licensees.

B. A Member State shall:

1. Participate fully in the Commission's Data System, including using the Commission's unique identifier as defined in Rules;

2. Notify the Commission, in compliance with the terms of the Compact and Rules, of any Adverse Action or the availability of Investigative Information regarding a Licensee;

3. Implement or utilize procedures for considering the criminal history records of applicants for an initial Privilege to Practice. These procedures shall include the submission of fingerprints or other biometric-based information by applicants for the purpose of obtaining an applicant's criminal history record information from the Federal Bureau of Investigation and the agency responsible for retaining that State's criminal records;

a. A Member State must fully implement a criminal background check requirement, within a timeframe established by rule, by receiving the results of the Federal Bureau of Investigation record search and shall use the results in making licensure decisions.

b. Communication between a Member State, the Commission and among Member States regarding the verification of eligibility for licensure through the Compact shall not include any information received from the Federal Bureau of Investigation relating to a federal criminal records check performed by a Member State under Public Law 92-544.

4. Comply with the Rules of the Commission;

5. Require an applicant to obtain or retain a license in the Home State and meet the Home State's qualifications for licensure or renewal of licensure, as well as all other applicable State laws;

6. Grant the Privilege to Practice to a Licensee holding a valid Unencumbered License in another Member State in accordance with the terms of the Compact and Rules; and

7. Provide for the attendance of the State's commissioner to the Counseling Compact Commission meetings.

C. Member States may charge a fee for granting the Privilege to Practice.

D. Individuals not residing in a Member State shall continue to be able to apply for a Member State's Single State License as provided under the laws of each Member State. However, the Single State License granted to these individuals shall not be recognized as granting a Privilege to Practice Professional Counseling in any other Member State.

E. Nothing in this Compact shall affect the requirements established by a Member State for the issuance of a Single State License.

F. A license issued to a Licensed Professional Counselor by a Home State to a resident in that State shall be recognized by each Member State as authorizing a Licensed Professional Counselor to practice Professional Counseling, under a Privilege to Practice, in each Member State.

SECTION 4. PRIVILEGE TO PRACTICE

A. To exercise the Privilege to Practice under the terms and provisions of the Compact, the Licensee shall:

1. Hold a license in the Home State;

2. Have a valid United States social security number or national practitioner identifier;

3. Be eligible for a Privilege to Practice in any Member State in accordance with Section 4(D), (G) and (H);

4. Have not had any Encumbrance or restriction against any license or Privilege to Practice within the previous two years;

5. Notify the Commission that the Licensee is seeking the Privilege to Practice within a Remote State(s);

6. Pay any applicable fees, including any State fee, for the Privilege to Practice;

7. Meet any Continuing Competence/Education requirements established by the Home State;

8. Meet any Jurisprudence Requirements established by the Remote State(s) in which the Licensee is seeking a Privilege to Practice; and

9. Report to the Commission any Adverse Action, Encumbrance, or restriction on license taken by any non-Member State within thirty days from the date the action is taken.

B. The Privilege to Practice is valid until the expiration date of the Home State license. The Licensee must comply with the requirements of Section 4(A) to maintain the Privilege to Practice in the Remote State.

C. A Licensee providing Professional Counseling in a Remote State under the Privilege to Practice shall adhere to the laws and regulations of the Remote State.

D. A Licensee providing Professional Counseling services in a Remote State is subject to that State's regulatory authority. A Remote State may, in accordance with due process and that State's laws, remove a Licensee's Privilege to Practice in the Remote State for a specific period of time, impose fines, and/or take any other necessary actions to protect the health and safety of its citizens. The Licensee may be ineligible for a Privilege to Practice in any Member State until the specific time for removal has passed and all fines are paid.

E. If a Home State license is encumbered, the Licensee shall lose the Privilege to Practice in any Remote State until the following occur:

1. The Home State license is no longer encumbered; and

2. Have not had any Encumbrance or restriction against any license or Privilege to Practice within the previous two years.

F. Once an Encumbered License in the Home State is restored to good standing, the Licensee must meet the requirements of Section 4(A) to obtain a Privilege to Practice in any Remote State.

G. If a Licensee's Privilege to Practice in any Remote State is removed, the individual may lose the Privilege to Practice in all other Remote States until the following occur:

1. The specific period of time for which the Privilege to Practice was removed has ended;

2. All fines have been paid; and

3. Have not had any Encumbrance or restriction against any license or Privilege to Practice within the previous two years.

H. Once the requirements of Section 4(G) have been met, the Licensee must meet the requirements in Section 4(A) to obtain a Privilege to Practice in a Remote State.

SECTION 5: OBTAINING A NEW HOME STATE LICENSE BASED ON A PRIVILEGE TO PRACTICE

A. A Licensed Professional Counselor may hold a Home State license, which allows for a Privilege to Practice in other Member States, in only one Member State at a time.

B. If a Licensed Professional Counselor changes primary State of residence by moving between two Member States:

1. The Licensed Professional Counselor shall file an application for obtaining a new Home State license based on a Privilege to Practice, pay all applicable fees, and notify the current and new Home State in accordance with applicable Rules adopted by the Commission.

2. Upon receipt of an application for obtaining a new Home State license by virtue of a Privilege to Practice, the new Home State shall verify that the Licensed Professional Counselor meets the pertinent criteria outlined in Section 4 via the Data System, without need for primary source verification except for:

a. a Federal Bureau of Investigation fingerprint-based criminal background check if not previously performed or updated pursuant to applicable rules adopted by the Commission in accordance with Public Law 92-544;

b. other criminal background check as required by the new Home State; and

c. completion of any requisite Jurisprudence Requirements of the new Home State.

3. The former Home State shall convert the former Home State license into a Privilege to Practice once the new Home State has activated the new Home State license in accordance with applicable Rules adopted by the Commission.

4. Notwithstanding any other provision of this Compact, if the Licensed Professional Counselor cannot meet the criteria in Section 4, the new Home State may apply its requirements for issuing a new Single State License.

5. The Licensed Professional Counselor shall pay all applicable fees to the new Home State in order to be issued a new Home State license.

C. If a Licensed Professional Counselor changes Primary State of Residence by moving from a Member State to a non-Member State, or from a non-Member State to a Member State, the State criteria shall apply for issuance of a Single State License in the new State.

D. Nothing in this Compact shall interfere with a Licensee's ability to hold a Single State License in multiple States, however for the purposes of this Compact, a Licensee shall have only one Home State license.

E. Nothing in this Compact shall affect the requirements established by a Member State for the issuance of a Single State License.

SECTION 6. ACTIVE DUTY MILITARY PERSONNEL OR THEIR SPOUSES

Active Duty Military personnel, or their spouse, shall designate a Home State where the individual has a current license in good standing. The individual may retain the Home State designation during the period the service member is on active duty. Subsequent to designating a Home State, the individual shall only change their Home State through application for licensure in the new State, or through the process outlined in Section 5.

SECTION 7. COMPACT PRIVILEGE TO PRACTICE TELEHEALTH

A. Member States shall recognize the right of a Licensed Professional Counselor, licensed by a Home State in accordance with Section 3 and under Rules promulgated by the Commission, to practice Professional Counseling in any Member State via Telehealth under a Privilege to Practice as provided in the Compact and Rules promulgated by the Commission.

B. A Licensee providing Professional Counseling services in a Remote State under the Privilege to Practice shall adhere to the laws and regulations of the Remote State.

SECTION 8. ADVERSE ACTIONS

A. In addition to the other powers conferred by State law, a Remote State shall have the authority, in accordance with existing State due process law, to:

1. Take Adverse Action against a Licensed Professional Counselor's Privilege to Practice within that Member State, and

2. Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses as well as the production of evidence. Subpoenas issued by a Licensing Board in a Member State for the attendance

and testimony of witnesses or the production of evidence from another Member State shall be enforced in the latter State by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the State in which the witnesses or evidence are located.

3. Only the Home State shall have the power to take Adverse Action against a Licensed Professional Counselor's license issued by the Home State.

B. For purposes of taking Adverse Action, the Home State shall give the same priority and effect to reported conduct received from a Member State as it would if the conduct had occurred within the Home State. In so doing, the Home State shall apply its own State laws to determine appropriate action.

C. The Home State shall complete any pending investigations of a Licensed Professional Counselor who changes primary State of residence during the course of the investigations. The Home State shall also have the authority to take appropriate action(s) and shall promptly report the conclusions of the investigations to the administrator of the Data System. The administrator of the coordinated licensure information system shall promptly notify the new Home State of any Adverse Actions.

D. A Member State, if otherwise permitted by State law, may recover from the affected Licensed Professional Counselor the costs of investigations and dispositions of cases resulting from any Adverse Action taken against that Licensed Professional Counselor.

E. A Member State may take Adverse Action based on the factual findings of the Remote State, provided that the Member State follows its own procedures for taking the Adverse Action.

F. Joint Investigations:

1. In addition to the authority granted to a Member State by its respective Professional Counseling practice act or other applicable State law, any Member State may participate with other Member States in joint investigations of Licensees.

2. Member States shall share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the Compact.

G. If Adverse Action is taken by the Home State against the license of a Licensed Professional Counselor, the Licensed Professional Counselor's Privilege to Practice in all other Member States shall be deactivated until all Encumbrances have been removed from the State license. All Home State disciplinary orders that impose Adverse Action against the license of a Licensed Professional Counselor shall include a Statement that the Licensed Professional Counselor's Privilege to Practice is deactivated in all Member States during the pendency of the order.

H. If a Member State takes Adverse Action, it shall promptly notify the administrator of the Data System. The administrator of the Data System shall promptly notify the Home State of any Adverse Actions by Remote States.

I. Nothing in this Compact shall override a Member State's decision that participation in an Alternative Program may be used in lieu of Adverse Action.

SECTION 9. ESTABLISHMENT OF COUNSELING COMPACT COMMISSION

A. The Compact Member States hereby create and establish a joint public agency known as the Counseling Compact Commission:

1. The Commission is an instrumentality of the Compact States.

2. Venue is proper and judicial proceedings by or against the Commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the Commission is located. The Commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

3. Nothing in this Compact shall be construed to be a waiver of sovereign immunity.

B. Membership, Voting, and Meetings

1. Each Member State shall have and be limited to one delegate selected by that Member State's Licensing Board.

2. The delegate shall be either:

a. A current member of the Licensing Board at the time of appointment, who is a Licensed Professional Counselor or public member; or

b. An administrator of the Licensing Board.

3. Any delegate may be removed or suspended from office as provided by the law of the State from which the delegate is appointed.

4. The Member State Licensing Board shall fill any vacancy occurring on the Commission within sixty days.

5. Each delegate shall be entitled to one vote with regard to the promulgation of Rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the Commission.

6. A delegate shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for delegates' participation in meetings by telephone or other means of communication.

7. The Commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

8. The Commission shall by Rule establish a term of office for delegates and may by Rule establish term limits.

C. The Commission shall have the following powers and duties:

1. Establish the fiscal year of the Commission;

2. Establish bylaws;

3. Maintain its financial records in accordance with the bylaws;

4. Meet and take such actions as are consistent with the provisions of this Compact and the bylaws;

5. Promulgate Rules which shall be binding to the extent and in the manner provided for in the Compact;

6. Bring and prosecute legal proceedings or actions in the name of the Commission, provided that the standing of any State Licensing Board to sue or be sued under applicable law shall not be affected;

7. Purchase and maintain insurance and bonds;

8. Borrow, accept, or contract for services of personnel, including, but not limited to, employees of a Member State;

9. Hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of the Compact, and establish the Commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;

10. Accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of the same; provided that at all times the Commission shall avoid any appearance of impropriety and/or conflict of interest;

11. Lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use, any property, real, personal or mixed; provided that at all times the Commission shall avoid any appearance of impropriety;

12. Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed;

13. Establish a budget and make expenditures;

14. Borrow money;

15. Appoint committees, including standing committees composed of members, State regulators, State legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in this Compact and the bylaws;

16. Provide and receive information from, and cooperate with, law enforcement agencies;

17. Establish and elect an Executive Committee; and

18. Perform such other functions as may be necessary or appropriate to achieve the purposes of this Compact consistent with the State regulation of Professional Counseling licensure and practice.

D. The Executive Committee

1. The Executive Committee shall have the power to act on behalf of the Commission according to the terms of this Compact.

2. The Executive Committee shall be composed of up to eleven members:

a. Seven voting members who are elected by the Commission from the current membership of the Commission; and

b. Up to four ex officio, nonvoting members from four recognized national professional counselor organizations.

c. The ex officio members will be selected by their respective organizations.

3. The Commission may remove any member of the Executive Committee as provided in bylaws.

4. The Executive Committee shall meet at least annually.

5. The Executive Committee shall have the following duties and responsibilities:

a. Recommend to the entire Commission changes to the Rules or bylaws, changes to this Compact legislation, fees paid by Compact Member States such as annual dues, and any Commission Compact fee charged to Licensees for the Privilege to Practice;

b. Ensure Compact administration services are appropriately provided, contractual or otherwise;

c. Prepare and recommend the budget;

d. Maintain financial records on behalf of the Commission;

e. Monitor Compact compliance of Member States and provide compliance reports to the Commission;

f. Establish additional committees as necessary; and

g. Other duties as provided in Rules or bylaws.

E. Meetings of the Commission

1. All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the Rulemaking provisions in Section 11.

2. The Commission or the Executive Committee or other committees of the Commission may convene in a closed, nonpublic meeting if the Commission or Executive Committee or other committees of the Commission must discuss:

a. Noncompliance of a Member State with its obligations under the Compact;

b. The employment, compensation, discipline or other matters, practices or procedures related to specific employees or other matters related to the Commission's internal personnel practices and procedures;

c. Current, threatened, or reasonably anticipated litigation;

d. Negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate;

e. Accusing any person of a crime or formally censuring any person;

f. Disclosure of trade secrets or commercial or financial information that is privileged or confidential;

g. Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

h. Disclosure of investigative records compiled for law enforcement purposes;

i. Disclosure of information related to any investigative reports prepared by or on behalf of or for use of the Commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the Compact; or

j. Matters specifically exempted from disclosure by federal or Member State statute.

3. If a meeting, or portion of a meeting, is closed pursuant to this provision, the Commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision.

4. The Commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefor, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the Commission or order of a court of competent jurisdiction.

F. Financing of the Commission

1. The Commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

2. The Commission may accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services.

3. The Commission may levy on and collect an annual assessment from each Member State or impose fees on other parties to cover the cost of the operations and activities of the Commission and its staff, which must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Commission, which shall promulgate a Rule binding upon all Member States.

4. The Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Commission pledge the credit of any of the Member States, except by and with the authority of the Member State.

5. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the Commission.

G. Qualified Immunity, Defense, and Indemnification

1. The members, officers, executive director, employees, and representatives of the Commission shall have no greater liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred, within the scope of Commission employment, duties, or responsibilities, than a state employee would have under the same or similar circumstances; provided that nothing in this paragraph shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person.

2. The Commission shall defend any member, officer, executive director, employee or representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and provided further, that the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct.

3. The Commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the Commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities, provided that the actual or alleged act,

error, or omission did not result from the intentional or willful or wanton misconduct of that person.

SECTION 10. DATA SYSTEM

A. The Commission shall provide for the development, maintenance, operation, and utilization of a coordinated database and reporting system containing licensure, Adverse Action, and Investigative Information on all licensed individuals in Member States.

B. Notwithstanding any other provision of State law to the contrary, a Member State shall submit a uniform data set to the Data System on all individuals to whom this Compact is applicable as required by the Rules of the Commission, including:

1. Identifying information;

2. Licensure data;

3. Adverse Actions against a license or Privilege to Practice;

4. Nonconfidential information related to Alternative Program participation;

5. Any denial of application for licensure, and the reason(s) for such denial;

6. Current Significant Investigative Information; and

7. Other information that may facilitate the administration of this Compact, as determined by the Rules of the Commission.

C. Investigative Information pertaining to a Licensee in any Member State will only be available to other Member States.

D. The Commission shall promptly notify all Member States of any Adverse Action taken against a Licensee or an individual applying for a license. Adverse Action information pertaining to a Licensee in any Member State will be available to any other Member State.

E. Member States contributing information to the Data System may designate information that may not be shared with the public without the express permission of the contributing State.

F. Any information submitted to the Data System that is subsequently required to be expunged by the laws of the Member State contributing the information shall be removed from the Data System.

SECTION 11. RULEMAKING

A. The Commission shall promulgate reasonable Rules in order to effectively and efficiently achieve the purpose of the Compact. Notwithstanding the foregoing, in the event the Commission exercises its Rulemaking authority in a manner that is beyond the scope of the purposes of the Compact, or the powers granted hereunder, then such an action by the Commission shall be invalid and have no force or effect.

B. The Commission shall exercise its Rulemaking powers pursuant to the criteria set forth in this Section and the Rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each Rule or amendment.

C. If a majority of the legislatures of the Member States rejects a Rule, by enactment of a statute or resolution in the same manner used to adopt the Compact within four years of the date of adoption of the Rule, then such Rule shall have no further force and effect in any Member State.

D. Rules or amendments to the Rules shall be adopted at a regular or special meeting of the Commission.

E. Prior to promulgation and adoption of a final Rule or Rules by the Commission, and at least thirty days in advance of the meeting at which the Rule will be considered and voted upon, the Commission shall file a Notice of Proposed Rulemaking:

1. On the website of the Commission or other publicly accessible platform; and

2. On the website of each Member State Professional Counseling Licensing Board or other publicly accessible platform or the publication in which each State would otherwise publish proposed Rules.

F. The Notice of Proposed Rulemaking shall include:

1. The proposed time, date, and location of the meeting in which the Rule will be considered and voted upon;

2. The text of the proposed Rule or amendment and the reason for the proposed Rule;

3. A request for comments on the proposed Rule from any interested person; and

4. The manner in which interested persons may submit notice to the Commission of their intention to attend the public hearing and any written comments.

G. Prior to adoption of a proposed Rule, the Commission shall allow persons to submit written data, facts, opinions, and arguments, which shall be made available to the public.

H. The Commission shall grant an opportunity for a public hearing before it adopts a Rule or amendment if a hearing is requested by:

1. At least twenty-five persons;

2. A State or federal governmental subdivision or agency; or

3. An association having at least twenty-five members.

I. If a hearing is held on the proposed Rule or amendment, the Commission shall publish the place, time, and date of the scheduled public hearing. If the hearing is held via electronic means, the Commission shall publish the mechanism for access to the electronic hearing.

1. All persons wishing to be heard at the hearing shall notify the executive director of the Commission or other designated member in writing of their desire to appear and testify at the hearing not less than five business days before the scheduled date of the hearing.

2. Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.

3. All hearings will be recorded. A copy of the recording will be made available on request.

4. Nothing in this section shall be construed as requiring a separate hearing on each Rule. Rules may be grouped for the convenience of the Commission at hearings required by this section.

J. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the Commission shall consider all written and oral comments received.

K. If no written notice of intent to attend the public hearing by interested parties is received, the Commission may proceed with promulgation of the proposed Rule without a public hearing.

L. The Commission shall, by majority vote of all members, take final action on the proposed Rule and shall determine the effective date of the Rule, if any, based on the Rulemaking record and the full text of the Rule.

M. Upon determination that an emergency exists, the Commission may consider and adopt an emergency Rule without prior notice, opportunity for comment, or hearing, provided that the usual Rulemaking procedures provided in the Compact and in this section shall be retroactively applied to the Rule as soon as reasonably possible, in no event later than ninety days after the effective date of the Rule. For the purposes of this provision, an emergency Rule is one that must be adopted immediately in order to:

1. Meet an imminent threat to public health, safety, or welfare;

2. Prevent a loss of Commission or Member State funds;

3. Meet a deadline for the promulgation of an administrative Rule that is established by federal law or Rule; or

4. Protect public health and safety.

N. The Commission or an authorized committee of the Commission may direct revisions to a previously adopted Rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the website of the Commission. The revision shall be subject to challenge by any person for a period of thirty days after posting. The revision may be challenged only on grounds that the revision results in a material change to a Rule. A challenge shall be made in writing and delivered to the chair of the Commission prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the Commission.

SECTION 12. OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

A. Oversight

1. The executive, legislative, and judicial branches of State government in each Member State shall enforce this Compact and take all actions necessary and appropriate to effectuate the Compact's purposes and intent. The provisions of this Compact and the Rules promulgated hereunder shall have standing as statutory law.

2. All courts shall take judicial notice of the Compact and the Rules in any judicial or administrative proceeding in a Member State pertaining to the subject matter of this Compact which may affect the powers, responsibilities, or actions of the Commission.

3. The Commission shall be entitled to receive service of process in any such proceeding and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the Commission shall render a judgment or order void as to the Commission, this Compact, or promulgated Rules.

B. Default, Technical Assistance, and Termination

1. If the Commission determines that a Member State has defaulted in the performance of its obligations or responsibilities under this Compact or the promulgated Rules, the Commission shall:

a. Provide written notice to the defaulting State and other Member States of the nature of the default, the proposed means of curing the default and/or any other action to be taken by the Commission; and

b. Provide remedial training and specific technical assistance regarding the default.

C. If a State in default fails to cure the default, the defaulting State may be terminated from the Compact upon an affirmative vote of a majority of the Member States, and all rights, privileges and benefits conferred by this Compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending State of obligations or liabilities incurred during the period of default.

D. Termination of membership in the Compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the Commission to the governor, the majority and minority leaders of the defaulting State's legislature, and each of the Member States.

E. A State that has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

F. The Commission shall not bear any costs related to a State that is found to be in default or that has been terminated from the Compact, unless agreed upon in writing between the Commission and the defaulting State.

G. The defaulting State may appeal the action of the Commission by petitioning the United States District Court for the District of Columbia or the federal district where the Commission has its principal offices. The prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

H. Dispute Resolution

1. Upon request by a Member State, the Commission shall attempt to resolve disputes related to the Compact that arise among Member States and between Member and non-Member States.

2. The Commission shall promulgate a Rule providing for both mediation and binding dispute resolution for disputes as appropriate.

I. Enforcement

1. The Commission, in the reasonable exercise of its discretion, shall enforce the provisions and Rules of this Compact.

2. By majority vote, the Commission may initiate legal action in the United States District Court for the District of Columbia or the federal district where the Commission has its principal offices against a Member State in default to enforce compliance with the provisions of the Compact and its promulgated Rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

3. The remedies herein shall not be the exclusive remedies of the Commission. The Commission may pursue any other remedies available under federal or State law.

SECTION 13. DATE OF IMPLEMENTATION OF THE COUNSELING COMPACT COMMISSION AND ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENT

A. The Compact shall come into effect on the date on which the Compact statute is enacted into law in the tenth Member State. The provisions, which become effective at that time, shall be limited to the powers granted to the Commission relating to assembly and the promulgation of Rules. Thereafter, the Commission shall meet and exercise Rulemaking powers necessary to the implementation and administration of the Compact.

B. Any State that joins the Compact subsequent to the Commission's initial adoption of the Rules shall be subject to the Rules as they exist on the date on which the Compact becomes law in that State. Any Rule that has been previously adopted by the Commission shall have the full force and effect of law on the day the Compact becomes law in that State.

C. Any Member State may withdraw from this Compact by enacting a statute repealing the same.

1. A Member State's withdrawal shall not take effect until six months after enactment of the repealing statute.

2. Withdrawal shall not affect the continuing requirement of the withdrawing State's Professional Counseling Licensing Board to comply with the investigative and Adverse Action reporting requirements of the Compact prior to the effective date of withdrawal.

D. Nothing contained in this Compact shall be construed to invalidate or prevent any Professional Counseling licensure agreement or other cooperative arrangement between a Member State and a non-Member State that does not conflict with the provisions of this Compact.

E. This Compact may be amended by the Member States. No amendment to this Compact shall become effective and binding upon any Member State until it is enacted into the laws of all Member States.

SECTION 14. CONSTRUCTION AND SEVERABILITY

This Compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Compact shall be severable and if any phrase, clause, sentence or provision of this Compact is declared to be contrary to the constitution of any Member State or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any Member State, the Compact shall remain in full force and effect as to the remaining Member States and in full force and effect as to the Member State affected as to all severable matters.

SECTION 15. BINDING EFFECT OF COMPACT AND OTHER LAWS

A. A Licensee providing Professional Counseling services in a Remote State under the Privilege to Practice shall adhere to the laws and regulations, including scope of practice, of the Remote State.

B. Nothing herein prevents the enforcement of any other law of a Member State that is not inconsistent with the Compact.

C. Any laws in a Member State in conflict with the Compact are superseded to the extent of the conflict.

D. Any lawful actions of the Commission, including all Rules and bylaws properly promulgated by the Commission, are binding upon the Member States.

E. All permissible agreements between the Commission and the Member States are binding in accordance with their terms.

F. In the event any provision of the Compact exceeds the constitutional limits imposed on the legislature of any Member State, the provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that Member State.

Source: Laws 2022, LB752, § 1.

ARTICLE 43

OCCUPATIONAL THERAPY PRACTICE INTERSTATE COMPACT

Section
38-4301. Occupational Therapy Practice Interstate Compact.

38-4301 Occupational Therapy Practice Interstate Compact.

The State of Nebraska adopts the Occupational Therapy Practice Interstate Compact in the form substantially as follows:

ARTICLE 1
PURPOSE

The purpose of the Occupational Therapy Practice Interstate Compact is to facilitate interstate practice of occupational therapy with the goal of improving public access to occupational therapy services. The practice of occupational therapy occurs in the state where the patient or client is located at the time of the patient or client encounter. This Compact preserves the regulatory authority of states to protect public health and safety through the current system of state licensure.

This Compact is designed to achieve the following objectives:

A. Increase public access to occupational therapy services by providing for the mutual recognition of other Member State licenses;

B. Enhance the states' ability to protect the public health and safety;

C. Encourage the cooperation of Member States in regulating multistate occupational therapy practice;

D. Support spouses of relocating military members;

E. Enhance the exchange of licensure, investigative, and disciplinary information between Member States;

F. Allow a Remote State to hold a provider of services with a Compact Privilege in that state accountable to that state's practice standards; and

G. Facilitate the use of telehealth technology in order to increase access to occupational therapy services.

ARTICLE 2
DEFINITIONS

As used in the Occupational Therapy Practice Interstate Compact, and except as otherwise provided, the following definitions apply:

A. Active duty military means full-time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. Chapters 1209 and 1211.

B. Adverse action means any administrative, civil, equitable, or criminal action permitted by a state's laws which is imposed by a licensing board or other authority against an occupational therapist or occupational therapy assistant, including actions against an individual's license or Compact Privilege such as revocation, suspension, probation, monitoring of the Licensee, or restriction on the Licensee's practice.

C. Alternative program means a nondisciplinary monitoring process approved by an occupational therapy licensing board to address Impaired Practitioners.

D. Compact Privilege means the authorization, which is equivalent to a license, granted by a Remote State to allow a Licensee from another Member State to practice as an occupational therapist or practice as an occupational therapy assistant in the Remote State under its laws and rules. The practice of occupational therapy occurs in the Member State where the patient or client is located at the time of the patient or client encounter.

E. Continuing Competence/Education means a requirement, as a condition of license renewal, to provide evidence of participation in, and completion of, educational and professional activities relevant to practice or area of work.

F. Current significant investigative information means investigative information that a licensing board, after an inquiry or investigation that includes notification and an opportunity for the occupational therapist or occupational therapy assistant to respond, if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction.

G. Data system means a repository of information about Licensees, including, but not limited to, licensure, investigative information, Compact Privilege, and adverse action.

H. Encumbered License means a license in which an adverse action restricts the practice of occupational therapy by the Licensee and the adverse action has been reported to the National Practitioner Data Bank.

I. Executive Committee means a group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the Commission.

J. Home State means the Member State that is the Licensee's primary state of residence.

K. Impaired Practitioner means an individual whose professional practice is adversely affected by substance abuse, addiction, or other health-related conditions.

L. Investigative information means information, records, or documents received or generated by an occupational therapy licensing board pursuant to an investigation.

M. Jurisprudence requirement means the assessment of an individual's knowledge of the laws and rules governing the practice of occupational therapy in a state.

N. Licensee means an individual who currently holds an authorization from the state to practice as an occupational therapist or as an occupational therapy assistant.

O. Member State means a state that has enacted this Compact.

P. Occupational therapist means an individual who is licensed by a state to practice occupational therapy.

Q. Occupational therapy assistant means an individual who is licensed by a state to assist in the practice of occupational therapy.

R. Occupational therapy, occupational therapy practice, and the practice of occupational therapy mean the care and services provided by an occupational therapist or an occupational therapy assistant as set forth in the Member State's statutes and regulations.

S. Occupational Therapy Interstate Compact Commission or Commission means the national administrative body whose membership consists of all states that have enacted this Compact.

T. Occupational therapy licensing board or licensing board means the agency of a state that is responsible for the licensing and regulation of occupational therapists and occupational therapy assistants.

U. Primary state of residence means the state, also known as the Home State, in which an occupational therapist or occupational therapy assistant who is not active duty military declares a primary residence for legal purposes as verified by: Driver's license, federal income tax return, lease, deed, mortgage or voter registration or other verifying documentation as further defined by Commission Rules.

V. Remote State means a Member State other than the Home State, where a Licensee is exercising or seeking to exercise the Compact Privilege.

W. Rule means a regulation promulgated by the Commission that has the force of law.

X. State means any state, commonwealth, district, or territory of the United States of America that regulates the practice of occupational therapy.

Y. Single-State License means an occupational therapist or occupational therapy assistant license issued by a Member State that authorizes practice only within the issuing state and does not include a Compact Privilege in any other Member State.

Z. Telehealth means the application of telecommunication technology to deliver occupational therapy services for assessment, intervention, or consultation.

ARTICLE 3
STATE PARTICIPATION IN THIS COMPACT

A. To participate in this Compact, a Member State shall:

1. License occupational therapists and occupational therapy assistants;

2. Participate fully in the data system, including, but not limited to, using the Commission's unique identifier as defined in Rules of the Commission;

3. Have a mechanism in place for receiving and investigating complaints about Licensees;

4. Notify the Commission, in compliance with the terms of this Compact and Rules, of any adverse action or the availability of investigative information regarding a Licensee;

5. Implement or utilize procedures for considering the criminal history records of applicants for an initial Compact Privilege. These procedures shall include the submission of fingerprints or other biometric-based information by applicants for the purpose of obtaining an applicant's criminal history record information from the Federal Bureau of Investigation and the agency responsible for retaining that state's criminal records.

a. A Member State shall, within a timeframe established by the Commission, require a criminal background check for a Licensee seeking or applying for a Compact Privilege whose primary state of residence is that Member State, by receiving the results of the Federal Bureau of Investigation criminal record search, and shall use the results in making licensure decisions.

b. Communication between a Member State, the Commission, and among Member States regarding the verification of eligibility for licensure through this Compact shall not include any information received from the Federal Bureau of Investigation relating to a federal criminal records check performed by a Member State under Public Law 92-544.

6. Comply with the Rules of the Commission;

7. Utilize only a recognized national examination as a requirement for licensure pursuant to the Rules of the Commission; and

8. Have Continuing Competence/Education requirements as a condition for license renewal.

B. A Member State shall grant the Compact Privilege to a Licensee holding a valid unencumbered license in another Member State in accordance with the terms of this Compact and Rules.

C. Member States may charge a fee for granting a Compact Privilege.

D. A Member State shall provide for the state's delegate to attend all Commission meetings.

E. Individuals not residing in a Member State shall continue to be able to apply for a Member State's Single-State License as provided under the laws of each Member State. However, the Single-State License granted to these individuals shall not be recognized as granting the Compact Privilege in any other Member State.

F. Nothing in this Compact shall affect the requirements established by a Member State for the issuance of a Single-State License.

ARTICLE 4
COMPACT PRIVILEGE

A. To exercise the Compact Privilege under the terms and provisions of this Compact, the Licensee shall:

1. Hold a license in the Home State;

2. Have a valid United States social security number or national practitioner identification number;

3. Have no encumbrance on any state license;

4. Be eligible for a Compact Privilege in any Member State in accordance with sections D, F, G, and H of this Article 4;

5. Have paid all fines and completed all requirements resulting from any adverse action against any license or Compact Privilege, and two years have elapsed from the date of such completion;

6. Notify the Commission that the Licensee is seeking the Compact Privilege within a Remote State(s);

7. Pay any applicable fees, including any state fee, for the Compact Privilege;

8. Complete a criminal background check in accordance with subsection A5 of Article 3. The Licensee shall be responsible for the payment of any fee associated with the completion of such criminal background check;

9. Meet any jurisprudence requirements established by the Remote State(s) in which the Licensee is seeking a Compact Privilege; and

10. Report to the Commission adverse action taken by any non-Member State within thirty days from the date the adverse action is taken.

B. The Compact Privilege is valid until the expiration date of the Home State license. The Licensee must comply with the requirements of section A of this Article 4 to maintain this Compact Privilege in the Remote State.

C. A Licensee providing occupational therapy in a Remote State under the Compact Privilege shall function within the laws and regulations of the Remote State.

D. Occupational therapy assistants practicing in a Remote State shall be supervised by an occupational therapist licensed or holding a Compact Privilege in that Remote State.

E. A Licensee providing occupational therapy in a Remote State is subject to that state's regulatory authority. A Remote State may, in accordance with due process and that state's laws, remove a Licensee's Compact Privilege in the Remote State for a specific period of time, impose fines, or take any other necessary actions to protect the health and safety of its citizens. The Licensee may be ineligible for a Compact Privilege in any state until the specific time for removal has passed and all fines are paid.

F. If a Home State license is encumbered, the Licensee shall lose the Compact Privilege in any Remote State until the following occur:

1. The Home State license is no longer encumbered; and

2. Two years have elapsed from the date on which the Home State license is no longer encumbered in accordance with subsection F1 of this Article 4.

G. Once an Encumbered License in the Home State is restored to good standing, the Licensee must meet the requirements of section A of this Article 4 to obtain a Compact Privilege in any Remote State.

H. If a Licensee's Compact Privilege in any Remote State is removed, the individual may lose the Compact Privilege in any other Remote State until the following occur:

1. The specific period of time for which the Compact Privilege was removed has ended;

2. All fines have been paid and all conditions have been met;

3. Two years have elapsed from the date of completing requirements for subsections H1 and 2 of this Article 4; and

4. The Compact Privileges are reinstated by the Commission, and the compact data system is updated to reflect reinstatement.

I. If a Licensee's Compact Privilege in any Remote State is removed due to an erroneous charge, privileges shall be restored through the compact data system.

J. Once the requirements of section H of this Article 4 have been met, the Licensee must meet the requirements in section A of this Article 4 to obtain a Compact Privilege in a Remote State.

ARTICLE 5
OBTAINING A NEW HOME STATE LICENSE BY VIRTUE OF COMPACT PRIVILEGE

A. An occupational therapist and an occupational therapy assistant may hold a Home State license, issued by the Home State which allows for Compact Privileges, in only one Member State at a time.

B. If an occupational therapist or occupational therapy assistant changes primary state of residence by moving between two Member States:

1. The occupational therapist or occupational therapy assistant shall file an application for obtaining a new Home State license by virtue of a Compact Privilege, pay all applicable fees, and notify the current and new Home State in accordance with applicable Rules adopted by the Commission.

2. Upon receipt of an application for obtaining a new Home State license by virtue of compact privilege, the new Home State shall verify that the occupational therapist or occupational therapy assistant meets the pertinent criteria outlined in Article 4 via the data system, without need for primary source verification except for:

a. A Federal Bureau of Investigation fingerprint-based criminal background check if not previously performed or updated pursuant to applicable Rules adopted by the Commission in accordance with Public Law 92-544;

b. Other criminal background check as required by the new Home State; and

c. Submission of any requisite jurisprudence requirements of the new Home State.

3. The former Home State shall convert the former Home State license into a Compact Privilege once the new Home State has activated the new Home State license in accordance with applicable Rules adopted by the Commission.

4. Notwithstanding any other provision of this Compact, if the occupational therapist or occupational therapy assistant cannot meet the criteria in Article 4, the new Home State shall apply its requirements for issuing a new Single-State License.

5. The occupational therapist or the occupational therapy assistant shall pay all applicable fees to the new Home State in order to be issued a new Home State license.

C. If an occupational therapist or occupational therapy assistant changes primary state of residence by moving from a Member State to a non-Member State, or from a non-Member State to a Member State, the state criteria shall apply for issuance of a Single-State License in the new state.

D. Nothing in this Compact shall interfere with a Licensee's ability to hold a Single-State License in multiple states, however, for the purposes of this Compact, a Licensee shall have only one Home State license.

E. Nothing in this Compact shall affect the requirements established by a Member State for the issuance of a Single-State License.

ARTICLE 6
ACTIVE DUTY MILITARY PERSONNEL OR THEIR SPOUSES

Active duty military personnel, or their spouse, shall designate a Home State where the individual has a current license in good standing. The individual may retain the Home State designation during the period the service member is on active duty. Subsequent to designating a Home State, the individual shall only change their Home State through application for licensure in the new state or through the process described in Article 5.

ARTICLE 7
ADVERSE ACTIONS

A. A Home State shall have exclusive power to impose adverse action against a license issued by the Home State.

B. In addition to the other powers conferred by state law, a Remote State shall have the authority, in accordance with existing state due process law, to:

1. Take adverse action against an occupational therapist's or occupational therapy assistant's Compact Privilege within that Member State.

2. Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses as well as the production of evidence. Subpoenas issued by a licensing board in a Member State for the attendance and testimony of witnesses or the production of evidence from another Member State shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state in which the witnesses or evidence are located.

C. For purposes of taking adverse action, the Home State shall give the same priority and effect to reported conduct received from a Member State as it would if the conduct had occurred within the Home State. In so doing, the Home State shall apply its own state laws to determine appropriate action.

D. The Home State shall complete any pending investigations of an occupational therapist or occupational therapy assistant who changes primary state of residence during the course of the investigations. The Home State, where the investigations were initiated, shall also have the authority to take appropriate action and shall promptly report the conclusions of the investigations to the Commission data system. The Commission data system administrator shall promptly notify the new Home State of any adverse actions.

E. A Member State, if otherwise permitted by state law, may recover from the affected occupational therapist or occupational therapy assistant the costs of investigations and disposition of cases resulting from any adverse action taken against that occupational therapist or occupational therapy assistant.

F. A Member State may take adverse action based on the factual findings of the Remote State, provided that the Member State follows its own procedures for taking the adverse action.

G. Joint Investigations.

1. In addition to the authority granted to a Member State by its respective state occupational therapy laws and regulations or other applicable State law, any Member State may participate with other Member States in joint investigations of Licensees.

2. Member States shall share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under this Compact.

H. If an adverse action is taken by the Home State against an occupational therapist's or occupational therapy assistant's license, the occupational therapist's or occupational therapy assistant's Compact Privilege in all other Member States shall be deactivated until all encumbrances have been removed from the state license. All Home State disciplinary orders that impose adverse action against an occupational therapist's or occupational therapy assistant's license shall include a statement that the occupational therapist's or occupational therapy assistant's Compact Privilege is deactivated in all Member States during the pendency of the order.

I. If a Member State takes adverse action, it shall promptly notify the administrator of the data system. The administrator of the data system shall promptly notify the Home State of any adverse actions by Remote States.

J. Nothing in this Compact shall override a Member State's decision that participation in an alternative program may be used in lieu of adverse action.

ARTICLE 8
ESTABLISHMENT OF THE OCCUPATIONAL THERAPY COMPACT COMMISSION

A. The Member States hereby create and establish a joint public agency known as the Occupational Therapy Interstate Compact Commission:

1. The Commission is an instrumentality of the Compact States.

2. Venue is proper and judicial proceedings by or against the Commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the Commission is located. The Commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

3. Nothing in this Compact shall be construed to be a waiver of sovereign immunity.

B. Membership, Voting, and Meetings.

1. Each Member State shall have and be limited to one delegate selected by that Member State's licensing board.

2. The delegate shall be either:

a. A current member of the licensing board, who is an occupational therapist, occupational therapy assistant, or public member; or

b. An administrator of the licensing board.

3. Any delegate may be removed or suspended from office as provided by the law of the state from which the delegate is appointed.

4. The Member State board shall fill any vacancy occurring in the Commission within ninety days.

5. Each delegate shall be entitled to one vote with regard to the promulgation of Rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the Commission. A delegate shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for delegates' participation in meetings by telephone or other means of communication.

6. The Commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

7. The Commission shall establish by Rule a term of office for delegates.

C. The Commission shall have the following powers and duties:

1. Establish a Code of Ethics for the Commission;

2. Establish the fiscal year of the Commission;

3. Establish bylaws;

4. Maintain its financial records in accordance with the bylaws;

5. Meet and take such actions as are consistent with the provisions of this Compact and the bylaws;

6. Promulgate uniform Rules to facilitate and coordinate implementation and administration of this Compact. The Rules shall have the force and effect of law and shall be binding in all Member States;

7. Bring and prosecute legal proceedings or actions in the name of the Commission, provided that the standing of any state licensing board to sue or be sued under applicable law shall not be affected;

8. Purchase and maintain insurance and bonds;

9. Borrow, accept, or contract for services of personnel, including, but not limited to, employees of a Member State;

10. Hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of this Compact, and to establish the Commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;

11. Accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of the same; provided that at all times the Commission shall avoid any appearance of impropriety or conflict of interest;

12. Lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve, or use, any property, real, personal, or mixed; provided that at all times the Commission shall avoid any appearance of impropriety;

13. Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed;

14. Establish a budget and make expenditures;

15. Borrow money;

16. Appoint committees, including standing committees composed of members, state regulators, state legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in this Compact and the bylaws;

17. Provide and receive information from, and cooperate with, law enforcement agencies;

18. Establish and elect an executive committee; and

19. Perform such other functions as may be necessary or appropriate to achieve the purposes of this Compact consistent with the state regulation of occupational therapy licensure and practice.

D. The Executive Committee.

The executive committee shall have the power to act on behalf of the Commission according to the terms of this Compact.

1. The executive committee shall be composed of nine members:

a. Seven voting members who are elected by the Commission from the current membership of the Commission;

b. One ex officio, nonvoting member from a recognized national occupational therapy professional association; and

c. One ex officio, nonvoting member from a recognized national occupational therapy certification organization.

2. The ex officio members will be selected by their respective organizations.

3. The Commission may remove any member of the executive committee as provided in bylaws.

4. The executive committee shall meet at least annually.

5. The executive committee shall have the following duties and responsibilities:

a. Recommend to the entire Commission changes to the Rules or bylaws, changes to this Compact, fees paid by Member States such as annual dues, and any Commission Compact fee charged to Licensees for the Compact Privilege;

b. Ensure Compact administration services are appropriately provided, contractual or otherwise;

c. Prepare and recommend the budget;

d. Maintain financial records on behalf of the Commission;

e. Monitor Compact compliance of Member States and provide compliance reports to the Commission;

f. Establish additional committees as necessary; and

g. Other duties as provided in Rules or bylaws.

E. Meetings of the Commission.

1. All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the Rulemaking provisions in Article 10.

2. The Commission or the executive committee or other committees of the Commission may convene in a closed, nonpublic meeting if the Commission or executive committee or other committees of the Commission must discuss:

a. Noncompliance of a Member State with its obligations under this Compact;

b. The employment, compensation, discipline, or other matters, practices, or procedures related to specific employees or other matters related to the Commission's internal personnel practices and procedures;

c. Current, threatened, or reasonably anticipated litigation;

d. Negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate;

e. Accusing any person of a crime or formally censuring any person;

f. Disclosure of trade secrets or commercial or financial information that is privileged or confidential;

g. Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

h. Disclosure of investigative records compiled for law enforcement purposes;

i. Disclosure of information related to any investigative reports prepared by or on behalf of or for use of the Commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to this Compact; or

j. Matters specifically exempted from disclosure by federal or Member State statute.

3. If a meeting, or portion of a meeting, is closed pursuant to this provision, the Commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision.

4. The Commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefor, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the Commission or order of a court of competent jurisdiction.

F. Financing of the Commission.

1. The Commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

2. The Commission may accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services.

3. The Commission may levy on and collect an annual assessment from each Member State or impose fees on other parties to cover the cost of the operations and activities of the Commission and its staff, which must be in a total amount sufficient to cover its annual budget as approved by the Commission each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Commission, which shall promulgate a Rule binding upon all Member States.

4. The Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Commission pledge the credit of any of the Member States, except by and with the authority of the Member State.

5. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the Commission.

G. Qualified Immunity, Defense, and Indemnification.

1. The members, officers, executive director, employees, and representatives of the Commission shall have no greater liability than a state employee would have under the same or similar circumstances, either personally or in their official capacity, for any claim for damage to or loss of property or personal

injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred, within the scope of Commission employment, duties, or responsibilities; provided that nothing in this paragraph shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person.

2. The Commission shall defend any member, officer, executive director, employee, or representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and provided further, that the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct.

3. The Commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the Commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided that the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

ARTICLE 9
DATA SYSTEM

A. The Commission shall provide for the development, maintenance, and utilization of a coordinated database and reporting system containing licensure, adverse action, and investigative information on all licensed individuals in Member States.

B. A Member State shall submit a uniform data set to the data system on all individuals to whom this Compact is applicable utilizing a unique identifier as required by the Rules of the Commission, including:

1. Identifying information;

2. Licensure data;

3. Adverse actions against a license or Compact Privilege;

4. Nonconfidential information related to alternative program participation;

5. Any denial of application for licensure, and the reason for such denial;

6. Other information that may facilitate the administration of this Compact, as determined by the Rules of the Commission; and

7. Current significant investigative information.

C. Current significant investigative information and other investigative information pertaining to a Licensee in any Member State will only be available to other Member States.

D. The Commission shall promptly notify all Member States of any adverse action taken against a Licensee or an individual applying for a license. Adverse

action information pertaining to a Licensee in any Member State will be available to any other Member State.

E. Member States contributing information to the data system may designate information that may not be shared with the public without the express permission of the contributing state.

F. Any information submitted to the data system that is subsequently required to be expunged by the laws of the Member State contributing the information shall be removed from the data system.

ARTICLE 10
RULEMAKING

A. The Commission shall exercise its Rulemaking powers pursuant to the criteria set forth in this Article and the Rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each Rule or amendment.

B. The Commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purposes of the Compact. Notwithstanding the foregoing, in the event the Commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of the Compact, or the powers granted hereunder, then such an action by the Commission shall be invalid and have no force and effect.

C. If a majority of the legislatures of the Member States rejects a Rule, by enactment of a statute or resolution in the same manner used to adopt this Compact within four years of the date of adoption of the Rule, then such Rule shall have no further force and effect in any Member State.

D. Rules or amendments to the Rules shall be adopted at a regular or special meeting of the Commission.

E. Prior to promulgation and adoption of a final Rule or Rules by the Commission, and at least thirty days in advance of the meeting at which the Rule will be considered and voted upon, the Commission shall file a Notice of Proposed Rulemaking:

1. On the website of the Commission or other publicly accessible platform; and

2. On the website of each Member State occupational therapy licensing board or other publicly accessible platform or the publication in which each State would otherwise publish proposed Rules.

F. The Notice of Proposed Rulemaking shall include:

1. The proposed time, date, and location of the meeting in which the Rule will be considered and voted upon;

2. The text of the proposed Rule or amendment and the reason for the proposed Rule;

3. A request for comments on the proposed Rule from any interested person; and

4. The manner in which interested persons may submit notice to the Commission of their intention to attend the public hearing and any written comments.

G. Prior to adoption of a proposed Rule, the Commission shall allow persons to submit written data, facts, opinions, and arguments, which shall be made available to the public.

H. The Commission shall grant an opportunity for a public hearing before it adopts a Rule or amendment if a hearing is requested by:

1. At least twenty-five persons;

2. A State or federal governmental subdivision or agency; or

3. An association or organization having at least twenty-five members.

I. If a hearing is held on the proposed Rule or amendment, the Commission shall publish the place, time, and date of the scheduled public hearing. If the hearing is held via electronic means, the Commission shall publish the mechanism for access to the electronic hearing.

1. All persons wishing to be heard at the hearing shall notify the executive director of the Commission or other designated member in writing of their desire to appear and testify at the hearing not less than five business days before the scheduled date of the hearing.

2. Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.

3. All hearings will be recorded. A copy of the recording will be made available on request.

4. Nothing in this Article shall be construed as requiring a separate hearing on each Rule.

Rules may be grouped for the convenience of the Commission at hearings required by this Article.

J. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the Commission shall consider all written and oral comments received.

K. If no written notice of intent to attend the public hearing by interested parties is received, the Commission may proceed with promulgation of the proposed Rule without a public hearing.

L. The Commission shall, by majority vote of all members, take final action on the proposed Rule and shall determine the effective date of the Rule, if any, based on the Rulemaking record and the full text of the Rule.

M. Upon determination that an emergency exists, the Commission may consider and adopt an emergency Rule without prior notice, opportunity for comment, or hearing; provided that the usual Rulemaking procedures provided in this Compact and in this Article shall be retroactively applied to the Rule as soon as reasonably possible, in no event later than ninety days after the effective date of the Rule. For the purposes of this provision, an emergency Rule is one that must be adopted immediately in order to:

1. Meet an imminent threat to public health, safety, or welfare;

2. Prevent a loss of Commission or Member State funds;

3. Meet a deadline for the promulgation of an administrative Rule that is established by federal law or Rule; or

4. Protect public health and safety.

N. The Commission or an authorized committee of the Commission may direct revisions to a previously adopted Rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the

website of the Commission. The revision shall be subject to challenge by any person for a period of thirty days after posting. The revision may be challenged only on grounds that the revision results in a material change to a Rule. A challenge shall be made in writing and delivered to the chair of the Commission prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the Commission.

ARTICLE 11
OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

A. Oversight.

1. The executive, legislative, and judicial branches of state government in each Member State shall enforce this Compact and take all actions necessary and appropriate to effectuate this Compact's purposes and intent. The provisions of this Compact and the Rules promulgated hereunder shall have standing as statutory law.

2. All courts shall take judicial notice of this Compact and the Rules in any judicial or administrative proceeding in a Member State pertaining to the subject matter of this Compact which may affect the powers, responsibilities, or actions of the Commission.

3. The Commission shall be entitled to receive service of process in any such proceeding and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the Commission shall render a judgment or order void as to the Commission, this Compact, or promulgated Rules.

B. Default, Technical Assistance, and Termination.

1. If the Commission determines that a Member State has defaulted in the performance of its obligations or responsibilities under this Compact or the promulgated Rules, the Commission shall:

a. Provide written notice to the defaulting state and other Member States of the nature of the default, the proposed means of curing the default, and any other action to be taken by the Commission; and

b. Provide remedial training and specific technical assistance regarding the default.

2. If a state in default fails to cure the default, the defaulting state may be terminated from this Compact upon an affirmative vote of a majority of the Member States, and all rights, privileges, and benefits conferred by this Compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

3. Termination of membership in this Compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the Commission to the governor, the majority and minority leaders of the defaulting State's legislature, and each of the Member States.

4. A state that has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

5. The Commission shall not bear any costs related to a state that is found to be in default or that has been terminated from this Compact, unless agreed upon in writing between the Commission and the defaulting state.

6. The defaulting state may appeal the action of the Commission by petitioning the United States District Court for the District of Columbia or the federal district where the Commission has its principal offices. The prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

C. Dispute Resolution.

1. Upon request by a Member State, the Commission shall attempt to resolve disputes related to this Compact that arise among Member States and between Member and non-Member States.

2. The Commission shall promulgate a Rule providing for both mediation and binding dispute resolution for disputes as appropriate.

D. Enforcement.

1. The Commission, in the reasonable exercise of its discretion, shall enforce the provisions and Rules of this Compact.

2. By majority vote, the Commission may initiate legal action in the United States District Court for the District of Columbia or the federal district where the Commission has its principal offices against a Member State in default to enforce compliance with the provisions of this Compact and its promulgated Rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

3. The remedies herein shall not be the exclusive remedies of the Commission. The Commission may pursue any other remedies available under federal or State law.

ARTICLE 12
DATE OF IMPLEMENTATION OF THE INTERSTATE COMMISSION FOR OCCUPATIONAL THERAPY PRACTICE AND ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENT

A. This Compact shall come into effect on the date on which this Compact statute is enacted into law in the tenth Member State. The provisions, which become effective at that time, shall be limited to the powers granted to the Commission relating to assembly and the promulgation of Rules. Thereafter, the Commission shall meet and exercise Rulemaking powers necessary to the implementation and administration of this Compact.

B. Any state that joins this Compact subsequent to the Commission's initial adoption of the Rules shall be subject to the Rules as they exist on the date on which this Compact becomes law in that state. Any Rule that has been previously adopted by the Commission shall have the full force and effect of law on the day this Compact becomes law in that State.

C. Any Member State may withdraw from this Compact by enacting a statute repealing the same.

1. A Member State's withdrawal shall not take effect until six months after enactment of the repealing statute.

2. Withdrawal shall not affect the continuing requirement of the withdrawing state's occupational therapy licensing board to comply with the investigative and adverse action reporting requirements of this Compact prior to the effective date of withdrawal.

D. Nothing contained in this Compact shall be construed to invalidate or prevent any occupational therapy licensure agreement or other cooperative arrangement between a Member State and a non-Member State that does not conflict with the provisions of this Compact.

E. This Compact may be amended by the Member States. No amendment to this Compact shall become effective and binding upon any Member State until it is enacted into the laws of all Member States.

ARTICLE 13
CONSTRUCTION AND SEVERABILITY

This Compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Compact shall be severable and if any phrase, clause, sentence, or provision of this Compact is declared to be contrary to the constitution of any Member State or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any Member State, this Compact shall remain in full force and effect as to the remaining Member States and in full force and effect as to the Member State affected as to all severable matters.

ARTICLE 14
BINDING EFFECT OF COMPACT AND OTHER LAWS

A. A Licensee providing occupational therapy in a Remote State under the Compact Privilege shall function within the laws and regulations of the Remote State.

B. Nothing herein prevents the enforcement of any other law of a Member State that is not inconsistent with this Compact.

C. Any laws in a Member State in conflict with this Compact are superseded to the extent of the conflict.

D. Any lawful actions of the Commission, including all Rules and bylaws promulgated by the Commission, are binding upon the Member States.

E. All agreements between the Commission and the Member States are binding in accordance with their terms.

F. In the event any provision of this Compact exceeds the constitutional limits imposed on the legislature of any Member State, the provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that Member State.

Source: Laws 2022, LB752, § 2.

ARTICLE 44

BEHAVIOR ANALYST PRACTICE ACT

Section
38-4401. Act, how cited.
38-4402. Definitions, where found.

Section

38-4401 Act, how cited.

Sections 38-4401 to 38-4414 shall be known and may be cited as the Behavior Analyst Practice Act.

Source: Laws 2023, LB227, § 1.

38-4402 Definitions, where found.

For purposes of the Behavior Analyst Practice Act, the definitions found in sections 38-4403 to 38-4408 apply.

Source: Laws 2023, LB227, § 2.

38-4403 Behavior technician, defined.

Behavior technician means an individual who practices under the close, ongoing supervision of a licensed behavior analyst or a licensed assistant behavior analyst.

Source: Laws 2023, LB227, § 3.

38-4404 Board, defined.

Board means the Board of Behavior Analysts.

Source: Laws 2023, LB227, § 4.

38-4405 Certifying entity, defined.

Certifying entity means the Behavior Analyst Certification Board or another equivalent entity approved by the Board of Behavior Analysts which has programs to credential practitioners of applied behavior analysis that have substantially equivalent requirements as the programs offered by the Behavior Analyst Certification Board as determined by the Board of Behavior Analysts.

Source: Laws 2023, LB227, § 5.

38-4406 Licensed assistant behavior analyst, defined.

Licensed assistant behavior analyst means an individual practicing under the close ongoing supervision of a licensed behavior analyst and who also meets the requirements specified in section 38-4410 and is issued a license as a licensed assistant behavior analyst under the Behavior Analyst Practice Act by the department.

Source: Laws 2023, LB227, § 6.

38-4407 Licensed behavior analyst, defined.

Licensed behavior analyst means an individual who meets the requirements specified in section 38-4410 and who is issued a license as a licensed behavior analyst under the Behavior Analyst Practice Act by the department.

Source: Laws 2023, LB227, § 7.

38-4408 Practice of applied behavior analysis, defined.

(1) Practice of applied behavior analysis means the design, implementation, and evaluation of instructional and environmental modifications to produce socially significant improvements in human behavior.

(2) Practice of applied behavior analysis includes the empirical identification of functional relations between behavior and environmental factors, known as functional assessment and analysis.

(3) Applied behavior analysis interventions (a) are based on scientific research and direct and indirect observation and measurement of behavior and environment and (b) utilize contextual factors, motivating operations, antecedent stimuli, positive reinforcement, and other procedures to help individuals develop new behaviors, increase or decrease existing behaviors, and emit behaviors under specific environmental conditions.

(4) Practice of applied behavior analysis excludes (a) diagnosis of disorders, (b) psychological testing, (c) psychotherapy, (d) cognitive therapy, (e) psychoanalysis, (f) counseling, (g) functional movement analysis, (h) practice by persons required to be credentialed under the Audiology and Speech-Language Pathology Practice Act in the diagnosis or treatment of hearing, speech, communication, or swallowing disorders, or (i) practice by persons required to be credentialed under the Occupational Therapy Practice Act in the treatment of occupational performance dysfunction, such as activities of daily living and instrumental activities of daily living.

Source: Laws 2023, LB227, § 8.

Cross References

Audiology and Speech-Language Pathology Practice Act, see section 38-501.
Occupational Therapy Practice Act, see section 38-2501.

38-4409 Act; applicability; how construed.

The Behavior Analyst Practice Act shall not be construed as prohibiting the practice of any of the following:

(1) A licensed psychologist in the State of Nebraska and any person who delivers psychological services under the supervision of a licensed psychologist, if the applied behavior analysis services are provided within the scope of the licensed psychologist's education, training, and competence and the licensed psychologist does not represent that the psychologist is a licensed behavior analyst unless the psychologist is licensed as a behavior analyst under the act;

(2) An individual licensed to practice any other profession in the State of Nebraska and any person who delivers services under the supervision of the licensed professional, if (a) applied behavior analysis is stated in the Uniform Credentialing Act as being in the scope of practice of the profession, (b) the applied behavior analysis services provided are within the scope of the licensed professional's education, training, and competence, and (c) the licensed profes-

sional does not represent that the professional is a licensed behavior analyst unless the professional is licensed as a behavior analyst under the act;

(3) A behavior technician who delivers applied behavior analysis services under the extended authority and direction of a licensed behavior analyst or a licensed assistant behavior analyst;

(4) A caregiver of a recipient of applied behavior analysis services who delivers those services to the recipient under the extended authority and direction of a licensed behavior analyst. A caregiver shall not represent that the caregiver is a professional behavior analyst;

(5) A behavior analyst who practices with animals, including applied animal behaviorists and animal trainers. Such a behavior analyst may use the title ''behavior analyst'' but may not represent that the behavior analyst is a licensed behavior analyst unless the behavior analyst is licensed under the act;

(6) A professional who provides general applied behavior analysis services to organizations, so long as those services are for the benefit of the organizations and do not involve direct services to individuals. Such a professional may use the title ''behavior analyst'' but may not represent that the professional is a licensed behavior analyst unless the professional is licensed under the act;

(7) A matriculated college or university student or postdoctoral fellow whose applied behavior analysis activity is part of a defined program of study, course, practicum, internship, or fellowship and is directly supervised by a licensed behavior analyst licensed in Nebraska or a qualified faculty member of a college or university offering a program of study, course, practicum, internship, or fellowship in applied behavior analysis. Such student or fellow shall not represent that the student or fellow is a professional behavior analyst and shall use a title that clearly indicates the trainee status, such as student, intern, or trainee;

(8) An unlicensed individual pursuing experience in applied behavior analysis consistent with the experience requirements of the certifying entity, if such experience is supervised in accordance with the requirements of the certifying entity;

(9) An individual who teaches behavior analysis or conducts behavior-analytic research, if such activities do not involve the direct delivery of applied behavior analysis services beyond the typical parameters of applied research. Such an individual may use the title ''behavior analyst'' but shall not represent that the individual is a licensed behavior analyst unless the individual is licensed under the act; and

(10) An individual employed by a school district performing the duties for which employed. Such an individual shall not represent that the individual is a licensed behavior analyst unless the individual is licensed under the act, shall not offer applied behavior analysis services to any person or entity other than the school which employs the individual, and shall not accept remuneration for providing applied behavior analysis services other than the remuneration received for the duties for which employed by the school employer.

Source: Laws 2023, LB227, § 9.

38-4410 Licensed behavior analyst; licensed assistant behavior analyst; license required; when; application; minimum standards.

(1) Beginning one year after September 2, 2023, each applicant for licensure as a licensed behavior analyst or licensed assistant behavior analyst shall submit an application that includes evidence that the applicant meets the requirements of the Uniform Credentialing Act for a license as a licensed behavior analyst or licensed assistant behavior analyst, as applicable.

(2) The board shall adopt rules and regulations to specify minimum standards required for a license as a licensed behavior analyst or a licensed assistant behavior analyst as provided in section 38-126. The board shall include certification by the certifying entity as a Board Certified Behavior Analyst® or a Board Certified Behavior Analyst-Doctoral® as part of the minimum standards for licensure as a licensed behavior analyst. The board shall include certification by the certifying entity as a Board Certified Assistant Behavior Analyst® as part of the minimum standards for licensure as a licensed assistant behavior analyst.

Source: Laws 2023, LB227, § 10.

38-4411 Temporary license.

(1) A behavior analyst or an assistant behavior analyst who is licensed in another jurisdiction or certified by the certifying entity to practice independently and who provides applied behavior analysis services in the State of Nebraska on a short-term basis may apply for a temporary license. An applicant for a temporary license shall submit evidence that the practice in Nebraska will be temporary as determined by the board according to rules and regulations adopted and promulgated pursuant to section 38-126. The department shall issue a temporary license under this subsection only if the department verifies the applicant's licensure or certification status with the relevant entity.

(2) An applicant for licensure as a licensed behavior analyst or as a licensed assistant behavior analyst under the Behavior Analyst Practice Act who is a military spouse may apply for a temporary license as provided in section 38-129.01.

Source: Laws 2023, LB227, § 11.

38-4412 Behavior technician; prohibited acts.

A behavior technician shall not represent that the technician is a professional behavior analyst and shall use a title that indicates the nonprofessional status, such as Registered Behavior Technician®, behavior technician, or tutor.

A behavior technician shall not design assessment or intervention plans or procedures but may deliver services as assigned by the supervisor responsible for the technician's work as designated by the licensed behavior analyst.

Source: Laws 2023, LB227, § 12.

38-4413 Code of conduct.

The board shall adopt a code of conduct for licensed behavior analysts and licensed assistant behavior analysts. The code of conduct shall be based on the Ethics Code for Behavior Analysts adopted by the certifying entity.

Source: Laws 2023, LB227, § 13.

38-4414 Fees.

The department shall establish and collect fees for initial licensure and renewal under the Behavior Analyst Practice Act as provided in sections 38-151 to 38-157.

Source: Laws 2023, LB227, § 14.

ARTICLE 45
SOCIAL WORKER LICENSURE COMPACT

Section
38-4501. Social Worker Licensure Compact.

38-4501 Social Worker Licensure Compact.

This section shall be known and may be cited as the Social Worker Licensure Compact. The State of Nebraska adopts the Social Worker Licensure Compact in the form substantially as follows:

SECTION 1. PURPOSE

The purpose of this Compact is to facilitate interstate practice of Regulated Social Workers by improving public access to competent Social Work Services. The Compact preserves the regulatory authority of States to protect public health and safety through the current system of State licensure.

This Compact is designed to achieve the following objectives:

A. Increase public access to Social Work Services;

B. Reduce overly burdensome and duplicative requirements associated with holding multiple licenses;

C. Enhance the Member States' ability to protect the public's health and safety;

D. Encourage the cooperation of Member States in regulating multistate practice;

E. Promote mobility and address workforce shortages by eliminating the necessity for licenses in multiple States by providing for the mutual recognition of other Member State licenses;

F. Support military families;

G. Facilitate the exchange of licensure and disciplinary information among Member States;

H. Authorize all Member States to hold a Regulated Social Worker accountable for abiding by a Member State's laws, regulations, and applicable professional standards in the Member State in which the client is located at the time care is rendered; and

I. Allow for the use of telehealth to facilitate increased access to regulated Social Work Services.

SECTION 2. DEFINITIONS

As used in this Compact, and except as otherwise provided, the following definitions shall apply:

A. ''Active Military Member'' means any individual with full-time duty status in the active armed forces of the United States, including members of the National Guard and Reserve.

B. ''Adverse Action'' means any administrative, civil, equitable, or criminal action permitted by a State's laws which is imposed by a Licensing Authority or

other authority against a Regulated Social Worker, including actions against an individual's license or Multistate Authorization to Practice such as revocation, suspension, probation, monitoring of the Licensee, limitation on the Licensee's practice, or any other Encumbrance on licensure affecting a Regulated Social Worker's authorization to practice, including issuance of a cease and desist action.

C. ''Alternative Program'' means a nondisciplinary monitoring or practice remediation process approved by a Licensing Authority to address practitioners with an Impairment.

D. ''Charter Member States'' means Member States who have enacted legislation to adopt this Compact where such legislation predates the effective date of this Compact as described in Section 14 of this Compact.

E. ''Compact Commission'' or ''Commission'' means the government agency whose membership consists of all States that have enacted this Compact, which is known as the Social Work Licensure Compact Commission, as described in Section 10 of this Compact, and which shall operate as an instrumentality of the Member States.

F. ''Current Significant Investigative Information'' means:

1. Investigative information that a Licensing Authority, after a preliminary inquiry that includes notification and an opportunity for the Regulated Social Worker to respond, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction as may be defined by the Commission; or

2. Investigative information that indicates that the Regulated Social Worker represents an immediate threat to public health and safety, as may be defined by the Commission, regardless of whether the Regulated Social Worker has been notified and has had an opportunity to respond.

G. ''Data System'' means a repository of information about Licensees, including continuing education, examination, licensure, Current Significant Investigative Information, Disqualifying Event, Multistate License, and Adverse Action information or other information as required by the Commission.

H. ''Domicile'' means the jurisdiction in which the Licensee resides and intends to remain indefinitely.

I. ''Disqualifying Event'' means any Adverse Action or incident which results in an Encumbrance that disqualifies or makes the Licensee ineligible to either obtain, retain, or renew a Multistate License.

J. ''Encumbrance'' means a revocation or suspension of, or any limitation on, the full and unrestricted practice of Social Work licensed and regulated by a Licensing Authority.

K. ''Executive Committee'' means a group of delegates elected or appointed to act on behalf of, and within the powers granted to them by, the Compact and Commission.

L. ''Home State'' means the Member State that is the Licensee's primary Domicile.

M. ''Impairment'' means a condition that may impair a practitioner's ability to engage in full and unrestricted practice as a Regulated Social Worker without some type of intervention and may include alcohol and drug dependence, mental health impairment, and neurological or physical impairments.

N. ''Licensee'' means an individual who currently holds a license from a State to practice as a Regulated Social Worker.

O. ''Licensing Authority'' means the board or agency of a Member State, or equivalent, that is responsible for the licensing and regulation of Regulated Social Workers.

P. ''Member State'' means a state, commonwealth, district, or territory of the United States of America that has enacted this Compact.

Q. ''Multistate Authorization to Practice'' means a legally authorized privilege to practice, which is equivalent to a license, associated with a Multistate License permitting the practice of Social Work in a Remote State.

R. ''Multistate License'' means a license to practice as a Regulated Social Worker issued by a Home State Licensing Authority that authorizes the Regulated Social Worker to practice in all Member States under Multistate Authorization to Practice.

S. ''Qualifying National Exam'' means a national licensing examination approved by the Commission.

T. ''Regulated Social Worker'' means any clinical, master's, or bachelor's Social Worker licensed by a Member State regardless of the title used by that Member State.

U. ''Remote State'' means a Member State other than the Licensee's Home State.

V. ''Rule'' or ''Rule of the Commission'' means a regulation duly promulgated by the Commission, as authorized by the Compact, that has the force of law.

W. ''Single State License'' means a Social Work license issued by any State that authorizes practice only within the issuing State and does not include Multistate Authorization to Practice in any Member State.

X. ''Social Work'' or ''Social Work Services'' means the application of social work theory, knowledge, methods, ethics, and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial functioning of individuals, couples, families, groups, organizations, and communities through the care and services provided by a Regulated Social Worker as set forth in the Member State's statutes and regulations in the State where the services are being provided.

Y. ''State'' means any state, commonwealth, district, or territory of the United States of America that regulates the practice of Social Work.

Z. ''Unencumbered License'' means a license that authorizes a Regulated Social Worker to engage in the full and unrestricted practice of Social Work.

SECTION 3. STATE PARTICIPATION IN THE COMPACT

A. To be eligible to participate in the Compact, a potential Member State must currently meet all of the following criteria:

1. License and regulate the practice of Social Work at either the clinical, master's, or bachelor's category.

2. Require applicants for licensure to graduate from a program that is:

a. Operated by a college or university recognized by the Licensing Authority;

b. Accredited, or in candidacy by an institution that subsequently becomes accredited, by an accrediting agency recognized by either:

i. the Council for Higher Education Accreditation, or its successor; or

ii. the United States Department of Education; and

c. Corresponds to the licensure sought as outlined in Section 4 of this Compact.

3. Require applicants for clinical licensure to complete a period of supervised practice.

4. Have a mechanism in place for receiving, investigating, and adjudicating complaints about Licensees.

B. To maintain membership in the Compact a Member State shall:

1. Require that applicants for a Multistate License pass a Qualifying National Exam for the corresponding category of Multistate License sought as outlined in Section 4 of this Compact;

2. Participate fully in the Commission's Data System, including using the Commission's unique identifier as defined in Rules;

3. Notify the Commission, in compliance with the terms of the Compact and Rules, of any Adverse Action or the availability of Current Significant Investigative Information regarding a Licensee;

4. Implement procedures for considering the criminal history records of applicants for a Multistate License. Such procedures shall include the submission of fingerprints or other biometric-based information by applicants for the purpose of obtaining an applicant's criminal history record information from the Federal Bureau of Investigation and the agency responsible for retaining that State's criminal records;

5. Comply with the Rules of the Commission;

6. Require an applicant to obtain or retain a license in the Home State and meet the Home State's qualifications for licensure or renewal of licensure, as well as all other applicable Home State laws;

7. Authorize a Licensee holding a Multistate License in any Member State to practice in accordance with the terms of the Compact and Rules of the Commission; and

8. Designate a delegate to participate in the Commission meetings.

C. A Member State meeting the requirements of Section 3.A. and 3.B. of this Compact shall designate the categories of Social Work licensure that are eligible for issuance of a Multistate License for applicants in such Member State. To the extent that any Member State does not meet the requirements for participation in the Compact at any particular category of Social Work licensure, such Member State may choose, but is not obligated, to issue a Multistate License to applicants that otherwise meet the requirements of Section 4 of this Compact for issuance of a Multistate License in such category or categories of licensure.

D. The Home State may charge a fee for granting the Multistate License.

SECTION 4. SOCIAL WORKER PARTICIPATION IN THE COMPACT

A. To be eligible for a Multistate License under the terms and provisions of the Compact, an applicant, regardless of category, must:

1. Hold or be eligible for an active, Unencumbered License in the Home State;

2. Pay any applicable fees, including any State fee, for the Multistate License;

3. Submit, in connection with an application for a Multistate License, fingerprints or other biometric data for the purpose of obtaining criminal history record information from the Federal Bureau of Investigation and the agency responsible for retaining that State's criminal records;

4. Notify the Home State of any Adverse Action, Encumbrance, or restriction on any professional license taken by any Member State or non-Member State within thirty days from the date the action is taken;

5. Meet any continuing competence requirements established by the Home State; and

6. Abide by the laws, regulations, and applicable standards in the Member State where the client is located at the time care is rendered.

B. An applicant for a clinical-category Multistate License must meet all of the following requirements:

1. Fulfill a competency requirement, which shall be satisfied by either:

a. Passage of a clinical-category Qualifying National Exam;

b. Licensure of the applicant in their Home State at the clinical category, beginning prior to such time as a Qualifying National Exam was required by the Home State and accompanied by a period of continuous Social Work licensure thereafter, all of which may be further governed by the Rules of the Commission; or

c. The substantial equivalency of the foregoing competency requirements which the Commission may determine by Rule.

2. Attain at least a master's degree in Social Work from a program that is:

a. Operated by a college or university recognized by the Licensing Authority; and

b. Accredited, or in candidacy that subsequently becomes accredited, by an accrediting agency recognized by either:

i. the Council for Higher Education Accreditation or its successor; or

ii. the United States Department of Education.

3. Fulfill a practice requirement, which shall be satisfied by demonstrating completion of either:

a. A period of postgraduate supervised clinical practice equal to a minimum of three thousand hours;

b. A minimum of two years of full-time postgraduate supervised clinical practice; or

c. The substantial equivalency of the foregoing practice requirements which the Commission may determine by Rule.

C. An applicant for a master's-category Multistate License must meet all of the following requirements:

1. Fulfill a competency requirement, which shall be satisfied by either:

a. Passage of a master's-category Qualifying National Exam;

b. Licensure of the applicant in their Home State at the master's category, beginning prior to such time as a Qualifying National Exam was required by the Home State at the master's category and accompanied by a continuous period of Social Work licensure thereafter, all of which may be further governed by the Rules of the Commission; or

c. The substantial equivalency of the foregoing competency requirements which the Commission may determine by Rule.

2. Attain at least a master's degree in Social Work from a program that is:

a. Operated by a college or university recognized by the Licensing Authority; and

b. Accredited, or in candidacy that subsequently becomes accredited, by an accrediting agency recognized by either:

i. the Council for Higher Education Accreditation or its successor; or

ii. the United States Department of Education.

D. An applicant for a bachelor's-category Multistate License must meet all of the following requirements:

1. Fulfill a competency requirement, which shall be satisfied by either:

a. Passage of a bachelor's-category Qualifying National Exam;

b. Licensure of the applicant in their Home State at the bachelor's category, beginning prior to such time as a Qualifying National Exam was required by the Home State and accompanied by a period of continuous Social Work licensure thereafter, all of which may be further governed by the Rules of the Commission; or

c. The substantial equivalency of the foregoing competency requirements which the Commission may determine by Rule.

2. Attain at least a bachelor's degree in Social Work from a program that is:

a. Operated by a college or university recognized by the Licensing Authority; and

b. Accredited, or in candidacy that subsequently becomes accredited, by an accrediting agency recognized by either:

i. the Council for Higher Education Accreditation or its successor; or

ii. the United States Department of Education.

E. The Multistate License for a Regulated Social Worker is subject to the renewal requirements of the Home State. The Regulated Social Worker must maintain compliance with the requirements of Section 4.A. of this Compact to be eligible to renew a Multistate License.

F. The Regulated Social Worker's services in a Remote State are subject to that Member State's regulatory authority. A Remote State may, in accordance with due process and that Member State's laws, remove a Regulated Social Worker's Multistate Authorization to Practice in the Remote State for a specific period of time, impose fines, and take any other necessary actions to protect the health and safety of its residents.

G. If a Multistate License is encumbered, the Regulated Social Worker's Multistate Authorization to Practice shall be deactivated in all Remote States until the Multistate License is no longer encumbered.

H. If a Multistate Authorization to Practice is encumbered in a Remote State, the regulated Social Worker's Multistate Authorization to Practice may be deactivated in that State until the Multistate Authorization to Practice is no longer encumbered.

SECTION 5. ISSUANCE OF A MULTISTATE LICENSE

A. Upon receipt of an application for a Multistate License, the Home State Licensing Authority shall determine the applicant's eligibility for a Multistate License in accordance with Section 4 of this Compact.

B. If such applicant is eligible pursuant to Section 4 of this Compact, the Home State Licensing Authority shall issue a Multistate License that authorizes the applicant or Regulated Social Worker to practice in all Member States under a Multistate Authorization to Practice.

C. Upon issuance of a Multistate License, the Home State Licensing Authority shall designate whether the Regulated Social Worker holds a Multistate License in the Bachelor's, Master's, or Clinical category of Social Work.

D. A Multistate License issued by a Home State to a resident in that State shall be recognized by all Compact Member States as authorizing Social Work Practice under a Multistate Authorization to Practice corresponding to each category of licensure regulated in each Member State.

SECTION 6. AUTHORITY OF INTERSTATE COMPACT COMMISSION AND MEMBER STATE LICENSING AUTHORITIES

A. Nothing in this Compact, nor any Rule of the Commission, shall be construed to limit, restrict, or in any way reduce the ability of a Member State to enact and enforce laws, regulations, or other rules related to the practice of Social Work in that State, where those laws, regulations, or other rules are not inconsistent with the provisions of this Compact.

B. Nothing in this Compact shall affect the requirements established by a Member State for the issuance of a Single State License.

C. Nothing in this Compact, nor any Rule of the Commission, shall be construed to limit, restrict, or in any way reduce the ability of a Member State to take Adverse Action against a Licensee's Single State License to practice Social Work in that State.

D. Nothing in this Compact, nor any Rule of the Commission, shall be construed to limit, restrict, or in any way reduce the ability of a Remote State to take Adverse Action against a Licensee's Multistate Authorization to Practice in that State.

E. Nothing in this Compact, nor any Rule of the Commission, shall be construed to limit, restrict, or in any way reduce the ability of a Licensee's Home State to take Adverse Action against a Licensee's Multistate License based upon information provided by a Remote State.

SECTION 7. REISSUANCE OF A MULTISTATE LICENSE BY A NEW HOME STATE

A. A Licensee can hold a Multistate License, issued by their Home State, in only one Member State at any given time.

B. If a Licensee changes their Home State by moving between two Member States:

1. The Licensee shall immediately apply for the reissuance of their Multistate License in their new Home State. The Licensee shall pay all applicable fees and notify the prior Home State in accordance with the Rules of the Commission.

2. Upon receipt of an application to reissue a Multistate License, the new Home State shall verify that the Multistate License is active, unencumbered, and eligible for reissuance under the terms of the Compact and the Rules of the Commission. The Multistate License issued by the prior Home State will be

deactivated and all Member States notified in accordance with the applicable Rules adopted by the Commission.

3. Prior to the reissuance of the Multistate License, the new Home State shall conduct procedures for considering the criminal history records of the Licensee. Such procedures shall include the submission of fingerprints or other biometric-based information by applicants for the purpose of obtaining an applicant's criminal history record information from the Federal Bureau of Investigation and the agency responsible for retaining that State's criminal records.

4. If required for initial licensure, the new Home State may require completion of jurisprudence requirements in the new Home State.

5. Notwithstanding any other provision of this Compact, if a Licensee does not meet the requirements set forth in this Compact for the reissuance of a Multistate License by the new Home State, then the Licensee shall be subject to the new Home State requirements for the issuance of a Single State License in that State.

C. If a Licensee changes their primary State of residence by moving from a Member State to a non-Member State, or from a non-Member State to a Member State, then the Licensee shall be subject to the State requirements for the issuance of a Single State License in the new Home State.

D. Nothing in this Compact shall interfere with a Licensee's ability to hold a Single State License in multiple States; however, for the purposes of this Compact, a Licensee shall have only one Home State and only one Multistate License.

E. Nothing in this Compact shall interfere with the requirements established by a Member State for the issuance of a Single State License.

SECTION 8. MILITARY FAMILIES

An Active Military Member or their spouse shall designate a Home State where the individual has a Multistate License. The individual may retain their Home State designation during the period the service member is on active duty.

SECTION 9. ADVERSE ACTIONS

A. In addition to the other powers conferred by State law, a Remote State shall have the authority, in accordance with existing State due process law, to:

1. Take Adverse Action against a Regulated Social Worker's Multistate Authorization to Practice only within that Member State and issue subpoenas for hearings and investigations that require the attendance and testimony of witnesses as well as the production of evidence. Subpoenas issued by a Licensing Authority in a Member State for the attendance and testimony of witnesses or the production of evidence from another Member State shall be enforced in the latter State by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing Licensing Authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the State in which the witnesses or evidence are located.

2. Only the Home State shall have the power to take Adverse Action against a Regulated Social Worker's Multistate License.

B. For purposes of taking Adverse Action, the Home State shall give the same priority and effect to reported conduct received from a Member State as it

would if the conduct had occurred within the Home State. In so doing, the Home State shall apply its own State laws to determine appropriate action.

C. The Home State shall complete any pending investigations of a Regulated Social Worker who changes their Home State during the course of the investigations. The Home State shall also have the authority to take appropriate action and shall promptly report the conclusions of the investigations to the administrator of the Data System. The administrator of the Data System shall promptly notify the new Home State of any Adverse Actions.

D. A Member State, if otherwise permitted by State law, may recover from the affected Regulated Social Worker the costs of investigations and dispositions of cases resulting from any Adverse Action taken against that Regulated Social Worker.

E. A Member State may take Adverse Action based on the factual findings of another Member State, provided that the Member State follows its own procedures for taking the Adverse Action.

F. Joint Investigations:

1. In addition to the authority granted to a Member State by its respective Social Work practice act or other applicable State law, any Member State may participate with other Member States in joint investigations of Licensees.

2. Member States shall share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the Compact.

G. If Adverse Action is taken by the Home State against the Multistate License of a Regulated Social Worker, the Regulated Social Worker's Multistate Authorization to Practice in all other Member States shall be deactivated until all Encumbrances have been removed from the Multistate License. All Home State disciplinary orders that impose Adverse Action against the license of a Regulated Social Worker shall include a statement that the Regulated Social Worker's Multistate Authorization to Practice is deactivated in all Member States until all conditions of the decision, order, or agreement are satisfied.

H. If a Member State takes Adverse Action, it shall promptly notify the administrator of the Data System. The administrator of the Data System shall promptly notify the Home State and all other Member States of any Adverse Actions by Remote States.

I. Nothing in this Compact shall override a Member State's decision that participation in an Alternative Program may be used in lieu of Adverse Action.

J. Nothing in this Compact shall authorize a Member State to demand the issuance of subpoenas for attendance and testimony of witnesses or the production of evidence from another Member State for lawful actions within that Member State.

K. Nothing in this Compact shall authorize a Member State to impose discipline against a Regulated Social Worker who holds a Multistate Authorization to Practice for lawful actions within another Member State.

SECTION 10. ESTABLISHMENT OF SOCIAL WORK LICENSURE COMPACT COMMISSION

A. The Compact Member States hereby create and establish a joint government agency whose membership consists of all Member States that have

enacted the Compact known as the Social Work Licensure Compact Commission. The Commission is an instrumentality of the Compact States acting jointly and not an instrumentality of any one State. The Commission shall come into existence on or after the effective date of the Compact as set forth in Section 14 of this Compact.

B. Membership, Voting, and Meetings

1. Each Member State shall have and be limited to one delegate selected by that Member State's State Licensing Authority.

2. The delegate shall be either:

a. A current member of the State Licensing Authority at the time of appointment, who is a Regulated Social Worker or public member of the State Licensing Authority; or

b. An administrator of the State Licensing Authority or their designee.

3. The Commission shall by Rule or bylaw establish a term of office for delegates and may by Rule or bylaw establish term limits.

4. The Commission may recommend removal or suspension of any delegate from office.

5. A Member State's State Licensing Authority shall fill any vacancy of its delegate occurring on the Commission within sixty days of the vacancy.

6. Each delegate shall be entitled to one vote on all matters before the Commission requiring a vote by Commission delegates.

7. A delegate shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for delegates to meet by telecommunication, videoconference, or other means of communication.

8. The Commission shall meet at least once during each calendar year. Additional meetings may be held as set forth in the bylaws. The Commission may meet by telecommunication, videoconference, or other similar electronic means.

C. The Commission shall have the following powers:

1. Establish the fiscal year of the Commission;

2. Establish code of conduct and conflict of interest policies;

3. Establish and amend Rules and bylaws;

4. Maintain its financial records in accordance with the bylaws;

5. Meet and take such actions as are consistent with the provisions of this Compact, the Commission's Rules, and the bylaws;

6. Initiate and conclude legal proceedings or actions in the name of the Commission, provided that the standing of any State Licensing Board to sue or be sued under applicable law shall not be affected;

7. Maintain and certify records and information provided to a Member State as the authenticated business records of the Commission, and designate an agent to do so on the Commission's behalf;

8. Purchase and maintain insurance and bonds;

9. Borrow, accept, or contract for services of personnel, including, but not limited to, employees of a Member State;

10. Conduct an annual financial review;

11. Hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of the Compact, and establish the Commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;

12. Assess and collect fees;

13. Accept any and all appropriate gifts, donations, grants of money, other sources of revenue, equipment, supplies, materials, and services, and receive, utilize, and dispose of the same; provided that at all times the Commission shall avoid any appearance of impropriety or conflict of interest;

14. Lease, purchase, retain, own, hold, improve, or use any property, real, personal, or mixed, or any undivided interest therein;

15. Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;

16. Establish a budget and make expenditures;

17. Borrow money;

18. Appoint committees, including standing committees, composed of members, State regulators, State legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in this Compact and the bylaws;

19. Provide and receive information from, and cooperate with, law enforcement agencies;

20. Establish and elect an Executive Committee, including a chair and a vice chair;

21. Determine whether a State's adopted language is materially different from the model Compact language such that the State would not qualify for participation in the Compact; and

22. Perform such other functions as may be necessary or appropriate to achieve the purposes of this Compact.

D. The Executive Committee

1. The Executive Committee shall have the power to act on behalf of the Commission according to the terms of this Compact. The powers, duties, and responsibilities of the Executive Committee shall include:

a. Oversee the day-to-day activities of the administration of the Compact including enforcement and compliance with the provisions of the Compact, its Rules and bylaws, and other such duties as deemed necessary;

b. Recommend to the Commission changes to the Rules or bylaws, changes to this Compact legislation, fees charged to Compact Member States, fees charged to Licensees, and other fees;

c. Ensure Compact administration services are appropriately provided, including by contract;

d. Prepare and recommend the budget;

e. Maintain financial records on behalf of the Commission;

f. Monitor Compact compliance of Member States and provide compliance reports to the Commission;

g. Establish additional committees as necessary;

h. Exercise the powers and duties of the Commission during the interim between Commission meetings, except for adopting or amending Rules, adopting or amending bylaws, and exercising any other powers and duties expressly reserved to the Commission by Rule or bylaw; and

i. Other duties as provided in the Rules or bylaws of the Commission.

2. The Executive Committee shall be composed of up to eleven members.

a. The chair and vice chair of the Commission shall be voting members of the Executive Committee.

b. The Commission shall elect five voting members from the current membership of the Commission.

c. There shall be up to four ex officio, nonvoting members from four recognized national Social Work organizations. Such organizations shall be selected by the Commission.

d. The ex officio members will be selected by their respective organizations.

3. The Commission may remove any member of the Executive Committee as provided in the Commission's bylaws.

4. The Executive Committee shall meet at least annually.

a. Executive Committee meetings shall be open to the public, except that the Executive Committee may meet in a closed, nonpublic meeting as provided in Section 10.F.2 of this Compact.

b. The Executive Committee shall give seven days' notice of its meetings, posted on its website and as determined to provide notice to persons with an interest in the business of the Commission.

c. The Executive Committee may hold a special meeting in accordance with Section 10.F.1.b of this Compact.

E. The Commission shall adopt and provide to the Member States an annual report.

F. Meetings of the Commission

1. All meetings shall be open to the public, except that the Commission may meet in a closed, nonpublic meeting as provided in Section 10.F.2 of this Compact.

a. Public notice for all meetings of the full Commission shall be given in the same manner as required under the Rulemaking provisions in Section 12 of this Compact, except that the Commission may hold a special meeting as provided in Section 10.F.1.b of this Compact.

b. The Commission may hold a special meeting when it must meet to conduct emergency business by giving forty-eight hours' notice to all commissioners, on the Commission's website, and other means as provided in the Commission's Rules. The Commission's legal counsel shall certify that the Commission's need to meet qualifies as an emergency.

2. The Commission or the Executive Committee or other committees of the Commission may convene in a closed, nonpublic meeting for the Commission or Executive Committee or other committees of the Commission to receive legal advice or to discuss:

a. Noncompliance of a Member State with its obligations under the Compact;

b. The employment, compensation, discipline, or other matters, practices, or procedures related to specific employees;

c. Current or threatened discipline of a Licensee by the Commission or by a Member State's Licensing Authority;

d. Current, threatened, or reasonably anticipated litigation;

e. Negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate;

f. Accusing any person of a crime or formally censuring any person;

g. Trade secrets or commercial or financial information that is privileged or confidential;

h. Information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

i. Investigative records compiled for law enforcement purposes;

j. Information related to any investigative reports prepared by or on behalf of or for use of the Commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the Compact;

k. Matters specifically exempted from disclosure by federal or Member State law; or

l. Other matters as promulgated by the Commission by Rule.

3. If a meeting, or portion of a meeting, is closed, the presiding officer shall state that the meeting will be closed and reference each relevant exempting provision, and such reference shall be recorded in the minutes.

4. The Commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefor, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release only by a majority vote of the Commission or order of a court of competent jurisdiction.

G. Financing of the Commission

1. The Commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

2. The Commission may accept any and all appropriate revenue sources as provided in Section 10.C.13 of this Compact.

3. The Commission may levy on and collect an annual assessment from each Member State and impose fees on Licensees of Member States to whom it grants a Multistate License to cover the cost of the operations and activities of the Commission and its staff, which must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount for Member States shall be allocated based upon a formula that the Commission shall promulgate by Rule.

4. The Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Commission pledge the credit of any of the Member States, except by and with the authority of the Member State.

5. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the financial review and accounting procedures established under its bylaws.

However, all receipts and disbursements of funds handled by the Commission shall be subject to an annual financial review by a certified or licensed public accountant, and the report of the financial review shall be included in and become part of the annual report of the Commission.

H. Qualified Immunity, Defense, and Indemnification

1. The members, officers, executive director, employees, and representatives of the Commission shall have no greater liability than a state employee would have under the same or similar circumstances, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred, within the scope of Commission employment, duties, or responsibilities; provided that nothing in this paragraph shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person. The procurement of insurance of any type by the Commission shall not in any way compromise or limit the immunity granted hereunder.

2. The Commission shall defend any member, officer, executive director, employee, or representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided that nothing herein shall be construed to prohibit that person from retaining their own counsel at their own expense; and provided further, that the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct.

3. The Commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the Commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided that the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

4. Nothing herein shall be construed as a limitation on the liability of any Licensee for professional malpractice or misconduct, which shall be governed solely by any other applicable State laws.

5. Nothing in this Compact shall be interpreted to waive or otherwise abrogate a Member State's state action immunity or state action affirmative defense with respect to antitrust claims under the Sherman Act, the Clayton Act, or any other State or federal antitrust or anticompetitive law or regulation.

6. Nothing in this Compact shall be construed to be a waiver of sovereign immunity by the Member States or by the Commission.

SECTION 11. DATA SYSTEM

A. The Commission shall provide for the development, maintenance, operation, and utilization of a coordinated Data System.

B. The Commission shall assign each applicant for a Multistate License a unique identifier, as determined by the Rules of the Commission.

C. Notwithstanding any other provision of State law to the contrary, a Member State shall submit a uniform data set to the Data System on all individuals to whom this Compact is applicable as required by the Rules of the Commission, including:

1. Identifying information;

2. Licensure data;

3. Adverse Actions against a license and information related thereto;

4. Nonconfidential information related to Alternative Program participation, the beginning and ending dates of such participation, and other information related to such participation not made confidential under Member State law;

5. Any denial of application for licensure, and the reason for such denial;

6. The presence of Current Significant Investigative Information; and

7. Other information that may facilitate the administration of this Compact or the protection of the public, as determined by the Rules of the Commission.

D. The records and information provided to a Member State pursuant to this Compact or through the Data System, when certified by the Commission or an agent thereof, shall constitute the authenticated business records of the Commission, and shall be entitled to any associated hearsay exception in any relevant judicial, quasi-judicial, or administrative proceedings in a Member State.

E. Current Significant Investigative Information pertaining to a Licensee in any Member State will only be available to other Member States.

1. It is the responsibility of the Member States to report any Adverse Action against a Licensee and to monitor the database to determine whether Adverse Action has been taken against a Licensee. Adverse Action information pertaining to a Licensee in any Member State will be available to any other Member State.

F. Member States contributing information to the Data System may designate information that may not be shared with the public without the express permission of the contributing State.

G. Any information submitted to the Data System that is subsequently expunged pursuant to federal law or the laws of the Member State contributing the information shall be removed from the Data System.

SECTION 12. RULEMAKING

A. The Commission shall promulgate reasonable Rules in order to effectively and efficiently implement and administer the purposes and provisions of the Compact. A Rule shall be invalid and have no force or effect only if a court of competent jurisdiction holds that the Rule is invalid because the Commission exercised its rulemaking authority in a manner that is beyond the scope and purposes of the Compact, or the powers granted hereunder, or based upon another applicable standard of review.

B. The Rules of the Commission shall have the force of law in each Member State, provided however that where the Rules of the Commission conflict with the laws of the Member State that establish the Member State's laws, regulations, and applicable standards that govern the practice of Social Work as held

by a court of competent jurisdiction, the Rules of the Commission shall be ineffective in that State to the extent of the conflict.

C. The Commission shall exercise its Rulemaking powers pursuant to the criteria set forth in Section 12 of this Compact and the Rules adopted thereunder. Rules shall become binding on the day following adoption or the date specified in the Rule or amendment, whichever is later.

D. If a majority of the legislatures of the Member States rejects a Rule or portion of a Rule, by enactment of a statute or resolution in the same manner used to adopt the Compact within four years of the date of adoption of the Rule, then such Rule shall have no further force and effect in any Member State.

E. Rules shall be adopted at a regular or special meeting of the Commission.

F. Prior to adoption of a proposed Rule, the Commission shall hold a public hearing and allow persons to provide oral and written comments, data, facts, opinions, and arguments.

G. Prior to adoption of a proposed Rule by the Commission, and at least thirty days in advance of the meeting at which the Commission will hold a public hearing on the proposed Rule, the Commission shall provide a Notice of Proposed Rulemaking:

1. On the website of the Commission or other publicly accessible platform;

2. To persons who have requested notice of the Commission's Notices of Proposed Rulemaking; and

3. In such other ways as the Commission may by Rule specify.

H. The Notice of Proposed Rulemaking shall include:

1. The time, date, and location of the public hearing at which the Commission will hear public comments on the proposed Rule and, if different, the time, date, and location of the meeting where the Commission will consider and vote on the proposed Rule;

2. If the hearing is held via telecommunication, videoconference, or other electronic means, the mechanism for access to the hearing in the Notice of Proposed Rulemaking;

3. The text of the proposed Rule and the reason therefor;

4. A request for comments on the proposed Rule from any interested person; and

5. The manner in which interested persons may submit written comments.

I. All hearings will be recorded. A copy of the recording and all written comments and documents received by the Commission in response to the proposed Rule shall be available to the public.

J. Nothing in Section 12 of this Compact shall be construed as requiring a separate hearing on each Rule. Rules may be grouped for the convenience of the Commission at hearings required by Section 12 of this Compact.

K. The Commission shall, by majority vote of all members, take final action on the proposed Rule based on the rulemaking record and the full text of the Rule.

1. The Commission may adopt changes to the proposed Rule provided the changes do not enlarge the original purpose of the proposed Rule.

2. The Commission shall provide an explanation of the reasons for substantive changes made to the proposed Rule as well as reasons for substantive changes not made that were recommended by commenters.

3. The Commission shall determine a reasonable effective date for the Rule. Except for an emergency as provided in Section 12.L of this Compact, the effective date of the Rule shall be no sooner than thirty days after issuing the notice that it adopted or amended the Rule.

L. Upon determination that an emergency exists, the Commission may consider and adopt an emergency Rule with forty-eight hours' notice, with opportunity to comment, provided that the usual rulemaking procedures provided in the Compact and in Section 12 of this Compact shall be retroactively applied to the Rule as soon as reasonably possible, in no event later than ninety days after the effective date of the Rule. For the purposes of this provision, an emergency Rule is one that must be adopted immediately in order to:

1. Meet an imminent threat to public health, safety, or welfare;

2. Prevent a loss of Commission or Member State funds;

3. Meet a deadline for the promulgation of a Rule that is established by federal law or rule; or

4. Protect public health and safety.

M. The Commission or an authorized committee of the Commission may direct revisions to a previously adopted Rule for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the website of the Commission. The revision shall be subject to challenge by any person for a period of thirty days after posting. The revision may be challenged only on grounds that the revision results in a material change to a Rule. A challenge shall be made in writing and delivered to the Commission prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the Commission.

N. No Member State's rulemaking requirements shall apply under this Compact.

SECTION 13. OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

A. Oversight

1. The executive and judicial branches of State government in each Member State shall enforce this Compact and take all actions necessary and appropriate to implement the Compact.

2. Except as otherwise provided in this Compact, venue is proper and judicial proceedings by or against the Commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the Commission is located. The Commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings. Nothing herein shall affect or limit the selection or propriety of venue in any action against a Licensee for professional malpractice, misconduct, or any such similar matter.

3. The Commission shall be entitled to receive service of process in any proceeding regarding the enforcement or interpretation of the Compact and

shall have standing to intervene in such a proceeding for all purposes. Failure to provide the Commission service of process shall render a judgment or order void as to the Commission, this Compact, or promulgated Rules.

B. Default, Technical Assistance, and Termination

1. If the Commission determines that a Member State has defaulted in the performance of its obligations or responsibilities under this Compact or the promulgated Rules, the Commission shall provide written notice to the defaulting State. The notice of default shall describe the default, the proposed means of curing the default, and any other action that the Commission may take, and shall offer training and specific technical assistance regarding the default.

2. The Commission shall provide a copy of the notice of default to the other Member States.

C. If a State in default fails to cure the default, the defaulting State may be terminated from the Compact upon an affirmative vote of a majority of the delegates of the Member States, and all rights, privileges, and benefits conferred on that State by this Compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending State of obligations or liabilities incurred during the period of default.

D. Termination of membership in the Compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the Commission to the governor, the majority and minority leaders of the defaulting State's legislature, the defaulting State's State Licensing Authority, and each of the Member States' State Licensing Authority.

E. A State that has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

F. Upon the termination of a State's membership from this Compact, that State shall immediately provide notice to all Licensees within that State of such termination. The terminated State shall continue to recognize all Multistate Authorizations to Practice within that State granted pursuant to this Compact for a minimum of six months after the date of the notice of termination.

G. The Commission shall not bear any costs related to a State that is found to be in default or that has been terminated from the Compact, unless agreed upon in writing between the Commission and the defaulting State.

H. The defaulting State may appeal the action of the Commission by petitioning the United States District Court for the District of Columbia or the federal district where the Commission has its principal offices. The prevailing party shall be awarded all costs of such litigation, including reasonable attorney's fees.

I. Dispute Resolution

1. Upon request by a Member State, the Commission shall attempt to resolve disputes related to the Compact that arise among Member States and between Member and non-Member States.

2. The Commission shall promulgate a Rule providing for both mediation and binding dispute resolution for disputes as appropriate.

J. Enforcement

1. By majority vote as provided by Rule, the Commission may initiate legal action against a Member State in default in the United States District Court for the District of Columbia or the federal district where the Commission has its principal offices to enforce compliance with the provisions of the Compact and its promulgated Rules. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation, including reasonable attorney's fees. The remedies herein shall not be the exclusive remedies of the Commission. The Commission may pursue any other remedies available under federal or the defaulting Member State's law.

2. A Member State may initiate legal action against the Commission in the United States District Court for the District of Columbia or the federal district where the Commission has its principal offices to enforce compliance with the provisions of the Compact and its promulgated Rules. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation, including reasonable attorney's fees.

3. No person other than a Member State shall enforce this Compact against the Commission.

SECTION 14. EFFECTIVE DATE, WITHDRAWAL, AND AMENDMENT

A. The Compact shall come into effect on the date on which the Compact statute is enacted into law in the seventh Member State.

1. On or after the effective date of the Compact, the Commission shall convene and review the enactment of each of the first seven Member States (''Charter Member States'') to determine if the statute enacted by each such Charter Member State is materially different than the model Compact statute.

a. A Charter Member State whose enactment is found to be materially different from the model Compact statute shall be entitled to the default process set forth in Section 13 of this Compact.

b. If any Member State is later found to be in default, or is terminated or withdraws from the Compact, the Commission shall remain in existence and the Compact shall remain in effect even if the number of Member States should be less than seven.

2. Member States enacting the Compact subsequent to the seven initial Charter Member States shall be subject to the process set forth in Section 10.C.21 of this Compact to determine if their enactments are materially different from the model Compact statute and whether they qualify for participation in the Compact.

3. All actions taken for the benefit of the Commission or in furtherance of the purposes of the administration of the Compact prior to the effective date of the Compact or the Commission coming into existence shall be considered to be actions of the Commission unless specifically repudiated by the Commission.

4. Any State that joins the Compact subsequent to the Commission's initial adoption of the Rules and bylaws shall be subject to the Rules and bylaws as they exist on the date on which the Compact becomes law in that State. Any Rule that has been previously adopted by the Commission shall have the full force and effect of law on the day the Compact becomes law in that State.

B. Any Member State may withdraw from this Compact by enacting a statute repealing the same.

1. A Member State's withdrawal shall not take effect until one hundred eighty days after enactment of the repealing statute.

2. Withdrawal shall not affect the continuing requirement of the withdrawing State's Licensing Authority to comply with the investigative and Adverse Action reporting requirements of this Compact prior to the effective date of withdrawal.

3. Upon the enactment of a statute withdrawing from this Compact, a State shall immediately provide notice of such withdrawal to all Licensees within that State. Notwithstanding any subsequent statutory enactment to the contrary, such withdrawing State shall continue to recognize all Multistate Authorizations to Practice within that State granted pursuant to this Compact for a minimum of one hundred eighty days after the date of such notice of withdrawal.

C. Nothing contained in this Compact shall be construed to invalidate or prevent any licensure agreement or other cooperative arrangement between a Member State and a non-Member State that does not conflict with the provisions of this Compact.

D. This Compact may be amended by the Member States. No amendment to this Compact shall become effective and binding upon any Member State until it is enacted into the laws of all Member States.

SECTION 15. CONSTRUCTION AND SEVERABILITY

A. This Compact and the Commission's rulemaking authority shall be liberally construed so as to effectuate the purposes, implementation, and administration of the Compact. Provisions of the Compact expressly authorizing or requiring the promulgation of Rules shall not be construed to limit the Commission's rulemaking authority solely for those purposes.

B. The provisions of this Compact shall be severable and if any phrase, clause, sentence, or provision of this Compact is held by a court of competent jurisdiction to be contrary to the constitution of any Member State, of a State seeking participation in the Compact, or of the United States, or the applicability thereof to any government, agency, person, or circumstance is held to be unconstitutional by a court of competent jurisdiction, the validity of the remainder of this Compact and the applicability thereof to any other government, agency, person, or circumstance shall not be affected thereby.

C. Notwithstanding Section 15.B of this Compact, the Commission may deny a State's participation in the Compact or, in accordance with the requirements of Section 13.B of this Compact, terminate a Member State's participation in the Compact, if it determines that a constitutional requirement of a Member State is a material departure from the Compact. Otherwise, if this Compact shall be held to be contrary to the constitution of any Member State, the Compact shall remain in full force and effect as to the remaining Member States and in full force and effect as to the Member State affected as to all severable matters.

SECTION 16. CONSISTENT EFFECT AND CONFLICT WITH OTHER STATE LAWS

A. A Licensee providing services in a Remote State under a Multistate Authorization to Practice shall adhere to the laws and regulations, including laws, regulations, and applicable standards, of the Remote State where the client is located at the time care is rendered.

B. Nothing herein shall prevent or inhibit the enforcement of any other law of a Member State that is not inconsistent with the Compact.

C. Any laws, statutes, regulations, or other legal requirements in a Member State in conflict with the Compact are superseded to the extent of the conflict.

D. All permissible agreements between the Commission and the Member States are binding in accordance with their terms.

Source: Laws 2024, LB932, § 1.
Operative date January 1, 2025.

ARTICLE 46

PHYSICIAN ASSISTANT (PA) LICENSURE COMPACT

Section
38-4601. Physician Assistant (PA) Licensure Compact.

38-4601 Physician Assistant (PA) Licensure Compact.

This section shall be known and may be cited as the Physician Assistant (PA) Licensure Compact. The State of Nebraska adopts the Physician Assistant (PA) Licensure Compact in the form substantially as follows:

SECTION 1. PURPOSE

In order to strengthen access to Medical Services, and in recognition of the advances in the delivery of Medical Services, the Participating States of the PA Licensure Compact have allied in common purpose to develop a comprehensive process that complements the existing authority of State Licensing Boards to license and discipline PAs and seeks to enhance the portability of a License to practice as a PA while safeguarding the safety of patients. This Compact allows Medical Services to be provided by PAs, via the mutual recognition of the Licensee's Qualifying License by other Compact Participating States. This Compact also adopts the prevailing standard for PA licensure and affirms that the practice and delivery of Medical Services by the PA occurs where the patient is located at the time of the patient encounter, and therefore requires the PA to be under the jurisdiction of the State Licensing Board where the patient is located. State Licensing Boards that participate in this Compact retain the jurisdiction to impose Adverse Action against a Compact Privilege in that State issued to a PA through the procedures of this Compact. The PA Licensure Compact will alleviate burdens for military families by allowing active duty military personnel and their spouses to obtain a Compact Privilege based on having an unrestricted License in good standing from a Participating State.

SECTION 2. DEFINITIONS

In this Compact:

A. ''Adverse Action'' means any administrative, civil, equitable, or criminal action permitted by a State's laws which is imposed by a Licensing Board or other authority against a PA License or License application or Compact Privilege such as License denial, censure, revocation, suspension, probation, monitoring of the Licensee, or restriction on the Licensee's practice.

B. ''Compact Privilege'' means the authorization granted by a Remote State to allow a Licensee from another Participating State to practice as a PA to provide Medical Services and other licensed activity to a patient located in the Remote State under the Remote State's laws and regulations.

C. ''Conviction'' means a finding by a court that an individual is guilty of a felony or misdemeanor offense through adjudication or entry of a plea of guilty or no contest to the charge by the offender.

D. ''Criminal Background Check'' means the submission of fingerprints or other biometric-based information for a License applicant for the purpose of obtaining that applicant's criminal history record information, as defined in 28 C.F.R. 20.3(d), from the State's criminal history record repository as defined in 28 C.F.R. 20.3(f).

E. ''Data System'' means the repository of information about Licensees, including, but not limited to, License status and Adverse Actions, which is created and administered under the terms of this Compact.

F. ''Executive Committee'' means a group of directors and ex officio individuals elected or appointed pursuant to Section 7.F.2.

G. ''Impaired Practitioner'' means a PA whose practice is adversely affected by a health-related condition that impacts the practitioner's ability to practice.

H. ''Investigative Information'' means information, records, or documents received or generated by a Licensing Board pursuant to an investigation.

I. ''Jurisprudence Requirement'' means the assessment of an individual's knowledge of the laws and Rules governing the practice of a PA in a State.

J. ''License'' means current authorization by a State, other than authorization pursuant to a Compact Privilege, for a PA to provide Medical Services, which would be unlawful without current authorization.

K. ''Licensee'' means an individual who holds a License from a State to provide Medical Services as a PA.

L. ''Licensing Board'' means any State entity authorized to license and otherwise regulate PAs.

M. ''Medical Services'' means health care services provided for the diagnosis, prevention, treatment, cure, or relief of a health condition, injury, or disease, as defined by a State's laws and regulations.

N. ''Model Compact'' means the model for the PA Licensure Compact on file with The Council of State Governments or other entity as designated by the Commission.

O. ''Participating State'' means a State that has enacted this Compact.

P. ''PA'' means an individual who is licensed as a physician assistant in a State. For purposes of this Compact, any other title or status adopted by a State to replace the term ''physician assistant'' shall be deemed synonymous with ''physician assistant'' and shall confer the same rights and responsibilities to the Licensee under the provisions of this Compact at the time of its enactment.

Q. ''PA Licensure Compact Commission,'' ''Compact Commission,'' or ''Commission'' mean the national administrative body created pursuant to Section 7.A of this Compact.

R. ''Qualifying License'' means an unrestricted License issued by a Participating State to provide Medical Services as a PA.

S. ''Remote State'' means a Participating State where a Licensee who is not licensed as a PA is exercising or seeking to exercise the Compact Privilege.

T. ''Rule'' means a regulation promulgated by an entity that has the force and effect of law.

U. ''Significant Investigative Information'' means Investigative Information that a Licensing Board, after an inquiry or investigation that includes notification and an opportunity for the PA to respond if required by State law, has reason to believe is not groundless and, if proven true, would indicate more than a minor infraction.

V. ''State'' means any state, commonwealth, district, or territory of the United States.

SECTION 3. STATE PARTICIPATION IN THIS COMPACT

A. To participate in this Compact, a Participating State shall:

1. License PAs.

2. Participate in the Compact Commission's Data System.

3. Have a mechanism in place for receiving and investigating complaints against Licensees and License applicants.

4. Notify the Commission, in compliance with the terms of this Compact and Commission Rules, of any Adverse Action against a Licensee or License applicant and the existence of Significant Investigative Information regarding a Licensee or License applicant.

5. Fully implement a Criminal Background Check requirement, within a timeframe established by Commission Rule, by its Licensing Board receiving the results of a Criminal Background Check and reporting to the Commission whether the License applicant has been granted a License.

6. Comply with the Rules of the Compact Commission.

7. Utilize passage of a recognized national exam such as the Physician Assistant National Certifying Examination (PANCE) of the National Commission on Certification of Physician Assistants (NCCPA) as a requirement for PA licensure.

8. Grant the Compact Privilege to a holder of a Qualifying License in a Participating State.

B. Nothing in this Compact prohibits a Participating State from charging a fee for granting the Compact Privilege.

SECTION 4. COMPACT PRIVILEGE

A. To exercise the Compact Privilege, a Licensee must:

1. Have graduated from a PA program accredited by the Accreditation Review Commission on Education for the Physician Assistant, Inc., or other programs authorized by Commission Rule.

2. Hold current National Commission on Certification of Physician Assistants (NCCPA) certification.

3. Have no felony or misdemeanor Conviction.

4. Have never had a controlled substance license, permit, or registration suspended or revoked by a State or by the United States Drug Enforcement Administration.

5. Have a unique identifier as determined by Commission Rule.

6. Hold a Qualifying License.

7. Have had no revocation of a License or limitation or restriction on any License currently held due to an Adverse Action.

8. If a Licensee has had a limitation or restriction on a License or Compact Privilege due to an Adverse Action, two years must have elapsed from the date on which the License or Compact Privilege is no longer limited or restricted due to the Adverse Action.

9. If a Compact Privilege has been revoked or is limited or restricted in a Participating State for conduct that would not be a basis for disciplinary action in a Participating State in which the Licensee is practicing or applying to practice under a Compact Privilege, that Participating State shall have the discretion not to consider such action as an Adverse Action requiring the denial or removal of a Compact Privilege in that State.

10. Notify the Compact Commission that the Licensee is seeking the Compact Privilege in a Remote State.

11. Meet any Jurisprudence Requirement of a Remote State in which the Licensee is seeking to practice under the Compact Privilege and pay any fees applicable to satisfying the Jurisprudence Requirement.

12. Report to the Commission any Adverse Action taken by a non-Participating State within thirty days after the action is taken.

B. The Compact Privilege is valid until the expiration or revocation of the Qualifying License unless terminated pursuant to an Adverse Action. The Licensee must also comply with all of the requirements of subsection A above to maintain the Compact Privilege in a Remote State. If the Participating State takes Adverse Action against a Qualifying License, the Licensee shall lose the Compact Privilege in any Remote State in which the Licensee has a Compact Privilege until all of the following occur:

1. The License is no longer limited or restricted; and

2. Two years have elapsed from the date on which the License is no longer limited or restricted due to the Adverse Action.

C. Once a restricted or limited License satisfies the requirements of subsections B.1 and 2, the Licensee must meet the requirements of subsection A to obtain a Compact Privilege in any Remote State.

D. For each Remote State in which a PA seeks authority to prescribe controlled substances, the PA shall satisfy all requirements imposed by such State in granting or renewing such authority.

SECTION 5. DESIGNATION OF THE STATE FROM WHICH THE LICENSEE IS APPLYING FOR A COMPACT PRIVILEGE

A. Upon a Licensee's application for a Compact Privilege, the Licensee shall identify to the Commission the Participating State from which the Licensee is applying, in accordance with applicable Rules adopted by the Commission, and subject to the following requirements:

1. When applying for a Compact Privilege, the Licensee shall provide the Commission with the address of the Licensee's primary residence and thereafter shall immediately report to the Commission any change in the address of the Licensee's primary residence.

2. When applying for a Compact Privilege, the Licensee is required to consent to accept service of process by mail at the Licensee's primary residence on file with the Commission with respect to any action brought against the Licensee by the Commission or a Participating State, including a subpoena, with respect to

any action brought or investigation conducted by the Commission or a Participating State.

SECTION 6. ADVERSE ACTIONS

A. A Participating State in which a Licensee is licensed shall have exclusive power to impose Adverse Action against the Qualifying License issued by that Participating State.

B. In addition to the other powers conferred by State law, a Remote State shall have the authority, in accordance with existing State due process law, to do all of the following:

1. Take Adverse Action against a PA's Compact Privilege within that State to remove a Licensee's Compact Privilege or take other action necessary under applicable law to protect the health and safety of its citizens.

2. Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses as well as the production of evidence. Subpoenas issued by a Licensing Board in a Participating State for the attendance and testimony of witnesses or the production of evidence from another Participating State shall be enforced in the latter State by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the State in which the witnesses or evidence are located.

3. Notwithstanding subsection 2, subpoenas may not be issued by a Participating State to gather evidence of conduct in another State that is lawful in that other State for the purpose of taking Adverse Action against a Licensee's Compact Privilege or application for a Compact Privilege in that Participating State.

4. Nothing in this Compact authorizes a Participating State to impose discipline against a PA's Compact Privilege or to deny an application for a Compact Privilege in that Participating State for the individual's otherwise lawful practice in another State.

C. For purposes of taking Adverse Action, the Participating State which issued the Qualifying License shall give the same priority and effect to reported conduct received from any other Participating State as it would if the conduct had occurred within the Participating State which issued the Qualifying License. In so doing, that Participating State shall apply its own State laws to determine appropriate action.

D. A Participating State, if otherwise permitted by State law, may recover from the affected PA the costs of investigations and disposition of cases resulting from any Adverse Action taken against that PA.

E. A Participating State may take Adverse Action based on the factual findings of a Remote State, provided that the Participating State follows its own procedures for taking the Adverse Action.

F. Joint Investigations

1. In addition to the authority granted to a Participating State by its respective State PA laws and regulations or other applicable State law, any Participating State may participate with other Participating States in joint investigations of Licensees.

2. Participating States shall share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under this Compact.

G. If an Adverse Action is taken against a PA's Qualifying License, the PA's Compact Privilege in all Remote States shall be deactivated until two years have elapsed after all restrictions have been removed from the Qualifying License. All disciplinary orders by the Participating State which issued the Qualifying License that impose Adverse Action against a PA's License shall include a Statement that the PA's Compact Privilege is deactivated in all Participating States during the pendency of the order.

H. If any Participating State takes Adverse Action, it promptly shall notify the administrator of the Data System.

SECTION 7. ESTABLISHMENT OF THE PA LICENSURE COMPACT COMMISSION

A. The Participating States hereby create and establish a joint government agency and national administrative body known as the PA Licensure Compact Commission. The Commission is an instrumentality of the Compact States acting jointly and not an instrumentality of any one State. The Commission shall come into existence on or after the effective date of the Compact as set forth in Section 11.A.

B. Membership, Voting, and Meetings

1. Each Participating State shall have and be limited to one delegate selected by that Participating State's Licensing Board or, if the State has more than one Licensing Board, selected collectively by the Participating State's Licensing Boards.

2. The delegate shall be either:

a. A current PA, physician, or public member of a Licensing Board or PA Council/Committee; or

b. An administrator of a Licensing Board.

3. Any delegate may be removed or suspended from office as provided by the laws of the State from which the delegate is appointed.

4. The Participating State Licensing Board shall fill any vacancy occurring in the Commission within sixty days.

5. Each delegate shall be entitled to one vote on all matters voted on by the Commission and shall otherwise have an opportunity to participate in the business and affairs of the Commission. A delegate shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for delegates' participation in meetings by telecommunications, videoconference, or other means of communication.

6. The Commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in this Compact and the bylaws.

7. The Commission shall establish by Rule a term of office for delegates.

C. The Commission shall have the following powers and duties:

1. Establish a code of ethics for the Commission;

2. Establish the fiscal year of the Commission;

3. Establish fees;

4. Establish bylaws;

5. Maintain its financial records in accordance with the bylaws;

6. Meet and take such actions as are consistent with the provisions of this Compact and the bylaws;

7. Promulgate Rules to facilitate and coordinate implementation and administration of this Compact. The Rules shall have the force and effect of law and shall be binding in all Participating States;

8. Bring and prosecute legal proceedings or actions in the name of the Commission, provided that the standing of any State Licensing Board to sue or be sued under applicable law shall not be affected;

9. Purchase and maintain insurance and bonds;

10. Borrow, accept, or contract for services of personnel, including, but not limited to, employees of a Participating State;

11. Hire employees and engage contractors, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of this Compact, and establish the Commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;

12. Accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services, and receive, utilize, and dispose of the same; provided that at all times the Commission shall avoid any appearance of impropriety or conflict of interest;

13. Lease, purchase, accept appropriate gifts or donations of, or otherwise own, hold, improve, or use, any property, real, personal, or mixed; provided that at all times the Commission shall avoid any appearance of impropriety;

14. Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;

15. Establish a budget and make expenditures;

16. Borrow money;

17. Appoint committees, including standing committees composed of members, State regulators, State legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in this Compact and the bylaws;

18. Provide and receive information from, and cooperate with, law enforcement agencies;

19. Elect a Chair, Vice Chair, Secretary, and Treasurer and such other officers of the Commission as provided in the Commission's bylaws;

20. Reserve for itself, in addition to those reserved exclusively to the Commission under the Compact, powers that the Executive Committee may not exercise;

21. Approve or disapprove a State's participation in the Compact based upon its determination as to whether the State's Compact legislation departs in a material manner from the Model Compact language;

22. Prepare and provide to the Participating States an annual report; and

23. Perform such other functions as may be necessary or appropriate to achieve the purposes of this Compact consistent with the State regulation of PA licensure and practice.

D. Meetings of the Commission

1. All meetings of the Commission that are not closed pursuant to this subsection shall be open to the public. Notice of public meetings shall be posted on the Commission's website at least thirty days prior to the public meeting.

2. Notwithstanding subsection D.1 of this section, the Commission may convene a public meeting by providing at least twenty-four hours prior notice on the Commission's website, and any other means as provided in the Commission's Rules, for any of the reasons it may dispense with notice of proposed rulemaking under Section 9.L.

3. The Commission may convene in a closed, nonpublic meeting or nonpublic part of a public meeting to receive legal advice or to discuss:

a. Noncompliance of a Participating State with its obligations under this Compact;

b. The employment, compensation, discipline, or other matters, practices, or procedures related to specific employees or other matters related to the Commission's internal personnel practices and procedures;

c. Current, threatened, or reasonably anticipated litigation;

d. Negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate;

e. Accusing any person of a crime or formally censuring any person;

f. Disclosure of trade secrets or commercial or financial information that is privileged or confidential;

g. Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

h. Disclosure of investigative records compiled for law enforcement purposes;

i. Disclosure of information related to any investigative reports prepared by or on behalf of or for use of the Commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to this Compact;

j. Legal advice; or

k. Matters specifically exempted from disclosure by federal or Participating States' statutes.

4. If a meeting, or portion of a meeting, is closed pursuant to this provision, the chair of the meeting or the chair's designee shall certify that the meeting or portion of the meeting may be closed and shall reference each relevant exempting provision.

5. The Commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the Commission or order of a court of competent jurisdiction.

E. Financing of the Commission

1. The Commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

2. The Commission may accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services.

3. The Commission may levy on and collect an annual assessment from each Participating State and may impose Compact Privilege fees on Licensees of Participating States to whom a Compact Privilege is granted to cover the cost of the operations and activities of the Commission and its staff, which must be in a total amount sufficient to cover its annual budget as approved by the Commission each year for which revenue is not provided by other sources. The aggregate annual assessment amount levied on Participating States shall be allocated based upon a formula to be determined by Commission Rule.

a. A Compact Privilege expires when the Licensee's Qualifying License in the Participating State from which the Licensee applied for the Compact Privilege expires.

b. If the Licensee terminates the Qualifying License through which the Licensee applied for the Compact Privilege before its scheduled expiration, and the Licensee has a Qualifying License in another Participating State, the Licensee shall inform the Commission that it is changing to that Participating State the Participating State through which it applies for a Compact Privilege and pay to the Commission any Compact Privilege fee required by Commission Rule.

4. The Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Commission pledge the credit of any of the Participating States, except by and with the authority of the Participating State.

5. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the financial review and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the Commission shall be subject to an annual financial review by a certified or licensed public accountant, and the report of the financial review shall be included in and become part of the annual report of the Commission.

F. The Executive Committee

1. The Executive Committee shall have the power to act on behalf of the Commission according to the terms of this Compact and Commission Rules.

2. The Executive Committee shall be composed of nine members:

a. Seven voting members who are elected by the Commission from the current membership of the Commission;

b. One ex officio, nonvoting member from a recognized national PA professional association; and

c. One ex officio, nonvoting member from a recognized national PA certification organization.

3. The ex officio members will be selected by their respective organizations.

4. The Commission may remove any member of the Executive Committee as provided in its bylaws.

5. The Executive Committee shall meet at least annually.

6. The Executive Committee shall have the following duties and responsibilities:

a. Recommend to the Commission changes to the Commission's Rules or bylaws, changes to this Compact legislation, fees to be paid by Compact

Participating States such as annual dues, and any Commission Compact fee charged to Licensees for the Compact Privilege;

b. Ensure Compact administration services are appropriately provided, contractual or otherwise;

c. Prepare and recommend the budget;

d. Maintain financial records on behalf of the Commission;

e. Monitor Compact compliance of Participating States and provide compliance reports to the Commission;

f. Establish additional committees as necessary;

g. Exercise the powers and duties of the Commission during the interim between Commission meetings, except for issuing proposed rulemaking or adopting Commission Rules or bylaws, or exercising any other powers and duties exclusively reserved to the Commission by the Commission's Rules; and

h. Perform other duties as provided in the Commission's Rules or bylaws.

7. All meetings of the Executive Committee at which it votes or plans to vote on matters in exercising the powers and duties of the Commission shall be open to the public, and public notice of such meetings shall be given as public meetings of the Commission are given.

8. The Executive Committee may convene in a closed, nonpublic meeting for the same reasons that the Commission may convene in a nonpublic meeting as set forth in Section 7.D.3 and shall announce the closed meeting as the Commission is required to under Section 7.D.4 and keep minutes of the closed meeting as the Commission is required to under Section 7.D.5.

G. Qualified Immunity, Defense, and Indemnification

1. The members, officers, executive director, employees, and representatives of the Commission shall have no greater liability than a state employee would have under the same or similar circumstances, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred, within the scope of Commission employment, duties, or responsibilities; provided that nothing in this paragraph shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person. The procurement of insurance of any type by the Commission shall not in any way compromise or limit the immunity granted hereunder.

2. The Commission shall defend any member, officer, executive director, employee, or representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or as determined by the Commission that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided that nothing herein shall be construed to prohibit that person from retaining their own counsel at their own expense; and provided further, that the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct.

3. The Commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the Commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided that the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

4. Venue is proper and judicial proceedings by or against the Commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the Commission is located. The Commission may waive venue and jurisdictional defenses in any proceedings as authorized by Commission Rules.

5. Nothing herein shall be construed as a limitation on the liability of any Licensee for professional malpractice or misconduct, which shall be governed solely by any other applicable State laws.

6. Nothing herein shall be construed to designate the venue or jurisdiction to bring actions for alleged acts of malpractice, professional misconduct, negligence, or other such civil action pertaining to the practice of a PA. All such matters shall be determined exclusively by State law other than this Compact.

7. Nothing in this Compact shall be interpreted to waive or otherwise abrogate a Participating State's state action immunity or state action affirmative defense with respect to antitrust claims under the Sherman Act, the Clayton Act, or any other State or federal antitrust or anticompetitive law or regulation.

8. Nothing in this Compact shall be construed to be a waiver of sovereign immunity by the Participating States or by the Commission.

SECTION 8. DATA SYSTEM

A. The Commission shall provide for the development, maintenance, operation, and utilization of a coordinated data and reporting system containing licensure, Adverse Action, and the reporting of the existence of Significant Investigative Information on all licensed PAs and applicants denied a License in Participating States.

B. Notwithstanding any other State law to the contrary, a Participating State shall submit a uniform data set to the Data System on all PAs to whom this Compact is applicable (utilizing a unique identifier) as required by the Rules of the Commission, including:

1. Identifying information;

2. Licensure data;

3. Adverse Actions against a License or Compact Privilege;

4. Any denial of application for licensure, and the reason(s) for such denial (excluding the reporting of any criminal history record information where prohibited by law);

5. The existence of Significant Investigative Information; and

6. Other information that may facilitate the administration of this Compact, as determined by the Rules of the Commission.

C. Significant Investigative Information pertaining to a Licensee in any Participating State shall only be available to other Participating States.

D. The Commission shall promptly notify all Participating States of any Adverse Action taken against a Licensee or an individual applying for a License that has been reported to it. This Adverse Action information shall be available to any other Participating State.

E. Participating States contributing information to the Data System may, in accordance with State or federal law, designate information that may not be shared with the public without the express permission of the contributing State. Notwithstanding any such designation, such information shall be reported to the Commission through the Data System.

F. Any information submitted to the Data System that is subsequently expunged pursuant to federal law or the laws of the Participating State contributing the information shall be removed from the Data System upon reporting of such by the Participating State to the Commission.

G. The records and information provided to a Participating State pursuant to this Compact or through the Data System, when certified by the Commission or an agent thereof, shall constitute the authenticated business records of the Commission, and shall be entitled to any associated hearsay exception in any relevant judicial, quasi-judicial, or administrative proceedings in a Participating State.

SECTION 9. RULEMAKING

A. The Commission shall exercise its Rulemaking powers pursuant to the criteria set forth in this Section and the Rules adopted thereunder. Commission Rules shall become binding as of the date specified by the Commission for each Rule.

B. The Commission shall promulgate reasonable Rules in order to effectively and efficiently implement and administer this Compact and achieve its purposes. A Commission Rule shall be invalid and have no force or effect only if a court of competent jurisdiction holds that the Rule is invalid because the Commission exercised its rulemaking authority in a manner that is beyond the scope of the purposes of this Compact, or the powers granted hereunder, or based upon another applicable standard of review.

C. The Rules of the Commission shall have the force of law in each Participating State, provided however that where the Rules of the Commission conflict with the laws of the Participating State that establish the medical services a PA may perform in the Participating State, as held by a court of competent jurisdiction, the Rules of the Commission shall be ineffective in that State to the extent of the conflict.

D. If a majority of the legislatures of the Participating States rejects a Commission Rule, by enactment of a statute or resolution in the same manner used to adopt this Compact within four years of the date of adoption of the Rule, then such Rule shall have no further force and effect in any Participating State or to any State applying to participate in the Compact.

E. Commission Rules shall be adopted at a regular or special meeting of the Commission.

F. Prior to promulgation and adoption of a final Rule or Rules by the Commission, and at least thirty days in advance of the meeting at which the

Rule will be considered and voted upon, the Commission shall file a Notice of Proposed Rulemaking:

1. On the website of the Commission or other publicly accessible platform;

2. To persons who have requested notice of the Commission's notices of proposed rulemaking; and

3. In such other way(s) as the Commission may by Rule specify.

G. The Notice of Proposed Rulemaking shall include:

1. The time, date, and location of the public hearing on the proposed Rule and the proposed time, date, and location of the meeting in which the proposed Rule will be considered and voted upon;

2. The text of the proposed Rule and the reason for the proposed Rule;

3. A request for comments on the proposed Rule from any interested person and the date by which written comments must be received; and

4. The manner in which interested persons may submit notice to the Commission of their intention to attend the public hearing or provide any written comments.

H. Prior to adoption of a proposed Rule, the Commission shall allow persons to submit written data, facts, opinions, and arguments, which shall be made available to the public.

I. If the hearing is to be held via electronic means, the Commission shall publish the mechanism for access to the electronic hearing.

1. All persons wishing to be heard at the hearing shall as directed in the Notice of Proposed Rulemaking, not less than five business days before the scheduled date of the hearing, notify the Commission of their desire to appear and testify at the hearing.

2. Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.

3. All hearings shall be recorded. A copy of the recording and the written comments, data, facts, opinions, and arguments received in response to the proposed rulemaking shall be made available to a person upon request.

4. Nothing in this section shall be construed as requiring a separate hearing on each proposed Rule. Proposed Rules may be grouped for the convenience of the Commission at hearings required by this section.

J. Following the public hearing the Commission shall consider all written and oral comments timely received.

K. The Commission shall, by majority vote of all delegates, take final action on the proposed Rule and shall determine the effective date of the Rule, if adopted, based on the Rulemaking record and the full text of the Rule.

1. If adopted, the Rule shall be posted on the Commission's website.

2. The Commission may adopt changes to the proposed Rule provided the changes do not enlarge the original purpose of the proposed Rule.

3. The Commission shall provide on its website an explanation of the reasons for substantive changes made to the proposed Rule as well as reasons for substantive changes not made that were recommended by commenters.

4. The Commission shall determine a reasonable effective date for the Rule. Except for an emergency as provided in subsection L, the effective date of the

Rule shall be no sooner than thirty days after the Commission issued the notice that it adopted the Rule.

L. Upon determination that an emergency exists, the Commission may consider and adopt an emergency Rule with twenty-four hours' prior notice, without the opportunity for comment or hearing, provided that the usual rulemaking procedures provided in this Compact and in this section shall be retroactively applied to the Rule as soon as reasonably possible, in no event later than ninety days after the effective date of the Rule. For the purposes of this provision, an emergency Rule is one that must be adopted immediately by the Commission in order to:

1. Meet an imminent threat to public health, safety, or welfare;

2. Prevent a loss of Commission or Participating State funds;

3. Meet a deadline for the promulgation of a Commission Rule that is established by federal law or Rule; or

4. Protect public health and safety.

M. The Commission or an authorized committee of the Commission may direct revisions to a previously adopted Commission Rule for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the website of the Commission. The revision shall be subject to challenge by any person for a period of thirty days after posting. The revision may be challenged only on grounds that the revision results in a material change to a Rule. A challenge shall be made as set forth in the notice of revisions and delivered to the Commission prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the Commission.

N. No Participating State's rulemaking requirements shall apply under this Compact.

SECTION 10. OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

A. Oversight

1. The executive and judicial branches of State government in each Participating State shall enforce this Compact and take all actions necessary and appropriate to implement the Compact.

2. Venue is proper and judicial proceedings by or against the Commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the Commission is located. The Commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings. Nothing herein shall affect or limit the selection or propriety of venue in any action against a licensee for professional malpractice, misconduct, or any such similar matter.

3. The Commission shall be entitled to receive service of process in any proceeding regarding the enforcement or interpretation of the Compact or the Commission's Rules and shall have standing to intervene in such a proceeding for all purposes. Failure to provide the Commission with service of process shall render a judgment or order in such proceeding void as to the Commission, this Compact, or Commission Rules.

B. Default, Technical Assistance, and Termination

1. If the Commission determines that a Participating State has defaulted in the performance of its obligations or responsibilities under this Compact or the Commission Rules, the Commission shall provide written notice to the defaulting State and other Participating States. The notice shall describe the default, the proposed means of curing the default, and any other action that the Commission may take and shall offer remedial training and specific technical assistance regarding the default.

2. If a State in default fails to cure the default, the defaulting State may be terminated from this Compact upon an affirmative vote of a majority of the delegates of the Participating States, and all rights, privileges, and benefits conferred by this Compact upon such State may be terminated on the effective date of termination. A cure of the default does not relieve the offending State of obligations or liabilities incurred during the period of default.

3. Termination of participation in this Compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the Commission to the governor, the majority and minority leaders of the defaulting State's legislature, and to the Licensing Board of each Participating State.

4. A State that has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

5. The Commission shall not bear any costs related to a State that is found to be in default or that has been terminated from this Compact, unless agreed upon in writing between the Commission and the defaulting State.

6. The defaulting State may appeal its termination from the Compact by the Commission by petitioning the United States District Court for the District of Columbia or the federal district where the Commission has its principal offices. The prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

7. Upon the termination of a State's participation in the Compact, the State shall immediately provide notice to all Licensees within that State of such termination.

a. Licensees who have been granted a Compact Privilege in that State shall retain the Compact Privilege for one hundred eighty days following the effective date of such termination.

b. Licensees who are licensed in that State who have been granted a Compact Privilege in a Participating State shall retain the Compact Privilege for one hundred eighty days unless the Licensee also has a Qualifying License in a Participating State or obtains a Qualifying License in a Participating State before the one-hundred-eighty-day period ends, in which case the Compact Privilege shall continue.

C. Dispute Resolution

1. Upon request by a Participating State, the Commission shall attempt to resolve disputes related to this Compact that arise among Participating States and between Participating and non-Participating States.

2. The Commission shall promulgate a Rule providing for both mediation and binding dispute resolution for disputes as appropriate.

D. Enforcement

1. The Commission, in the reasonable exercise of its discretion, shall enforce the provisions of this Compact and Rules of the Commission.

2. If compliance is not secured after all means to secure compliance have been exhausted, by majority vote, the Commission may initiate legal action in the United States District Court for the District of Columbia or the federal district where the Commission has its principal offices, against a Participating State in default to enforce compliance with the provisions of this Compact and the Commission's promulgated Rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation, including reasonable attorney's fees.

3. The remedies herein shall not be the exclusive remedies of the Commission. The Commission may pursue any other remedies available under federal or State law.

E. Legal Action Against the Commission

1. A Participating State may initiate legal action against the Commission in the United States District Court for the District of Columbia or the federal district where the Commission has its principal offices to enforce compliance with the provisions of the Compact and its Rules. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation, including reasonable attorney's fees.

2. No person other than a Participating State shall enforce this Compact against the Commission.

SECTION 11. DATE OF IMPLEMENTATION OF THE PA LICENSURE COMPACT

A. This Compact shall come into effect on the date on which this Compact statute is enacted into law in the seventh Participating State.

1. On or after the effective date of the Compact, the Commission shall convene and review the enactment of each of the States that enacted the Compact prior to the Commission convening (''Charter Participating States'') to determine if the statute enacted by each such Charter Participating State is materially different than the Model Compact.

a. A Charter Participating State whose enactment is found to be materially different from the Model Compact shall be entitled to the default process set forth in Section 10.B.

b. If any Participating State later withdraws from the Compact or its participation is terminated, the Commission shall remain in existence and the Compact shall remain in effect even if the number of Participating States should be less than seven. Participating States enacting the Compact subsequent to the Commission convening shall be subject to the process set forth in Section 7.C.21 to determine if their enactments are materially different from the Model Compact and whether they qualify for participation in the Compact.

2. Participating States enacting the Compact subsequent to the seven initial Charter Participating States shall be subject to the process set forth in Section 7.C.21 to determine if their enactments are materially different from the Model Compact and whether they qualify for participation in the Compact.

3. All actions taken for the benefit of the Commission or in furtherance of the purposes of the administration of the Compact prior to the effective date of the

Compact or the Commission coming into existence shall be considered to be actions of the Commission unless specifically repudiated by the Commission.

B. Any State that joins this Compact shall be subject to the Commission's Rules and bylaws as they exist on the date on which this Compact becomes law in that State. Any Rule that has been previously adopted by the Commission shall have the full force and effect of law on the day this Compact becomes law in that State.

C. Any Participating State may withdraw from this Compact by enacting a statute repealing the same.

1. A Participating State's withdrawal shall not take effect until one hundred eighty days after enactment of the repealing statute. During this period of one hundred eighty days, all Compact Privileges that were in effect in the withdrawing State and were granted to Licensees licensed in the withdrawing State shall remain in effect. If any Licensee licensed in the withdrawing State is also licensed in another Participating State or obtains a license in another Participating State within the one hundred eighty days, the Licensee's Compact Privileges in other Participating States shall not be affected by the passage of the one hundred eighty days.

2. Withdrawal shall not affect the continuing requirement of the State Licensing Board of the withdrawing State to comply with the investigative and Adverse Action reporting requirements of this Compact prior to the effective date of withdrawal.

3. Upon the enactment of a statute withdrawing a State from this Compact, the State shall immediately provide notice of such withdrawal to all Licensees within that State. Such withdrawing State shall continue to recognize all Licenses and Compact Privileges to practice within that State granted pursuant to this Compact for a minimum of one hundred eighty days after the date of such notice of withdrawal.

D. Nothing contained in this Compact shall be construed to invalidate or prevent any PA licensure agreement or other cooperative arrangement between Participating States and between a Participating State and non-Participating State that does not conflict with the provisions of this Compact.

E. This Compact may be amended by the Participating States. No amendment to this Compact shall become effective and binding upon any Participating State until it is enacted materially in the same manner into the laws of all Participating States as determined by the Commission.

SECTION 12. CONSTRUCTION AND SEVERABILITY

A. This Compact and the Commission's rulemaking authority shall be liberally construed so as to effectuate the purposes, implementation, and administration of the Compact. Provisions of the Compact expressly authorizing or requiring the promulgation of Rules shall not be construed to limit the Commission's rulemaking authority solely for those purposes.

B. The provisions of this Compact shall be severable and if any phrase, clause, sentence, or provision of this Compact is held by a court of competent jurisdiction to be contrary to the constitution of any Participating State, of a State seeking participation in the Compact, or of the United States, or the applicability thereof to any government, agency, person, or circumstance is held to be unconstitutional by a court of competent jurisdiction, the validity of

the remainder of this Compact and the applicability thereof to any other government, agency, person, or circumstance shall not be affected thereby.

C. Notwithstanding subsection B of this section, the Commission may deny a State's participation in the Compact or, in accordance with the requirements of Section 10.B, terminate a Participating State's participation in the Compact, if it determines that a constitutional requirement of a Participating State is, or would be with respect to a State seeking to participate in the Compact, a material departure from the Compact. Otherwise, if this Compact shall be held to be contrary to the constitution of any Participating State, the Compact shall remain in full force and effect as to the remaining Participating States and in full force and effect as to the Participating State affected as to all severable matters.

SECTION 13. BINDING EFFECT OF COMPACT

A. Nothing herein prevents the enforcement of any other law of a Participating State that is not inconsistent with this Compact.

B. Any laws in a Participating State in conflict with this Compact are superseded to the extent of the conflict.

C. All agreements between the Commission and the Participating States are binding in accordance with their terms.

Source: Laws 2024, LB1215, § 1.
Operative date January 1, 2025.

ARTICLE 47
DIETITIAN LICENSURE COMPACT

Section
38-4701. Dietitian Licensure Compact.

38-4701 Dietitian Licensure Compact.

This section shall be known and may be cited as the Dietitian Licensure Compact. The State of Nebraska adopts the Dietitian Licensure Compact in the form substantially as follows:

SECTION 1. PURPOSE

The purpose of this Compact is to facilitate interstate Practice of Dietetics with the goal of improving public access to dietetics services. This Compact preserves the regulatory authority of States to protect public health and safety through the current system of State licensure, while also providing for licensure portability through a Compact Privilege granted to qualifying professionals.

This Compact is designed to achieve the following objectives:

A. Increase public access to dietetics services;

B. Provide opportunities for interstate practice by Licensed Dietitians who meet uniform requirements;

C. Eliminate the necessity for Licenses in multiple States;

D. Reduce administrative burdens on Member States and Licensees;

E. Enhance the States' ability to protect the public's health and safety;

F. Encourage the cooperation of Member States in regulating multistate practice of Licensed Dietitians;

G. Support relocating Active Military Members and their spouses;

H. Enhance the exchange of licensure, investigative, and disciplinary information among Member States; and

I. Vest all Member States with the authority to hold a Licensed Dietitian accountable for meeting all State practice laws in the State in which the patient is located at the time care is rendered.

SECTION 2. DEFINITIONS

As used in this Compact, and except as otherwise provided, the following definitions shall apply:

A. ''ACEND'' means the Accreditation Council for Education in Nutrition and Dietetics or its successor organization.

B. ''Active Military Member'' means any individual with full-time duty status in the active armed forces of the United States, including members of the National Guard and Reserve.

C. ''Adverse Action'' means any administrative, civil, equitable, or criminal action permitted by a State's laws which is imposed by a Licensing Authority or other authority against a Licensee, including actions against an individual's License or Compact Privilege such as revocation, suspension, probation, monitoring of the Licensee, limitation on the Licensee's practice, or any other Encumbrance on licensure affecting a Licensee's authorization to practice, including issuance of a cease and desist action.

D. ''Alternative Program'' means a non-disciplinary monitoring or practice remediation process approved by a Licensing Authority.

E. ''Charter Member State'' means any Member State which enacted this Compact by law before the Effective Date specified in Section 12.

F. ''Continuing Education'' means a requirement, as a condition of License renewal, to provide evidence of participation in, and completion of, educational and professional activities relevant to practice or area of work.

G. ''CDR'' means the Commission on Dietetic Registration or its successor organization.

H. ''Compact Commission'' means the government agency whose membership consists of all States that have enacted this Compact, which is known as the Dietitian Licensure Compact Commission, as described in Section 8 of this Compact, and which shall operate as an instrumentality of the Member States.

I. ''Compact Privilege'' means a legal authorization, which is equivalent to a License, permitting the Practice of Dietetics in a Remote State.

J. ''Current Significant Investigative Information'' means:

1. Investigative Information that a Licensing Authority, after a preliminary inquiry that includes notification and an opportunity for the subject Licensee to respond, if required by State law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction; or

2. Investigative Information that indicates that the subject Licensee represents an immediate threat to public health and safety regardless of whether the subject Licensee has been notified and had an opportunity to respond.

K. ''Data System'' means a repository of information about Licensees, including, but not limited to, Continuing Education, examination, licensure, investigative, Compact Privilege, and Adverse Action information.

L. ''Encumbered License'' means a License in which an Adverse Action restricts a Licensee's ability to practice dietetics.

M. ''Encumbrance'' means a revocation or suspension of, or any limitation on a Licensee's full and unrestricted Practice of Dietetics by a Licensing Authority.

N. ''Executive Committee'' means a group of delegates elected or appointed to act on behalf of, and within the powers granted to them by, this Compact, and the Compact Commission.

O. ''Home State'' means the Member State that is the Licensee's primary State of residence or that has been designated pursuant to Section 6 of this Compact.

P. ''Investigative Information'' means information, records, and documents received or generated by a Licensing Authority pursuant to an investigation.

Q. ''Jurisprudence Requirement'' means an assessment of an individual's knowledge of the State laws and regulations governing the Practice of Dietetics in such State.

R. ''License'' means an authorization from a Member State to either:

1. Engage in the Practice of Dietetics (including medical nutrition therapy); or

2. Use the title ''dietitian,'' ''licensed dietitian,'' ''licensed dietitian nutritionist,'' ''certified dietitian,'' or other title describing a substantially similar practitioner as the Compact Commission may further define by Rule.

S. ''Licensee'' or ''Licensed Dietitian'' means an individual who currently holds a License and who meets all of the requirements outlined in Section 4 of this Compact.

T. ''Licensing Authority'' means the board or agency of a State, or equivalent, that is responsible for the licensing and regulation of the Practice of Dietetics.

U. ''Member State'' means a State that has enacted the Compact.

V. ''Practice of Dietetics'' means the synthesis and application of dietetics, primarily for the provision of nutrition care services, including medical nutrition therapy, in person or via telehealth, to prevent, manage, or treat diseases or medical conditions and promote wellness.

W. ''Registered Dietitian'' means a person who:

1. Has completed applicable education, experience, examination, and recertification requirements approved by CDR;

2. Is credentialed by CDR as a registered dietitian or a registered dietitian nutritionist; and

3. Is legally authorized to use the title registered dietitian or registered dietitian nutritionist and the corresponding abbreviations ''RD'' or ''RDN.''

X. ''Remote State'' means a Member State other than the Home State, where a Licensee is exercising or seeking to exercise a Compact Privilege.

Y. ''Rule'' means a regulation promulgated by the Compact Commission that has the force of law.

Z. ''Single State License'' means a License issued by a Member State within the issuing State and does not include a Compact Privilege in any other Member State.

AA. ''State'' means any state, commonwealth, district, or territory of the United States of America.

BB. ''Unencumbered License'' means a License that authorizes a Licensee to engage in the full and unrestricted Practice of Dietetics.

SECTION 3. STATE PARTICIPATION IN THE COMPACT

A. To participate in the Compact, a State must currently:

1. License and regulate the Practice of Dietetics; and

2. Have a mechanism in place for receiving and investigating complaints about Licensees.

B. A Member State shall:

1. Participate fully in the Compact Commission's Data System, including using the unique identifier as defined in Rules;

2. Notify the Compact Commission, in compliance with the terms of the Compact and Rules, of any Adverse Action or the availability of Current Significant Investigative Information regarding a Licensee;

3. Implement or utilize procedures for considering the criminal history record information of applicants for an initial Compact Privilege. These procedures shall include the submission of fingerprints or other biometric-based information by applicants for the purpose of obtaining an applicant's criminal history record information from the Federal Bureau of Investigation and the agency responsible for retaining that State's criminal records;

a. A Member State must fully implement a criminal history record information requirement, within a time frame established by Rule, which includes receiving the results of the Federal Bureau of Investigation record search and shall use those results in determining Compact Privilege eligibility.

b. Communication between a Member State and the Compact Commission or among Member States regarding the verification of eligibility for a Compact Privilege shall not include any information received from the Federal Bureau of Investigation relating to a federal criminal history record information check performed by a Member State.

4. Comply with and enforce the Rules of the Compact Commission;

5. Require an applicant for a Compact Privilege to obtain or retain a License in the Licensee's Home State and meet the Home State's qualifications for licensure or renewal of licensure, as well as all other applicable State laws; and

6. Recognize a Compact Privilege granted to a Licensee who meets all of the requirements outlined in Section 4 of this Compact in accordance with the terms of the Compact and Rules.

C. Member States may set and collect a fee for granting a Compact Privilege.

D. Individuals not residing in a Member State shall continue to be able to apply for a Member State's Single State License as provided under the laws of each Member State. However, the Single State License granted to these individuals shall not be recognized as granting a Compact Privilege to engage in the Practice of Dietetics in any other Member State.

E. Nothing in this Compact shall affect the requirements established by a Member State for the issuance of a Single State License.

F. At no point shall the Compact Commission have the power to define the requirements for the issuance of a Single State License to practice dietetics.

The Member States shall retain sole jurisdiction over the provision of these requirements.

SECTION 4. COMPACT PRIVILEGE

A. To exercise the Compact Privilege under the terms and provisions of the Compact, the Licensee shall:

1. Satisfy one of the following:

a. Hold a valid current registration that gives the applicant the right to use the term Registered Dietitian; or

b. Complete all of the following:

i. An education program which is either:

a) A master's degree or doctoral degree that is programmatically accredited by (i) ACEND; or (ii) a dietetics accrediting agency recognized by the United States Department of Education, which the Compact Commission may by Rule determine, and from a college or university accredited at the time of graduation by the appropriate regional accrediting agency recognized by the Council on Higher Education Accreditation and the United States Department of Education.

b) An academic degree from a college or university in a foreign country equivalent to the degree described in subparagraph (a) that is programmatically accredited by (i) ACEND; or (ii) a dietetics accrediting agency recognized by the United States Department of Education, which the Compact Commission may by Rule determine.

ii. A planned, documented, supervised practice experience in dietetics that is programmatically accredited by (i) ACEND, or (ii) a dietetics accrediting agency recognized by the United States Department of Education which the Compact Commission may by Rule determine and which involves at least one thousand hours of practice experience under the supervision of a Registered Dietitian or a Licensed Dietitian.

iii. Successful completion of either: (i) the Registration Examination for Dietitians administered by CDR, or (ii) a national credentialing examination for dietitians approved by the Compact Commission by Rule; such completion being no more than five years prior to the date of the Licensee's application for initial licensure and accompanied by a period of continuous licensure thereafter, all of which may be further governed by the Rules of the Compact Commission.

2. Hold an Unencumbered License in the Home State;

3. Notify the Compact Commission that the Licensee is seeking a Compact Privilege within a Remote State(s);

4. Pay any applicable fees, including any State fee, for the Compact Privilege;

5. Meet any Jurisprudence Requirements established by the Remote State(s) in which the Licensee is seeking a Compact Privilege; and

6. Report to the Compact Commission any Adverse Action, Encumbrance, or restriction on a License taken by any non-Member State within thirty days from the date the action is taken.

B. The Compact Privilege is valid until the expiration date of the Home State License. To maintain a Compact Privilege, renewal of the Compact Privilege shall be congruent with the renewal of the Home State License as the Compact Commission may define by Rule. The Licensee must comply with the require-

ments of subsection 4(A) to maintain the Compact Privilege in the Remote State(s).

C. A Licensee exercising a Compact Privilege shall adhere to the laws and regulations of the Remote State. Licensees shall be responsible for educating themselves on, and complying with, any and all State laws relating to the Practice of Dietetics in such Remote State.

D. Notwithstanding anything to the contrary provided in this Compact or State law, a Licensee exercising a Compact Privilege shall not be required to complete Continuing Education Requirements required by a Remote State. A Licensee exercising a Compact Privilege is only required to meet any Continuing Education Requirements as required by the Home State.

SECTION 5. OBTAINING A NEW HOME STATE LICENSE BASED ON A COMPACT PRIVILEGE

A. A Licensee may hold a Home State License, which allows for a Compact Privilege in other Member States, in only one Member State at a time.

B. If a Licensee changes Home State by moving between two Member States:

1. The Licensee shall file an application for obtaining a new Home State License based on a Compact Privilege, pay all applicable fees, and notify the current and new Home State in accordance with the Rules of the Compact Commission.

2. Upon receipt of an application for obtaining a new Home State License by virtue of a Compact Privilege, the new Home State shall verify that the Licensee meets the criteria in Section 4 of this Compact via the Data System, and require that the Licensee complete the following:

a. Federal Bureau of Investigation fingerprint based criminal history record information check;

b. Any other criminal history record information required by the new Home State; and

c. Any Jurisprudence Requirements of the new Home State.

3. The former Home State shall convert the former Home State License into a Compact Privilege once the new Home State has activated the new Home State License in accordance with applicable Rules adopted by the Compact Commission.

4. Notwithstanding any other provision of this Compact, if the Licensee cannot meet the criteria in Section 4 of this Compact, the new Home State may apply its requirements for issuing a new Single State License.

5. The Licensee shall pay all applicable fees to the new Home State in order to be issued a new Home State License.

C. If a Licensee changes their State of residence by moving from a Member State to a non-Member State, or from a non-Member State to a Member State, the State criteria shall apply for issuance of a Single State License in the new State.

D. Nothing in this Compact shall interfere with a Licensee's ability to hold a Single State License in multiple States; however, for the purposes of this Compact, a Licensee shall have only one Home State License.

E. Nothing in this Compact shall affect the requirements established by a Member State for the issuance of a Single State License.

SECTION 6. ACTIVE MILITARY MEMBERS OR THEIR SPOUSES

An Active Military Member, or their spouse, shall designate a Home State where the individual has a current License in good standing. The individual may retain the Home State designation during the period the service member is on active duty.

SECTION 7. ADVERSE ACTIONS

A. In addition to the other powers conferred by State law, a Remote State shall have the authority, in accordance with existing State due process law, to:

1. Take Adverse Action against a Licensee's Compact Privilege within that Member State; and

2. Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses as well as the production of evidence. Subpoenas issued by a Licensing Authority in a Member State for the attendance and testimony of witnesses or the production of evidence from another Member State shall be enforced in the latter State by any court of competent jurisdiction, according to the practice and procedure applicable to subpoenas issued in proceedings pending before that court. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the State in which the witnesses or evidence are located.

B. Only the Home State shall have the power to take Adverse Action against a Licensee's Home State License.

C. For purposes of taking Adverse Action, the Home State shall give the same priority and effect to reported conduct received from a Member State as it would if the conduct had occurred within the Home State. In so doing, the Home State shall apply its own State laws to determine appropriate action.

D. The Home State shall complete any pending investigations of a Licensee who changes Home States during the course of the investigations. The Home State shall also have authority to take appropriate action(s) and shall promptly report the conclusions of the investigations to the administrator of the Data System. The administrator of the Data System shall promptly notify the new Home State of any Adverse Actions.

E. A Member State, if otherwise permitted by State law, may recover from the affected Licensee the costs of investigations and dispositions of cases resulting from any Adverse Action taken against that Licensee.

F. A Member State may take Adverse Action based on the factual findings of another Remote State, provided that the Member State follows its own procedures for taking the Adverse Action.

G. Joint Investigations:

1. In addition to the authority granted to a Member State by its respective State law, any Member State may participate with other Member States in joint investigations of Licensees.

2. Member States shall share any investigative, litigation, or compliance materials in furtherance of any joint investigation initiated under the Compact.

H. If Adverse Action is taken by the Home State against a Licensee's Home State License resulting in an Encumbrance on the Home State License, the Licensee's Compact Privilege(s) in all other Member States shall be revoked until all Encumbrances have been removed from the Home State License. All Home State disciplinary orders that impose Adverse Action against a Licensee

shall include a statement that the Licensee's Compact Privileges are revoked in all Member States during the pendency of the order.

I. Once an Encumbered License in the Home State is restored to an Unencumbered License (as certified by the Home State's Licensing Authority), the Licensee must meet the requirements of Section 4(A) of this Compact and follow the administrative requirements to reapply to obtain a Compact Privilege in any Remote State.

J. If a Member State takes Adverse Action, it shall promptly notify the administrator of the Data System. The administrator of the Data System shall promptly notify the other Member States State of any Adverse Actions.

K. Nothing in this Compact shall override a Member State's decision that participation in an Alternative Program may be used in lieu of Adverse Action.

SECTION 8. ESTABLISHMENT OF THE DIETITIAN LICENSURE COMPACT COMMISSION

A. The Compact Member States hereby create and establish a joint government agency whose membership consists of all Member States that have enacted the Compact known as the Dietitian Licensure Compact Commission. The Compact Commission is an instrumentality of the Compact States acting jointly and not an instrumentality of any one State. The Compact Commission shall come into existence on or after the effective date of the Compact as set forth in Section 12 of this Compact.

B. Membership, Voting, and Meetings

1. Each Member State shall have and be limited to one delegate selected by that Member State's Licensing Authority.

2. The delegate shall be the primary administrator of the Licensing Authority or their designee.

3. The Compact Commission shall by Rule or bylaw establish a term of office for delegates and may by Rule or bylaw establish term limits.

4. The Compact Commission may recommend removal or suspension of any delegate from office.

5. A Member State's Licensing Authority shall fill any vacancy of its delegate occurring on the Compact Commission within sixty days of the vacancy.

6. Each delegate shall be entitled to one vote on all matters before the Compact Commission requiring a vote by the delegates.

7. Delegates shall meet and vote by such means as set forth in the bylaws. The bylaws may provide for delegates to meet and vote in-person or by telecommunication, video conference, or other means of communication.

8. The Compact Commission shall meet at least once during each calendar year. Additional meetings may be held as set forth in the bylaws. The Compact Commission may meet in person or by telecommunication, video conference, or other means of communication.

C. The Compact Commission shall have the following powers:

1. Establish the fiscal year of the Compact Commission;

2. Establish code of conduct and conflict of interest policies;

3. Establish and amend Rules and bylaws;

4. Maintain its financial records in accordance with the bylaws;

5. Meet and take such actions as are consistent with the provisions of this Compact, the Compact Commission's Rules, and the bylaws;

6. Initiate and conclude legal proceedings or actions in the name of the Compact Commission, provided that the standing of any Licensing Authority to sue or be sued under applicable law shall not be affected;

7. Maintain and certify records and information provided to a Member State as the authenticated business records of the Compact Commission, and designate an agent to do so on the Compact Commission's behalf;

8. Purchase and maintain insurance and bonds;

9. Borrow, accept, or contract for services of personnel, including, but not limited to, employees of a Member State;

10. Conduct an annual financial review;

11. Hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of the Compact, and establish the Compact Commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;

12. Assess and collect fees;

13. Accept any and all appropriate donations, grants of money, other sources of revenue, equipment, supplies, materials, services, and gifts, and receive, utilize, and dispose of the same; provided that at all times the Compact Commission shall avoid any actual or appearance of impropriety or conflict of interest;

14. Lease, purchase, retain, own, hold, improve, or use any property, real, personal, or mixed, or any undivided interest therein;

15. Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed;

16. Establish a budget and make expenditures;

17. Borrow money;

18. Appoint committees, including standing committees, composed of members, State regulators, State legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in this Compact or the bylaws;

19. Provide and receive information from, and cooperate with, law enforcement agencies;

20. Establish and elect an Executive Committee, including a chair and a vice chair;

21. Determine whether a State's adopted language is materially different from the model compact language such that the State would not qualify for participation in the Compact; and

22. Perform such other functions as may be necessary or appropriate to achieve the purposes of this Compact.

D. The Executive Committee

1. The Executive Committee shall have the power to act on behalf of the Compact Commission according to the terms of this Compact. The powers, duties, and responsibilities of the Executive Committee shall include:

a. Oversee the day-to-day activities of the administration of the Compact including enforcement and compliance with the provisions of the Compact, its Rules and bylaws, and other such duties as deemed necessary;

b. Recommend to the Compact Commission changes to the Rules or bylaws, changes to this Compact legislation, fees charged to Compact Member States, fees charged to Licensees, and other fees;

c. Ensure Compact administration services are appropriately provided, including by contract;

d. Prepare and recommend the budget;

e. Maintain financial records on behalf of the Compact Commission;

f. Monitor Compact compliance of Member States and provide compliance reports to the Compact Commission;

g. Establish additional committees as necessary;

h. Exercise the powers and duties of the Compact Commission during the interim between Compact Commission meetings, except for adopting or amending Rules, adopting or amending bylaws, and exercising any other powers and duties expressly reserved to the Compact Commission by Rule or bylaw; and

i. Other duties as provided in the Rules or bylaws of the Compact Commission.

2. The Executive Committee shall be composed of nine members:

a. The chair and vice chair of the Compact Commission shall be voting members of the Executive Committee;

b. Five voting members from the current membership of the Compact Commission, elected by the Compact Commission;

c. One ex officio, nonvoting member from a recognized professional association representing dietitians; and

d. One ex officio, nonvoting member from a recognized national credentialing organization for dietitians.

3. The Compact Commission may remove any member of the Executive Committee as provided in the Compact Commission's bylaws.

4. The Executive Committee shall meet at least annually.

a. Executive Committee meetings shall be open to the public, except that the Executive Committee may meet in a closed, nonpublic meeting as provided in subsection (F)(2).

b. The Executive Committee shall give thirty days' notice of its meetings, posted on the website of the Compact Commission and as determined to provide notice to persons with an interest in the business of the Compact Commission.

c. The Executive Committee may hold a special meeting in accordance with subsection (F)(1)(b).

E. The Compact Commission shall adopt and provide to the Member States an annual report.

F. Meetings of the Compact Commission

1. All meetings shall be open to the public, except that the Compact Commission may meet in a closed, nonpublic meeting as provided in subsection (F)(2).

a. Public notice for all meetings of the full Compact Commission shall be given in the same manner as required under the rulemaking provisions in Section 10, except that the Compact Commission may hold a special meeting as provided in subsection (F)(1)(b).

b. The Compact Commission may hold a special meeting when it must meet to conduct emergency business by giving twenty-four hours' notice to all Member States, on the Compact Commission's website, and by other means as provided in the Compact Commission's Rules. The Compact Commission's legal counsel shall certify that the Compact Commission's need to meet qualifies as an emergency.

2. The Compact Commission or the Executive Committee or other committees of the Compact Commission may convene in a closed, nonpublic meeting for the Compact Commission or Executive Committee or other committees of the Compact Commission to receive legal advice or to discuss:

a. Non-compliance of a Member State with its obligations under the Compact;

b. The employment, compensation, discipline, or other matters, practices, or procedures related to specific employees;

c. Current or threatened discipline of a Licensee by the Compact Commission or by a Member State's Licensing Authority;

d. Current, threatened, or reasonably anticipated litigation;

e. Negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate;

f. Accusing any person of a crime or formally censuring any person;

g. Trade secrets or commercial or financial information that is privileged or confidential;

h. Information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

i. Investigative records compiled for law enforcement purposes;

j. Information related to any investigative reports prepared by or on behalf of or for use of the Compact Commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the Compact;

k. Matters specifically exempted from disclosure by federal or Member State law; or

l. Other matters as specified in the Rules of the Compact Commission.

3. If a meeting, or portion of a meeting, is closed, the presiding officer shall state that the meeting will be closed and reference each relevant exempting provision, and such reference shall be recorded in the minutes.

4. The Compact Commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release only by a majority vote of the Compact Commission or order of a court of competent jurisdiction.

G. Financing of the Compact Commission

1. The Compact Commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

2. The Compact Commission may accept any and all appropriate revenue sources as provided in subsection (C)(13).

3. The Compact Commission may levy on and collect an annual assessment from each Member State and impose fees on Licensees of Member States to whom it grants a Compact Privilege to cover the cost of the operations and activities of the Compact Commission and its staff, which must, in a total amount, be sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount for Member States shall be allocated based upon a formula that the Compact Commission shall promulgate by Rule.

4. The Compact Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Compact Commission pledge the credit of any of the Member States, except by and with the authority of the Member State.

5. The Compact Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Compact Commission shall be subject to the financial review and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Compact Commission shall be subject to an annual financial review by a certified or licensed public accountant, and the report of the financial review shall be included in and become part of the annual report of the Compact Commission.

H. Qualified Immunity, Defense, and Indemnification

1. The members, officers, executive director, employees and representatives of the Compact Commission shall have no greater liability than a state employee would have under the same or similar circumstances, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Compact Commission employment, duties, or responsibilities; provided that nothing in this paragraph shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person. The procurement of insurance of any type by the Compact Commission shall not in any way compromise or limit the immunity granted hereunder.

2. The Compact Commission shall defend any member, officer, executive director, employee, and representative of the Compact Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of Compact Commission employment, duties, or responsibilities, or as determined by the Compact Commission that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Compact Commission employment, duties, or responsibilities; provided that nothing herein shall be construed to prohibit that person from retaining their own counsel at their own expense; and provided further, that the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct.

3. The Compact Commission shall indemnify and hold harmless any member, officer, executive director, employee, and representative of the Compact Commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of Compact Commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of Compact Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

4. Nothing herein shall be construed as a limitation on the liability of any Licensee for professional malpractice or misconduct, which shall be governed solely by any other applicable State laws.

5. Nothing in this Compact shall be interpreted to waive or otherwise abrogate a Member State's state action immunity or state action affirmative defense with respect to antitrust claims under the Sherman Act, Clayton Act, or any other State or federal antitrust or anticompetitive law or regulation.

6. Nothing in this Compact shall be construed to be a waiver of sovereign immunity by the Member States or by the Compact Commission.

SECTION 9. DATA SYSTEM

A. The Compact Commission shall provide for the development, maintenance, operation, and utilization of a coordinated Data System.

B. The Compact Commission shall assign each applicant for a Compact Privilege a unique identifier, as determined by the Rules.

C. Notwithstanding any other provision of State law to the contrary, a Member State shall submit a uniform data set to the Data System on all individuals to whom this Compact is applicable as required by the Rules of the Compact Commission, including:

1. Identifying information;

2. Licensure data;

3. Adverse Actions against a License or Compact Privilege and information related thereto;

4. Nonconfidential information related to Alternative Program participation, the beginning and ending dates of such participation, and other information related to such participation not made confidential under Member State law;

5. Any denial of application for licensure, and the reason(s) for such denial;

6. The presence of Current Significant Investigative Information; and

7. Other information that may facilitate the administration of this Compact or the protection of the public, as determined by the Rules of the Compact Commission.

D. The records and information provided to a Member State pursuant to this Compact or through the Data System, when certified by the Compact Commission or an agent thereof, shall constitute the authenticated business records of the Compact Commission, and shall be entitled to any associated hearsay exception in any relevant judicial, quasi-judicial, or administrative proceedings in a Member State.

E. Current Significant Investigative Information pertaining to a Licensee in any Member State will only be available to other Member States.

F. It is the responsibility of the Member States to report any Adverse Action against a Licensee and to monitor the Data System to determine whether any Adverse Action has been taken against a Licensee. Adverse Action information pertaining to a Licensee in any Member State will be available to any other Member State.

G. Member States contributing information to the Data System may designate information that may not be shared with the public without the express permission of the contributing State.

H. Any information submitted to the Data System that is subsequently expunged pursuant to federal law or the laws of the Member State contributing the information shall be removed from the Data System.

SECTION 10. RULEMAKING

A. The Compact Commission shall promulgate reasonable Rules in order to effectively and efficiently implement and administer the purposes and provisions of the Compact. A Rule shall be invalid and have no force or effect only if a court of competent jurisdiction holds that the Rule is invalid because the Compact Commission exercised its rulemaking authority in a manner that is beyond the scope and purposes of the Compact, or the powers granted hereunder, or based upon another applicable standard of review.

B. The Rules of the Compact Commission shall have the force of law in each Member State, provided however that where the Rules conflict with the laws or regulations of a Member State that relate to the procedures, actions, and processes a Licensed Dietitian is permitted to undertake in that State and the circumstances under which they may do so, as held by a court of competent jurisdiction, the Rules of the Compact Commission shall be ineffective in that State to the extent of the conflict.

C. The Compact Commission shall exercise its rulemaking powers pursuant to the criteria set forth in this Section and the Rules adopted thereunder. Rules shall become binding on the day following adoption or as of the date specified in the Rule or amendment, whichever is later.

D. If a majority of the legislatures of the Member States rejects a Rule or portion of a Rule, by enactment of a statute or resolution in the same manner used to adopt the Compact within four years of the date of adoption of the Rule, then such Rule shall have no further force and effect in any Member State.

E. Rules shall be adopted at a regular or special meeting of the Compact Commission.

F. Prior to adoption of a proposed Rule, the Compact Commission shall hold a public hearing and allow persons to provide oral and written comments, data, facts, opinions, and arguments.

G. Prior to adoption of a proposed Rule by the Compact Commission, and at least thirty days in advance of the meeting at which the Compact Commission will hold a public hearing on the proposed Rule, the Compact Commission shall provide a Notice of Proposed rulemaking:

1. On the website of the Compact Commission or other publicly accessible platform;

2. To persons who have requested notice of the Compact Commission's notices of proposed rulemaking; and

3. In such other way(s) as the Compact Commission may by Rule specify.

H. The Notice of Proposed rulemaking shall include:

1. The time, date, and location of the public hearing at which the Compact Commission will hear public comments on the proposed Rule and, if different, the time, date, and location of the meeting where the Compact Commission will consider and vote on the proposed Rule;

2. If the hearing is held via telecommunication, video conference, or other means of communication, the Compact Commission shall include the mechanism for access to the hearing in the Notice of Proposed rulemaking;

3. The text of the proposed Rule and the reason therefore;

4. A request for comments on the proposed Rule from any interested person; and

5. The manner in which interested persons may submit written comments.

I. All hearings will be recorded. A copy of the recording and all written comments and documents received by the Compact Commission in response to the proposed Rule shall be available to the public.

J. Nothing in this Section shall be construed as requiring a separate hearing on each Rule. Rules may be grouped for the convenience of the Compact Commission at hearings required by this Section.

K. The Compact Commission shall, by majority vote of all members, take final action on the proposed Rule based on the rulemaking record and the full text of the Rule.

1. The Compact Commission may adopt changes to the proposed Rule provided the changes do not enlarge the original purpose of the proposed Rule.

2. The Compact Commission shall provide an explanation of the reasons for substantive changes made to the proposed Rule as well as reasons for substantive changes not made that were recommended by commenters.

3. The Compact Commission shall determine a reasonable effective date for the Rule. Except for an emergency as provided in subsection 10(L), the effective date of the Rule shall be no sooner than thirty days after issuing the notice that it adopted or amended the Rule.

L. Upon determination that an emergency exists, the Compact Commission may consider and adopt an emergency Rule with twenty-four hours' notice, with opportunity to comment, provided that the usual rulemaking procedures provided in the Compact and in this Section shall be retroactively applied to the Rule as soon as reasonably possible, in no event later than ninety days after the effective date of the Rule. For the purposes of this provision, an emergency Rule is one that must be adopted immediately in order to:

1. Meet an imminent threat to public health, safety, or welfare;

2. Prevent a loss of Compact Commission or Member State funds;

3. Meet a deadline for the promulgation of a Rule that is established by federal law or rule; or

4. Protect public health and safety.

M. The Compact Commission or an authorized committee of the Compact Commission may direct revision to a previously adopted Rule for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revision shall be posted on the website of the Compact Commission. The revision shall be subject to challenge by any

person for a period of thirty days after posting. The revision may be challenged only on grounds that the revision results in a material change to a Rule. A challenge shall be made in writing and delivered to the Compact Commission prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the Compact Commission.

N. No Member State's rulemaking requirements shall apply under this Compact.

SECTION 11. OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

A. Oversight

1. The executive and judicial branches of State government in each Member State shall enforce this Compact and take all actions necessary and appropriate to implement this Compact.

2. Except as otherwise provided in this Compact, venue is proper and judicial proceedings by or against the Compact Commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the Compact Commission is located. The Compact Commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings. Nothing herein shall affect or limit the selection or propriety of venue in any action against a Licensee for professional malpractice, misconduct, or any such similar matter.

3. The Compact Commission shall be entitled to receive service of process in any proceeding regarding the enforcement or interpretation of the Compact and shall have standing to intervene in such a proceeding for all purposes. Failure to provide the Compact Commission service of process shall render a judgment or order void as to the Compact Commission, this Compact, or promulgated Rules.

B. Default, Technical Assistance, and Termination

1. If the Compact Commission determines that a Member State has defaulted in the performance of its obligations or responsibilities under this Compact or the promulgated Rules, the Compact Commission shall provide written notice to the defaulting State. The notice of default shall describe the default, the proposed means of curing the default, and any other action that the Compact Commission may take and shall offer training and specific technical assistance regarding the default.

2. The Compact Commission shall provide a copy of the notice of default to the other Member States.

C. If a State in default fails to cure the default, the defaulting State may be terminated from the Compact upon an affirmative vote of a majority of the delegates of the Member States, and all rights, privileges, and benefits conferred on that State by this Compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending State of obligations or liabilities incurred during the period of default.

D. Termination of membership in the Compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the Compact Commission to the governor, the majority and minority leaders of the defaulting State's legislature,

the defaulting State's Licensing Authority, and each of the Member States' Licensing Authority.

E. A State that has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

F. Upon the termination of a State's membership from this Compact, that State shall immediately provide notice to all Licensees within that State of such termination. The terminated State shall continue to recognize all Compact Privileges granted pursuant to this Compact for a minimum of six months after the date of said notice of termination.

G. The Compact Commission shall not bear any costs related to a State that is found to be in default or that has been terminated from the Compact, unless agreed upon in writing between the Compact Commission and the defaulting State.

H. The defaulting State may appeal the action of the Compact Commission by petitioning the United States District Court for the District of Columbia or the federal district where the Compact Commission has its principal offices. The prevailing party shall be awarded all costs of such litigation, including reasonable attorney's fees.

I. Dispute Resolution

1. Upon request by a Member State, the Compact Commission shall attempt to resolve disputes related to the Compact that arise among Member States and between Member and non-Member States.

2. The Compact Commission shall promulgate a Rule providing for both mediation and binding dispute resolution for disputes as appropriate.

J. Enforcement

1. By supermajority vote, the Compact Commission may initiate legal action against a Member State in default in the United States District Court for the District of Columbia or the federal district where the Compact Commission has its principal offices to enforce compliance with the provisions of the Compact and its promulgated Rules. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation, including reasonable attorney's fees. The remedies herein shall not be the exclusive remedies of the Compact Commission. The Compact Commission may pursue any other remedies available under federal or the defaulting Member State's law.

2. A Member State may initiate legal action against the Compact Commission in the United States District Court for the District of Columbia or the federal district where the Compact Commission has its principal offices to enforce compliance with the provisions of the Compact and its promulgated Rules. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation, including reasonable attorney's fees.

3. No party other than a Member State shall enforce this Compact against the Compact Commission.

SECTION 12. EFFECTIVE DATE, WITHDRAWAL, AND AMENDMENT

A. The Compact shall come into effect on the date on which the Compact statute is enacted into law in the seventh Member State.

1. On or after the effective date of the Compact, the Compact Commission shall convene and review the enactment of each of the first seven Member States (''Charter Member States'') to determine if the statute enacted by each such Charter Member State is materially different than the model Compact statute.

a. A Charter Member State whose enactment is found to be materially different from the model Compact statute shall be entitled to the default process set forth in Section 11 of this Compact.

b. If any Member State is later found to be in default, or is terminated, or withdraws from the Compact, the Compact Commission shall remain in existence and the Compact shall remain in effect even if the number of Member States should be less than seven.

2. Member States enacting the Compact subsequent to the seven initial Charter Member States shall be subject to the process set forth in Section 8(C)(21) of this Compact to determine if their enactments are materially different from the model Compact statute and whether they qualify for participation in the Compact.

3. All actions taken for the benefit of the Compact Commission or in furtherance of the purposes of the administration of the Compact prior to the effective date of the Compact or the Compact Commission coming into existence shall be considered to be actions of the Compact Commission unless specifically repudiated by the Compact Commission.

4. Any State that joins the Compact subsequent to the Compact Commission's initial adoption of the Rules and bylaws shall be subject to the Rules and bylaws as they exist on the date on which the Compact becomes law in that State. Any Rule that has been previously adopted by the Compact Commission shall have the full force and effect of law on the day the Compact becomes law in that State.

B. Any Member State may withdraw from this Compact by enacting a statute repealing the same.

1. A Member State's withdrawal shall not take effect until one hundred eighty days after enactment of the repealing statute.

2. Withdrawal shall not affect the continuing requirement of the withdrawing State's Licensing Authority to comply with the investigative and Adverse Action reporting requirements of this Compact prior to the effective date of withdrawal.

3. Upon the enactment of a statute withdrawing from this Compact, a State shall immediately provide notice of such withdrawal to all Licensees within that State. Notwithstanding any subsequent statutory enactment to the contrary, such withdrawing State shall continue to recognize all Compact Privileges granted pursuant to this Compact for a minimum of one hundred eighty days after the date of such notice of withdrawal.

C. Nothing contained in this Compact shall be construed to invalidate or prevent any licensure agreement or other cooperative arrangement between a Member State and a non-Member State that does not conflict with the provisions of this Compact.

D. This Compact may be amended by the Member States. No amendment to this Compact shall become effective and binding upon any Member State until it is enacted into the laws of all Member States.

SECTION 13. CONSTRUCTION AND SEVERABILITY

A. This Compact and the Compact Commission's rulemaking authority shall be liberally construed so as to effectuate the purposes and the implementation and administration of the Compact. Provisions of the Compact expressly authorizing or requiring the promulgation of Rules shall not be construed to limit the Compact Commission's rulemaking authority solely for those purposes.

B. The provisions of this Compact shall be severable and if any phrase, clause, sentence, or provision of this Compact is held by a court of competent jurisdiction to be contrary to the constitution of any Member State, a State seeking participation in the Compact, or of the United States, or the applicability thereof to any government, agency, person, or circumstance is held to be unconstitutional by a court of competent jurisdiction, the validity of the remainder of this Compact and the applicability thereof to any other government, agency, person, or circumstance shall not be affected thereby.

C. Notwithstanding subsection 13(B), the Compact Commission may deny a State's participation in the Compact or, in accordance with the requirements of Section 11(B) of this Compact, terminate a Member State's participation in the Compact, if it determines that a constitutional requirement of a Member State is a material departure from the Compact. Otherwise, if this Compact shall be held to be contrary to the constitution of any Member State, the Compact shall remain in full force and effect as to the remaining Member States and in full force and effect as to the Member State affected as to all severable matters.

SECTION 14. CONSISTENT EFFECT AND CONFLICT WITH OTHER STATE LAWS

A. Nothing herein shall prevent or inhibit the enforcement of any other law of a Member State that is not inconsistent with the Compact.

B. Any laws, statutes, regulations, or other legal requirements in a Member State in conflict with the Compact are superseded to the extent of the conflict.

C. All permissible agreements between the Compact Commission and the Member States are binding in accordance with their terms.

Source: Laws 2024, LB1215, § 2.
Operative date January 1, 2025.

CHAPTER 39
HIGHWAYS AND BRIDGES

Article.
1. General Highway Provisions. 39-102, 39-103.
2. Signs. 39-202 to 39-225.
3. Miscellaneous Penalty Provisions. 39-308 to 39-312.
8. Bridges.
   (a) Miscellaneous Provisions. 39-805.
   (b) Contracts for Construction and Repair of Bridges. 39-810 to 39-826.02.
   (g) State Aid Bridges. 39-847, 39-847.01.
   (k) Interstate Bridge Act of 1959. 39-891 to 39-893.
10. Rural Mail Routes. 39-1010, 39-1011.
11. State Highway Commission. 39-1101 to 39-1110.
13. State Highways.
   (a) Intent, Definitions, and Rules. 39-1301, 39-1302.
   (b) Intergovernmental Relations. 39-1306.01 to 39-1306.03.
   (c) Designation of System. 39-1309 to 39-1314.
   (d) Planning and Research. 39-1316.
   (e) Land Acquisition. 39-1320, 39-1323.01.
   (f) Control of Access. 39-1328.01, 39-1328.02.
   (g) Construction and Maintenance. 39-1337, 39-1345.01.
   (h) Contracts. 39-1348 to 39-1354.
   (j) Miscellaneous. 39-1359.01 to 39-1365.02.
   (l) State Recreation Roads. 39-1390, 39-1392.
14. County Roads. General Provisions. 39-1407 to 39-1412.
15. County Roads. Organization and Administration.
   (a) County Highway Board. 39-1503.
   (b) County Highway Superintendent. 39-1506 to 39-1512.
16. County Roads. Road Improvement Districts.
   (a) Special Improvement Districts. 39-1621 to 39-1635.03.
17. County Roads. Land Acquisition, Establishment, Alteration, Survey, Relocation, Vacation, and Abandonment.
   (a) Land Acquisition. 39-1703.
   (b) Establishment, Alteration, and Survey. 39-1713.
18. County Roads. Maintenance. 39-1804, 39-1811.
19. County Roads. Road Finances. 39-1901.
20. County Road Classification. 39-2001, 39-2002.
21. Functional Classification. 39-2103 to 39-2124.
22. Nebraska Highway Bonds. 39-2202 to 39-2224.
23. County Highway and City Street Superintendents Act. 39-2301.01 to 39-2310.
25. Distribution to Political Subdivisions.
   (a) Roads. 39-2501 to 39-2510.
   (b) Streets. 39-2511 to 39-2520.
26. Junkyards. 39-2602.
27. Build Nebraska Act. 39-2702 to 39-2704.
28. Transportation Innovation Act. 39-2801 to 39-2825.

ARTICLE 1

GENERAL HIGHWAY PROVISIONS

Section
39-102. Rules and regulations; promulgated by Department of Transportation to promote public safety.
39-103. Department of Transportation; rules and regulations; violation; penalty.

39-102 Rules and regulations; promulgated by Department of Transportation to promote public safety.

In order to promote public safety, to preserve and protect state highways, and to prevent immoderate and destructive use of state highways, the Department of Transportation may formulate, adopt, and promulgate rules and regulations in regard to the use of and travel upon the state highways consistent with Chapter 39 and the Nebraska Rules of the Road. Such rules and regulations may include specifications, standards, limitations, conditions, requirements, definitions, enumerations, descriptions, procedures, prohibitions, restrictions, instructions, controls, guidelines, and classifications relative to the following:

(1) The issuance or denial of special permits for the travel of vehicles or objects exceeding statutory size and weight capacities upon the highways as authorized by section 60-6,298;

(2) Qualification and prequalification of contractors, including, but not limited to, maximum and minimum qualifications, ratings, classifications, classes of contractors or classes of work, or both, and procedures to be followed;

(3) The setting of special load restrictions as provided in Chapter 39 and the Nebraska Rules of the Road;

(4) The placing, location, occupancy, erection, construction, or maintenance, upon any highway or area within the right-of-way, of any pole line, pipeline, or other utility located above, on, or under the level of the ground in such area;

(5) Protection and preservation of trees, shrubbery, plantings, buildings, structures, and all other things located upon any highway or any portion of the right-of-way of any highway by the department;

(6) Applications for the location of, and location of, private driveways, commercial approach roads, facilities, things, or appurtenances upon the right-of-way of state highways, including, but not limited to, procedures for applications for permits therefor and standards for the issuance or denial of such permits, based on highway traffic safety, and the foregoing may include reapplication for permits and applications for permits for existing facilities, and in any event, issuance of permits may also be conditioned upon approval of the design of such facilities;

(7) Outdoor advertising signs, displays, and devices in areas where the department is authorized by law to exercise such controls; and

(8) The Grade Crossing Protection Fund provided for in section 74-1317, including, but not limited to, authority for application, procedures on application, effect of application, procedures for and effect of granting such applications, and standards and specifications governing the type of control thereunder.

This section shall not amend or derogate any other grant of power or authority to the department to make or promulgate rules and regulations but shall be additional and supplementary thereto.

Source: Laws 1973, LB 45, § 99; Laws 1985, LB 395, § 1; R.S.1943, (1988), § 39-699; Laws 1993, LB 370, § 17; Laws 2017, LB339, § 83.

Cross References

Nebraska Rules of the Road, see section 60-601.

39-103 Department of Transportation; rules and regulations; violation; penalty.

Any person who operates a vehicle upon any highway in violation of the rules and regulations of the Department of Transportation governing the use of state highways shall be guilty of a Class III misdemeanor.

Source: Laws 1967, c. 235, § 4, p. 633; R.R.S.1943, § 39-7,134.01; Laws 1977, LB 41, § 17; R.S.1943, (1988), § 39-699.01; Laws 1993, LB 370, § 18; Laws 2017, LB339, § 84.

ARTICLE 2

SIGNS

Section

39-202 Advertising signs, displays, or devices; visible from highway; prohibited; exceptions; permitted signs enumerated.

(1) Except as provided in sections 39-202 to 39-205, 39-215, 39-216, and 39-220, the erection or maintenance of any advertising sign, display, or device beyond six hundred sixty feet of the right-of-way of the National System of

Interstate and Defense Highways and visible from the main-traveled way of such highway system is prohibited.

(2) The following signs shall be permitted:

(a) Directional and official signs to include, but not be limited to, signs and notices pertaining to natural wonders, scenic attractions, and historical attractions. Such signs shall comply with standards and criteria established by regulations of the Department of Transportation as promulgated from time to time;

(b) Signs, displays, and devices advertising the sale or lease of property upon which such media are located;

(c) Signs, displays, and devices advertising activities conducted on the property on which such media are located; and

(d) Signs in existence in accordance with sections 39-212 to 39-222, to include landmark signs, signs on farm structures, markers, and plaques of historical or artistic significance.

(3) For purposes of this section, visible shall mean the message or advertising content of an advertising sign, display, or device is capable of being seen without visual aid by a person of normal visual acuity. A sign shall be considered visible even though the message or advertising content may be seen but not read.

Source: Laws 1975, LB 213, § 1; R.S.1943, (1988), § 39-618.02; Laws 1993, LB 370, § 20; Laws 1995, LB 264, § 2; Laws 2017, LB339, § 85.

39-203 Advertising sign; compensation upon removal; Department of Transportation; make expenditures; when.

Just compensation shall be paid upon the removal of any advertising sign, display, or device lawfully erected or in existence prior to May 27, 1975, and not conforming to the provisions of sections 39-202 to 39-205, 39-215, 39-216, and 39-220 except as otherwise authorized by such sections. The Department of Transportation shall not be required to expend any funds under the provisions of such sections unless and until federal-aid matching funds are made available for this purpose.

Source: Laws 1975, LB 213, § 3; R.S.1943, (1988), § 39-618.04; Laws 1993, LB 370, § 21; Laws 1995, LB 264, § 3; Laws 2017, LB339, § 86.

39-204 Informational signs; erection; conform with rules and regulations; minimum service requirements.

(1) Signs, displays, and devices giving specific information of interest to the traveling public shall be erected by or at the direction of the Department of Transportation and maintained within the right-of-way at appropriate distances from interchanges on the National System of Interstate and Defense Highways and from roads of the state primary system as shall conform with the rules and regulations adopted and promulgated by the department to carry out this section and section 39-205. Such rules and regulations shall be consistent with national standards promulgated from time to time by the appropriate authority of the federal government pursuant to 23 U.S.C. 131(f).

(2) For purposes of this section, specific information of interest to the traveling public shall mean only information about camping, lodging, food, attractions, and motor fuel and associated services, including trade names.

(3) The minimum service that is required to be available for each type of service shall include:

(a) Motor fuel services including:

(i) Vehicle services, which shall include fuel, oil, and water;

(ii) Restroom facilities and drinking water;

(iii) Continuous operation of such services for at least sixteen hours per day, seven days per week, for freeways and expressways and continuous operation of such services for at least twelve hours per day, seven days per week, for conventional roads; and

(iv) Telephone services;

(b) Attraction services including:

(i) An attraction of regional significance with the primary purpose of providing amusement, historical, cultural, or leisure activity to the public;

(ii) Restroom facilities and drinking water; and

(iii) Adequate parking accommodations;

(c) Food services including:

(i) Licensing or approval of such services, when required;

(ii) Continuous operation of such services to serve at least two meals per day, six days per week;

(iii) Modern sanitary facilities; and

(iv) Telephone services;

(d) Lodging services including:

(i) Licensing or approval of such services, when required;

(ii) Adequate sleeping accommodations; and

(iii) Telephone services; and

(e) Camping services including:

(i) Licensing or approval of such services, when required;

(ii) Adequate parking accommodations; and

(iii) Modern sanitary facilities and drinking water.

Source: Laws 1975, LB 213, § 9; Laws 1987, LB 741, § 1; R.S.1943, (1988), § 39-634.01; Laws 1993, LB 370, § 22; Laws 2010, LB926, § 1; Laws 2017, LB339, § 87.

39-205 Informational signs; business signs; posted by department; costs and fees; disposition; notice of available space.

(1) Applicants for business signs shall furnish business signs to the Department of Transportation and shall pay to the department an annual fee for posting each business sign and the actual cost of material for, fabrication of, and erecting the specific information sign panels where specific information sign panels have not been installed.

(2) Upon receipt of the business signs and the annual fee, the department shall post or cause to be posted the business signs where specific information

sign panels have been installed. The applicant shall not be required to remove any advertising device to qualify for a business sign except any advertising device which was unlawfully erected or in violation of section 39-202, 39-203, 39-204, 39-205, 39-206, 39-215, 39-216, or 39-220, any rule or regulation of the department, or any federal rule or regulation relating to informational signs. The specific information sign panels and business signs shall conform to the requirements of the Federal Beautification Act and the Manual on Uniform Traffic Control Devices adopted pursuant to section 60-6,118.

(3) All revenue received for the posting or erecting of business signs or specific information sign panels pursuant to this section shall be deposited in the Highway Cash Fund, except that any revenue received from the annual fee and for posting or erecting such signs in excess of the state's costs shall be deposited in the General Fund.

(4) For purposes of this section, unless the context otherwise requires:

(a) Business sign means a sign displaying a commercial brand, symbol, trademark, or name, or combination thereof, designating a motorist service. Business signs shall be mounted on a rectangular information panel; and

(b) Specific information sign panel means a rectangular sign panel with:

(i) The word gas, food, attraction, lodging, or camping;

(ii) Directional information; and

(iii) One or more business signs.

(5) The department shall provide notice of space available for business signs on any specific information sign panel at least ninety days prior to accepting or approving the posting of any business sign.

Source: Laws 1975, LB 213, § 10; Laws 1987, LB 741, § 2; R.S.1943, (1988), § 39-634.02; Laws 1993, LB 370, § 23; Laws 1995, LB 264, § 4; Laws 2010, LB926, § 2; Laws 2017, LB339, § 88.

39-206 Informational signs; erection; conditions; fee.

It is the intent of sections 39-204 and 39-205 to allow the erection of specific information sign panels on the right-of-way of the state highways under the following conditions:

(1) No state funds shall be used for the erection, maintenance, or servicing of such signs;

(2) Such signs shall be erected in accordance with federal standards and the rules and regulations adopted and promulgated by the Department of Transportation;

(3) Such signs may be erected by the department or by a contractor selected through the competitive bidding process; and

(4) The department shall charge an annual fee in an amount equal to the fair market rental value of the sign site and any other cost to the state associated with the erection, maintenance, or servicing of specific information sign panels. If such sign is erected by a contractor, the annual fee shall be limited to the fair market rental value of the sign site.

Source: Laws 1987, LB 741, § 3; R.S.1943, (1988), § 39-634.03; Laws 1993, LB 370, § 24; Laws 2017, LB339, § 89.

39-207 Tourist-oriented directional sign panels; erection and maintenance.

Tourist-oriented directional sign panels shall be erected and maintained by or at the direction of the Department of Transportation within the right-of-way of rural highways which are part of the state highway system to provide tourist-oriented information to the traveling public in accordance with sections 39-207 to 39-211.

For purposes of such sections:

(1) Rural highways means (a) all public highways and roads outside the limits of an incorporated municipality exclusive of freeways and interchanges on expressways and (b) all public highways and roads within incorporated municipalities having a population of forty 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 exclusive of freeways and interchanges on expressways. Expressway, freeway, and interchange are used in this subdivision as they are defined in section 39-1302; and

(2) Sign panel means one or more individual signs mounted as an assembly on the same supports.

Source: Laws 1993, LB 108, § 1; Laws 1995, LB 112, § 1; Laws 2017, LB113, § 39; Laws 2017, LB339, § 90.

39-208 Sign panels; erection; conditions; fee; disposition.

(1) The Department of Transportation shall erect tourist-oriented directional sign panels on the right-of-way of the rural highways pursuant to section 39-207 under the following conditions:

(a) No state funds shall be used for the erection, maintenance, or servicing of the sign panels;

(b) The sign panels shall be erected in accordance with federal standards and the rules and regulations adopted and promulgated by the department;

(c) The sign panels may be erected by the department or by a contractor selected by the department through the competitive negotiation process;

(d) No more than three sign panels shall be installed on the approach to an intersection; and

(e) The department shall charge an annual fee in an amount equal to the fair market rental value of the sign panel site and any other cost to the state associated with the erection, maintenance, or servicing of tourist-oriented directional sign panels. If the sign panel is erected by a contractor, the annual fee to the department shall be limited to the fair market rental value of the sign panel site.

(2) All revenue received for the posting or erecting of tourist-oriented directional sign panels pursuant to this section shall be deposited in the Highway Cash Fund, except that any revenue received from the annual fee and for posting or erecting such sign panels in excess of the state's costs shall be deposited in the General Fund.

Source: Laws 1993, LB 108, § 2; Laws 2017, LB339, § 91.

39-210 Sign panels; qualification of activities; minimum requirements; violation; effect.

To qualify to appear on a tourist-oriented directional sign panel, an activity shall be licensed and approved by the state and local agencies if required by

law and be open to the public at least eight hours per day, five days per week, including Saturdays or Sundays, during the normal season of the activity, except that if the activity is a winery, the winery shall be open at least twenty hours per week. The activity, before qualifying to appear on a sign panel, shall provide to the Department of Transportation assurance of its conformity with all applicable laws relating to discrimination based on race, creed, color, sex, national origin, ancestry, political affiliation, or religion. If the activity violates any of such laws, it shall lose its eligibility to appear on a tourist-oriented directional sign panel. In addition, the qualifying activity shall be required to remove any advertising device which was unlawfully erected or which is in violation of section 39-202, 39-203, 39-204, 39-205, 39-206, 39-215, 39-216, or 39-220, any rule or regulation of the department, or any federal rule or regulation relating to tourist-oriented directional sign panels. The tourist-oriented directional sign panels shall conform to the requirements of the Federal Beautification Act and the Manual on Uniform Traffic Control Devices as adopted pursuant to section 60-6,118.

Source: Laws 1993, LB 108, § 4; Laws 1995, LB 264, § 5; Laws 2010, LB926, § 3; Laws 2017, LB339, § 92.

39-211 Sign panels; rules and regulations.

The Department of Transportation shall adopt and promulgate rules and regulations deemed necessary by the department to carry out sections 39-207 to 39-211.

Source: Laws 1993, LB 108, § 5; Laws 2017, LB339, § 93.

39-212 Acquisition of interest in property; control of advertising outside of right-of-way; compensation; removal; costs; payment by department.

(1) The Department of Transportation may acquire the interest in real or personal property necessary to exercise the power authorized by subdivision (2)(m) of section 39-1320 and to pay just compensation upon removal of the following outdoor advertising signs, displays, and devices, as well as just compensation for the disconnection and removal of electrical service to the same:

(a) Those lawfully erected or in existence prior to March 27, 1972, and not conforming to the provisions of sections 39-212 to 39-222 except as otherwise authorized by such sections; and

(b) Those lawfully erected after March 27, 1972, which become nonconforming after being erected.

(2) Such compensation for removal of such signs, displays, and devices is authorized to be paid only for the following:

(a) The taking from the owner of such sign, display, or device or of all right, title, leasehold, and interest in connection with such sign, display, or device, or both; and

(b) The taking from the owner of the real property on which the sign, display, or device is located of the right to erect and maintain such signs, displays, and devices thereon.

(3) In all instances where signs, displays, or devices which are served electrically are taken under subdivision (2)(a) of this section, the department shall pay just compensation to the supplier of electricity for supportable costs of

disconnection and removal of such service to the nearest distribution line or, in the event such sign, display, or device is relocated, just compensation for removal of such service to the point of relocation.

Except for expenditures for the removal of nonconforming signs erected between April 16, 1982, and May 27, 1983, the department shall not be required to expend any funds under sections 39-212 to 39-222 and 39-1320 unless and until federal-aid matching funds are made available for this purpose.

Source: Laws 1961, c. 195, § 2, p. 596; Laws 1972, LB 1181, § 4; Laws 1974, LB 490, § 1; Laws 1979, LB 322, § 12; Laws 1981, LB 545, § 7; Laws 1983, LB 120, § 3; Laws 1994, LB 848, § 1; R.S.Supp.,1994, § 39-1320.01; Laws 1995, LB 264, § 6; Laws 2017, LB339, § 94.

39-213 Control of advertising outside of right-of-way; agreements authorized; commercial and industrial zones; provisions.

(1) In order that this state may qualify for the payments authorized in 23 U.S.C. 131(c) and (e), and to comply with the provisions of 23 U.S.C. 131 as revised and amended on October 22, 1965, by Public Law 89-285, the Nebraska Department of Transportation, for and in the name of the State of Nebraska, is authorized to enter into an agreement, or agreements, with the Secretary of Transportation of the United States, which agreement or agreements shall include provisions for regulation and control of the erection and maintenance of advertising signs, displays, and other advertising devices and may include, among other things, provisions for preservation of natural beauty, prevention of erosion, landscaping, reforestation, development of viewpoints for scenic attractions that are accessible to the public without charge, and the erection of markers, signs, or plaques, and development of areas in appreciation of sites of historical significance.

(2) It is the intention of the Legislature that the state shall be and is hereby empowered and directed to continue to qualify for and accept bonus payments pursuant to 23 U.S.C. 131(j) and subsequent amendments as amended in the Federal Aid Highway Acts of 1968 and 1970 for controlling outdoor advertising within the area adjacent to and within six hundred sixty feet of the edge of the right-of-way of the National System of Interstate and Defense Highways constructed upon any part of the right-of-way the entire width of which is acquired subsequent to July 1, 1956, and, to this end, to continue any agreements with, and make any new agreements with the Secretary of Transportation, to accomplish the same. Such agreement or agreements shall also provide for excluding from application of the national standards segments of the National System of Interstate and Defense Highways which traverse commercial or industrial zones within the boundaries of incorporated municipalities as they existed on September 21, 1959, wherein the use of real property adjacent to the National System of Interstate and Defense Highways is subject to municipal regulation or control, or which traverse other areas where the land use, as of September 21, 1959, is clearly established by state law as industrial or commercial.

(3) It is also the intention of the Legislature that the state shall comply with 23 U.S.C. 131, as revised and amended on October 22, 1965, by Public Law 89-285, in order that the state not be penalized by the provisions of subsection (b) thereof, and that the Nebraska Department of Transportation shall be and is hereby empowered and directed to make rules and regulations in accord with

the agreement between the Nebraska Department of Transportation and the United States Department of Transportation dated October 29, 1968.

Source: Laws 1961, c. 195, § 3, p. 596; Laws 1963, c. 236, § 1, p. 726; Laws 1972, LB 1058, § 11; Laws 1972, LB 1181, § 5; R.S.1943, (1993), § 39-1320.02; Laws 1995, LB 264, § 7; Laws 2017, LB339, § 95.

39-214 Control of advertising outside of right-of-way; adoption of rules and regulations by Department of Transportation; minimum requirements.

Whenever advertising rights are acquired by the Department of Transportation pursuant to subdivision (2)(m) of section 39-1320 or an agreement has been entered into as authorized by section 39-213, it shall be the duty of the department to adopt and promulgate reasonable rules and regulations for the control of outdoor advertising within the area specified in such subdivision, which rules and regulations shall have as their minimum requirements the provisions of 23 U.S.C. 131 and regulations adopted pursuant thereto, as amended on March 27, 1972.

Source: Laws 1961, c. 195, § 4, p. 597; Laws 1972, LB 1181, § 6; R.S.1943, (1993), § 39-1320.03; Laws 1995, LB 264, § 8; Laws 2017, LB339, § 96.

39-216 Control of advertising visible from main-traveled way; unlawful; when permitted; written lease and permit from Department of Transportation.

It shall be unlawful for any person to place or cause to be placed any advertising sign, display, or device which is visible from the main-traveled way of the Highway Beautification Control System or upon land not owned by such person, without first procuring a written lease from the owner of such land and a permit from the Department of Transportation authorizing such display or device to be erected as permitted by the advertising laws, rules, and regulations of this state.

Source: Laws 1972, LB 1181, § 8; Laws 1975, LB 213, § 7; R.S.1943, (1993), § 39-1320.07; Laws 1995, LB 264, § 10; Laws 2017, LB339, § 97.

39-217 Scenic byway designations.

(1) The Department of Transportation may designate portions of the state highway system as a scenic byway when the highway corridor possesses unusual, exceptional, or distinctive scenic, historic, recreational, cultural, or archeological features. The department shall adopt and promulgate rules and regulations establishing the procedure and criteria to be utilized in making scenic byway designations.

(2) Any portion of a highway designated as a scenic byway which is located within the limits of any incorporated municipality shall not be designated as part of the scenic byway, except when such route possesses intrinsic scenic, historic, recreational, cultural, or archaeological features which support designation of the route as a scenic byway.

Source: Laws 1995, LB 264, § 11; Laws 2017, LB339, § 98.

39-218 Scenic byways; prohibition of signs visible from main-traveled way; exceptions.

No sign shall be erected which is visible from the main-traveled way of any scenic byway except (1) directional and official signs to include, but not be limited to, signs and notices pertaining to natural wonders, scenic attractions, and historical attractions, (2) signs, displays, and devices advertising the sale or lease of property upon which such media are located, and (3) signs, displays, and devices advertising activities conducted on the property on which such media are located. Signs which are allowed shall comply with the standards and criteria established by rules and regulations of the Department of Transportation.

Source: Laws 1995, LB 264, § 12; Laws 2017, LB339, § 99.

39-219 Control of advertising outside of right-of-way; erected prior to March 27, 1972; effect.

Outdoor advertising signs, displays, and devices erected prior to March 27, 1972, may continue in zoned or unzoned commercial or industrial areas, notwithstanding the fact that such outdoor advertising signs, displays, and devices do not comply with standards and criteria established by sections 39-212 to 39-222 or rules and regulations of the Department of Transportation.

Source: Laws 1972, LB 1181, § 9; Laws 1994, LB 848, § 3; R.S.Supp.,1994, § 39-1320.08; Laws 1995, LB 264, § 13; Laws 2017, LB339, § 100.

39-220 Control of advertising visible from main-traveled way; permit; rules and regulations.

The Department of Transportation may at its discretion require permits for advertising signs, displays, or devices which are placed or allowed to exist along or upon the Highway Beautification Control System or which are at any point visible from the main-traveled way of the Highway Beautification Control System, except for on-premise signs, displays, and devices, as defined in the department's rules and regulations, for advertising activities conducted on the property on which the sign, display, or device is located. Such permits shall be renewed biennially. Each sign shall bear on the side facing the highway the permit number in a readily observable place for inspection purposes from the highway right-of-way. The department shall adopt and promulgate rules and regulations to implement and administer sections 39-212 to 39-226. The department may revoke the permit for noncompliance reasons and remove the sign if, after thirty days' notification to the sign owner, the sign remains in noncompliance. Printed sale bills not exceeding two hundred sixteen square inches in size shall not require a permit if otherwise conforming.

Source: Laws 1972, LB 1181, § 10; Laws 1974, LB 490, § 2; Laws 1975, LB 213, § 8; R.S.1943, (1993), § 39-1320.09; Laws 1995, LB 264, § 14; Laws 2017, LB339, § 101; Laws 2018, LB472, § 1.

39-221 Control of advertising outside of right-of-way; compliance; damages; violations; penalty.

Any person, firm, company, or corporation violating any of the provisions of sections 39-212 to 39-222 shall be guilty of a Class V misdemeanor. In addition

to any other available remedies, the Director-State Engineer, for the Department of Transportation and in the name of the State of Nebraska, may apply to the district court having jurisdiction for an injunction to force compliance with any of the provisions of such sections or rules and regulations promulgated thereunder. When any person, firm, company, or corporation deems its property rights have been adversely affected by the application of the provisions of such sections, such person, firm, company, or corporation shall have the right to have damages ascertained and determined pursuant to Chapter 76, article 7.

Source: Laws 1972, LB 1181, § 11; Laws 1974, LB 490, § 3; Laws 1977, LB 40, § 211; Laws 1994, LB 848, § 4; R.S.Supp.,1993, § 39-1320.10; Laws 1995, LB 264, § 15; Laws 2017, LB339, § 102.

39-222 Control of advertising outside of right-of-way; eminent domain; authorized.

Sections 39-212 to 39-221 shall not be construed to prevent the Department of Transportation from (1) exercising the power of eminent domain to accomplish the removal of any sign or signs or (2) acquiring any interest in real or personal property necessary to exercise the powers authorized by such sections whether within or without zoned or unzoned commercial or industrial areas.

Source: Laws 1972, LB 1181, § 12; Laws 1994, LB 848, § 5; R.S.Supp.,1994, § 39-1320.11; Laws 1995, LB 264, § 16; Laws 2017, LB339, § 103.

39-223 Governmental or quasi-governmental agency; removal of signs, displays, or devices along Highway Beautification Control System; exemption; petition.

Any community, board of county commissioners, municipality, county, city, a specific region or area of the state, or other governmental or quasi-governmental agency which is part of a specific economic area located along the Highway Beautification Control System of the State of Nebraska may petition the Department of Transportation for an exemption from mandatory removal of any legal, nonconforming directional signs, displays, or devices as defined by 23 U.S.C. 131(o), which signs, displays, or devices were in existence on May 5, 1976. The petitioning agency shall supply such documents as are supportive of its petition for exemption.

The Department of Transportation is hereby authorized to seek the exemptions authorized by 23 U.S.C. 131(o) in accordance with the federal regulations promulgated thereunder, 23 C.F.R., part 750, subpart E, if the petitioning agency shall supply the necessary documents to justify such exemptions.

Source: Laws 1978, LB 534, § 1; R.S.1943, (1993), § 39-1320.12; Laws 1995, LB 264, § 17; Laws 2017, LB339, § 104.

39-224 Department of Transportation; retention of signs, displays, or devices; request.

Upon receipt of a petition under section 39-223, the Nebraska Department of Transportation shall make request of the United States Department of Transportation for permission to retain the directional signs, displays, or devices

which provide information for the specific economic area responsible for the petition.

Source: Laws 1978, LB 534, § 2; R.S.1943, (1993), § 39-1320.13; Laws 1995, LB 264, § 18; Laws 2017, LB339, § 105.

39-225 Department of Transportation; removal of nonconforming signs; program.

The Department of Transportation shall adopt future programs to assure that removal of directional signs, displays, or devices, providing directional information about goods and services in the interest of the traveling public, not otherwise exempted by economic hardship, be deferred until all other nonconforming signs, on a statewide basis, are removed.

Source: Laws 1978, LB 534, § 3; R.S.1943, (1993), § 39-1320.14; Laws 1995, LB 264, § 19; Laws 2017, LB339, § 106.

ARTICLE 3

MISCELLANEOUS PENALTY PROVISIONS

Section
39-308. Removal of traffic hazards; determined by Department of Transportation and local authority; violation; penalty.
39-311. Rubbish on highways; prohibited; signs; enforcement; violation; penalties.
39-312. Camping; permitted; where; violation; penalty.

39-308 Removal of traffic hazards; determined by Department of Transportation and local authority; violation; penalty.

It shall be the duty of the owner of real property to remove from such property any tree, plant, shrub, or other obstruction, or part thereof, which, by obstructing the view of any driver, constitutes a traffic hazard. When the Department of Transportation or any local authority determines upon the basis of engineering and traffic investigation that such a traffic hazard exists, it shall notify the owner and order that the hazard be removed within ten days. Failure of the owner to remove such traffic hazard within ten days shall constitute a Class V misdemeanor, and every day such owner fails to remove it shall be a separate offense.

Source: Laws 1973, LB 45, § 101; R.S.1943, (1988), § 39-6,101; Laws 1993, LB 370, § 32; Laws 2017, LB339, § 107.

39-311 Rubbish on highways; prohibited; signs; enforcement; violation; penalties.

(1) No person shall throw or deposit upon any highway:

(a) Any glass bottle, glass, nails, tacks, wire, cans, or other substance likely to injure any person or animal or damage any vehicle upon such highway; or

(b) Any burning material.

(2) Any person who deposits or permits to be deposited upon any highway any destructive or injurious material shall immediately remove such or cause it to be removed.

(3) Any person who removes a wrecked or damaged vehicle from a highway shall remove any glass or other injurious substance deposited on the highway from such vehicle.

(4) The Department of Transportation or a local authority as defined in section 60-628 may procure and place at reasonable intervals on the side of highways under its respective jurisdiction appropriate signs showing the penalty for violating this section. Such signs shall be of such size and design as to be easily read by persons on such highways, but the absence of such a sign shall not excuse a violation of this section.

(5) It shall be the duty of all Nebraska State Patrol officers, conservation officers, sheriffs, deputy sheriffs, and other law enforcement officers to enforce this section and to make prompt investigation of any violations of this section reported by any person.

(6) Any person who violates any provision of this section shall be guilty of (a) a Class III misdemeanor for the first offense, (b) a Class II misdemeanor for the second offense, and (c) a Class I misdemeanor for the third or subsequent offense.

Source: Laws 1973, LB 45, § 83; Laws 1988, LB 1030, § 40; R.S.1943, (1988), § 39-683; Laws 1993, LB 370, § 35; Laws 1994, LB 570, § 3; Laws 1997, LB 495, § 5; Laws 1998, LB 922, § 403; Laws 2017, LB339, § 108.

Cross References

Littering, penalty, see section 28-523.

39-312 Camping; permitted; where; violation; penalty.

It shall be unlawful to camp on any state or county public highway, roadside area, park, or other property acquired for highway or roadside park purposes except at such places as are designated campsites by the Department of Transportation or the county or other legal entity of government owning or controlling such places. This provision shall not apply to lands originally acquired for highway purposes which have been transferred or leased to the Game and Parks Commission or a natural resources district or to other lands owned or controlled by the Game and Parks Commission where camping shall be controlled by the provisions of section 37-305 or by a natural resources district where camping shall be controlled by the provisions of section 2-3292.

For purposes of this section, camping means temporary lodging out of doors and presupposes the occupancy of a shelter designed or used for such purposes, such as a sleeping bag, tent, trailer, station wagon, pickup camper, camper-bus, or other vehicle, and the use of camping equipment and camper means an occupant of any such shelter.

Any person who camps on any state or county public highway, roadside area, park, or other property acquired for highway or roadside park purposes, which has not been properly designated as a campsite, or any person who violates any lawfully promulgated rules or regulations properly posted to regulate camping at designated campsites shall be guilty of a Class V misdemeanor and shall be ordered to pay any amount as determined by the court which may be necessary to reimburse the department or the county for the expense of repairing any damage to such campsite resulting from such violation.

Source: Laws 1969, c. 306, § 1, p. 1097; Laws 1977, LB 41, § 37; Laws 1984, LB 861, § 18; R.S.1943, (1988), § 39-712.01; Laws 1993, LB 370, § 36; Laws 1998, LB 922, § 404; Laws 2017, LB339, § 109.

ARTICLE 8
BRIDGES

(a) MISCELLANEOUS PROVISIONS

(b) CONTRACTS FOR CONSTRUCTION AND REPAIR OF BRIDGES

(g) STATE AID BRIDGES

(k) INTERSTATE BRIDGE ACT OF 1959

(a) MISCELLANEOUS PROVISIONS

39-805 Bridge over irrigation or drainage ditch; construction and maintenance; cost; how paid.

Whenever any public highway within this state shall cross or be crossed by any ditch or channel of any public drainage or irrigation district, it shall be the duty of the governing board of the drainage or irrigation district and the governing board of the county or municipal corporation involved to negotiate and agree for the building and maintenance of bridges and approaches thereto on such terms as shall be equitable, all things considered, between such drainage or irrigation district and such county or municipality. If such boards for any reason shall fail to agree with reference to such matter, it shall be the duty of the drainage or irrigation district to build the necessary bridges and approaches, and restore the highway in question to its former state as nearly as may be as it was laid out prior to the construction of the ditch or channel in question, and it shall be the duty of the county or municipal corporation involved to maintain the bridges and approaches. Where more than seventy-five percent of the water passing through any such ditch or channel is used by any person, firm, or corporation for purposes other than irrigation or drainage, it shall be the duty of such person, firm, or corporation, so using such seventy-five percent or more of such water, to build and maintain solely at the expense of such person, firm, or corporation, all such bridges and approaches thereto. Any bridge that may be built by any drainage or irrigation district or by any person, firm, or corporation under the provisions of this section shall be constructed under the supervision of the Department of Transportation, if on a state highway, and under the supervision of the county board or governing body of a municipality, if under the jurisdiction of such board or governing body of such municipality.

Source: Laws 1913, c. 172, § 1, p. 524; R.S.1913, § 2983; C.S.1922, § 2734; Laws 1929, c. 172, § 1, p. 586; C.S.1929, § 39-821; R.S.1943, § 39-805; Laws 2017, LB339, § 110.

Cross References

Irrigation ditches, bridges across, see sections 46-251 and 46-255.

(b) CONTRACTS FOR CONSTRUCTION AND REPAIR OF BRIDGES

39-810 Bridges; culverts; construction and repair; road improvements; contracts; letting; procedures.

(1)(a) The county board of each county may erect and repair all bridges and approaches thereto and build all culverts and make improvements on roads, including the purchase of gravel for roads, and stockpile any materials to be used for such purposes, the cost and expense of which shall for no project exceed one hundred thousand dollars.

(b) All contracts for the erection or repair of bridges and approaches thereto or for the building of culverts and improvements on roads, the cost and expense of which shall exceed one hundred thousand dollars, shall be let by the county board to the lowest responsible bidder.

(c) All contracts for materials for repairing, erecting, and constructing bridges and approaches thereto or culverts or for the purchase of gravel for roads, the cost and expense of which exceed twenty thousand dollars, shall be let to the lowest responsible bidder, but the board may reject any and all bids submitted for such materials.

(d) Upon rejection of any bid or bids by the board of such a county, such board shall have power and authority to purchase materials to repair, erect, or construct the bridges of such county, approaches thereto, or culverts or to purchase gravel for roads.

(e) All contracts for bridge erection or repair, approaches thereto, culverts, or road improvements in excess of twenty thousand dollars shall require individual cost-accounting records on each individual project.

(2)(a) Except as otherwise provided in subdivision (b) of this subsection, all bids for the letting of contracts shall be deposited with the county clerk of such a county, opened by him or her in the presence of the county board, and filed in such clerk's office.

(b) In a county with a population of more than one hundred fifty thousand inhabitants with a purchasing agent under section 23-3105, the bids shall be opened as directed pursuant to section 23-3111.

Source: Laws 1905, c. 126, § 1, p. 540; Laws 1911, c. 111, § 1, p. 391; R.S.1913, § 2956; C.S.1922, § 2714; C.S.1929, § 39-801; Laws 1931, c. 84, § 1, p. 222; C.S.Supp.,1941, § 39-801; R.S.1943, § 39-810; Laws 1955, c. 159, § 1, p. 462; Laws 1969, c. 328, § 1, p. 1173; Laws 1975, LB 115, § 1; Laws 1988, LB 429, § 1; Laws 2013, LB623, § 1; Laws 2017, LB86, § 1; Laws 2019, LB82, § 1.

Cross References

Authority of board to purchase materials, other provisions, see sections 39-818, 39-824, and 39-826.

39-822 Bridge and culvert construction contracts; plans, specifications, and estimates furnished to bidders; statement of construction done.

The county board shall keep in the office of the county clerk of the county a sufficient supply of the prints of the plans and the printed copies of the specifications and estimates of the cost of construction mentioned in section

39-821, to be furnished by the Director-State Engineer for distribution to prospective bidders and taxpayers of the county. No contract shall be entered into under the provisions of sections 39-810 to 39-826 for the construction or erection of any bridge or bridges unless, for the period of thirty days immediately preceding the time of entering into such contract, there shall have been available for distribution by the county clerk such plans and specifications. The county boards of the several counties shall prepare and transmit to the Department of Transportation a statement accompanied by the plans and specifications, showing the cost of all bridges built in their counties under the provisions of such sections, and state therein whether they were built under a contract or by the county.

Source: Laws 1905, c. 126, § 15, p. 544; Laws 1913, c. 88, § 1, p. 232; R.S.1913, § 2969; Laws 1921, c. 286, § 2, p. 934; C.S.1922, § 2727; C.S.1929, § 39-814; R.S.1943, § 39-822; Laws 2017, LB339, § 111.

39-826.01 Proposed bridge or culvert; dam in lieu of; how determined.

The Department of Transportation or the county board shall, prior to the design or construction of a new bridge or culvert in a new or existing highway or road within its jurisdiction, notify in writing, by first-class mail, the natural resources district in which such bridge or culvert will be located. The natural resources district shall, pursuant to section 39-826.02, determine whether it would be beneficial to the district to have a dam constructed in lieu of the proposed bridge or culvert. If the district shall determine that a dam would be more beneficial, the department or the county board and the natural resources district shall jointly determine the feasibility of constructing a dam to support the road in lieu of a bridge or culvert. If the department or the county board and the natural resources district cannot agree regarding the feasibility of a dam, the decision of the department, in the case of the state highway system, or the county board, in the case of the county road system, shall be controlling.

Source: Laws 1979, LB 213, § 1; Laws 2017, LB339, § 112.

39-826.02 Proposed bridge or culvert; natural resources district; dam; feasibility study.

If a natural resources district shall receive notice of a proposed bridge or culvert pursuant to section 39-826.01, the district shall make a study to determine whether it would be practicable to construct a dam at or near the proposed site which could be used to support a highway or road. In making the study, such district shall consider the benefit which would be derived and the feasibility of such a dam. After it has made its determination, the natural resources district shall notify the Department of Transportation or the county board and shall, if the district favors such a dam, assist in the joint feasibility study and provide any other assistance which may be required.

Source: Laws 1979, LB 213, § 2; Laws 2017, LB339, § 113.

(g) STATE AID BRIDGES

39-847 State aid for bridges; application for replacement; costs; priorities; plans and specifications; contracts; maintenance.

(1) Any county board may apply, in writing, to the Department of Transportation for state aid in the replacement of any bridge under the jurisdiction of such

board. The application shall contain a description of the bridge, with a preliminary estimate of the cost of replacement thereof, and a certified copy of the resolution of such board, pledging such county to furnish up to twenty percent of the cost of replacement of such bridge. The county's share of replacement cost may be from any source except the State Aid Bridge Fund, except that where there is any bridge which is the responsibility of two counties, either county may make application to the department and, if the application is approved by the department, such county and the department may replace such bridge and recover, by suit, one-half of the county's cost of such bridge from the county failing or refusing to join in such application. All requests for bridge replacement under sections 39-846 to 39-847.01 shall be forwarded by the department to the Board of Public Roads Classifications and Standards. Such board shall establish priorities for bridge replacement based on critical needs. The board shall consider such applications and establish priorities for a period of time consistent with sections 39-2115 to 39-2119. The board shall return the applications to the department with the established priorities.

(2) The plans and specifications for each bridge shall be furnished by the department and replacement shall be under the supervision of the department and the county board.

(3) Any contract for the replacement of any such bridge shall be made by the department consistent with procedures for contracts for state highways and federal-aid secondary roads.

(4) After the replacement of any such bridge and the acceptance thereof by the department, any county having jurisdiction over it shall have sole responsibility for maintenance.

Source: Laws 1911, c. 112, § 2, p. 393; R.S.1913, § 2977; Laws 1919, c. 190, tit. VII, art. III, § 2, p. 815; Laws 1921, c. 260, § 1, p. 875; C.S.1922, § 8357; Laws 1923, c. 157, § 1, p. 382; Laws 1923, c. 156, § 1, p. 381; C.S.1929, § 39-1502; R.S.1943, § 39-847; Laws 1953, c. 287, § 61, p. 966; Laws 1973, LB 87, § 2; Laws 2017, LB339, § 114; Laws 2019, LB82, § 2; Laws 2023, LB138, § 4.

39-847.01 State Aid Bridge Fund; State Treasurer; transfer funds to.

The State Treasurer shall transfer monthly thirty-two thousand dollars from the share of the Department of Transportation of the Highway Trust Fund and thirty-two thousand dollars from the counties' share of the Highway Trust Fund which is allocated to bridges to the State Aid Bridge Fund.

Source: Laws 1973, LB 87, § 3; Laws 1986, LB 599, § 4; Laws 2017, LB339, § 115.

Cross References

Highway Trust Fund, see section 39-2215.

(k) INTERSTATE BRIDGE ACT OF 1959

39-891 Interstate bridges; declaration of purpose.

Recognizing that obstructions on or near the boundary of the State of Nebraska impede commerce and travel between the State of Nebraska and adjoining states, the Legislature hereby declares that bridges over these obstructions are essential to the general welfare of the State of Nebraska.

Providing bridges over these obstructions and for the safe and efficient operation of such bridges is deemed an urgent problem that is the proper concern of legislative action.

Such bridges, properly planned, designated, and managed, provide a safe passage for highway traffic to and from the state highway system and encourage commerce and travel between the State of Nebraska and adjoining states which increase the social and economic progress and general welfare of the state.

It is recognized that bridges between the State of Nebraska and adjoining states are not and cannot be the sole concern of the State of Nebraska. The nature of such bridges requires that a high degree of cooperation be exercised between the State of Nebraska and adjoining states in all phases of planning, construction, maintenance, and operation if proper benefits are to be realized.

It is also recognized that parties other than the State of Nebraska may wish to erect and control bridges between the State of Nebraska and adjoining states and that the construction, operation, and financing of such bridges have previously been authorized by the Legislature. Such bridges also benefit the State of Nebraska, and it is not the intent of the Legislature to abolish such power previously granted.

To this end, it is the intention of the Legislature to supplement sections 39-1301 to 39-1362 and 39-1393, relating to state highways, in order that the powers and authority of the department relating to the planning, construction, maintenance, acquisition, and operation of interstate bridges upon the state highway system may be clarified within a single act.

Acting under the direction of the Director-State Engineer, the department, with the advice of the State Highway Commission and the consent of the Governor, is given the power to enter into agreements with the United States and adjoining states, subject to the limitations imposed by the Constitution and the provisions of the Interstate Bridge Act of 1959.

The Legislature intends to place a high degree of trust in the hands of those officials whose duty it may be to enter into agreements with adjoining states and the United States for the planning, development, construction, acquisition, operation, maintenance, and protection of interstate bridges.

In order that the persons concerned may understand the limitations and responsibilities for planning, constructing, acquiring, operating, and maintaining interstate bridges upon the state highway system, it is necessary that the responsibilities for such work shall be fixed, but it is intended that the department, acting under the Director-State Engineer, shall have sufficient freedom to enter into agreements with adjoining states regarding any phase of planning, constructing, acquiring, maintaining, and operating interstate bridges upon the state highway system in order that the best interests of the State of Nebraska may always be served. The authority of the department to enter into agreements with adjoining states, as granted in the act, is therefor essential.

The Legislature hereby determines and declares that the provisions of the act are necessary for the preservation of the public peace, health, and safety, for the promotion of the general welfare, and as a contribution to the national defense.

Source: Laws 1959, c. 175, § 1, p. 630; Laws 1993, LB 15, § 1; Laws 2016, LB1038, § 5; Laws 2017, LB271, § 1.

39-892 Interstate bridges; terms, defined.

For purposes of the Interstate Bridge Act of 1959, unless the context otherwise requires:

(1) Approach shall mean that portion of any interstate bridge which allows the highway access to the bridge structure. It shall be measured along the centerline of the highway from the end of the bridge structure to the nearest right-of-way line of the closest street or road where traffic may leave the highway to avoid crossing the bridge, but in no event shall such approach exceed a distance of one mile. The term shall be construed to include all embankments, fills, grades, supports, drainage facilities, and appurtenances necessary therefor;

(2) Appurtenances shall include, but not be limited to, sidewalks, storm sewers, guardrails, handrails, steps, curb or grate inlets, fire plugs, retaining walls, lighting fixtures, and all other items of a similar nature which the department deems necessary for the proper operation of any interstate bridge or for the safety and convenience of the traveling public;

(3) Boundary line bridge shall mean any bridge upon which no toll, fee, or other consideration is charged for passage thereon and which connects the state highway systems of the State of Nebraska and an adjoining state in the same manner as an interstate bridge. Such bridges shall be composed of right-of-way, bridge structure, approaches, and road in the same manner as an interstate bridge but shall be distinguished from an interstate bridge in that no part of such bridge shall be a part of the state highway system, the title to such bridge being vested in a person other than the State of Nebraska, or the State of Nebraska and an adjoining state jointly. Any boundary line bridge purchased or acquired by the department, or the department and an adjoining state jointly, and added to the state highway system shall be deemed an interstate bridge;

(4) Boundary line toll bridge shall mean any boundary line bridge upon which a fee, toll, or other consideration is charged traffic for the use thereof. Any boundary line toll bridge purchased or acquired by the department, or by the department and an adjoining state jointly, and added to the state highway system shall be deemed an interstate bridge;

(5) Bridge structure shall mean the superstructure and substructure of any interstate bridge having a span of not less than twenty feet between undercopings of extreme end abutments, or extreme ends of openings of multiple boxes, when measured along the centerline of the highway thereon, and shall be construed to include the supports therefor and all appurtenances deemed necessary by the department;

(6) Construction shall mean the erection, fabrication, or alteration of the whole or any part of any interstate bridge. For purposes of this subdivision, alteration shall be construed to be the performance of construction by which the form or design of any interstate bridge is changed or modified;

(7) Department shall mean the Department of Transportation;

(8) Emergency shall include, but not be limited to, acts of God, invasion, enemy attack, war, flood, fire, storm, traffic accidents, or other actions of similar nature which usually occur suddenly and cause, or threaten to cause, damage requiring immediate attention;

(9) Expressway shall be defined in the manner provided by section 39-1302;

(10) Freeway shall be defined in the manner provided by section 39-1302;

(11) Highway shall mean a road, street, expressway, or freeway, including the entire area within the right-of-way, which has been designated a part of the state highway system;

(12) Interstate bridge shall mean the right-of-way, approaches, bridge structure, and highway necessary to form a passageway for highway traffic over the boundary line of the State of Nebraska from a point within the State of Nebraska to a point within an adjoining state for the purpose of spanning any obstruction or obstructions which would otherwise hinder the free and safe flow of traffic between such points, such bridge being a part of the state highway system with title vested in the State of Nebraska or in the State of Nebraska and an adjoining state jointly;

(13) Interstate bridge purposes shall include, but not be limited to, the applicable provisions of subdivisions (2)(a) through (l) of section 39-1320;

(14) Maintenance shall mean the act, operation, or continuous process of repair, reconstruction, or preservation of the whole or any part of any interstate bridge for the purpose of keeping it at or near its original standard of usefulness and shall include the performance of traffic services for the safety and convenience of the traveling public. For purposes of this subdivision, reconstruction shall be construed to be the repairing or replacing of any part of any interstate bridge without changing or modifying the form or design of such bridge;

(15) Person shall include bodies politic and corporate, societies, communities, the public generally, individuals, partnerships, limited liability companies, joint-stock companies, and associations;

(16) Right-of-way shall mean land, property, or interest therein, usually in a strip, acquired for or devoted to an interstate bridge;

(17) State highway system shall mean the highways within the State of Nebraska as shown on the map provided for in section 39-1311 and as defined by section 39-1302;

(18) Street shall be defined in the manner provided by section 39-1302;

(19) Title shall mean the evidence of right to property or the right itself; and

(20) Traffic services shall mean the operation of an interstate bridge facility, and the services incidental thereto, to provide for the safe and convenient flow of traffic over such bridge. Such services shall include, but not be limited to, erection of snow fence, snow and ice removal, painting, repairing, and replacing signs, guardrails, traffic signals, lighting standards, pavement stripes and markings, adding conventional traffic control devices, furnishing power for road lighting and traffic control devices, and replacement of parts.

Source: Laws 1959, c. 175, § 2, p. 631; Laws 1993, LB 121, § 210; Laws 1993, LB 370, § 38; Laws 2017, LB339, § 116.

39-893 Act; applicability.

The provisions of the Interstate Bridge Act of 1959 are intended to be cumulative to, and not amendatory of, sections 39-1301 to 39-1362 and 39-1393.

Source: Laws 1959, c. 175, § 3, p. 635; Laws 1993, LB 15, § 2; Laws 2016, LB1038, § 6; Laws 2017, LB271, § 2.

ARTICLE 10
RURAL MAIL ROUTES

Section
39-1010. Mailboxes; location; violation; duty of Department of Transportation.
39-1011. Mailboxes; Department of Transportation; turnouts; provide.

39-1010 Mailboxes; location; violation; duty of Department of Transportation.

(1) Except as otherwise provided in this subsection, all mailboxes shall be placed such that no part of the mailbox extends beyond the shoulder line of any highway and the mailbox support shall be placed a minimum of one foot outside the shoulder line of any gravel-surfaced highway, and of any hard-surfaced highway having a shoulder width of six feet or more as measured from the edge of the hard surfacing. Along hard-surfaced highways having a shoulder width of less than six feet, the Department of Transportation shall, on new construction or reconstruction, where feasible, provide a shoulder width of not less than six feet, or provide for a minimum clear traffic lane of ten feet in width at mailbox turnouts. On highways built before October 9, 1961, having a shoulder width of less than six feet, the department may, where feasible and deemed advisable, provide a shoulder width of not less than six feet or provide for minimum clear traffic lane of ten feet in width at mailbox turnouts. For a hard-surfaced highway having either a mailbox turnout or a hard-surfaced shoulder width of eight feet or more, the mailbox shall be placed such that no part of the mailbox extends beyond the outside edge of the mailbox turnout or hard-surfaced portion of the shoulder and the mailbox support shall be placed a minimum of one foot outside the outside edge of the mailbox turnout or hard-surfaced portion of the shoulder.

(2) It shall be the duty of the department to notify the owner of all mailboxes in violation of the provisions of this section, and the department may remove such mailboxes if the owner fails or refuses to remove the same after a reasonable time after he or she is notified of such violations.

Source: Laws 1961, c. 194, § 1, p. 593; Laws 2014, LB757, § 1; Laws 2017, LB339, § 117.

39-1011 Mailboxes; Department of Transportation; turnouts; provide.

The Department of Transportation shall provide and maintain gravel, crushed-rock, or hard-surface turnouts for delivery of mail to all mailboxes placed on the highway rights-of-way to conform with section 39-1010.

Source: Laws 1961, c. 194, § 2, p. 593; Laws 2017, LB339, § 118.

ARTICLE 11
STATE HIGHWAY COMMISSION

Section
39-1101. State Highway Commission; creation; members.
39-1108. State Highway Commission; meetings; quorum; minutes; open to public.
39-1110. State Highway Commission; powers and duties.

39-1101 State Highway Commission; creation; members.

There is hereby created in the Department of Transportation a State Highway Commission which shall consist of eight members to be appointed by the

Governor with the consent of a majority of all the members of the Legislature. One member shall at all times be appointed from each of the eight districts designated in section 39-1102. Each member of the commission shall be (1) a citizen of the United States, (2) not less than thirty years of age, and (3) a bona fide resident of the State of Nebraska and of the district from which he or she is appointed for at least three years immediately preceding his or her appointment. Not more than four members shall be of the same political party. The Director-State Engineer shall be an ex officio member of the commission who shall vote in case of a tie.

Source: Laws 1953, c. 334, § 1, p. 1095; Laws 1955, c. 163, § 1, p. 468; Laws 1987, LB 161, § 1; Laws 2017, LB339, § 119.

39-1108 State Highway Commission; meetings; quorum; minutes; open to public.

Regular meetings of the State Highway Commission shall be held upon call of the chairperson, but not less than six times per year. Special meetings may be held upon call of the chairperson or pursuant to a call signed by three other members, of which the chairperson shall have three days' written notice.

All regular meetings shall be held in suitable offices to be provided in Lincoln unless a majority of the members deem it necessary to hold a regular meeting at another location within this state. Members of the commission may participate by virtual conferencing as long as the chairperson or vice-chairperson conducts the meeting in an open forum where the public is able to participate by attendance at the scheduled meeting.

Five members of the commission constitute a quorum for the transaction of business. Every act of a majority of the members of the commission shall be deemed to be the act of the commission.

All meetings shall be open to the public and shall be conducted in accordance with the Open Meetings Act.

The minutes of the meetings shall show the action of the commission on matters presented. The minutes shall be open to public inspection.

Source: Laws 1953, c. 334, § 8, p. 1097; Laws 1971, LB 101, § 1; Laws 1981, LB 544, § 4; Laws 1987, LB 161, § 4; Laws 2003, LB 101, § 1; Laws 2004, LB 821, § 11; Laws 2021, LB83, § 5.

Cross References

Open Meetings Act, see section 84-1407.

39-1110 State Highway Commission; powers and duties.

(1) It shall be the duty of the State Highway Commission:

(a) To conduct studies and investigations and to act in an advisory capacity to the Director-State Engineer in the establishment of broad policies for carrying out the duties and responsibilities of the Department of Transportation;

(b) To advise the public regarding the policies, conditions, and activities of the department;

(c) To hold hearings, make investigations, studies, and inspections, and do all other things necessary to carry out the duties imposed upon it by law;

(d) To advance information and advice conducive to providing adequate and safe highways in the state;

(e) When called upon by the Governor, to advise him or her relative to the appointment of the Director-State Engineer; and

(f) To submit to the Governor its written advice regarding the feasibility of each relinquishment or abandonment of a fragment of a route, section of a route, or a route on the state highway system proposed by the department. The chairperson of the commission shall designate one or more of the members of the commission, prior to submitting such advice, to personally inspect the fragment of a route, section of a route, or a route to be relinquished or abandoned, who shall take into consideration the following factors: Cost to the state for maintenance, estimated cost to the state for future improvements, whether traffic service provided is primarily local or otherwise, whether other facilities provide comparable service, and the relationship to an integrated state highway system. The department shall furnish to the commission all needed assistance in making its inspection and study. If the commission, after making such inspection and study, shall fail to reach a decision as to whether or not the fragment of a route, section of a route, or a route should be relinquished or abandoned, it may hold a public hearing on such proposed relinquishment or abandonment. The commission shall give a written notice of the time and place of such hearing, not less than two weeks prior to the time of the hearing, to the political or governmental subdivisions or public corporations wherein such portion of the state highway system is proposed to be relinquished or abandoned. The commission shall submit to the Governor, within two weeks after such hearing, its written advice upon such proposed relinquishment or abandonment.

(2) All funds rendered available by law to the department, including funds already collected for such purposes, may be used by the State Highway Commission in administering and effecting such purposes, to be paid upon approval by the Director-State Engineer.

(3) All data and information of the department shall be available to the State Highway Commission.

(4) The State Highway Commission may issue bonds under the Nebraska Highway Bond Act.

Source: Laws 1953, c. 334, § 10, p. 1098; Laws 1955, c. 163, § 3, p. 469; Laws 2000, LB 1135, § 4; Laws 2017, LB339, § 120.

Cross References

Nebraska Highway Bond Act, see section 39-2222.

ARTICLE 13

STATE HIGHWAYS

(a) INTENT, DEFINITIONS, AND RULES

(c) DESIGNATION OF SYSTEM

(d) PLANNING AND RESEARCH

(e) LAND ACQUISITION

(f) CONTROL OF ACCESS

(g) CONSTRUCTION AND MAINTENANCE

(h) CONTRACTS

(j) MISCELLANEOUS

Section

(l) STATE RECREATION ROADS

(a) INTENT, DEFINITIONS, AND RULES

39-1301 State highways; declaration of legislative intent.

Recognizing that safe and efficient highway transportation is a matter of important interest to all of the people in the state, the Legislature hereby determines and declares that an integrated system of highways is essential to the general welfare of the State of Nebraska.

Providing such a system of facilities and the efficient management, operation, and control thereof are recognized as urgent problems and the proper objectives of highway legislation.

Adequate highways provide for the free flow of traffic, result in low cost of motor vehicle operation, protect the health and safety of the citizens of the state, increase property values, and generally promote economic and social progress of the state.

It is the intent of the Legislature to consider of paramount importance the convenience and safety of the traveling public in the location, relocation, or abandonment of highways.

In designating the highway system of this state, as provided by sections 39-1301 to 39-1362 and 39-1393, the Legislature places a high degree of trust in the hands of those officials whose duty it shall be, within the limits of available funds, to plan, develop, construct, operate, maintain, and protect the highway facilities of this state, for present as well as for future uses.

The design, construction, maintenance, operation, and protection of adequate state highway facilities sufficient to meet the present demands as well as future requirements will, of necessity, require careful organization, with lines of authority definitely fixed, and basic rules of procedure established by the Legislature.

To this end, it is the intent of the Legislature, subject to the limitations of the Constitution and such mandates as the Legislature may impose by the provisions of such sections, to designate the Director-State Engineer and the department, acting under the direction of the Director-State Engineer, as direct custodian of the state highway system, with full authority in all departmental administrative details, in all matters of engineering design, and in all matters having to do with the construction, maintenance, operation, and protection of the state highway system.

The Legislature intends to declare, in general terms, the powers and duties of the Director-State Engineer, leaving specific details to be determined by reasonable rules and regulations which may be promulgated by him or her. It is the intent of the Legislature to grant authority to the Director-State Engineer to exercise sufficient power and authority to enable him or her and the department to carry out the broad objectives stated in this section.

While it is necessary to fix responsibilities for the construction, maintenance, and operation of the several systems of highways, it is intended that the State of

Nebraska shall have an integrated system of all roads and streets to provide safe and efficient highway transportation throughout the state. The authority granted in sections 39-1301 to 39-1362 and 39-1393 to the Director-State Engineer and to the political or governmental subdivisions or public corporations of this state to assist and cooperate with each other is therefor essential.

The Legislature hereby determines and declares that such sections are necessary for the preservation of the public peace, health, and safety, for promotion of the general welfare, and as a contribution to the national defense.

Source: Laws 1955, c. 148, § 1, p. 414; Laws 1993, LB 15, § 3; Laws 2016, LB1038, § 7; Laws 2017, LB271, § 3.

39-1302 Terms, defined.

For purposes of sections 39-1301 to 39-1393, unless the context otherwise requires:

(1) Abandon means to reject all or part of the department's rights and responsibilities relating to all or part of a fragment, section, or route on the state highway system;

(2) Alley means an established passageway for vehicles and pedestrians affording a secondary means of access in the rear to properties abutting on a street or highway;

(3) Approach or exit road means any highway or ramp designed and used solely for the purpose of providing ingress or egress to or from an interchange or rest area of a highway. An approach road shall begin at the point where it intersects with any highway not a part of the highway for which such approach road provides access and shall terminate at the point where it merges with an acceleration lane of a highway. An exit road shall begin at the point where it intersects with a deceleration lane of a highway and shall terminate at the point where it intersects any highway not a part of a highway from which the exit road provides egress;

(4) Arterial highway means a highway primarily for through traffic, usually on a continuous route;

(5) Beltway means the roads and streets not designated as a part of the state highway system and that are under the primary authority of a county or municipality, if the location of the beltway has been approved by (a) record of decision or finding of no significant impact and (b) the applicable local planning authority as a part of the comprehensive plan;

(6) Business means any lawful activity conducted primarily for the purchase and resale, manufacture, processing, or marketing of products, commodities, or other personal property or for the sale of services to the public or by a nonprofit corporation;

(7) Channel means a natural or artificial watercourse;

(8) Commercial activity means those activities generally recognized as commercial by zoning authorities in this state, and industrial activity means those activities generally recognized as industrial by zoning authorities in this state, except that none of the following shall be considered commercial or industrial:

(a) Outdoor advertising structures;

(b) General agricultural, forestry, ranching, grazing, farming, and related activities, including wayside fresh produce stands;

(c) Activities normally or regularly in operation less than three months of the year;

(d) Activities conducted in a building principally used as a residence;

(e) Railroad tracks and minor sidings; and

(f) Activities more than six hundred sixty feet from the nearest edge of the right-of-way of the road or highway;

(9) Connecting link means the roads, streets, and highways designated as part of the state highway system and which are within the corporate limits of any city or village in this state;

(10) Controlled-access facility means a highway or street especially designed for through traffic and over, from, or to which owners or occupants of abutting land or other persons have no right or easement or only a controlled right or easement of access, light, air, or view by reason of the fact that their property abuts upon such controlled-access facility or for any other reason. Such highways or streets may be freeways, or they may be parkways;

(11) Department means the Department of Transportation;

(12) Displaced person means any individual, family, business, or farm operation which moves from real property acquired for state highway purposes or for a federal-aid highway;

(13) Easement means a right acquired by public authority to use or control property for a designated highway purpose;

(14) Expressway means a divided arterial highway for through traffic with full or partial control of access which may have grade separations at intersections;

(15) Extreme weather event means a weather event that generates extraordinary costs related to such event for construction, reconstruction, relocation, improvement, or maintenance occurring on or after January 1, 2023, resulting from weather conditions including, but not limited to, snow, rain, drought, flood, storm, extreme heat, or extreme cold;

(16) Family means two or more persons living together in the same dwelling unit who are related to each other by blood, marriage, adoption, or legal guardianship;

(17) Farm operation means any activity conducted primarily for the production of one or more agricultural products or commodities for sale and home use and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support;

(18) Faulty engineering means a defect in the design of, construction of, workmanship on, or the materials or systems used on a project that results in failure of a component part or the structural integrity of a structure and that such failure causes damage;

(19) Federal-aid primary roads means roads, streets, and highways, whether a part of the state highway system, county road systems, or city streets, which have been designated as federal-aid primary roads by the Nebraska Department of Transportation and approved by the United States Secretary of Transportation and shown on the maps provided for in section 39-1311;

(20) Freeway means an expressway with full control of access;

(21) Frontage road means a local street or road auxiliary to an arterial highway for service to abutting property and adjacent areas and for control of access;

(22) Full control of access means that the right of owners or occupants of abutting land or other persons to access or view is fully controlled by public authority having jurisdiction and that such control is exercised to give preference to through traffic by providing access connections with selected public roads only and by prohibiting crossings or intersections at grade or direct private driveway connections;

(23) Grade separation means a crossing of two highways at different levels;

(24) Highway means a road or street, including the entire area within the right-of-way, which has been designated a part of the state highway system;

(25) Highway approach means the portion of a county road located within the right-of-way of a highway;

(26) Individual means a person who is not a member of a family;

(27) Interchange means a grade-separated intersection with one or more turning roadways for travel between any of the highways radiating from and forming part of such intersection;

(28) Map means a drawing or other illustration or a series of drawings or illustrations which may be considered together to complete a representation;

(29) Mileage means the aggregate distance in miles without counting double mileage where there are one-way or divided roads, streets, or highways;

(30) Parking lane means an auxiliary lane primarily for the parking of vehicles;

(31) Parkway means an arterial highway for noncommercial traffic, with full or partial control of access, and usually located within a park or a ribbon of park-like development;

(32) Relinquish means to surrender all or part of the rights and responsibilities relating to all or part of a fragment, section, or route on the state highway system to a political or governmental subdivision or public corporation of Nebraska;

(33) Right of access means the rights of ingress and egress to or from a road, street, or highway and the rights of owners or occupants of land abutting a road, street, or highway or other persons to a way or means of approach, light, air, or view;

(34) Right-of-way means land, property, or interest therein, usually in a strip, acquired for or devoted to a road, street, or highway;

(35) Road means a public way for the purposes of vehicular travel, including the entire area within the right-of-way. A road designated as part of the state highway system may be called a highway, while a road in an urban area may be called a street;

(36) Roadside means the area adjoining the outer edge of the roadway. Extensive areas between the roadways of a divided highway may also be considered roadside;

(37) Roadway means the portion of a highway, including shoulders, for vehicular use;

(38) Separation structure means that part of any bridge or road which is directly overhead of the roadway of any part of a highway;

(39) State highway purposes has the same meaning set forth in subsection (2) of section 39-1320;

(40) State highway system means the roads, streets, and highways shown on the map provided for in section 39-1311 as forming a group of highway transportation lines for which the Nebraska Department of Transportation shall be the primary authority. The state highway system shall include, but not be limited to, rights-of-way, connecting links, drainage facilities, and the bridges, appurtenances, easements, and structures used in conjunction with such roads, streets, and highways;

(41) Street means a public way for the purposes of vehicular travel in a city or village and shall include the entire area within the right-of-way;

(42) Structure means anything constructed or erected, the use of which requires permanent location on the ground or attachment to something having a permanent location;

(43) Title means the evidence of a person's right to property or the right itself;

(44) Traveled way means the portion of the roadway for the movement of vehicles, exclusive of shoulders and auxiliary lanes;

(45) Unzoned commercial or industrial area for purposes of control of outdoor advertising means all areas within six hundred sixty feet of the nearest edge of the right-of-way of the interstate and federal-aid primary systems which are not zoned by state or local law, regulation, or ordinance and on which there is located one or more permanent structures devoted to a business or industrial activity or on which a commercial or industrial activity is conducted, whether or not a permanent structure is located thereon, the area between such activity and the highway, and the area along the highway extending outward six hundred feet from and beyond each edge of such activity and, in the case of the primary system, may include the unzoned lands on both sides of such road or highway to the extent of the same dimensions if those lands on the opposite side of the highway are not deemed scenic or having aesthetic value as determined by the department. In determining such an area, measurements shall be made from the furthest or outermost edges of the regularly used area of the commercial or industrial activity, structures, normal points of ingress and egress, parking lots, and storage and processing areas constituting an integral part of such commercial or industrial activity;

(46) Visible, for purposes of section 39-1320, in reference to advertising signs, displays, or devices, means the message or advertising content of such sign, display, or device is capable of being seen without visual aid by a person of normal visual acuity. A sign shall be considered visible even though the message or advertising content may be seen but not read;

(47) Written instrument means a deed or any other document that states a contract, agreement, gift, or transfer of property; and

(48) Zoned commercial or industrial areas means those areas within six hundred sixty feet of the nearest edge of the right-of-way of the Highway Beautification Control System defined in section 39-201.01, zoned by state or local zoning authorities for industrial or commercial activities.

Source: Laws 1955, c. 148, § 2, p. 415; Laws 1969, c. 329, § 1, p. 1174; Laws 1972, LB 1181, § 1; Laws 1975, LB 213, § 4; Laws 1983,

LB 120, § 2; Laws 1993, LB 15, § 4; Laws 1993, LB 121, § 211; Laws 1993, LB 370, § 39; Laws 1995, LB 264, § 21; Laws 2005, LB 639, § 1; Laws 2016, LB1038, § 8; Laws 2017, LB271, § 4; Laws 2017, LB339, § 121; Laws 2022, LB750, § 2.

(b) INTERGOVERNMENTAL RELATIONS

39-1306.01 Federal aid; political subdivisions; department; unused funds; allocation.

Unused funds shall be made available by the department to other political or governmental subdivisions or public corporations for an additional period of six months. The department shall likewise make available unused funds from allotments which have been made prior to December 25, 1969. The department shall separately classify all unused funds referred to in section 39-1306 from their sources on the basis of the type of political or governmental subdivision or public corporation to which they were allotted. It is the intent of the Legislature that such funds which were allotted to counties and were unused be made available to other counties, and that such funds which were allotted to cities and villages and were unused be made available to other cities and villages. The funds in each classification shall be made available by the department to other subdivisions which have utilized all of the federal funds available to them, and shall be subject to the same conditions as apply to funds received under section 39-1306. Such funds shall be reallocated upon application therefor by the subdivisions.

Source: Laws 1967, c. 237, § 2, p. 635; Laws 1969, c. 330, § 3, p. 1185; Laws 2017, LB339, § 122.

39-1306.02 Federal aid; political subdivisions; allotment; department; duration; notice.

When any political or governmental subdivision or any public corporation of this state has an allotment of federal-aid funds made available to it by the federal government, the department shall give notice to the political or governmental subdivision of the amount of such funds the department has allotted to it, and, that the duration of the allotment to the political or governmental subdivision or public corporation is for not less than an eighteen-month period, which notice shall state the last date of such allotment to the subdivision or political corporation. The department shall give notice a second time six months before the last date of such allotment of the impending six months expiration of the allotment and of the amount of funds remaining.

Source: Laws 1969, c. 330, § 2, p. 1185; Laws 2017, LB339, § 123.

39-1306.03 United States Department of Transportation; department assume responsibilities; agreements authorized; waiver of immunity; department; powers and duties.

(1) The department may assume, pursuant to 23 U.S.C. 326, all or part of the responsibilities of the United States Department of Transportation:

(a) For determining whether federal-aid design and construction projects are categorically excluded from requirements for environmental assessments or environmental impact statements; and

(b) For environmental review, consultation, or other related actions required under any federal law applicable to activities that are classified as categorical exclusions.

(2) The department may assume, pursuant to 23 U.S.C. 327, all or part of the responsibilities of the United States Department of Transportation:

(a)(i) With respect to one or more highway projects within the state, under the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 et seq.; and

(ii) For environmental review, consultation, or other action required under any federal environmental law pertaining to the review or approval of a specific project; and

(b) With respect to one or more railroad, public transportation, or multimodal projects within the state under the National Environmental Policy Act of 1969, as amended.

(3) The department may enter into one or more agreements with the United States Secretary of Transportation, including memoranda of understanding, in furtherance of the assumption by the department of duties under 23 U.S.C. 326 and 327.

(4) The State of Nebraska hereby waives its immunity from civil liability, including immunity from suit in federal court under the Eleventh Amendment to the United States Constitution, and consents to the jurisdiction of the federal courts solely for the compliance, discharge, or enforcement of responsibilities assumed by the department pursuant to 23 U.S.C. 326 and 327, in accordance with the same procedural and substantive requirements applicable to a suit against a federal agency. This waiver of immunity shall only be valid if:

(a) The department executes a memorandum of understanding with the United States Department of Transportation accepting the jurisdiction of the federal courts as required by 23 U.S.C. 326(c) and 327(c);

(b) The act or omission that is the subject of the lawsuit arises out of compliance, discharge, or enforcement of responsibilities assumed by the department pursuant to 23 U.S.C. 326 and 327; and

(c) The memorandum of understanding is in effect when the act or omission that is the subject of the federal lawsuit occurred.

(5) The department may adopt and promulgate rules and regulations to implement this section and may adopt relevant federal environmental standards as the standards for the department.

Source: Laws 2017, LB271, § 5.

(c) DESIGNATION OF SYSTEM

39-1309 State highway system; designation; redesignation; factors.

(1) The map prepared by the State Highway Commission showing a proposed state highway system in Nebraska, filed with the Clerk of the Legislature and referred to in the resolution filed with the Legislature on February 3, 1955, is hereby adopted by the Legislature as the state highway system on September 18, 1955, except that a highway from Rushville in Sheridan County going south on the most feasible and direct route to the Smith Lake State Recreation Grounds shall be known as state highway 250 and shall be a part of the state highway system.

(2) The state highway system may be redesignated, relocated, redetermined, or recreated by the department with the written advice of the State Highway Commission and the consent of the Governor. In redesignating, relocating, redetermining, or recreating the several routes of the state highway system, the following factors, except as provided in section 39-1309.01, shall be considered: (a) The actual or potential traffic volumes and other traffic survey data, (b) the relevant factors of construction, maintenance, right-of-way, and the costs thereof, (c) the safety and convenience of highway users, (d) the relative importance of each highway to existing business, industry, agriculture, enterprise, and recreation and to the development of natural resources, business, industry, agriculture, enterprise, and recreation, (e) the desirability of providing an integrated system to serve interstate travel, principal market centers, principal municipalities, county seat municipalities, and travel to places of statewide interest, (f) the desirability of connecting the state highway system with any state park, any state forest reserve, any state game reserve, the grounds of any state institution, or any recreational, scenic, or historic place owned or operated by the state or federal government, (g) the national defense, and (h) the general welfare of the people of the state.

(3) Any highways not designated as a part of the state highway system as provided by sections 39-1301 to 39-1362 and 39-1393 shall be a part of the county road system, and the title to the right-of-way of such roads shall vest in the counties in which the roads are located.

Source: Laws 1955, c. 148, § 9, p. 420; Laws 1959, c. 176, § 1, p. 647; Laws 1981, LB 285, § 5; Laws 1993, LB 15, § 6; Laws 2016, LB1038, § 9; Laws 2017, LB271, § 6.

39-1311 State highway system; department; maintain current map; contents; corridor location; map; notice; beltway; duties.

(1) The department at all times shall maintain a current map of the state, which shall show all the roads, highways, and connecting links which have been designated, located, created, or constituted as part of the state highway system, including all corridors. All changes in designation or location of highways constituting the state highway system, or additions thereto, shall be indicated upon the map. The department shall also maintain six separate and additional maps. These maps shall include (a) the roads, highways, and streets designated as federal-aid primary roads as of March 27, 1972, (b) the National System of Interstate and Defense Highways, (c) the roads designated as the federal-aid primary system as it existed on June 1, 1991, (d) the National Highway System, (e) the Highway Beautification Control System as defined in section 39-201.01, and (f) scenic byways as defined in section 39-201.01. The National Highway System is the system designated as such under the federal Intermodal Surface Transportation Efficiency Act. The maps shall be available at all times for public inspection at the offices of the Director-State Engineer and shall be filed with the Legislature of the State of Nebraska each biennium.

(2) Whenever the department has received a corridor location approval for a proposed state highway or proposed beltway to be located in any county or municipality, it shall prepare a map of such corridor sufficient to show the location of such corridor on each parcel of land to be traversed. If the county or municipality in which such corridor is located does not have a requirement for the review and approval of a preliminary subdivision plat or a requirement that

a building permit be obtained prior to commencement of a structure, the department shall send notice of the approval of such corridor by certified mail to the owner of each parcel traversed by the corridor at the address shown for such owner on the county tax records. Such notice shall advise the owner of the requirement of sections 39-1311 to 39-1311.05 for preliminary subdivision plats and for building permits.

(3) For any beltway proposed under sections 39-1311 to 39-1311.05, the duties of the department shall be assumed by the county or municipality that received approval for the beltway project.

Source: Laws 1955, c. 148, § 11, p. 422; Laws 1972, LB 1181, § 2; Laws 1974, LB 805, § 1; Laws 1995, LB 264, § 22; Laws 2003, LB 187, § 7; Laws 2005, LB 639, § 2; Laws 2017, LB339, § 124.

39-1311.02 Corridor; review of preliminary subdivision plat; building permit; required.

(1) A review of a preliminary subdivision plat shall be required for all proposals to subdivide land or to make public or private improvements on all land within an approved corridor.

(2) A building permit shall be required for all structures within an approved corridor if the actual cost of the structure exceeds one thousand dollars. Structures include, but are not limited to, any construction or improvement to land such as public or private streets, sidewalks, and utilities; golf course tee boxes, fairways, or greens; drainage facilities; storm water detention areas; mitigation sites; green space; landscaped areas; or other similar uses. Any application for a building permit shall include a plat drawn by a person licensed as a professional engineer or architect under the Engineers and Architects Regulation Act or licensed as a professional land surveyor as provided in the Land Surveyors Regulation Act showing the location of all existing and proposed structures in the area subject to corridor protection.

Source: Laws 1974, LB 805, § 3; Laws 2003, LB 187, § 9; Laws 2015, LB138, § 4; Laws 2024, LB102, § 7.
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.

39-1314 State highways; relinquishment; abandonment; fragment or section; offer to political subdivision; procedure; memorandum of understanding; contents.

No fragment or section of a route nor any route on the state highway system shall be abandoned without first offering to relinquish such fragment, section, or route to the political or governmental subdivisions or public corporations wherein any portion of the state highway system is to be abandoned. The department shall offer to relinquish such fragment, section, or route by written notification to such political or governmental subdivisions or public corporations of the department's offer to relinquish. Four months after sending the notice of offer to relinquish, the department may proceed to abandon such fragment, section, or route on the state highway system unless a petition from a notified political or governmental subdivision or public corporation has been filed with the department, prior to abandonment, setting forth that the political

or governmental subdivision or public corporation desires to maintain such fragment, section, route, or portion thereof. After the filing of such petition, the department and political or governmental subdivision or public corporation may negotiate the terms or conditions of any relinquishment, including any reservation of rights by either party, except that any rights and conditions asserted by the department as existing at the time of right-of-way acquisition or stipulated to as a requirement for federal funding of project development and construction shall not be negotiable. The petition and a written memorandum of understanding executed by the department and the political or governmental subdivision or public corporation, together with a written instrument describing the proposed relinquishment, shall be filed as a public record in the department. The memorandum of understanding shall detail the reservation of rights made by either party, including any restrictions upon any future use of the fragment, section, or route to be relinquished, and shall also state the right of the political or governmental subdivision or public corporation to petition the department to seek renegotiation of the terms and conditions of the relinquishment at a future date. Such written instrument shall bear the department seal and shall be dated and subscribed by the Director-State Engineer and state the terms or conditions, if any pursuant to the memorandum of understanding, upon which the relinquishment shall be qualified. Such written instrument shall be certified by the department and be recorded in the office of the register of deeds of the county where the portion of the state highway system is being relinquished. No fee shall be charged for such recording. After such recording, the fragment, section, route, or portion relinquished will be the responsibility of such political or governmental subdivision or public corporation, subject to any mutually agreed terms or conditions. At any time after the relinquishment, the political or governmental subdivision or public corporation may, upon a showing of a change in financial or other circumstances or for economic development purposes, petition the department to renegotiate the agreed terms or conditions of the relinquishment or revert to abandonment. If the department agrees to new terms or conditions, it shall file an amended memorandum of understanding executed by the department and the political or governmental subdivision or public corporation and certify and record an amended written instrument with the register of deeds.

Source: Laws 1955, c. 148, § 14, p. 423; Laws 2018, LB78, § 1.

(d) PLANNING AND RESEARCH

39-1316 State highway system; establishment, construction, maintenance; plans and specifications.

The department shall be responsible for the preparation and adoption of plans and specifications for the establishment, construction, and maintenance of the state highway system. Such plans and specifications may be amended, from time to time, as the department deems advisable. Such plans and specifications should conform, as closely as practicable, to those adopted by the American Association of State Highway and Transportation Officials.

Source: Laws 1955, c. 148, § 16, p. 424; Laws 2021, LB174, § 1.

(e) LAND ACQUISITION

39-1320 State highway purposes; acquisition of property; eminent domain; purposes enumerated.

(1) The department is hereby authorized to acquire, either temporarily or permanently, lands, real or personal property or any interests therein, or any easements deemed to be necessary or desirable for present or future state highway purposes by gift, agreement, purchase, exchange, condemnation, or otherwise. Such lands or real property may be acquired in fee simple or in any lesser estate. It is the intention of the Legislature that all property leased or purchased from the owner shall receive a fair price.

(2) State highway purposes, as referred to in subsection (1) of this section or otherwise in sections 39-1301 to 39-1362 and 39-1393, shall include provision for, but shall not be limited to, the following:

(a) The construction, reconstruction, relocation, improvement, and maintenance of the state highway system and highway approaches. The right-of-way for such highways shall be of such width as is deemed necessary by the department;

(b) Adequate drainage in connection with any highway, cuts, fills, or channel changes and the maintenance thereof;

(c) Controlled-access facilities, including air, light, view, and frontage and service roads to highways;

(d) Weighing stations, shops, storage buildings and yards, and road maintenance or construction sites;

(e) Road material sites, sites for the manufacture of road materials, and access roads to such sites;

(f) The preservation of objects of attraction or scenic value adjacent to, along, or in close proximity to highways and the culture of trees and flora which may increase the scenic beauty of such highways;

(g) Roadside areas or parks adjacent to or near any highway;

(h) The exchange of property for other property to be used for rights-of-way or other purposes set forth in subsection (1) or (2) of this section if the interests of the state will be served and acquisition costs thereby reduced;

(i) The maintenance of an unobstructed view of any portion of a highway so as to promote the safety of the traveling public;

(j) The construction and maintenance of stock trails and cattle passes;

(k) The erection and maintenance of marking and warning signs and traffic signals;

(l) The construction and maintenance of sidewalks and highway illumination;

(m) The control of outdoor advertising which is visible from the nearest edge of the right-of-way of the Highway Beautification Control System as defined in section 39-201.01 to comply with the provisions of 23 U.S.C. 131, as amended;

(n) The relocation of or giving assistance in the relocation of individuals, families, businesses, or farm operations occupying premises acquired for state highway or federal-aid road purposes; and

(o) The establishment and maintenance of wetlands to replace or to mitigate damage to wetlands affected by highway construction, reconstruction, or maintenance. The replacement lands shall be capable of being used to create wetlands comparable to the wetlands area affected. The area of the replacement lands may exceed the wetlands area affected. Lands may be acquired to establish a large or composite wetlands area, sometimes called a wetlands bank, not larger than an area which is one hundred fifty percent of the lands

reasonably expected to be necessary for the mitigation of future impact on wetlands brought about by highway construction, reconstruction, or maintenance during the six-year plan or program as required by section 39-2115 or an annual plan or program under section 39-2118. For purposes of this section, wetlands shall have the definition found in 33 C.F.R. 328.3(c).

(3) The procedure to condemn property authorized by subsection (1) of this section or elsewhere in sections 39-1301 to 39-1362 and 39-1393 shall be exercised in the manner set forth in sections 76-704 to 76-724 or as provided by section 39-1323, as the case may be.

Source: Laws 1955, c. 148, § 20, p. 425; Laws 1961, c. 195, § 1, p. 594; Laws 1969, c. 329, § 2, p. 1178; Laws 1972, LB 1181, § 3; Laws 1975, LB 213, § 5; Laws 1992, LB 899, § 1; Laws 1992, LB 1241, § 3; Laws 1993, LB 15, § 7; Laws 1995, LB 264, § 23; Laws 2007, LB277, § 1; Laws 2016, LB1038, § 10; Laws 2017, LB271, § 7; Laws 2017, LB339, § 125; Laws 2019, LB82, § 3; Laws 2022, LB750, § 3.

Cross References

Advertising and informational signs along highways and roads, see sections 39-201.01 to 39-226.
Outdoor advertising signs, displays, and devices, rules and regulations of the Department of Transportation, see section 39-102.
Outdoor advertising signs, removal, see sections 69-1701 and 69-1702.

39-1323.01 Lands acquired for highway purposes; lease, rental, or permit for use; authorization; proprietary purposes permitted; disposition of rental funds; conditions, covenants, exceptions, reservations.

The Nebraska Department of Transportation, subject to the approval of the Governor, and the United States Department of Transportation if such department has a financial interest, is authorized to lease, rent, or permit for use, any area, or land and the buildings thereon, which area or land was acquired for highway purposes. The Director-State Engineer, for the Nebraska Department of Transportation, and in the name of the State of Nebraska, may execute all leases, permits, and other instruments necessary to accomplish the foregoing. Such instruments may contain any conditions, covenants, exceptions, and reservations which the department deems to be in the public interest, including, but not limited to, the provision that upon notice that such property is needed for highway purposes the use and occupancy thereof shall cease. If so leased, rented, or permitted to be used by a municipality, the property may be used for such governmental or proprietary purpose as the governing body of the municipality shall determine, and such governing body may let the property to bid by private operators for proprietary uses. All money received as rent shall be deposited in the state treasury and by the State Treasurer placed in the Highway Cash Fund, subject to reimbursement, if requested, to the United States Department of Transportation for its proportionate financial contribution.

Source: Laws 1961, c. 354, § 1, p. 1114; Laws 1965, c. 222, § 1, p. 644; Laws 1969, c. 331, § 1, p. 1186; Laws 1969, c. 584, § 41, p. 2368; Laws 1986, LB 599, § 5; Laws 2017, LB339, § 126.

(f) CONTROL OF ACCESS

39-1328.01 State highways; frontage roads; request by municipality, county, or property owners; right-of-way acquired by purchase or lease; department; maintenance.

Whenever a highway not a freeway, which formerly traversed the corporate limits of a municipality of not more than five thousand inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census, is relocated and is made a controlled-access facility, and the department is or is not providing any frontage road as authorized by section 39-1328, near an intersection with a roadway connecting with such municipality, the department shall, when consistent with requirements of traffic safety, and when the cost of drainage structures does not exceed five thousand dollars, and upon the conditions hereinafter set out construct such frontage roads if requested to do so by such municipality, by the county, or by the owners of sixty percent of the property abutting on such relocated highway if such request is made prior to the purchase, lease, or lease with option to purchase of right-of-way by the department. The quadrant of such intersection in which the frontage road or roads shall be located shall be designated by the governing board of such municipality. The department shall at the request of the county or municipality procure the right-of-way for such frontage road by lease or lease-option to buy or in the same manner as though it were for state highway purposes after receiving from the county or municipality reasonable assurance of reimbursement for such right-of-way costs. The responsibility for the maintenance of such frontage road shall be as provided in section 39-1372.

Source: Laws 1965, c. 211, § 1, p. 619; Laws 2017, LB113, § 40; Laws 2017, LB339, § 127.

39-1328.02 State highways; frontage roads; request by municipality, county, or property owners; consent of federal government, when; right-of-way; reimbursement; maintenance.

Whenever a highway not a freeway, which formerly traversed the corporate limits of a municipality, has been relocated since January 1, 1960, and has been made or will be made a controlled-access facility, and the department has not provided any frontage road as authorized by section 39-1328, near an intersection with a roadway connecting with such municipality, the department shall, when consistent with requirements of traffic safety, and when the cost of drainage structures does not exceed five thousand dollars, and upon the conditions hereinafter set out construct such frontage roads if requested to do so by such municipality, the county, or by the owners of sixty percent of the property abutting on such relocated highway within two years after November 18, 1965, or within two years after the highway is made a controlled-access facility. If agreements exist with the federal government requiring its consent to the relinquishment of control of access, the department shall make a bona fide effort to secure such consent, but upon failure to obtain such consent, the frontage road shall not be constructed, or, if conditions are imposed by the federal government, the department shall construct such frontage roads only in accordance with such conditions. The municipality, county, or owners requesting such frontage road shall reimburse the department for any damages which it paid for such control of access and also for payment to the federal government of such sum, if any, demanded by it for the relinquishment of the access control. The quadrant of such intersection in which the frontage road may be located shall be designated by the governing board of such municipality. The department shall at the request of the county or municipality procure the right-of-way for such frontage road in the same manner as though it were for state

highway purposes after receiving from the county or municipality reasonable assurance of reimbursement for such right-of-way costs. The responsibility for the maintenance of such frontage road shall be as provided in section 39-1372.

Source: Laws 1965, c. 211, § 2, p. 620; Laws 2017, LB339, § 128.

(g) CONSTRUCTION AND MAINTENANCE

39-1337 State highway system and highway approach; department; construction, maintenance, control; improvement; sufficiency rating.

(1) The construction, maintenance, protection, and control of the state highway system shall be under the authority and responsibility of the department, except as otherwise provided in sections 39-1339 and 39-1372.

(2) The construction, reconstruction, relocation, improvement, or maintenance of a highway approach damaged or destroyed due to (a) an extreme weather event or (b) faulty engineering shall be under the authority and responsibility of the department. The department may seek reimbursement from any party responsible for causing faulty engineering.

(3) The relative urgency of proposed improvements on the state highway system and highway approaches shall be determined by a sufficiency rating established by the department, insofar as the use of such a rating is deemed practicable. The sufficiency rating shall include, but not be limited to, the following factors: (a) Surface condition, (b) economic factors, (c) safety, and (d) service.

Source: Laws 1955, c. 148, § 37, p. 433; Laws 1961, c. 184, § 3, p. 565; Laws 2022, LB750, § 4.

39-1345.01 State highways; public use while under construction, repair, or maintenance; contractor; liability.

Whenever the department, under the authority of section 39-1345, permits the public use of a highway undergoing construction, repair, or maintenance in lieu of a detour route, the contractor shall not be held responsible for damages to those portions of the project upon which the department has permitted public use, when such damages are the result of no proximate act or failure to act on the part of the contractor.

Source: Laws 1969, c. 310, § 1, p. 1114; Laws 2001, LB 489, § 11; Laws 2017, LB339, § 129.

(h) CONTRACTS

39-1348 Construction; plans and specifications; advertisement for bids; failure of publication; effect; powers of department.

(1) Except as otherwise provided in sections 39-2808 to 39-2823, when letting contracts for the construction, reconstruction, improvement, maintenance, or repair of roads, bridges, and their appurtenances, the department shall solicit bids as follows:

(a) For contracts with an estimated cost, as determined by the department, of greater than two hundred fifty thousand dollars, the department shall advertise for sealed bids for not less than twenty days by publication of a notice thereof once a week for three consecutive weeks in the official county newspaper

designated by the county board in the county where the work is to be done and in such additional newspaper or newspapers as may appear necessary to the department in order to give notice of the receiving of bids. Such advertisement shall state the place where the plans and specifications for the work may be inspected and shall designate the time when the bids shall be filed and opened. If through no fault of the department publication of such notice fails to appear in any newspaper or newspapers in the manner provided in this subdivision, the department shall be deemed to have fulfilled the requirements of this subdivision; and

(b) For contracts with an estimated cost, as determined by the department, of two hundred fifty thousand dollars or less, the department, in its sole discretion, shall either:

(i) Follow the procedures given in subdivision (a) of this subsection; or

(ii) Request bids from at least three potential bidders for such work. If the department requests bids under this subdivision, it shall designate a time when the bids shall be opened. The department may award a contract pursuant to this subdivision if it receives at least one responsive bid.

(2) The Department of Transportation may adjust the amounts in subdivisions (1)(a) and (b) of this section annually on October 1 by the percentage change in the Consumer Price Index for All Urban Consumers published by the United States Department of Labor, Bureau of Labor Statistics, at the close of the twelve-month period ending on August 31 of such year. The amounts shall be rounded to the next highest one-thousand-dollar amount.

Source: Laws 1955, c. 148, § 48, p. 439; Laws 1961, c. 181, § 8, p. 541; Laws 2015, LB312, § 1; Laws 2016, LB960, § 25; Laws 2023, LB138, § 5.

39-1349 Construction contracts; letting; procedure; interest on retained payments; exception; predetermined minimum wages; powers of department.

(1) Except as provided in subsections (5) and (6) of this section, all contracts for the construction, reconstruction, improvement, maintenance, or repair of state highway system roads and bridges and their appurtenances shall be let by the department to the lowest responsible bidder. Bidders on such contracts must be prequalified to bid by the department except as provided in subsection (2) of section 39-1351. The department may reject any or all bids and cause the work to be done as may be directed by the department.

(2) Except as provided in subsection (3) of this section, if the contractor has furnished the department all required records and reports, the department shall pay to the contractor interest at a rate three percentage points above the average annual Federal Reserve composite prime lending rate for the previous calendar year rounded to the nearest one-tenth of one percent on the amount retained and on the final payment due the contractor beginning sixty days after the work under the contract has been completed as evidenced by the completion date established in the department's letter of tentative acceptance or, when tentative acceptance has not been issued, beginning sixty days after completion of the work and running until the date when payment is tendered to the contractor.

(3) Subsection (2) of this section shall not apply to contracts which provide for payment pursuant to a set schedule over a period of time that extends beyond the completion of construction.

(4) When the department is required by acts of Congress and rules and regulations made by an agent of the United States in pursuance of such acts to predetermine minimum wages to be paid laborers and mechanics employed on highway construction, the Director-State Engineer shall cause minimum rates of wages for such laborers and mechanics to be predetermined and set forth in contracts for such construction. The minimum rates shall be the scale of wages which the Director-State Engineer finds are paid and maintained by at least fifty percent of the contractors in performing highway work contracted with the department unless the Director-State Engineer further finds that such scale of wages so determined would unnecessarily increase the cost of such highway work to the state, in which event he or she shall reduce such determination to such scale of wages as he or she finds is required to avoid such unnecessary increase in the cost of such highway work.

(5) The department, in its sole discretion, may permit a city or county to let state or federally funded contracts for the construction, reconstruction, improvement, maintenance, or repair of state highways, bridges, and their appurtenances located within the jurisdictional boundaries of such city or county, to the lowest responsible bidder when the work to be let is primarily local in nature and the department determines that it is in the public interest that the contract be let by the city or the county. Bidders on such contracts must be prequalified to bid by the department except as provided in subsection (2) of section 39-1351.

(6) The department, in its sole discretion, may permit a federal agency to let contracts for the construction, reconstruction, improvement, maintenance, or repair of state highways, bridges, and their appurtenances and may permit such federal agency to perform any and all other aspects of the project to which such contract relates, including, but not limited to, preliminary engineering, environmental clearance, final design, and construction engineering, when the department determines that it is in the public interest to do so. Bidders on such contracts must be prequalified to bid by the department except as provided in subsection (2) of section 39-1351.

Source: Laws 1955, c. 148, § 49, p. 439; Laws 1959, c. 177, § 1, p. 648; Laws 1961, c. 197, § 1, p. 599; Laws 1967, c. 240, § 1, p. 640; Laws 1969, c. 332, § 1, p. 1188; Laws 1980, LB 279, § 3; Laws 1993, LB 539, § 1; Laws 2002, LB 491, § 1; Laws 2015, LB312, § 2; Laws 2019, LB616, § 1.

39-1350 Bids; contracts; department powers; department authorized to act for political subdivision.

The department shall have the authority to act for any political or governmental subdivision or public corporation of this state for the purpose of taking bids or letting contracts for the construction, reconstruction, improvement, maintenance, or repair of roads, bridges, and their appurtenances. The department, while so acting, may take such bids and let such contracts at the offices of the department in Lincoln, Nebraska, or at such other location as designated

by the department if the department has the written consent of the political or governmental subdivision or public corporation where the work is to be done.

Source: Laws 1955, c. 148, § 50, p. 439; Laws 1969, c. 333, § 1, p. 1189; Laws 2015, LB312, § 3; Laws 2017, LB339, § 130.

39-1351 Construction contracts; bidders; qualifications; evaluation by department; powers of department.

(1) Except as provided in subsection (2) of this section, any person desiring to submit to the department a bid for the performance of any contract for the construction, reconstruction, improvement, maintenance, or repair of roads, bridges, and their appurtenances, which the department proposes to let, shall apply to the department for prequalification. Such application shall be made not later than five days before the letting of the contract unless fewer than five days is specified by the department. The department shall determine the extent of any applicant's qualifications by a full and appropriate evaluation of the applicant's experience, bonding capacity as determined by a bonding agency licensed to do business in the State of Nebraska or other sufficient financial showing deemed satisfactory by the department, and performance record. In determining the qualification of an applicant to bid on any particular contract, the department shall consider the resources available for the particular contract contemplated.

(2) The department may, in its sole discretion, grant an exemption from all prequalification requirements for (a) any contract for the construction, reconstruction, improvement, maintenance, or repair of roads, bridges, and their appurtenances if the estimate of the department for such work is two hundred fifty thousand dollars or less or (b) any contract for the construction, reconstruction, improvement, maintenance, or repair of roads, bridges, and their appurtenances if such work is of an emergency nature.

Source: Laws 1955, c. 148, § 51, p. 439; Laws 1973, LB 491, § 6; Laws 2015, LB312, § 4; Laws 2019, LB117, § 1; Laws 2023, LB138, § 6.

39-1352 Construction contracts; bidders; statement of qualifications.

(1) Except as provided in subsection (2) of this section, any person proposing to bid on a contract for the construction, reconstruction, improvement, maintenance, or repair of roads, bridges, and their appurtenances to be let by the department shall submit to the department, at such times as it may require, a statement showing such person's qualifications. Such statement shall be under oath and on a standard form to be prepared and supplied by the department. The statement shall be confidential and only for the use of the department.

(2) Subsection (1) of this section shall not apply to any contract granted an exemption from prequalification requirements pursuant to subsection (2) of section 39-1351.

Source: Laws 1955, c. 148, § 52, p. 440; Laws 1961, c. 198, § 1, p. 601; Laws 2015, LB312, § 5; Laws 2019, LB117, § 2.

39-1353 Construction contracts; request authorization to bid; issuance to certain bidders.

(1) Any person desiring to bid on any contract for the construction, reconstruction, improvement, maintenance, or repair of roads, bridges, and their appurtenances to be let by the department shall request an authorization to bid from the department at the offices of the department in Lincoln, Nebraska, or at such other location as designated by the department not later than 5 p.m. of the day before the letting of the contract.

(2) Such authorization shall be issued only to those persons previously qualified by the department and bids shall be accepted only from such qualified persons. This subsection shall not apply to any contract granted an exemption from prequalification requirements pursuant to subsection (2) of section 39-1351.

Source: Laws 1955, c. 148, § 53, p. 440; Laws 1969, c. 333, § 2, p. 1189; Laws 1995, LB 447, § 1; Laws 2015, LB312, § 6; Laws 2017, LB339, § 131; Laws 2019, LB117, § 3.

39-1354 Construction contracts; plans; reproduction; how obtained.

The department, in its discretion, may provide paper or electronic reproductions of the plans prepared by the department for any contract to be let for the construction, reconstruction, improvement, maintenance, or repair of roads, bridges, and their appurtenances, to any person desiring such paper or electronic reproductions. Such person shall pay to the department a reasonable sum, to be fixed by the department in an amount estimated to cover the actual cost of preparing such paper or electronic reproductions.

Source: Laws 1955, c. 148, § 54, p. 441; Laws 2019, LB117, § 4.

(j) MISCELLANEOUS

39-1359.01 Rights-of-way; mowing and harvesting of hay; permit; fee; department; powers and duties.

For purposes of this section, the definitions in section 39-1302 apply.

The department shall issue permits which authorize and regulate the mowing and harvesting of hay on the right-of-way of highways of the state highway system. The applicant for a permit shall be informed in writing and shall sign a release acknowledging (1) that he or she will assume all risk and liability for hay quality and for any accidents and damages that may occur as a result of the work and (2) that the State of Nebraska assumes no liability for the hay quality or for work done by the permittee. The applicant shall show proof of liability insurance of at least one million dollars. The owner or the owner's assignee of land abutting the right-of-way shall have priority to receive a permit for such land under this section until July 30 of each year. Applicants who are not owners of abutting land shall be limited to a permit for five miles of right-of-way per year. The department shall allow mowing and hay harvesting on or after July 15 of each year. The department shall charge a permit fee in an amount calculated to defray the costs of administering this section. All fees received under this section shall be remitted to the State Treasurer for credit to the Highway Cash Fund. The department shall adopt and promulgate rules and regulations to carry out this section.

Source: Laws 2007, LB43, § 1; Laws 2014, LB698, § 1; Laws 2017, LB339, § 132.

39-1363 Preservation of historical, archaeological, and paleontological remains; agreements; funds; payment.

To more effectually preserve the historical, archaeological, and paleontological remains of the state, the department is authorized to enter into agreements with the appropriate agencies of the state charged with preserving historical, archaeological, and paleontological remains to have these agencies remove and preserve such remains disturbed or to be disturbed by highway construction and to use highway funds, when appropriated, for this purpose. This authority specifically extends to highways which are part of the National System of Interstate and Defense Highways as defined in the Federal Aid Highway Act of 1956, Public Law 627, 84th Congress, and the use of state funds on a matching basis with federal funds therein.

Source: Laws 1959, c. 178, § 1, p. 649; Laws 2017, LB339, § 133.

39-1364 Plans, specifications, and records of highway projects; available to public, when.

The department shall, upon the request of any citizen of this state, disclose to such citizen full information concerning any highway construction, alteration, maintenance, or repair project in this state, whether completed, presently in process, or contemplated for future action, and permit an examination of the plans, specifications, and records concerning such project, except that any information received by the department as confidential by the laws of this state shall not be disclosed. Any person who willfully fails to comply with the provisions of this section shall be guilty of official misconduct. By the provisions of this section, the officials of the department will not be required to furnish information on the right-of-way of any proposed highway until such information can be made available to the general public.

Source: Laws 1959, c. 179, § 1, p. 650; Laws 2017, LB339, § 134.

39-1365.01 State highway system; plans; department; duties; priorities.

The department shall be responsible for developing a specific and long-range state highway system plan. The department shall annually formulate plans to meet the state highway system needs of all facets of the state and shall assign priorities for such needs. The department shall, on or before December 1 of each year, present such plans and the report required in section 39-1365.02 to the Legislature. The plans shall be referred to the appropriate standing committees of the Legislature for review. The department shall consider the preservation of the existing state highway system asset as its primary priority except as may otherwise be provided in state or federal law. In establishing secondary priorities, the department shall consider a variety of factors, including, but not limited to, current and projected traffic volume, safety requirements, economic development needs, current and projected demographic trends, and enhancement of the quality of life for all Nebraska citizens. The state highway system plan shall include the designation of those portions of the state highway system which shall be expressways.

Source: Laws 1988, LB 632, § 24; Laws 2010, LB821, § 1; Laws 2017, LB339, § 135; Laws 2021, LB579, § 1.

39-1365.02 State highway system; federal funding; maximum use; department; report on system needs and planning procedures.

(1) The department shall apply for and make maximum use of available federal funding, including discretionary funding, on all highway construction projects which are eligible for such assistance.

(2) The department shall transmit electronically to the Legislature, by December 1 of each year, a report on the needs of the state highway system, the department's planning procedures, and the progress being made on the expressway system. Such report shall include:

(a) The criteria by which highway needs are determined;

(b) The standards established for each classification of highways;

(c) An assessment of current and projected needs of the state highway system, such needs to be defined by category of improvement required to bring each segment up to standards. Projected fund availability shall not be a consideration by which needs are determined;

(d) Criteria and data, including factors enumerated in section 39-1365.01, upon which decisions may be made on possible special priority highways for commercial growth;

(e) A review of the department's procedure for selection of projects for the annual construction program, the five-year planning program, and extended planning programs. The review shall include a statement of all state highway projects under construction, other than any part of the expressway system, and the estimated cost of each project;

(f) A review of the progress being made toward completion of the expressway system, as such system was designated on January 1, 2016, and whether such work is on pace for completion prior to June 30, 2033. The review shall include a statement of the amount of money spent on the expressway system, as of the date of the report, and the number of miles of the expressway system yet to be completed and expected milestone dates for other expressway projects, including planning, permitting, designing, bid letting, and required funding for project completion;

(g) A review of the Transportation Infrastructure Bank Fund and the fund's component programs under sections 39-2803 to 39-2807. This review shall include a listing of projects funded and planned to be funded under each of the three component programs; and

(h) A review of the outcomes of the Economic Opportunity Program, including the growth in permanent jobs and related income and the net increase in overall business activity.

Source: Laws 1988, LB 632, § 25; Laws 2012, LB782, § 40; Laws 2016, LB960, § 27; Laws 2017, LB339, § 136; Laws 2021, LB579, § 2.

(l) STATE RECREATION ROADS

39-1390 State Recreation Road Fund; created; use; preferences; maintenance; investment.

The State Recreation Road Fund is created. The money in the fund shall be transferred by the State Treasurer, on the first day of each month, to the department and shall be expended by the Director-State Engineer with the approval of the Governor for construction and maintenance of dustless-surface roads to be designated as state recreation roads as provided in this section,

except that (1) transfers may be made from the fund to the State Park Cash Revolving Fund at the direction of the Legislature through July 31, 2016, and (2) if the balance in the State Recreation Road Fund exceeds fourteen million dollars on the first day of each month, the State Treasurer shall transfer the amount greater than fourteen million dollars to the Game and Parks State Park Improvement and Maintenance Fund. Except as to roads under contract as of March 15, 1972, those roads, excluding state highways, giving direct and immediate access to or located within state parks, state recreation areas, or other recreational or historical areas, shall be eligible for designation as state recreation roads. Such eligibility shall be determined by the Game and Parks Commission and certified to the Director-State Engineer, who shall, after receiving such certification, be authorized to commence construction on such recreation roads as funds are available. In addition, those roads, excluding state highways, giving direct and immediate access to a state veteran cemetery are state recreation roads. After construction of such roads they shall be shown on the map provided by section 39-1311. Preference in construction shall be based on existing or potential traffic use by other than local residents. Unless the State Highway Commission otherwise recommends, such roads upon completion of construction shall be incorporated into the state highway system. If such a road is not incorporated into the state highway system, the department and the county within which such road is located shall enter into a maintenance agreement establishing the responsibility for maintenance of the road, the maintenance standards to be met, and the responsibility for maintenance costs. Any money in the State Recreation Road 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 1963, c. 348, § 2, p. 1119; Laws 1965, c. 225, § 1, p. 649; Laws 1965, c. 501, § 1, p. 1595; Laws 1969, c. 584, § 42, p. 2369; Laws 1972, LB 1131, § 1; Laws 1995, LB 7, § 36; Laws 2003, LB 408, § 1; Laws 2009, First Spec. Sess., LB3, § 20; Laws 2010, LB749, § 1; Laws 2014, LB906, § 15; Laws 2015, LB661, § 30; Laws 2017, LB339, § 137; Laws 2024, First Spec. Sess., LB3, § 12.
Effective date August 21, 2024.

Cross References

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

39-1392 Exterior access roads; interior service roads; department; develop and file plans with Governor and Legislature; reviewed annually.

The department shall develop and file with the Governor and the Legislature a one-year and a long-range five-year plan of scheduled design, construction, and improvement for all exterior access roads and interior service roads as certified to it by the Game and Parks Commission. The first such plans shall be filed on or before January 1, 1974. The plans shall be reviewed and extended annually, on or before January 1 of each year, so that there shall always be a current one-year and five-year plan on file. The plans submitted to the Legislature shall be submitted electronically. The department shall also, at the time it files such plans and extensions thereof, report the design, construction, and

improvement accomplished during each of the two immediately preceding calendar years.

Source: Laws 1973, LB 374, § 2; Laws 2012, LB782, § 42; Laws 2017, LB339, § 138.

ARTICLE 14

COUNTY ROADS. GENERAL PROVISIONS

Section
39-1407. County road improvement projects; lettings; procedure; county board may authorize Department of Transportation to conduct; contractors' bonds.
39-1410. Section lines declared roads; opening; damages, appraisal and allowance; government corners, how perpetuated.
39-1411. Road and bridge records, who must keep; carrying capacity posted on bridges.
39-1412. County bridges; loads exceeding limits or posted capacity; no damage recovery; violation; penalty.

39-1407 County road improvement projects; lettings; procedure; county board may authorize Department of Transportation to conduct; contractors' bonds.

Whenever contracts are to be let for road improvements, it shall be the duty of the county board to cause to be prepared and filed with the county clerk an estimate of the nature of the work and the cost thereof. After such estimate has been filed, bids for such contracts shall be advertised by publication of a notice thereof once a week for three consecutive weeks in a legal newspaper of the county prior to the date set for receiving bids. Bids shall be let to the lowest responsible bidder. The board shall have the discretionary power to reject any and all bids for sufficient cause. If all bids are rejected, the county board shall have the power to negotiate any contract for road improvements, but the county board shall adhere to all specifications that were required for the initial bids on contracts. The board shall have the discretionary power to authorize the Department of Transportation to take and let bids on behalf of the county at the offices of the department in Lincoln, Nebraska. When the bid is accepted the bidder shall enter into a sufficient bond for the use and benefit of the county, precinct, or township, for the faithful performance of the contract, and for the payment of all laborers employed in the performance of the work, and for the payment of all damages which the county, precinct, or township may sustain by reason of any failure to perform the work in the manner stipulated. It shall be the duty of the county to determine whether or not the work is performed in keeping with such contract before paying for the same.

Source: Laws 1957, c. 155, art. I, § 7, p. 510; Laws 1972, LB 1058, § 12; Laws 1975, LB 114, § 2; Laws 2017, LB339, § 139.

39-1410 Section lines declared roads; opening; damages, appraisal and allowance; government corners, how perpetuated.

The section lines are hereby declared to be public roads in each county in the state, and the county board may whenever the public good requires it open such roads without any preliminary survey and cause them to be worked in the same manner as other public roads; *Provided,* any damages claimed by reason of any such road shall be appraised and allowed in the manner provided by law. The county board shall cause existing government corners along such line

to be perpetuated by causing to be planted monuments of some durable material, with suitable witnesses, and causing a record to be made of the same and, if government corners are lost or obliterated, the county board shall cause the corners to be located in the manner provided in the manual of instruction for government surveys. The county board shall cause such work to be performed by the county surveyor or, if there is no county surveyor in the county, by some other competent professional land surveyor.

Source: Laws 1957, c. 155, art. I, § 10, p. 511; Laws 2024, LB102, § 8. Operative date September 1, 2024.

39-1411 Road and bridge records, who must keep; carrying capacity posted on bridges.

The county highway superintendent or some other qualified person designated by the county board shall keep in his or her office a road record which shall include a record of the proceedings in regard to the laying out, establishing, changing, or discontinuing of all roads in the county hereafter established, changed, or discontinued, and a record of the cost and maintenance of all such roads. Such person shall record in the bridge record a record of all county bridges and culverts showing number, location, and description of each, and a record of the cost of construction and maintenance of all such bridges and culverts. If the carrying capacity or weight limit of any bridge is less than the limits set forth in subsections (2), (3), and (4) of section 60-6,294, the county shall cause to be firmly posted or attached upon such bridge in a conspicuous place at each end thereof a board or metal sign showing the carrying capacity or weight which the bridge will safely carry or bear.

Source: Laws 1957, c. 155, art. I, § 11, p. 511; Laws 2018, LB310, § 1.

Cross References

Road record, duties of county clerk, see section 23-1305.

39-1412 County bridges; loads exceeding limits or posted capacity; no damage recovery; violation; penalty.

(1) No person shall drive across or go upon any county bridge with a greater weight than the limits set forth in subsections (2), (3), and (4) of section 60-6,294 or the carrying capacity or weight posted or attached pursuant to section 39-1411.

(2) A person who violates this section shall recover no damages from the county for any accident or injury which may happen to him or her upon such bridge because of damage to or the failure of such bridge caused by such violation.

(3) A person who violates this section shall be guilty of a Class III misdemeanor.

Source: Laws 1957, c. 155, art. I, § 12, p. 512; Laws 1977, LB 40, § 214; Laws 2018, LB310, § 2.

ARTICLE 15

COUNTY ROADS. ORGANIZATION AND ADMINISTRATION

(a) COUNTY HIGHWAY BOARD

Section
39-1503. Highway superintendent or road unit system counties; county boards; duties.

Section

(b) COUNTY HIGHWAY SUPERINTENDENT

(a) COUNTY HIGHWAY BOARD

39-1503 Highway superintendent or road unit system counties; county boards; duties.

It shall be the duty of the county board in commissioner-type counties having a county highway superintendent and in township-type counties having adopted a county road unit system to:

(1) Give notice to the public of the date set for public hearings upon the proposed county highway program of the county highway superintendent for the forthcoming year by publication once a week for three consecutive weeks in a legal newspaper published in the county or, if none is published in the county, in a legal newspaper of general circulation in the county. The notice shall clearly state the purpose, time, and place of such public hearings;

(2) Adopt a county highway annual program no later than March 1 of each year which shall include a schedule of construction, repair, and maintenance projects and the order of priority of such projects to be undertaken and carried out by the county and a list of equipment to be purchased and the priority of such purchases, within the limits of the estimated funds available during the next twelve months;

(3) Adopt standards to be applied in road and bridge repair, maintenance, and construction;

(4) Advertise for and take and let bids for all or any portion of the county road work when letting bids, except that when the Department of Transportation takes bids on behalf of the county, the county shall have authority to permit such bids to be taken and let at the offices of the department in Lincoln, Nebraska; and

(5) Cause investigations, studies, and inspections to be made, hold public hearings, and do all other things necessary to carry out the duties imposed upon it by law.

Source: Laws 1957, c. 155, art. II, § 3, p. 514; Laws 1969, c. 333, § 3, p. 1190; Laws 1986, LB 960, § 28; Laws 2017, LB339, § 140.

(b) COUNTY HIGHWAY SUPERINTENDENT

39-1506 County highway superintendent; qualifications.

Any person, whether or not a resident of the county, who is a duly licensed engineer in this state, any firm of consulting engineers duly licensed in this state, or any other person who is a competent, experienced, practical road builder shall be qualified to serve as county highway superintendent, except that no member of the county board shall be eligible for appointment. In counties having a population of one hundred thousand but less than one hundred fifty thousand inhabitants according to the most recent official United States census, the county surveyor shall perform all the duties and possess all the powers and functions of the county highway superintendent. In counties

having a population of one hundred fifty thousand or more inhabitants, the county engineer shall serve as county highway superintendent.

Source: Laws 1957, c. 155, art. II, § 6, p. 515; Laws 1982, LB 127, § 9; Laws 1986, LB 512, § 3; Laws 2017, LB200, § 4; Laws 2022, LB791, § 4.

39-1508 Highway superintendent; duties.

It shall be the duty of the county highway superintendent to:

(1) Annually submit to the county board a proposed schedule of construction, repair, maintenance, and supervision of county roads and bridges in conjunction with sections 39-2115, 39-2119, and 39-2120;

(2) Annually file with the county clerk a revised and current map of the county roads clearly distinguishing the primary and secondary roads, indicating the past year's improvements thereon, and showing the number of miles of roads established during the year and the location thereof; and

(3) Undertake the projects contained in subdivision (1) of this section, and when requested by the county board report the projects completed, the projects in construction, the equipment and material purchased, the amounts expended upon roads and bridges, and the sum remaining to be expended, except that deviations from the adopted program may be authorized by the unanimous vote of the county board in case of an emergency.

Source: Laws 1957, c. 155, art. II, § 8, p. 516; Laws 2019, LB414, § 1.

39-1512 Repealed. Laws 2019, LB414, § 3.

ARTICLE 16

COUNTY ROADS. ROAD IMPROVEMENT DISTRICTS

(a) SPECIAL IMPROVEMENT DISTRICTS

(a) SPECIAL IMPROVEMENT DISTRICTS

39-1621 Budget; taxes; levy; limitation; certification; collection; disbursement.

(1) The board of trustees may, after adoption of the budget statement for such district, annually levy and collect the amount of taxes provided in the adopted budget statement of the district to be received from taxation for corporate purposes upon property within the limits of such road improvement district to the amount of not more than three and five-tenths cents on each one hundred dollars upon the taxable value of the taxable property in such district for general maintenance and operating purposes subject to section 77-3443. The board shall, on or before September 30 of each year, certify any such levy to the county clerk of the counties in which such district is located who shall extend the levy upon the county tax list.

(2) The county treasurer of the county in which the greater portion of the area of the district is located shall be ex officio treasurer of the road improvement district and shall be responsible for all funds of the district coming into his or her hands. The treasurer shall collect all taxes and special assessments levied by the district and collected by him or her from his or her county or from other county treasurers if there is more than one county having land in the district and all money derived from the sale of bonds or warrants. The treasurer shall not be responsible for such funds until they are received by him or her. The treasurer shall disburse the funds of the district only on warrants authorized by the trustees and signed by the president and clerk.

Source: Laws 1957, c. 155, art. III, § 21, p. 533; Laws 1969, c. 145, § 35, p. 694; Laws 1979, LB 187, § 159; Laws 1992, LB 1063, § 36; Laws 1992, Second Spec. Sess., LB 1, § 36; Laws 1993, LB 734, § 39; Laws 1995, LB 452, § 12; Laws 1996, LB 1114, § 57; Laws 2021, LB644, § 17.

39-1635 Annexation of territory by a city or village; effect on certain contracts.

Whenever any city or village annexes all the territory within the boundaries of any road improvement district organized under sections 39-1601 to 39-1636.01, the district shall merge with the city or village and the city or village shall succeed to all the property and property rights of every kind, contracts, obligations, and choses in action of every kind, held by or belonging to the district, and the city or village shall be liable for and recognize, assume, and carry out all valid contracts and obligations of the district. All taxes, assessments, claims, and demands of every kind due or owing to the district shall be paid to and collected by the city or village. Any special assessments which the district was authorized to levy, assess, relevy, or reassess, but which were not levied, assessed, relevied, or reassessed, at the time of the merger, for improvements made by it or in the process of construction or contracted for may be levied, assessed, relevied, or reassessed by the annexing city or village to the same extent as the district may have levied or assessed but for the merger. Nothing in this section shall authorize the annexing city or village to revoke any resolution, order, or finding made by the district in regard to special benefits or increase any assessments made by the district, but such city or village shall be bound by all such findings or orders and assessments to the same extent as the district would be bound. No district so annexed shall have power to levy any special assessments after the effective date of such annexation.

Source: Laws 2018, LB130, § 10.

39-1635.01 Annexation; trustees; accounting; effect.

The trustees of a road improvement district shall, within thirty days after the effective date of the merger, submit to the city or village a written accounting of all assets and liabilities, contingent or fixed, of the district. Unless the city or village within six months thereafter brings an action against the trustees of the district for an accounting or for damages for breach of duty, the trustees shall be discharged of all further duties and liabilities and their bonds exonerated. If the city or village brings such an action and does not recover judgment in its favor, the taxable costs may include reasonable expenses incurred by the

trustees of the road improvement district in connection with such suit and a reasonable attorney's fee for the trustees' attorney. The city or village shall represent the district and all parties who might be interested in such an action. The city or village and such trustees shall be the only necessary parties to such action. Nothing contained in this section shall authorize the trustees to levy any special assessments after the effective date of the merger.

Source: Laws 2018, LB130, § 11.

39-1635.02 Annexation; when effective; trustees; duties; special assessments prohibited.

The merger shall be effective thirty days after the effective date of the ordinance annexing the territory within the road improvement district. If the validity of the ordinance annexing the territory is challenged by a proceeding in a court of competent jurisdiction, the effective date of the merger shall be thirty days after the final determination of the validity of the ordinance. The trustees of the road improvement district shall continue in possession and conduct the affairs of the district until the effective date of the merger, but shall not during such period levy any special assessments after the effective date of annexation.

Source: Laws 2018, LB130, § 12.

39-1635.03 Annexation; obligations and assessments; agreement to divide; approval; decree.

If only a part of the territory within any road improvement district is annexed by a city or village, the road improvement district acting through its trustees and the city or village acting through its governing body may agree between themselves as to the division of the assets, liabilities, maintenance, contracts, or other obligations of the district for a change in the boundaries of the district so as to exclude the portion annexed by the city or village or may agree upon a merger of the district with the city or village. The division of assets, liabilities, maintenance, contracts, or other obligations of the district shall be equitable, shall be proportionate to the valuation of the portion of the district annexed and to the valuation of the portion of the district remaining following annexation, and shall, to the greatest extent feasible, reflect the actual impact of the annexation on the ability of the district to perform its duties and responsibilities within its new boundaries following annexation. In the event a merger is agreed upon, the city or village shall have all the rights, privileges, duties, and obligations as provided in sections 39-1635 to 39-1635.02 when the city or village annexes the entire territory within the district, and the trustees shall be relieved of all further duties and liabilities and their bonds exonerated as provided in section 39-1635.01. No agreement between the district and the city or village shall be effective until submitted to and approved by the district court of the county in which the major portion of the district is located. No agreement shall be approved which may prejudice the rights of any bondholder or creditor of the district or employee under contract to the district. The court may authorize or direct amendments to the agreement before approving the same. If the district and city or village do not agree upon the proper adjustment of all matters growing out of the annexation of a part of the territory located within the district, the district, the annexing city or village, any bondholder or creditor of the district, or any employee under contract to the district may apply to the district court of the county where the major portion of the district

is located for an adjustment of all matters growing out of or in any way connected with the annexation of such territory, and after a hearing thereon the court may enter an order or decree fixing the rights, duties, and obligations of the parties. In every case such decree or order shall require a change of the district boundaries so as to exclude from the district that portion of the territory of the district which has been annexed. Such change of boundaries shall become effective on the date of entry of such decree. Only the district and the city or village shall be necessary parties to such an action. Any bondholder or creditor of the district or any employee under contract to the district whose interests may be adversely affected by the annexation may intervene in the action pursuant to section 25-328. The decree when entered shall be binding on the parties the same as though the parties had voluntarily agreed thereto. Nothing contained in this section shall authorize any district to levy any special assessments within the annexed area after the effective date of annexation.

Source: Laws 2018, LB130, § 13.

ARTICLE 17

COUNTY ROADS. LAND ACQUISITION, ESTABLISHMENT, ALTERATION, SURVEY, RELOCATION, VACATION, AND ABANDONMENT

(a) LAND ACQUISITION

(a) LAND ACQUISITION

39-1703 State lands; acquisition for county road purposes; approval of Governor and Department of Transportation; damages.

The county board of any county and the governing authority of any city or village may acquire land owned, occupied, or controlled by the state or any state institution, board, agency, or commission, whenever such land is necessary to construct, reconstruct, improve, relocate, or maintain a county road or a city or village street or to provide adequate drainage for such roads or streets. The procedure for such acquisition shall, as nearly as possible, be that provided in sections 72-224.02 and 72-224.03. Prior to taking any land for any such purposes, a certificate that the taking of such land is in the public interest must be obtained from the Governor and from the Department of Transportation and be filed in the office of the Department of Administrative Services and a copy thereof in the office of the Board of Educational Lands and Funds. The damages assessed in such proceedings shall be paid to the Board of Educational Lands and Funds and shall be remitted by that board to the State Treasurer for credit to the proper account.

Source: Laws 1957, c. 155, art. IV, § 3, p. 542; Laws 1969, c. 317, § 10, p. 1149; Laws 2017, LB339, § 141.

(b) ESTABLISHMENT, ALTERATION, AND SURVEY

39-1713 Isolated land; access; affidavit; petition; hearing before county board; time; terms, defined.

(1) When any person presents to the county board an affidavit satisfying it (a) that he or she is the owner of the real estate described therein located within the county, (b) that such real estate is shut out from all public access, other than a waterway, by being surrounded on all sides by real estate belonging to other persons, or by such real estate and by water, (c) that he or she is unable to purchase from any of such persons the right-of-way over or through the same to a public road or that it cannot be purchased except at an exorbitant price, stating the lowest price for which the same can be purchased by him or her, and (d) asking that an access road be provided in accordance with section 39-1716, the county board shall appoint a time and place for hearing the matter, which hearing shall be not more than thirty days after the receipt of such affidavit. The application for an access road may be included in a separate petition instead of in such affidavit.

(2) For purposes of sections 39-1713 to 39-1719:

(a) Access road means a right-of-way open to the general public for ingress to and egress from a tract of isolated land provided in accordance with section 39-1716; and

(b) State of Nebraska includes the Board of Educational Lands and Funds, Board of Regents of the University of Nebraska, Board of Trustees of the Nebraska State Colleges, Department of Transportation, Department of Administrative Services, and Game and Parks Commission and all other state agencies, boards, departments, and commissions.

Source: Laws 1957, c. 155, art. IV, § 13, p. 544; Laws 1982, LB 239, § 1; Laws 1999, LB 779, § 4; Laws 2017, LB339, § 142.

ARTICLE 18

COUNTY ROADS. MAINTENANCE

Section

39-1804 Main thoroughfare through cities and villages of 1,500 inhabitants or less; graveling by county; when authorized; chargeable to Highway Allocation Fund.

The county board may, with the approval of the mayor and council or the chairperson and board of trustees, as the case may be, whenever conditions warrant, furnish, deliver, and spread gravel of a depth not exceeding three inches on certain streets in cities of the second class and villages having a population of not more than fifteen hundred inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census and shall charge the cost of such improvement to that portion of the Highway Allocation Fund allocated to such counties from the Highway Trust Fund under section 39-2215. No improvement

of any street or streets in cities of the second class or villages having a population of not more than fifteen hundred inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census shall be made under the provisions of this section unless the street or streets, when graveled, will constitute one main thoroughfare through such city or village that connects with or forms a part of the county highway system of such county which has been or which shall be graveled up to the corporate limits of such city or village. Before being entitled to such county aid in graveling such thoroughfare, the same must have been properly graded by such city or village in accordance with the grade established in the construction of the county road system.

Source: Laws 1957, c. 155, art. V, § 4, p. 553; Laws 1972, LB 1058, § 13; Laws 1986, LB 599, § 10; Laws 2017, LB113, § 41.

39-1811 Weeds; mowing; duty of landowner; neglect of duty; obligation of county board; cost; assessment and collection.

(1) It shall be the duty of the landowners in this state to mow all weeds that can be mowed with the ordinary farm mower to the middle of all public roads and drainage ditches running along their lands at least twice each year, namely, sometime in July for the first time and sometime in September for the second time.

(2) This section shall not restrict landowners, a county, or a township from management of (a) roadside vegetation on road shoulders or of sight distances at intersections and entrances at any time of the year or (b) snow control mowing as may be necessary.

(3) Except as provided in subsection (2) of this section, no person employed by or under contract with a county or township to mow roadside ditches shall do such mowing before July 1 of any year.

(4) Whenever a landowner, referred to in subsections (1) and (5) of this section, neglects to mow the weeds as provided in this section, it shall be the duty of the county board on complaint of any resident of the county to cause the weeds to be mowed or otherwise destroyed on neglected portions of roads or ditches complained of.

(5) The county board shall cause to be ascertained and recorded an accurate account of the cost of mowing or destroying such weeds, as referred to in subsections (1) and (4) of this section, in such places, specifying, in such statement or account of costs, the description of the land abutting upon each side of the highway where such weeds were mowed or destroyed, and, if known, the name of the owner of such abutting land. The board shall file such statement with the county clerk, together with a description of the lands abutting on each side of the road where such expenses were incurred, and the county board, at the time of the annual tax levy made upon lands and property of the county, may, if it desires, assess such cost upon such abutting land, giving such landowner due notice of such proposed assessment and reasonable opportunity to be heard concerning the proposed assessment before the same is finally made.

Source: Laws 1957, c. 155, art. V, § 11, p. 555; Laws 2017, LB584, § 1.

ARTICLE 19
COUNTY ROADS. ROAD FINANCES

Section
39-1901. Road damages; payment from general fund; barricades by Department of Transportation; payment by department; claimant's petition.

39-1901 Road damages; payment from general fund; barricades by Department of Transportation; payment by department; claimant's petition.

All damages caused by the laying out, altering, opening, or discontinuing of any county road shall be paid by warrant on the general fund of the county in which such road is located, except that the Department of Transportation shall pay the damages, if any, which a person sustains and is legally entitled to recover because of the barricading of a county or township road pursuant to section 39-1728. Upon the failure of the party damaged and the county to agree upon the amount of damages, the damaged party, in addition to any other available remedy, may file a petition as provided for in section 76-705.

Source: Laws 1957, c. 155, art. VI, § 1, p. 558; Laws 2017, LB339, § 143.

ARTICLE 20
COUNTY ROAD CLASSIFICATION

Section
39-2001. Designation of primary and secondary county roads by county board; procedure; determination by Department of Transportation; when; certification; record.
39-2002. County primary road system; designation by county board; when; redesignation of primary roads; procedure; current map kept on file.

39-2001 Designation of primary and secondary county roads by county board; procedure; determination by Department of Transportation; when; certification; record.

(1) The county board of each county shall select and designate, from the laid out and platted public roads within the county, certain roads to be known as primary and secondary county roads. Primary county roads shall include (a) direct highways leading to and from rural schools where ten or more grades are being taught, (b) highways connecting cities, villages, and market centers, (c) rural mail route and star mail route roads, (d) main-traveled roads, and (e) such other roads as are designated as such by the county board. All county roads not designated as primary county roads shall be secondary county roads.

(2) As soon as the primary county roads are designated as provided by subsection (1) of this section, the county board shall cause such primary county roads to be plainly marked on a map to be deposited with the county clerk and be open to public inspection. Upon filing the map the county clerk shall at once fix a date of hearing thereon, which shall not be more than twenty days nor less than ten days from the date of filing. Notice of the filing of the map and of the date of such hearing shall be published prior to the hearing in one issue of each newspaper published in the English language in the county.

(3) At any time before the hearing provided for by subsection (2) of this section is concluded, any ten freeholders of the county may file a petition with the county clerk asking for any change in the designated primary county roads,

setting forth the reason for the proposed change. Such petition shall be accompanied by a plat showing such proposed change.

(4) The roads designated on the map by the county board shall be conclusively established as the primary roads. If no agreement is reached between the county board and the petitioners at the hearing, the county clerk shall forward the map, together with all petitions and plats, to the Department of Transportation.

(5) The department shall, upon receipt of the maps, petitions, and plats, proceed to examine the same, and shall determine the lines to be followed by the said county roads, having regard to volume of traffic, continuity, and cost of construction. The department shall, not later than twenty days from the receipt thereof, return the papers to the county clerk, together with the decision of the department in writing, duly certified, and accompanied by a plat showing the lines of the county roads as finally determined. The county clerk shall file the papers and record the decision, and the same shall be conclusive as to the lines of the county roads established therein.

Source: Laws 1957, c. 155, art. VII, § 1, p. 560; Laws 2017, LB339, § 144.

39-2002 County primary road system; designation by county board; when; redesignation of primary roads; procedure; current map kept on file.

The county board of each county shall select and designate, within six months from January 1, 1958, the roads which will be county primary roads and which will constitute the county primary road system. Such roads shall be selected from those roads which already have been designated as primary county roads pursuant to section 39-2001 or from those roads which were maintained by the Department of Transportation under section 39-1309. The primary county roads shall include only the more important county roads as determined by the actual or potential traffic volumes and other traffic survey data.

The county board of each county shall have authority to redesignate the county primary roads from time to time by naming additional roads as primary roads and by rescinding the designation of existing county primary roads. The county board shall follow the same procedure for redesignation as is required by law for initially designating the county primary roads. The principle of designating only the more important county roads as primary roads as determined by the actual or potential traffic volumes and other traffic survey data shall be adhered to.

A copy of a current map of the county roads showing the location of roads and bridges and reflecting the county primary road system as designated in this section shall be kept on file and available to public inspection at the office of the county clerk and with the department.

Source: Laws 1957, c. 155, art. VII, § 2, p. 561; Laws 1963, c. 240, § 1, p. 730; Laws 2017, LB339, § 145.

ARTICLE 21

FUNCTIONAL CLASSIFICATION

Section
39-2103. Rural highways; functional classifications.
39-2105. Functional classifications; jurisdictional responsibility.

Section

39-2103 Rural highways; functional classifications.

Rural highways are hereby divided into nine functional classifications as follows:

(1) Interstate, which shall consist of the federally designated National System of Interstate and Defense Highways;

(2) Expressway, which shall consist of a group of highways following major traffic desires in Nebraska which rank next in importance to the National System of Interstate and Defense Highways. The expressway system is one which ultimately should be developed to multilane divided highway standards;

(3) Major arterial, which shall consist of the balance of routes which serve major statewide interests for highway transportation. This includes super-two, which shall consist of two-lane highways designed primarily for through traffic with passing lanes spaced intermittently and on alternating sides of the highway to provide predictable opportunities to pass slower moving vehicles. This system is characterized by high-speed, relatively long-distance travel patterns;

(4) Scenic-recreation, which shall consist of highways or roads located within or which provide access to or through state parks, recreation or wilderness areas, other areas of geographical, historical, geological, recreational, biological, or archaeological significance, or areas of scenic beauty;

(5) Other arterial, which shall consist of a group of highways of less importance as through-travel routes which would serve places of smaller population and smaller recreation areas not served by the higher systems;

(6) Collector, which shall consist of a group of highways which pick up traffic from many local or land-service roads and carry it to community centers or to the arterial systems. They are the main school bus routes, mail routes, and farm-to-market routes;

(7) Local, which shall consist of all remaining rural roads, except minimum maintenance roads and remote residential roads;

(8) Minimum maintenance, which shall consist of (a) roads used occasionally by a limited number of people as alternative access roads for areas served primarily by local, collector, or arterial roads or (b) roads which are the principal access roads to agricultural lands for farm machinery and which are not primarily used by passenger or commercial vehicles; and

(9) Remote residential, which shall consist of roads or segments of roads in remote areas of counties with (a) a population density of no more than five people per square mile or (b) an area of at least one thousand square miles, and which roads or segments of roads serve as primary access to no more than seven residences. For purposes of this subdivision, residence means a structure which serves as a primary residence for more than six months of a calendar year. Population shall be determined using data from the most recent federal decennial census.

The rural highways classified under subdivisions (1) through (3) of this section should, combined, serve every incorporated municipality having a minimum population of one hundred inhabitants as determined by the most recent federal decennial census or the most recent revised certified count by the United States Bureau of the Census or sufficient commerce, a part of which will be served by stubs or spurs, and along with rural highways classified under subdivision (4) of this section, should serve the major recreational areas of the state.

For purposes of this section, sufficient commerce means a minimum of two hundred thousand dollars of gross receipts under the Nebraska Revenue Act of 1967.

Source: Laws 1969, c. 312, § 3, p. 1119; Laws 1972, LB 866, § 2; Laws 1976, LB 724, § 1; Laws 1980, LB 873, § 1; Laws 1983, LB 10, § 3; Laws 2008, LB1068, § 4; Laws 2017, LB113, § 42; Laws 2018, LB1009, § 1.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

39-2105 Functional classifications; jurisdictional responsibility.

Jurisdictional responsibility for the various functional classifications of public highways and streets shall be as follows:

(1) The state shall have the responsibility for the design, construction, reconstruction, maintenance, and operation of all roads classified under the category of rural highways as interstate, expressway, and major arterial, and the municipal extensions thereof, except that the state shall not be responsible for that portion of a municipal extension which exceeds the design of the rural highway leading into the municipality. When the design of a rural highway differs at the different points where it leads into the municipality, the state's responsibility for the municipal extension thereof shall be limited to the lesser of the two designs. The state shall be responsible for the entire interstate system

under either the rural or municipal category and for connecting links between the interstate and the nearest existing state highway system in rural areas, except that if such a connecting link has not been improved and a sufficient study by the Department of Transportation results in the determination that a link to an alternate state highway would provide better service for the area involved, the department shall have the option of providing the alternate route, subject to satisfactory local participation in the additional cost of the alternate route;

(2) The various counties shall have the responsibility for the design, construction, reconstruction, maintenance, and operation of all roads classified as other arterial, collector, local, minimum maintenance, and remote residential under the rural highway category;

(3) The various incorporated municipalities shall have the responsibility for the design, construction, reconstruction, maintenance, and operation of all streets classified as expressway which are of a purely local nature, that portion of municipal extensions of rural expressways and major arterials which exceeds the design of the rural portions of such systems, and responsibility for those streets classified as other arterial, collector, and local within their corporate limits; and

(4) Jurisdictional responsibility for all scenic-recreation roads and highways shall remain with the governmental subdivision which had jurisdictional responsibility for such road or highway prior to its change in classification to scenic-recreation made pursuant to this section and sections 39-2103, 39-2109, and 39-2113.

Source: Laws 1969, c. 312, § 5, p. 1121; Laws 1971, LB 738, § 1; Laws 1980, LB 873, § 2; Laws 1983, LB 10, § 4; Laws 2008, LB1068, § 5; Laws 2017, LB339, § 146.

39-2106 Board of Public Roads Classifications and Standards; established; members; number; appointment; qualifications; compensation; expenses.

(1) To assist in developing the functional classification system, there is hereby established the Board of Public Roads Classifications and Standards which shall consist of eleven members to be appointed by the Governor with the approval of the Legislature.

(2) Of the members of such board:

(a) Two shall be representatives of the Department of Transportation;

(b) Three shall be representatives of the counties. One of such members shall be a county highway superintendent licensed pursuant to the County Highway and City Street Superintendents Act and two of such members shall be county board members;

(c) Three shall be representatives of the municipalities. Each of such members shall be a city engineer, village engineer, public works director, city manager, city administrator, street commissioner, or city street superintendent licensed pursuant to the County Highway and City Street Superintendents Act; and

(d) Three shall be lay citizens, with one representing each of the three congressional districts of the state.

(3) The county members on the board shall represent the various classes of counties, as defined in section 23-1114.01, in the following manner:

(a) One shall be a representative from either a Class 1 or Class 2 county;

(b) One shall be a representative from either a Class 3 or Class 4 county; and

(c) One shall be a representative from either a Class 5, Class 6, or Class 7 county.

(4) The municipal members of the board shall represent municipalities of the following sizes by population, 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) One shall be a representative from a municipality of less than two thousand five hundred inhabitants;

(b) One shall be a representative from a municipality of two thousand five hundred to fifty thousand inhabitants; and

(c) One shall be a representative from a municipality of over fifty thousand inhabitants.

(5) In making such appointments, the Governor shall consult with the Director-State Engineer and with the appropriate county and municipal officials and may consult with organizations representing such officials or representing counties or municipalities as may be appropriate.

(6) At the expiration of the existing term, one member from the county representatives, the municipal representatives, and the lay citizens shall be appointed for a term of two years; and two members from the county representatives, the municipal representatives, and the lay citizens shall be appointed for terms of four years. One representative from the department shall be appointed for a two-year term and the other representative shall be appointed for a four-year term. Thereafter, all such appointments shall be for terms of four years each.

(7) Members of such board shall receive no compensation for their services as such, except that the lay members shall receive the same compensation as members of the State Highway Commission, and all members shall be reimbursed for expenses incurred in the performance of their official duties as provided in sections 81-1174 to 81-1177. All expenses of such board shall be paid by the department.

Source: Laws 1969, c. 312, § 6, p. 1122; Laws 1971, LB 100, § 1; Laws 1981, LB 204, § 61; Laws 2017, LB113, § 43; Laws 2017, LB339, § 147; Laws 2020, LB381, § 28; Laws 2021, LB174, § 2.

Cross References

County Highway and City Street Superintendents Act, see section 39-2301.

39-2107 Board of Public Roads Classifications and Standards; office space; furniture; equipment; supplies; personnel.

The Department of Transportation shall furnish the Board of Public Roads Classifications and Standards with necessary office space, furniture, equipment, and supplies as well as necessary professional, technical, and clerical assistance.

Source: Laws 1969, c. 312, § 7, p. 1123; Laws 2017, LB339, § 148; Laws 2021, LB174, § 3.

39-2109 Board of Public Roads Classifications and Standards; functional classification; criteria; adoption; hearing; duties.

The Board of Public Roads Classifications and Standards shall develop and adopt the specific criteria for each functional classification set forth in sections 39-2103 and 39-2104, which criteria shall be consistent with the general criteria set forth in those sections. No such criteria shall be adopted until after public hearings have been held thereon at such times and places as to assure interested parties throughout the state an opportunity to be heard thereon. Following their adoption, the board shall provide an electronic copy of such criteria to the Secretary of State and the Clerk of the Legislature. The board shall also provide an electronic notification of such criteria to the appropriate representative of each county and each incorporated municipality and to the Director-State Engineer.

Source: Laws 1969, c. 312, § 9, p. 1123; Laws 1980, LB 873, § 3; Laws 1983, LB 10, § 5; Laws 2008, LB1068, § 6; Laws 2019, LB82, § 4.

39-2110 Functional classification; specific criteria; assignment to highways, roads, streets.

Following adoption and publication of the specific criteria required by section 39-2109, the Department of Transportation, after consultation with the appropriate local authorities in each instance, shall assign a functional classification to each segment of highway, road, and street in this state. Before assigning any such classification, the department shall make reasonable effort to resolve any differences of opinion between the department and any county or municipality. Whenever a new road or street is to be opened or an existing road or street is to be extended, the department shall, upon a request from the operating jurisdiction, assign a functional classification to such segment in accordance with the specific criteria established under section 39-2109.

Source: Laws 1969, c. 312, § 10, p. 1123; Laws 2008, LB1068, § 7; Laws 2017, LB339, § 149.

39-2111 Functional classification; assignment; appeal.

The county or municipality may appeal to the Board of Public Roads Classifications and Standards from any action taken by the Department of Transportation in assigning any functional classification under section 39-2110. Upon the taking of such an appeal, the board shall review all information pertaining to the assignment, hold a hearing thereon if deemed advisable, and render a decision on the assigned classification. The decision of the board may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1969, c. 312, § 11, p. 1123; Laws 1971, LB 100, § 2; Laws 1988, LB 352, § 32; Laws 2017, LB339, § 150.

Cross References

Administrative Procedure Act, see section 84-920.

39-2112 Functional classification; assignment; Department of Transportation; request to reclassify; county board; public hearing; decision; appeal.

Any county or municipality may, based on changing traffic patterns or volume or a change in jurisdiction, request the Department of Transportation to reclassify any segment of highway, road, or street. Any county that wants to use the minimum maintenance, remote residential, or scenic-recreation functional classification or wants to return a road to its previous functional classification may request the department to reclassify an applicable segment of highway or road. If a county board wants a road or a segment of road to be classified as remote residential, it shall hold a public hearing on the matter prior to requesting the department to reclassify such road or segment of road. The department shall review a request made under this section and either grant or deny the reclassification in whole or in part. Any county or municipality dissatisfied with the action taken by the department under this section may appeal to the Board of Public Roads Classifications and Standards in the manner provided in section 39-2111.

Source: Laws 1969, c. 312, § 12, p. 1124; Laws 1971, LB 100, § 3; Laws 2008, LB1068, § 8; Laws 2017, LB339, § 151.

39-2113 Board of Public Roads Classifications and Standards; minimum standards; signs required; when; rule for relaxing; request for review; decision; additional programs.

(1) In addition to the duties imposed upon it by section 39-2109, the Board of Public Roads Classifications and Standards shall develop minimum standards of design, construction, and maintenance for each functional classification set forth in sections 39-2103 and 39-2104. Except for scenic-recreation road standards, such standards shall be such as to assure that each segment of highway, road, or street will satisfactorily meet the requirements of the area it serves and the traffic patterns and volumes which it may reasonably be expected to bear.

(2) The standards for a scenic-recreation road and highway classification shall insure a minimal amount of environmental disruption practicable in the design, construction, and maintenance of such highways, roads, and streets by the use of less restrictive, more flexible design standards than other highway classifications. Design elements of such a road or highway shall incorporate parkway-like features which will allow the user-motorist to maintain a leisurely pace and enjoy the scenic and recreational aspects of the route and include rest areas and scenic overlooks with suitable facilities.

(3) The standards developed for a minimum maintenance road and highway classification shall provide for a level of minimum maintenance sufficient to serve farm machinery and the occasional or intermittent use by passenger and commercial vehicles. The standards shall provide that any defective bridges, culverts, or other such structures on, in, over, under, or part of the minimum maintenance road may be removed by the county in order to protect the public safety and need not be replaced by equivalent structures except when deemed by the county board to be essential for public safety or for the present or future transportation needs of the county. The standards for such minimum maintenance roads shall include the installation and maintenance by the county at entry points to minimum maintenance roads and at regular intervals thereon of appropriate signs to adequately warn the public that the designated section of road has a lower level of maintenance effort than other public roads and

thoroughfares. Such signs shall conform to the requirements in the Manual on Uniform Traffic Control Devices adopted pursuant to section 60-6,118.

(4) The standards developed for a remote residential road classification shall provide for a level of maintenance sufficient to provide access to remote residences, farms, and ranches by passenger and commercial vehicles. The standards shall allow for one-lane traffic where sight distance is adequate to warn motorists of oncoming traffic. The standards for remote residential roads shall include the installation and maintenance by the county at entry points to remote residential roads of appropriate signs to adequately warn members of the public that they are traveling on a one-lane road. Such signs shall conform to the requirements in the Manual on Uniform Traffic Control Devices adopted pursuant to section 60-6,118.

(5) The board shall by rule provide for the relaxation of standards for any functional classification in those instances in which their application is not feasible because of peculiar, special, or unique local situations.

(6) Any county or municipality which believes that the application of standards for any functional classification to any segment of highway, road, or street would work a special hardship, or any other interested party which believes that the application of standards for scenic-recreation roads and highways to any segment of highway, road, or street would defeat the purpose of the scenic-recreation functional classification contained in section 39-2103, may request the board to relax the standards for such segment. The Department of Transportation, when it believes that the application of standards for any functional classification to any segment of highway that is not hard surfaced would work a special hardship, may request the board to relax such standards. The board shall review any request made pursuant to this section and either grant or deny it in whole or in part. This section shall not be construed to apply to removal of a road or highway from the state highway system pursuant to section 39-1315.01.

(7) In cooperation with the Department of Transportation, counties, and municipalities, the board is authorized to develop, support, approve, and implement programs and project strategies that provide additional flexibility in the design and maintenance standards. Once a program is established, the board shall allow project preapproval for all projects that conform to the agreed-upon program. The programs shall be set out in memorandums of understanding or guidance documents and may include, but are not limited to, the following:

(a) Practical design, flexible design, or similar programs or strategies intended to focus funding on the primary problem or need in constructing projects that will not meet all the standards but provide substantial overall benefit at a reasonable cost to the public;

(b) Asset preservation or preventative maintenance programs and strategies that focus on extending the life of assets such as, but not limited to, pavement and bridges that may incorporate benefit cost, cost effectiveness, best value, or lifecycle analysis in determining the project approach and overall benefit to the public; and

(c) Context sensitive design programs or similar programs that consider the established needs and values of a county, municipality, community, or other connected group to enable projects that balance safety while making needed

improvements in a manner that fits the surroundings and provides overall benefit to the public.

Source: Laws 1969, c. 312, § 13, p. 1124; Laws 1973, LB 324, § 1; Laws 1980, LB 873, § 4; Laws 1983, LB 10, § 6; Laws 1993, LB 370, § 42; Laws 2008, LB1068, § 9; Laws 2017, LB339, § 152; Laws 2019, LB82, § 5.

39-2114 Counties and municipalities; contract between themselves.

In order to achieve the efficiencies and economics resulting from unified operations, the Legislature encourages the counties and municipalities to make use of the Interlocal Cooperation Act or the Joint Public Agency Act by contracting between and among themselves for cooperative programs of administering all phases of their road and street programs.

Source: Laws 1969, c. 312, § 14, p. 1124; Laws 1999, LB 87, § 72; Laws 2019, LB82, § 6.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.

39-2115 Six-year plan or program; basis; certification form; failure to file; penalty; funds placed in escrow.

The Department of Transportation and each county and municipality shall develop, adopt, maintain as a public record, and annually update a long-range, six-year plan or program of highway, road, and street improvements based on priority of needs and calculated to contribute to the orderly development of an integrated statewide system of highways, roads, and streets. The department and each county and municipality shall annually certify compliance with the requirements of this section to the Board of Public Roads Classifications and Standards using the certification form developed by the board pursuant to section 39-2120. If any county or municipality, or the department, shall fail to file its certification form on or before its due date, the board shall so notify the local governing board, the Governor, and the State Treasurer, who shall suspend distribution of any highway-user revenue allocated to such county or municipality, or the department, until the certification form has been filed. Such funds shall be held in escrow for six months until the county or municipality complies. If the county or municipality complies within the six-month period it shall receive the money in escrow, but after six months, if the county or municipality fails to comply, the money in the escrow account shall be lost to the county or municipality and shall be distributed to other counties or municipalities, as appropriate, in the manner provided by law for allocation of highway-user revenue.

Source: Laws 1969, c. 312, § 15, p. 1124; Laws 1971, LB 100, § 4; Laws 1973, LB 137, § 1; Laws 1976, LB 724, § 2; Laws 2017, LB339, § 153; Laws 2019, LB82, § 7.

39-2116 Repealed. Laws 2019, LB82, § 18.

39-2117 Repealed. Laws 2019, LB82, § 18.

39-2118 Department of Transportation; plan or program for specific highway improvements; certify compliance with Board of Public Roads Classifications and Standards.

The Department of Transportation shall annually develop, adopt, and maintain as a public record a plan or program for specific highway improvements for the current year. In so doing, the department shall take into account all federal funds which will be available to the department for such year. The department shall annually certify compliance with the requirements of this section to the Board of Public Roads Classifications and Standards using the certification form developed by the board pursuant to section 39-2120.

Source: Laws 1969, c. 312, § 18, p. 1125; Laws 1971, LB 100, § 7; Laws 1976, LB 724, § 4; Laws 2017, LB339, § 155; Laws 2019, LB82, § 8.

39-2119 Counties and municipalities; plan or program for specific improvements; hearing; duty to certify compliance; penalty; funds placed in escrow.

Each county and municipality shall annually develop, adopt, and maintain as a public record, a one-year plan or program for specific highway, road, or street improvements for the current year. No such plan or program, or revision to such plan or program, shall be adopted until after a public hearing thereon and its approval by the governing body. Each county and municipality shall schedule and hold the public hearing each year, and such hearing may be held prior to or in conjunction with that entity's annual public hearing on its proposed budget statement in any year such budget statement hearing is held pursuant to section 13-506. Each county and municipality shall annually certify compliance with the requirements of this section to the Board of Public Roads Classifications and Standards using the certification form developed by the board pursuant to section 39-2120. If any county or municipality shall fail to comply with the provisions of this section, the board shall so notify the local governing board, the Governor, and the State Treasurer, who shall suspend distribution of any highway-user revenue allocated to such county or municipality until there has been compliance. Such funds shall be held in escrow for six months until the county or municipality complies. If the county or municipality complies within the six-month period it shall receive the money in escrow, but after six months, if the county or municipality fails to comply, the money in the escrow account shall be lost to the county or municipality and shall be distributed to other counties or municipalities, as appropriate, in the manner provided by law for allocation of highway-user revenue.

Source: Laws 1969, c. 312, § 19, p. 1126; Laws 1971, LB 100, § 8; Laws 1973, LB 137, § 2; Laws 1976, LB 724, § 5; Laws 2007, LB277, § 3; Laws 2019, LB82, § 9.

39-2119.01 Repealed. Laws 2019, LB82, § 18.

39-2120 Certification form for annual filing; Board of Public Roads Classifications and Standards; develop; contents.

The Board of Public Roads Classifications and Standards shall develop and schedule for implementation a certification form for annual filing pursuant to section 39-2121 by the Department of Transportation and each county and municipality. The certification form shall include:

(1) A statement from the department and each county or municipality that it has developed, adopted, and included in its public records the plans, programs, or standards required by sections 39-2115 to 39-2119;

(2) A statement that the department and each county or municipality:

(a) Meets the plans, programs, or standards of design, construction, and maintenance for its highways, roads, or streets;

(b) Expends all tax revenue for highway, road, or street purposes in accordance with approved plans, programs, or standards, including county and municipal tax revenue as well as highway-user revenue allocations;

(c) Uses a system of revenue and cost accounting which clearly includes a comparison of receipts and expenditures for approved budgets, plans, programs, and standards;

(d) Uses a system of budgeting which reflects uses and sources of funds in terms of plans, programs, or standards and accomplishments;

(e) Uses an accounting system including an inventory of machinery, equipment, and supplies; and

(f) Uses an accounting system that tracks equipment operation costs; and

(3) The information required under subsection (2) of section 39-2510 or subsection (2) of section 39-2520, when applicable.

The certification by the department shall be signed by the Director-State Engineer. The certification by each county and municipality shall be signed by the board chairperson or mayor and shall include a copy of the resolution or ordinance of the governing body of the county or municipality authorizing the signing of the certification form.

Source: Laws 1969, c. 312, § 20, p. 1126; Laws 1971, LB 100, § 9; Laws 2017, LB339, § 156; Laws 2019, LB82, § 10.

39-2121 Department of Transportation; counties; municipalities; certification form; filing; penalty; when imposed; appeal.

(1) The certification form required to be filed with the Board of Public Roads Classifications and Standards pursuant to section 39-2120 shall be filed annually by the Department of Transportation by July 31 and by each county and municipality by October 31.

(2) If any county or municipality or the department fails to file such certification form on or before its due date, the board shall so notify the local governing board, the Governor, and the State Treasurer who shall suspend distribution of any highway-user revenue allocated to such county or municipality or the department until the certification form has been filed. Such funds shall be held in escrow for six months until the county or municipality complies. If the county or municipality complies within the six-month period it shall receive the money in escrow, but after six months, if the county or municipality fails to comply, the money in the escrow account shall be lost to the county or municipality and shall be distributed to other counties or municipalities, as appropriate, in the manner provided by law for allocation of highway-user revenue.

(3) If any county or municipality either (a) files a materially false certification form or (b) constructs any highway, road, or street below the minimum standards developed under section 39-2113, without having received prior

approval thereof, such county's or municipality's share of highway-user revenue allocated during the following calendar year shall be reduced by ten percent and the amount of any such reduction shall be distributed among the other counties or municipalities, as appropriate, in the manner provided by law for allocation of highway-user revenue. The penalty for filing a materially false certification form and the penalty for constructing a highway, road, or street below established minimum standards without prior approval shall be assessed by the board only after a review of the facts involved in such case and the holding of a public hearing on the matter. The decision thereafter rendered by the board may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1969, c. 312, § 21, p. 1127; Laws 1971, LB 100, § 10; Laws 1973, LB 137, § 3; Laws 1976, LB 724, § 6; Laws 1988, LB 352, § 33; Laws 2017, LB339, § 157; Laws 2019, LB82, § 11.

Cross References

Administrative Procedure Act, see section 84-920.

39-2122 Board of Public Roads Classifications and Standards; powers.

The Board of Public Roads Classifications and Standards may make occasional random checks of county and municipal construction projects to determine that the standards of design and construction developed under section 39-2113 are being met.

Source: Laws 1969, c. 312, § 22, p. 1128; Laws 1971, LB 100, § 11; Laws 2019, LB82, § 12.

39-2124 Legislative intent.

It is the intent of the Legislature to recognize the responsibilities of the Department of Transportation, of the counties, and of the municipalities in their planning programs as authorized by state law and by home rule charter and to encourage the acceptance and implementation of comprehensive, continuing, cooperative, and coordinated planning by the state, the counties, and the municipalities. Sections 13-914 and 39-2101 to 39-2125 are not intended to prohibit or inhibit the actions of the counties and of the municipalities in their planning programs and their subdivision regulations, nor are sections 13-914 and 39-2101 to 39-2125 intended to restrict the actions of the municipalities in their creation of street improvement districts and in their assessment of property for special benefits as authorized by state law or by home rule charter.

Source: Laws 1969, c. 312, § 24, p. 1128; Laws 1971, LB 100, § 13; Laws 1983, LB 10, § 8; Laws 2007, LB277, § 5; Laws 2017, LB339, § 158.

ARTICLE 22

NEBRASKA HIGHWAY BONDS

Section
39-2202. Legislative findings and intent.
39-2203.01. Build Nebraska Act; highway construction projects; bonds; issuance; terms and conditions; proceeds; use; commission; powers; bonds; maturity date.
39-2205. Bonds; issuance; amount.
39-2209. Resolution authorizing issuance of bonds; contents.

39-2202 Legislative findings and intent.

The Legislature finds that safe and modern highway infrastructure is of great importance to Nebraska's residents, agricultural economy, business economy, and future economic growth. Furthermore, the Legislature finds that it is in the interest of Nebraska taxpayers to leverage interest rates to offset the challenges that construction inflation and uncertain federal highway funding pose to adequately financing the state's infrastructure needs. It is the intent of the Legislature to conservatively utilize bond financing by issuing bonds, not to exceed four hundred fifty million dollars in principal and thirty-five million dollars in annual debt service for a period of not more than nineteen years, in order to accelerate completion of the highway construction projects identified and to be identified for funding under the Build Nebraska Act.

Source: Laws 2023, LB727, § 29.

Cross References

Build Nebraska Act, see section 39-2701.

39-2203.01 Build Nebraska Act; highway construction projects; bonds; issuance; terms and conditions; proceeds; use; commission; powers; bonds; maturity date.

Upon the written recommendation of the Department of Transportation, the commission, acting for and on behalf of the state, may issue from time to time bonds under the Nebraska Highway Bond Act by resolution as described in section 39-2209 in such principal amounts as determined by the commission for the purpose of accelerating completion of the highway construction projects identified and to be identified for funding under the Build Nebraska Act. The principal amounts, interest rates, maturities, redemption provisions, sale prices, and other terms of the bonds so authorized to be issued shall be in accordance with terms or conditions established by the commission. No bonds shall be issued after June 30, 2029, except for refunding bonds issued in accordance with the Nebraska Highway Bond Act. The proceeds from the sale of any bonds issued, net of costs of issuance, capitalized interest, and necessary or appropriate reserve funds, shall be deposited in the State Highway Capital Improvement Fund for use pursuant to the Build Nebraska Act. The commission is hereby granted all powers necessary or convenient to carry out the purposes and

exercise the powers granted by the Nebraska Highway Bond Act. Bonds shall be paid off by June 30, 2042.

Source: Laws 2023, LB727, § 30.

Cross References

Build Nebraska Act, see section 39-2701.

39-2205 Bonds; issuance; amount.

Bonds may be issued under the Nebraska Highway Bond Act only to the extent that the annual aggregate principal and interest requirements, in the calendar year in which such bonds are issued and in each calendar year thereafter until the scheduled maturity of such bonds, on such bonds and on all other bonds theretofore issued and to be outstanding and unpaid upon the issuance of such bonds shall not exceed the amount which is equal to fifty percent of the money deposited in the fund, the State Highway Capital Improvement Fund, or the bond fund, as the case may be, from which such bonds shall be paid during the calendar year preceding the issuance of the bonds proposed to be issued. This section shall not apply to the first issuance of each series of bonds authorized by the Legislature.

If short-term bonds are issued in anticipation of the issuance of long-term refunding bonds and such short-term bonds are secured by insurance or a letter of credit or similar guarantee issued by a financial institution rated by a national rating agency in one of the two highest categories of bond ratings, then, for the purposes of the Nebraska Highway Bond Act, when determining the amount of short-term bonds that may be issued and the amount of taxes, fees, or other money to be deposited in any fund for the payment of bonds issued under the act, the annual aggregate principal and interest payments on the short-term bonds shall be deemed to be such payments thereon, except that the final principal payment shall not be that specified in the short-term bonds but shall be the principal and all interest payments required to reimburse the issuer of the insurance policy or letter of credit or similar guarantee pursuant to the reimbursement agreement between the commission and such issuer.

Source: Laws 1969, c. 309, § 5, p. 1108; Laws 1988, LB 632, § 3; Laws 2023, LB727, § 32.

39-2209 Resolution authorizing issuance of bonds; contents.

Any resolution or resolutions of the commission authorizing any bonds or any issue thereof may contain provisions, consistent with the Nebraska Highway Bond Act and not in derogation or limitation of such act, which shall be a part of the contract with the holders thereof, as to:

(1) Pledging all or any part of the money in the fund, the State Highway Capital Improvement Fund, or the bond fund, as the case may be, to secure the payment of the bonds, subject to such agreements with the bondholders as may then prevail;

(2) The use and disposition of money in the fund, the State Highway Capital Improvement Fund, or the bond fund;

(3) The setting aside of reserves, sinking funds, or arbitrage rebate funds and the funding, regulation, and disposition thereof;

(4) Limitations on the purpose to which the proceeds from the sale of bonds may be applied;

(5) Limitations on the issuance of additional bonds and on the retirement of outstanding or other bonds pursuant to the Nebraska Highway Bond Act;

(6) The procedure by which the terms of any agreement with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(7) Vesting in a bank or trust company as paying agent such rights, powers, and duties as the commission may determine, vesting in a trustee appointed by the bondholders pursuant to the Nebraska Highway Bond Act such rights, powers, and duties as the commission may determine, and limiting or abrogating the right of the bondholders to appoint a trustee under such act or limiting the rights, powers, and duties of such trustee;

(8) Providing for a municipal bond insurance policy, surety bond, letter of credit, or other credit support facility or liquidity facility; and

(9) Any other matters, of like or different character, which in any way affect the security or protection of the bonds.

Source: Laws 1969, c. 309, § 9, p. 1109; Laws 1988, LB 632, § 4; Laws 2023, LB727, § 33.

39-2211 Commission; bonds; issuance; agreements; contents; powers.

In addition to the powers conferred upon the commission to secure the bonds in the Nebraska Highway Bond Act, the commission shall have power in connection with the issuance of bonds to enter into such agreements, consistent with the act and not in derogation or limitation of the act, as it may deem necessary, convenient, or desirable concerning the use or disposition of the money in the fund, the State Highway Capital Improvement Fund, or the bond fund including the pledging or creation of any security interest in such money and the doing of or refraining from doing any act which the commission would have the right to do to secure the bonds in the absence of such agreements. The commission shall have the power to enter into amendments of any such agreements, consistent with the Nebraska Highway Bond Act and not in derogation or limitation of the act, within the powers granted to the commission by the act and to perform such agreements. The provisions of any such agreements may be made a part of the contract with the holders of the bonds.

Source: Laws 1969, c. 309, § 11, p. 1110; Laws 1988, LB 632, § 5; Laws 2023, LB727, § 34.

39-2212 Pledge or security agreement; lien on funds.

Any pledge or security instrument made by the commission shall be valid and binding from the time when the pledge or security instrument is made. The money in the fund, the State Highway Capital Improvement Fund, or the bond fund so pledged and entrusted shall immediately be subject to the lien of such pledge or security instrument upon the deposit thereof in the fund without any physical delivery thereof or further act. The lien of any such pledge or security instrument shall be valid and binding as against all parties having subsequently arising claims of any kind in tort, contract, or otherwise, irrespective of whether such parties have notice thereof. Neither the resolution nor any security instrument or other instrument by which a pledge or other security is

created need be recorded or filed and the commission shall not be required to comply with any of the provisions of the Uniform Commercial Code.

Source: Laws 1969, c. 309, § 12, p. 1111; Laws 1988, LB 632, § 6; Laws 2023, LB727, § 35.

39-2213 Bonds; special obligations of state; payment.

The bonds shall be special obligations of the state payable solely and only from the fund, the State Highway Capital Improvement Fund, or the bond fund, as the case may be, and neither the members of the commission nor any person executing the bonds shall be liable thereon. Such bonds shall not be a general obligation debt of this state and they shall contain on the face thereof a statement to such effect.

Source: Laws 1969, c. 309, § 13, p. 1111; Laws 1988, LB 632, § 7; Laws 2023, LB727, § 36.

39-2213.01 Build Nebraska Act; highway construction projects; bonds; special obligations of state; payment; exempt from taxation and assessments; waiver of exemption.

The bonds issued pursuant to section 39-2203.01 shall be special obligations of the state payable solely and only from the State Highway Capital Improvement Fund and any other funds specifically pledged by the commission for such purpose, and neither the members of the commission nor any person executing the bonds shall be liable thereon. Such bonds shall not be a general obligation or debt of the state, and they shall contain on the face thereof a statement to such effect. Such bonds, and the transfer of and the income from any such bonds, shall be exempt from all taxation and assessments in this state. In the resolution authorizing the bonds, the commission may waive the exemption from federal income taxation for interest on the bonds.

Source: Laws 2023, LB727, § 31.

39-2215 Highway Trust Fund; created; credit to the State Highway Capital Improvement Fund; allocation of remainder; investment; State Treasurer; transfer; disbursements.

(1) There is hereby created in the state treasury a special fund to be known as the Highway Trust Fund.

(2) Except as provided in subsection (4) of this section, all funds credited to the Highway Trust Fund pursuant to sections 66-489.02, 66-499, 66-4,140, 66-4,147, 66-6,108, and 66-6,109.02, and related penalties and interest, shall be allocated as provided in such sections.

(3) All sums of money credited to the Highway Trust Fund pursuant to subdivision (2)(c) of section 77-27,132 shall only be allocated to the Highway Cash Fund and shall not be used for the purposes described in subsection (4) of this section.

(4) The State Treasurer shall monthly credit, from those portions of the Highway Trust Fund otherwise allocated to the Highway Cash Fund, to the State Highway Capital Improvement Fund an amount equal to the sums of money credited to the Highway Trust Fund by subdivision (2)(c) of section 77-27,132, but in no event less than seventy million dollars annually. Such credit shall occur prior to allocating funds from the Highway Trust Fund to the

Highway Cash Fund. Such credited funds shall only be derived from revenue closely related to the use of highways, including, but not limited to, motor vehicle fuel taxes, diesel fuel taxes, compressed fuel taxes, and alternative fuel fees related to highway use retained by the state, all motor vehicle registration fees retained by the state other than those fees credited to the State Recreation Road Fund, and other highway-user taxes, fees, and penalties imposed by state law. The remainder of such funds shall thereafter be credited to the Highway Cash Fund.

(5) All other motor vehicle fuel taxes, diesel fuel taxes, compressed fuel taxes, and alternative fuel fees related to highway use retained by the state, all motor vehicle registration fees retained by the state other than those fees credited to the State Recreation Road Fund pursuant to subdivision (3) of section 60-3,156, and other highway-user taxes imposed by state law and allocated to the Highway Trust Fund, except for the proceeds of the sales and use taxes derived from motor vehicles, trailers, and semitrailers credited to the fund pursuant to section 77-27,132, are hereby irrevocably pledged for the terms of the bonds issued prior to January 1, 1988, to the payment of the principal, interest, and redemption premium, if any, of such bonds as they mature and become due at maturity or prior redemption and for any reserves therefor and shall, as received by the State Treasurer, be deposited in the fund for such purpose.

(6) Of the money in the fund specified in subsection (5) of this section which is not required for the use specified in such subsection, (a) an amount to be determined annually by the Legislature through the appropriations process may be transferred to the Motor Fuel Tax Enforcement and Collection Cash Fund for use as provided in section 66-739 on a monthly or other less frequent basis as determined by the appropriation language, (b) an amount to be determined annually by the Legislature through the appropriations process shall be transferred to the License Plate Cash Fund as certified by the Director of Motor Vehicles, and (c) the remaining money may be used for the purchase for retirement of the bonds issued prior to January 1, 1988, in the open market.

(7) The State Treasurer shall monthly transfer, from the proceeds of the sales and use taxes credited to the Highway Trust Fund and any money remaining in the fund after the requirements of subsections (2) through (6) of this section are satisfied, thirty thousand dollars to the Grade Crossing Protection Fund.

(8) Except as provided in subsection (9) of this section, the balance of the Highway Trust Fund shall be allocated fifty-three and one-third percent, less the amount provided for in section 39-847.01, to the Department of Transportation, twenty-three and one-third percent, less the amount provided for in section 39-847.01, to the various counties for road purposes, and twenty-three and one-third percent to the various municipalities for street purposes. If bonds are issued pursuant to subsection (2) of section 39-2223, the portion allocated to the department shall be credited monthly to the Highway Restoration and Improvement Bond Fund, and if no bonds are issued pursuant to such subsection, the portion allocated to the department shall be credited monthly to the Highway Cash Fund. The portions allocated to the counties and municipalities shall be credited monthly to the Highway Allocation Fund and distributed monthly as provided by law. Vehicles accorded prorated registration pursuant to section 60-3,198 shall not be included in any formula involving motor vehicle registrations used to determine the allocation and distribution of state funds for highway purposes to political subdivisions.

(9) If it is determined by December 20 of any year that a county will receive from its allocation of state-collected highway revenue and from any funds relinquished to it by municipalities within its boundaries an amount in such year which is less than such county received in state-collected highway revenue in calendar year 1969, based upon the 1976 tax rates for highway-user fuels and registration fees, the department shall notify the State Treasurer that an amount equal to the sum necessary to provide such county with funds equal to such county's 1969 highway allocation for such year shall be transferred to such county from the Highway Trust Fund. Such makeup funds shall be matched by the county as provided in sections 39-2501 to 39-2510. The balance remaining in the fund after such transfer shall then be reallocated as provided in subsection (8) of this section.

(10) The State Treasurer shall disburse the money in the Highway Trust Fund as directed by resolution of the commission. All disbursements from the fund shall be made by electronic funds transfer by the Director of Administrative Services. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act and the earnings, if any, credited to the fund.

Source: Laws 1969, c. 309, § 15, p. 1111; Laws 1971, LB 53, § 3; Laws 1979, LB 571, § 2; Laws 1981, LB 22, § 8; Laws 1983, LB 118, § 2; Laws 1984, LB 1089, § 1; Laws 1986, LB 599, § 11; Laws 1988, LB 632, § 9; Laws 1989, LB 258, § 3; Laws 1990, LB 602, § 1; Laws 1991, LB 627, § 4; Laws 1992, LB 319, § 1; Laws 1994, LB 1066, § 25; Laws 1994, LB 1160, § 49; Laws 1995, LB 182, § 22; Laws 2002, LB 989, § 7; Laws 2002, Second Spec. Sess., LB 1, § 2; Laws 2003, LB 563, § 17; Laws 2004, LB 983, § 1; Laws 2004, LB 1144, § 3; Laws 2005, LB 274, § 228; Laws 2008, LB846, § 1; Laws 2011, LB170, § 1; Laws 2011, LB289, § 3; Laws 2017, LB339, § 159; Laws 2019, LB512, § 2; Laws 2021, LB509, § 2; Laws 2023, LB727, § 37.

Cross References

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

39-2215.02 State Highway Capital Improvement Fund; pledged for bonds; disbursement; investment.

(1) If bonds are issued pursuant to subsection (3) of section 39-2223, seventy million dollars of the funds annually retained by the state and allocated to the State Highway Capital Improvement Fund pursuant to subsection (4) of section 39-2215 shall be hereby irrevocably pledged for the terms of the bonds to the payment of the principal, interest, and redemption premium, if any, of such bonds as they mature and become due at maturity or prior redemption and for any reserves therefor and shall, as received by the State Treasurer, be deposited directly in the State Highway Capital Improvement Fund for such purpose. Of the money in the State Highway Capital Improvement Fund not required for such purpose, such remaining money may be used as prescribed in section 39-2704.

(2) The State Treasurer shall disburse the money in the State Highway Capital Improvement Fund as directed by resolution of the commission. All

disbursements from the State Highway Capital Improvement Fund shall be made upon warrants drawn by the Director of Administrative Services. Any money in the State Highway Capital Improvement Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2023, LB727, § 38.

Cross References

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

39-2216 Legislature; holders of bonds; pledges not to repeal, diminish, or apply funds for other uses.

The Legislature hereby irrevocably pledges and agrees with the holders of the bonds issued under the Nebraska Highway Bond Act that so long as such bonds remain outstanding and unpaid it shall not repeal, diminish, or apply to any other purposes the motor vehicle fuel taxes, diesel fuel taxes, compressed fuel taxes, and alternative fuel fees related to highway use, motor vehicle registration fees, and such other highway-user taxes which may be imposed by state law and allocated to the fund, the State Highway Capital Improvement Fund, or the bond fund, as the case may be, if to do so would result in fifty percent of the amount deposited in the fund, the State Highway Capital Improvement Fund, or the bond fund in each year being less than the amount equal to the maximum annual principal and interest requirements of such bonds.

Source: Laws 1969, c. 309, § 16, p. 1112; Laws 1988, LB 632, § 11; Laws 1994, LB 1160, § 51; Laws 1995, LB 182, § 24; Laws 2011, LB289, § 5; Laws 2023, LB727, § 39.

39-2222 Act, how cited.

Sections 39-2201 to 39-2226 shall be known and may be cited as the Nebraska Highway Bond Act.

Source: Laws 1969, c. 309, § 22, p. 1113; Laws 1988, LB 632, § 15; Laws 2023, LB727, § 40.

39-2223 Bonds; issuance; amount.

(1) Under the authority granted by Article XIII, section 1, of the Constitution of Nebraska, the Legislature hereby authorizes the issuance of bonds in the principal amount of twenty million dollars in 1969 and in the principal amount of twenty million dollars on or before June 30, 1977, with the proceeds thereof to be used for the construction of highways in this state, the Legislature expressly finding that the need for such construction requires such action. Such bonds shall in all respects comply with the provisions of Article XIII, section 1, of the Constitution of Nebraska.

(2) Under the authority granted by Article XIII, section 1, of the Constitution of Nebraska, the Legislature hereby authorizes after July 1, 1988, the issuance of bonds in a principal amount to be determined by the commission, not to exceed fifty million dollars. The outstanding principal amount of such bonds may exceed such limit if and to the extent that the commission determines that the issuance of advance refunding bonds under section 39-2226 in a principal amount greater than the bonds to be refunded would reduce the aggregate

bond principal and interest requirements payable from the bond fund. The proceeds of such issues shall be used exclusively (a) for the construction, resurfacing, reconstruction, rehabilitation, and restoration of highways in this state, the Legislature expressly finding that the need for such construction and reconstruction work and the vital importance of the highway system to the welfare and safety of all Nebraskans requires such action, or (b) to eliminate or alleviate cash-flow problems resulting from the receipt of federal funds. Such bonds shall in all respects comply with the provisions of Article XIII, section 1, of the Constitution of Nebraska.

(3) Under the authority granted by Article XIII, section 1, of the Constitution of Nebraska, the Legislature hereby authorizes after July 1, 2023, in addition to the authority granted in subsections (1) and (2) of this section, the issuance of bonds in one or more series in an aggregate principal amount to be determined by the commission, not to exceed four hundred fifty million dollars. The outstanding principal amount of such bonds may exceed such limit if and to the extent that the commission determines that the issuance of advance refunding bonds under section 39-2226 in a principal amount greater than the bonds to be refunded would reduce the aggregate bond principal and interest requirements payable from the State Highway Capital Improvement Fund. The proceeds of such issues shall be used exclusively for purposes of the Build Nebraska Act, the Legislature expressly finding that the need for such construction and reconstruction work and the vital importance of the highway system to the welfare and safety of all Nebraskans requires such action. Such bonds shall in all respects comply with the provisions of Article XIII, section 1, of the Constitution of Nebraska.

Source: Laws 1969, c. 314, § 1, p. 1132; Laws 1975, LB 401, § 1; Laws 1988, LB 632, § 16; Laws 2023, LB727, § 41.

39-2224 Bonds; sale; proceeds; appropriated to Highway Cash Fund or State Highway Capital Improvement Fund.

(1) The proceeds of the sale of bonds authorized by subsection (1) of section 39-2223 are hereby appropriated to the Highway Cash Fund of the Department of Transportation, for the biennium ending June 30, 1977, for expenditure for the construction of highways.

(2) The proceeds of the sale of bonds authorized by subsection (2) of section 39-2223 are hereby appropriated to the Highway Cash Fund of the Department of Transportation for expenditure for highway construction, resurfacing, reconstruction, rehabilitation, and restoration and for the elimination or alleviation of cash-flow problems resulting from the receipt of federal funds.

(3) The proceeds of the sale of bonds authorized by subsection (3) of section 39-2223 are hereby appropriated to the State Highway Capital Improvement Fund of the Department of Transportation for use pursuant to the Build Nebraska Act.

Source: Laws 1969, c. 314, § 2, p. 1132; Laws 1975, LB 401, § 2; Laws 1988, LB 632, § 17; Laws 2017, LB339, § 160; Laws 2023, LB727, § 42.

Cross References

Build Nebraska Act, see section 39-2701.

ARTICLE 23

COUNTY HIGHWAY AND CITY STREET SUPERINTENDENTS ACT

Section

39-2301.01 Terms, defined.

For purposes of the County Highway and City Street Superintendents Act, unless the context otherwise requires:

(1) Board of examiners means the Board of Examiners for County Highway and City Street Superintendents;

(2) City street superintendent means a person who engages in the practice of street superintending for an incorporated municipality;

(3) County highway superintendent means a person who engages in the practice of highway superintending for a county; and

(4) Street or highway superintending means assisting an incorporated municipality or a county in the following:

(a) Developing and annually updating long-range plans or programs based on needs and coordinated with adjacent local governmental units;

(b) Developing annual programs for design, construction, and maintenance;

(c) Developing annual budgets based on programmed projects and activities;

(d) Implementing the capital improvements and maintenance activities provided in the approved plans, programs, and budgets; and

(e) Managing personnel, contractors, and equipment in support of such planning, programming, budgeting, and implementation operations.

Source: Laws 2003, LB 500, § 2; Laws 2021, LB174, § 4.

39-2302 Incentive payments; county highway or city street superintendents; requirements.

No person shall be appointed by any county as a county highway superintendent or by any municipality as a city street superintendent to qualify for the incentive payments provided in sections 39-2501 to 39-2505 for counties and municipal counties or sections 39-2511 to 39-2515 for municipalities and municipal counties unless he or she has been licensed under the County

Highway and City Street Superintendents Act or is exempt from such licensure requirement as provided in section 39-2504 or 39-2514.

Source: Laws 1969, c. 144, § 2, p. 665; Laws 2003, LB 500, § 3; Laws 2021, LB174, § 5.

39-2304 Board of Examiners for County Highway and City Street Superintendents; created; members; qualifications; appointment; term; vacancy; expenses.

(1) The Board of Examiners for County Highway and City Street Superintendents is created. The board shall consist of seven members to be appointed by the Governor. Four of such members shall be county representatives and three of such members shall be municipal representatives.

(2)(a) Immediately preceding appointment to the board, each county and municipal representative shall hold a county highway and city street superintendent license pursuant to the County Highway and City Street Superintendents Act.

(b) Of the county representatives, no more than one member shall be appointed from each class of county as defined in section 23-1114.01.

(c) Of the municipal representatives:

(i) No more than one shall be appointed from each congressional district;

(ii) One shall be a representative of a city of the metropolitan class, primary class, or first class;

(iii) One shall be a representative of a city of the second class; and

(iv) One shall be a representative of a village.

(3) In making such appointments, the Governor may give consideration to the following lists of persons licensed pursuant to the County Highway and City Street Superintendents Act:

(a) A list of county engineers, county highway superintendents, and county surveyors submitted by the Nebraska Association of County Officials; and

(b) A list of city street superintendents, city managers, city administrators, street commissioners, city engineers, village engineers, and public works directors submitted by the League of Nebraska Municipalities.

(4) Two county representatives shall initially be appointed for terms of two years each, and two county representatives shall initially be appointed for terms of four years each. One municipal representative shall initially be appointed for a term of two years, and two municipal representatives shall initially be appointed for terms of four years each. Thereafter, all such appointments shall be for terms of four years each.

(5) In the event a county or municipal representative loses his or her county highway and city street superintendent license, such person shall no longer be qualified to serve on the board and such seat shall be vacant. In the event of a vacancy occurring on the board for any reason, such vacancy shall be filled by appointment by the Governor for the remainder of the unexpired term. Such appointed person shall meet the same requirements and qualifications as the member whose vacancy he or she is filling.

(6) Members of the board shall receive no compensation for their services as members of the board but shall be reimbursed for expenses incurred while

engaged in the performance of their official duties as provided in sections 81-1174 to 81-1177.

Source: Laws 1969, c. 144, § 4, p. 666; Laws 1981, LB 204, § 63; Laws 1992, LB 175, § 1; Laws 2003, LB 500, § 4; Laws 2020, LB381, § 29; Laws 2021, LB174, § 6.

39-2305 Board of examiners; office space; equipment; meetings.

The board of examiners shall be furnished necessary office space, furniture, equipment, stationery, and clerical assistance by the Department of Transportation. The board shall organize itself by selecting from among its members a chairperson and such other officers as it may find desirable. The board shall meet at such times at the headquarters of the department in Lincoln, Nebraska, as may be necessary for the administration of the County Highway and City Street Superintendents Act.

Source: Laws 1969, c. 144, § 5, p. 666; Laws 2003, LB 500, § 5; Laws 2017, LB339, § 161.

39-2306 Class B license; application; fee; exceptions.

(1) Any person desiring to be issued a Class B license under section 39-2308 shall apply to the board of examiners upon forms prescribed and furnished by the board. Such application shall be accompanied by an application fee of twenty-five dollars.

(2) Any professional engineer licensed pursuant to the Engineers and Architects Regulation Act shall be entitled to a Class B license under section 39-2308 without examination.

Source: Laws 1969, c. 144, § 6, p. 667; Laws 1997, LB 622, § 61; Laws 1997, LB 752, § 94; Laws 2003, LB 500, § 6; Laws 2021, LB174, § 7.

Cross References

Engineers and Architects Regulation Act, see section 81-3401.

39-2307 Board of examiners; examinations; conduct; test qualifications of applicants for Class B licenses.

The board of examiners shall, twice each year, conduct examinations of applicants for Class B licenses under section 39-2308. Such examinations shall be designed to test the qualifications of applicants for the position of county highway superintendent or city street superintendent and shall cover the ability to assist in:

(1) Developing and annually updating long-range plans or programs based on needs and coordinated with adjacent local governmental units;

(2) Developing annual programs for design, construction, and maintenance;

(3) Developing annual budgets based on programmed projects and activities; and

(4) Implementing the capital improvements and maintenance activities provided in the approved plans, programs, and budgets.

Source: Laws 1969, c. 144, § 7, p. 667; Laws 2003, LB 500, § 7; Laws 2021, LB174, § 8.

39-2308 Class B license; term; renewal; fee.

Any person satisfactorily completing the examination required by section 39-2307 or exempt from such examination under subsection (2) of section 39-2306 shall be issued a Class B license as a county highway and city street superintendent. Such license shall be valid for a period of three years and shall be renewable upon the payment of a fee of thirty dollars.

Source: Laws 1969, c. 144, § 8, p. 668; Laws 2003, LB 500, § 8; Laws 2018, LB733, § 1; Laws 2021, LB174, § 9.

39-2308.01 Class A license; application; qualifications; fees; term; renewal.

Any person holding a Class B license issued pursuant to section 39-2308 may apply to the board of examiners for a Class A license upon forms prescribed and furnished by the board upon submitting evidence that (1) he or she has been employed and appointed by one or more county or counties or municipality or municipalities as a county highway or city street superintendent on at least a half-time basis for at least two years within the past six years or (2) he or she has at least four years' experience in work comparable to street or highway superintending, on at least a half-time basis, within the past eight years. Such application shall be accompanied by a fee of seventy-five dollars. A Class A license shall be valid for a period of three years and shall be renewable for three years as provided in section 39-2308.02 upon payment of a fee of fifty dollars.

Source: Laws 2003, LB 500, § 9; Laws 2018, LB733, § 2; Laws 2021, LB174, § 10.

39-2308.03 County highway and city street superintendent licenses; reissuance; renewal.

(1) Beginning on August 28, 2021:

(a) A county highway superintendent license or city street superintendent license, whether of Class A or Class B, issued prior to August 28, 2021, is deemed to be a county highway and city street superintendent license;

(b) The holder of any Class A license or licenses shall have such license or licenses reissued as a single Class A county highway and city street superintendent license;

(c) The holder of any Class A license and any Class B license shall have such licenses reissued as a single Class A county highway and city street superintendent license; and

(d) The holder of any Class B license or licenses who does not hold any Class A license shall have such Class B license or licenses reissued as a single Class B county highway and city street superintendent license.

(2) A license reissued under subsection (1) of this section shall remain on the same triennial renewal cycle as the license or licenses replaced.

Source: Laws 2003, LB 500, § 11; Laws 2018, LB733, § 3; Laws 2021, LB174, § 11.

39-2310 Funds received under act; use.

All funds received under the County Highway and City Street Superintendents Act shall be remitted to the State Treasurer for credit to the Highway

Cash Fund. Expenses of the members of the board of examiners as provided in section 39-2304 shall be paid by the Department of Transportation from the Highway Cash Fund.

Source: Laws 1969, c. 144, § 10, p. 668; Laws 1971, LB 53, § 4; Laws 1972, LB 1496, § 1; Laws 2003, LB 500, § 13; Laws 2017, LB339, § 162.

ARTICLE 25

DISTRIBUTION TO POLITICAL SUBDIVISIONS

(a) ROADS

Section

(b) STREETS

(a) ROADS

39-2501 Incentive payments for road purposes; priority.

Before distributing the February portion of funds under sections 39-2508 and 66-4,148, incentive payments shall first be made as provided in sections 39-2502 to 39-2505.

Source: Laws 1969, c. 315, § 1, p. 1133; Laws 2001, LB 142, § 39; Laws 2021, LB174, § 12.

39-2502 County highway superintendent, defined; incentive payment; requirements.

An incentive payment shall be made to each county having appointed and employed a county highway superintendent licensed under the County Highway and City Street Superintendents Act, during the calendar year preceding the year in which payment is made. For purposes of sections 39-2501 to 39-2505, county highway superintendent means a person who assists the county with the following:

(1) Developing and annually updating a long-range plan or program based on needs and coordinated with adjacent local governmental units;

(2) Developing an annual program for design, construction, and maintenance;

(3) Developing an annual budget based on programmed projects and activities;

(4) Submitting such plans, programs, and budgets to the local governing body for approval; and

(5) Implementing the capital improvements and maintenance activities provided in the approved plans, programs, and budgets.

Source: Laws 1969, c. 315, § 2, p. 1133; Laws 1976, LB 724, § 7; Laws 2003, LB 500, § 15; Laws 2007, LB277, § 7; Laws 2019, LB82, § 13; Laws 2021, LB174, § 13.

Cross References

County Highway and City Street Superintendents Act, see section 39-2301.

39-2503 Incentive payment; amount.

Except as provided in section 39-2504, the incentive payment to the various counties and municipal counties shall be based on the class of license of the county highway superintendent appointed and employed by the county and on the rural population of each county or municipal county, as determined by the most recent federal census, according to the following table:

Rural Population	Class B License Payment	Class A License Payment
Not more than 3,000	$4,500.00	$ 9,000.00
3,001 to 5,000	$4,875.00	$ 9,750.00
5,001 to 10,000	$5,250.00	$10,500.00
10,001 to 20,000	$5,625.00	$11,250.00
20,001 to 30,000	$6,000.00	$12,000.00
30,001 and more	$6,375.00	$12,750.00

Source: Laws 1969, c. 315, § 3, p. 1134; Laws 1981, LB 51, § 1; Laws 2001, LB 142, § 40; Laws 2003, LB 500, § 16; Laws 2021, LB174, § 14.

39-2504 Incentive payment; reduction; when.

(1) A reduced incentive payment shall be made to any county or municipal county having appointed and employed either (a) a licensed county highway superintendent for only a portion of the calendar year preceding the year in which the payment is made or (b) two or more successive licensed county highway superintendents for the calendar year preceding the year in which the payment is made. Such reduced payment shall be in the proportion of the payment amounts listed in section 39-2503 as the number of full months each such licensed superintendent was appointed and employed is of twelve.

(2) Any county or municipal county that contracts for the services of and appoints a consulting engineer licensed under the County Highway and City Street Superintendents Act or any other person licensed under the act to perform the duties outlined in section 39-2502 rather than appointing and employing a licensed county highway superintendent shall be entitled to an incentive payment equal to two-thirds the payment amount provided in section 39-2503 or two-thirds of the reduced incentive payment provided in subsection

(1) of this section, as determined by the Department of Transportation pursuant to section 39-2505.

(3) Any county or municipal county that contracts with another county or municipal county or with any city or village for the services of and appoints a licensed county highway superintendent as provided in section 39-2114 shall be entitled to the incentive payment provided in section 39-2503 or the reduced incentive payment provided in subsection (1) of this section.

(4) Beginning in calendar year 2022, any county or municipal county having a total population of sixty thousand or more inhabitants, as determined by the most recent official United States census, shall receive the full twelve-month Class A incentive payment amount provided in section 39-2503 applicable to such county's or municipal county's rural population as determined by the most recent federal census.

(5) Beginning in calendar year 2022, a county or municipal county having a total population of less than sixty thousand inhabitants, as determined by the most recent official United States census, may appoint and employ a professional engineer, who is licensed pursuant to the Engineers and Architects Regulation Act but is not licensed under the County Highway and City Street Superintendents Act, to perform the duties of county highway superintendent outlined in section 39-2502. In such case, the professional engineer's license under the Engineers and Architects Regulation Act shall serve as a Class A license for purposes of incentive payments under sections 39-2502 to 39-2505. This subsection only applies to a professional engineer in the direct employ of a county or municipal county and does not apply to an engineer serving as a contractor or consultant.

Source: Laws 1969, c. 315, § 4, p. 1134; Laws 1981, LB 51, § 2; Laws 2001, LB 142, § 41; Laws 2003, LB 500, § 17; Laws 2017, LB339, § 163; Laws 2021, LB174, § 15.

Cross References

County Highway and City Street Superintendents Act, see section 39-2301.
Engineers and Architects Regulation Act, see section 81-3401.

39-2505 County or municipal county; certify information; incentive payments; Department of Transportation; certify amount; State Treasurer; payment.

(1) By December 31 of each year, each county or municipal county shall certify to the Department of Transportation, using the certification process developed by the department:

(a) The name of any appointed county highway superintendent;

(b) Such superintendent's class of license, if applicable; and

(c) The type of appointment:

(i) Employed;

(ii) Contract consultant; or

(iii) Contract interlocal agreement with another municipality, county, or municipal county.

(2) The Department of Transportation shall, in January of each year commencing in 1970, determine and certify to the State Treasurer the amount of each incentive payment to be made under sections 39-2501 to 39-2505. The

State Treasurer shall, on or before February 15, make the incentive payments in accordance with such certification.

Source: Laws 1969, c. 315, § 5, p. 1134; Laws 2017, LB339, § 164; Laws 2021, LB174, § 16.

39-2507 Allocation of funds for road purposes; factors used.

The following factors and weights shall be used in determining the amount to be allocated to each of the counties or municipal counties for road purposes each year:

(1) Rural population of each county or municipal county, as determined by the most recent federal census, twenty percent;

(2) Total population of each county or municipal county, as determined by the most recent federal census, ten percent;

(3) Lineal feet of bridges twenty feet or more in length and all overpasses in each county or municipal county, as determined by the most recent inventory available within the Department of Transportation, ten percent, and for purposes of this subdivision a bridge or overpass located partly in one county or municipal county and partly in another shall be considered as being located one-half in each county or municipal county;

(4) Total motor vehicle registrations, other than prorated commercial vehicles, in the rural areas of each county or municipal county, as determined from the most recent information available from the Department of Motor Vehicles, twenty percent;

(5) Total motor vehicle registrations, other than prorated commercial vehicles, in each county or municipal county as determined from the most recent information available from the Department of Motor Vehicles, ten percent;

(6) Total miles of county or municipal county and township roads within each county or municipal county, as determined by the most recent inventory available within the Department of Transportation, twenty percent; and

(7) Value of farm products sold from each county or municipal county, as determined from the most recent federal Census of Agriculture, ten percent.

Source: Laws 1969, c. 315, § 7, p. 1135; Laws 2001, LB 142, § 42; Laws 2017, LB339, § 165.

39-2508 Allocation of funds for road purposes; Department of Transportation; State Treasurer; duties.

The Department of Transportation shall compute the amount allocated to each county or municipal county under each of the factors listed in section 39-2507 and shall then compute the total allocation to each such county or municipal county and transmit such information to the local governing board and the State Treasurer, who shall disburse funds accordingly.

Source: Laws 1969, c. 315, § 8, p. 1136; Laws 1985, LB 25, § 1; Laws 2001, LB 142, § 43; Laws 2017, LB339, § 166.

39-2510 Funds received; use; restriction; exception.

(1) All money derived from fees, excises, or license fees relating to registration, operation, or use of vehicles on the public highways, or to fuels used for the propulsion of such vehicles, shall be expended for payment of highway

obligations, cost of construction, reconstruction, maintenance, and repair of public highways and bridges and county, city, township, and village roads, streets, and bridges, and all facilities, appurtenances, and structures deemed necessary in connection with such highways, bridges, roads, and streets, or may be pledged to secure bonded indebtedness issued for such purposes, except for (a) the cost of administering laws under which such money is derived, (b) statutory refunds and adjustments provided therein, and (c) money derived from the motor vehicle operators' license fees or money received from parking meter proceeds, fines, and penalties.

(2)(a) The requirements of subsection (1) of this section also apply to sales and use taxes imposed on motor vehicles, trailers, and semitrailers pursuant to sections 13-319, 77-27,142, and 77-6403, except that such provisions shall not apply in a county or municipal county that has issued bonds (i) the proceeds of which were used for purposes listed in subsection (1) of this section and for which revenue other than sales and use taxes on motor vehicles, trailers, and semitrailers is pledged for payment or (ii) approved by a vote that required the use of sales and use taxes imposed on motor vehicles, trailers, and semitrailers for a specific purpose other than those listed in subsection (1) of this section, until all such bonds issued prior to January 1, 2006, have been paid or retired.

(b) The county or municipal county shall determine (i) the amount of revenue other than sales and use tax revenue derived from motor vehicles, trailers, or semitrailers that is to be expended for the purposes listed in subsection (1) of this section and (ii) the amount of sales and use taxes expected to be collected from sales of motor vehicles, trailers, and semitrailers for that year. The county or municipal county shall create and maintain such determination as a public record and certify the determination pursuant to sections 39-2120 and 39-2121.

Source: Laws 1969, c. 315, § 10, p. 1138; Laws 1997, LB 271, § 15; Laws 2006, LB 904, § 2; Laws 2019, LB82, § 14; Laws 2019, LB472, § 8.

(b) STREETS

39-2511 Incentive payments for street purposes; priority.

Before distributing the February portion of funds under sections 39-2518 and 66-4,148, incentive payments shall first be made as provided in sections 39-2512 to 39-2515.

Source: Laws 1969, c. 316, § 1, p. 1139; Laws 2001, LB 142, § 45; Laws 2021, LB174, § 17.

39-2512 City street superintendent, defined; incentive payment.

An incentive payment shall be made to each municipality or municipal county having appointed and employed a city street superintendent licensed under the County Highway and City Street Superintendents Act, during the calendar year preceding the year in which payment is made. For purposes of sections 39-2511 to 39-2515, city street superintendent means a person who assists the municipality or municipal county with the following:

(1) Developing and annually updating a long-range plan or program based on needs and coordinated with adjacent local governmental units;

(2) Developing an annual program for design, construction, and maintenance;

(3) Developing an annual budget based on programmed projects and activities;

(4) Submitting such plans, programs, and budgets to the local governing body for approval; and

(5) Implementing the capital improvements and maintenance activities provided in the approved plans, programs, and budgets.

Source: Laws 1969, c. 316, § 2, p. 1139; Laws 1976, LB 724, § 8; Laws 2001, LB 142, § 46; Laws 2003, LB 500, § 18; Laws 2007, LB277, § 8; Laws 2019, LB82, § 15; Laws 2021, LB174, § 18.

Cross References

County Highway and City Street Superintendents Act, see section 39-2301.

39-2513 Incentive payment; amount.

Except as provided in section 39-2514, the incentive payment to the various municipalities or municipal counties shall be based on the class of license of the city street superintendent appointed and employed by the municipality or municipal counties and on the population of each municipality or urbanized area of each municipal county, as determined by the most recent federal census figures certified by the Tax Commissioner as provided in section 77-3,119, according to the following table:

Population	Class B License Payment	Class A License Payment
Not more than 500	$ 300.00	$ 600.00
501 to 1,000	$ 500.00	$1,000.00
1,001 to 2,500	$1,500.00	$3,000.00
2,501 to 5,000	$2,000.00	$4,000.00
5,001 to 10,000	$3,000.00	$6,000.00
10,001 to 20,000	$3,500.00	$7,000.00
20,001 to 40,000	$3,750.00	$7,500.00
40,001 to 200,000	$4,000.00	$8,000.00
200,001 and more	$4,250.00	$8,500.00

Source: Laws 1969, c. 316, § 3, p. 1139; Laws 1993, LB 726, § 9; Laws 1994, LB 1127, § 5; Laws 2001, LB 142, § 47; Laws 2003, LB 500, § 19; Laws 2021, LB174, § 19.

39-2514 Incentive payment; reduction; when.

(1) A reduced incentive payment shall be made to any municipality or municipal county having appointed and employed either (a) a licensed city street superintendent for only a portion of the calendar year preceding the year in which the payment is made or (b) two or more successive licensed city street superintendents for the calendar year preceding the year in which the payment is made. Such reduced payment shall be in the proportion of the payment amounts listed in section 39-2513 as the number of full months each such licensed superintendent was appointed and employed is of twelve.

(2) Any municipality or municipal county that contracts for the services of and appoints a consulting engineer licensed under the County Highway and City Street Superintendents Act or any other person licensed under the act to

perform the duties outlined in section 39-2512 rather than appointing and employing a licensed city street superintendent shall be entitled to an incentive payment as provided in section 39-2513 or to the reduced incentive payment provided in subsection (1) of this section, as determined by the Department of Transportation pursuant to section 39-2515.

(3) Any municipality or municipal county that contracts with another municipality, county, or municipal county for the services of and appoints a licensed city street superintendent as provided in section 39-2114 shall be entitled to the incentive payment provided in section 39-2513 or the reduced incentive payment provided in subsection (1) of this section.

(4) Beginning in calendar year 2022, a municipality or municipal county may appoint and employ a professional engineer who is licensed pursuant to the Engineers and Architects Regulation Act but is not licensed under the County Highway and City Street Superintendents Act and who is serving as city engineer, village engineer, public works director, city manager, city administrator, or street commissioner to perform the duties of city street superintendent outlined in section 39-2512. In such case, the professional engineer's license under the Engineers and Architects Regulation Act shall serve as a Class A license for purposes of incentive payments under sections 39-2512 to 39-2515. This subsection only applies to a professional engineer in the direct employ of a municipality or municipal county and does not apply to an engineer serving as a contractor or consultant.

Source: Laws 1969, c. 316, § 4, p. 1140; Laws 2001, LB 142, § 48; Laws 2003, LB 500, § 20; Laws 2017, LB339, § 167; Laws 2021, LB174, § 20.

Cross References

County Highway and City Street Superintendents Act, see section 39-2301.
Engineers and Architects Regulation Act, see section 81-3401.

39-2515 Municipality or municipal county; certify information; incentive payments; Department of Transportation, certify amount; State Treasurer; payment.

(1) By December 31 of each year, each municipality or municipal county shall certify to the Department of Transportation, using the certification process developed by the department:

(a) The name of any appointed city street superintendent;

(b) Such superintendent's class of license, if applicable; and

(c) The type of appointment:

(i) Employed;

(ii) Contract consultant; or

(iii) Contract interlocal agreement with another municipality, county, or municipal county.

(2) The Department of Transportation shall, in January of each year commencing in 1970, determine and certify to the State Treasurer the amount of each incentive payment to be made under sections 39-2511 to 39-2515. The

State Treasurer shall, on or before February 15, make the incentive payments in accordance with such certification.

Source: Laws 1969, c. 316, § 5, p. 1140; Laws 2017, LB339, § 168; Laws 2021, LB174, § 21.

39-2517 Allocation of funds for street purposes; factors used.

The following factors and weights shall be used in determining the amount to be allocated to each of the municipalities or municipal counties for street purposes each year:

(1) Total population of each incorporated municipality or the urbanized area of a municipal county, as determined by the most recent federal census figures certified by the Tax Commissioner as provided in section 77-3,119, fifty percent;

(2) Total motor vehicle registrations, other than prorated commercial vehicles, in each incorporated municipality or the urbanized area of a municipal county, as determined from the most recent information available from the Department of Motor Vehicles, thirty percent; and

(3) Total number of miles of traffic lanes of streets in each incorporated municipality or the urbanized area of a municipal county, as determined by the most recent inventory available within the Department of Transportation, twenty percent.

Source: Laws 1969, c. 316, § 7, p. 1141; Laws 1993, LB 726, § 10; Laws 1994, LB 1127, § 6; Laws 2001, LB 142, § 49; Laws 2017, LB339, § 169.

39-2518 Allocation of funds for street purposes; Department of Transportation; State Treasurer; duties.

The Department of Transportation shall compute the amount allocated to each municipality or municipal county under the factors listed in section 39-2517 and shall then compute the total allocation to each such municipality or municipal county and transmit such information to the local governing body and the State Treasurer, who shall disburse funds accordingly.

Source: Laws 1969, c. 316, § 8, p. 1141; Laws 1986, LB 729, § 1; Laws 2001, LB 142, § 50; Laws 2017, LB339, § 170.

39-2520 Funds received; use; restriction; exception.

(1) All money derived from fees, excises, or license fees relating to registration, operation, or use of vehicles on the public highways, or to fuels used for the propulsion of such vehicles, shall be expended for payment of highway obligations, cost of construction, reconstruction, maintenance, and repair of public highways and bridges and county, city, township, and village roads, streets, and bridges, and all facilities, appurtenances, and structures deemed necessary in connection with such highways, bridges, roads, and streets, or may be pledged to secure bonded indebtedness issued for such purposes, except for (a) the cost of administering laws under which such money is derived, (b) statutory refunds and adjustments provided therein, and (c) money derived from the motor vehicle operators' license fees or money received from parking meter proceeds, fines, and penalties.

(2)(a) The requirements of subsection (1) of this section also apply to sales and use taxes imposed on motor vehicles, trailers, and semitrailers pursuant to

sections 13-319, 77-27,142, and 77-6403, except that such provisions shall not apply in a municipality that has issued bonds (i) the proceeds of which were used for purposes listed in subsection (1) of this section and for which revenue other than sales and use taxes on motor vehicles, trailers, and semitrailers is pledged for payment or (ii) approved by a vote that required the use of sales and use taxes imposed on motor vehicles, trailers, and semitrailers for a specific purpose other than those listed in subsection (1) of this section, until all such bonds issued prior to January 1, 2006, have been paid or retired.

(b) The municipality shall determine (i) the amount of revenue other than sales and use tax revenue derived from motor vehicles, trailers, or semitrailers that is to be expended for the purposes listed in subsection (1) of this section and (ii) the amount of sales and use taxes expected to be collected from sales of motor vehicles, trailers, and semitrailers for that year. The municipality shall create and maintain such determination as a public record and certify the determination pursuant to sections 39-2120 and 39-2121.

Source: Laws 1969, c. 316, § 10, p. 1143; Laws 1971, LB 74, § 2; Laws 1997, LB 271, § 17; Laws 2006, LB 904, § 3; Laws 2019, LB82, § 16; Laws 2019, LB472, § 9.

ARTICLE 26
JUNKYARDS

Section
39-2602. Terms, defined.

39-2602 Terms, defined.

For purposes of sections 39-2601 to 39-2612, unless the context otherwise requires:

(1) Junk means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material;

(2) Automobile graveyard means any establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts;

(3) Junkyard means an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk or for the maintenance or operation of an automobile graveyard, and includes garbage dumps and sanitary fills;

(4) Highway Beautification Control System has the same meaning as in section 39-201.01;

(5) Scenic byway has the same meaning as in section 39-201.01;

(6) Main-traveled way means the traveled portion of an interstate or primary highway on which through traffic is carried and, in the case of a divided highway, the traveled portion of each of the separated roadways;

(7) Person means any natural person, partnership, limited liability company, association, corporation, or governmental subdivision; and

(8) Department means the Department of Transportation.

Source: Laws 1971, LB 398, § 2; Laws 1993, LB 121, § 214; Laws 1995, LB 264, § 25; Laws 2017, LB339, § 171.

ARTICLE 27
BUILD NEBRASKA ACT

Section
39-2702. Terms, defined.
39-2703. State Highway Capital Improvement Fund; created; use; investment.
39-2704. Fund; uses enumerated.

39-2702 Terms, defined.

For purposes of the Build Nebraska Act:

(1) Department means the Department of Transportation;

(2) Fund means the State Highway Capital Improvement Fund; and

(3) Surface transportation project means (a) expansion or reconstruction of a road or highway which is part of the state highway system, (b) expansion or reconstruction of a bridge which is part of the state highway system, or (c) construction of a new road, highway, or bridge which, if built, would be a part of the state highway system.

Source: Laws 2011, LB84, § 2; Laws 2017, LB339, § 172.

39-2703 State Highway Capital Improvement Fund; created; use; investment.

(1) The State Highway Capital Improvement Fund is created. The fund shall consist of money credited to the fund pursuant to subsection (4) of section 39-2215, proceeds of bonds issued pursuant to subsection (3) of section 39-2223, and any other money as determined by the Legislature.

(2) The department may create or direct the creation of accounts within the fund as the department determines to be appropriate and useful in administering the fund.

(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. Investment earnings from investment of money in the fund shall be credited to the fund.

Source: Laws 2011, LB84, § 3; Laws 2023, LB727, § 43.

Cross References

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

39-2704 Fund; uses enumerated.

(1) The money credited to the fund pursuant to subsection (4) of section 39-2215 shall be used for repayment of bonds issued pursuant to subsection (3) of section 39-2223. If any of the money credited to the fund pursuant to subsection (4) of section 39-2215 exceeds the amount of the annual principal and interest requirements for such bonds which are issued, such money shall be used as follows:

(a) At least twenty-five percent of the money shall be used, as determined by the department, for construction of the expressway system and federally designated high priority corridors; and

(b) The remaining money shall be used to pay for surface transportation projects of the highest priority as determined by the department.

(2) The proceeds of bonds issued pursuant to subsection (3) of section 39-2223 which are credited to the fund shall be used as follows:

(a) At least seventy-five percent of the proceeds from such bonds shall be used, as determined by the department, for construction of the expressway system and federally designated high priority corridors; and

(b) The remaining proceeds shall be used to pay for surface transportation projects of the highest priority as determined by the department.

Source: Laws 2011, LB84, § 4; Laws 2023, LB727, § 44.

ARTICLE 28

TRANSPORTATION INNOVATION ACT

Section

39-2801 Act, how cited.

Sections 39-2801 to 39-2825 shall be known and may be cited as the Transportation Innovation Act.

Source: Laws 2016, LB960, § 1; Laws 2022, LB1016, § 1.

39-2802 Terms, defined.

For purposes of the Transportation Innovation Act:

(1) Alternative technical concept means changes suggested by a qualified, eligible, short-listed design-builder to a contracting agency's basic configurations, project scope, design, or construction criteria;

(2) Best value-based selection process means a process of selecting a design-builder using price, schedule, and qualifications for evaluation factors;

(3) Construction manager means the legal entity which proposes to enter into a construction manager-general contractor contract pursuant to the act;

(4) Construction manager-general contractor contract means a contract which is subject to a qualification-based selection process between a contracting agency and a construction manager to furnish preconstruction services during the design development phase of the project and, if an agreement can be reached which is satisfactory to the contracting agency, construction services for the construction phase of the project;

(5) Construction services means activities associated with building the project;

(6) Contracting agency means the department, an eligible county, a city of the metropolitan class, or a city of the primary class using the powers provided under the Transportation Innovation Act;

(7) Department means the Department of Transportation;

(8) Design-build contract means a contract between a contracting agency and a design-builder which is subject to a best value-based selection process to furnish (a) architectural, engineering, and related design services and (b) labor, materials, supplies, equipment, and construction services;

(9) Design-builder means the legal entity which proposes to enter into a design-build contract;

(10) Eligible county means (a) a county or (b) a joint entity created by agreement under section 13-804 if a county is a party to the agreement;

(11) Multimodal transportation network means the interconnected system of highways, roads, streets, rail lines, river ports, and transit systems which facilitates the movement of people and freight to enhance Nebraska's economy;

(12) Preconstruction services means all nonconstruction-related services that a construction manager performs in relation to the design of the project before execution of a contract for construction services. Preconstruction services includes, but is not limited to, cost estimating, value engineering studies, constructability reviews, delivery schedule assessments, and life-cycle analysis;

(13) Private partner means any entity that is a partner in a public-private partnership other than the State of Nebraska, any agency of the State of Nebraska, the federal government, any agency of the federal government, any other state government, or any agency of any government at any level;

(14) Progressive design-build means a project-delivery process in which both the design and construction of a project are procured from a single entity that is selected through a qualification-based selection process at the earliest feasible stage of the project;

(15) Project performance criteria means the performance requirements of the project suitable to allow the design-builder to make a proposal. Performance requirements shall include, but are not limited to, the following, if required by the project: Capacity, durability, standards, ingress and egress requirements,

description of the site, surveys, soil and environmental information concerning the site, material quality standards, design and milestone dates, site development requirements, compliance with applicable law, and other criteria for the intended use of the project;

(16) Proposal means an offer in response to a request for proposals (a) by a design-builder to enter into a design-build contract or (b) by a construction manager to enter into a construction manager-general contractor contract;

(17) Public-private partnership means a project delivery method for construction or financing of capital projects or procurement of services under a written public-private partnership agreement entered into pursuant to section 39-2825 between at least one private partner and the State of Nebraska or any agency of the state;

(18) Qualification-based selection process means a process of selecting a construction manager or progressive design-builder based on qualifications;

(19) Request for proposals means the documentation by which a contracting agency solicits proposals; and

(20) Request for qualifications means the documentation or publication by which a contracting agency solicits qualifications.

Source: Laws 2016, LB960, § 2; Laws 2017, LB339, § 173; Laws 2019, LB583, § 2; Laws 2022, LB1016, § 2.

39-2805 County Bridge Match Program; created; termination; County Bridge Match Working Group.

(1) The County Bridge Match Program is created. The department shall administer the program using funds from the Transportation Infrastructure Bank Fund. The purpose of the program is to promote innovative solutions and provide additional funding to accelerate the repair and replacement of deficient bridges on the county road system. Participation by counties in the program shall be voluntary.

(2) The County Bridge Match Working Group is hereby created. The Governor shall appoint two representatives to serve on the working group from a list of county highway superintendents, county surveyors, or county engineers submitted by a statewide association representing county officials. The Director-State Engineer shall select three representatives of the department to serve on the working group. The working group shall develop the program, including participation criteria and matching fund requirements for counties, and shall score the applications and award the funds. A meeting of the working group does not constitute a meeting as defined in section 84-1409.

(3) The County Bridge Match Program terminates on June 30, 2029.

Source: Laws 2016, LB960, § 5; Laws 2023, LB683, § 1; Laws 2023, LB818, § 10; Laws 2024, LB1030, § 1.
Effective date April 16, 2024.
Termination date June 30, 2029.

39-2806 Economic Opportunity Program; created.

The Economic Opportunity Program is created. The Department of Transportation shall administer the program in consultation with the Department of Economic Development using funds from the Transportation Infrastructure Bank Fund, except that no more than twenty million dollars shall be expended

for this program. The purpose of the program is to finance transportation improvements to attract and support new businesses and business expansions by successfully connecting such businesses to Nebraska's multimodal transportation network and to increase employment, create high-quality jobs, increase business investment, and revitalize rural and other distressed areas of the state. The Department of Transportation shall develop the program, including the application process, criteria for providing funding, matching requirements, and provisions for recapturing funds awarded for projects with unmet obligations, in consultation with statewide associations representing municipal and county officials, economic developers, and the Department of Economic Development. No project shall be approved through the Economic Opportunity Program without an economic impact analysis proving positive economic impact. The details of the program shall be presented to the Appropriations Committee and the Transportation and Telecommunications Committee of the Legislature on or before December 1, 2016.

Source: Laws 2016, LB960, § 6; Laws 2017, LB339, § 174.
Termination date June 30, 2033.

39-2808 Purpose of sections.

The purpose of sections 39-2808 to 39-2824 is to provide a contracting agency alternative methods of contracting for public projects. The alternative methods of contracting shall be available to a contracting agency for use on any project regardless of the funding source. Notwithstanding any other provision of state law to the contrary, the Transportation Innovation Act shall govern the design-build, progressive design-build, and construction manager-general contractor procurement processes.

Source: Laws 2016, LB960, § 8; Laws 2019, LB583, § 3; Laws 2022, LB1016, § 3.

39-2809 Design-build contract; progressive design-build contract; construction manager-general contract; authorized.

A contracting agency, in accordance with sections 39-2808 to 39-2824, may solicit and execute a design-build contract, a progressive design-build contract, or a construction manager-general contractor contract for a public project, other than a project that is primarily resurfacing, rehabilitation, or restoration.

Source: Laws 2016, LB960, § 9; Laws 2019, LB583, § 4; Laws 2022, LB1016, § 4.

39-2810 Contracting agency; hire engineering or architectural consultant.

A contracting agency may hire an engineering or architectural consultant to assist the contracting agency with the development of project performance criteria and requests for proposals, with evaluation of proposals, with evaluation of the construction to determine adherence to the project performance criteria, and with any additional services requested by the contracting agency to represent its interests in relation to a project. The procedures used to hire such person or organization shall comply with the Nebraska Consultants' Competitive Negotiation Act. The person or organization hired shall be ineligible to be included as a provider of other services in a proposal for the project for which he or she has been hired and shall not be employed by or have a

financial or other interest in a design-builder or construction manager who will submit a proposal.

Source: Laws 2016, LB960, § 10; Laws 2019, LB583, § 5.

Cross References

Nebraska Consultants' Competitive Negotiation Act, see section 81-1702.

39-2811 Guidelines; contents.

The department shall adopt guidelines for entering into a design-build contract, a progressive design-build contract, or construction manager-general contractor contract. If an eligible county, a city of the metropolitan class, or a city of the primary class intends to proceed with a design-build contract, a progressive design-build contract, or a construction manager-general contractor contract, the eligible county, city of the metropolitan class, or city of the primary class may adopt the guidelines published by the department. The department's guidelines shall include the following:

(1) Preparation and content of requests for qualifications;

(2) Preparation and content of requests for proposals;

(3) Qualification and short-listing of design-builders, progressive design-builders, and construction managers. The guidelines shall provide that the contracting agency will evaluate prospective design-builders, progressive design-builders, and construction managers based on the information submitted to the contracting agency in response to a request for qualifications and will select a short list of design-builders, progressive design-builders, or construction managers who shall be considered qualified and eligible to respond to the request for proposals;

(4) Preparation and submittal of proposals;

(5) Procedures and standards for evaluating proposals;

(6) Procedures for negotiations between the contracting agency and the design-builders, progressive design-builders, or construction managers submitting proposals prior to the acceptance of a proposal if any such negotiations are contemplated; and

(7) Procedures for the evaluation of construction under a design-build contract or a progressive design-build contract to determine adherence to the project performance criteria.

Source: Laws 2016, LB960, § 11; Laws 2019, LB583, § 6; Laws 2022, LB1016, § 5.

39-2812 Process; provisions applicable.

(1) The process for selecting a design-builder and entering into a design-build contract shall be in accordance with sections 39-2813 to 39-2816.

(2) Except as otherwise specifically provided in the Transportation Innovation Act, the process for selecting a progressive design-builder and entering into a progressive design-build contract shall be in accordance with sections 39-2813 to 39-2816.

Source: Laws 2016, LB960, § 12; Laws 2022, LB1016, § 6.

39-2813 Request for qualifications for design-build proposals and progressive design-build proposals; publication; short list created.

(1) A contracting agency shall prepare a request for qualifications for design-build and progressive design-build proposals and shall prequalify design-builders and progressive design-builders. The request for qualifications shall describe the project in sufficient detail to permit a design-builder or a progressive design-builder to respond. The request for qualifications shall identify the maximum number of design-builders or progressive design-builders the contracting agency will place on a short list as qualified and eligible to receive a request for proposals.

(2) A person or organization hired by the contracting agency under section 39-2810 shall be ineligible to compete for a design-build contract on the same project for which the person or organization was hired.

(3) The request for qualifications shall be (a) published in a newspaper of statewide circulation at least thirty days prior to the deadline for receiving the request for qualifications and (b) sent by first-class mail to any design-builder or progressive design-builder upon request.

(4) The contracting agency shall create a short list of qualified and eligible design-builders or progressive design-builders in accordance with the guidelines adopted pursuant to section 39-2811. The contracting agency shall select at least two prospective design-builders or progressive design-builders, except that if only one design-builder or progressive design-builder has responded to the request for qualifications, the contracting agency may, in its discretion, proceed or cancel the procurement. The request for proposals shall be sent only to the design-builders or progressive design-builders placed on the short list.

Source: Laws 2016, LB960, § 13; Laws 2019, LB583, § 7; Laws 2022, LB1016, § 7.

39-2814 Request for proposals for design-build or progressive design-build contract; elements.

A contracting agency shall prepare a request for proposals for each design-build or progressive design-build contract. The request for proposals shall contain, at a minimum, the following elements:

(1) The guidelines adopted in accordance with section 39-2811. The identification of a publicly accessible location of the guidelines, either physical or electronic, shall be considered compliance with this subdivision;

(2) The proposed terms and conditions of the design-build or progressive design-build contract, including any terms and conditions which are subject to further negotiation;

(3) A project statement which contains information about the scope and nature of the project;

(4) If applicable, a statement regarding alternative technical concepts including the process and time period in which such concepts may be submitted, confidentiality of the concepts, and ownership of the rights to the intellectual property contained in such concepts;

(5) Project performance criteria;

(6) Budget parameters for the project;

(7) Any bonding and insurance required by law or as may be additionally required by the contracting agency;

(8) The criteria for evaluation of proposals and the relative weight of each criterion. For both design-build and progressive design-build contracts, the criteria shall include, but are not limited to, construction experience, design experience, and the financial, personnel, and equipment resources available for the project. For design-build contracts only, the criteria shall also include the cost of the work. For progressive design-build contracts only, the criteria shall also include consideration of the historic reasonableness of the progressive design-builder's costs and expenses when bidding and completing projects, whether such projects were completed using the progressive design-build process or another bidding and contracting process. The relative weight to apply to any criterion shall be at the discretion of the contracting agency based on each project, except that for all design-build contracts, the cost of the work shall be given a relative weight of at least fifty percent;

(9) A requirement that the design-builder or progressive design-builder provide a written statement of the design-builder's or progressive design-builder's proposed approach to the design and construction of the project, which may include graphic materials illustrating the proposed approach to design and construction;

(10) A requirement that the design-builder or progressive design-builder agree to the following conditions:

(a) At the time of the design-build or progressive design-build proposal, the design-builder or progressive design-builder must furnish to the contracting agency a written statement identifying the architect or engineer who will perform the architectural or engineering work for the project. The architect or engineer engaged by the design-builder or progressive design-builder to perform the architectural or engineering work with respect to the project must have direct supervision of such work and may not be removed by the design-builder or progressive design-builder prior to the completion of the project without the written consent of the contracting agency;

(b) At the time of the design-build or progressive design-build proposal, the design-builder or progressive design-builder must furnish to the contracting agency a written statement identifying the general contractor who will provide the labor, material, supplies, equipment, and construction services. The general contractor identified by the design-builder or progressive design-builder may not be removed by the design-builder or progressive design-builder prior to completion of the project without the written consent of the contracting agency;

(c) A design-builder or progressive design-builder offering design-build or progressive design-build services with its own employees who are design professionals licensed to practice in Nebraska must (i) comply with the Engineers and Architects Regulation Act by procuring a certificate of authorization to practice architecture or engineering and (ii) submit proof of sufficient professional liability insurance in the amount required by the contracting agency; and

(d) The rendering of architectural or engineering services by a licensed architect or engineer employed by the design-builder or progressive design-builder must conform to the Engineers and Architects Regulation Act;

(11) The amount and terms of the stipend required pursuant to section 39-2815, if any; and

(12) Other information or requirements which the contracting agency, in its discretion, chooses to include in the request for proposals.

Source: Laws 2016, LB960, § 14; Laws 2019, LB583, § 8; Laws 2022, LB1016, § 8.

Cross References

Engineers and Architects Regulation Act, see section 81-3401.

39-2815 Stipend.

The contracting agency shall pay a stipend to qualified design-builders that submit responsive proposals but are not selected. Payment of the stipend shall give the contracting agency ownership of the intellectual property contained in the proposals and alternative technical concepts. The amount of the stipend shall be at the discretion of the contracting agency as disclosed in the request for proposals.

Source: Laws 2016, LB960, § 15; Laws 2019, LB583, § 9.

39-2816 Submission of proposals; sealed; rank of design-builders and progressive design-builders; negotiation of contract.

(1) Design-builders and progressive design-builders shall submit proposals as required by the request for proposals. A contracting agency may meet with individual design-builders and progressive design-builders prior to the time of submitting the proposal and may have discussions concerning alternative technical concepts. If an alternative technical concept provides a solution that is equal to or better than the requirements in the request for proposals and the alternative technical concept is acceptable to the contracting agency, it may be incorporated as part of the proposal by the design-builder or progressive design-builder. Notwithstanding any other provision of state law to the contrary, alternative technical concepts shall be confidential and not disclosed to other design-builders, progressive design-builders, or members of the public from the time the proposals are submitted until such proposals are opened by the contracting agency.

(2) Proposals shall be sealed and shall not be opened until expiration of the time established for making the proposals as set forth in the request for proposals.

(3) Proposals may be withdrawn at any time prior to the opening of such proposals in which case no stipend shall be paid. The contracting agency shall have the right to reject any and all proposals at no cost to the contracting agency other than any stipend for design-builders who have submitted responsive proposals. The contracting agency may thereafter solicit new proposals using the same or different project performance criteria or may cancel the design-build or progressive design-build solicitation.

(4) The contracting agency shall rank the design-builders or progressive design-builders in order of best value pursuant to the criteria in the request for proposals. The contracting agency may meet with design-builders or progressive design-builders prior to ranking.

(5) The contracting agency may attempt to negotiate a design-build or progressive design-build contract with the highest ranked design-builder or progressive design-builder selected by the contracting agency and may enter into a design-build or progressive design-build contract after negotiations. If the

contracting agency is unable to negotiate a satisfactory design-build or progressive design-build contract with the highest ranked design-builder or progressive design-builder, the contracting agency may terminate negotiations with that design-builder or progressive design-builder. The contracting agency may then undertake negotiations with the second highest ranked design-builder or progressive design-builder and may enter into a design-build or progressive design-build contract after negotiations. If the contracting agency is unable to negotiate a satisfactory contract with the second highest ranked design-builder or progressive design-builder, the contracting agency may undertake negotiations with the third highest ranked design-builder or progressive design-builder, if any, and may enter into a design-build or progressive design-build contract after negotiations.

(6) If the contracting agency is unable to negotiate a satisfactory contract with any of the ranked design-builders or progressive design-builders, the contracting agency may either revise the request for proposals and solicit new proposals or cancel the design-build or progressive design-build process under sections 39-2808 to 39-2824.

Source: Laws 2016, LB960, § 16; Laws 2019, LB583, § 10; Laws 2022, LB1016, § 9.

39-2817 Selection of construction manager; construction manager-general contractor contract; sections applicable; request for qualifications; prequalification; publication; short list created; single-step process; when authorized.

(1) The process for selecting a construction manager and entering into a construction manager-general contractor contract shall be in accordance with this section and sections 39-2818 to 39-2820.

(2) A contracting agency shall prepare a request for qualifications for construction manager-general contractor contract proposals and shall prequalify construction managers. The request for qualifications shall describe the project in sufficient detail to permit a construction manager to respond. The request for qualifications shall identify the maximum number of eligible construction managers the contracting agency will place on a short list as qualified and eligible to receive a request for proposals.

(3) The request for qualifications shall be (a) published in a newspaper of statewide circulation at least thirty days prior to the deadline for receiving the request for qualifications and (b) sent by first-class mail to any construction manager upon request.

(4) The contracting agency shall create a short list of qualified and eligible construction managers in accordance with the guidelines adopted pursuant to section 39-2811. The contracting agency shall select at least two construction managers, except that if only one construction manager has responded to the request for qualifications, the contracting agency may, in its discretion, proceed or cancel the procurement. The request for proposals shall be sent only to the construction managers placed on the short list.

(5) A contracting agency may combine the separate qualification and proposal steps of this section and section 39-2818 into a single-step process if the contracting agency determines that a single-step process is in the contracting agency's best interest. If a single-step process is used, a contracting agency shall consider the qualifications of all proposing construction managers as a part of the request for proposals. Notice of the request for proposals shall be

published as provided in subsection (3) of this section. There is no requirement to short list construction managers when using the single-step process. If only one proposal is submitted, the contracting agency may, in its discretion, proceed or cancel the procurement.

Source: Laws 2016, LB960, § 17; Laws 2019, LB583, § 11; Laws 2024, LB1200, § 3.
Operative date July 19, 2024.

39-2818 Request for proposals for construction manager-general contractor contract; elements.

A contracting agency shall prepare a request for proposals for each construction manager-general contractor contract. The request for proposals shall contain, at a minimum, the following elements:

(1) The guidelines adopted in accordance with section 39-2811. The identification of a publicly accessible location of the guidelines, either physical or electronic, shall be considered compliance with this subdivision;

(2) The proposed terms and conditions of the contract, including any terms and conditions which are subject to further negotiation;

(3) Any bonding and insurance required by law or as may be additionally required by the contracting agency;

(4) General information about the project which will assist the contracting agency in its selection of the construction manager, including a project statement which contains information about the scope and nature of the project, the project site, the schedule, and the estimated budget;

(5) The criteria for evaluation of proposals and the relative weight of each criterion;

(6) A statement that the construction manager shall not be allowed to sublet, assign, or otherwise dispose of any portion of the contract without consent of the contracting agency. In no case shall the contracting agency allow the construction manager to sublet more than seventy percent of the work, excluding specialty items; and

(7) Other information or requirements which the contracting agency, in its discretion, chooses to include in the request for proposals.

Source: Laws 2016, LB960, § 18; Laws 2019, LB583, § 12.

39-2819 Submission of proposals; sealed; rank of construction managers; negotiation of contract.

(1) Construction managers shall submit proposals as required by the request for proposals.

(2) Proposals shall be sealed and shall not be opened until expiration of the time established for making the proposals as set forth in the request for proposals.

(3) Proposals may be withdrawn at any time prior to signing a contract for preconstruction services. The contracting agency shall have the right to reject any and all proposals at no cost to the contracting agency. The contracting agency may thereafter solicit new proposals or may cancel the construction manager-general contractor procurement process.

(4) The contracting agency shall rank the construction managers in accordance with the qualification-based selection process and pursuant to the criteria in the request for proposals. The contracting agency may meet with construction managers prior to the ranking.

(5) The contracting agency may attempt to negotiate a contract for preconstruction services with the highest ranked construction manager and may enter into a contract for preconstruction services after negotiations. If the contracting agency is unable to negotiate a satisfactory contract for preconstruction services with the highest ranked construction manager, the contracting agency may terminate negotiations with that construction manager. The contracting agency may then undertake negotiations with the second highest ranked construction manager and may enter into a contract for preconstruction services after negotiations. If the contracting agency is unable to negotiate a satisfactory contract with the second highest ranked construction manager, the contracting agency may undertake negotiations with the third highest ranked construction manager, if any, and may enter into a contract for preconstruction services after negotiations.

(6) If the contracting agency is unable to negotiate a satisfactory contract for preconstruction services with any of the ranked construction managers, the contracting agency may either revise the request for proposals and solicit new proposals or cancel the construction manager-general contractor contract process under sections 39-2808 to 39-2824.

Source: Laws 2016, LB960, § 19; Laws 2019, LB583, § 13.

39-2820 Contracting agency; cost estimate; conduct contract negotiations.

(1) Before the construction manager begins any construction services, a contracting agency shall:

(a) Conduct an independent cost estimate for the project; and

(b) Conduct contract negotiations with the construction manager to develop a construction manager-general contractor contract for construction services.

(2) If the construction manager and the contracting agency are unable to negotiate a contract, the contracting agency may use other contract procurement processes. Persons or organizations who submitted proposals but were unable to negotiate a contract with the contracting agency shall be eligible to compete in the other contract procurement processes.

Source: Laws 2016, LB960, § 20; Laws 2019, LB583, § 14.

39-2821 Contracts; changes authorized.

A design-build contract, a progressive design-build contract, and a construction manager-general contractor contract may be conditioned upon later refinements in scope and price and may permit the contracting agency in agreement with the design-builder, progressive design-builder, or construction manager to make changes in the project without invalidating the contract.

Source: Laws 2016, LB960, § 21; Laws 2019, LB583, § 15; Laws 2022, LB1016, § 10.

39-2822 Department; authority for political subdivision projects.

The department may enter into agreements under sections 39-2808 to 39-2824 to let, design, and construct projects for political subdivisions when

any of the funding for such projects is provided by or through the department. In such instances, the department may enter into contracts with the design-builder, progressive design-builder, or construction manager. The provisions of the Political Subdivisions Construction Alternatives Act shall not apply to projects let, designed, and constructed under the supervision of the department pursuant to agreements with political subdivisions under sections 39-2808 to 39-2824.

Source: Laws 2016, LB960, § 22; Laws 2019, LB583, § 16; Laws 2022, LB1016, § 11.

Cross References

Political Subdivisions Construction Alternatives Act, see section 13-2901.

39-2823 Insurance.

Nothing in sections 39-2808 to 39-2824 shall limit or reduce statutory or regulatory requirements regarding insurance.

Source: Laws 2016, LB960, § 23; Laws 2019, LB583, § 17.

39-2824 Rules and regulations.

The department may adopt and promulgate rules and regulations to carry out the Transportation Innovation Act. An eligible county, a city of the metropolitan class, or a city of the primary class may adopt a resolution or an ordinance establishing rules to carry out the act.

Source: Laws 2016, LB960, § 24; Laws 2019, LB583, § 18.

39-2825 Public-private partnership delivery method; authorized.

(1) A public-private partnership delivery method may be used for projects under the Transportation Innovation Act as provided in this section and rules and regulations adopted and promulgated pursuant to this section only to the extent allowed under the Constitution of Nebraska. State contracts using this method shall be awarded by competitive negotiation.

(2) A contracting agency utilizing a public-private partnership shall continue to be responsible for oversight of any function that is delegated to or otherwise performed by a private partner.

(3) On or before July 1, 2023, the Director-State Engineer shall adopt and promulgate rules and regulations setting forth criteria to be used in determining when a public-private partnership is to be used for a particular project. The rules and regulations shall reflect the intent of the Legislature to promote and encourage the use of public-private partnerships in the State of Nebraska. The Director-State Engineer shall consult with design-builders, progressive design-builders, construction managers, other contractors and design professionals, including engineers and architects, and other appropriate professionals during the development of the rules and regulations.

(4) A request for proposals for a project utilizing a public-private partnership shall include at a minimum:

(a) The parameters of the proposed public-private partnership agreement;

(b) The duties and responsibilities to be performed by the private partner or private partners;

(c) The methods of oversight to be employed by the contracting agency;

(d) The duties and responsibilities that are to be performed by the contracting agency and any other parties to the contract;

(e) The evaluation factors and the relative weight of each factor to be used in the scoring of awards;

(f) Plans for financing and operating the project and the revenues, service payments, bond financings, and appropriations of public funds needed for the qualifying project;

(g) Comprehensive documentation of the experience, capabilities, capitalization and financial condition, and other relevant qualifications of the private entity submitting the proposal;

(h) The ability of a private partner or private partners to quickly respond to the needs presented in the request for proposals and the importance of economic development opportunities represented by the project. In evaluating proposals, preference shall be given to a plan that includes the involvement of small businesses as subcontractors, to the extent that small businesses can provide services in a competitive manner, unless any preference interferes with the qualification for federal or other funds; and

(i) Other information required by the contracting agency to evaluate the proposals submitted and the overall proposed public-private partnership.

(5) A private entity desiring to be a private partner shall demonstrate to the satisfaction of the contracting agency that it is capable of performing any duty, responsibility, or function it may be authorized or directed to perform as a term or condition of the public-private partnership agreement.

(6) A request for proposals may be canceled, or all proposals may be rejected, if it is determined in writing that such action is taken in the best interest of the State of Nebraska and approved by the purchasing officer.

(7) Upon execution of a public-private partnership agreement, the contracting agency shall ensure that the contract clearly identifies that a public-private partnership is being utilized.

(8) The department shall:

(a) Adhere to the rules and regulations adopted and promulgated under this section when utilizing a public-private partnership for financing capital projects; and

(b) Electronically report annually to the Appropriations Committee of the Legislature and the Transportation and Telecommunications Committee of the Legislature regarding private-public partnerships which have been considered or are approved pursuant to this section.

Source: Laws 2022, LB1016, § 12.

CHAPTER 40
HOMESTEADS

Section
40-101. Homestead; exemption from judgment liens and execution or forced sale.
40-102. Repealed. Laws 2024, LB1195, § 16.
40-103. Homestead; exemption; when inoperative.

40-101 Homestead; exemption from judgment liens and execution or forced sale.

Each natural person residing in this state shall have exempt from judgment liens and from execution or forced sale, except as provided in sections 40-101 to 40-116, a homestead not exceeding one hundred twenty thousand dollars in value consisting of the dwelling house in which the claimant resides, its appurtenances, and the land on which the same is situated, not exceeding one hundred and sixty acres of land, to be selected by the owner, and not in any incorporated city or village, or, at the option of the claimant, a quantity of contiguous land not exceeding two lots within any incorporated city or village.

Source: Laws 1879, § 1, p. 57; R.S.1913, § 3076; C.S.1922, § 2816; C.S.1929, § 40-101; R.S.1943, § 40-101; Laws 1957, c. 153, § 3, p. 498; Laws 1973, LB 15, § 1; Laws 1980, LB 940, § 3; Laws 1986, LB 999, § 2; Laws 1997, LB 372, § 4; Laws 2007, LB237, § 1; Laws 2024, LB1195, § 10.
Effective date July 19, 2024.

40-102 Repealed. Laws 2024, LB1195, § 16.

40-103 Homestead; exemption; when inoperative.

The homestead is subject to execution or forced sale in satisfaction of judgments obtained (1) on debts secured by mechanics', laborers', or vendors' liens upon the premises and (2) on debts secured by mortgages or trust deeds upon the premises executed and acknowledged by a claimant.

Source: Laws 1879, § 3, p. 58; R.S.1913, § 3078; C.S.1922, § 2818; C.S.1929, § 40-103; R.S.1943, § 40-103; Laws 1997, LB 372, § 5; Laws 2024, LB1195, § 11.
Effective date July 19, 2024.

CHAPTER 42
HOUSEHOLDS AND FAMILIES

ARTICLE 3
DIVORCE, ALIMONY, AND CHILD SUPPORT

(d) DOMESTIC RELATIONS ACTIONS

(d) DOMESTIC RELATIONS ACTIONS

42-364 Action involving child support, child custody, parenting time, visitation, or other access; parenting plan; legal custody and physical custody determination; rights of parents; child support; termination of parental rights; court; duties; modification proceedings; use of school records as evidence.

(1)(a) In an action under Chapter 42 involving child support, child custody, parenting time, visitation, or other access, the parties and their counsel, if represented, shall develop a parenting plan as provided in the Parenting Act. If the parties and counsel do not develop a parenting plan, the complaint shall so indicate as provided in section 42-353 and the case shall be referred to mediation or specialized alternative dispute resolution as provided in the Parenting Act. For good cause shown and (i) when both parents agree and such parental agreement is bona fide and not asserted to avoid the purposes of the Parenting Act, or (ii) when mediation or specialized alternative dispute resolution is not possible without undue delay or hardship to either parent, the mediation or specialized alternative dispute resolution requirement may be waived by the court. In such a case where waiver of the mediation or specialized alternative dispute resolution is sought, the court shall hold an evidentiary hearing and the burden of proof for the party or parties seeking waiver is by clear and convincing evidence.

(b) The decree in an action involving the custody of a minor child shall include the determination of legal custody and physical custody based upon the

best interests of the child, as defined in the Parenting Act, and child support. Such determinations shall be made by incorporation into the decree of (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 or the plan developed by the parties is not approved by the court. The decree shall conform to the Parenting Act.

(c) The social security number of each parent and the minor child shall be furnished to the clerk of the district court but shall not be disclosed or considered a public record.

(2) In determining legal custody or physical custody, the court shall not give preference to either parent based on the sex or disability of the parent and, except as provided in section 43-2933, no presumption shall exist that either parent is more fit or suitable than the other. Custody shall be determined on the basis of the best interests of the child, as defined in the Parenting Act. Unless parental rights are terminated, both parents shall continue to have the rights stated in section 42-381.

(3) Custody of a minor child may be placed with both parents on a joint legal custody or joint physical custody basis, or both, (a) when 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) 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 regardless of any parental agreement or consent.

(4) In determining the amount of child support to be paid by a parent, the court shall consider the earning capacity of each parent and the guidelines provided by the Supreme Court pursuant to section 42-364.16 for the establishment of child support obligations. Upon application, hearing, and presentation of evidence of an abusive disregard of the use of child support money or cash medical support paid by one party to the other, the court may require the party receiving such payment to file a verified report with the court, as often as the court requires, stating the manner in which child support money or cash medical support is used. Child support money or cash medical support paid to the party having physical custody of the minor child shall be the property of such party except as provided in section 43-512.07. The clerk of the district court shall maintain a record of all decrees and orders in which the payment of child support, cash medical support, or spousal support has been ordered, whether ordered by a district court, county court, separate juvenile court, or county court sitting as a juvenile court. Orders for child support or cash medical support in cases in which a party has applied for services under Title IV-D of the federal Social Security Act, as amended, shall be reviewed as provided in sections 43-512.12 to 43-512.18.

(5) Whenever termination of parental rights is placed in issue the court shall transfer jurisdiction to a juvenile court established pursuant to the Nebraska Juvenile Code unless a showing is made that the county court or district court is a more appropriate forum. In making such determination, the court may consider such factors as cost to the parties, undue delay, congestion of trial dockets, and relative resources available for investigative and supervisory assistance. A determination that the county court or district court is a more appropriate forum shall not be a final order for the purpose of enabling an

appeal. If no such transfer is made, the court shall conduct the termination of parental rights proceeding as provided in the Nebraska Juvenile Code.

(6) Modification proceedings relating to support, custody, parenting time, visitation, other access, or removal of children from the jurisdiction of the court shall be commenced by filing a complaint to modify. Modification of a parenting plan is governed by the Parenting Act. Proceedings to modify a parenting plan shall be commenced by filing a complaint to modify. Such actions shall be referred to mediation or specialized alternative dispute resolution as provided in the Parenting Act. For good cause shown and (a) when both parents agree and such parental agreement is bona fide and not asserted to avoid the purposes of the Parenting Act, or (b) when mediation or specialized alternative dispute resolution is not possible without undue delay or hardship to either parent, the mediation or specialized alternative dispute resolution requirement may be waived by the court. In such a case where waiver of the mediation or specialized alternative dispute resolution is sought, the court shall hold an evidentiary hearing and the burden of proof for the party or parties seeking waiver is by clear and convincing evidence. Service of process and other procedure shall comply with the requirements for a dissolution action.

(7) In any proceeding under this section relating to custody of a child of school age, certified copies of school records relating to attendance and academic progress of such child are admissible in evidence.

(8) For purposes of this section, disability has the same meaning as in 42 U.S.C. 12102, as such section existed on January 1, 2018.

Source: Laws 1983, LB 138, § 1; Laws 1985, LB 612, § 1; Laws 1985, Second Spec. Sess., LB 7, § 16; Laws 1991, LB 457, § 3; Laws 1991, LB 715, § 1; Laws 1993, LB 629, § 21; Laws 1994, LB 490, § 1; Laws 1996, LB 1296, § 15; Laws 1997, LB 752, § 96; Laws 2004, LB 1207, § 25; Laws 2006, LB 1113, § 35; Laws 2007, LB554, § 32; Laws 2008, LB1014, § 32; Laws 2009, LB288, § 5; Laws 2010, LB901, § 1; Laws 2013, LB561, § 5; Laws 2018, LB193, § 76; Laws 2018, LB845, § 17.

Cross References

Nebraska Juvenile Code, see section 43-2,129.
Parenting Act, see section 43-2920.
Violation of custody, penalty, see section 28-316.

42-364.18 Individuals with disabilities; legislative findings.

The Legislature finds that individuals with disabilities, as defined in section 42-364, continue to face unfair, preconceived, and unnecessary societal biases as well as antiquated attitudes regarding their ability to successfully parent their children.

Source: Laws 2018, LB845, § 16.

42-369 Support or alimony; presumption; items includable; payments; disbursement; enforcement; health care coverage.

(1) All orders, decrees, or judgments for temporary or permanent support payments, including child, spousal, or medical support, and all orders, decrees, or judgments for alimony or modification of support payments or alimony shall direct the payment of such sums to be made commencing on the first day of each month for the use of the persons for whom the support payments or

alimony have been awarded. Such payments shall be made to the clerk of the district court (a) when the order, decree, or judgment is for spousal support, alimony, or maintenance support and the order, decree, or judgment does not also provide for child support, and (b) when the payment constitutes child care or day care expenses, unless payments under subdivision (1)(a) or (1)(b) of this section are ordered to be made directly to the obligee. All other support order payments shall be made to the State Disbursement Unit. In all cases in which income withholding has been implemented pursuant to the Income Withholding for Child Support Act or sections 42-364.01 to 42-364.14, support order payments shall be made to the State Disbursement Unit. The court may order such payment to be in cash or guaranteed funds.

(2)(a) If the party against whom an order, decree, or judgment for child support is entered or the custodial party has health care coverage available to him or her through an employer, organization, or other health care coverage entity which may extend to cover any children affected by the order, decree, or judgment and the health care coverage is accessible to the children and is available to the responsible party at reasonable cost, the court shall require health care coverage to be provided. Health care coverage is accessible if the covered children can obtain services from a plan provider with reasonable effort by the custodial party. When the administrative agency, court, or other tribunal determines that the only health care coverage option available through the noncustodial party is a plan that limits service coverage to providers within a defined geographic area, the administrative agency, court, or other tribunal shall determine whether the child lives within the plan's service area. If the child does not live within the plan's service area, the administrative agency, court, or other tribunal shall determine whether the plan has a reciprocal agreement that permits the child to receive coverage at no greater cost than if the child resided in the plan's service area. The administrative agency, court, or other tribunal shall also determine if primary care is available within thirty minutes or thirty miles of the child's residence. For the purpose of determining the accessibility of health care coverage, the administrative agency, court, or other tribunal may determine and include in an order that longer travel times are permissible if residents, in part or all of the service area, customarily travel distances farther than thirty minutes or thirty miles. If primary care services are not available within these constraints, the health care coverage is presumed inaccessible. If health care coverage is not available or is inaccessible and one or more of the parties are receiving Title IV-D services, then cash medical support shall be ordered. Cash medical support or the cost of health care coverage is considered reasonable in cost if the cost to the party responsible for providing medical support does not exceed the amount set forth in child support guidelines established by the Supreme Court by court rule pursuant to section 42-364.16.

(b) For purposes of this section:

(i) Health care coverage has the same meaning as in section 44-3,144; and

(ii) Cash medical support means an amount ordered to be paid toward the cost of health care coverage provided by a public entity or by another parent through employment or otherwise or for other medical costs not covered by insurance or other health care coverage.

(3) A support order, decree, or judgment may include the providing of necessary shelter, food, clothing, care, medical support as defined in section

43-512, medical attention, expenses of confinement, education expenses, funeral expenses, and any other expense the court may deem reasonable and necessary.

(4) Orders, decrees, and judgments for temporary or permanent support or alimony shall be filed with the clerk of the district court and have the force and effect of judgments when entered. The clerk and the State Disbursement Unit shall disburse all payments received as directed by the court and as provided in sections 42-358.02 and 43-512.07. Records shall be kept of all funds received and disbursed by the clerk and the unit and shall be open to inspection by the parties and their attorneys.

(5) Unless otherwise specified by the court, an equal and proportionate share of any child support awarded shall be presumed to be payable on behalf of each child subject to the order, decree, or judgment for purposes of an assignment under section 43-512.07.

Source: Laws 1972, LB 820, § 23; Laws 1983, LB 371, § 11; Laws 1991, LB 457, § 4; Laws 1993, LB 435, § 1; Laws 2000, LB 972, § 15; Laws 2007, LB554, § 35; Laws 2009, LB288, § 6; Laws 2018, LB702, § 1; Laws 2022, LB922, § 8.

Cross References

Income Withholding for Child Support Act, see section 43-1701.

42-371.01 Duty to pay child support; termination, when; procedure; State Court Administrator; duties.

(1) An obligor's duty to pay child support for a child terminates when (a) the child reaches nineteen years of age, (b) the child marries, (c) the child dies, or (d) the child is emancipated by a court of competent jurisdiction, unless the court order for child support specifically extends child support after such circumstances.

(2) The termination of child support does not relieve the obligor from the duty to pay any unpaid child support obligations owed or in arrears.

(3) The obligor may provide written application for termination of a child support order when the child being supported reaches nineteen years of age, marries, dies, or is otherwise emancipated. The application shall be filed with the clerk of the district court where child support was ordered. A certified copy of the birth certificate, marriage license, death certificate, or court order of emancipation or an abstract of marriage or abstract of death as defined in section 71-601.01 shall accompany the application for termination of the child support. The clerk of the district court shall send notice of the filing of the child support termination application to the last-known address of the obligee. The notice shall inform the obligee that if he or she does not file a written objection within thirty days after the date the notice was mailed, child support may be terminated without further notice. The court shall terminate child support if no written objection has been filed within thirty days after the date the clerk's notice to the obligee was mailed, the forms and procedures have been complied with, and the court believes that a hearing on the matter is not required.

(4) The State Court Administrator shall develop uniform procedures and forms to be used to terminate child support.

Source: Laws 1997, LB 58, § 1; Laws 2000, LB 972, § 16; Laws 2006, LB 1115, § 30; Laws 2024, LB1215, § 19.
Operative date July 19, 2024.

42-372.02 Decree; assignment of real estate; affidavit and certificate; filing.

(1) When a decree of dissolution of marriage assigns real estate to either party, the party to whom the real estate is assigned may (a) prepare and file with the clerk of the district court an affidavit identifying the real estate by legal description and affirmatively identifying the person entitled to the real estate and (b) prepare for signature and seal by the clerk one or more certificates in a form substantially similar to the following:

CERTIFICATE OF DISSOLUTION OF MARRIAGE

_____, Clerk of the District Court of _____ County, Nebraska, certifies that in Case No. _____, in such Court, entitled _____ vs. _____, the Court entered its decree of dissolution of marriage in which the interest of _____ in the following described real estate in _____ County, Nebraska:

_____

_____

_____

_____

has been assigned to _____.

Dated: _____

(SEAL) Clerk of the District Court

_____ County, Nebraska.

(2) A certificate may include more than one parcel of real estate, but there shall be separate certificates for each party to whom real estate is assigned and separate certificates for each county in which real estate is located. The certificate or certificates shall be delivered by the clerk to the person applying for the same, and such person shall be responsible for recording the certificate or certificates with the register of deeds in the appropriate county or counties as provided in section 76-248.01.

Source: Laws 2005, LB 361, § 23; Laws 2018, LB193, § 77.

42-377 Legitimacy of children.

Children born to the parties, or to either spouse, in a marriage relationship which may be dissolved or annulled pursuant to sections 42-347 to 42-381 shall be legitimate unless otherwise decreed by the court, and in every case the legitimacy of all children conceived before the commencement of the suit shall be presumed until the contrary is shown.

Source: Laws 1972, LB 820, § 31; Laws 1997, LB 229, § 21; Laws 2019, LB427, § 1.

ARTICLE 9
DOMESTIC VIOLENCE

(a) PROTECTION FROM DOMESTIC ABUSE ACT

(a) PROTECTION FROM DOMESTIC ABUSE ACT

42-903 Terms, defined.

For purposes of the Protection from Domestic Abuse Act, unless the context otherwise requires:

(1) Abuse means the occurrence of one or more of the following acts between family or household members:

(a) Attempting to cause or intentionally and knowingly causing bodily injury with or without a dangerous instrument;

(b) Placing, by means of credible threat, another person in fear of bodily injury. For purposes of this subdivision, credible threat means a verbal or written threat, including a threat performed through the use of an electronic communication device, or a threat implied by a pattern of conduct or a combination of verbal, written, or electronically communicated statements and conduct that is made by a person with the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her family. It is not necessary to prove that the person making the threat had the intent to actually carry out the threat. The present incarceration of the person making the threat shall not prevent the threat from being deemed a credible threat under this section; or

(c) Engaging in sexual contact or sexual penetration without consent as defined in section 28-318;

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

(3) Family or 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 relationship with each other or who have been involved in a dating relationship with each other. For purposes of this subdivision, 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;

(4) Household pet means any animal maintained for companionship or pleasure but does not include any animal kept primarily for commercial purposes or for consumption or any livestock animal as defined in section 54-902; and

(5) 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.

Source: Laws 1978, LB 623, § 3; Laws 1986, LB 448, § 1; Laws 1989, LB 330, § 5; Laws 1992, LB 1098, § 6; Laws 1993, LB 299, § 4; Laws 1996, LB 1044, § 103; Laws 1998, LB 218, § 18; Laws 2004, LB 613, § 12; Laws 2012, LB310, § 2; Laws 2017, LB289, § 13; Laws 2023, LB157, § 11.

42-924 Protection order; when authorized; term; renewal; violation; penalty; construction of sections.

(1)(a) Any victim of domestic abuse may file a petition and affidavit for a protection order as provided in this section. Upon the filing of such a petition and affidavit in support thereof, the court may issue a protection order without bond granting the following relief:

(i) Enjoining the respondent from imposing any restraint upon the petitioner or upon the liberty of the petitioner;

(ii) Enjoining the respondent from threatening, assaulting, molesting, attacking, or otherwise disturbing the peace of the petitioner;

(iii) Enjoining the respondent from telephoning, contacting, or otherwise communicating with the petitioner;

(iv) Removing and excluding the respondent from the residence of the petitioner, regardless of the ownership of the residence;

(v) Ordering the respondent to stay away from any place specified by the court;

(vi) Awarding the petitioner temporary custody of any minor children not to exceed ninety days;

(vii) Enjoining the respondent from possessing or purchasing a firearm as defined in section 28-1201;

(viii) Directing that the petitioner have sole possession of any household pet owned, possessed, leased, kept, or held by the petitioner, the respondent, or any family or household member residing in the household of the petitioner or respondent;

(ix) Enjoining the respondent from coming into contact with, harming, or killing any household pet owned, possessed, leased, kept, or held by the petitioner, the respondent, or any family or household member of the petitioner or respondent; or

(x) Ordering such other relief deemed necessary to provide for the safety and welfare of the petitioner and any designated family or household member.

(b) If sole possession of a household pet is ordered by a court pursuant to subdivision (1)(a)(viii) of this section, such possession shall be for the duration of the protection order or until further order of the court. The grant of sole possession of a household pet under such subdivision is not intended to permanently determine ownership of such household pet. The petitioner shall not permanently transfer, sell, or dispose of a household pet placed in the petitioner's possession without prior court approval, except that court approval shall not be required in cases where humane euthanasia of a seriously ill or injured household pet is recommended by a licensed veterinarian.

(c) The petition for a protection order shall state the events and dates or approximate dates of acts constituting the alleged domestic abuse, including the most recent and most severe incident or incidents.

(d) The protection order shall specify to whom relief under this section was granted.

(2) Petitions for protection orders 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. A petition for a protection order may not be withdrawn except upon order of the court.

(3)(a) A protection order shall specify that it is effective for a period of one year and, if the order grants temporary custody, the number of days of custody granted to the petitioner unless otherwise modified by the court.

(b)(i) Any victim of domestic abuse may file a petition and affidavit to renew a protection order. Such petition and affidavit for renewal shall be filed any time within forty-five days before the expiration of the previous protection order, including the date the order expires.

(ii) A 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:

(A) The petitioner seeks no modification of the order; and

(B)(I) 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

(II) The respondent indicates that he or she does not contest the renewal.

(iii) Such renewed order shall specify that it is effective for a period of one year to commence on the first calendar day following the 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 and, if the court grants temporary custody, the number of days of custody granted to the petitioner unless otherwise modified by the court.

(4) Any person, except the petitioner, who knowingly violates a protection order issued pursuant to this section or section 42-931 after service or notice as described in subsection (2) of section 42-926 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 protection order shall be guilty of a Class IV felony.

(5) If there is any conflict between sections 42-924 to 42-926 and any other provision of law, sections 42-924 to 42-926 shall govern.

Source: Laws 1978, LB 623, § 24; Laws 1984, LB 276, § 3; Laws 1989, LB 330, § 7; Laws 1992, LB 1098, § 7; Laws 1993, LB 299, § 5; Laws 1997, LB 229, § 34; Laws 1998, LB 218, § 20; Laws 2002, LB 82, § 17; Laws 2012, LB310, § 3; Laws 2017, LB289, § 14; Laws 2019, LB532, § 3; Laws 2023, LB157, § 12.

42-924.02 Protection order; forms provided; State Court Administrator; duties.

The clerk of the district court shall make available standard petition and affidavit forms for all types of protection orders provided by law with instruc-

tions 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 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 petition and affidavit forms provided for in this section as well as the standard temporary ex parte and final 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 protection order forms shall be the only such forms used in this state.

Source: Laws 1989, LB 330, § 13; Laws 1997, LB 393, § 2; Laws 1998, LB 218, § 22; Laws 2019, LB532, § 4.

42-925 Ex parte protection order; duration; notice requirements; hearing; notice; referral to referee; notice regarding firearm or ammunition.

(1) An order issued under section 42-924 may be issued ex parte to the respondent if it reasonably appears from the specific facts included in the affidavit that the petitioner will be in immediate danger of abuse before the matter can be heard on notice. If an order is issued ex parte, such order is a temporary order and the court shall forthwith cause notice of the petition and order to be given to the respondent. The court shall also cause a form to request a show-cause hearing to be served upon the respondent. If the respondent wishes to appear and show cause why the order should not remain in effect, 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 request of the petitioner, or upon the court's own motion, 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. If the respondent appears at the hearing and shows cause why such order should not remain in effect, the court shall rescind the temporary order.

(2) A temporary ex parte 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 temporary ex parte order and:

(a) 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;

(b) 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 fails to appear at such hearing; or

(c) 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.

(3) If an order under section 42-924 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 hearing to be given to the petitioner and the respondent. Any notice provided to the respondent shall include notification that a court may treat a petition for a domestic abuse protection order as a petition for a harassment protection order or a sexual assault 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 the respondent does not appear at the hearing and show cause why such order should not be issued, the court shall issue a final protection order.

(4) The court may by rule or order refer or assign all matters regarding orders issued under section 42-924 to a referee for findings and recommendations.

(5) An order issued under section 42-924 shall remain in effect for the period provided in subsection (3) of section 42-924, unless dismissed or modified by the court prior to such date. If the order grants temporary custody, such custody shall not exceed the number of days specified by the court unless the respondent shows cause why the order should not remain in effect.

(6) The court shall also cause the notice created under section 29-2291 to be served upon the respondent notifying the respondent that it may be unlawful under federal law for a person who is subject to a protection order to possess or receive any firearm or ammunition.

(7) A court may treat a petition for a domestic abuse protection order as a petition for a harassment protection order or a sexual assault 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.

Source: Laws 1978, LB 623, § 25; Laws 1989, LB 330, § 8; Laws 1998, LB 218, § 23; Laws 2008, LB1014, § 36; Laws 2012, LB310, § 4; Laws 2017, LB289, § 15; Laws 2019, LB532, § 5.

42-926 Protection order; copies; distribution; sheriff; duties; dismissal or modification; clerk of court; duties; notice requirements.

(1) Upon the issuance of a temporary ex parte or final protection order under section 42-925, 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 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 protection order upon the respondent and file its return thereon with the clerk of the court which issued the protection order within fourteen days of the issuance of the protection

order. If any 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. If the respondent has notice as described in subsection (2) of this section, further service under this subsection is unnecessary.

(2) If the respondent was present at a hearing convened pursuant to section 42-925 and the protection order was not dismissed, the 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 notice described in subsection (1) of this section is not required for purposes of prosecution under subsection (4) of section 42-924.

(3) 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 1978, LB 623, § 26; Laws 1989, LB 330, § 9; Laws 1998, LB 218, § 24; Laws 2012, LB310, § 5; Laws 2019, LB532, § 6.

ARTICLE 12

ADDRESS CONFIDENTIALITY ACT

Section
42-1202. Findings.
42-1203. Terms, defined.
42-1204. Substitute address; application to Secretary of State; approval; certification; renewal; prohibited acts; violation; penalty.
42-1207. Early voting; authorized.
42-1209. Program participants; application assistance.

42-1202 Findings.

The Legislature finds that persons attempting to escape from actual or threatened abuse, sexual assault, kidnapping, or stalking frequently establish new addresses in order to prevent their assailants or probable assailants from finding them. The purposes of the Address Confidentiality Act are to enable state and local agencies to respond to requests for public records without disclosing the location of a victim of abuse, sexual assault, kidnapping, or stalking, to enable interagency cooperation with the office of the Secretary of State in providing address confidentiality for victims of abuse, sexual assault, kidnapping, or stalking, and to enable state and local agencies to accept a program participant's use of an address designated by the Secretary of State as a substitute mailing address.

Source: Laws 2003, LB 228, § 2; Laws 2022, LB691, § 1.

42-1203 Terms, defined.

For purposes of the Address Confidentiality Act:

(1) Abuse means causing or attempting to cause physical harm, placing another person in fear of physical harm, or causing another person to engage involuntarily in sexual activity by force, threat of force, or duress, when

committed by (a) a person against his or her spouse, (b) a person against his or her former spouse, (c) a person residing with the victim if such person and the victim are or were in a dating relationship, (d) a person who formerly resided with the victim if such person and the victim are or were in a dating relationship, (e) a person against a parent of his or her children, whether or not such person and the victim have been married or resided together at any time, (f) a person against a person with whom he or she is in a dating relationship, (g) a person against a person with whom he or she formerly was in a dating relationship, or (h) a person related to the victim by consanguinity or affinity;

(2) Address means a residential street address, school address, or work address of an individual as specified on the individual's application to be a program participant;

(3) Dating relationship means an intimate or sexual relationship;

(4) Kidnapping has the same meaning as in section 28-313;

(5) Program participant means a person certified as a program participant under section 42-1204;

(6) Sexual assault has the same meaning as in section 28-319, 28-319.01, 28-320, 28-320.01, or 28-386;

(7) Stalking has the same meaning as in sections 28-311.02 to 28-311.05; and

(8) Trafficking victim has the same meaning as in section 28-830.

Source: Laws 2003, LB 228, § 3; Laws 2006, LB 1199, § 31; Laws 2017, LB280, § 1; Laws 2022, LB691, § 2.

42-1204 Substitute address; application to Secretary of State; approval; certification; renewal; prohibited acts; violation; penalty.

(1) An adult, a parent or guardian acting on behalf of a minor, or a guardian acting on behalf of an incapacitated person as defined in section 30-2601 may apply to the Secretary of State to have an address designated by the Secretary of State serve as the substitute address of such adult, minor, or incapacitated person. The Secretary of State shall approve an application if it is filed in the manner and on the form prescribed by the Secretary of State and if it contains:

(a) A sworn statement by the applicant that the applicant has good reason to believe (i) that the applicant, or the minor or incapacitated person on whose behalf the application is made, is a victim of abuse, sexual assault, kidnapping, stalking, or trafficking and (ii) that the applicant fears for his or her safety, his or her children's safety, or the safety of the minor or incapacitated person on whose behalf the application is made;

(b) A designation of the Secretary of State as agent for purposes of service of process and receipt of mail;

(c) The mailing address and the telephone number or numbers where the applicant can be contacted by the Secretary of State;

(d) The new address or addresses that the applicant requests not be disclosed for the reason that disclosure will increase the risk of abuse, sexual assault, kidnapping, stalking, or trafficking; and

(e) The signature of the applicant and of any individual or representative of any office designated in writing under section 42-1209 who assisted in the preparation of the application and the date on which the applicant signed the application.

(2) Applications shall be filed in the office of the Secretary of State.

(3) Upon filing a properly completed application, the Secretary of State shall certify the applicant as a program participant. Such certification shall be valid for four years following the date of filing unless the certification is withdrawn or invalidated before that date. The Secretary of State may by rule and regulation establish a renewal procedure.

(4) A person who falsely attests in an application that disclosure of the applicant's address would endanger the applicant, the applicant's children, or the minor or incapacitated person on whose behalf the application is made, or who knowingly provides false or incorrect information upon making an application, is guilty of a Class II misdemeanor.

Source: Laws 2003, LB 228, § 4; Laws 2017, LB280, § 2; Laws 2022, LB691, § 3.

42-1207 Early voting; authorized.

(1) A program participant who is otherwise qualified to vote may apply to vote early under sections 32-938 to 32-951. The county clerk or election commissioner shall transmit the ballot for early voting to the program participant at the address designated by the program participant in his or her application as an early voter. Neither the name nor the address of a program participant or a registered voter with a court order issued as described under section 32-331 shall be included in any list of registered voters available to the public.

(2) The county clerk or election commissioner shall not make a program participant's address contained in voter registration records available for public inspection or copying except under the following circumstances:

(a) If requested by a law enforcement agency, to the law enforcement agency; or

(b) If directed by a court order, to a person identified in the order.

Source: Laws 2003, LB 228, § 7; Laws 2005, LB 98, § 33; Laws 2022, LB843, § 50.

42-1209 Program participants; application assistance.

The Secretary of State shall designate state and local agencies and nonprofit entities that provide counseling and shelter services to victims of abuse, sexual assault, kidnapping, stalking, or trafficking to assist persons applying to be program participants. Any assistance or counseling rendered by the office of the Secretary of State or its designees to such applicants shall not be deemed legal advice or the practice of law.

Source: Laws 2003, LB 228, § 9; Laws 2017, LB280, § 3; Laws 2022, LB691, § 4.

ARTICLE 13

FAMILY MEMBER VISITATION

Section
42-1301. Transferred to section 30-701.
42-1302. Transferred to section 30-702.
42-1303. Transferred to section 30-704.
42-1304. Transferred to section 30-705.

42-1301 Transferred to section 30-701.

42-1302 Transferred to section 30-702.

42-1303 Transferred to section 30-704.

42-1304 Transferred to section 30-705.

CHAPTER 43
INFANTS AND JUVENILES

Article.
1. Adoption Procedures.
   (a) General Provisions. 43-101 to 43-115.
   (c) Release of Information. 43-146.01.
   (h) Written Communication and Contact Agreements. 43-166.
2. Juvenile Code.
   (b) General Provisions. 43-245 to 43-247.04.
   (c) Law Enforcement Procedures. 43-248 to 43-251.02.
   (d) Preadjudication Procedures. 43-253 to 43-272.01.
   (e) Prosecution. 43-274 to 43-276.
   (f) Adjudication Procedures. 43-279 to 43-281.
   (g) Disposition. 43-283.01 to 43-296.
   (i) Miscellaneous Provisions. 43-2,108 to 43-2,108.05.
   (j) Separate Juvenile Courts. 43-2,112 to 43-2,119.
   (k) Citation and Construction of Code. 43-2,129.
4. Office of Juvenile Services. 43-401 to 43-431.
5. Assistance for Certain Children. 43-512 to 43-536.
9. Children Committed to the Department. 43-906, 43-907.
12. Uniform Child Custody Jurisdiction and Enforcement Act. 43-1238.
13. Foster Care.
   (a) Foster Care Review Act. 43-1302 to 43-1318.
   (b) Transition of Employees. 43-1322. Repealed.
14. Parental Support and Paternity. 43-1411, 43-1411.01.
16. Child Support Referees. 43-1609, 43-1611.
19. Child Abuse Prevention. 43-1903, 43-1906.
21. Age of Majority. 43-2101.
22. Family Finding Services. 43-2204.
24. Juvenile Services. 43-2401 to 43-2413.
26. Child Care.
   (a) Quality Child Care Act. 43-2606.
   (b) Child Care Capacity Building and Workforce Act. 43-2626 to 43-2639.
27. Nebraska Uniform Transfers to Minors Act. 43-2707.
29. Parenting Act. 43-2922 to 43-2939.
31. Court Proceedings. 43-3102.
32. McGruff House. Repealed.
33. Support Enforcement.
   (a) License Suspension Act. 43-3314, 43-3318.
   (e) State Disbursement Unit. 43-3342.03, 43-3342.05.
34. Early Childhood Interagency Coordinating Council. 43-3401.
40. Children's Behavioral Health. 43-4001, 43-4002.
42. Nebraska Children's Commission. 43-4201 to 43-4219.
43. Office of Inspector General of Nebraska Child Welfare Act. 43-4301 to 43-4332.
44. Child Welfare Services. 43-4401 to 43-4416.
45. Young Adult Bridge to Independence Act. 43-4502 to 43-4514.
47. Nebraska Strengthening Families Act. 43-4701 to 43-4716.
48. Judicial Emancipation of a Minor. 43-4801 to 43-4812.
49. Newborn Safe Haven Act. 43-4901 to 43-4903.

ARTICLE 1
ADOPTION PROCEDURES

(a) GENERAL PROVISIONS

Section

(c) RELEASE OF INFORMATION

(h) WRITTEN COMMUNICATION AND CONTACT AGREEMENTS

(a) GENERAL PROVISIONS

43-101 Children eligible for adoption.

(1) Except as otherwise provided in the Nebraska Indian Child Welfare Act, any minor child may be adopted by any adult person or persons and any adult child may be adopted by the spouse of such child's parent in the cases and subject to sections 43-101 to 43-115, except that no person having a spouse may adopt a minor child unless the spouse joins in the petition therefor. If the spouse so joins in the petition therefor, the adoption shall be by them jointly, except that an adult spouse may adopt a child of the other spouse whether born in or out of wedlock.

(2) Any adult child may be adopted by any person or persons subject to sections 43-101 to 43-115, except that no person having a spouse may adopt an adult child unless the spouse joins in the petition therefor. If the spouse so joins the petition therefor, the adoption shall be by them jointly. The adoption of an adult child by another adult or adults who are not the stepparent of the adult child may be permitted if the adult child has had a parent-child relationship with the prospective parent or parents for a period of at least six months next preceding the adult child's age of majority and (a) the adult child has no living parents, (b) the adult child's parent or parents had been deprived of parental rights to such child by the order of any court of competent jurisdiction, (c) the parent or parents, if living, have relinquished the adult child for adoption by a written instrument, (d) the parent or parents had abandoned the child for at least six months next preceding the adult child's age of majority, or (e) the parent or parents are incapable of consenting. The substitute consent provisions of section 43-105 do not apply to adoptions under this subsection.

Source: Laws 1943, c. 104, § 1, p. 349; R.S.1943, § 43-101; Laws 1984, LB 510, § 1; Laws 1985, LB 255, § 17; Laws 1999, LB 594, § 8; Laws 2022, LB741, § 3.

Cross References

Nebraska Indian Child Welfare Act, see section 43-1501.

43-101.01 Terms, defined.

For purposes of sections 43-101 to 43-115:

(1) Acknowledged father means an individual who has:

(a) Executed a valid acknowledgment of paternity; or

(b) Acknowledged paternity through establishment of a familial relationship with the child for a period of at least six months;

(2) Adjudicated father means an individual who has been determined by a court of competent jurisdiction, in this state or in another state or territory of the United States, to be the biological or legal father of a minor child; and

(3) Juvenile court means the separate juvenile court where it has been established pursuant to sections 43-2,111 to 43-2,127 and the county court sitting as a juvenile court in all other counties.

Source: Laws 2022, LB741, § 4.

43-102 Petition requirements; decree; jurisdiction; filings.

(1) Except as otherwise provided in the Nebraska Indian Child Welfare Act, any person or persons desiring to adopt a minor child or an adult child shall file a petition for adoption signed and sworn to by the person or persons

desiring to adopt. The following shall be filed prior to the hearing required under section 43-103:

(a) The consent or consents required by sections 43-104 and 43-105 or section 43-104.07;

(b) The documents required by section 43-104.07 or the documents required by sections 43-104.08 to 43-104.24;

(c) A completed preplacement adoptive home study if required by section 43-107;

(d) The completed and signed affidavit described in section 43-104.09 if required by such section;

(e) The completed and signed affidavit described in section 43-104.16 if required by such section; and

(f) When a consent is not required under subdivision (4)(c) of section 43-104, a certified copy of the termination order.

(2) The county court of the county in which the person or persons desiring to adopt a child reside has jurisdiction of adoption proceedings, except that if a juvenile court already has jurisdiction over the child to be adopted under the Nebraska Juvenile Code, such juvenile court has concurrent jurisdiction with the county court in such adoption proceeding. If a child to be adopted is a ward of any court or a ward of the state at the time of placement and at the time of filing an adoption petition, the person or persons desiring to adopt shall not be required to be residents of Nebraska. The petition and all other court filings for an adoption proceeding shall be filed with the clerk of the county court. The party shall state in the petition whether such party requests that the proceeding be heard by the county court or, in cases in which a juvenile court already has jurisdiction over the child to be adopted under the Nebraska Juvenile Code, such juvenile court. Such proceeding is considered a county court proceeding even if heard by a juvenile court judge and an order of the juvenile court in such adoption proceeding has the force and effect of a county court order. The testimony in an adoption proceeding heard before a juvenile court judge shall be preserved as in any other juvenile court proceeding.

Source: Laws 1943, c. 104, § 2, p. 349; R.S.1943, § 43-102; Laws 1975, LB 224, § 1; Laws 1983, LB 146, § 1; Laws 1984, LB 510, § 2; Laws 1985, LB 255, § 18; Laws 1993, LB 16, § 1; Laws 1995, LB 712, § 19; Laws 1996, LB 1001, § 1; Laws 1998, LB 1041, § 6; Laws 1999, LB 375, § 2; Laws 1999, LB 594, § 9; Laws 2007, LB247, § 4; Laws 2007, LB296, § 62; Laws 2018, LB193, § 78; Laws 2022, LB741, § 5.

Cross References

Nebraska Indian Child Welfare Act, see section 43-1501.
Nebraska Juvenile Code, see section 43-2,129.

43-104 Adoption; consent required; exceptions; petition requirements; private adoption; requirements.

(1) Except as otherwise provided in this section and in the Nebraska Indian Child Welfare Act, no adoption shall be decreed unless written consents thereto are filed in the county court of the county in which the person or persons desiring to adopt reside or in the county court in which the juvenile court

having jurisdiction over the custody of the child is located and the written consents are executed by:

(a) The minor child, if over fourteen years of age; and

(b) Both parents of a child born in lawful wedlock if living, the surviving parent of a child born in lawful wedlock, the mother of a child born out of wedlock, or both the mother and father of a child born out of wedlock as determined pursuant to sections 43-104.08 to 43-104.24.

(2) A written consent or relinquishment for adoption under this section shall not be valid unless signed at least forty-eight hours after the birth of the child.

(3) A petition for adoption shall attest that, at the time of filing:

(a) There were no pending motions in any other court having jurisdiction over the minor child; and

(b) If a juvenile court has jurisdiction over the child, that adoption is the permanency goal in proceedings in juvenile court.

(4) Consent shall not be required of any parent:

(a) Who relinquished the child for adoption by a written instrument;

(b) Who abandoned the child for at least six months next preceding the filing of the adoption petition;

(c) Whose parental rights to such child have been terminated by the order of any court of competent jurisdiction; or

(d) Who is incapable of consenting.

(5) Consent shall not be required of a putative father who has failed to timely file:

(a) A Notice of Objection to Adoption and Intent to Obtain Custody pursuant to section 43-104.02 and, with respect to the absence of such filing, a certificate has been filed pursuant to section 43-104.04; or

(b) A petition pursuant to section 43-104.05 for the adjudication of such father's objection to the adoption and a determination of whether his consent to the adoption is required and the mother of the child has timely executed a valid relinquishment and consent to the adoption pursuant to such section.

(6) Consent shall not be required of an acknowledged or adjudicated father who has failed to timely file a petition pursuant to section 43-104.05 for the adjudication of such notice and a determination of whether his consent to the adoption is required and the mother of the child has timely executed a valid relinquishment and consent to the adoption pursuant to such section.

(7) Consent shall not be required of an acknowledged father, an adjudicated father, or a putative father who is not required to consent to the adoption pursuant to section 43-104.05 or 43-104.22.

(8) The validity of a relinquishment and consent for adoption is not affected by the fact that a relinquishing person is a minor.

(9)(a) In private adoptions not involving relinquishment of a child to the state or to a licensed child placement agency, a parent or parents who relinquish a child for adoption shall be provided legal counsel of their choice independent from that of the adoptive parent or parents. Such counsel shall be provided at the expense of the adoptive parent or parents prior to the execution of a written relinquishment and consent to adoption or execution of a communication and contact agreement under section 43-166, unless specifically waived in writing.

(b) In private adoptions and adoptions involving relinquishment of a child to a licensed child placement agency other than the state, a parent or parents contemplating relinquishment of a child for adoption shall be offered, at the expense of the adoptive parent or parents or the agency, at least three hours of professional counseling prior to executing a written relinquishment of parental rights or written consent to adoption. Such relinquishment or consent shall state whether the relinquishing parent or parents received or declined counseling.

Source: Laws 1943, c. 104, § 4(1), p. 350; R.S.1943, § 43-104; Laws 1951, c. 127, § 1, p. 546; Laws 1967, c. 248, § 1, p. 652; Laws 1971, LB 329, § 1; Laws 1973, LB 436, § 1; Laws 1975, LB 224, § 2; Laws 1983, LB 146, § 3; Laws 1984, LB 510, § 3; Laws 1985, LB 255, § 20; Laws 1988, LB 790, § 22; Laws 1995, LB 712, § 20; Laws 1996, LB 1296, § 19; Laws 1998, LB 1041, § 7; Laws 1999, LB 594, § 10; Laws 2002, LB 952, § 2; Laws 2003, LB 148, § 100; Laws 2007, LB247, § 5; Laws 2022, LB741, § 6.

Cross References

Nebraska Indian Child Welfare Act, see section 43-1501.

43-104.01 Child born out of wedlock; putative father registry; Department of Health and Human Services; duties.

(1) The Department of Health and Human Services shall establish a putative father registry. The department shall maintain such registry and shall record the names and addresses of (a) any person adjudicated by a court of this state or by a court of another state or territory of the United States to be the biological father of a child born out of wedlock if a certified copy of the court order is filed with the registry by such person or any other person, (b) any putative father who has filed with the registry, prior to the receipt of notice under sections 43-104.12 to 43-104.16, a Request for Notification of Intended Adoption with respect to such child, and (c) any putative father who has filed with the registry a Notice of Objection to Adoption and Intent to Obtain Custody with respect to such child.

(2) A Request for Notification of Intended Adoption or a Notice of Objection to Adoption and Intent to Obtain Custody filed with the registry shall include (a) the putative father's name, address, and social security number, (b) the name and last-known address of the mother, (c) the month and year of the birth or the expected birth of the child, (d) the case name, court name, and location of any Nebraska court having jurisdiction over the custody of the child, and (e) a statement by the putative father that he acknowledges liability for contribution to the support and education of the child after birth and for contribution to the pregnancy-related medical expenses of the mother of the child. The person filing the notice shall notify the registry of any change of address pursuant to procedures prescribed in rules and regulations of the department.

(3) A request or notice filed under this section or section 43-104.02 shall be admissible in any action for paternity and shall estop the putative father from denying paternity of such child thereafter.

(4) Any putative father who files a Request for Notification of Intended Adoption or a Notice of Objection to Adoption and Intent to Obtain Custody with the putative father registry may revoke such filing. Upon receipt of such revocation by the registry, the effect shall be as if no filing had ever been made.

(5) The department may develop information about the registry and may distribute such information, through its existing publications, to the news media and the public. The department may provide information about the registry to the Department of Correctional Services, which may distribute such information through its existing publications.

Source: Laws 1995, LB 712, § 21; Laws 1996, LB 1044, § 105; Laws 1999, LB 594, § 11; Laws 2007, LB247, § 6; Laws 2007, LB296, § 63; Laws 2022, LB741, § 7.

43-104.02 Child born out of wedlock; Notice of Objection to Adoption and Intent to Obtain Custody; filing requirements.

(1) A Notice of Objection to Adoption and Intent to Obtain Custody shall be filed with the putative father registry under section 43-104.01 on forms provided by the Department of Health and Human Services:

(a) At any time during the pregnancy and no later than ten business days after the birth of the child; or

(b) If the notice required by section 43-104.13 is provided after the birth of the child:

(i) At any time during the pregnancy and no later than ten business days after receipt of the notice provided under section 43-104.12; or

(ii) No later than ten business days after the last date of any published notice provided under section 43-104.14, whichever notice is earlier.

(2) Such notice shall be considered to have been filed if it is received by the Department of Health and Human Services, Office of Vital Records, putative father registry or postmarked prior to the end of the tenth business day as provided in this section.

Source: Laws 1975, LB 224, § 3; Laws 1995, LB 712, § 22; Laws 1996, LB 1044, § 106; Laws 1997, LB 752, § 97; Laws 2007, LB247, § 7; Laws 2007, LB296, § 64; Laws 2014, LB908, § 2; Laws 2022, LB741, § 8.

43-104.03 Child born out of wedlock; filing with putative father registry; department; notice; to whom given.

Within three days after the filing of a Request for Notification of Intended Adoption or a Notice of Objection to Adoption and Intent to Obtain Custody with the putative father registry pursuant to sections 43-104.01 and 43-104.02, the Department of Health and Human Services shall cause a certified copy of such request or notice to be mailed by certified mail to the mother or prospective mother of such child at the last-known address shown on the request or notice or an agent specifically designated in writing by the mother or prospective mother to receive such request or notice.

Source: Laws 1975, LB 224, § 4; Laws 1994, LB 1224, § 49; Laws 1995, LB 712, § 23; Laws 1996, LB 1044, § 107; Laws 1999, LB 594, § 12; Laws 2007, LB247, § 8; Laws 2007, LB296, § 65; Laws 2022, LB741, § 9.

43-104.04 Child born out of wedlock; failure to file notice; effect.

If a Notice of Objection to Adoption and Intent to Obtain Custody is not timely filed with the putative father registry pursuant to section 43-104.02, the

mother of a child born out of wedlock or an agent specifically designated in writing by the mother may request, and the Department of Health and Human Services shall supply, a certificate that no such notice has been filed with the putative father registry. The filing of such certificate pursuant to section 43-102 shall eliminate the need or necessity of a consent or relinquishment for adoption by the putative father of such child.

Source: Laws 1975, LB 224, § 5; Laws 1995, LB 712, § 24; Laws 1996, LB 1044, § 108; Laws 1999, LB 594, § 13; Laws 2007, LB247, § 9; Laws 2007, LB296, § 66; Laws 2022, LB741, § 10.

43-104.05 Child born out of wedlock; notice; filed; petition for adjudication of paternity; trial; guardian ad litem; court; jurisdiction.

(1)(a) A putative, acknowledged, or adjudicated father objecting to a proposed adoption may file a petition objecting to the adoption and seeking a determination of whether the objecting father's consent to the proposed adoption is required. A putative father may only file such petition if he has timely filed a Notice of Objection to Adoption and Intent to Obtain Custody with the putative father registry pursuant to section 43-104.02.

(b) The petition shall be filed within forty-five days after the later of the child's birth or the objecting father's receipt of notice under sections 43-104.12 to 43-104.14.

(c)(i) Except as provided in subdivision (1)(c)(ii) of this section, the petition shall be filed in the county court in the county where such child was born or, if a juvenile court already has jurisdiction over the custody of the child, in the county court of the county in which such juvenile court is located.

(ii) If the child was not born in Nebraska, the petition shall be filed in the county court of the county where either the biological mother or objecting father resides.

(d) A timely petition objecting to the adoption must be filed by an objecting putative, acknowledged, or adjudicated father of a minor child born out of wedlock who is the subject of a proposed adoption.

(e) Such petition may be filed by and defended by a minor in the minor's own name.

(2) If a petition objecting to a proposed adoption is not filed within the deadline provided in subdivision (1)(b) of this section, and the mother of the child has executed a valid relinquishment and consent to the adoption within ninety days after the later of the birth of the child or the objecting father's receipt of notice under sections 43-104.12 to 43-104.14, the putative, acknowledged, or adjudicated father's consent to adoption of the child shall not be required, he is not entitled to any further notice of the adoption proceedings, his right to object to the adoption shall not be recognized thereafter in any court, and his parental rights to such child will be terminated upon entry of an adoption decree.

(3) After the timely filing of a petition objecting to a proposed adoption, the court shall set a trial date upon proper notice to the parties not less than twenty nor more than thirty days after the date of such filing. If the mother contests the objecting father's claim of paternity, the court shall order DNA testing to establish whether the objecting father is the biological father. The court shall assess the costs of such testing between the parties in an equitable manner.

Whether the objecting father's consent to the adoption is required shall be determined pursuant to section 43-104.22, except that such consent is not required if the objecting father is not the biological father. The court shall appoint a guardian ad litem to represent the best interests of the child.

(4)(a) The county court or juvenile court having jurisdiction over the custody of the child shall have exclusive jurisdiction over proceedings under this section from the date of notice provided under section 43-104.12 or the last date of published notice under section 43-104.14, whichever notice is earlier, until thirty days after the conclusion of proceedings under this section, including appeals, unless such jurisdiction is transferred under subdivision (b) of this subsection.

(b) Except as provided in subdivision (4)(c) of this section, the court shall, upon the motion of any party, transfer the case to the district court for further proceedings on the matters of custody, visitation, and child support with respect to such child if:

(i) Such court determines under section 43-104.22 that the consent of the objecting father is required for adoption of the minor child and the objecting father refuses such consent; or

(ii) The mother of the child, within ninety days after the conclusion of proceedings under this section, including appeals, has not executed a valid relinquishment and consent to the adoption.

(c) The court, upon its own motion, may retain the case for good cause shown.

Source: Laws 1975, LB 224, § 6; Laws 1995, LB 712, § 25; Laws 1998, LB 1041, § 8; Laws 1999, LB 594, § 14; Laws 2007, LB247, § 10; Laws 2022, LB741, § 11.

43-104.08 Child born out of wedlock; identify and inform biological father.

Whenever a child is claimed to be born out of wedlock and the biological mother contacts an adoption agency or attorney to relinquish her rights to the child, or the biological mother joins in a petition for adoption to be filed by her spouse, the agency or attorney contacted shall attempt to establish the identity of the biological father and further attempt to inform the biological father of his rights, including the right to object to the adoption and the procedure and required timing to object, and his right to execute a relinquishment and consent to adoption, or a denial of paternity and waiver of rights, in the form mandated by section 43-106, pursuant to sections 43-104.08 to 43-104.24.

Source: Laws 1995, LB 712, § 1; Laws 2007, LB247, § 11; Laws 2022, LB741, § 12.

43-104.09 Child born out of wedlock; biological mother; affidavit; form.

In all cases of adoption of a minor child born out of wedlock, the biological mother, or an individual acting on behalf of the biological mother and who possesses information provided by the biological mother if the biological mother is unavailable due to death, incapacity, abandonment, or termination of parental rights, shall complete and sign an affidavit in writing and under oath. The affidavit shall be completed and signed before or at the time of execution of the consent or relinquishment and shall be filed with the court prior to the hearing on the petition for adoption. If the biological mother is under the age of

nineteen, the biological mother may sign the affidavit despite her minority or the affidavit may be completed and signed by the agency or attorney representing the biological mother based upon information provided by the biological mother. The affidavit shall be in substantially the following form:

AFFIDAVIT OF IDENTIFICATION

I, _____, the mother of a child, state under oath or affirm as follows:

(1) My child was born, or is expected to be born, on the _____ day of _____, _____, at _____, in the State of _____ .

(2) I reside at _____, in the City or Village of _____, County of _____, State of _____ .

(3) I am of the age of _____ years, and my date of birth is _____ .

(4) I acknowledge that I have been asked to identify the father of my child.

(5) (CHOOSE ONE)

(5A) I know and am identifying the biological father (or possible biological fathers) as follows:

The name of the biological father is _____ .

His last-known home address is _____ .

His last-known work address is _____ .

He is _____ years of age, or he is deceased, having died on or about the _____ day of _____, _____, at _____, in the State of _____ .

He has been adjudicated to be the biological father by the _____ Court of _____ county, State of _____, case name _____, docket number _____ .

He ___ has ___ has not acknowledged paternity in court or in connection with the child's birth certificate.

He ___ has ___ has not established a familial relationship with the child.

(For other possible biological fathers, please use additional sheets of paper as needed.)

(5B) I am unwilling or unable to identify the biological father (or possible biological fathers). I do not wish or I am unable to name the biological father of the child for the following reasons:

_____ Conception of my child occurred as a result of sexual assault or incest

_____ Providing notice to the biological father of my child would threaten my safety or the safety of my child

_____ Other reason: _____ .

(6) If the biological mother is unable to name the biological father, the physical description of the biological father (or possible biological fathers) and other information which may assist in identifying him, including the city or county and state where conception occurred:

_____

_____

_____

(use additional sheets of paper as needed).

(7) Under penalty of perjury, the undersigned certifies that the statements set forth in this affidavit are true and correct.

(8) I have read this affidavit and have had the opportunity to review and question it. It was explained to me by _____ .

I am signing it as my free and voluntary act and understand the contents and the effect of signing it.

Dated this _____ day of _____, _____ .

(Acknowledgment)

_____

(Signature)

Source: Laws 1995, LB 712, § 2; Laws 2007, LB247, § 12; Laws 2022, LB741, § 13.

43-104.12 Child born out of wedlock; agency or attorney; duty to inform biological father.

In order to attempt to inform the biological father or possible biological fathers, whether putative, acknowledged, or adjudicated, of the right to execute a relinquishment and consent to adoption or a denial of paternity and waiver of rights, the agency or attorney representing the biological mother shall notify, by personal service of process or by registered or certified mail, restricted delivery, return receipt requested:

(1) Any acknowledged father or adjudicated father;

(2) Any person who has filed a Request for Notification of Intended Adoption or a Notice of Objection to Adoption and Intent to Obtain Custody pursuant to sections 43-104.01 and 43-104.02;

(3) Any person who is recorded on the child's birth certificate as the child's father;

(4) Any person who might be the biological father of the child who was openly living with the child's biological mother within the twelve months prior to the birth of the child;

(5) Any person who has been identified as the biological father or possible biological father of the child by the child's biological mother pursuant to section 43-104.09;

(6) Any person who was married to the child's biological mother within six months prior to the birth of the child and prior to the execution of the relinquishment; and

(7) Any other person who the agency or attorney representing the biological mother may have reason to believe may be the biological father of the child.

Source: Laws 1995, LB 712, § 5; Laws 1999, LB 594, § 16; Laws 2007, LB247, § 13; Laws 2022, LB741, § 14.

43-104.13 Child born out of wedlock; notice to biological father; contents.

The notice sent by the agency or attorney pursuant to section 43-104.12 shall be served sufficiently in advance of the birth of the child, whenever possible, to allow compliance with subdivision (1)(a) of section 43-104.02 and shall state:

(1) The biological mother's name, the fact that she is pregnant or has given birth to the child, and the expected or actual date of delivery;

(2) That the child has been relinquished by the biological mother, that she intends to execute a relinquishment and consent to adoption, or that the biological mother has joined or plans to join in a petition for adoption to be filed by her spouse;

(3) That the person being notified has been identified as a possible biological father of the child, whether putative, acknowledged, or adjudicated;

(4) That the person being notified may have certain rights with respect to such child if he is in fact the biological father;

(5) That the person being notified has the right to (a) deny paternity, (b) waive any parental rights he may have, (c) relinquish and consent to adoption of the child, (d) file a Notice of Objection to Adoption and Intent to Obtain Custody any time during the pregnancy or as late as ten business days after birth pursuant to section 43-104.02 if he is a putative father, and (e) object to the adoption in court within forty-five days after the later of receipt of notice under this section or the birth of the child if he is an acknowledged or adjudicated father;

(6) That to deny paternity, to waive his parental rights, or to relinquish and consent to the adoption, the person being notified must contact the undersigned agency or attorney representing the biological mother, and that if he wishes to object to the adoption and seek custody of the child he should seek legal counsel from his own attorney immediately; and

(7) That if the person being notified is the biological father and if the child is not relinquished for adoption, he has a duty to contribute to the support and education of the child and to the pregnancy-related expenses of the mother and a right to seek a court order for custody, parenting time, visitation, or other access with the child.

The agency or attorney representing the biological mother may enclose with the notice a document which is an admission or denial of paternity and a waiver of rights by the person being notified, which such person may choose to complete, in the form mandated by section 43-106, and return to the agency or attorney.

Source: Laws 1995, LB 712, § 6; Laws 2007, LB247, § 14; Laws 2007, LB554, § 38; Laws 2022, LB741, § 15.

43-104.14 Child born out of wedlock; agency or attorney; duty to notify biological father by publication; when.

(1) If the agency or attorney representing the biological mother is unable through reasonable efforts to locate and serve notice on the biological father or possible biological fathers as contemplated in sections 43-104.12 and 43-104.13, the agency or attorney shall notify the biological father or possible biological fathers by publication.

(2) The publication shall be made once a week for three consecutive weeks in a legal newspaper of general circulation in the Nebraska county or county of

another state which is most likely to provide actual notice to the biological father. The publication shall include:

(a) The first name or initials of the father or possible father or the entry ''John Doe, real name unknown'', if applicable;

(b) A description of the father or possible father if his first name is or initials are unknown;

(c) The approximate date of conception of the child and the city and state in which conception occurred, if known;

(d) The date of birth or expected birth of the child;

(e) That he has been identified as the biological father or possible biological father of a child whom the biological mother currently intends to place for adoption and the approximate date that placement will occur;

(f) That he has the right to (i) deny paternity, (ii) waive any parental rights he may have, (iii) relinquish and consent to adoption of the child, (iv) file a Notice of Objection to Adoption and Intent to Obtain Custody any time during the pregnancy or as late as ten business days after birth pursuant to section 43-104.02 if he is a putative father, or (v) object to the adoption in court within forty-five days after the later of receipt of notice under this section or the birth of the child if he is an acknowledged or adjudicated father;

(g) That in order to deny paternity, waive his parental rights, relinquish and consent to the adoption, or receive additional information to determine whether he is the father of the child in question, he must contact the undersigned agency or attorney representing the biological mother; and

(h) That if he wishes to object to the adoption and seek custody of the child, he must seek legal counsel from his own attorney immediately.

Source: Laws 1995, LB 712, § 7; Laws 2007, LB247, § 15; Laws 2022, LB741, § 16.

43-104.16 Child born out of wedlock; notice requirements; affidavit by agency or attorney.

In all cases involving the adoption of a minor child born out of wedlock, the agency or attorney representing the biological mother shall execute an affidavit stating that due diligence was used to identify and give actual or constructive notice to the biological father or possible biological fathers of the child and stating the methods used to attempt to identify and give actual or constructive notice to those persons or the reason why no attempts were made to identify and notify those persons. The affidavit shall be filed in the adoption proceeding prior to the hearing on the petition for adoption.

Source: Laws 1995, LB 712, § 9; Laws 2022, LB741, § 17.

43-104.17 Child born out of wedlock; petition; evidence of compliance required; notice to biological father; when.

In all cases of adoption of a minor child born out of wedlock, the petition for adoption shall specifically allege compliance with sections 43-104.08 to 43-104.16, and all documents which are evidence of such compliance shall be filed with the court prior to the hearing on the petition. No notice of the filing of the petition to finalize or the hearing on the petition shall be given to a biological father or putative biological father who (1) executed a valid relin-

quishment and consent or a valid denial of paternity and waiver of rights pursuant to section 43-104.11, (2) was a putative father provided notice under sections 43-104.12 to 43-104.14 and who failed to timely file a Notice of Objection to Adoption and Intent to Obtain Custody pursuant to section 43-104.02, (3) was a putative, acknowledged, or adjudicated father who failed to timely file a petition objecting to the adoption under section 43-104.05, or (4) is not required to consent to the adoption pursuant to proceedings conducted under section 43-104 or 43-104.22.

Source: Laws 1995, LB 712, § 10; Laws 2007, LB247, § 16; Laws 2022, LB741, § 18.

43-104.18 Child born out of wedlock; failure to establish compliance with notice requirements; court powers.

If a petition for adoption is filed and fails to establish substantial compliance with sections 43-104.08 to 43-104.16, the court shall receive evidence by affidavit of the facts and circumstances of the biological mother's relationship with the biological father or possible biological fathers at the time of conception of the child and at the time of the biological mother's relinquishment and consent to the adoption of the child, including any evidence that providing notice to a biological father or possible biological father would be likely to threaten the safety of the biological mother or the child or that the conception was the result of sexual assault or incest. If, under the facts and circumstances presented, the court finds that the agency or attorney representing the biological mother did not exercise due diligence in complying with sections 43-104.08 to 43-104.16, or if the court finds that there is no credible evidence that providing notice to a biological father or possible biological father would be likely to threaten the safety of the biological mother or the child or that the conception was the result of sexual assault or incest, the court shall order the attorney or agency to exercise due diligence in complying with sections 43-104.08 to 43-104.16.

Source: Laws 1995, LB 712, § 11; Laws 2022, LB741, § 19.

43-104.19 Repealed. Laws 2022, LB741, § 56.

43-104.20 Repealed. Laws 2022, LB741, § 56.

43-104.21 Repealed. Laws 2022, LB741, § 56.

43-104.22 Child born out of wedlock; hearing; paternity of child; father's consent not required; when; determination of custody.

At any hearing to determine the parental rights of an acknowledged father, an adjudicated father, or a putative father of a minor child born out of wedlock and whether such father's consent is required for the adoption of such child, the county court or juvenile court having jurisdiction shall receive evidence with regard to the actual paternity of the child, if contested. The court shall determine that such father's consent is not required for a valid adoption of the child upon a finding of one or more of the following:

(1) The father abandoned or neglected the child after having knowledge of the child's birth;

(2) The father is not a fit, proper, and suitable custodial parent for the child;

(3) The father had knowledge of the child's birth and failed to provide reasonable financial support for the mother or child;

(4) The father abandoned the mother without reasonable cause and with knowledge of the pregnancy;

(5) The father had knowledge of the pregnancy and failed to provide reasonable support for the mother during the pregnancy;

(6) The child was conceived as a result of a nonconsensual sex act or an incestual act;

(7) Notice was provided pursuant to sections 43-104.12 to 43-104.14 and the putative father failed to timely file a Notice of Objection to Adoption and Intent to Obtain Custody pursuant to section 43-104.02;

(8) The acknowledged father, adjudicated father, or putative father failed to timely file a petition objecting to the adoption pursuant to section 43-104.05;

(9) The father executed a valid relinquishment or consent to adoption; or

(10) The man whether an acknowledged father, an adjudicated father, or a putative father, is not, in fact, the biological father of the child.

The court shall determine the custody of the child according to the best interest of the child, weighing the superior rights of a biological parent who has been found to be a fit, proper, and suitable parent against any detriment the child would suffer if removed from the custody of persons with whom the child has developed a substantial relationship.

Source: Laws 1995, LB 712, § 15; Laws 1999, LB 594, § 17; Laws 2007, LB247, § 17; Laws 2022, LB741, § 20.

43-104.23 Child born out of wedlock; decree finalizing adoption without biological father's notification; when; appeal.

(1) The court shall enter a decree finalizing the adoption of the child if, after viewing the evidence submitted to support a petition for adoption, the court determines that:

(a) No biological father can be identified;

(b) No identified father can be notified without likely threat to the safety of the biological mother or the child; or

(c) That there has been due diligence and substantial compliance with sections 43-104.08 to 43-104.16 and that no biological father has timely filed under section 43-104.02 or 43-104.05.

(2) Subject to the disposition of an appeal, upon the expiration of thirty days after a decree is issued under this section, the decree shall not be reversed, vacated, or modified on the basis of fraud, misrepresentation, or failure to provide notice under sections 43-104.12 to 43-104.14.

Source: Laws 1995, LB 712, § 16; Laws 2022, LB741, § 21.

43-104.25 Repealed. Laws 2022, LB741, § 56.

43-105 Substitute consents.

(1) If consent is not required of both parents of a child born in lawful wedlock if living, the surviving parent of a child born in lawful wedlock, or the mother or mother and father of a child born out of wedlock, because of the

provisions of subdivision (1)(b) of section 43-104, substitute consents shall be filed as follows:

(a) Consent to the adoption of a minor child who has been committed to the Department of Health and Human Services may be given by the department or its duly authorized agent in accordance with section 43-906;

(b) When a parent has relinquished a minor child for adoption to any child placement agency licensed or approved by the department or its duly authorized agent, consent to the adoption of such child may be given by such agency; and

(c) When consent cannot be given as provided in section 43-104, consent shall be given by the guardian or guardian ad litem of such minor child appointed by a court, which consent shall be authorized by the court having jurisdiction of such guardian or guardian ad litem.

(2) Substitute consent provisions of this section do not apply to a biological father whose consent is not required under section 43-104.22 or subsection (5) or (6) of section 43-104.

Source: Laws 1943, c. 104, § 4(2), p. 350; R.S.1943, § 43-105; Laws 1967, c. 248, § 2, p. 653; Laws 1988, LB 790, § 23; Laws 1989, LB 22, § 2; Laws 1995, LB 712, § 26; Laws 1996, LB 1044, § 110; Laws 1996, LB 1155, § 8; Laws 1998, LB 1041, § 9; Laws 2007, LB247, § 19; Laws 2022, LB741, § 22.

Cross References

Terminated parental rights, substitute consents, see section 43-293.

43-106 Relinquishments and consents; signature; witnesses; acknowledgment.

Relinquishments and consents required to be given under sections 43-104 and 43-105 must be acknowledged before an officer authorized to acknowledge deeds in this state and signed in the presence of at least one witness, in addition to the officer.

Source: Laws 1943, c. 104, § 4(3), p. 351; R.S.1943, § 43-106; Laws 1951, c. 128, § 1, p. 547; Laws 1965, c. 233, § 1, p. 678; Laws 2007, LB247, § 20; Laws 2022, LB741, § 23.

43-108 Personal appearance of parties; exceptions.

The minor child to be adopted, unless such child is over fourteen years of age, and the person or persons desiring to adopt the child must appear in person before the judge at the time of hearing, except that when the petitioners are married and one of them is present in court, the court, in its discretion, may accept the affidavit of an absent spouse who is in the armed forces of the United States and it appears to the court the absent spouse will not be able to be present in court for more than a year because of his or her military assignment, which affidavit sets forth that the absent spouse favors the adoption.

Source: Laws 1943, c. 104, § 6, p. 351; R.S.1943, § 43-108; Laws 1969, c. 340, § 1, p. 1199; Laws 1998, LB 1041, § 11; Laws 2022, LB741, § 24.

43-109 Decree; conditions; content.

(1) If, upon the hearing, the court finds that such adoption is for the best interests of such minor child or such adult child, a decree of adoption shall be entered. No decree of adoption shall be entered unless:

(a) It appears that the child has resided with the person or persons petitioning for such adoption for at least six months next preceding the entering of the decree of adoption, except that such residency requirement shall not apply in an adoption of an adult child;

(b) The medical histories required by subsection (2) of section 43-107 have been made a part of the court record;

(c) The court record includes an affidavit or affidavits signed by the relinquishing biological parent, or parents if both are available, in which it is affirmed that, pursuant to section 43-106.02, prior to the relinquishment of the child for adoption, the relinquishing parent was, or parents if both are available were:

(i) Presented a copy or copies of the nonconsent form provided for in section 43-146.06; and

(ii) Given an explanation of the effects of filing or not filing the nonconsent form; and

(d) If the child to be adopted is committed to the Department of Health and Human Services, the document required by subsection (3) of section 43-107 is a part of the court record.

(2) If the adopted child was born out of wedlock, that fact shall not appear in the decree of adoption.

(3) The court may decree such change of name for the adopted child as the petitioner or petitioners may request.

Source: Laws 1943, c. 104, § 7, p. 351; R.S.1943, § 43-109; Laws 1984, LB 510, § 4; Laws 1985, LB 255, § 22; Laws 1988, LB 372, § 2; Laws 1988, LB 301, § 8; Laws 1989, LB 231, § 2; Laws 1999, LB 594, § 19; Laws 2011, LB94, § 2; Laws 2012, LB768, § 2; Laws 2022, LB741, § 25.

43-111 Decree; effect as to natural parents.

Except as provided in sections 43-101 and 43-106.01 and the Nebraska Indian Child Welfare Act, after a decree of adoption has been entered, the natural parents of the adopted child shall be relieved of all parental duties toward and all responsibilities for such child and have no rights over such adopted child or to his or her property by descent and distribution.

Source: Laws 1943, c. 104, § 9, p. 352; R.S.1943, § 43-111; Laws 1965, c. 234, § 2, p. 679; Laws 1985, LB 255, § 23; Laws 2022, LB741, § 26.

Cross References

Nebraska Indian Child Welfare Act, see section 43-1501.

43-111.01 Denial of petition; court; powers.

Except as otherwise provided in the Nebraska Indian Child Welfare Act, if, upon a hearing, the court shall deny a petition for adoption, the court may take custody of the child involved and determine whether or not it is in the best interests of the child to remain in the custody of the proposed adopting parents.

The court may also, on its own motion, appoint a legal guardian over the person and property of such minor and make disposition in the best interests of the child without further notice, relinquishments, or consents as may otherwise be required by sections 43-101.01 to 43-112.

Source: Laws 1965, c. 231, § 1, p. 674; Laws 1971, LB 384, § 1; Laws 1985, LB 255, § 24; Laws 2022, LB741, § 27.

Cross References

Nebraska Indian Child Welfare Act, see section 43-1501.

43-112 Decree; appeal.

An appeal shall be allowed from any final order, judgment, or decree, rendered under the authority of sections 43-101 to 43-115, from the county court to the Court of Appeals in the same manner as an appeal from district court to the Court of Appeals.

An appeal may be taken by any party and may also be taken by any person against whom the final judgment or final order may be made or who may be affected thereby. The judgment of the Court of Appeals shall not vacate the judgment of the county court. The judgment of the Court of Appeals shall be certified without cost to the county court for further proceedings consistent with the determination of the Court of Appeals.

Source: Laws 1943, c. 104, § 10, p. 352; R.S.1943, § 43-112; Laws 1981, LB 42, § 22; Laws 1995, LB 538, § 8; Laws 2022, LB741, § 28.

43-113 Adoption records; access; retention.

Except as otherwise provided in the Nebraska Indian Child Welfare Act, court adoption records may not be inspected by the public and shall be permanently retained as a preservation duplicate in the manner provided in section 84-1208 or in their original form in accordance with the Records Management Act. No person shall have access to such records except that:

(1) Access shall be provided on the order of the judge of the court in which the decree of adoption was entered on good cause shown or as provided in sections 43-138 to 43-140 or 43-146.11 to 43-146.13; or

(2) The clerk of the court shall provide three certified copies of the decree of adoption to the parents who have adopted a child born in a foreign country and not then a citizen of the United States within three days after the decree of adoption is entered. A court order is not necessary to obtain these copies. Certified copies shall only be provided upon payment of applicable fees.

Source: Laws 1943, c. 104, § 11, p. 352; R.S.1943, § 43-113; Laws 1980, LB 992, § 29; Laws 1985, LB 255, § 25; Laws 1988, LB 372, § 4; Laws 1989, LB 229, § 2; Laws 1997, LB 80, § 1; Laws 1998, LB 1041, § 12; Laws 2021, LB355, § 4.

Cross References

Birth certificate, adoptive, see sections 71-626 and 71-627.02.
Nebraska Indian Child Welfare Act, see section 43-1501.
Records Management Act, see section 84-1220.
Report of adoption, court required to file, see section 71-626.

43-115 Prior adoptions.

No adoption heretofore lawfully made shall be affected by the enactment of sections 43-101 to 43-115, but such adoptions shall continue in effect and operation according to the terms thereof.

Source: Laws 1943, c. 104, § 13, p. 352; R.S.1943, § 43-115; Laws 2022, LB741, § 29.

(c) RELEASE OF INFORMATION

43-146.01 Sections; applicability.

(1) Sections 43-106.02, 43-121, 43-123.01, and 43-146.02 to 43-146.16 shall provide the procedures for gaining access to information concerning an adopted person when a relinquishment or consent for an adoption is given on or after September 1, 1988.

(2) Sections 43-119 to 43-142 shall remain in effect for a relinquishment or consent for an adoption which is given prior to September 1, 1988.

(3) Except as otherwise provided in subsection (2) of section 43-107 and subsection (4) of this section: Sections 43-101 to 43-118, 43-143 to 43-146, 43-146.17, 71-626, 71-626.01, and 71-627.02 shall apply to all adoptions.

(4) Sections 43-143 to 43-146 shall not apply to adopted persons for whom a relinquishment or consent for adoption was given on and after July 20, 2002.

Source: Laws 1988, LB 372, § 6; Laws 1988, LB 301, § 9; Laws 2002, LB 952, § 4; Laws 2011, LB94, § 3; Laws 2012, LB768, § 3; Laws 2022, LB741, § 30.

(h) WRITTEN COMMUNICATION AND CONTACT AGREEMENTS

43-166 Communication and contact agreement; authorized; adoptee consent, when required; court approval; enforcement; civil action authorized; monetary award not allowed.

(1) The adoptive parent or parents and the parent or parents relinquishing a child for adoption may enter into a written agreement to permit continuing communication and contact after the placement of an adoptee between the adoptive parent or parents and the relinquishing parent or parents in private or agency adoptions for adoptees not in the custody of the Department of Health and Human Services as provided under this section.

(2) The terms of a communication and contact agreement entered into under this section may include provisions for (a) future contact or communication between the relinquishing parent or parents and the adoptee or the adoptive parent or parents, or both, (b) sharing information about the adoptee, or (c) other matters related to communication or contact agreed to by the parties.

(3) If the adoptee is fourteen years of age or older at the time of placement, a communication and contact agreement under this section shall not be valid unless consented to in writing by the adoptee.

(4) A court may approve a communication and contact agreement entered into under this section by incorporating such agreement by reference and indicating the court's approval of such agreement in the decree of adoption. Enforceability of a communication and contact agreement is not contingent on court approval or its incorporation into the decree of adoption.

(5) Neither the existence of, nor the failure of any party to comply with the terms of, a communication and contact agreement entered into under this section shall be grounds for (a) setting aside an adoption decree, (b) revoking a written relinquishment of parental rights or written consent to adoption, (c) challenging the adoption on the basis of duress or coercion, or (d) challenging the adoption on the basis that the agreement retains some aspect of parental rights by the relinquishing parent or parents.

(6) A communication and contact agreement entered into under this section may be enforced by a civil action. A court in which such civil action is filed may enforce, modify, or terminate a communication and contact agreement entered into under this section if the court finds that (a) enforcing, modifying, or terminating the communication and contact agreement is necessary to serve the best interests of the adoptee, (b) the party seeking to enforce, modify, or terminate the communication and contact agreement participated in, or attempted to participate in, mediation in good faith or participated in other appropriate dispute resolution proceedings in good faith to resolve the dispute prior to filing the petition, and (c) when seeking to modify or terminate the agreement, a material change in circumstances has arisen since the parties entered into the communication and contact agreement that justifies modifying or terminating the agreement.

(7) If the adoption was through an agency, the agency which accepted the relinquishment from the relinquishing parent or parents shall be invited to participate in any mediation or other appropriate dispute resolution proceedings as provided in subsection (6) of this section.

(8) With any communication and contact agreement entered into under this section, the following shall appear on the communication and contact agreement: No adoption shall be set aside due to the failure of the adoptive parent or parents or the relinquishing parent or parents to follow the terms of this agreement or a later order modifying or terminating this agreement. Disagreement between the parties or a subsequent civil action brought to enforce, modify, or terminate this agreement shall not affect the validity of the adoption and shall not serve as a basis for orders affecting the custody of the child. The court shall not act on a petition to enforce, modify, or terminate this agreement unless the petitioner has participated in, or attempted to participate in, mediation in good faith or participated in other appropriate dispute resolution proceedings in good faith to resolve the dispute prior to filing the petition.

(9) The court shall not award monetary damages as a result of the filing of a civil action pursuant to subsection (6) of this section.

Source: Laws 2016, LB744, § 1; Laws 2022, LB741, § 31.

ARTICLE 2

JUVENILE CODE

(b) GENERAL PROVISIONS

Section

(b) GENERAL PROVISIONS

43-245 Terms, defined.

For purposes of the Nebraska Juvenile Code, unless the context otherwise requires:

(1) Abandonment means a parent's intentionally withholding from a child, without just cause or excuse, the parent's presence, care, love, protection, and maintenance and the opportunity for the display of parental affection for the child;

(2) Age of majority means nineteen years of age;

(3) Alternative to detention means a program or directive that increases supervision of a youth in the community in an effort to ensure the youth attends court and refrains from committing a new law violation. Alternative to detention includes, but is not limited to, electronic monitoring, day and evening reporting centers, house arrest, tracking, family crisis response, and temporary shelter placement. Except for the use of manually controlled delayed egress of not more than thirty seconds, placements that utilize physical construction or hardware to restrain a youth's freedom of movement and ingress and egress from placement are not considered alternatives to detention;

(4) Approved center means a center that has applied for and received approval from the Director of the Office of Dispute Resolution under section 25-2909;

(5) Civil citation means a noncriminal notice which cannot result in a criminal record and is described in section 43-248.02;

(6) Cost or costs means (a) the sum or equivalent expended, paid, or charged for goods or services, or expenses incurred, or (b) the contracted or negotiated price;

(7) Criminal street gang means a group of three or more people with a common identifying name, sign, or symbol whose group identity or purposes include engaging in illegal activities;

(8) Criminal street gang member means a person who willingly or voluntarily becomes and remains a member of a criminal street gang;

(9) Custodian means a nonparental caretaker having physical custody of the juvenile and includes an appointee described in section 43-294;

(10) Guardian means a person, other than a parent, who has qualified by law as the guardian of a juvenile pursuant to testamentary or court appointment, but excludes a person who is merely a guardian ad litem;

(11) Juvenile means any person under the age of eighteen;

(12) Juvenile court means the separate juvenile court where it has been established pursuant to sections 43-2,111 to 43-2,127 and the county court sitting as a juvenile court in all other counties. Nothing in the Nebraska Juvenile Code shall be construed to deprive the district courts of their habeas corpus, common-law, or chancery jurisdiction or the county courts and district courts of jurisdiction of domestic relations matters as defined in section 25-2740;

(13) Juvenile detention facility has the same meaning as in section 83-4,125;

(14) Legal custody has the same meaning as in section 43-2922;

(15) Mental health facility means a treatment facility as defined in section 71-914 or a government, private, or state hospital which treats mental illness;

(16) Nonoffender means a juvenile who is subject to the jurisdiction of the juvenile court for reasons other than legally prohibited conduct, including, but not limited to, juveniles described in subdivision (3)(a) of section 43-247;

(17) Parent means one or both parents or stepparents when the stepparent is married to a parent who has physical custody of the juvenile as of the filing of the petition;

(18) Parties means the juvenile as described in section 43-247 and his or her parent, guardian, or custodian;

(19) Physical custody has the same meaning as in section 43-2922;

(20) Except in proceedings under the Nebraska Indian Child Welfare Act, relative means father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece;

(21) Restorative justice means practices, programs, or services that emphasize repairing the harm caused to victims and the community by persons who have caused the harm or committed an offense. Restorative justice practices may include, but are not limited to, victim youth conferencing, victim-offender mediation, youth or community dialogue, panels, circles, and truancy mediation;

(22) Restorative justice facilitator means a qualified individual who has been trained to facilitate restorative justice practices. A qualified individual shall be approved by the referring county attorney, city attorney, or juvenile or county court judge. Factors for approval may include, but are not limited to, an individual's education and training in restorative justice principles and practices; experience in facilitating restorative justice sessions; understanding of the

necessity to do no harm to either the victim or the person who harmed the victim; and proven commitment to ethical practices;

(23) Seal a record means that a record shall not be available to the public except upon the order of a court upon good cause shown;

(24) Secure detention means detention in a highly structured, residential, hardware-secured facility designed to restrict a juvenile's movement;

(25) Staff secure juvenile facility means a juvenile residential facility operated by a political subdivision (a) which does not include construction designed to physically restrict the movements and activities of juveniles who are in custody in the facility, (b) in which physical restriction of movement or activity of juveniles is provided solely through staff, (c) which may establish reasonable rules restricting ingress to and egress from the facility, and (d) in which the movements and activities of individual juvenile residents may, for treatment purposes, be restricted or subject to control through the use of intensive staff supervision. Staff secure juvenile facility does not include any institution operated by the Department of Correctional Services;

(26) Status offender means a juvenile who has been charged with or adjudicated for conduct which would not be a crime if committed by an adult, including, but not limited to, juveniles charged under subdivision (3)(b) of section 43-247 and sections 53-180.01 and 53-180.02;

(27) Traffic offense means any nonfelonious act in violation of a law or ordinance regulating vehicular or pedestrian travel, whether designated a misdemeanor or a traffic infraction; and

(28) Young adult means an individual older than eighteen years of age but under twenty-one years of age.

Source: Laws 1981, LB 346, § 1; Laws 1985, LB 447, § 11; Laws 1987, LB 638, § 1; Laws 1989, LB 182, § 9; Laws 1996, LB 1296, § 20; Laws 1997, LB 622, § 62; Laws 1998, LB 1041, § 20; Laws 1998, LB 1073, § 11; Laws 2000, LB 1167, § 11; Laws 2004, LB 1083, § 91; Laws 2009, LB63, § 28; Laws 2010, LB800, § 12; Laws 2013, LB561, § 6; Laws 2014, LB464, § 7; Laws 2014, LB908, § 3; Laws 2015, LB265, § 2; Laws 2016, LB894, § 1; Laws 2019, LB595, § 23.

Cross References

Nebraska Indian Child Welfare Act, see section 43-1501.

43-246 Code, how construed.

Acknowledging the responsibility of the juvenile court to act to preserve the public peace and security, the Nebraska Juvenile Code shall be construed to effectuate the following:

(1) To assure the rights of all juveniles to care and protection and a safe and stable living environment and to development of their capacities for a healthy personality, physical well-being, and useful citizenship and to protect the public interest;

(2) To provide for the intervention of the juvenile court in the interest of any juvenile who is within the provisions of the Nebraska Juvenile Code, with due regard to parental rights and capacities and the availability of nonjudicial resources;

(3) To remove juveniles who are within the Nebraska Juvenile Code from the criminal justice system whenever possible and to reduce the possibility of their committing future law violations through the provision of social and rehabilitative services to such juveniles and their families;

(4) To offer selected juveniles the opportunity to take direct personal responsibility for their individual actions by reconciling with the victims, or victim surrogates when appropriate, through restorative justice practices and fulfilling the terms of the resulting reparation plan which may require apologies, restitution, community service, or other agreed-upon means of making amends;

(5) To achieve the purposes of subdivisions (1) through (3) of this section in the juvenile's own home whenever possible, separating the juvenile from his or her parent when necessary for his or her welfare, the juvenile's health and safety being of paramount concern, or in the interest of public safety and, when temporary separation is necessary, to consider the developmental needs of the individual juvenile in all placements, to consider relatives as a preferred potential placement resource, and to make reasonable efforts to preserve and reunify the family if required under section 43-283.01;

(6) To promote adoption, guardianship, or other permanent arrangements for children in the custody of the Department of Health and Human Services who are unable to return home;

(7) To provide a judicial procedure through which these purposes and goals are accomplished and enforced in which the parties are assured a fair hearing and their constitutional and other legal rights are recognized and enforced;

(8) To assure compliance, in cases involving Indian children, with the Nebraska Indian Child Welfare Act; and

(9) To make any temporary placement of a juvenile in the least restrictive environment consistent with the best interests of the juvenile and the safety of the community.

Source: Laws 1981, LB 346, § 2; Laws 1982, LB 787, § 1; Laws 1985, LB 255, § 31; Laws 1985, LB 447, § 12; Laws 1996, LB 1001, § 2; Laws 1998, LB 1041, § 21; Laws 1998, LB 1073, § 12; Laws 2010, LB800, § 13; Laws 2019, LB595, § 24.

Cross References

Nebraska Indian Child Welfare Act, see section 43-1501.

43-246.01 Juvenile court; exclusive original and concurrent original jurisdiction.

(1) The juvenile court shall have exclusive original jurisdiction as to:

(a) Any juvenile described in subdivision (3) or (11) of section 43-247;

(b) Any juvenile who was under sixteen years of age at the time the alleged offense was committed and the offense falls under subdivision (1) of section 43-247;

(c) A party or proceeding described in subdivision (5) or (7) of section 43-247; and

(d) Any juvenile who was under fourteen years of age at the time the alleged offense was committed and the offense falls under subdivision (2) of section 43-247.

(2)(a) The juvenile court shall also have exclusive original jurisdiction as to:

(i) Any juvenile who is alleged to have committed an offense under subdivision (1) of section 43-247 and who was sixteen years of age or seventeen years of age at the time the alleged offense was committed; and

(ii) Any juvenile who was fourteen years of age or older at the time the alleged offense was committed and the offense falls under subdivision (2) of section 43-247 except offenses enumerated in subdivision (1)(a)(ii) of section 29-1816.

(b) Proceedings initiated under subsection (2) of this section may be transferred as provided in section 43-274.

(3)(a) The juvenile court shall have concurrent original jurisdiction with the county court or district court as to:

(i) Any juvenile described in subdivision (4) of section 43-247;

(ii) Any proceeding under subdivision (6), (8), (9), or (10) of section 43-247; and

(iii) Any juvenile described in subdivision (1)(a)(ii) of section 29-1816.

(b) Proceedings initiated under subsection (3) of this section may be transferred as provided in section 43-274.

Source: Laws 2014, LB464, § 9; Laws 2015, LB265, § 3; Laws 2024, LB1051, § 4.
Effective date July 19, 2024.

43-246.02 Transfer of jurisdiction to district court; bridge order; criteria; records; modification.

(1) A juvenile court may terminate its jurisdiction under subdivision (3)(a) of section 43-247 by transferring jurisdiction over the juvenile's custody, physical care, and visitation to the district court through a bridge order, if all of the following criteria are met:

(a) The juvenile has been adjudicated under subdivision (3)(a) of section 43-247 in an active juvenile court case and a dispositional order in that case is in place;

(b) Paternity of the juvenile has been legally established, including by operation of law due to an individual's marriage to the mother at the time of conception, birth, or at any time during the period between conception and birth of the child; by operation of law pursuant to section 43-1409; by order of a court of competent jurisdiction; or by administrative order when authorized by law;

(c) The juvenile has been safely placed by the juvenile court with a legal parent; and

(d) The juvenile court has determined that its jurisdiction under subdivision (3)(a) of section 43-247 should properly end once orders for custody, physical care, and visitation are entered by the district court.

(2) When the criteria in subsection (1) of this section are met, a legal parent or guardian ad litem to a juvenile adjudicated under subdivision (3)(a) of section 43-247 in juvenile court may file a motion with the juvenile court for a bridge order under subsection (3) of this section. The parent is not required to intervene in the action. The motion shall be set for evidentiary hearing by the juvenile court no less than thirty days or more than ninety days from the date of the filing of the motion. The juvenile court, on its own motion, may also set an

evidentiary hearing on the issue of a bridge order if such hearing is set no less than thirty days from the date of notice to the parties. The court may waive the evidentiary hearing if all issues raised in the motion for a bridge order are resolved by agreement of all parties and entry of a stipulated order.

(3) A motion for a bridge order shall:

(a) Allege that the juvenile court action filed under subdivision (3)(a) of section 43-247 may safely be closed once orders for custody, physical care, and visitation have been entered by the district court;

(b) State the relief sought by the petitioning legal parent or guardian ad litem;

(c) Disclose any other action or proceedings affecting custody of the juvenile, including proceedings related to domestic violence, protection orders, terminations of parental rights, and adoptions, including the docket number, court, county, and state of any such proceeding;

(d) State the names and addresses of any persons other than the legal parents who have a court order for physical custody or claim to have custody or visitation rights with the juvenile; and

(e) Name as a respondent any other person who has any relation to the controversy.

(4) A juvenile court shall designate the petitioner and respondent for purposes of a bridge order. A bridge order shall only address matters of legal and physical custody and parenting time. All other matters, including child support, shall be resolved by filing a separate petition or motion or by action of the child support enforcement office and shall be subject to existing applicable statutory provisions. No mediation or specialized alternative dispute resolution under section 42-364 shall be required in either district court or juvenile court where the juvenile has entered a bridge order. The Parenting Act shall not apply to the entry of the bridge order in juvenile or district court.

(5) When necessary and feasible, the juvenile court shall obtain child custody determinations from foreign jurisdictions pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act.

(6) Upon transferring jurisdiction from a juvenile court to a district court, the clerk of the district court shall docket the case under either a new docket or any previous docket establishing custody or paternity of a child. The transfer of jurisdiction shall not result in new filing fees and other court costs being assessed against the parties.

(7) The district court shall give full force and effect to the juvenile court bridge order as to custody and parenting time and shall not modify the juvenile court bridge order without modification proceedings as provided in subsection (9) of this section.

(8) A district court shall take judicial notice of the juvenile court pleadings and orders in any hearing held subsequent to transfer. Records contained in the district court case file that were copied or transferred from the juvenile court file concerning the case shall be subject to section 43-2,108 and other confidentiality provisions of the Nebraska Juvenile Code, and such records shall only be disclosed, upon request, to the child support enforcement office without a court order.

(9) Following the issuance of a bridge order, a party may file a petition in district court for modification of the bridge order as to legal and physical

custody or parenting time. If the petition for modification is filed within one year after the filing date of the bridge order, the party requesting modification shall not be required to demonstrate a substantial change of circumstance but instead shall demonstrate that such modification is in the best interests of the child. If a petition for modification is filed within one year after the filing date of the bridge order, filing fees and other court costs shall not be assessed against the parties.

(10) Nothing in this section shall be construed to require appointment of counsel for the parties in the district court action.

(11) Nothing in this section shall be construed to interfere with the jurisdictional provisions of section 25-2740.

Source: Laws 2017, LB180, § 1; Laws 2018, LB708, § 1.

Cross References

Parenting Act, see section 43-2920.
Uniform Child Custody Jurisdiction and Enforcement Act, see section 43-1226.

43-247 Juvenile court; jurisdiction.

The juvenile court in each county shall have jurisdiction of:

(1) Any juvenile who has committed an act other than a traffic offense which would constitute a misdemeanor or an infraction under the laws of this state, or violation of a city or village ordinance, and who was eleven years of age or older at the time the act was committed;

(2) Any juvenile who has committed an act which would constitute a felony under the laws of this state and who was eleven years of age or older at the time the act was committed;

(3) Any juvenile:

(a) Who is homeless or destitute, or without proper support through no fault of his or her parent, guardian, or custodian; who is abandoned by his or her parent, guardian, or custodian; who lacks proper parental care by reason of the fault or habits of his or her parent, guardian, or custodian; whose parent, guardian, or custodian neglects or refuses to provide proper or necessary subsistence, education, or other care necessary for the health, morals, or well-being of such juvenile; whose parent, guardian, or custodian is unable to provide or neglects or refuses to provide special care made necessary by the mental condition of the juvenile; who is in a situation or engages in an occupation, including prostitution, dangerous to life or limb or injurious to the health or morals of such juvenile; or who has committed an act or engaged in behavior described in subdivision (1), (2), (3)(b), or (4) of this section and who was under eleven years of age at the time of such act or behavior;

(b) Who is eleven years of age or older and who (i) by reason of being wayward or habitually disobedient, is uncontrolled by his or her parent, guardian, or custodian; (ii) deports himself or herself so as to injure or endanger seriously the morals or health of himself, herself, or others; or (iii) is habitually truant from home or school; or

(c) Who is mentally ill and dangerous as defined in section 71-908;

(4) Any juvenile who has committed an act which would constitute a traffic offense as defined in section 43-245 and who was eleven years of age or older at the time the act was committed;

(5) The parent, guardian, or custodian of any juvenile described in this section;

(6) The proceedings for termination of parental rights;

(7) Any juvenile who has been voluntarily relinquished, pursuant to section 43-106.01, to the Department of Health and Human Services or any child placement agency licensed by the Department of Health and Human Services;

(8) Any juvenile who was a ward of the juvenile court at the inception of his or her guardianship and whose guardianship has been disrupted or terminated;

(9) The adoption or guardianship proceedings for a child over which the juvenile court already has jurisdiction under another provision of the Nebraska Juvenile Code;

(10) The paternity or custody determination for a child over which the juvenile court already has jurisdiction;

(11) The proceedings under the Young Adult Bridge to Independence Act; and

(12) Except as provided in subdivision (11) of this section, any individual adjudged to be within the provisions of this section until the individual reaches the age of majority or the court otherwise discharges the individual from its jurisdiction.

Notwithstanding the provisions of the Nebraska Juvenile Code, the determination of jurisdiction over any Indian child as defined in section 43-1503 shall be subject to the Nebraska Indian Child Welfare Act; and the district court shall have exclusive jurisdiction in proceedings brought pursuant to section 71-510.

Source: Laws 1981, LB 346, § 3; Laws 1982, LB 215, § 2; Laws 1982, LB 787, § 2; Laws 1984, LB 13, § 77; Laws 1985, LB 255, § 32; Laws 1985, LB 447, § 13; Laws 1996, LB 1044, § 127; Laws 1997, LB 307, § 58; Laws 1997, LB 622, § 63; Laws 1998, LB 1041, § 22; Laws 2001, LB 23, § 1; Laws 2004, LB 1083, § 92; Laws 2006, LB 1115, § 31; Laws 2008, LB280, § 3; Laws 2008, LB1014, § 37; Laws 2013, LB255, § 9; Laws 2013, LB561, § 7; Laws 2014, LB464, § 8; Laws 2014, LB853, § 21; Laws 2015, LB265, § 4; Laws 2016, LB894, § 2; Laws 2024, LB1051, § 5. Effective date July 19, 2024.

Cross References

Nebraska Indian Child Welfare Act, see section 43-1501.
Paternity determinations, jurisdiction, see section 25-2740.
Young Adult Bridge to Independence Act, see section 43-4501.

43-247.02 Juvenile court; placement or commitment of juveniles; restrictions.

(1) Notwithstanding any other provision of Nebraska law, a juvenile court shall not:

(a) Place any juvenile adjudicated or pending adjudication under subdivision (1), (2), (3)(b), or (4) of section 43-247 with the Department of Health and Human Services or the Office of Juvenile Services, other than as allowed under subsection (2) of this section;

(b) Commit any juvenile adjudicated or pending adjudication under subdivision (1), (2), (3)(b), or (4) of section 43-247 to the care and custody of the Department of Health and Human Services or the Office of Juvenile Services, other than as allowed under subsection (2) of this section;

(c) Require the Department of Health and Human Services or the Office of Juvenile Services to supervise any juvenile adjudicated or pending adjudication under subdivision (1), (2), (3)(b), or (4) of section 43-247, other than as allowed under subsection (2) of this section; or

(d) Require the Department of Health and Human Services or the Office of Juvenile Services to provide, arrange for, or pay for any services for any juvenile adjudicated or pending adjudication under subdivision (1), (2), (3)(b), or (4) of section 43-247, or for any party to cases under those subdivisions, other than as allowed under subsection (2) of this section.

(2) Notwithstanding any other provision of Nebraska law, a juvenile court shall not commit a juvenile to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center except as part of an order of intensive supervised probation under subsection (1) of section 43-286.

Source: Laws 2013, LB561, § 8; Laws 2020, LB1148, § 9; Laws 2024, LB1051, § 6.
Effective date July 19, 2024.

Cross References

Juvenile Services Act, see section 43-2401.

43-247.03 Restorative justice practices; confidential; privileged communications.

(1) In any juvenile case, the court may provide the parties the opportunity to address issues involving the child's care and placement, services to the family, and other concerns through restorative justice practices. Restorative justice practices may include, but are not limited to, prehearing conferences, family group conferences, expedited family group conferences, child welfare mediation, permanency prehearing conferences, termination of parental rights prehearing conferences, juvenile victim-offender dialogue, victim youth conferencing, victim-offender mediation, youth or community dialogue, panels, circles, and truancy mediation. The Office of Dispute Resolution shall be responsible for funding and management for such services provided by approved centers. All discussions taking place during such restorative justice practices, including plea negotiations, shall be confidential and privileged communications as provided in section 25-2914.01.

(2) For purposes of this section:

(a) Expedited family group conference means an expedited and limited-scope facilitated planning meeting which engages a child's or juvenile's parents, the child or juvenile when appropriate, other critical family members, services providers, and staff members from either the Department of Health and Human Services or the Office of Probation Administration to address immediate placement issues for the child or juvenile;

(b) Family group conference means a facilitated meeting involving a child's or juvenile's family, the child or juvenile when appropriate, available extended family members from across the United States, other significant and close persons to the family, service providers, and staff members from either the Department of Health and Human Services or the Office of Probation Administration to develop a family-centered plan for the best interests of the child and to address the essential issues of safety, permanency, and well-being of the child;

(c) Juvenile victim-offender dialogue means a court-connected process in which a facilitator meets with the juvenile offender and the victim in an effort to convene a dialogue in which the offender takes responsibility for his or her actions and the victim is able to address the offender and request an apology and restitution, with the goal of creating an agreed-upon written plan;

(d) Prehearing conference means a facilitated meeting prior to appearing in court and held to gain the cooperation of the parties, to offer services and treatment, and to develop a problem-solving atmosphere in the best interests of children involved in the juvenile court system. A prehearing conference may be scheduled at any time during the child welfare or juvenile court process, from initial removal through permanency, termination of parental rights, and juvenile delinquency court processes; and

(e) Victim youth conferencing means a process in which a restorative justice facilitator meets with the juvenile and the victim, when appropriate, in an effort to convene a dialogue in which the juvenile takes responsibility for his or her actions and the victim or victim surrogate is able to address the juvenile and create a reparation plan agreement, which may include apologies, restitution, community services, or other agreed-upon means of amends.

Source: Laws 2008, LB1014, § 38; R.S.1943, (2008), § 43-247.01; Laws 2014, LB464, § 10; Laws 2019, LB595, § 25.

43-247.04 Repealed. Laws 2024, LB1051, § 20.

(c) LAW ENFORCEMENT PROCEDURES

43-248 Temporary custody of juvenile without warrant; when.

A peace officer may take a juvenile into temporary custody without a warrant or order of the court and proceed as provided in section 43-250 when:

(1) A juvenile has violated a state law or municipal ordinance and such juvenile was eleven years of age or older at the time of the violation, and the officer has reasonable grounds to believe such juvenile committed such violation and was eleven years of age or older at the time of the violation;

(2) The officer has reasonable grounds to believe that the juvenile has run away from his or her parent, guardian, or custodian;

(3) A probation officer has reasonable cause to believe that a juvenile is in violation of probation and that the juvenile will attempt to leave the jurisdiction or place lives or property in danger;

(4) The officer has reasonable grounds to believe the juvenile is truant from school;

(5) The officer has reasonable grounds to believe the juvenile is immune from prosecution for prostitution under subsection (5) of section 28-801;

(6) A juvenile is seriously endangered in his or her surroundings and immediate removal appears to be necessary for the juvenile's protection;

(7) A juvenile has committed an act or engaged in behavior described in subdivision (1), (2), (3)(b), or (4) of section 43-247 and such juvenile was under eleven years of age at the time of such act or behavior, and the officer has reasonable cause to believe such juvenile committed such act or engaged in such behavior and was under eleven years of age at such time; or

(8) The officer believes the juvenile to be mentally ill and dangerous as defined in section 71-908 and that the harm described in that section is likely to occur before proceedings may be instituted before the juvenile court.

Source: Laws 1981, LB 346, § 4; Laws 1997, LB 622, § 64; Laws 2004, LB 1083, § 93; Laws 2010, LB800, § 14; Laws 2013, LB255, § 10; Laws 2016, LB894, § 3; Laws 2018, LB670, § 1; Laws 2024, LB1051, § 7.
Effective date July 19, 2024.

43-250 Temporary custody; disposition; custody requirements.

(1) A peace officer who takes a juvenile into temporary custody under section 29-401 or subdivision (1), (2), (3), or (7) of section 43-248 shall immediately take reasonable measures to notify the juvenile's parent, guardian, custodian, or relative and shall proceed as follows:

(a) The peace officer may release a juvenile taken into temporary custody under section 29-401 or subdivision (1), (2), or (7) of section 43-248;

(b) The peace officer may require a juvenile taken into temporary custody under section 29-401 or subdivision (1) or (2) of section 43-248 to appear before the court of the county in which such juvenile was taken into custody at a time and place specified in the written notice prepared in triplicate by the peace officer or at the call of the court. The notice shall also contain a concise statement of the reasons such juvenile was taken into custody. The peace officer shall deliver one copy of the notice to such juvenile and require such juvenile or his or her parent, guardian, other custodian, or relative, or both, to sign a written promise that such signer will appear at the time and place designated in the notice. Upon the execution of the promise to appear, the peace officer shall immediately release such juvenile. The peace officer shall, as soon as practicable, file one copy of the notice with the county attorney or city attorney and, when required by the court, also file a copy of the notice with the court or the officer appointed by the court for such purpose; or

(c) The peace officer may retain temporary custody of a juvenile taken into temporary custody under section 29-401 or subdivision (1), (2), or (3) of section 43-248 and deliver the juvenile, if necessary, to the probation officer and communicate all relevant available information regarding such juvenile to the probation officer. The probation officer shall determine the need for detention of the juvenile as provided in section 43-260.01. Upon determining that the juvenile should be placed in detention or an alternative to detention and securing placement in such setting by the probation officer, the peace officer shall implement the probation officer's decision to release or to detain and place the juvenile. When secure detention of a juvenile is necessary, such detention shall occur within a juvenile detention facility except:

(i) When a juvenile described in subdivision (1) or (2) of section 43-247, except for a status offender, is taken into temporary custody within a metropolitan statistical area and where no juvenile detention facility is reasonably available, the juvenile may be delivered, for temporary custody not to exceed six hours, to a secure area of a jail or other facility intended or used for the detention of adults solely for the purposes of identifying the juvenile and ascertaining his or her health and well-being and for safekeeping while awaiting transport to an appropriate juvenile placement or release to a responsible party;

(ii) When a juvenile described in subdivision (1) or (2) of section 43-247, except for a status offender, is taken into temporary custody outside of a metropolitan statistical area and where no juvenile detention facility is reasonably available, the juvenile may be delivered, for temporary custody not to exceed twenty-four hours excluding nonjudicial days and while awaiting an initial court appearance, to a secure area of a jail or other facility intended or used for the detention of adults solely for the purposes of identifying the juvenile and ascertaining his or her health and well-being and for safekeeping while awaiting transport to an appropriate juvenile placement or release to a responsible party;

(iii) Whenever a juvenile is held in a secure area of any jail or other facility intended or used for the detention of adults, there shall be no verbal, visual, or physical contact between the juvenile and any incarcerated adult and there shall be adequate staff to supervise and monitor the juvenile's activities at all times. This subdivision shall not apply to a juvenile charged with a felony as an adult in county or district court if he or she is sixteen years of age or older;

(iv) If a juvenile is under sixteen years of age or is a juvenile as described in subdivision (3) of section 43-247, he or she shall not be placed within a secure area of a jail or other facility intended or used for the detention of adults;

(v) If, within the time limits specified in subdivision (1)(c)(i) or (1)(c)(ii) of this section, a felony charge is filed against the juvenile as an adult in county or district court, he or she may be securely held in a jail or other facility intended or used for the detention of adults beyond the specified time limits;

(vi) A status offender or nonoffender taken into temporary custody shall not be held in a secure area of a jail or other facility intended or used for the detention of adults; and

(vii) A juvenile described in subdivision (1) or (2) of section 43-247, except for a status offender, may be held in a secure area of a jail or other facility intended or used for the detention of adults for up to six hours before and six hours after any court appearance.

(2) A juvenile taken into custody pursuant to a legal warrant of arrest shall be delivered to a probation officer who shall determine the need for detention of the juvenile as provided in section 43-260.01. If detention is not required, the juvenile may be released without bond if such release is in the best interests of the juvenile, the safety of the community is not at risk, and the court that issued the warrant is notified that the juvenile had been taken into custody and was released.

(3) In determining the appropriate temporary placement or alternative to detention of a juvenile under this section, the peace officer shall select the placement or alternative which is least restrictive of the juvenile's freedom so long as such placement or alternative is compatible with the best interests of the juvenile and the safety of the community. Any alternative to detention shall cause the least restriction of the juvenile's freedom of movement consistent with the best interests of the juvenile and the safety of the community.

(4) When a juvenile is taken into temporary custody pursuant to subdivision (4) of section 43-248, the peace officer shall deliver the juvenile to the enrolled school of such juvenile.

(5) When a juvenile is taken into temporary custody pursuant to subdivision (5), (6), or (7) of section 43-248, and not released under subdivision (1)(a) of

this section, the peace officer shall deliver the custody of such juvenile to the Department of Health and Human Services which shall make a temporary placement of the juvenile in the least restrictive environment consistent with the best interests of the juvenile as determined by the department. The department shall supervise such placement and, if necessary, consent to any necessary emergency medical, psychological, or psychiatric treatment for such juvenile. The department shall have no other authority with regard to such temporary custody until or unless there is an order by the court placing the juvenile in the custody of the department. If the peace officer delivers temporary custody of the juvenile pursuant to this subsection, the peace officer shall make a full written report to the county attorney within twenty-four hours of taking such juvenile into temporary custody. If a court order of temporary custody is not issued within forty-eight hours of taking the juvenile into custody, the temporary custody by the department shall terminate and the juvenile shall be returned to the custody of his or her parent, guardian, custodian, or relative.

(6) If the peace officer takes the juvenile into temporary custody pursuant to subdivision (8) of section 43-248, the peace officer may place the juvenile at a mental health facility for evaluation and emergency treatment or may deliver the juvenile to the Department of Health and Human Services as provided in subsection (5) of this section. At the time of the admission or turning the juvenile over to the department, the peace officer responsible for taking the juvenile into custody pursuant to subdivision (8) of section 43-248 shall execute a written certificate as prescribed by the department which will indicate that the peace officer believes the juvenile to be mentally ill and dangerous, a summary of the subject's behavior supporting such allegations, and that the harm described in section 71-908 is likely to occur before proceedings before a juvenile court may be invoked to obtain custody of the juvenile. A copy of the certificate shall be forwarded to the county attorney. The peace officer shall notify the juvenile's parents, guardian, custodian, or relative of the juvenile's placement.

Source: Laws 1981, LB 346, § 6; Laws 1982, LB 787, § 4; Laws 1985, LB 447, § 14; Laws 1988, LB 790, § 24; Laws 1996, LB 1044, § 128; Laws 1997, LB 622, § 65; Laws 1998, LB 1073, § 13; Laws 2000, LB 1167, § 12; Laws 2001, LB 451, § 5; Laws 2003, LB 43, § 12; Laws 2004, LB 1083, § 94; Laws 2009, LB63, § 29; Laws 2010, LB771, § 18; Laws 2010, LB800, § 15; Laws 2013, LB255, § 11; Laws 2015, LB294, § 15; Laws 2016, LB894, § 5; Laws 2018, LB670, § 2; Laws 2024, LB1051, § 8.
Effective date July 19, 2024.

43-251.01 Juveniles; placements and commitments; restrictions.

All placements and commitments of juveniles for evaluations or as temporary or final dispositions are subject to the following:

(1) No juvenile shall be confined in an adult correctional facility as a disposition of the court;

(2) A juvenile who is found to be a juvenile as described in subdivision (3) of section 43-247 shall not be placed in an adult correctional facility, the secure youth confinement facility operated by the Department of Correctional Services, or a youth rehabilitation and treatment center or committed to the Office of Juvenile Services;

(3) A juvenile who is found to be a juvenile as described in subdivision (1), (2), or (4) of section 43-247 shall not be assigned or transferred to an adult correctional facility or the secure youth confinement facility operated by the Department of Correctional Services;

(4) A juvenile under the age of fourteen years shall not be placed with or committed to a youth rehabilitation and treatment center;

(5)(a) A juvenile shall not be detained unless the physical safety of persons in the community would be seriously threatened or detention is necessary to secure the presence of the juvenile at the next hearing, as evidenced by a demonstrable record of willful failure to appear at a scheduled court hearing within the last twelve months;

(b) A child twelve years of age or younger shall not be placed in detention under any circumstances; and

(c) A juvenile shall not be placed into detention:

(i) To allow a parent or guardian to avoid his or her legal responsibility;

(ii) To punish, treat, or rehabilitate such juvenile;

(iii) To permit more convenient administrative access to such juvenile;

(iv) To facilitate further interrogation or investigation; or

(v) Due to a lack of more appropriate facilities except in case of an emergency as provided in section 43-430;

(6) A juvenile alleged to be a juvenile as described in subdivision (3) of section 43-247 shall not be placed in a juvenile detention facility, including a wing labeled as staff secure at such facility, unless the designated staff secure portion of the facility fully complies with subdivision (5) of section 83-4,125 and the ingress and egress to the facility are restricted solely through staff supervision; and

(7) A juvenile alleged to be a juvenile as described in subdivision (1), (2), (3)(b), or (4) of section 43-247 shall not be placed out of his or her home as a dispositional order of the court unless:

(a) All available community-based resources have been exhausted to assist the juvenile and his or her family; and

(b) Maintaining the juvenile in the home presents a significant risk of harm to the juvenile or community.

Source: Laws 1998, LB 1073, § 25; Laws 2012, LB972, § 1; Laws 2013, LB561, § 10; Laws 2015, LB482, § 1; Laws 2016, LB894, § 6; Laws 2018, LB670, § 3; Laws 2020, LB1140, § 3; Laws 2024, LB1051, § 9.
Effective date July 19, 2024.

43-251.02 Reference to clinically credentialed community-based provider.

A peace officer, upon making contact with a child who is in need of assistance, may refer the child and child's parent or parents or guardian to a clinically credentialed community-based provider for immediate crisis intervention, de-escalation, and respite care services.

Source: Laws 2015, LB482, § 2; Laws 2018, LB670, § 4.

(d) PREADJUDICATION PROCEDURES

43-253 Temporary custody; investigation; release; when.

(1) Upon delivery to the probation officer of a juvenile who has been taken into temporary custody under section 29-401, 43-248, or 43-250, the probation officer shall immediately investigate the situation of the juvenile and the nature and circumstances of the events surrounding his or her being taken into custody. Such investigation may be by informal means when appropriate.

(2) The probation officer's decision to release the juvenile from custody or place the juvenile in detention or an alternative to detention shall be based upon the results of the standardized juvenile detention screening instrument described in section 43-260.01.

(3) No juvenile who has been taken into temporary custody under subdivision (1)(c) of section 43-250 or subsection (6) of section 43-286.01 or pursuant to an alleged violation of an order for conditional release shall be detained in any detention facility or be subject to an alternative to detention infringing upon the juvenile's liberty interest for longer than twenty-four hours, excluding nonjudicial days, after having been taken into custody unless such juvenile has appeared personally before a court of competent jurisdiction for a hearing to determine if continued detention, services, or supervision is necessary. The juvenile shall be represented by counsel at the hearing. Whether such counsel shall be provided at the cost of the county shall be determined as provided in subsection (1) of section 43-272. If continued secure detention is ordered, such detention shall be in a juvenile detention facility, except that a juvenile charged with a felony as an adult in county or district court may be held in an adult jail as set forth in subdivision (1)(c)(v) of section 43-250. A juvenile placed in an alternative to detention, but not in detention, may waive this hearing through counsel.

(4) When the probation officer deems it to be in the best interests of the juvenile, the probation officer shall immediately release such juvenile to the custody of his or her parent. If the juvenile has both a custodial and a noncustodial parent and the probation officer deems that release of the juvenile to the custodial parent is not in the best interests of the juvenile, the probation officer shall, if it is deemed to be in the best interests of the juvenile, attempt to contact the noncustodial parent, if any, of the juvenile and to release the juvenile to such noncustodial parent. If such release is not possible or not deemed to be in the best interests of the juvenile, the probation officer may release the juvenile to the custody of a legal guardian, a responsible relative, or another responsible person.

(5) The court may admit such juvenile to bail by bond in such amount and on such conditions and security as the court, in its sole discretion, shall determine, or the court may proceed as provided in section 43-254. In no case shall the court or probation officer release such juvenile if it appears that:

(a) The physical safety of persons in the community would be seriously threatened; or

(b) Detention is necessary to secure the presence of the juvenile at the next hearing, as evidenced by a demonstrable record of willful failure to appear at a scheduled court hearing within the last twelve months.

Source: Laws 1981, LB 346, § 9; Laws 1982, LB 787, § 6; Laws 1994, LB 451, § 2; Laws 1998, LB 1073, § 15; Laws 2000, LB 1167, § 15;

Laws 2001, LB 451, § 6; Laws 2010, LB800, § 16; Laws 2016, LB894, § 7; Laws 2017, LB8, § 1; Laws 2018, LB670, § 5; Laws 2024, LB1051, § 10.
Effective date July 19, 2024.

Cross References

Clerk magistrate, authority to determine temporary custody of juvenile, see section 24-519.

43-254 Placement or detention pending adjudication; restrictions; assessment of costs.

(1) Pending the adjudication of any case, and subject to subdivision (5) of section 43-251.01, if it appears that the need for placement or further detention exists, the juvenile may be:

(a) Placed or detained a reasonable period of time on order of the court in the temporary custody of either the person having charge of the juvenile or some other suitable person;

(b) Kept in some suitable place provided by the city or county authorities;

(c) Placed in any proper and accredited charitable institution;

(d) Placed in a state institution, except any adult correctional facility, when proper facilities are available and the only local facility is a city or county jail, at the expense of the committing county on a per diem basis as determined from time to time by the head of the particular institution;

(e) Placed in the temporary care and custody of the Department of Health and Human Services when it does not appear that there is any need for secure detention, except that no juvenile alleged to be a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247 shall be placed in the care and custody or under the supervision of the department; or

(f) Offered supervision options as determined pursuant to section 43-260.01, through the Office of Probation Administration as ordered by the court and agreed to in writing by the parties, if the juvenile is alleged to be a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247 and it does not appear that there is any need for secure detention.

(2) The court may assess the cost of such placement or detention in whole or in part to the parent of the juvenile as provided in section 43-290.

(3) If a juvenile has been removed from his or her parent, guardian, or custodian pursuant to subdivision (6) of section 43-248, the court may enter an order continuing detention or placement upon a written determination that continuation of the juvenile in his or her home would be contrary to the health, safety, or welfare of such juvenile and that reasonable efforts were made to preserve and reunify the family if required under section 43-283.01.

Source: Laws 1981, LB 346, § 10; Laws 1985, LB 447, § 16; Laws 1987, LB 635, § 1; Laws 1987, LB 638, § 2; Laws 1996, LB 1044, § 129; Laws 1998, LB 1041, § 23; Laws 2000, LB 1167, § 16; Laws 2010, LB800, § 17; Laws 2013, LB561, § 11; Laws 2017, LB289, § 16; Laws 2024, LB1051, § 11.
Effective date July 19, 2024.

43-254.01 Temporary mental health placement; evaluation; procedure.

(1) Any time a juvenile is temporarily placed at a mental health facility pursuant to subsection (6) of section 43-250 or by a court as a juvenile who is mentally ill and dangerous, a mental health professional as defined in section 71-906 shall evaluate the mental condition of the juvenile as soon as reasonably possible but not later than thirty-six hours after the juvenile's admission, unless the juvenile was evaluated by a mental health professional immediately prior to the juvenile being placed in temporary custody and the temporary custody is based upon the conclusions of that evaluation. The mental health professional who performed the evaluation prior to the temporary custody or immediately after the temporary custody shall, without delay, convey the results of his or her evaluation to the county attorney.

(2) If it is the judgment of the mental health professional that the juvenile is not mentally ill and dangerous or that the harm described in section 71-908 is not likely to occur before the matter may be heard by a juvenile court, the mental health professional shall immediately notify the county attorney of that conclusion and the county attorney shall either proceed to hearing before the court within twenty-four hours or order the immediate release of the juvenile from temporary custody. Such release shall not prevent the county attorney from proceeding on the petition if he or she so chooses.

(3) A juvenile taken into temporary protective custody under subsection (6) of section 43-250 shall have the opportunity to proceed to adjudication hearing within seven days unless the matter is continued. Continuances shall be liberally granted at the request of the juvenile, his or her guardian ad litem, attorney, parents, or guardian. Continuances may be granted to permit the juvenile an opportunity to obtain voluntary treatment.

Source: Laws 1997, LB 622, § 67; Laws 2004, LB 1083, § 95; Laws 2010, LB800, § 18; Laws 2024, LB1051, § 12.
Effective date July 19, 2024.

43-256 Continued placement, detention, or alternative to detention; probable cause hearing; release requirements; exceptions.

(1) When the court enters an order continuing placement, detention, or an alternative to detention infringing upon the juvenile's liberty interest pursuant to section 43-253, upon request of the juvenile, or his or her parent, guardian, or attorney, the court shall hold a hearing within forty-eight hours. At such hearing the state shall have the burden of proof to show probable cause that such juvenile is within the jurisdiction of the court. Strict rules of evidence shall not apply at the probable cause hearing. The juvenile shall be released if probable cause is not shown. At the option of the court, it may hold the adjudication hearing provided in section 43-279 as soon as possible instead of the probable cause hearing if held within a reasonable period of time.

(2) This section and section 43-255 shall not apply to a juvenile (a) who has escaped from a commitment or (b) who has been taken into custody for his or her own protection as provided in subdivision (6) of section 43-248 in which case the juvenile shall be held on order of the court with jurisdiction for a reasonable period of time.

Source: Laws 1981, LB 346, § 12; Laws 1982, LB 787, § 8; Laws 1998, LB 1073, § 17; Laws 2006, LB 1113, § 38; Laws 2010, LB800, § 19; Laws 2016, LB894, § 9; Laws 2024, LB1051, § 13.
Effective date July 19, 2024.

43-258 Preadjudication physical and mental evaluation; placement; restrictions; reports; costs.

(1) Pending the adjudication of any case under the Nebraska Juvenile Code, the court may order the juvenile examined by a physician, surgeon, psychiatrist, duly authorized community mental health service program, or psychologist to aid the court in determining (a) a material allegation in the petition relating to the juvenile's physical or mental condition, (b) the juvenile's competence to participate in the proceedings, (c) the juvenile's responsibility for his or her acts, or (d) whether or not to provide emergency medical treatment.

(2)(a) Pending the adjudication of any case under the Nebraska Juvenile Code and after a showing of probable cause that the juvenile is within the court's jurisdiction, for the purposes of subsection (1) of this section, the court may order such juvenile to be placed with the Department of Health and Human Services for evaluation, except that no juvenile alleged to be a juvenile as described in subdivision (1), (2), (3)(b), or (4) of section 43-247 shall be placed with the department. If a juvenile is placed with the department under this subdivision, the department shall make arrangements for an appropriate evaluation. The department shall determine whether the evaluation will be made on a residential or nonresidential basis. Placement with the department for the purposes of this section shall be for a period not to exceed thirty days. If necessary to complete the evaluation, the court may order an extension not to exceed an additional thirty days. Any temporary placement of a juvenile made under this section shall be in the least restrictive environment consistent with the best interests of the juvenile and the safety of the community.

(b) Pending the adjudication of any case in which a juvenile is alleged to be a juvenile as described in subdivision (1), (2), (3)(b), or (4) of section 43-247 and after a showing of probable cause that the juvenile is within the court's jurisdiction, for the purposes of subsection (1) of this section, the court may order an evaluation to be arranged by the Office of Probation Administration. Any temporary placement of a juvenile made under this section shall be in the least restrictive environment consistent with the best interests of the juvenile and the safety of the community.

(3) Upon completion of the evaluation, the juvenile shall be returned to the court together with a written or electronic report of the results of the evaluation. Such report shall include an assessment of the basic needs of the juvenile and recommendations for continuous and long-term care and shall be made to effectuate the purposes in subdivision (1) of section 43-246. The juvenile shall appear before the court for a hearing on the report of the evaluation results within ten days after the court receives the evaluation.

(4) During any period of detention or evaluation prior to adjudication, costs incurred on behalf of a juvenile shall be paid as provided in section 43-290.01.

(5) The court shall provide copies of the evaluation report and any evaluations of the juvenile to the juvenile's attorney and the county attorney or city attorney prior to any hearing in which the report or evaluation will be relied upon.

Source: Laws 1981, LB 346, § 14; Laws 1982, LB 787, § 9; Laws 1985, LB 447, § 17; Laws 1987, LB 638, § 3; Laws 1994, LB 988, § 20; Laws 1996, LB 1155, § 9; Laws 1998, LB 1073, § 19; Laws 2010,

LB800, § 20; Laws 2011, LB669, § 26; Laws 2013, LB561, § 12; Laws 2014, LB464, § 13; Laws 2024, LB1051, § 14.
Effective date July 19, 2024.

43-260.01 Detention; factors.

The need for preadjudication placement, services, or supervision and the need for detention of a juvenile and whether detention or an alternative to detention is indicated shall be subject to subdivision (5) of section 43-251.01 and shall be determined as follows:

(1) The standardized juvenile detention screening instrument shall be used to evaluate the juvenile;

(2) If the results indicate that detention is not required, the juvenile shall be released without restriction or released to an alternative to detention; and

(3) If the results indicate that detention is required, detention shall be pursued.

Source: Laws 2000, LB 1167, § 14; Laws 2013, LB561, § 13; Laws 2016, LB894, § 11; Laws 2018, LB670, § 6.

43-260.04 Juvenile pretrial diversion program; requirements.

A juvenile pretrial diversion program shall:

(1) Be an option available for the county attorney or city attorney based upon his or her determination under this subdivision. The county attorney or city attorney may use the following information:

(a) The juvenile's age;

(b) The nature of the offense and role of the juvenile in the offense;

(c) The number and nature of previous offenses involving the juvenile;

(d) The dangerousness or threat posed by the juvenile to persons or property; or

(e) The recommendations of the referring agency, victim, and advocates for the juvenile;

(2) Permit participation by a juvenile only on a voluntary basis and shall include a juvenile diversion agreement described in section 43-260.06;

(3) Allow the juvenile to consult with counsel prior to a decision to participate in the program;

(4) Be offered to the juvenile when practicable prior to the filing of a juvenile petition or a criminal charge but after the arrest of the juvenile or issuance of a citation to the juvenile if after the arrest or citation a decision has been made by the county attorney or city attorney that the offense will support the filing of a juvenile petition or criminal charges;

(5) Provide screening services for use in creating a diversion plan utilizing appropriate services for the juvenile;

(6) Result in dismissal of the juvenile petition or criminal charges if the juvenile successfully completes the program;

(7) Be designed and operated to further the goals stated in section 43-260.03 and comply with sections 43-260.04 to 43-260.07;

(8) Require information received by the program regarding the juvenile to remain confidential unless a release of information is signed upon admission to the program or is otherwise authorized by law; and

(9)(a) Respond to a public inquiry in the same manner as if there were no information or records concerning participation in the diversion program. Information or records pertaining to participation in the diversion program shall not be disseminated to any person other than:

(i) A criminal justice agency as defined in section 29-3509;

(ii) The individual who is the subject of the record or any persons authorized by such individual; or

(iii) Other persons or agencies authorized by law.

(b) An individual, a person, or an agency requesting information subject to subdivision (9)(a) of this section shall provide the diversion program with satisfactory verification of his, her, or its identity.

Source: Laws 2003, LB 43, § 3; Laws 2013, LB561, § 14; Laws 2019, LB354, § 1.

43-260.06 Juvenile diversion agreement; contents.

A juvenile diversion agreement shall include, but not be limited to, one or more of the following:

(1) A letter of apology;

(2) Community service, not to be performed during school hours if the juvenile offender is attending school;

(3) Restitution;

(4) Attendance at educational or informational sessions at a community agency;

(5) Requirements to remain during specified hours at home, school, and work and restrictions on leaving or entering specified geographical areas; and

(6) Participation in an appropriate restorative justice practice or service.

Source: Laws 2003, LB 43, § 5; Laws 2019, LB595, § 27.

43-261.01 Juvenile court petition; felony or crime of domestic violence; court provide explanation of firearm possession consequences.

(1) When the petition alleges the juvenile committed an act which would constitute a felony or an act which would constitute a misdemeanor crime of domestic violence, the court shall explain the specific legal consequences that an adjudication for such an act will have on the juvenile's right to possess a firearm. The court shall provide such explanation at the earlier of:

(a) The juvenile's first court appearance or, if the juvenile is not present in the court at the time of the first appearance, by written notice sent by regular mail to the juvenile's last-known address; or

(b) Prior to adjudication.

(2) For purposes of this section:

(a) Firearm has the same meaning as in section 28-1201; and

(b) Misdemeanor crime of domestic violence has the same meaning as in section 28-1206.

Source: Laws 2018, LB990, § 6.

43-272 Right to counsel; appointment; payment; guardian ad litem; appointment; when; duties; standards for guardians ad litem; standards for attorneys who practice in juvenile court.

(1)(a) In counties having a population of less than one hundred fifty thousand inhabitants:

(i) When any juvenile court petition is filed alleging jurisdiction of a juvenile pursuant to subdivision (2) of section 43-247, counsel shall be appointed for such juvenile; and

(ii) In any other instance in which a juvenile is brought without counsel before a juvenile court, the court shall advise such juvenile and his or her parent or guardian of their right to retain counsel and shall inquire of such juvenile and his or her parent or guardian as to whether they desire to retain counsel.

(b) In counties having a population of one hundred fifty thousand or more inhabitants, when any juvenile court petition is filed alleging jurisdiction of a juvenile pursuant to subdivision (1), (2), (3)(b), or (4) of section 43-247, counsel shall be appointed for such juvenile.

(c) The court shall inform any juvenile described in this subsection and his or her parent or guardian of such juvenile's right to counsel at county expense if none of them is able to afford counsel. If the juvenile or his or her parent or guardian desires to have counsel appointed for such juvenile, or the parent or guardian of such juvenile cannot be located, and the court ascertains that none of such persons are able to afford an attorney, the court shall forthwith appoint an attorney to represent such juvenile for all proceedings before the juvenile court, except that if an attorney is appointed to represent such juvenile and the court later determines that a parent of such juvenile is able to afford an attorney, the court shall order such parent or juvenile to pay for services of the attorney to be collected in the same manner as provided by section 43-290. If the parent willfully refuses to pay any such sum, the court may commit him or her for contempt, and execution may issue at the request of the appointed attorney or the county attorney or by the court without a request.

(2) The court, on its own motion or upon application of a party to the proceedings, shall appoint a guardian ad litem for the juvenile: (a) If the juvenile has no parent or guardian of his or her person or if the parent or guardian of the juvenile cannot be located or cannot be brought before the court; (b) if the parent or guardian of the juvenile is excused from participation in all or any part of the proceedings; (c) if the parent is a juvenile or an incompetent; (d) if the parent is indifferent to the interests of the juvenile; or (e) in any proceeding pursuant to the provisions of subdivision (3)(a) of section 43-247.

A guardian ad litem shall have the duty to protect the interests of the juvenile for whom he or she has been appointed guardian, and shall be deemed a parent of the juvenile as to those proceedings with respect to which his or her guardianship extends.

(3) The court shall appoint an attorney as guardian ad litem. A guardian ad litem shall act as his or her own counsel and as counsel for the juvenile, unless there are special reasons in a particular case why the guardian ad litem or the juvenile or both should have separate counsel. In such cases the guardian ad litem shall have the right to counsel, except that the guardian ad litem shall be entitled to appointed counsel without regard to his or her financial ability to retain counsel. Whether such appointed counsel shall be provided at the cost of the county shall be determined as provided in subsection (1) of this section.

(4) By July 1, 2015, the Supreme Court shall provide by court rule standards for guardians ad litem for juveniles in juvenile court proceedings.

(5) By July 1, 2017, the Supreme Court shall provide guidelines setting forth standards for all attorneys who practice in juvenile court.

Source: Laws 1981, LB 346, § 28; Laws 1982, LB 787, § 12; Laws 2000, LB 1167, § 19; Laws 2015, LB15, § 1; Laws 2016, LB894, § 12; Laws 2021, LB307, § 2.

Cross References

Representation by public defender, see section 29-3915.

43-272.01 Guardian ad litem; appointment; powers and duties; consultation; payment of costs; compensation.

(1) A guardian ad litem as provided for in subsections (2) and (3) of section 43-272 shall be appointed when a child is removed from his or her surroundings pursuant to subdivision (6) or (8) of section 43-248, subsection (5) of section 43-250, or section 43-251. If a county has a guardian ad litem division created under section 23-3901, the court shall appoint the guardian ad litem division unless a conflict of interest exists or the court determines that an appointment outside of the guardian ad litem division would be more appropriate to serve the child's best interests. If removal has not occurred, a guardian ad litem shall be appointed at the commencement of all cases brought under subdivision (3)(a) or (7) of section 43-247 and section 28-707.

(2) In the course of discharging duties as guardian ad litem, the person so appointed shall consider, but not be limited to, the criteria provided in this subsection. The guardian ad litem:

(a) Is appointed to stand in lieu of a parent for a protected juvenile who is the subject of a juvenile court petition, shall be present at all hearings before the court in such matter unless expressly excused by the court, and may enter into such stipulations and agreements concerning adjudication and disposition deemed by him or her to be in the juvenile's best interests;

(b) Is not appointed to defend the parents or other custodian of the protected juvenile but shall defend the legal and social interests of such juvenile. Social interests shall be defined generally as the usual and reasonable expectations of society for the appropriate parental custody and protection and quality of life for juveniles without regard to the socioeconomic status of the parents or other custodians of the juvenile;

(c) May at any time after the filing of the petition move the court of jurisdiction to provide medical or psychological treatment or evaluation as set out in section 43-258. The guardian ad litem shall have access to all reports resulting from any examination ordered under section 43-258, and such reports shall be used for evaluating the status of the protected juvenile;

(d) Shall make every reasonable effort to become familiar with the needs of the protected juvenile which (i) shall include consultation with the juvenile in his or her respective placement within two weeks after the appointment and once every six months thereafter, unless the court approves other methods of consultation as provided in subsection (6) of this section, and inquiry of the most current caseworker, foster parent, or other custodian and (ii) may include inquiry of others directly involved with the juvenile or who may have information or knowledge about the circumstances which brought the juvenile court action or related cases and the development of the juvenile, including biological parents, physicians, psychologists, teachers, and clergy members;

(e) May present evidence and witnesses and cross-examine witnesses at all evidentiary hearings. In any proceeding under this section relating to a child of school age, certified copies of school records relating to attendance and academic progress of such child are admissible in evidence;

(f) Shall be responsible for making written reports and recommendations to the court at every dispositional, review, or permanency planning hearing regarding (i) the temporary and permanent placement of the protected juvenile, (ii) the type and number of contacts with the juvenile, (iii) the type and number of contacts with other individuals described in subdivision (d) of this subsection, (iv) compliance with the Nebraska Strengthening Families Act, and (v) any further relevant information on a form prepared by the Supreme Court. As an alternative to the written reports and recommendations, the court may provide the guardian ad litem with a checklist that shall be completed and presented to the court at every dispositional or review hearing. A copy of the written reports and recommendations to the court or a copy of the checklist presented to the court shall also be submitted to the Foster Care Review Office for any juvenile in foster care placement as defined in section 43-1301;

(g) Shall consider such other information as is warranted by the nature and circumstances of a particular case; and

(h) May file a petition in the juvenile court on behalf of the juvenile, including a supplemental petition as provided in section 43-291.

(3) Nothing in this section shall operate to limit the discretion of the juvenile court in protecting the best interests of a juvenile who is the subject of a juvenile court petition.

(4) For purposes of subdivision (2)(d) of this section, the court may order the expense of such consultation, if any, to be paid by the county in which the juvenile court action is brought or the court may, after notice and hearing, assess the cost of such consultation, if any, in whole or in part to the parents of the juvenile. The ability of the parents to pay and the amount of the payment shall be determined by the court by appropriate examination.

(5) The guardian ad litem may be compensated on a per-case appointment system or pursuant to a system of multi-case contracts or may be employed by a guardian ad litem division created pursuant to section 23-3901. If a county creates a guardian ad litem division, guardian ad litem appointments shall be made first from the guardian ad litem division unless a conflict exists or the court determines that an appointment outside of the guardian ad litem division would be more appropriate to serve the child's best interests. Regardless of the method of compensation, billing hours and expenses for court-appointed guardian ad litem services shall be submitted to the court for approval and shall be recorded on a written, itemized billing statement signed by the attorney

responsible for the case. Billing hours and expenses for guardian ad litem services rendered under a contract for such services shall be submitted to the entity with whom the guardian ad litem contracts in the form and manner prescribed by such entity for approval. Case time for guardian ad litem services shall be scrupulously accounted for by the attorney responsible for the case. Additionally, in the case of a multi-lawyer firm or organization retained for guardian ad litem services, the name of the attorney or attorneys assigned to each guardian ad litem case shall be recorded.

(6) The guardian ad litem shall meet in person with the juvenile for purposes of the consultation required by subdivision (2)(d) of this section unless prohibited or made impracticable by exceptional circumstances, including, but not limited to, situations in which an unreasonable geographical distance is involved between the location of the guardian ad litem and the juvenile. When such exceptional circumstances exist, the guardian ad litem shall attempt such consultation by other reasonable means, including, but not limited to, by telephone or suitable electronic means, if the juvenile is of sufficient age and capacity to participate in such means of communication and there are no other barriers preventing such means of communication. If consultation by telephone or suitable electronic means is not feasible, the guardian ad litem shall seek direction from the court as to any other acceptable method by which to accomplish consultation required by subdivision (2)(d) of this section.

Source: Laws 1982, LB 787, § 13; Laws 1985, LB 447, § 21; Laws 1990, LB 1222, § 2; Laws 1992, LB 1184, § 12; Laws 1995, LB 305, § 1; Laws 1997, LB 622, § 68; Laws 2008, LB1014, § 39; Laws 2010, LB800, § 21; Laws 2013, LB561, § 17; Laws 2015, LB15, § 2; Laws 2016, LB746, § 15; Laws 2016, LB894, § 13; Laws 2024, LB1051, § 15.
Effective date July 19, 2024.

Cross References

Nebraska Strengthening Families Act, see section 43-4701.

(e) PROSECUTION

43-274 County attorney; city attorney; preadjudication powers and duties; petition, pretrial diversion, or restorative justice practice or service; transfer; procedures; appeal; admission, confession, or statement made by juvenile; inadmissible; when.

(1) The county attorney or city attorney, having knowledge of a juvenile within his or her jurisdiction who appears to be a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247 and taking into consideration the criteria in section 43-276, may proceed as provided in this section.

(2) The county attorney or city attorney may offer pretrial diversion to the juvenile in accordance with a juvenile pretrial diversion program established pursuant to sections 43-260.02 to 43-260.07.

(3)(a) If a juvenile appears to be a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247, the county attorney or city attorney may utilize restorative justice practices or services as a form of, or condition of, diversion or plea bargaining or as a recommendation as a condition of disposition, through a referral to a restorative justice facilitator.

(b) For victim-involved offenses, a restorative justice facilitator shall conduct a separate individual intake and assessment session with each juvenile and victim to determine which, if any, restorative justice practice is appropriate. All participation by the victim shall be voluntary. If the victim declines to participate in any or all parts of the restorative justice practice, a victim surrogate may be invited to participate with the juvenile. If, after assessment, participation by the juvenile is deemed inappropriate, the restorative justice facilitator shall return the referral to the referring county attorney or city attorney.

(c) A victim or his or her parent or guardian shall not be charged a fee. A juvenile or his or her parent or guardian may be charged a fee according to the policies and procedures of the restorative justice facilitator and the referring county attorney or city attorney. Restorative justice facilitators shall use a sliding fee scale based on income and shall not deny services based upon the inability of a juvenile or his or her parent or guardian to pay, if funding is otherwise available.

(d) Prior to participating in any restorative justice practice or service under this section, the juvenile, the juvenile's parent or guardian, and the victim, if he or she is participating, shall sign a consent to participate form.

(e) If a reparation plan agreement is reached, the restorative justice facilitator shall forward a copy of the agreement to the referring county attorney or city attorney. The terms of the reparation plan agreement shall specify provisions for reparation, monitoring, completion, and reporting. An agreement may include, but is not limited to, one or more of the following:

(i) Participation by the juvenile in certain community service programs;

(ii) Payment of restitution by the juvenile to the victim;

(iii) Reconciliation between the juvenile and the victim;

(iv) Apology, when appropriate, between the juvenile and the victim; and

(v) Any other areas of agreement.

(f) The restorative justice facilitator shall give notice to the county attorney or city attorney regarding the juvenile's compliance with the terms of the reparation plan agreement. If the juvenile does not satisfactorily complete the terms of the agreement, the county attorney or city attorney may:

(i) Refer the matter back to the restorative justice facilitator for further restorative justice practices or services; or

(ii) Proceed with filing a juvenile court petition or criminal charge.

(g) If a juvenile meets the terms of the reparation plan agreement, the county attorney or city attorney shall either:

(i) Not file a juvenile court petition or criminal charge against the juvenile for the acts for which the juvenile was referred for restorative justice practice or services when referred as a diversion or an alternative to diversion; or

(ii) File a reduced charge as previously agreed when referred as a part of a plea negotiation.

(4) The county attorney or city attorney shall file the petition in the court with jurisdiction as outlined in section 43-246.01.

(5)(a) When a transfer from juvenile court to county court or district court is authorized because there is concurrent jurisdiction, the county attorney or city attorney may move to transfer the proceedings. Such motion shall be filed with the juvenile court petition unless otherwise permitted for good cause shown.

The juvenile court shall schedule a hearing on such motion within fifteen days after the motion is filed. The county attorney or city attorney has the burden by a preponderance of the evidence to show why such proceeding should be transferred. The juvenile shall be represented by counsel at the hearing and may present the evidence as to why the proceeding should be retained. After considering all the evidence and reasons presented by both parties, the juvenile court shall retain the proceeding unless the court determines that a preponderance of the evidence shows that the proceeding should be transferred to the county court or district court. The court shall make a decision on the motion within thirty days after the hearing. The juvenile court shall set forth findings for the reason for its decision.

(b) An order granting or denying transfer of the case from juvenile court to county or district court shall be considered a final order for the purposes of appeal. Upon the 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 any such appeal, the juvenile court may continue to enter temporary orders in the best interests of the juvenile pursuant to section 43-295.

(c) If the proceeding is transferred from juvenile court to the county court or district court, the county attorney or city attorney shall file a criminal information in the county court or district court, as appropriate, and the accused shall be arraigned as provided for a person eighteen years of age or older in subdivision (1)(b) of section 29-1816.

(d)(i) Except as provided in subdivision (5)(d)(ii) of this section, any admission, confession, or statement made by the juvenile to a psychiatrist, psychologist, therapist, or licensed mental health practitioner for purposes of a motion to transfer a case from juvenile court to county court or district court shall be inadmissible in any criminal or civil proceeding.

(ii) Subdivision (5)(d)(i) of this section does not prevent any such admission, confession, or statement from being:

(A) Admissible in proceedings relating to such motion to transfer;

(B) Admissible in disposition proceedings for such juvenile under the Nebraska Juvenile Code if the case is not transferred to county court or district court;

(C) Included in any presentence investigation report for such juvenile if the case is transferred to county court or district court; and

(D) Admissible in such case to impeach such juvenile during cross-examination if the juvenile testifies at trial or during juvenile court proceedings and such testimony is materially inconsistent with a prior statement made by the juvenile to a psychiatrist, psychologist, therapist, or licensed mental health practitioner for purposes of the motion to transfer such case.

Source: Laws 1981, LB 346, § 30; Laws 1987, LB 638, § 4; Laws 1998, LB 1073, § 20; Laws 2003, LB 43, § 13; Laws 2014, LB464, § 16; Laws 2017, LB11, § 2; Laws 2019, LB595, § 28; Laws 2024, LB184, § 2.
Effective date July 19, 2024.

43-275 Petition, complaint, or restorative justice program consent form; filing; time.

Whenever a juvenile is detained or placed in custody under the provisions of section 43-253, a petition, complaint, or restorative justice program consent form must be filed within forty-eight hours excluding nonjudicial days.

Source: Laws 1981, LB 346, § 31; Laws 1998, LB 1073, § 21; Laws 2019, LB595, § 29.

43-276 County attorney; city attorney; criminal charge, juvenile court petition, pretrial diversion, restorative justice, or transfer of case; determination; considerations; referral to community-based resources.

(1) The county attorney or city attorney, in making the determination whether to file a criminal charge, file a juvenile court petition, offer juvenile pretrial diversion or restorative justice, or transfer a case to or from juvenile court, and the juvenile court, county court, or district court in making the determination whether to transfer a case, shall consider: (a) The type of treatment such juvenile would most likely be amenable to; (b) whether there is evidence that the alleged offense included violence; (c) the motivation for the commission of the offense; (d) the age of the juvenile and the ages and circumstances of any others involved in the offense; (e) the previous history of the juvenile, including whether he or she had been convicted of any previous offenses or adjudicated in juvenile court; (f) the best interests of the juvenile; (g) consideration of public safety; (h) consideration of the juvenile's ability to appreciate the nature and seriousness of his or her conduct; (i) whether the best interests of the juvenile and the security of the public may require that the juvenile continue in secure detention or under supervision for a period extending beyond his or her minority and, if so, the available alternatives best suited to this purpose; (j) whether the victim or juvenile agree to participate in restorative justice; (k) whether there is a juvenile pretrial diversion program established pursuant to sections 43-260.02 to 43-260.07; (l) whether the juvenile has been convicted of or has acknowledged unauthorized use or possession of a firearm; (m) whether a juvenile court order has been issued for the juvenile pursuant to section 43-2,106.03; (n) whether the juvenile is a criminal street gang member; and (o) such other matters as the parties deem relevant to aid in the decision.

(2) Prior to filing a petition alleging that a juvenile is a juvenile as described in subdivision (3)(b) of section 43-247, the county attorney shall make reasonable efforts to refer the juvenile and family to community-based resources available to address the juvenile's behaviors, provide crisis intervention, and maintain the juvenile safely in the home. Failure to describe the efforts required by this subsection shall be a defense to adjudication.

Source: Laws 1981, LB 346, § 32; Laws 1998, LB 1073, § 22; Laws 2000, LB 1167, § 20; Laws 2003, LB 43, § 14; Laws 2008, LB1014, § 40; Laws 2009, LB63, § 30; Laws 2012, LB972, § 2; Laws 2014, LB464, § 17; Laws 2015, LB482, § 5; Laws 2019, LB595, § 30.

(f) ADJUDICATION PROCEDURES

43-279 Juvenile violator or juvenile in need of special supervision; rights of parties; proceedings.

(1) The adjudication portion of hearings shall be conducted before the court without a jury, applying the customary rules of evidence in use in trials without a jury. When the petition alleges the juvenile to be within the provisions of subdivision (1), (2), (3)(b), or (4) of section 43-247 and the juvenile or his or her parent, guardian, or custodian appears with or without counsel, the court shall inform the parties:

(a) Of the nature of the proceedings and the possible consequences or dispositions pursuant to sections 43-284 to 43-286, 43-289, and 43-290 that may apply to the juvenile's case following an adjudication of jurisdiction;

(b) Of such juvenile's right to counsel as provided in sections 43-272 and 43-273;

(c) Of the privilege against self-incrimination by advising the juvenile, parent, guardian, or custodian that the juvenile may remain silent concerning the charges against the juvenile and that anything said may be used against the juvenile;

(d) Of the right to confront anyone who testifies against the juvenile and to cross-examine any persons who appear against the juvenile;

(e) Of the right of the juvenile to testify and to compel other witnesses to attend and testify in his or her own behalf;

(f) Of the right of the juvenile to a speedy adjudication hearing; and

(g) Of the right to appeal and have a transcript for such purpose.

After giving such warnings and admonitions, the court may accept an in-court admission or answer of no contest by the juvenile of all or any part of the allegations in the petition if the court has determined from examination of the juvenile and those present that such admission or answer of no contest is intelligently, voluntarily, and understandingly made and with an affirmative waiver of rights and that a factual basis for such admission or answer of no contest exists. The waiver of the right to counsel shall satisfy section 43-3102. The court may base its adjudication provided in subsection (2) of this section on such admission or answer of no contest.

(2) If the juvenile denies the petition or stands mute the court shall first allow a reasonable time for preparation if needed and then consider only the question of whether the juvenile is a person described by section 43-247. After hearing the evidence on such question, the court shall make a finding and adjudication, to be entered on the records of the court, whether or not the juvenile is a person described by subdivision (1), (2), (3)(b), or (4) of section 43-247 based upon proof beyond a reasonable doubt. If an Indian child is involved, the standard of proof shall be in compliance with the Nebraska Indian Child Welfare Act, if applicable.

(3) If the court shall find that the juvenile named in the petition is not within the provisions of section 43-247, it shall dismiss the case. If the court finds that the juvenile named in the petition is such a juvenile, it shall make and enter its findings and adjudication accordingly, designating which subdivision or subdivisions of section 43-247 such juvenile is within; the court shall allow a reasonable time for preparation if needed and then proceed to an inquiry into the proper disposition to be made of such juvenile.

Source: Laws 1981, LB 346, § 35; Laws 1982, LB 787, § 15; Laws 1985, LB 255, § 34; Laws 1985, LB 447, § 22; Laws 1998, LB 1073, § 23; Laws 2016, LB894, § 17; Laws 2023, LB50, § 21.

Cross References

Acceptance of plea, finding by court required, see section 29-401.
Nebraska Indian Child Welfare Act, see section 43-1501.

43-280 Adjudication; effect; use of in-court statements.

No adjudication by the juvenile court upon the status of a juvenile shall be deemed a conviction nor shall the adjudication operate to impose any of the civil disabilities ordinarily resulting from conviction. The adjudication and the evidence given in the court shall not operate to disqualify such juvenile in any future civil or military service application or appointment. Any admission, answer of no contest, confession, or statement made by the juvenile in court and admitted by the court, in a proceeding under section 43-279, shall be inadmissible against such juvenile in any criminal or civil proceeding but may be considered by a court as part of a presentence investigation involving a subsequent transaction.

Source: Laws 1981, LB 346, § 36; Laws 2023, LB50, § 22.

Cross References

Juvenile adjudication, inadmissible for purpose of attacking credibility of witness, see section 27-609.

43-281 Adjudication of jurisdiction; evaluation; restrictions on placement; copy of report or evaluation.

(1) Following an adjudication of jurisdiction and prior to final disposition, the court may provide for evaluation of a juvenile as provided in this section.

(2) If the adjudication of jurisdiction is not under subdivision (1), (2), (3)(b), or (4) of section 43-247, the court may place the juvenile with the Office of Juvenile Services or the Department of Health and Human Services for evaluation. The office or department shall arrange and pay for an appropriate evaluation if the office or department determines that there are no parental funds or private or public insurance available to pay for such evaluation.

(3)(a) If the adjudication of jurisdiction is under subdivision (1), (2), (3)(b), or (4) of section 43-247, the court may order an evaluation to be arranged by the Office of Probation Administration.

(b) For a juvenile in detention, the court shall order that such evaluation be completed and the juvenile returned to the court within twenty-one days after the evaluation.

(c) For a juvenile who is not in detention, the evaluation shall be completed and the juvenile returned to the court within thirty days.

(d) The physician, psychologist, licensed mental health practitioner, professional counselor holding a privilege to practice in Nebraska under the Licensed Professional Counselors Interstate Compact, licensed drug and alcohol counselor, or other provider responsible for completing the evaluation shall have up to ten days to complete the evaluation after receiving the referral authorizing the evaluation.

(4) A juvenile pending evaluation ordered under this section shall not reside in a detention facility at the time of the evaluation or while waiting for the completed evaluation to be returned to the court unless detention of such juvenile is a matter of immediate and urgent necessity for the protection of such juvenile or the person or property of another or if it appears that such juvenile is likely to flee the jurisdiction of the court.

(5) The court shall provide copies of predisposition reports and evaluations of the juvenile to the juvenile's attorney and the county attorney or city attorney prior to any hearing in which the report or evaluation will be relied upon.

Source: Laws 1981, LB 346, § 37; Laws 1982, LB 787, § 16; Laws 1994, LB 436, § 1; Laws 1998, LB 1073, § 24; Laws 2013, LB561, § 19; Laws 2014, LB464, § 18; Laws 2022, LB752, § 25; Laws 2024, LB1051, § 16.
Effective date July 19, 2024.

Cross References

Licensed Professional Counselors Interstate Compact, see section 38-4201.

(g) DISPOSITION

43-283.01 Preserve and reunify the family; reasonable efforts; requirements.

(1) In determining whether reasonable efforts have been made to preserve and reunify the family and in making such reasonable efforts, the juvenile's health and safety are the paramount concern.

(2) Except as provided in subsections (4) and (5) of this section, reasonable efforts shall be made to preserve and reunify families prior to the placement of a juvenile in foster care to prevent or eliminate the need for removing the juvenile from the juvenile's home and to make it possible for a juvenile to safely return to the juvenile's home.

(3) If continuation of reasonable efforts to preserve and reunify the family is determined to be inconsistent with the permanency plan determined for the juvenile in accordance with a permanency hearing under section 43-1312, efforts shall be made to place the juvenile in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the juvenile.

(4) Reasonable efforts to preserve and reunify the family are not required if a court of competent jurisdiction has determined that:

(a) 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;

(b) The parent of the juvenile has (i) committed first or second degree murder to another child of the parent, (ii) committed voluntary manslaughter to another child of the parent, (iii) aided or abetted, attempted, conspired, or solicited to commit murder, or aided or abetted voluntary manslaughter of the juvenile or another child of the parent, (iv) committed a felony assault which results in serious bodily injury to the juvenile or another minor child of the parent, or (v) been convicted of felony sexual assault of the other parent of the juvenile under section 28-319.01 or 28-320.01 or a comparable crime in another state; or

(c) The parental rights of the parent to a sibling of the juvenile have been terminated involuntarily.

(5) Except as otherwise provided in the Nebraska Indian Child Welfare Act, if the family includes a child who was conceived by the victim of a sexual assault and a biological parent is convicted of the crime under section 28-319 or 28-320 or a law in another jurisdiction similar to either section 28-319 or 28-320, the convicted biological parent of such child shall not be considered a

part of the child's family for purposes of requiring reasonable efforts to preserve and reunify the family.

(6) If reasonable efforts to preserve and reunify the family are not required because of a court determination made under subsection (4) of this section, a permanency hearing, as provided in section 43-1312, shall be held for the juvenile within thirty days after the determination, reasonable efforts shall be made to place the juvenile in a timely manner in accordance with the permanency plan, and whatever steps are necessary to finalize the permanent placement of the juvenile shall be made.

(7) Reasonable efforts to place a juvenile for adoption or with a guardian may be made concurrently with reasonable efforts to preserve and reunify the family, but priority shall be given to preserving and reunifying the family as provided in this section.

Source: Laws 1998, LB 1041, § 24; Laws 2009, LB517, § 1; Laws 2017, LB289, § 17.

Cross References

Nebraska Indian Child Welfare Act, see section 43-1501.

43-284 Juvenile in need of assistance or special supervision; care and custody; payments for support; removal from home; restrictions.

(1) When any juvenile is adjudged to be under subdivision (3), (4), or (8) of section 43-247, the court may permit such juvenile to remain in his or her own home subject to supervision or may make an order committing the juvenile to:

(a) The care of some suitable institution;

(b) Inpatient or outpatient treatment at a mental health facility or mental health program;

(c) The care of some reputable citizen of good moral character;

(d) The care of some association willing to receive the juvenile embracing in its objects the purpose of caring for or obtaining homes for such juveniles, which association shall have been accredited as provided in section 43-296;

(e) The care of a suitable family; or

(f) The care and custody of the Department of Health and Human Services, except that a juvenile who is adjudicated to be a juvenile described in subdivision (3)(b) or (4) of section 43-247 shall not be committed to the care and custody or supervision of the department.

(2)(a) Under subdivision (1)(a), (b), (c), (d), or (e) of this section, upon a determination by the court that there are no parental, private, or other public funds available for the care, custody, education, and maintenance of a juvenile, the court may order a reasonable sum for the care, custody, education, and maintenance of the juvenile to be paid out of a fund which shall be appropriated annually by the county where the petition is filed until suitable provisions may be made for the juvenile without such payment.

(b) The amount to be paid by a county for education pursuant to this section shall not exceed the average cost for education of a public school student in the county in which the juvenile is placed and shall be paid only for education in kindergarten through grade twelve.

(3) The court may enter a dispositional order removing a juvenile from his or her home upon a written determination that continuation in the home would be

contrary to the health, safety, or welfare of such juvenile and that reasonable efforts to preserve and reunify the family have been made if required under section 43-283.01.

Source: Laws 1981, LB 346, § 40; Laws 1982, LB 353, § 1; Laws 1987, LB 635, § 3; Laws 1987, LB 638, § 5; Laws 1989, LB 182, § 10; Laws 1996, LB 1044, § 130; Laws 1997, LB 622, § 72; Laws 1998, LB 1041, § 25; Laws 2001, LB 23, § 2; Laws 2013, LB561, § 20; Laws 2024, LB1051, § 17.
Effective date July 19, 2024.

Cross References

Child removed from home, investigation and examination required, see section 43-1311.

43-285 Care of juvenile; duties; authority; placement plan and report; when; court proceedings; standing; Foster Care Review Office or local foster care review board; participation authorized; immunity.

(1) When the court awards a juvenile to the care of the Department of Health and Human Services, an association, or an individual in accordance with the Nebraska Juvenile Code, the juvenile shall, unless otherwise ordered, become a ward and be subject to the legal custody and care of the department, association, or individual to whose care he or she is committed. Any such association and the department shall have authority, by and with the assent of the court, to determine the care, placement, medical services, psychiatric services, training, and expenditures on behalf of each juvenile committed to it. Any such association and the department shall be responsible for applying for any health insurance available to the juvenile, including, but not limited to, medical assistance under the Medical Assistance Act. Such custody and care shall not include the guardianship of any estate of the juvenile.

(2)(a) Following an adjudication hearing at which a juvenile is adjudged to be under subdivision (3)(a) or (c) of section 43-247, the court may order the department 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. The health and safety of the juvenile shall be the paramount concern in the proposed plan.

(b) The department shall provide opportunities for the child, in an age or developmentally appropriate manner, to be consulted in the development of his or her plan as provided in the Nebraska Strengthening Families Act.

(c) The department shall include in the plan for a child who is fourteen years of age or older and subject to the legal care and custody of the department a written independent living transition proposal which meets the requirements of section 43-1311.03 and, for eligible children, the Young Adult Bridge to Independence Act. The juvenile court shall provide a copy of the plan to all interested parties before the hearing. The court may approve the plan, modify the plan, order that an alternative plan be developed, or implement another plan that is in the child's best interests. In its order the court shall include a finding regarding the appropriateness of the programs and services described in the proposal designed to help the child prepare for the transition from foster care to a successful adulthood. The court shall also ask the child, in an age or developmentally appropriate manner, if he or she participated in the development of his or her plan and make a finding regarding the child's participation in the development of his or her plan as provided in the Nebraska Strengthen-

ing Families Act. Rules of evidence shall not apply at the dispositional hearing when the court considers the plan that has been presented.

(d) The last court hearing before jurisdiction pursuant to subdivision (3)(a) of section 43-247 is terminated for a child who is sixteen years of age or older or pursuant to subdivision (8) of section 43-247 for a child whose guardianship or state-funded adoption assistance agreement was disrupted or terminated after he or she had attained the age of sixteen years shall be called the independence hearing. In addition to other matters and requirements to be addressed at this hearing, the independence hearing shall address the child's future goals and plans and access to services and support for the transition from foster care to adulthood consistent with section 43-1311.03 and the Young Adult Bridge to Independence Act. The child shall not be required to attend the independence hearing, but efforts shall be made to encourage and enable the child's attendance if the child wishes to attend, including scheduling the hearing at a time that permits the child's attendance. An independence coordinator as provided in section 43-4506 shall attend the hearing if reasonably practicable, but the department is not required to have legal counsel present. At the independence hearing, the court shall advise the child about the bridge to independence program, including, if applicable, the right of young adults in the bridge to independence program to request a court-appointed, client-directed attorney under subsection (1) of section 43-4510 and the benefits and role of such attorney and to request additional permanency review hearings in the bridge to independence program under subsection (5) of section 43-4508 and how to request such a hearing. The court shall also advise the child, if applicable, of the rights he or she is giving up if he or she chooses not to participate in the bridge to independence program and the option to enter such program at any time between nineteen and twenty-one years of age if the child meets the eligibility requirements of section 43-4504. The department shall present information to the court regarding other community resources that may benefit the child, specifically information regarding state programs established pursuant to 42 U.S.C. 677. The court shall also make a finding as to whether the child has received the documents as required by subsection (9) of section 43-1311.03.

(3)(a) Within thirty days after an order awarding a juvenile to the care of the department, an association, or an individual and until the juvenile reaches the age of majority, the department, association, or individual shall file with the court a report stating the location of the juvenile's placement and the needs of the juvenile in order to effectuate the purposes of subdivision (1) of section 43-246. The department, association, or individual shall file a report with the court once every six months or at shorter intervals if ordered by the court or deemed appropriate by the department, association, or individual. Every six months, the report shall provide an updated statement regarding the eligibility of the juvenile for health insurance, including, but not limited to, medical assistance under the Medical Assistance Act. The department shall also concurrently file a written sibling placement report as described in subsection (3) of section 43-1311.02 at these times.

(b) The department, association, or individual shall file a report and notice of placement change with the court and shall send copies of the notice to all interested parties, including all of the child's siblings that are known to the department and, if the child is of school age, the school where the child is enrolled, at least seven days before the placement of the juvenile is changed from what the court originally considered to be a suitable family home or

institution to some other custodial situation in order to effectuate the purposes of subdivision (1) of section 43-246. If a determination is made that it is not in the child's best interest to remain in the same school after a placement change, notice of placement change shall also be sent to the new school where the child will be enrolled. The department, association, or individual shall afford a parent or an adult sibling the option of refusing to receive such notifications. The court, on its own motion or upon the filing of an objection to the change by an interested party, may order a hearing to review such a change in placement and may order that the change be stayed until the completion of the hearing. Nothing in this section shall prevent the court on an ex parte basis from approving an immediate change in placement upon good cause shown. The department may make an immediate change in placement without court approval only if the juvenile is in a harmful or dangerous situation or when the foster parents request that the juvenile be removed from their home. Approval of the court shall be sought within twenty-four hours after making the change in placement or as soon thereafter as possible. Within twenty-four hours after court approval of the emergency placement change, the department, association, or individual shall provide notice of the placement change to all interested parties, including all of the child's siblings that are known to the department, and, if the child is of school age, the school where the child is enrolled and the new school where the child will be enrolled.

(c) The department shall provide the juvenile's guardian ad litem with a copy of any report filed with the court by the department pursuant to this subsection.

(4) The court shall also hold a permanency hearing if required under section 43-1312.

(5) When the court awards a juvenile to the care of the department, an association, or an individual, then the department, association, or individual shall have standing as a party to file any pleading or motion, to be heard by the court with regard to such filings, and to be granted any review or relief requested in such filings consistent with the Nebraska Juvenile Code.

(6) Whenever a juvenile is in a foster care placement as defined in section 43-1301, the Foster Care Review Office or the designated local foster care review board may participate in proceedings concerning the juvenile as provided in section 43-1313 and notice shall be given as provided in section 43-1314.

(7) Any written findings or recommendations of the Foster Care Review Office or the designated local foster care review board with regard to a juvenile in a foster care placement submitted to a court having jurisdiction over such juvenile shall be admissible in any proceeding concerning such juvenile if such findings or recommendations have been provided to all other parties of record.

(8) The executive director and any agent or employee of the Foster Care Review Office or any member of any local foster care review board participating in an investigation or making any report pursuant to the Foster Care Review Act or participating in a judicial proceeding pursuant to this section shall be immune from any civil liability that would otherwise be incurred except for false statements negligently made.

Source: Laws 1981, LB 346, § 41; Laws 1982, LB 787, § 17; Laws 1984, LB 845, § 31; Laws 1985, LB 447, § 25; Laws 1989, LB 182, § 12; Laws 1990, LB 1222, § 3; Laws 1992, LB 1184, § 14; Laws 1993, LB 103, § 1; Laws 1996, LB 1044, § 133; Laws 1998, LB 1041, § 26; Laws 2010, LB800, § 23; Laws 2011, LB177, § 1;

Laws 2011, LB648, § 1; Laws 2012, LB998, § 2; Laws 2013, LB216, § 15; Laws 2013, LB269, § 1; Laws 2013, LB561, § 22; Laws 2014, LB464, § 19; Laws 2014, LB853, § 23; Laws 2014, LB908, § 5; Laws 2015, LB243, § 11; Laws 2016, LB746, § 16; Laws 2018, LB1078, § 1; Laws 2019, LB600, § 1; Laws 2021, LB143, § 1.

Cross References

Foster Care Review Act, see section 43-1318.
Medical Assistance Act, see section 68-901.
Nebraska Strengthening Families Act, see section 43-4701.
Young Adult Bridge to Independence Act, see section 43-4501.

43-286 Juvenile violator or juvenile in need of special supervision; disposition; violation of probation, supervision, or court order; procedure; discharge; procedure; notice; hearing; individualized reentry plan.

(1) When any juvenile is adjudicated to be a juvenile described in subdivision (1), (2), or (4) of section 43-247:

(a) The court may continue the dispositional portion of the hearing, from time to time upon such terms and conditions as the court may prescribe, including an order of restitution of any property stolen or damaged or an order requiring the juvenile to participate in restorative justice programs or community service programs, if such order is in the interest of the juvenile's reformation or rehabilitation, and, subject to the further order of the court, may:

(i) Place the juvenile on probation subject to the supervision of a probation officer; or

(ii) Permit the juvenile to remain in his or her own home or be placed in a suitable family home or institution, subject to the supervision of the probation officer;

(b) When it is alleged that the juvenile has exhausted all levels of probation supervision and options for community-based services and section 43-251.01 has been satisfied, a motion for commitment to a youth rehabilitation and treatment center may be filed and proceedings held as follows:

(i) The motion shall set forth specific factual allegations that support the motion and a copy of such motion shall be served on all persons required to be served by sections 43-262 to 43-267;

(ii) The Office of Juvenile Services shall be served with a copy of such motion and shall be a party to the case for all matters related to the juvenile's commitment to, placement with, or discharge from the Office of Juvenile Services; and

(iii) The juvenile shall be entitled to a hearing before the court to determine the validity of the allegations. At such hearing the burden is upon the state by a preponderance of the evidence to show that:

(A) All levels of probation supervision have been exhausted;

(B) All options for community-based services have been exhausted; and

(C) Placement at a youth rehabilitation and treatment center is a matter of immediate and urgent necessity for the protection of the juvenile or the person or property of another or if it appears that such juvenile is likely to flee the jurisdiction of the court;

(c) After the hearing, the court may, as a condition of an order of intensive supervised probation, commit such juvenile to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center operated in compliance with state law. Upon commitment by the court to the Office of Juvenile Services, the court shall immediately notify the Office of Juvenile Services of the commitment. Intensive supervised probation for purposes of this subdivision means that the Office of Juvenile Services shall be responsible for the care and custody of the juvenile until the Office of Juvenile Services discharges the juvenile from commitment to the Office of Juvenile Services. Upon discharge of the juvenile, the court shall hold a review hearing on the conditions of probation and enter any order allowed under subdivision (1)(a) of this section;

(d) The Office of Juvenile Services shall notify those required to be served by sections 43-262 to 43-267, all interested parties, and the committing court of the pending discharge of a juvenile from the youth rehabilitation and treatment center sixty days prior to discharge and again in every case not less than thirty days prior to discharge. Upon notice of pending discharge by the Office of Juvenile Services, the court shall set a continued disposition hearing in anticipation of reentry. The Office of Juvenile Services shall work in collaboration with the Office of Probation Administration in developing an individualized reentry plan for the juvenile as provided in section 43-425. The Office of Juvenile Services shall provide a copy of the individualized reentry plan to the juvenile, the juvenile's attorney, and the county attorney or city attorney prior to the continued disposition hearing. At the continued disposition hearing, the court shall review and approve or modify the individualized reentry plan, place the juvenile under probation supervision, and enter any other order allowed by law. No hearing is required if all interested parties stipulate to the individualized reentry plan by signed motion. In such a case, the court shall approve the conditions of probation, approve the individualized reentry plan, and place the juvenile under probation supervision; and

(e) The Office of Juvenile Services is responsible for transportation of the juvenile to and from the youth rehabilitation and treatment center. The Office of Juvenile Services may contract for such services. A plan for a juvenile's transport to return to the community shall be a part of the individualized reentry plan. The Office of Juvenile Services may approve family to provide such transport when specified in the individualized reentry plan.

(2) When any juvenile is found by the court to be a juvenile described in subdivision (3)(b) of section 43-247, the court may enter such order as it is empowered to enter under subdivision (1)(a) of this section.

(3) When any juvenile is adjudicated to be a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247, the court may order the juvenile to be assessed for referral to participate in a restorative justice program. Factors that the judge may consider for such referral include, but are not limited to: The juvenile's age, intellectual capacity, and living environment; the ages of others who were part of the offense; the age and capacity of the victim; and the nature of the case.

(4) When a juvenile is placed on probation and a probation officer has reasonable cause to believe that such juvenile has committed a violation of a condition of his or her probation, the probation officer shall take appropriate measures as provided in section 43-286.01.

(5)(a) When a juvenile is placed on probation or under the supervision of the court and it is alleged that the juvenile is again a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247, a petition may be filed and the same procedure followed and rights given at a hearing on the original petition. If an adjudication is made that the allegations of the petition are true, the court may make any disposition authorized by this section for such adjudications and the county attorney may file a motion to revoke the juvenile's probation.

(b) When a juvenile is placed on probation or under the supervision of the court for conduct under subdivision (1), (2), (3)(b), or (4) of section 43-247 and it is alleged that the juvenile has violated a term of probation or supervision or that the juvenile has violated an order of the court, a motion to revoke probation or supervision or to change the disposition may be filed and proceedings held as follows:

(i) The motion shall set forth specific factual allegations of the alleged violations and a copy of such motion shall be served on all persons required to be served by sections 43-262 to 43-267;

(ii) The juvenile shall be entitled to a hearing before the court to determine the validity of the allegations. At such hearing the juvenile shall be entitled to those rights relating to counsel provided by section 43-272 and those rights relating to detention provided by sections 43-254 to 43-256. The juvenile shall also be entitled to speak and present documents, witnesses, or other evidence on his or her own behalf. He or she may confront persons who have given adverse information concerning the alleged violations, may cross-examine such persons, and may show that he or she did not violate the conditions of his or her probation or supervision or an order of the court or, if he or she did, that mitigating circumstances suggest that the violation does not warrant revocation of probation or supervision or a change of disposition. The hearing shall be held within a reasonable time after the juvenile is taken into custody;

(iii) The hearing shall be conducted in an informal manner and shall be flexible enough to consider evidence, including letters, affidavits, and other material, that would not be admissible in an adversarial criminal trial;

(iv) The juvenile shall not be confined, detained, or otherwise significantly deprived of his or her liberty pursuant to the filing of a motion described in this section unless the requirements of subdivision (5) of section 43-251.01 and section 43-260.01 have been met. In all cases when the requirements of subdivision (5) of section 43-251.01 and section 43-260.01 have been met and the juvenile is confined, detained, or otherwise significantly deprived of his or her liberty as a result of his or her alleged violation of probation, supervision, or a court order, the juvenile shall be given a preliminary hearing. If, as a result of such preliminary hearing, probable cause is found to exist, the juvenile shall be entitled to a hearing before the court in accordance with this subsection;

(v) If the juvenile is found by the court to have violated the terms of his or her probation or supervision or an order of the court, the court may modify the terms and conditions of the probation, supervision, or other court order, extend the period of probation, supervision, or other court order, or enter any order of disposition that could have been made at the time the original order was entered; and

(vi) In cases when the court revokes probation, supervision, or other court order, it shall enter a written statement as to the evidence relied on and the reasons for revocation.

(6)(a) Except as provided in subdivision (6)(b) of this section, the court shall not change a disposition unless the court finds that the juvenile has violated a term or condition of probation or supervision or an order of the court and the procedures in subdivision (5)(b) of this section have been satisfied.

(b) Upon motion of the juvenile, the court may modify the terms or conditions of probation or supervision or modify a dispositional order if:

(i) All parties stipulate to the particular modification; and

(ii) The juvenile has consulted with counsel or has waived counsel. Any waiver must be particular to the modification and shall comply with section 43-3102.

(7) Costs incurred on behalf of a juvenile under this section shall be paid as provided in section 43-290.01.

(8) When any juvenile is adjudicated to be a juvenile described in subdivision (4) of section 43-247, the juvenile court shall within thirty days of adjudication transmit to the Director of Motor Vehicles an abstract of the court record of adjudication.

Source: Laws 1981, LB 346, § 42; Laws 1982, LB 787, § 18; Laws 1987, LB 638, § 6; Laws 1989, LB 182, § 13; Laws 1994, LB 988, § 21; Laws 1996, LB 1044, § 134; Laws 1998, LB 1073, § 26; Laws 2000, LB 1167, § 21; Laws 2011, LB463, § 4; Laws 2012, LB972, § 3; Laws 2013, LB561, § 23; Laws 2014, LB464, § 20; Laws 2017, LB8, § 2; Laws 2018, LB670, § 7; Laws 2019, LB595, § 31; Laws 2020, LB1148, § 10; Laws 2023, LB157, § 13.

Cross References

Juvenile probation officers, appointment, see section 29-2253.
Placements and commitments, restrictions, see section 43-251.01.

43-286.01 Juveniles; graduated response; probation officer; duties; powers; county attorney; file action to revoke probation; when.

(1) For purposes of this section, graduated response means an accountability-based series of sanctions, incentives, and services designed to facilitate the juvenile's continued progress in changing behavior, ongoing compliance, and successful completion of probation. Graduated response does not include restrictions of liberty that would otherwise require a hearing under subsection (3) of section 43-253.

(2) The Office of Probation Administration may establish a statewide standardized graduated response matrix of incentives for compliance and positive behaviors and sanctions for probationers who violate the terms and conditions of a court order. The graduated response system shall use recognized best practices and be developed with the input of stakeholders, including judges, probation officers, county attorneys, defense attorneys, juveniles, and parents. The office shall provide implementation and ongoing training to all probation officers on the graduated response options.

(3) Graduated response sanctions should be immediate, certain, consistent, and fair to appropriately address the behavior. Failure to complete a sanction may result in repeating the sanction, increasing the duration, or selecting a

different sanction similar in nature. Continued failure to comply could result in a request for a motion to revoke probation. Once a sanction is successfully completed the alleged probation violation is deemed resolved and cannot be alleged as a violation in future proceedings.

(4) Graduated response incentives should provide positive reinforcement to encourage and support positive behavior change and compliance with court-ordered conditions of probation.

(5) Whenever a probation officer has reasonable cause to believe that a juvenile subject to the supervision of a probation officer has committed a violation of the terms of the juvenile's probation while on probation, but that such juvenile will not attempt to leave the jurisdiction and will not place lives or property in danger, the probation officer shall either:

(a) Impose one or more graduated response sanctions with the approval of his or her chief probation officer or such chief's designee. The decision to impose graduated response sanctions in lieu of formal revocation proceedings rests with the probation officer and his or her chief probation officer or such chief's designee and shall be based upon such juvenile's risk level, the severity of the violation, and the juvenile's response to the violation. If graduated response sanctions are to be imposed, such juvenile shall acknowledge in writing the nature of the violation and agree upon the graduated response sanction with approval of such juvenile's parents or guardian. Such juvenile has the right to decline to acknowledge the violation, and if he or she declines to acknowledge the violation, the probation officer shall submit a written report pursuant to subdivision (5)(b) of this section. If the juvenile fails to satisfy the graduated response sanctions and the office determines that a motion to revoke probation should be pursued, the probation officer shall submit a written report pursuant to subdivision (5)(b) of this section. A copy of the report shall be submitted to the county attorney of the county where probation was imposed; or

(b) Submit a written report to the county attorney of the county where probation was imposed and to the juvenile's attorney of record, outlining the nature of the probation violation and request that formal revocation proceedings be instituted against the juvenile subject to the supervision of a probation officer. The report shall also include a statement regarding why graduated response sanctions were not utilized or were ineffective. If there is no attorney of record for the juvenile, the office shall notify the court and counsel for the juvenile shall be appointed.

(6) Whenever a probation officer has reasonable cause to believe that a juvenile subject to the supervision of a probation officer has violated a condition of his or her probation and that such juvenile will attempt to leave the jurisdiction or will place lives or property in danger, the probation officer shall take such juvenile into temporary custody without a warrant and may call on any peace officer for assistance as provided in section 43-248. Continued detention or deprivation of liberty shall be subject to the criteria and requirements of sections 43-251.01, 43-260, and 43-260.01 and subdivision (5)(b)(iv) of section 43-286, and a hearing shall be held before the court within twenty-four hours as provided in subsection (3) of section 43-253.

(7) Immediately after detention or deprivation of liberty pursuant to subsection (6) of this section, the probation officer shall notify the county attorney of the county where probation was imposed and the juvenile's attorney of record

and submit a written report describing the risk of harm to lives or property or of fleeing the jurisdiction which precipitated the need for such detention or deprivation of liberty and of any violation of probation. If there is no attorney of record for the juvenile, the office shall notify the court and counsel for the juvenile shall be appointed. After prompt consideration of the written report, the county attorney shall:

(a) Order the release of the juvenile from confinement or alternative to detention subject to the supervision of a probation officer; or

(b) File with the adjudicating court a motion to revoke the probation.

(8) Whenever a county attorney receives a report from a probation officer that a juvenile subject to the supervision of a probation officer has violated a condition of probation and the probation officer is seeking revocation of probation, the county attorney may file a motion to revoke probation.

(9) Whenever a juvenile subject to supervision of a probation officer is engaging in positive behavior, completion of goals, and compliance with the terms of probation, the probation officer shall use graduated incentives to provide positive reinforcement and encouragement of such behavior. The office shall keep records of all incentives and provide such records to the county attorney or the juvenile's attorney upon request.

(10) During the term of probation, the court, on application of a probation officer or of the juvenile or on its own motion, may reduce or eliminate any of the conditions imposed on the juvenile. Upon completion of the term of probation or the earlier discharge of the juvenile, the juvenile shall be relieved of any obligations imposed by the order of the court and his or her record shall be sealed pursuant to section 43-2,108.04.

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

Source: Laws 2010, LB800, § 7; R.S.Supp.,2010, § 29-2262.08; Laws 2011, LB463, § 5; Laws 2017, LB8, § 3.

43-287 Impoundment of license or permit issued under Motor Vehicle Operator's License Act; other powers of court; copy of abstract to Department of Motor Vehicles; fine for excessive absenteeism from school; not eligible for ignition interlock permit.

(1) When a juvenile is adjudged to be a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247, the juvenile court may:

(a) If such juvenile holds any license or permit issued under the Motor Vehicle Operator's License Act, impound any such license or permit for thirty days; or

(b) If such juvenile does not have a permit or license issued under the Motor Vehicle Operator's License Act, prohibit such juvenile from obtaining any permit or any license pursuant to the act for which such juvenile would otherwise be eligible until thirty days after the date of such order.

(2) A copy of an abstract of the juvenile court's 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 subsection (1) of this section. If a juvenile whose operator's license or permit has been impounded by a juvenile court operates a motor vehicle during any period that he or she is subject to the court

order not to operate any motor vehicle or after a period of impoundment but before return of the license or permit, such violation shall be handled in the juvenile court and not as a violation of section 60-4,108.

(3) When a juvenile is adjudged to be a juvenile described in subdivision (3)(a) of section 43-247 for excessive absenteeism from school, the juvenile court may issue the parents or guardians of such juvenile a fine not to exceed five hundred dollars for each offense or order such parents or guardians to complete specified hours of community service. For community service ordered under this subsection, the juvenile court may require that all or part of the service be performed for a public school district or nonpublic school if the court finds that service in the school is appropriate under the circumstances.

(4) A juvenile who holds any license or permit issued under the Motor Vehicle Operator's License Act and has violated subdivision (3)(b) or (c) of section 28-306, subdivision (3)(b) or (c) of section 28-394, or section 28-1254, 60-6,196, 60-6,197, 60-6,197.06, or 60-6,198 shall not be eligible for an ignition interlock permit.

Source: Laws 2010, LB800, § 24; Laws 2012, LB751, § 5; Laws 2019, LB269, § 1.

Cross References

Motor Vehicle Operator's License Act, see section 60-462.

43-292.02 Termination of parental rights; state; duty to file petition; when.

(1) A petition shall be filed on behalf of the state to terminate the parental rights of the juvenile's parents or, if such a petition has been filed by another party, the state shall join as a party to the petition, and the state shall concurrently identify, recruit, process, and approve a qualified family for an adoption of the juvenile, if:

(a) A juvenile has been in foster care under the responsibility of the state for fifteen or more months of the most recent twenty-two months; or

(b) A court of competent jurisdiction has determined the juvenile to be an abandoned infant or has made a determination that the parent has committed murder of another child of the parent, committed voluntary manslaughter of another child of the parent, aided or abetted, attempted, conspired, or solicited to commit murder, or aided or abetted voluntary manslaughter of the juvenile or another child of the parent, or committed a felony assault that has resulted in serious bodily injury to the juvenile or another minor child of the parent. For purposes of this subdivision, infant means a child eighteen months of age or younger.

(2) A petition shall not be filed on behalf of the state to terminate the parental rights of the juvenile's parents or, if such a petition has been filed by another party, the state shall not join as a party to the petition if the sole factual basis for the petition is that (a) the parent or parents of the juvenile are financially unable to provide health care for the juvenile or (b) the parent or parents of the juvenile are incarcerated. The fact that a qualified family for an adoption of the juvenile has been identified, recruited, processed, and approved shall have no bearing on whether parental rights shall be terminated.

(3) The petition is not required to be filed on behalf of the state or if a petition is filed the state shall not be required to join in a petition to terminate parental

rights or to concurrently find a qualified family to adopt the juvenile under this section if:

(a) The child is being cared for by a relative;

(b) The Department of Health and Human Services has documented in the case plan or permanency plan, which shall be available for court review, a compelling reason for determining that filing such a petition would not be in the best interests of the juvenile; or

(c) The family of the juvenile has not had a reasonable opportunity to avail themselves of the services deemed necessary in the case plan or permanency plan approved by the court if reasonable efforts to preserve and reunify the family are required under section 43-283.01.

(4) Except as otherwise provided in the Nebraska Indian Child Welfare Act, if a child is conceived by the victim of a sexual assault, a petition for termination of parental rights of the perpetrator shall be granted if such termination is in the best interests of the child and (a) the perpetrator has been convicted of or pled guilty or nolo contendere to sexual assault of the child's birth parent under section 28-319 or 28-320 or a law in another jurisdiction similar to either section 28-319 or 28-320 or (b) the perpetrator has fathered the child or given birth to the child as a result of such sexual assault.

Source: Laws 1998, LB 1041, § 29; Laws 2017, LB289, § 18.

Cross References

Nebraska Indian Child Welfare Act, see section 43-1501.

43-296 Associations receiving juveniles; supervision by Department of Health and Human Services; certificate; reports; statements.

All associations receiving juveniles under the Nebraska Juvenile Code shall be subject to the same visitation, inspection, and supervision by the Department of Health and Human Services as are public charitable institutions of this state, and it shall be the duty of the department to pass annually upon the fitness of every such association as may receive or desire to receive juveniles under the provisions of such code. Upon the department being satisfied that such association is competent and has adequate facilities to care for such juveniles, it shall issue to such association a certificate to that effect, which certificate shall continue in force for one year unless sooner revoked by the department. No juvenile shall be committed to any such association which has not received such a certificate within the fifteen months immediately preceding the commitment. The court may at any time require from any association receiving or desiring to receive juveniles under the provisions of the Nebraska Juvenile Code such reports, information, and statements as the judge shall deem proper and necessary for his or her action, and the court shall in no case be required to commit a juvenile to any association whose standing, conduct, or care of juveniles or ability to care for the same is not satisfactory to the court.

Source: Laws 1981, LB 346, § 52; Laws 1985, LB 447, § 28; Laws 1996, LB 1044, § 146; Laws 2012, LB1160, § 11; Laws 2013, LB222, § 6; Laws 2017, LB417, § 5.

Cross References

Department of Health and Human Services, supervisory powers, see section 43-707.

(i) MISCELLANEOUS PROVISIONS

43-2,108 Juvenile court; record; case file; how kept; certain reports and records not open to inspection without order of court; exceptions; information accessible through criminal justice information system.

(1) The juvenile court judge shall keep a record of all proceedings of the court in each case, including appearances, findings, orders, decrees, and judgments, and any evidence which he or she feels it is necessary and proper to record. The case file shall contain the complaint or petition and subsequent pleadings. 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.

(2) Except as provided in subsections (3) and (4) of this section, the medical, psychological, psychiatric, and social welfare reports and the records of juvenile probation officers, as they relate to individual proceedings in the juvenile court, shall not be open to inspection, without order of the court. Such records shall be made available to a district court of this state or the District Court of the United States on the order of a judge thereof for the confidential use of such judge or his or her probation officer as to matters pending before such court but shall not be made available to parties or their counsel; and such district court records shall be made available to a county court or separate juvenile court upon request of the county judge or separate juvenile judge for the confidential use of such judge and his or her probation officer as to matters pending before such court, but shall not be made available by such judge to the parties or their counsel.

(3) As used in this section, confidential record information means all docket records, other than the pleadings, orders, decrees, and judgments; case files and records; reports and records of probation officers; and information supplied to the court of jurisdiction in such cases by any individual or any public or private institution, agency, facility, or clinic, which is compiled by, produced by, and in the possession of any court. In all cases under subdivision (3)(a) of section 43-247, access to all confidential record information in such cases shall be granted only as follows: (a) The court of jurisdiction may, subject to applicable federal and state regulations, disseminate such confidential record information to any individual, or public or private agency, institution, facility, or clinic which is providing services directly to the juvenile and such juvenile's parents or guardian and his or her immediate family who are the subject of such record information; (b) the court of jurisdiction may disseminate such confidential record information, with the consent of persons who are subjects of such information, or by order of such court after showing of good cause, to any law enforcement agency upon such agency's specific request for such agency's exclusive use in the investigation of any protective service case or investigation of allegations under subdivision (3)(a) of section 43-247, regarding the juvenile or such juvenile's immediate family, who are the subject of such investigation; and (c) the court of jurisdiction may disseminate such confidential record information to any court, which has jurisdiction of the juvenile who is the subject of such information upon such court's request.

(4) The court shall provide copies of predispositional reports and evaluations of the juvenile to the juvenile's attorney and the county attorney or city attorney prior to any hearing in which the report or evaluation will be relied upon.

(5) In all cases under sections 43-246.01 and 43-247, the office of Inspector General of Nebraska Child Welfare may submit a written request to the probation administrator for access to the records of juvenile probation officers in a specific case. Upon a juvenile court order, the records shall be provided to the Inspector General within five days for the exclusive use in an investigation pursuant to the Office of Inspector General of Nebraska Child Welfare Act. Nothing in this subsection shall prevent the notification of death or serious injury of a juvenile to the Inspector General of Nebraska Child Welfare pursuant to section 43-4318 as soon as reasonably possible after the Office of Probation Administration learns of such death or serious injury.

(6) In all cases under sections 43-246.01 and 43-247, the juvenile court shall disseminate confidential record information to the Foster Care Review Office pursuant to the Foster Care Review Act.

(7) Nothing in subsections (3), (5), and (6) of this section shall be construed to restrict the dissemination of confidential record information between any individual or public or private agency, institute, facility, or clinic, except any such confidential record information disseminated by the court of jurisdiction pursuant to this section shall be for the exclusive and private use of those to whom it was released and shall not be disseminated further without order of such court.

(8)(a) Any records concerning a juvenile court petition filed pursuant to subdivision (3)(c) of section 43-247 shall remain confidential except as may be provided otherwise by law. Such records shall be accessible to (i) the juvenile except as provided in subdivision (b) of this subsection, (ii) the juvenile's counsel, (iii) the juvenile's parent or guardian, and (iv) persons authorized by an order of a judge or court.

(b) Upon application by the county attorney or by the director of the facility where the juvenile is placed and upon a showing of good cause therefor, a judge of the juvenile court having jurisdiction over the juvenile or of the county where the facility is located may order that the records shall not be made available to the juvenile if, in the judgment of the court, the availability of such records to the juvenile will adversely affect the juvenile's mental state and the treatment thereof.

(9) Nothing in subsection (3), (5), or (6) of this section shall be construed to restrict the immediate dissemination of a current picture and information about a child who is missing from a foster care or out-of-home placement. Such dissemination by the Office of Probation Administration shall be authorized by an order of a judge or court. Such information shall be subject to state and federal confidentiality laws and shall not include that the child is in the care, custody, or control of the Department of Health and Human Services or under the supervision of the Office of Probation Administration.

(10) Any juvenile court order that places a juvenile on electronic monitoring shall also state whether the data from such electronic monitoring device shall be made available to a law enforcement agency immediately upon request by such agency. For any juvenile subject to the supervision of a probation officer, the name of the juvenile, the name of the juvenile's probation officer, and any terms of probation included in a juvenile court order otherwise open to inspection shall be provided 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 1981, LB 346, § 65; Laws 1997, LB 622, § 73; Laws 2014, LB464, § 25; Laws 2015, LB347, § 2; Laws 2016, LB954, § 1; Laws 2017, LB225, § 4; Laws 2018, LB193, § 79; Laws 2023, LB50, § 23.

Cross References

Foster Care Review Act, see section 43-1318.
Office of Inspector General of Nebraska Child Welfare Act, see section 43-4301.
Records Management Act, see section 84-1220.

43-2,108.01 Sealing of records; juveniles eligible.

(1) Sections 43-2,108.01 to 43-2,108.05 apply only to persons who were under the age of eighteen years when the offense took place and, after being taken into custody, arrested, cited in lieu of arrest, or referred for prosecution without citation, the county attorney or city attorney:

(a) Declined to file a juvenile petition or criminal complaint;

(b) Offered juvenile pretrial diversion, mediation, or restorative justice to the juvenile under the Nebraska Juvenile Code;

(c) Filed a juvenile court petition describing the juvenile as a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247;

(d) Filed a criminal complaint in county court against the juvenile under state statute or city or village ordinance for misdemeanor or infraction possession of marijuana or misdemeanor or infraction possession of drug paraphernalia;

(e) Filed a criminal complaint in county court against the juvenile for any other misdemeanor or infraction under state statute or city or village ordinance, other than for a traffic offense when all offenses in the case are waivable offenses; or

(f) Filed a criminal complaint in county or district court for a felony offense under state law or a city or village ordinance that was subsequently transferred to juvenile court for ongoing jurisdiction.

(2) The changes made by Laws 2019, LB354, to the relief set forth in sections 43-2,108.03 to 43-2,108.05 shall apply to all persons described in this section, as amended by Laws 2019, LB354, and Laws 2020, LB1148, for offenses occurring prior to, on, or after September 1, 2019.

Source: Laws 2010, LB800, § 26; Laws 2011, LB463, § 6; Laws 2019, LB354, § 2; Laws 2019, LB595, § 32; Laws 2020, LB1148, § 11.

43-2,108.02 Sealing of records; notice to juvenile; contents.

(1) By January 1, 2020, the Supreme Court shall promulgate a written notice that:

(a) States in developmentally appropriate language that, for a juvenile described in section 43-2,108.01, the juvenile's record will be automatically sealed if (i) no charges are filed as a result of the determination of the prosecuting attorney, (ii) the charges are dismissed, (iii) the juvenile has satisfactorily completed the diversion, mediation, restorative justice, probation, supervision, or other treatment or rehabilitation program provided under the Nebraska Juvenile Code, or (iv) the juvenile has satisfactorily completed the county court

diversion program, probation ordered by the court, or sentence ordered by the court;

(b) States in developmentally appropriate language that, if the record is not sealed as provided in subdivision (1)(a) of this section, the juvenile or the juvenile's parent or guardian may file a motion to seal the record with the court when the juvenile reaches the age of majority or six months have passed since the case was closed, whichever occurs sooner; and

(c) Explains in developmentally appropriate language what sealing the record means.

(2) For a juvenile described in section 43-2,108.01, the county attorney or city attorney shall attach a copy of the notice to any juvenile petition or criminal complaint.

Source: Laws 2010, LB800, § 27; Laws 2011, LB463, § 7; Laws 2019, LB354, § 3; Laws 2019, LB595, § 33.

43-2,108.03 Sealing of records; county attorney or city attorney; duties; motion to seal record authorized.

(1)(a) If a juvenile described in section 43-2,108.01 was taken into custody, arrested, cited in lieu of arrest, or referred for prosecution without citation but no juvenile petition or criminal complaint was filed against the juvenile with respect to the arrest or custody, the county attorney or city attorney shall notify the government agency responsible for the arrest, custody, citation in lieu of arrest, or referral for prosecution without citation that no criminal charge or juvenile court petition was filed. The county attorney or city attorney shall provide written notification to the juvenile that no juvenile petition or criminal complaint was filed and provide the juvenile with the notice described in section 43-2,108.02.

(b) If a juvenile described in subdivision (1)(a) of this section discovers that his or her record was not automatically sealed, such juvenile may notify the county attorney, who shall cause the record to be sealed by providing the notice required by subdivision (1)(a) of this section.

(2)(a) If the county attorney or city attorney offered and a juvenile described in section 43-2,108.01 has agreed to pretrial diversion, mediation, or restorative justice, the county attorney or city attorney shall notify the government agency responsible for the arrest or custody when the juvenile has satisfactorily completed the resulting diversion, mediation, or restorative justice. At the time the juvenile is offered diversion, mediation, or restorative justice, the county attorney or city attorney shall provide the notice described in section 43-2,108.02 to the juvenile. The county attorney or city attorney shall also provide written notification to the juvenile of his or her satisfactory or unsatisfactory completion of diversion, mediation, or restorative justice.

(b) If a juvenile who was satisfactorily discharged from diversion, mediation, or restorative justice discovers that his or her record was not automatically sealed, the juvenile may notify the county attorney, who shall cause the record to be sealed by providing the notice required by subdivision (2)(a) of this section.

(3)(a) If the juvenile was taken into custody, arrested, cited in lieu of arrest, or referred for prosecution without citation and charges were filed but the case

was dismissed by the court, the court shall seal the record as set forth in section 43-2,108.05.

(b) If a juvenile described in subdivision (3)(a) discovers that his or her record was not automatically sealed, the juvenile may notify the court, which shall seal the record as set forth in section 43-2,108.05.

(4)(a) If a juvenile described in section 43-2,108.01 has satisfactorily completed the probation, supervision, or other treatment or rehabilitation program provided under the Nebraska Juvenile Code or if the juvenile has satisfactorily completed the probation or sentence ordered by a county court, the court shall seal the records as set forth in section 43-2,108.05.

(b) If a juvenile described in subdivision (4)(a) discovers that his or her record was not automatically sealed, the juvenile may notify the court, which shall seal the record as set forth in section 43-2,108.05.

(5) A government agency or court that receives notice under subdivision (1)(a) or (2)(a) of this section shall, upon such receipt, immediately seal all records housed at that government agency or court pertaining to the citation, arrest, record of custody, complaint, disposition, diversion, mediation, or restorative justice.

(6) When a juvenile described in section 43-2,108.01 whose records have not been automatically sealed as provided in subsection (1), (2), (3), or (4) of this section reaches the age of majority or six months have passed since the case was closed, whichever occurs sooner, such juvenile or his or her parent or guardian may file a motion in the court of record asking the court to seal the record pertaining to the offense which resulted in disposition, adjudication, or diversion in juvenile court or diversion or sentence of the county court. The motion shall set forth the facts supporting the argument that the individual who is the subject of the juvenile petition or criminal complaint has been satisfactorily rehabilitated.

Source: Laws 2010, LB800, § 28; Laws 2011, LB463, § 8; Laws 2019, LB354, § 4; Laws 2019, LB595, § 34.

43-2,108.04 Sealing of records; notification of proceedings; order of court; hearing; notice; findings; considerations.

(1) When a proceeding to seal the record is initiated, the court shall promptly notify the county attorney or city attorney involved in the case that is the subject of the proceeding to seal the record of the proceedings, and shall promptly notify the Department of Health and Human Services of the proceedings if the juvenile whose record is the subject of the proceeding is a ward of the state at the time the proceeding is initiated or if the department was a party in the proceeding.

(2) A party notified under subsection (1) of this section may file a response with the court within thirty days after receiving such notice. Any such response shall be served on all parties to the case. If the response objects to the sealing of a record, such response shall specify which factor or factors under subsection (5) of this section form the basis for the objection and shall set forth the facts supporting any argument that the juvenile has not been satisfactorily rehabilitated.

(3) If a party notified under subsection (1) of this section does not file a response with the court or files a response that indicates there is no objection to

the sealing of the record, the court shall order that the record of the juvenile under consideration be sealed.

(4) If a party receiving notice under subsection (1) of this section files a response with the court objecting to the sealing of the record, the court shall conduct a hearing on the motion within sixty days after the court receives the response. The court shall give notice, by regular mail, of the date, time, and location of the hearing to the parties receiving notice under subsection (1) of this section and to the juvenile who is the subject of the record under consideration.

(5) After conducting a hearing in accordance with this section, the court shall order the record of the juvenile that is the subject of the motion be sealed if it finds by a preponderance of the evidence that the juvenile has been rehabilitated to a satisfactory degree. In determining whether the juvenile has been rehabilitated to a satisfactory degree, the court may consider all of the following:

(a) The behavior of the juvenile after the disposition, adjudication, diversion, or sentence and the juvenile's response to diversion, mediation, restorative justice, probation, supervision, other treatment or rehabilitation program, or sentence;

(b) The education and employment history of the juvenile; and

(c) Any other circumstances that may relate to the rehabilitation of the juvenile.

(6) If, after conducting the hearing in accordance with this section, the juvenile is not found to be satisfactorily rehabilitated such that the record is not ordered to be sealed, a juvenile who is a person described in section 43-2,108.01 or such juvenile's parent or guardian may not move the court to seal the record for one year after the court's decision not to seal the record is made, unless such time restriction is waived by the court.

Source: Laws 2010, LB800, § 29; Laws 2011, LB463, § 9; Laws 2019, LB354, § 5; Laws 2019, LB595, § 35.

43-2,108.05 Sealing of record; court; duties; effect; inspection of records; prohibited acts; violation; contempt of court.

(1) If the court orders the record of a juvenile sealed, the court shall:

(a) Order that all records, including any information or other data concerning any proceedings relating to the offense, including the arrest, taking into custody, petition, complaint, indictment, information, trial, hearing, adjudication, correctional supervision, dismissal, or other disposition or sentence, be deemed never to have occurred;

(b) Send notice of the order to seal the record (i) if the record includes impoundment or prohibition to obtain a license or permit pursuant to section 43-287, to the Department of Motor Vehicles, (ii) if the juvenile whose record has been ordered sealed was a ward of the state at the time the proceeding was initiated or if the Department of Health and Human Services was a party in the proceeding, to such department, and (iii) to law enforcement agencies, county attorneys, and city attorneys referenced in the court record;

(c) Order all notified under subdivision (1)(b) of this section to seal all records pertaining to the offense;

(d) If the case was transferred from district court to juvenile court or was transferred under section 43-282, send notice of the order to seal the record to the transferring court; and

(e) Explain to the juvenile using developmentally appropriate language what sealing the record means. The explanation shall be given verbally if the juvenile is present in the court at the time the court issues the sealing order and by written notice sent by regular mail to the juvenile's last-known address if the juvenile is not present in the court at the time the court issues the sealing order. The sealing order shall include contact information for each government agency subject to the sealing order.

(2) The effect of having a record sealed is that thereafter no person is allowed to release any information concerning such record, except as provided by this section. After a record is sealed, the person whose record was sealed can respond to any public inquiry as if the offense resulting in such record never occurred. A government agency and any other public office or agency shall reply to any public inquiry that no information exists regarding a sealed record. Except as provided in subsection (3) of this section, an order to seal the record applies to every government agency and any other public office or agency that has a record relating to the offense, regardless of whether it receives notice of the hearing on the sealing of the record or a copy of the order. Upon the written request of a person whose record has been sealed and the presentation of a copy of such order, a government agency or any other public office or agency shall seal all records pertaining to the offense.

(3) A sealed record is accessible to the individual who is the subject of the sealed record and any persons authorized by such individual, law enforcement officers, county attorneys, and city attorneys in the investigation, prosecution, and sentencing of crimes, to the sentencing judge in the sentencing of criminal defendants, to a judge making a determination whether to transfer a case to or from juvenile court, to any attorney representing the subject of the sealed record, and to the Inspector General of Nebraska Child Welfare pursuant to an investigation conducted under the Office of Inspector General of Nebraska Child Welfare Act. Inspection of records that have been ordered sealed under section 43-2,108.04 may be made by the following persons or for the following purposes:

(a) By the court or by any person allowed to inspect such records by an order of the court for good cause shown;

(b) By the court, city attorney, or county attorney for purposes of collection of any remaining parental support or obligation balances under section 43-290;

(c) By the Nebraska Probation System for purposes of juvenile intake services, for presentence and other probation investigations, and for the direct supervision of persons placed on probation and by the Department of Correctional Services, the Office of Juvenile Services, a juvenile assessment center, a criminal detention facility, a juvenile detention facility, or a staff secure juvenile facility, for an individual committed to it, placed with it, or under its care;

(d) By the Department of Health and Human Services for purposes of juvenile intake services, the preparation of case plans and reports, the preparation of evaluations, compliance with federal reporting requirements, or the supervision and protection of persons placed with the department or for licensing or certification purposes under sections 71-1901 to 71-1906.01, the

Child Care Licensing Act, or the Children's Residential Facilities and Placing Licensure Act;

(e) By the individual who is the subject of the sealed record and by persons authorized by such individual. The individual shall provide satisfactory verification of his or her identity;

(f) At the request of a party in a civil action that is based on a case that has a sealed record, as needed for the civil action. The party also may copy the sealed record as needed for the civil action. The sealed record shall be used solely in the civil action and is otherwise confidential and subject to this section;

(g) By persons engaged in bona fide research, with the permission of the court or the State Court Administrator, only if the research results in no disclosure of the person's identity and protects the confidentiality of the sealed record; or

(h) By a law enforcement agency if the individual whose record has been sealed applies for employment with the law enforcement agency.

(4) Nothing in this section prohibits the Department of Health and Human Services from releasing information from sealed records in the performance of its duties with respect to the supervision and protection of persons served by the department.

(5) 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. Applications for employment shall contain specific language that states that the applicant is not obligated to disclose a sealed record. Employers shall not ask if an applicant has had a record sealed. The Department of Labor shall develop a link on the department's website to inform employers that employers cannot ask if an applicant had a record sealed and that an application for employment shall contain specific language that states that the applicant is not obligated to disclose a sealed record.

(6) Any person who knowingly violates this section shall be guilty of a Class V misdemeanor.

Source: Laws 2010, LB800, § 30; Laws 2011, LB463, § 10; Laws 2013, LB265, § 31; Laws 2013, LB561, § 24; Laws 2015, LB265, § 6; Laws 2016, LB954, § 2; Laws 2019, LB354, § 6.

Cross References

Child Care Licensing Act, see section 71-1908.
Children's Residential Facilities and Placing Licensure Act, see section 71-1924.
Office of Inspector General of Nebraska Child Welfare Act, see section 43-4301.

(j) SEPARATE JUVENILE COURTS

43-2,112 Establishment; petition; election; clerk of county court; duties.

The question of whether or not there shall be established a separate juvenile court in any county having a population of seventy-five thousand or more inhabitants shall be submitted to the registered voters of any such county at the first statewide general election or at any special election held not less than four months after the filing with the Secretary of State of a petition requesting the

establishment of such court signed by registered voters of such county in a number not less than five percent of the total votes cast for Governor in such county at the general state election next preceding the filing of the petition. The question shall be submitted to the registered voters of the county in the following form:

Shall there be established in _____ County a separate juvenile court?

_____ Yes

_____ No

The election shall be conducted and the ballots shall be counted and canvassed in the manner prescribed by the Election Act.

After a separate juvenile court has been established, the clerk of the county court shall forthwith transfer to the trial docket of the separate juvenile court all pending matters within the exclusive jurisdiction of the separate juvenile court for consideration and disposition by the judge thereof.

Source: Laws 1959, c. 189, § 2, p. 683; Laws 1976, LB 669, § 2; Laws 1977, LB 118, § 1; Laws 1979, LB 373, § 2; R.S.Supp.,1980, § 43-229; Laws 1981, LB 346, § 69; Laws 1984, LB 973, § 2; Laws 1994, LB 76, § 553; Laws 2018, LB193, § 80.

Cross References

Election Act, see section 32-101.

43-2,113 Rooms and offices; jurisdiction; powers and duties.

(1) In counties where a separate juvenile court is established, the county board of the county shall provide suitable rooms and offices for the accommodation of the judge of the separate juvenile court and the officers and employees appointed by such judge or by the probation administrator pursuant to subsection (4) of section 29-2253. Such separate juvenile court and the judge, officers, and employees of such court shall have the same and exclusive jurisdiction, powers, and duties that are prescribed in the Nebraska Juvenile Code, concurrent jurisdiction under section 83-223, and such other jurisdiction, powers, and duties as specifically provided by law.

(2) A juvenile court created in a separate juvenile court judicial district or a county court sitting as a juvenile court in all other counties shall have and exercise jurisdiction within such juvenile court judicial district or county court judicial district with the county court and district court in all matters arising under Chapter 42, article 3, when the care, support, custody, or control of minor children under the age of eighteen years is involved. Such cases shall be filed in the county court and district court and may, with the consent of the juvenile judge, be transferred to the trial docket of the separate juvenile court or county court.

(3) All orders issued by a separate juvenile court or a county court which provide for child support or spousal support as defined in section 42-347 shall be governed by sections 42-347 to 42-381 and 43-290 relating to such support. Certified copies of such orders shall be filed by the clerk of the separate juvenile or county court with the clerk of the district court who shall maintain a record as provided in subsection (4) of section 42-364. There shall be no fee charged for the filing of such certified copies.

Source: Laws 1959, c. 189, § 3, p. 684; Laws 1961, c. 205, § 2, p. 618; Laws 1963, c. 527, § 1, p. 1653; R.S.1943, (1978), § 43-230; Laws

1981, LB 499, § 41; Laws 1981, LB 346, § 70; Laws 1984, LB 13, § 78; Laws 1984, LB 973, § 3; Laws 1985, LB 447, § 33; Laws 1985, Second Spec. Sess., LB 7, § 64; Laws 1986, LB 529, § 49; Laws 1986, LB 600, § 11; Laws 1991, LB 830, § 30; Laws 1993, LB 435, § 2; Laws 1994, LB 490, § 2; Laws 1996, LB 1296, § 21; Laws 1997, LB 229, § 35; Laws 2007, LB554, § 40; Laws 2018, LB193, § 81.

43-2,119 Judges; number; presiding judge.

(1) The number of judges of the separate juvenile court in counties which have established a separate juvenile court shall be:

(a) Two judges in counties having seventy-five thousand inhabitants but less than three hundred thousand inhabitants;

(b) Four judges in counties having at least three hundred thousand inhabitants but less than five hundred thousand inhabitants; and

(c) Six judges in counties having five hundred thousand inhabitants or more.

(2) The senior judge in point of service as a juvenile court judge shall be the presiding judge. The judges shall rotate the office of presiding judge every three years unless the judges agree to another system.

Source: Laws 1972, LB 1362, § 1; Laws 1973, LB 446, § 1; Laws 1976, LB 669, § 3; R.S.1943, (1978), § 43-233.01; Laws 1981, LB 346, § 76; Laws 1995, LB 19, § 2; Laws 1998, LB 404, § 3; Laws 2001, LB 23, § 3; Laws 2007, LB377, § 4; Laws 2017, LB10, § 1; Laws 2024, LB1085, § 1.
Effective date July 19, 2024.

(k) CITATION AND CONSTRUCTION OF CODE

43-2,129 Code, how cited.

Sections 43-245 to 43-2,129 shall be known and may be cited as the Nebraska Juvenile Code.

Source: Laws 1981, LB 346, § 85; Laws 1985, LB 447, § 35; Laws 1989, LB 182, § 19; Laws 1994, LB 1106, § 8; Laws 1997, LB 622, § 74; Laws 1998, LB 1041, § 31; Laws 1998, LB 1073, § 27; Laws 2000, LB 1167, § 23; Laws 2003, LB 43, § 16; Laws 2006, LB 1115, § 32; Laws 2008, LB1014, § 42; Laws 2010, LB800, § 31; Laws 2011, LB463, § 11; Laws 2013, LB561, § 25; Laws 2014, LB464, § 26; Laws 2015, LB482, § 6; Laws 2017, LB180, § 2; Laws 2018, LB990, § 7.

ARTICLE 4
OFFICE OF JUVENILE SERVICES

Section

Section

43-401 Act, how cited.

Sections 43-401 to 43-431 shall be known and may be cited as the Health and Human Services, Office of Juvenile Services Act.

Source: Laws 1998, LB 1073, § 33; Laws 2012, LB972, § 4; Laws 2020, LB1140, § 4; Laws 2020, LB1188, § 1.

43-403 Terms, defined.

For purposes of the Health and Human Services, Office of Juvenile Services Act:

(1) Aftercare means the control, supervision, and care exercised over juveniles who have been discharged from commitment;

(2) Committed means an order by a court committing a juvenile to the care and custody of the Office of Juvenile Services for treatment at a youth rehabilitation and treatment center identified in the court order;

(3) Community supervision means the control, supervision, and care exercised over juveniles when a commitment to the level of treatment of a youth rehabilitation and treatment center has not been ordered by the court;

(4) Emergency, for purposes of sections 43-427 to 43-430, means a public health emergency or a situation, including fire, flood, tornado, natural disaster, or damage to a youth rehabilitation and treatment center, that renders the youth rehabilitation and treatment center uninhabitable. Emergency does not include inadequate staffing;

(5) Evaluation means assessment of the juvenile's social, physical, psychological, and educational development and needs, including a recommendation as to an appropriate treatment plan; and

(6) Treatment means the type of supervision, care, and rehabilitative services provided for the juvenile at a youth rehabilitation and treatment center operated by the Office of Juvenile Services.

Source: Laws 1998, LB 1073, § 35; Laws 2020, LB1140, § 5; Laws 2020, LB1188, § 2; Laws 2021, LB273, § 2.

43-404 Office of Juvenile Services; created; powers and duties.

There is created within the Department of Health and Human Services the Office of Juvenile Services. The office shall have oversight and control of the youth rehabilitation and treatment centers. The Administrator of the Office of Juvenile Services shall be appointed by the chief executive officer of the department or his or her designee and shall be responsible for the administration of the facilities and programs of the office. The department may subcontract with a state agency or private provider to provide services related to the facilities and programs of the Office of Juvenile Services.

Source: Laws 1994, LB 988, § 10; Laws 1996, LB 1044, § 960; R.S.Supp.,1996, § 83-925.02; Laws 1998, LB 1073, § 36; Laws 2007, LB296, § 109; Laws 2013, LB561, § 26; Laws 2020, LB1188, § 3.

43-405 Office of Juvenile Services; administrative duties.

The administrative duties of the Office of Juvenile Services are to:

(1) Manage, establish policies for, and administer the office, including all facilities and programs operated by the office or provided through the office by contract with a provider;

(2) Supervise employees of the office, including employees of the facilities and programs operated by the office;

(3) Have separate budgeting procedures and develop and report budget information separately from the Department of Health and Human Services;

(4) Adopt and promulgate rules and regulations for the levels of treatment and for management, control, screening, treatment, rehabilitation, transfer, discharge, and evaluation of juveniles committed to the Office of Juvenile Services;

(5) Ensure that statistical information concerning juveniles committed to facilities of the office is collected, developed, and maintained for purposes of research and the development of treatment programs;

(6) Monitor commitments, placements, and evaluations at facilities and programs operated by the office or through contracts with providers and submit electronically an annual report of its findings to the Legislature. The report shall include an assessment of the administrative costs of operating the facilities, the cost of programming, and the savings realized through reductions in commitments, placements, and evaluations;

(7) Coordinate the programs and services of the juvenile justice system with other governmental agencies and political subdivisions;

(8) Coordinate educational, vocational, and social counseling for juveniles committed to the office; and

(9) Exercise all powers and perform all duties necessary to carry out its responsibilities under the Health and Human Services, Office of Juvenile Services Act.

Source: Laws 1998, LB 1073, § 37; Laws 2012, LB782, § 44; Laws 2012, LB972, § 5; Laws 2012, LB1160, § 12; Laws 2013, LB222, § 7; Laws 2013, LB561, § 27; Laws 2020, LB1188, § 4.

43-406 Office of Juvenile Services; individualized treatment plan; case classification and management; requirements.

The Office of Juvenile Services shall utilize:

(1) Evidence-based and validated risk and needs assessment instruments for use in determining the individualized treatment plan for each juvenile committed to the office;

(2) A case classification process to include levels of treatment defined by rules and regulations and case management standards for each level of treatment;

(3) Case management for all juveniles committed to the office; and

(4) A management information system. The system shall be a unified, interdepartmental client information system which supports the management function as well as the service function.

Source: Laws 1994, LB 988, § 15; Laws 1995, LB 371, § 27; Laws 1996, LB 1141, § 1; Laws 1997, LB 307, § 229; Laws 1997, LB 882, § 12; R.S.Supp.,1997, § 83-925.07; Laws 1998, LB 1073, § 38; Laws 2013, LB561, § 28; Laws 2020, LB1188, § 5.

43-407 Office of Juvenile Services; programs and treatment services; individualized treatment plan; placement; procedure; case management and coordination process; funding utilization; intent; evidence-based services, policies, practices, and procedures; report; contents; Executive Board of Legislative Council; powers.

(1) The Office of Juvenile Services shall design and make available programs and treatment services through youth rehabilitation and treatment centers. The programs and treatment services shall be evidence-based and based upon the individual or family evaluation process using evidence-based, validated risk and needs assessments to create an individualized treatment plan. The treatment plan shall be developed within fourteen days after admission and provided to the committing court and interested parties. The court may, on its own motion or upon the motion of an interested party, set a hearing to review the treatment plan.

(2) A juvenile may be committed by a court to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center operated and utilized in compliance with state law pursuant to a hearing described in subdivision (1)(b)(iii) of section 43-286. The office shall not change a juvenile's placement except as provided in this section. If a juvenile placed at a youth rehabilitation and treatment center is assessed as needing inpatient or subacute substance abuse or behavioral health residential treatment, the Office of Juvenile Services may arrange for such treatment to be provided at the Hastings Regional Center or may transition the juvenile to another inpatient or subacute

residential treatment facility licensed as a treatment facility in the State of Nebraska and shall provide notice of the change in placement pursuant to subsection (3) of this section. Except in a case requiring emergency admission to an inpatient facility, the juvenile shall not be discharged by the Office of Juvenile Services until the juvenile has been returned to the court for a review of his or her conditions of probation and the juvenile has been transitioned to the clinically appropriate level of care. Programs and treatment services shall address:

(a) Behavioral impairments, severe emotional disturbances, sex offender behaviors, and other mental health or psychiatric disorders;

(b) Drug and alcohol addiction;

(c) Health and medical needs;

(d) Education, special education, and related services;

(e) Individual, group, and family counseling services as appropriate with any treatment plan related to subdivisions (a) through (d) of this subsection. Services shall also be made available for juveniles who have been physically or sexually abused;

(f) A case management and coordination process, designed to assure appropriate reintegration of the juvenile to his or her family, school, and community. This process shall follow individualized planning which shall begin at intake and evaluation. Structured programming shall be scheduled for all juveniles. This programming shall include a strong academic program as well as classes in health education, living skills, vocational training, behavior management and modification, money management, family and parent responsibilities, substance abuse awareness, physical education, job skills training, and job placement assistance. Participation shall be required of all juveniles if such programming is determined to be age and developmentally appropriate. The goal of such structured programming shall be to provide the academic and life skills necessary for a juvenile to successfully return to his or her home and community upon release; and

(g) The design and delivery of treatment programs through the youth rehabilitation and treatment centers as well as any licensing or certification requirements, and the office shall follow the requirements as stated within Title XIX and Title IV-E of the federal Social Security Act, as such act existed on January 1, 2020, the Special Education Act, or other funding guidelines as appropriate. It is the intent of the Legislature that these funding sources shall be utilized to support service needs of eligible juveniles.

(3) When the Office of Juvenile Services has arranged for treatment of a juvenile as provided in subsection (2) of this section, the office shall file a report and notice of placement change with the court and shall send copies of the notice to all interested parties, including any parent or guardian of the juvenile, at least seven days before the placement of the juvenile is changed from the order of the committing court. The court, on its own motion or upon the filing of an objection to the change by an interested party, may order a hearing to review such change in placement and may order the change be stayed until the completion of the hearing. When filing a report and notice of placement change pursuant to this subsection, or upon a court order to set a hearing to review a change in placement or stay a change in placement pursuant to this subsection, the office may file a motion for immediate change of placement pursuant to subsection (4) of section 43-408.

(4)(a) The Office of Juvenile Services shall provide evidence-based services and operate the youth rehabilitation and treatment centers in accordance with evidence-based policies, practices, and procedures. On December 15 of each year, the office shall electronically submit to the Governor, the Legislature, and the Chief Justice of the Supreme Court, a comprehensive report of the evidence-based services, policies, practices, and procedures by which such centers operate, and efforts the office has taken to ensure fidelity to evidence-based models. The report may be attached to preexisting reporting duties. The report shall include at a minimum:

(i) The percentage of juveniles being supervised in accordance with evidence-based practices;

(ii) The percentage of state funds expended by each respective department for programs that are evidence-based, and a list of all programs which are evidence-based;

(iii) Specification of supervision policies, procedures, programs, and practices that were created, modified, or eliminated; and

(iv) Recommendations of the office for any additional collaboration with other state, regional, or local public agencies, private entities, or faith-based and community organizations.

(b) Each report and executive summary shall be available to the general public on the website of the office.

(c) The Executive Board of the Legislative Council may request the Consortium for Crime and Justice Research and Juvenile Justice Institute at the University of Nebraska at Omaha to review, study, and make policy recommendations on the reports assigned by the executive board.

Source: Laws 1994, LB 988, § 14; Laws 1997, LB 882, § 11; R.S.Supp.,1997, § 83-925.06; Laws 1998, LB 1073, § 39; Laws 2007, LB542, § 4; Laws 2013, LB561, § 29; Laws 2014, LB464, § 27; Laws 2020, LB1148, § 12; Laws 2020, LB1188, § 6; Laws 2021, LB273, § 3.

Cross References

Special Education Act, see section 79-1110.

43-408 Office of Juvenile Services; committing court; powers and duties; commitment review; hearing; immediate change of placement; procedure; annual review of commitment and placement; review status; when.

(1) Whenever any juvenile is committed to the Office of Juvenile Services, the juvenile shall also be considered committed to the care and custody of the Department of Health and Human Services for the purpose of obtaining health care and treatment services.

(2) The committing court may order placement at a youth rehabilitation and treatment center for a juvenile committed to the Office of Juvenile Services following a commitment hearing pursuant to subdivision (1)(b)(iii) of section 43-286. The court shall continue to maintain jurisdiction over any juvenile committed to the Office of Juvenile Services, and the office shall provide the court and parties of record with the initial treatment plan and monthly updates regarding the progress of the juvenile.

(3) In addition to the hearings set forth in section 43-285, during a juvenile's term of commitment, any party may file a motion for commitment review to

bring the case before the court for consideration of the juvenile's commitment to a youth rehabilitation and treatment center. A hearing shall be scheduled no later than thirty days after the filing of such motion. No later than five days prior to the hearing, the office shall provide information to the parties regarding the juvenile's individualized treatment plan and progress. A representative of the office or facility shall be physically present at the hearing to provide information to the court unless the court allows the representative to appear telephonically or by video. The juvenile and the juvenile's parent or guardian shall have the right to be physically present at the hearing. The court may enter such orders regarding the juvenile's care and treatment as are necessary and in the best interests of the juvenile, including an order for early discharge from commitment when appropriate. In entering an order for early discharge from commitment to intensive supervised probation in the community, the court shall consider to what extent:

(a) The juvenile has completed the goals of the juvenile's individualized treatment plan or received maximum benefit from institutional treatment;

(b) The juvenile would benefit from continued services under community supervision;

(c) The juvenile can function in a community setting with appropriate supports; and

(d) There is reason to believe that the juvenile will not commit further violations of law and will comply with the terms of intensive supervised probation.

(4) When filing a motion pursuant to subsection (3) of this section, the office may also file a motion for immediate change of placement to another youth rehabilitation and treatment center operated and utilized in compliance with state law. When filing a report and notice of placement change pursuant to subsection (3) of section 43-407, or upon a court order to set a hearing to review a change in placement or stay a change in placement pursuant to subsection (3) of section 43-407, the office may file a motion for immediate change of placement to the inpatient or subacute residential treatment facility licensed as a treatment facility in the State of Nebraska. The motion shall set forth with reasonable particularity the grounds for an immediate change of placement. A motion for immediate change of placement under this subsection shall be heard within twenty-four hours, excluding nonjudicial days, and may be heard telephonically or by videoconferencing. Prior to filing a motion for immediate change of placement, the office shall make a reasonable attempt to provide notice of the motion to the juvenile's parent or guardian, including notice that the motion will be set for hearing within twenty-four hours. The court shall promptly provide the notice of hearing to all parties of record. In advance of the hearing, the office shall provide to the other parties of record any exhibits it intends to offer, if any, and the identity of its witnesses. The office shall provide the juvenile an opportunity before the hearing to consult with the juvenile's counsel and review the motion and the exhibits and witnesses. The court shall order the immediate change of placement pending an order pursuant to subsection (3) of this section or subsection (3) of section 43-407 if the court determines that an immediate change is in the best interests of the juvenile and further delay would be contrary to the juvenile's well-being, physical health, emotional health, or mental health.

(5) Each juvenile committed to the Office of Juvenile Services for placement at a youth rehabilitation and treatment center shall also be entitled to an annual review of such commitment and placement for as long as the juvenile remains so committed and placed. At an annual review hearing, the court shall consider the factors described in subsection (3) of this section to assess the juvenile's progress and determine whether commitment remains in the best interests of the juvenile.

(6) If a juvenile is placed in detention while awaiting placement at a youth rehabilitation and treatment center and the placement has not occurred within fourteen days, the committing court shall hold a hearing every fourteen days to review the status of the juvenile. Placement of a juvenile in detention shall not be considered a treatment service.

Source: Laws 1996, LB 1044, § 962; R.S.Supp.,1996, § 83-925.12; Laws 1998, LB 1073, § 40; Laws 2001, LB 598, § 1; Laws 2006, LB 1113, § 40; Laws 2013, LB561, § 30; Laws 2020, LB1148, § 13; Laws 2020, LB1188, § 7; Laws 2021, LB273, § 4.

43-410 Juvenile absconding; authority to apprehend.

(1) Any peace officer or direct care staff member of the Office of Juvenile Services has the authority to apprehend and detain a juvenile who has absconded or is attempting to abscond from commitment to the Office of Juvenile Services and shall cause the juvenile to be returned to the youth rehabilitation and treatment center or an appropriate juvenile detention facility or staff secure juvenile facility.

(2) For purposes of this section, direct care staff member means any staff member charged with the day-to-day care and supervision of juveniles at a youth rehabilitation and treatment center or security staff who has received training in apprehension techniques and procedures.

Source: Laws 1998, LB 1073, § 42; Laws 2013, LB561, § 31; Laws 2020, LB1188, § 8.

43-414 Repealed. Laws 2020, LB1188, § 21.

43-415 Repealed. Laws 2020, LB1188, § 21.

43-416 Repealed. Laws 2020, LB1188, § 21.

43-417 Discharge from youth rehabilitation and treatment center; considerations.

In determining whether to discharge a juvenile from a youth rehabilitation and treatment center, the Office of Juvenile Services shall consider whether (1) the juvenile has completed the goals of his or her individualized treatment plan or received maximum benefit from institutional treatment, (2) the juvenile would benefit from continued services under community supervision, (3) the juvenile can function in a community setting, (4) there is reason to believe that the juvenile will not commit further violations of law, and (5) there is reason to believe that the juvenile will comply with the conditions of probation.

Source: Laws 1998, LB 1073, § 49; Laws 2013, LB561, § 37; Laws 2020, LB1188, § 9.

43-418 Repealed. Laws 2020, LB1188, § 21.

43-419 Repealed. Laws 2020, LB1188, § 21.

43-420 Hearing officer; requirements.

Any hearing required or permitted for juveniles in the custody of the Office of Juvenile Services shall be conducted by a hearing officer who is an attorney licensed to practice law in the State of Nebraska and may be an employee of the Department of Health and Human Services or an attorney who is an independent contractor. If the hearing officer is an employee of the department, he or she shall not be assigned to any duties requiring him or her to give ongoing legal advice to any person employed by or who is a contractor with the office.

Source: Laws 1998, LB 1073, § 52; Laws 2013, LB561, § 40; Laws 2020, LB1188, § 10.

43-421 Repealed. Laws 2020, LB1188, § 21.

43-422 Repealed. Laws 2020, LB1188, § 21.

43-423 Repealed. Laws 2020, LB1188, § 21.

43-425 Community and Family Reentry Process; created; juvenile committed to youth rehabilitation and treatment center; family team meetings; individualized reentry plan; risk-screening and needs assessment; probation officer; duties; Office of Probation Administration; duties.

(1) The Community and Family Reentry Process is hereby created. This process is created in order to reduce recidivism and promote safe and effective reentry for the juvenile and his or her family to the community from the juvenile justice system.

(2) While a juvenile is committed to a youth rehabilitation and treatment center, family team meetings shall be conducted in person or via videoconferencing at least once per month with the juvenile's support system to discuss the juvenile's transition back to the community. A juvenile's support system should be made up of any of the following: The juvenile himself or herself, any immediate family members or guardians, informal and formal supports, the juvenile's guardian ad litem appointed by the court, the juvenile's probation officer, Office of Juvenile Services personnel employed by the facility, and any additional personnel as appropriate. Once developed, individualized reentry plans should be discussed at the family team meetings with the juvenile and other members of the juvenile's support system and shall include discussions on the juvenile's placement after leaving the facility. The probation officer and the Office of Juvenile Services personnel should discuss progress and needs of the juvenile and should help the juvenile follow his or her individual reentry plan to help with his or her transition back to the community.

(3) Within sixty days prior to discharge from a youth rehabilitation and treatment center, or as soon as possible if the juvenile's remaining time at the youth rehabilitation and treatment center is less than sixty days, an evidence-based risk screening and needs assessment should be conducted on the juvenile in order to determine the juvenile's risk of reoffending and the juvenile's individual needs upon reentering the community.

(4) Individualized reentry plans shall be developed with input from the juvenile and his or her support system in conjunction with a risk assessment

process. Individualized reentry plans shall be finalized thirty days prior to the juvenile leaving the youth rehabilitation and treatment center or as soon as possible if the juvenile's remaining time at the center is less than thirty days. Individualized reentry plans should include specifics about the juvenile's placement upon return to the community, an education transition plan, a treatment plan with any necessary appointments being set prior to the juvenile leaving the center, and any other formal and informal supports for the juvenile and his or her family. The district probation officer and Office of Juvenile Services personnel shall review the individualized reentry plan and the expected outcomes as a result of the plan with the juvenile and his or her support system within thirty days prior to the juvenile's discharge from the center.

(5) The probation officer shall have contact with the juvenile and the juvenile's support system within forty-eight hours after the juvenile returns to the community and continue to assist the juvenile and the juvenile's support system in implementing and following the individualized reentry plan and monitoring the juvenile's risk through ongoing assessment updates.

(6) The Office of Probation Administration shall:

(a) Establish an evidence-based reentry process that utilizes risk assessment to determine the juvenile's supervision level upon return to the community;

(b) Establish supervision strategies based on risk levels of the juvenile and supervise accordingly, with ongoing reassessment to assist in determining eligibility for release from probation;

(c) Develop a formal matrix of graduated sanctions to be utilized prior to requesting the county attorney to file for probation revocation; and

(d) Provide training to its workers on risk-based supervision strategies, motivational interviewing, family engagement, community-based resources, and other evidence-based reentry strategies.

Source: Laws 2013, LB561, § 54; Laws 2014, LB464, § 29; Laws 2020, LB1188, § 11.

43-426 Visitation and communication; use as consequence or sanction; prohibited.

In-person visitation and other forms of communication, including telephone calls and electronic communication, with a juvenile's relatives, including, but not limited to, parents, guardians, grandparents, siblings, and children, shall not be limited or prohibited as a consequence or sanction.

Source: Laws 2020, LB1188, § 12.

43-427 Youth rehabilitation and treatment centers; five-year operations plan; reports.

(1) The Department of Health and Human Services shall develop a five-year operations plan for the youth rehabilitation and treatment centers and submit such operations plans electronically to the Health and Human Services Committee of the Legislature on or before March 15, 2021.

(2) The operations plan shall be developed with input from key stakeholders and shall include, but not be limited to:

(a) A description of the population served at each youth rehabilitation and treatment center;

(b) An organizational chart of supervisors and operations staff. The operations plan shall not allow for administrative staff to have oversight over more than one youth rehabilitation and treatment center and shall not allow for clinical staff to have responsibility over more than one youth rehabilitation and treatment center;

(c) Staff who shall be centralized offsite or managed onsite, including facility and maintenance staff;

(d) A facility plan that considers taxpayer investments already made in the facility and the community support and acceptance of the juveniles in the community surrounding the youth rehabilitation and treatment center;

(e) A description of each rehabilitation program offered at the youth rehabilitation and treatment center;

(f) A description of each mental health treatment plan offered at the youth rehabilitation and treatment center;

(g) A description of reentry and discharge planning;

(h) A staffing plan that ensures adequate staffing;

(i) An education plan developed in collaboration with the State Department of Education;

(j) A capital improvements budget;

(k) An operating budget;

(l) A disaster recovery plan;

(m) A plan to segregate the juveniles by gender on separate campuses;

(n) A parenting plan for juveniles placed in a youth rehabilitation and treatment center who are parenting;

(o) A statement of the rights of juveniles placed at the youth rehabilitation and treatment centers, including a right to privacy, and the rights of parents or guardians;

(p) Quality and outcome measurements for tracking outcomes for juveniles when they are discharged from the youth rehabilitation and treatment center, including an exit survey of such juveniles;

(q) Key performance indicators to be included in the annual report required under this section;

(r) A requirement for trauma-informed training provided to staff;

(s) Methods and procedures for investigations at the youth rehabilitation and treatment center; and

(t) A grievance process for juveniles placed at the youth rehabilitation and treatment centers.

(3) The department shall submit a report electronically to the Clerk of the Legislature on or before December 15, 2021, and each December 15 thereafter regarding such operations plan and key performance indicators.

(4) In addition to the report required in subsection (3) of this section, the department shall update the Health and Human Services Committee of the Legislature on or before each March 15, June 15, and September 15, regarding the elements of the operations plan described in subdivisions (a), (d), (e), (f), and (m) of subsection (2) of this section, of any substantial changes planned before the next report, and of any substantial changes that have occurred to such facilities or programs. Nothing in this subsection shall be construed to

limit or prevent the department from acting in accordance with sections 43-428 to 43-430 in the event of an emergency.

Source: Laws 2020, LB1140, § 2; Laws 2021, LB428, § 1.

43-428 Youth rehabilitation and treatment center; emergency plan.

(1) The Department of Health and Human Services shall develop an emergency plan for the Youth Rehabilitation and Treatment Center-Geneva, the Youth Rehabilitation and Treatment Center-Kearney, and any other facility operated and utilized as a youth rehabilitation and treatment center in compliance with state law.

(2) Each emergency plan shall:

(a) Identify and designate temporary placement facilities for the placement of juveniles in the event a youth rehabilitation and treatment center must be evacuated due to an emergency as defined in section 43-403. The administrator of a proposed temporary placement facility shall consent to be designated as a temporary placement facility in the emergency plan. A criminal detention facility or a juvenile detention facility shall only be designated as a temporary placement facility pursuant to section 43-430;

(b) Identify barriers to implementation of an effective emergency plan, including necessary administrative or legislative changes;

(c) Include procedures for the Office of Juvenile Services to provide reliable, effective, and timely notification that an emergency plan is to be implemented to:

(i) Staff at the youth rehabilitation and treatment center where the emergency plan is implemented and the administrator and staff at the temporary placement facility;

(ii) Juveniles placed at the youth rehabilitation and treatment center;

(iii) Families and legal guardians of juveniles placed at the youth rehabilitation and treatment center;

(iv) The State Court Administrator, in a form and manner prescribed by the State Court Administrator;

(v) The committing court of each juvenile placed at the youth rehabilitation and treatment center;

(vi) The chairperson of the Health and Human Services Committee of the Legislature; and

(vii) The office of Public Counsel and the office of Inspector General of Nebraska Child Welfare;

(d) Detail the plan for transportation of juveniles to a temporary placement facility; and

(e) Include methods and schedules for implementing the emergency plan.

(3) Each emergency plan shall be developed on or before December 15, 2020.

Source: Laws 2020, LB1140, § 6.

43-429 Emergency plan; requirements.

(1) The Department of Health and Human Services shall ensure that the administrator of each temporary placement facility described in an emergency plan required under section 43-428 consents to the temporary placement of

juveniles placed in such facility pursuant to the emergency plan. Prior to inclusion in an emergency plan as a temporary placement facility, the department and the administrator of the temporary placement facility shall agree on a cost-reimbursement plan for the temporary placement of juveniles at such facility.

(2) If an emergency plan required under section 43-428 is implemented, the Office of Juvenile Services shall, at least twenty-four hours prior to implementation, if practical, and otherwise within twenty-four hours after implementation of such emergency plan, notify the persons and entities listed in subdivision (2)(c) of section 43-428.

Source: Laws 2020, LB1140, § 7.

43-430 Criminal detention facility; juvenile detention facility; emergency use.

In the event of an emergency and only after all other temporary placement options have been exhausted, the Office of Juvenile Services may provide for the placement of a juvenile for a period not to exceed seven days at a criminal detention facility, if allowed by law, or a juvenile detention facility, as such terms are defined in section 83-4,125.

Source: Laws 2020, LB1140, § 8.

43-431 Transportation of juveniles; policies and procedures; applicable to private contractor.

Policies and procedures of the Department of Health and Human Services regarding the transportation of juveniles placed at the youth rehabilitation and treatment centers shall apply to any private contractor utilized by the Office of Juvenile Services to transport juveniles placed at the youth rehabilitation and treatment centers.

Source: Laws 2020, LB1140, § 10.

ARTICLE 5

ASSISTANCE FOR CERTAIN CHILDREN

Section

43-512 Application for assistance; procedure; maximum monthly assistance; payment; transitional benefits; terms, defined.

(1) Any dependent child as defined in section 43-504 or any relative or eligible caretaker of such a dependent child may file with the Department of Health and Human Services a written application for financial assistance for such child on forms furnished by the department.

(2) The department, through its agents and employees, shall make such investigation pursuant to the application as it deems necessary or as may be

required by the county attorney or authorized attorney. If the investigation or the application for financial assistance discloses that such child has a parent or stepparent who is able to contribute to the support of such child and has failed to do so, a copy of the finding of such investigation and a copy of the application shall immediately be filed with the county attorney or authorized attorney.

(3) The department shall make a finding as to whether the application referred to in subsection (1) of this section should be allowed or denied. If the department finds that the application should be allowed, the department shall further find the amount of monthly assistance which should be paid with reference to such dependent child. Except as may be otherwise provided, payments shall be made by unit size and shall be consistent with subdivisions (1)(p), (1)(q), (1)(t), (1)(u), and (1)(v) of section 68-1713. Beginning on August 30, 2015, the maximum payment level for monthly assistance shall be fifty-five percent of the standard of need described in section 43-513.

No payments shall be made for amounts totaling less than ten dollars per month except in the recovery of overpayments.

(4) The amount which shall be paid as assistance with respect to a dependent child shall be based in each case upon the conditions disclosed by the investigation made by the department. An appeal shall lie from the finding made in each case to the chief executive officer of the department or his or her designated representative. Such appeal may be taken by any taxpayer or by any relative of such child. Proceedings for and upon appeal shall be conducted in the same manner as provided for in section 68-1016.

(5)(a) For the purpose of preventing dependency, the department shall adopt and promulgate rules and regulations providing for services to former and potential recipients of aid to dependent children and medical assistance benefits. The department shall adopt and promulgate rules and regulations establishing programs and cooperating with programs of work incentive, work experience, job training, and education. The provisions of this section with regard to determination of need, amount of payment, maximum payment, and method of payment shall not be applicable to families or children included in such programs. Income and assets described in section 68-1201 shall not be included in determination of need under this section.

(b) If a recipient of aid to dependent children becomes ineligible for aid to dependent children as a result of increased hours of employment or increased income from employment after having participated in any of the programs established pursuant to subdivision (a) of this subsection, the recipient may be eligible for the following benefits, as provided in rules and regulations of the department in accordance with sections 402, 417, and 1925 of the federal Social Security Act, as amended, Public Law 100-485, in order to help the family during the transition from public assistance to independence:

(i) An ongoing transitional payment that is intended to meet the family's ongoing basic needs which may include food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses during the five months following the time the family becomes ineligible for assistance under the aid to dependent children program, if the family's earned income is at or below one hundred eighty-five percent of the federal poverty level at the time the family becomes ineligible for the aid to dependent children program. Payments shall be made in five monthly payments, each equal to one-fifth of the

aid to dependent children payment standard for the family's size at the time the family becomes ineligible for the aid to dependent children program. If during the five-month period, (A) the family's earnings exceed one hundred eighty-five percent of the federal poverty level, (B) the family members are no longer working, (C) the family ceases to be Nebraska residents, (D) there is no longer a minor child in the family's household, or (E) the family again becomes eligible for the aid to dependent children program, the family shall become ineligible for any remaining transitional benefits under this subdivision;

(ii) Child care as provided in subdivision (1)(c) of section 68-1724; and

(iii) Except as may be provided in accordance with subsection (2) of section 68-1713 and subdivision (1)(c) of section 68-1724, medical assistance for up to twelve months after the month the recipient becomes employed and is no longer eligible for aid to dependent children.

(6) For purposes of sections 43-512 to 43-512.18:

(a) Authorized attorney shall mean an attorney, employed by the county subject to the approval of the county board, employed by the department, or appointed by the court, who is authorized to investigate and prosecute child, spousal, and medical support cases. An authorized attorney shall represent the state as provided in section 43-512.03;

(b) Child support shall be defined as provided in section 43-1705;

(c) Medical support shall include all expenses associated with the birth of a child, cash medical support as defined in section 42-369, health care coverage as defined in section 44-3,144, and medical and hospital insurance coverage or membership in a health maintenance organization or preferred provider organization;

(d) Spousal support shall be defined as provided in section 43-1715;

(e) State Disbursement Unit shall be defined as provided in section 43-3341; and

(f) Support shall be defined as provided in section 43-3313.

Source: Laws 1935, Spec. Sess., c. 30, § 12, p. 185; C.S.Supp.,1941, § 43-512; R.S.1943, § 43-512; Laws 1945, c. 104, § 1, p. 338; Laws 1947, c. 158, § 1, p. 436; Laws 1951, c. 79, § 5, p. 240; Laws 1951, c. 130, § 1, p. 549; Laws 1953, c. 233, § 1, p. 809; Laws 1959, c. 191, § 1, p. 694; Laws 1967, c. 252, § 1, p. 671; Laws 1971, LB 639, § 1; Laws 1974, LB 834, § 1; Laws 1975, LB 192, § 1; Laws 1977, LB 179, § 1; Laws 1977, LB 425, § 1; Laws 1980, LB 789, § 1; Laws 1982, LB 522, § 13; Laws 1982, LB 942, § 3; Laws 1983, LB 371, § 12; Laws 1985, Second Spec. Sess., LB 7, § 65; Laws 1987, LB 573, § 2; Laws 1988, LB 518, § 1; Laws 1989, LB 362, § 3; Laws 1990, LB 536, § 1; Laws 1991, LB 457, § 5; Laws 1991, LB 715, § 7; Laws 1994, LB 1224, § 50; Laws 1995, LB 455, § 2; Laws 1996, LB 1044, § 156; Laws 1997, LB 864, § 4; Laws 2000, LB 972, § 17; Laws 2007, LB296, § 115; Laws 2007, LB351, § 2; Laws 2009, LB288, § 7; Laws 2014, LB359, § 2; Laws 2015, LB607, § 1; Laws 2016, LB1081, § 1; Laws 2024, LB233, § 1.
Effective date July 19, 2024.

43-512.07 Assignment of child, spousal, or medical support payments; when; duration; notice; unpaid court-ordered support; how treated; pass-through amounts; how treated.

(1) Any action, payment, aid, or assistance listed in this subsection shall constitute an assignment by operation of law to the Department of Health and Human Services of any right to spousal or medical support, when ordered by the court, and to child support, whether or not ordered by the court, which a person may have in his or her own behalf or on behalf of any other person for whom such person receives such payments, aid, or assistance:

(a) Application for and acceptance of one or more aid to dependent children payments by a parent, another relative, or a custodian;

(b) Receipt of aid by or on behalf of any dependent child as defined in section 43-504; or

(c) Receipt of aid from child welfare funds.

The assignment under this section is the right to support payments that become due while the person is receiving payments, aid, or assistance listed in this subsection. The department shall be entitled to retain such spousal or other support up to the amount of payments, aid, or assistance provided to a recipient. For purposes of this section, the right to receive child support shall belong to the child and the assignment shall be effective as to any such support even if the recipient of the payments, aid, or assistance is not the same as the payee of court-ordered support.

(2) After notification of the State Disbursement Unit receiving the child, spousal, or other support payments made pursuant to a court order that the person for whom such support is ordered is a recipient of payments, aid, or assistance listed in subsection (1) of this section, the department shall also give notice to the payee named in the court order at his or her last-known address.

(3) Upon written or other notification from the department or from another state of such assignment of child, spousal, or other support payments, the State Disbursement Unit shall transmit the support payments received to the department or the other state without the requirement of a subsequent order by the court. The State Disbursement Unit shall continue to transmit the support payments for as long as the payments, aid, or assistance listed in subsection (1) of this section continues.

(4) Any court-ordered child, spousal, or other support remaining unpaid for the months during which such payments, aid, or assistance was made shall constitute a debt and a continuing assignment at the termination of payments, aid, or assistance listed in subsection (1) of this section, collectible by the department or other state as reimbursement for such payments, aid, or assistance. The continuing assignment shall only apply to support payments made during a calendar period which exceed the specific amount of support ordered for that period. When payments, aid, or assistance listed in subsection (1) of this section have ceased and upon notice by the department or the other state, the State Disbursement Unit shall continue to transmit to the department or the other state any support payments received in excess of the amount of support ordered for that specific calendar period until notified by the department or the other state that the debt has been paid in full.

(5) Beginning July 1, 2027, the department shall pass through an amount not exceeding one hundred dollars per month, or in the case of a family with two or

more children, an amount not exceeding two hundred dollars per month, to the recipient of any payments, aid, or assistance listed in subdivision (1)(a) of this section, from the current child support collected pursuant to the assignment. Such pass-through amounts shall not be considered income for the purpose of calculating a recipient's eligibility for assistance. The department shall disregard the amount of child support passed through to the recipient in calculating the amount of the recipient's monthly assistance payment.

Source: Laws 1976, LB 926, § 9; Laws 1981, LB 345, § 5; Laws 1985, Second Spec. Sess., LB 7, § 71; Laws 1986, LB 600, § 13; Laws 1987, LB 599, § 13; Laws 1991, LB 457, § 11; Laws 1993, LB 435, § 3; Laws 1995, LB 524, § 1; Laws 1996, LB 1044, § 161; Laws 1997, LB 307, § 63; Laws 2000, LB 972, § 18; Laws 2009, LB288, § 9; Laws 2024, LB233, § 2.
Effective date July 19, 2024.

43-512.12 Title IV-D child support order; review by Department of Health and Human Services; when; noncustodial parent incarcerated; notice to parents.

(1) Child support orders in cases in which a party has applied for services under Title IV-D of the federal Social Security Act, as amended, shall be reviewed by the Department of Health and Human Services to determine whether to refer such orders to the county attorney or authorized attorney for filing of an application for modification. An order shall be reviewed by the department upon its own initiative or at the request of either parent when such review is required by Title IV-D of the federal Social Security Act, as amended. After review the department shall refer an order to a county attorney or authorized attorney when the verifiable financial information available to the department indicates:

(a) The present child support obligation varies from the Supreme Court child support guidelines pursuant to section 42-364.16 by more than the percentage, amount, or other criteria established by Supreme Court rule, and the variation is due to financial circumstances which have lasted at least three months and can reasonably be expected to last for an additional six months; or

(b) Health care coverage meeting the requirements of subsection (2) of section 42-369 is available to either party and the children do not have health care coverage other than the medical assistance program under the Medical Assistance Act.

Health care coverage cases may be modified within three years of entry of the order.

(2) Orders that are not addressed under subsection (1) of this section shall not be reviewed by the department if it has not been three years since the present child support obligation was ordered unless the requesting party demonstrates a substantial change in circumstances that is expected to last for the applicable time period established by subdivision (1)(a) of this section. Such substantial change in circumstances may include, but is not limited to, change in employment, earning capacity, or income or receipt of an ongoing source of income from a pension, gift, lottery winnings, casino winnings, parimutuel winnings, sports wagering winnings, or cash device winnings. An order may be reviewed after one year if the department's determination after the previous review was not to refer to the county attorney or authorized attorney for filing

of an application for modification because financial circumstances had not lasted or were not expected to last for the time periods established by subdivision (1)(a) of this section.

(3) Notwithstanding the time periods set forth in subdivision (1)(a) of this section, within fifteen business days of learning that a noncustodial parent will be incarcerated for more than one hundred eighty calendar days, the department shall send notice by first-class mail to both parents informing them of the right to request the state to review and, if appropriate, adjust the order. Such notice shall be sent to the incarcerated parent at the address of the facility at which the parent is incarcerated.

Source: Laws 1991, LB 715, § 13; Laws 1993, LB 523, § 8; Laws 1996, LB 1044, § 163; Laws 1997, LB 307, § 64; Laws 1997, LB 752, § 99; Laws 2006, LB 1248, § 54; Laws 2009, LB288, § 10; Laws 2010, LB712, § 25; Laws 2018, LB702, § 2; Laws 2024, LB1317, § 57.
Operative date July 19, 2024.

Cross References

Medical Assistance Act, see section 68-901.

43-512.15 Title IV-D child support order; modification; when; procedures.

(1) The county attorney or authorized attorney, upon referral from the Department of Health and Human Services, shall file a complaint to modify a child support order unless the attorney determines in the exercise of independent professional judgment that:

(a) The variation from the Supreme Court child support guidelines pursuant to section 42-364.16 is based on material misrepresentation of fact concerning any financial information submitted to the attorney;

(b) The variation from the guidelines is due to a voluntary reduction in net monthly income. Incarceration may not be treated as voluntary unemployment in establishing or modifying support orders; or

(c) When the amount of the order is considered with all the other undisputed facts in the case, no variation from the criteria set forth in subdivisions (1)(a) and (b) of section 43-512.12 exists.

(2) The proceedings to modify a child support order shall comply with section 42-364, and the county attorney or authorized attorney shall represent the state in the proceedings.

(3) After a complaint to modify a child support order is filed, any party may choose to be represented personally by private counsel. Any party who retains private counsel shall so notify the county attorney or authorized attorney in writing.

Source: Laws 1991, LB 715, § 16; Laws 1993, LB 523, § 10; Laws 1996, LB 1044, § 166; Laws 1997, LB 307, § 67; Laws 2004, LB 1207, § 39; Laws 2007, LB554, § 42; Laws 2008, LB1014, § 43; Laws 2009, LB288, § 11; Laws 2010, LB712, § 26; Laws 2018, LB702, § 3.

43-536 Child care reimbursement; assessment; adjustment of rate; participation in quality rating and improvement system; effect.

In determining the rate of reimbursement for child care, the Department of Health and Human Services shall assess the market rates and costs for provision of services of the child care providers in the state, utilizing an approved methodology in accordance with 45 C.F.R. 98.45, as such section existed on January 1, 2024. The department shall adjust the reimbursement rate for child care every odd-numbered year at a rate not less than the seventy-fifth percentile of the current market rate, except that (1) nationally accredited child care providers may be reimbursed at higher rates and (2) an applicable child care or early childhood education program, as defined in section 71-1954, that is participating in the quality rating and improvement system and has received a rating of step three or higher under the Step Up to Quality Child Care Act may be reimbursed at higher rates based upon the program's quality scale rating under the quality rating and improvement system.

Source: Laws 1995, LB 455, § 20; Laws 1996, LB 1044, § 174; Laws 1997, LB 307, § 69; Laws 1998, LB 1073, § 28; Laws 2003, LB 414, § 1; Laws 2007, LB296, § 123; Laws 2011, LB464, § 1; Laws 2013, LB507, § 14; Laws 2017, LB335, § 1; Laws 2024, LB904, § 1.
Effective date July 19, 2024.

Cross References

Step Up to Quality Child Care Act, see section 71-1952.

ARTICLE 9
CHILDREN COMMITTED TO THE DEPARTMENT

Section

43-906 Adoption; consent.

Except as otherwise provided in the Nebraska Indian Child Welfare Act, the Department of Health and Human Services, or its duly authorized agent, may consent to the adoption of children committed to it upon the order of a juvenile court if the parental rights of the parents or of the mother of a child born out of wedlock have been terminated and if no father of a child born out of wedlock has timely asserted his paternity rights under section 43-104.02, or upon the relinquishment to such department by their parents or the mother and, if required under sections 43-104.08 to 43-104.24, the father of a child born out of wedlock. The parental rights of parents of a child born out of wedlock shall be determined pursuant to sections 43-104.05 and 43-104.08 to 43-104.24.

Source: Laws 1911, c. 62, § 7, p. 275; R.S.1913, § 7231; C.S.1922, § 6888; C.S.1929, § 83-506; R.S.1943, § 83-245; Laws 1947, c. 333, § 2, p. 1052; Laws 1955, c. 344, § 2, p. 1061; Laws 1967, c. 248, § 5, p. 658; Laws 1985, LB 255, § 36; Laws 1995, LB 712, § 27; Laws 1996, LB 1044, § 186; Laws 2007, LB247, § 21; Laws 2022, LB741, § 32.

Cross References

Adoption, substitute consents, see sections 43-105 and 43-293.
Nebraska Indian Child Welfare Act, see section 43-1501.

43-907 Assets; custody; records; expenditures; investments; social security benefits; department; duties.

(1) Unless a guardian shall have been appointed by a court of competent jurisdiction, the Department of Health and Human Services shall take custody of and exercise general control over assets owned by children under the charge of the department. Children owning assets shall at all times pay for personal items. Assets over and above a maximum of one thousand dollars and current income shall be available for reimbursement to the state for the cost of care. Assets may be deposited in a checking account, invested in United States bonds, or deposited in a savings account insured by the United States Government. All income received from the investment or deposit of assets shall be credited to the individual child whose assets were invested or deposited. The department shall make and maintain detailed records showing all receipts, investments, and expenditures of assets owned by children under the charge of the department.

(2) When the Department of Health and Human Services serves as representative payee for a child beneficiary of social security benefits, the department shall provide:

(a) Notice to the child beneficiary, in an age-appropriate manner, and the child's guardian ad litem, that the department is acting as the child's representative payee for the purposes of receiving social security benefits, within thirty days after receiving the first social security benefit payment on behalf of the child;

(b) Notice to the juvenile court, at every review hearing regarding the child beneficiary after January 1, 2023, regarding the department's receipt and conservation of the child's social security benefits, that shall include:

(i) The total amount of social security benefit funds the department has received on behalf of the child beneficiary as of the review hearing; and

(ii) The total amount of social security benefit funds received on behalf of the child beneficiary that are currently conserved or unspent as of the review hearing; and

(c) All accounting records regarding the department's receipt, use, and conservation of the child's social security benefits, to the child beneficiary, the child's guardian ad litem or attorney, or the child's parent upon:

(i) Request from the child beneficiary, the child's guardian ad litem or attorney, or the child's parent; and

(ii) Termination of the department's role as the child beneficiary's representative payee.

(3) On or before October 1, 2023, the Department of Health and Human Services shall adopt and promulgate rules and regulations to carry out subsection (2) of this section consistent with federal requirements regarding representative payees for social security beneficiaries.

Source: Laws 1963, c. 245, § 1, p. 739; Laws 1976, LB 545, § 1; Laws 1977, LB 312, § 6; Laws 1982, LB 828, § 1; Laws 1996, LB 1044, § 187; Laws 2007, LB296, § 125; Laws 2022, LB1173, § 8.

ARTICLE 12

UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT

Section
43-1238. Initial child custody jurisdiction.

43-1238 Initial child custody jurisdiction.

(a) Except as otherwise provided in section 43-1241, a court of this state has jurisdiction to make an initial child custody determination only if:

(1) this state is the home state of the child on the date of the commencement of the proceeding or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state;

(2) a court of another state does not have jurisdiction under subdivision (a)(1) of this section, or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under section 43-1244 or 43-1245, and:

(A) the child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence; and

(B) substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships;

(3) all courts having jurisdiction under subdivision (a)(1) or (a)(2) of this section have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under section 43-1244 or 43-1245; or

(4) no court of any other state would have jurisdiction under the criteria specified in subdivision (a)(1), (a)(2), or (a)(3) of this section.

(b) Subsection (a) of this section is the exclusive jurisdictional basis for making a child custody determination by a court of this state. In addition to having jurisdiction to make judicial determinations about the custody and care of the child, a court of this state with exclusive jurisdiction under subsection (a) of this section has jurisdiction and authority to make factual findings regarding (1) the abuse, abandonment, or neglect of the child, (2) the nonviability of reunification with at least one of the child's parents due to such abuse, abandonment, neglect, or a similar basis under state law, and (3) whether it would be in the best interests of such child to be removed from the United States to a foreign country, including the child's country of origin or last habitual residence. If there is sufficient evidence to support such factual findings, the court shall issue an order containing such findings when requested by one of the parties or upon the court's own motion.

(c) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination.

Source: Laws 2003, LB 148, § 13; Laws 2018, LB670, § 8.

ARTICLE 13
FOSTER CARE

(a) FOSTER CARE REVIEW ACT

(b) TRANSITION OF EMPLOYEES

(a) FOSTER CARE REVIEW ACT

43-1302 Foster Care Review Office; established; purpose; Foster Care Advisory Committee; created; members; terms; meetings; duties; expenses; executive director; duties.

(1) The Foster Care Review Office is hereby established. The purpose of the office is to provide information and direct reporting to the courts, the Department of Health and Human Services, the Office of Probation Administration, and the Legislature regarding the foster care system in Nebraska; to provide oversight of the foster care system; and to make recommendations regarding foster care policy to the Legislature. The executive director of the Foster Care Review Office shall provide information and reporting services, provide analysis of information obtained, and oversee foster care file audit case reviews and tracking of cases of children in the foster care system. The executive director of the office shall, through information analysis and with the assistance of the Foster Care Advisory Committee, (a) determine key issues of the foster care system and ways to resolve the issues and to otherwise improve the system and (b) make policy recommendations.

(2)(a) The Foster Care Advisory Committee is created. The committee shall have five members appointed by the Governor. Three members shall be local board members, one member shall have data analysis experience, and one member shall be a resident of the state who is representative of the public at large. The members shall have no pecuniary interest in the foster care system and shall not be employed by the office, the Department of Health and Human Services, a county, a residential child-caring agency, a child-placing agency, or a court.

(b) The Health and Human Services Committee of the Legislature shall hold a confirmation hearing for the appointees, and the appointments shall be subject

to confirmation by the Legislature, except that the members appointed while the Legislature is not in session shall serve until the next session of the Legislature, at which time a majority of the members of the Legislature shall approve or disapprove of the appointments.

(c) The terms of the members shall be for three years, except that the Governor shall designate two of the initial appointees to serve initial terms ending on March 1, 2014, and three of the initial appointees to serve initial terms ending on March 1, 2015. The Governor shall make the initial appointments within thirty days after July 1, 2012. Members shall not serve more than two consecutive terms, except that members shall serve until their successors have been appointed and qualified. The Governor shall appoint members to fill vacancies from the same category as the vacated position to serve for the remainder of the unexpired term.

(d) The Foster Care Advisory Committee shall meet at least four times each calendar year. Each member shall attend at least two meetings each calendar year and shall be subject to removal for failure to attend at least two meetings unless excused by a majority of the members of the committee. Members shall be reimbursed for expenses as provided in sections 81-1174 to 81-1177.

(e) The duties of the Foster Care Advisory Committee are to:

(i) Hire and fire an executive director for the office who has training and experience in foster care; and

(ii) Support and facilitate the work of the office, including the tracking of children in foster care and reviewing foster care file audit case reviews.

(3) The executive director of the office shall hire, fire, and supervise office staff and shall be responsible for the duties of the office as provided by law, including the annual report and other reporting, review, tracking, data collection and analysis, and oversight and training of local boards.

Source: Laws 1982, LB 714, § 2; Laws 1987, LB 239, § 2; Laws 1990, LB 1222, § 5; Laws 2005, LB 761, § 1; Laws 2007, LB463, § 1133; Laws 2009, LB679, § 1; Laws 2012, LB998, § 4; Laws 2013, LB265, § 33; Laws 2015, LB265, § 8; Laws 2020, LB381, § 30.

43-1303 Office; registry; reports required; foster care file audit case reviews; rules and regulations; local board; report; court; report; visitation of facilities; executive director; powers and duties.

(1) The office shall maintain the statewide register of all foster care placements occurring within the state, and there shall be a weekly report made to the registry of all foster care placements by the Department of Health and Human Services, any child-placing agency, or any court in a form as developed by the office in consultation with representatives of entities required to make such reports. For each child entering and leaving foster care, such report shall consist of identifying information, placement information, the plan or permanency plan developed by the person or court in charge of the child pursuant to section 43-1312, and information on whether any such child was a person immune from criminal prosecution under subsection (5) of section 28-801 or was considered a trafficking victim as defined in section 28-830. The department, the Office of Probation Administration, and every court and child-placing agency shall report any foster care placement within three working days. The report shall contain the following information:

(a) Child identification information, including name, date of birth, gender, race, religion, and ethnicity;

(b) Identification information for parents and stepparents, including name, address, and status of parental rights;

(c) Placement information, including (i) initial placement date, (ii) current placement date, (iii) the name and address of the foster care placement, (iv) if a relative placement or kinship placement, whether the foster care placement is licensed, and (v) whether the foster care placement has received a waiver pursuant to section 71-1904 and the basis for such waiver;

(d) Court status information, including which court has jurisdiction, initial custody date, court hearing date, and results of the court hearing;

(e) Agency or other entity having custody of the child; and

(f) Case worker, probation officer, or person providing direct case management or supervision functions.

(2)(a) The Foster Care Review Office shall designate a local board to conduct foster care file audit case reviews for each case of children in foster care placement.

(b) The office may adopt and promulgate rules and regulations for the following:

(i) Establishment of training programs for local board members which shall include an initial training program and periodic inservice training programs;

(ii) Development of procedures for local boards;

(iii) Establishment of a central record-keeping facility for all local board files, including foster care file audit case reviews;

(iv) Accumulation of data and the making of annual reports on children in foster care placements. Such reports shall include, but not be limited to, (A) personal data on length of time in foster care, (B) number of placements, (C) frequency and results of foster care file audit case reviews and court review hearings, (D) number of children supervised by the foster care programs in the state annually, (E) trend data impacting foster care, services, and placements, (F) analysis of the data, and (G) recommendations for improving the foster care system in Nebraska;

(v) Accumulation of data and the making of quarterly reports regarding the children in foster care placements;

(vi) To the extent not prohibited by section 43-1310, evaluation of the judicial and administrative data collected on foster care and the dissemination of such data to the judiciary, public and private agencies, the department, and members of the public; and

(vii) Manner in which the office shall determine the appropriateness of requesting a court review hearing as provided for in section 43-1313.

(3) A local board shall send a written report to the office for each foster care file audit case review conducted by the local board. A court shall send a written report to the office for each foster care review hearing conducted by the court.

(4)(a) The office shall report and make recommendations to the Legislature, the department, the Office of Probation Administration, the courts, local boards, and county welfare offices.

(b) Such reports and recommendations shall include, but not be limited to, the annual judicial and administrative data collected on foster care pursuant to subsections (2) and (3) of this section and the annual evaluation of such data.

(c) The Foster Care Review Office shall provide copies of such reports and recommendations to each court having the authority to make foster care placements.

(d) The executive director of the office shall provide reports regarding child welfare and juvenile justice data and information on March 1, June 1, September 1, and December 1. The September 1 report shall be the annual report. The executive director shall provide additional reports at a time specified by the Health and Human Services Committee of the Legislature. The reports shall include issues, policy concerns, problems which have come to the attention of the office, and analysis of the data. The reports shall recommend alternatives to the identified problems and related needs of the foster care system. The reports and recommendations submitted to the Legislature shall be submitted electronically.

(e) The Health and Human Services Committee shall coordinate and prioritize data and information requests submitted to the office by members of the Legislature.

(5) The executive director of the office or his or her designees from the office may visit and observe foster care facilities in order to ascertain whether the individual physical, psychological, and sociological needs of each foster child are being met.

(6) At the request of any state agency, the executive director of the office or his or her designees from the office may conduct a case file review process and data analysis regarding any state ward or ward of the court whether placed in-home or out-of-home at the time of the case file review.

Source: Laws 1982, LB 714, § 3; Laws 1990, LB 1222, § 6; Laws 1996, LB 1044, § 195; Laws 1998, LB 1041, § 36; Laws 1999, LB 240, § 1; Laws 2012, LB998, § 5; Laws 2013, LB222, § 10; Laws 2015, LB265, § 9; Laws 2015, LB294, § 16; Laws 2017, LB289, § 19; Laws 2018, LB840, § 1; Laws 2018, LB1078, § 2.

43-1306 Children and Juveniles Data Feasibility Study Advisory Group; created; members; meetings; duties; Data Steering Subcommittee; Information-Sharing Subcommittee.

(1) The Children and Juveniles Data Feasibility Study Advisory Group is created. The advisory group shall oversee a feasibility study to identify how existing state agency data systems currently used to account for the use of all services, programs, and facilities by children and juveniles in the State of Nebraska can be used to establish an independent, external data warehouse. The Foster Care Review Office shall provide administrative support for the feasibility study and the advisory group.

(2) The advisory group shall include the Inspector General of Nebraska Child Welfare or his or her designee, the State Court Administrator or his or her designee, the probation administrator of the Office of Probation Administration or his or her designee, the executive director of the Nebraska Commission on Law Enforcement and Criminal Justice or his or her designee, the Commissioner of Education or his or her designee, the executive director of the Foster Care

Review Office or his or her designee, the Chief Information Officer of the office of Chief Information Officer or his or her designee, and the chief executive officer of the Department of Health and Human Services or his or her designee.

(3) The advisory group shall:

(a) Meet at least twice a year;

(b) Carry out in good faith the duties provided in this section;

(c) Create a Data Steering Subcommittee. Each member of the advisory group shall designate one representative from his or her agency with specific technical knowledge of the agency's data structure, limitation, and capabilities to serve on the subcommittee. The subcommittee shall meet regularly to manage and discuss data-related items, including the technological and system issues of each agency's current data system, specific barriers that impact the implementation of a data warehouse, and steps necessary to establish and sustain a data warehouse. The subcommittee shall report its findings to the advisory group;

(d) Create an Information-Sharing Subcommittee. Each member of the advisory group shall designate one representative from his or her agency with specific knowledge of the agency's legal and regulatory responsibilities and restrictions related to sharing data to serve on the subcommittee. The subcommittee shall meet regularly to manage and discuss the legal and regulatory barriers to establishing a data warehouse and to identify possible solutions. The subcommittee shall report its findings to the advisory group; and

(e) Submit a written report electronically to the Legislature on October 1 of 2017 and 2018, detailing the technical and legal steps necessary to establish the Children and Juveniles Data Warehouse by July 1, 2019. The report to be submitted on October 1, 2018, shall include the final results of the feasibility study to establish the data warehouse by July 1, 2019. The results of the feasibility study shall not be binding on any agency.

(4) For purposes of this section, independent, external data warehouse means a data system which allows for the collection, storage, and analysis of data from multiple agencies but is not solely controlled by the agencies providing the data.

(5) This section terminates on December 31, 2019.

Source: Laws 2017, LB225, § 5.

43-1311.02 Placement of child and siblings; sibling visitation or ongoing interaction; motions authorized; court review; department; duties; right of sibling to intervene.

(1)(a) Reasonable efforts shall be made to place a child and the child's siblings in the same foster care placement or adoptive placement, unless such placement is contrary to the safety or well-being of any of the siblings. This requirement applies even if the custody orders of the siblings are made at separate times and even if the children have no preexisting relationship.

(b) If the siblings are not placed together in a joint-sibling placement, the Department of Health and Human Services shall provide the siblings and the court with the reasons why a joint-sibling placement would be contrary to the safety or well-being of any of the siblings.

(2) When siblings are not placed together in a joint-sibling placement, the department shall make a reasonable effort to provide for frequent sibling visitation or ongoing interaction between the child and the child's siblings unless the department provides the siblings and the court with reasons why such sibling visitation or ongoing interaction would be contrary to the safety or well-being of any of the siblings. The court shall determine the type and frequency of sibling visitation or ongoing interaction to be implemented by the department. The court shall make a determination as to whether reasonable efforts have been made by the department to facilitate sibling placement and sibling visitation or other ongoing interaction and whether such placement and visitation or other ongoing interaction is contrary to the safety or well-being of any of the siblings.

(3) The department shall file a written sibling placement report as required by subsection (3) of section 43-285. Such a report shall include the reasonable efforts of the department to locate the child's siblings and, if a joint-sibling placement is made, whether such placement continues to be consistent with the safety and well-being of the children. If joint-sibling placement is not possible, the report shall include the reasons why a joint-sibling placement is and continues to be contrary to the safety or well-being of any of the siblings, the department's continuing reasonable efforts to place a child with a sibling in the same foster care or adoptive placement, and the department's continuing reasonable efforts to facilitate sibling visitation.

(4) Parties to the case, including a child's sibling, may file a motion for joint-sibling placement, sibling visitation, or ongoing interaction between siblings.

(5) The court shall periodically review and evaluate the effectiveness and appropriateness of the joint-sibling placement, sibling visitation, or ongoing interaction between siblings.

(6) If an order is entered for termination of parental rights of siblings who are subject to this section, unless the court has suspended or terminated joint-sibling placement, sibling visitation, or ongoing interaction between siblings, the department shall make reasonable efforts to make a joint-sibling placement or do all of the following to facilitate frequent sibling visitation or ongoing interaction between the child and the child's siblings when the child is adopted or enters a permanent placement: (a) Include in the training provided to prospective adoptive parents information regarding the importance of sibling relationships to an adopted child and counseling methods for maintaining sibling relationships; (b) provide prospective adoptive parents with information regarding the child's siblings; and (c) encourage prospective adoptive parents to plan for facilitating post-adoption contact between the child and the child's siblings.

(7) Any information regarding court-ordered or authorized joint-sibling placement, sibling visitation, or ongoing interaction between siblings shall be provided by the department to the parent or parents if parental rights have not been terminated unless the court determines that doing so would be contrary to the safety or well-being of the child and to the foster parent, relative caretaker, guardian, prospective adoptive parent, and child as soon as reasonably possible following the entry of the court order or authorization as necessary to facilitate the sibling time.

(8) For purposes relative to the administration of the federal foster care program and the state plans pursuant to Title IV-B and Title IV-E of the federal

Social Security Act, as such act existed on January 1, 2015, the term sibling means an individual considered to be a sibling under Nebraska law or an individual who would have been considered a sibling but for a termination of parental rights or other disruption of parental rights such as death of a parent.

(9) A sibling of a child under the jurisdiction of the court shall have the right to intervene at any point in the proceedings for the limited purpose of seeking joint-sibling placement, sibling visitation, or ongoing interaction with their sibling.

(10) This section shall not be construed to subordinate the rights of foster or adoptive parents of a child to the rights of the parents of a sibling of that child or to subordinate the rights of an adoptive, foster, or biological parent to the rights of a child seeking sibling placement or visitation.

Source: Laws 2011, LB177, § 7; Laws 2015, LB296, § 2; Laws 2018, LB1078, § 3.

43-1311.03 Written independent living transition proposal; development; contents; transition team; department; duties; information regarding Young Adult Bridge to Independence Act; notice; contents; out-of-home placement; hearing, when held.

(1) When a child placed in foster care turns fourteen years of age or enters foster care and is at least fourteen years of age, a written independent living transition proposal shall be developed by the Department of Health and Human Services at the direction and involvement of the child to prepare for the transition from foster care to successful adulthood. Any revision or addition to such proposal shall also be made in consultation with the child. The transition proposal shall be personalized based on the child's needs and shall describe the services needed for the child to transition to a successful adulthood as provided in the Nebraska Strengthening Families Act. The transition proposal shall include, but not be limited to, the following needs and the services needed for the child to transition to a successful adulthood as provided in the Nebraska Strengthening Families Act:

(a) Education;

(b) Employment services and other workforce support;

(c) Health and health care coverage, including the child's potential eligibility for medicaid coverage under the federal Patient Protection and Affordable Care Act, 42 U.S.C. 1396a(a)(10)(A)(i)(IX), as such act and section existed on January 1, 2013;

(d) Behavioral health treatment and support needs and access to such treatment and support;

(e) Financial assistance, including education on credit card financing, banking, and other services;

(f) Housing;

(g) Relationship development and permanent connections;

(h) Adult services, if the needs assessment indicates that the child is reasonably likely to need or be eligible for services or other support from the adult services system; and

(i) Information, planning, and assistance to obtain a driver's license as allowed under state law and consistent with subdivision (9)(b)(iv) of this

section, including, but not limited to, providing the child with a copy of a driver's manual, identifying driver safety courses and resources to access a driver safety course, and identifying potential means by which to access a motor vehicle for such purposes.

(2) The transition proposal shall be developed and frequently reviewed by the department in collaboration with the child's transition team. The transition team shall be comprised of the child, the child's caseworker, the child's guardian ad litem, individuals selected by the child, and individuals who have knowledge of services available to the child. As provided in the Nebraska Strengthening Families Act, one of the individuals selected by the child may be designated as the child's advisor and, as necessary, advocate for the child with respect to the application of the reasonable and prudent parent standard and for the child on normalcy activities. The department may reject an individual selected by the child to be a member of the team if the department has good cause to believe the individual would not act in the best interests of the child.

(3) The transition proposal shall be considered a working document and shall be, at the least, updated for and reviewed at every permanency or review hearing by the court. The court shall determine whether the transition proposal includes the services needed to assist the child to make the transition from foster care to a successful adulthood.

(4) The transition proposal shall document what efforts were made to involve and engage the child in the development of the transition proposal and any revisions or additions to the transition proposal. As provided in the Nebraska Strengthening Families Act, the court shall ask the child, in an age or developmentally appropriate manner, about his or her involvement in the development of the transition proposal and any revisions or additions to such proposal. As provided in the Nebraska Strengthening Families Act, the court shall make a finding as to the child's involvement in the development of the transition proposal and any revisions or additions to such proposal.

(5) The final transition proposal prior to the child's leaving foster care shall specifically identify how the need for housing will be addressed.

(6) If the child is interested in pursuing higher education, the transition proposal shall provide for the process in applying for any applicable state, federal, or private aid.

(7) The department shall provide without cost a copy of any consumer report as defined in 15 U.S.C. 1681a(d), as such section existed on January 1, 2016, pertaining to the child each year until the child is discharged from care and assistance, including when feasible, from the child's guardian ad litem, in interpreting and resolving any inaccuracies in the report as provided in the Nebraska Strengthening Families Act.

(8)(a) Any child who is adjudicated to be a juvenile described in (i) subdivision (3)(a) of section 43-247 and who is in an out-of-home placement or (ii) subdivision (8) of section 43-247 and whose guardianship or state-funded adoption assistance agreement was disrupted or terminated after the child had attained the age of sixteen years, shall receive information regarding the Young Adult Bridge to Independence Act and the bridge to independence program available under the act.

(b) The department shall create a clear and developmentally appropriate written notice discussing the rights of eligible young adults to participate in the program. The notice shall include information about eligibility and require-

ments to participate in the program, the extended services and support that young adults are eligible to receive under the program, and how young adults can be a part of the program. The notice shall also include information about the young adult's right to request a client-directed attorney to represent the young adult pursuant to section 43-4510 and the benefits and role of an attorney.

(c) The department shall disseminate this information to any child who was adjudicated to be a juvenile described in subdivision (3)(a) of section 43-247 and who is in an out-of-home placement at sixteen years of age and any child who was adjudicated to be a juvenile under subdivision (8) of section 43-247 and whose guardianship or state-funded adoption assistance agreement was disrupted or terminated after the child had attained the age of sixteen years. The department shall disseminate this information to any such child yearly thereafter until such child attains the age of nineteen years and not later than ninety days prior to the child's last court review before attaining nineteen years of age or being discharged from foster care to independent living. In addition to providing the written notice, not later than ninety days prior to the child's last court review before attaining nineteen years of age or being discharged from foster care to independent living, a representative of the department shall explain the information contained in the notice to the child in person and the timeline necessary to avoid a lapse in services and support.

(d)(i) On and after January 1, 2025, a child adjudicated to be a juvenile as described in subdivision (1), (2), or (3)(b) of section 43-247 and who is in a court-ordered out-of-home placement in the six months prior to attaining nineteen years of age shall receive information regarding the Young Adult Bridge to Independence Act and the bridge to independence program available under the act. The Office of Probation Administration shall identify any such juvenile and provide the juvenile with information regarding the Young Adult Bridge to Independence Act and the bridge to independence program available under the act.

(ii) Any party to such juvenile's court case, or the court upon its own motion, may request a hearing in the six months prior to the juvenile attaining nineteen years of age for the court to consider whether it is necessary for the juvenile to remain in the court-ordered out-of-home placement if the requesting party or the court believes it would be contrary to the juvenile's welfare to return to the family home. The following factors may guide the court in finding whether or not return to the family home would be contrary to the juvenile's welfare:

(A) Whether the juvenile is disconnected from family support that would assist the juvenile in transitioning to adulthood;

(B) Whether the juvenile faces the risk of homelessness upon closure of the juvenile court case; or

(C) Whether the Office of Probation Administration has made reasonable efforts to return the juvenile to the family home prior to the juvenile's nineteenth birthday.

(iii) The court shall set forth its finding in a written order. If the court finds that return to the family home would be contrary to the juvenile's welfare, the Office of Probation Administration shall notify the Department of Health and Human Services within ten days after such finding is made. As soon as practicable thereafter and prior to the child's nineteenth birthday, a representative of the department shall explain the information contained in the written

notice described in this subsection to the juvenile in person and the timeline necessary to avoid a lapse in services and support. If the juvenile remains in a court-ordered out-of-home placement upon attaining nineteen years of age pursuant to a court order as described in section 43-4504, the department shall proceed pursuant to sections 43-4506 and 43-4508.

(iv) A juvenile with a current pending motion to revoke probation before the court at the time of the hearing shall not be eligible for the Young Adult Bridge to Independence Act.

(9)(a) The department shall provide the child with the documents, information, records, and other materials described in subdivision (9)(b) of this section, (i) if the child is leaving foster care, on or before the date the child reaches eighteen or nineteen years of age or twenty-one years of age if the child participates in the bridge to independence program, and (ii) at the age or as otherwise prescribed in subdivision (9)(b) of this section.

(b) The department shall provide the child with:

(i) A certified copy of the child's birth certificate and facilitate securing a federal social security card when the child is eligible for such card;

(ii) Health insurance information and all documentation required for enrollment in medicaid coverage for former foster care children as available under the federal Patient Protection and Affordable Care Act, 42 U.S.C. 1396a(a)(10)(A)(i)(IX), as such act and section existed on January 1, 2013;

(iii) A copy of the child's medical records;

(iv) A driver's license or identification card issued by a state in accordance with the requirements of section 202 of the REAL ID Act of 2005, as such section existed on January 1, 2016, and when requested by a child fourteen years of age or older, all documents necessary to obtain such license or card;

(v) A copy of the child's educational records;

(vi) A credit report check;

(vii) Contact information, with permission, for family members, including siblings, with whom the child can maintain a safe and appropriate relationship, and other supportive adults;

(viii) A list of local community resources, including, but not limited to, support groups, health clinics, mental and behavioral health and substance abuse treatment services and support, pregnancy and parenting resources, and employment and housing agencies;

(ix) Written information, including, but not limited to, contact information, for disability resources or benefits that may assist the child as an adult, specifically including information regarding state programs established pursuant to 42 U.S.C. 677, as such section existed on January 1, 2016, and disability benefits, including supplemental security income pursuant to 42 U.S.C. 1382 et seq., as such sections existed on January 1, 2016, or social security disability insurance pursuant to 42 U.S.C. 423, as such section existed on January 1, 2016, if the child may be eligible as an adult;

(x) An application for public assistance and information on how to access the system to determine public assistance eligibility;

(xi) A letter prepared by the department that verifies the child's name and date of birth, dates the child was in foster care, and whether the child was in

foster care on his or her eighteenth, nineteenth, or twenty-first birthday and enrolled in medicaid while in foster care;

(xii) Written information about the child's Indian heritage or tribal connection, if any; and

(xiii) Written information on how to access personal documents in the future.

(c) All fees associated with securing the certified copy of the child's birth certificate or obtaining a driver's license or a state identification card shall be waived by the state.

(d) The transition proposal shall document that the child was provided all of the documents listed in this subsection. The court shall make a finding as to whether the child has received the documents as part of the independence hearing as provided in subdivision (2)(d) of section 43-285.

Source: Laws 2011, LB177, § 8; Laws 2013, LB216, § 17; Laws 2013, LB269, § 3; Laws 2014, LB853, § 25; Laws 2016, LB746, § 19; Laws 2019, LB600, § 2; Laws 2020, LB219, § 1; Laws 2023, LB50, § 24.

Cross References

Nebraska Strengthening Families Act, see section 43-4701.
Young Adult Bridge to Independence Act, see section 43-4501.

43-1318 Act, how cited.

Sections 43-1301 to 43-1321 shall be known and may be cited as the Foster Care Review Act.

Source: Laws 1982, LB 714, § 18; Laws 1996, LB 642, § 2; Laws 1998, LB 1041, § 44; Laws 2007, LB457, § 2; Laws 2011, LB177, § 9; Laws 2014, LB908, § 7; Laws 2015, LB265, § 15; Laws 2017, LB225, § 6.

(b) TRANSITION OF EMPLOYEES

43-1322 Repealed. Laws 2017, LB225, § 20.

ARTICLE 14

PARENTAL SUPPORT AND PATERNITY

Section
43-1411. Paternity; action to establish; venue; limitation; summons; person claiming to be biological father; action to establish; genetic testing.
43-1411.01. Paternity or parental support; jurisdiction; termination of parental rights; provisions applicable.

43-1411 Paternity; action to establish; venue; limitation; summons; person claiming to be biological father; action to establish; genetic testing.

(1) A civil proceeding to establish the paternity of a child may be instituted, in the court of the district where the child is domiciled or found or, for cases under the Uniform Interstate Family Support Act, where the alleged father is domiciled, by:

(a) The mother or the alleged father of such child, either during pregnancy or within four years after the child's birth, unless:

(i) A valid consent or relinquishment has been made pursuant to sections 43-104.08 to 43-104.24 or section 43-105 for purposes of adoption; or

(ii) A county court or separate juvenile court has jurisdiction over the custody of the child or jurisdiction over an adoption matter with respect to such child pursuant to sections 43-101 to 43-116; or

(b) The guardian or next friend of such child or the state, either during pregnancy or within eighteen years after the child's birth.

(2) Summons shall issue and be served as in other civil proceedings, except that such summons may be directed to the sheriff of any county in the state and may be served in any county.

(3) Notwithstanding any other provision of law, a person claiming to be the biological father of a child over which the juvenile court already has jurisdiction may file a complaint to intervene in such juvenile proceeding to institute an action to establish the paternity of the child. The complaint to intervene shall be accompanied by an affidavit under oath that the affiant believes he is the biological father of the juvenile. No filing fee shall be charged for filing the complaint and affidavit. Upon filing of the complaint and affidavit, the juvenile court shall enter an order pursuant to section 43-1414 to require genetic testing and to require the juvenile to be made available for genetic testing. The costs of genetic testing shall be paid by the intervenor, the county, or the state at the discretion of the juvenile court. This subsection does not authorize intervention by a person whose parental rights to such child have been terminated by the order of any court of competent jurisdiction.

Source: Laws 1941, c. 81, § 11, p. 325; C.S.Supp.,1941, § 43-711; R.S. 1943, § 13-111; R.S.1943, (1983), § 13-111; Laws 1985, Second Spec. Sess., LB 7, § 75; Laws 1986, LB 813, § 1; Laws 1991, LB 457, § 16; Laws 1993, LB 500, § 54; Laws 1994, LB 1224, § 59; Laws 1995, LB 712, § 29; Laws 1998, LB 1041, § 45; Laws 2007, LB247, § 22; Laws 2020, LB93, § 1; Laws 2022, LB741, § 33.

Cross References

Uniform Interstate Family Support Act, see section 42-701.

43-1411.01 Paternity or parental support; jurisdiction; termination of parental rights; provisions applicable.

(1) An action for paternity or parental support under sections 43-1401 to 43-1418 may be initiated by filing a complaint with the clerk of the district court as provided in section 25-2740. Such proceeding may be heard by the county court or the district court as provided in section 25-2740. A paternity determination under sections 43-1411 to 43-1418 may also be decided in a county court or separate juvenile court if the county court or separate juvenile court already has jurisdiction over the child whose paternity is to be determined.

(2) Whenever termination of parental rights is placed in issue in any case arising under sections 43-1401 to 43-1418, the Nebraska Juvenile Code and the Parenting Act shall apply to such proceedings.

(3) The court may stay the paternity action if there is a pending criminal allegation of sexual assault under section 28-319 or 28-320 or a law in another

jurisdiction similar to either section 28-319 or 28-320 against the alleged father with regard to the conception of the child.

Source: Laws 1997, LB 229, § 38; Laws 1998, LB 1041, § 46; Laws 2004, LB 1207, § 40; Laws 2008, LB1014, § 46; Laws 2013, LB561, § 44; Laws 2017, LB289, § 20.

Cross References

Nebraska Juvenile Code, see section 43-2,129.
Parenting Act, see section 43-2920.

ARTICLE 16
CHILD SUPPORT REFEREES

Section
43-1609. Child support referee; appointment; when; qualifications; oath or affirmation; removal; contracts authorized.
43-1611. Support and paternity matters; protection orders; referral or assignment.

43-1609 Child support referee; appointment; when; qualifications; oath or affirmation; removal; contracts authorized.

(1) Child support referees shall be appointed when necessary by the district courts, separate juvenile courts, and county courts to meet the requirements of federal law relating to expediting the establishment, modification, enforcement, and collection of child, spousal, or medical support and protection orders issued under section 42-924.

(2) Child support referees shall be appointed by order of the district court, separate juvenile court, or county court. The Supreme Court shall appoint child support referees to serve more than one judicial district if the Supreme Court determines it is necessary.

(3) To be qualified for appointment as a child support referee, a person shall be an attorney in good standing admitted to the practice of law in the State of Nebraska and shall meet any other requirements imposed by the Supreme Court. A child support referee shall be sworn or affirmed to well and faithfully hear and examine the cause and to make a just and true report according to the best of his or her understanding. The oath or affirmation may be administered by a district, county, or separate juvenile court judge. A child support referee may be removed at any time by the appointing court.

(4) The Supreme Court may contract with an attorney to perform the duties of a referee for a specific case or for a specific amount of time or may direct a judge of the county court to perform such duties.

Source: Laws 1989, LB 265, § 2; Laws 1991, LB 715, § 21; Laws 2008, LB1014, § 49; Laws 2017, LB289, § 21.

43-1611 Support and paternity matters; protection orders; referral or assignment.

A district court, separate juvenile court, or county court may by rule or order refer or assign any and all matters regarding the establishment, modification, enforcement, and collection of child, spousal, or medical support, paternity

matters, and protection orders issued under section 42-924 to a child support referee for findings and recommendations.

Source: Laws 1989, LB 265, § 4; Laws 1991, LB 715, § 23; Laws 2008, LB1014, § 51; Laws 2017, LB289, § 22.

ARTICLE 19

CHILD ABUSE PREVENTION

Section
43-1903. Nebraska Child Abuse Prevention Fund Board; created; members; terms; vacancies; officers; expenses; removal.
43-1906. Nebraska Child Abuse Prevention Fund; established; investment; use.

43-1903 Nebraska Child Abuse Prevention Fund Board; created; members; terms; vacancies; officers; expenses; removal.

(1) There is hereby created within the department the Nebraska Child Abuse Prevention Fund Board which shall be composed of nine members as follows: Two representatives of the Department of Health and Human Services appointed by the chief executive officer and seven members to be appointed by the Governor with the approval of the Legislature. The Governor shall appoint two members from each of the three congressional districts and one member from the state at large. As a group, the appointed board members (a) shall demonstrate knowledge in the area of child abuse and neglect prevention, (b) shall be representative of the demographic composition of this state, and (c) to the extent practicable, shall be representative of all of the following categories (i) the business community, (ii) the religious community, (iii) the legal community, (iv) professional providers of child abuse and neglect prevention services, and (v) volunteers in child abuse and neglect prevention services.

(2) The term of each appointed board member shall be three years, except that of the board members first appointed, two, including the at-large member, shall serve for three years, three shall serve for two years, and two shall serve for one year. The Governor shall designate the term which each of the members first appointed shall serve when he or she makes the appointments. An appointed board member shall not serve more than two consecutive terms whether partial or full. A vacancy shall be filled for the balance of the unexpired term in the same manner as the original appointment.

(3) The board shall elect a chairperson from among the appointed board members who shall serve for a term of two years. The board may elect the other officers and establish committees as it deems appropriate.

(4) The members of the board shall not receive any compensation for their services but shall be reimbursed for expenses incurred in the performance of their duties as provided in sections 81-1174 to 81-1177. The reimbursement shall be paid from the fund. In any one fiscal year, no more than five percent of the annually available funds as provided in section 43-1906 shall be used for the purpose of reimbursement of board members.

(5) Any board member may be removed by the Governor for misconduct, incompetency, or neglect of duty after first being given the opportunity to be heard in his or her own behalf.

Source: Laws 1986, LB 333, § 3; Laws 1996, LB 1044, § 207; Laws 2007, LB296, § 133; Laws 2020, LB381, § 31.

43-1906 Nebraska Child Abuse Prevention Fund; established; investment; use.

(1) There is hereby established the Nebraska Child Abuse Prevention Fund. The additional child abuse prevention fee as provided in section 33-106.03, the additional charge for supplying a certified copy of the record of any birth as provided in sections 71-612, 71-617.15, 71-627, and 71-628, and all amounts which may be received from grants, gifts, bequests, the federal government, or other sources granted or given for the purposes specified in sections 43-1901 to 43-1906 shall be remitted to the State Treasurer for credit to the Nebraska Child Abuse Prevention Fund. The fund shall be administered and disbursed by the department.

(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.

(3) In any one fiscal year, no more than twenty percent of the annually appropriated funds shall be disbursed to any one agency, organization, or individual.

(4) Funds allocated from the fund shall only be used for purposes authorized under sections 43-1901 to 43-1906 and shall not be used to supplant any existing governmental program or service. No grants may be made to any state department or agency.

Source: Laws 1986, LB 333, § 6; Laws 1995, LB 7, § 39; Laws 2002, LB 1310, § 4; Laws 2002, Second Spec. Sess., LB 48, § 2; Laws 2017, LB307, § 4.

Cross References

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

ARTICLE 21
AGE OF MAJORITY

Section
43-2101. Persons under nineteen years of age declared minors; marriage, effect; person eighteen years of age or older; rights and responsibility.

43-2101 Persons under nineteen years of age declared minors; marriage, effect; person eighteen years of age or older; rights and responsibility.

(1) All persons under nineteen years of age are declared to be minors, but in case any person marries under the age of nineteen years, his or her minority ends.

(2) Upon becoming the age of majority, a person is considered an adult and acquires all rights and responsibilities granted or imposed by statute or common law, except that a person:

(a) Eighteen years of age or older and who is not a ward of the state may:

(i) Enter into a binding contract or lease of whatever kind or nature and shall be legally responsible for such contract or lease, including legal responsibility to third parties;

(ii) Execute, sign, authorize, or otherwise authenticate (A) an effective financing statement, (B) a promissory note or other instrument evidencing an obli-

gation to repay, or (C) a mortgage, trust deed, security agreement, financing statement, or other security instrument to grant a lien or security interest in real or personal property or fixtures, and shall be legally responsible for such document, including legal responsibility to third parties; and

(iii) Acquire or convey title to real property and shall have legal responsibility for such acquisition or conveyance, including legal responsibility to third parties; and

(b) Eighteen years of age or older may consent to mental health services for himself or herself without the consent of his or her parent or guardian.

Source: R.S.1866, c. 23, § 1, p. 178; R.S.1913, § 1627; Laws 1921, c. 247, § 1, p. 853; C.S.1922, § 1576; C.S.1929, § 38-101; R.S.1943, § 38-101; Laws 1965, c. 207, § 1, p. 613; Laws 1969, c. 298, § 1, p. 1072; Laws 1972, LB 1086, § 1; R.S.1943, (1984), § 38-101; Laws 1988, LB 790, § 6; Laws 2010, LB226, § 2; Laws 2018, LB982, § 1; Laws 2019, LB55, § 5.

Cross References

Juvenile committed under Nebraska Juvenile Code, marriage under age of nineteen years does not make juvenile age of majority, see section 43-289.

ARTICLE 22

FAMILY FINDING SERVICES

Section
43-2204. Pilot project; created; department; duties; termination of project.

43-2204 Pilot project; created; department; duties; termination of project.

A pilot project is created to provide family finding services within at least two service areas. The department shall contract with providers of family finding services to carry out the family finding services pilot project. A provider may contract within multiple service areas. Each contracting provider shall be trained in and implement the steps described in section 43-2203. The family finding services pilot project shall terminate on June 30, 2019.

Source: Laws 2015, LB243, § 4; Laws 2022, LB1173, § 9.

ARTICLE 24

JUVENILE SERVICES

Section
43-2401. Act, how cited.
43-2404.01. Comprehensive juvenile services plan; contents; statewide system to evaluate fund recipients; Director of the Community-based Juvenile Services Aid Program; duties.
43-2404.02. Community-based Juvenile Services Aid Program; created; use; reports.
43-2409. Eligible applicants; performance review; commission; powers; use of grants; limitation.
43-2411. Nebraska Coalition for Juvenile Justice; created; members; terms; expenses; task forces or subcommittee; authorized.
43-2412. Coalition; powers and duties.
43-2413. Repealed. Laws 2018, LB670, § 21.

43-2401 Act, how cited.

Sections 43-2401 to 43-2412 shall be known and may be cited as the Juvenile Services Act.

Source: Laws 1990, LB 663, § 1; Laws 2000, LB 1167, § 40; Laws 2001, LB 640, § 2; Laws 2018, LB670, § 9.

43-2404.01 Comprehensive juvenile services plan; contents; statewide system to evaluate fund recipients; Director of the Community-based Juvenile Services Aid Program; duties.

(1) To be eligible for participation in either the Commission Grant Program or the Community-based Juvenile Services Aid Program, a comprehensive juvenile services plan shall be developed, adopted, and submitted to the commission in accordance with the federal act and rules and regulations adopted and promulgated by the commission in consultation with the Director of the Community-based Juvenile Services Aid Program, the Director of Juvenile Diversion Programs, the Office of Probation Administration, and the University of Nebraska at Omaha, Juvenile Justice Institute. Such plan may be developed by eligible applicants for the Commission Grant Program and by individual counties, by multiple counties, by federally recognized or state-recognized Indian tribes, or by any combination of the three for the Community-based Juvenile Services Aid Program. Comprehensive juvenile services plans shall:

(a) Be developed by a comprehensive community team representing juvenile justice system stakeholders;

(b) Be based on data relevant to juvenile and family issues, including an examination of disproportionate minority contact in order to identify juvenile delinquency prevention efforts and system improvement efforts designed to reduce, without establishing or requiring numerical standards or quotas, the disproportionate number of juvenile members of minority groups who come into contact with the juvenile justice system;

(c) Identify policies and practices that are research-based or standardized and reliable and are implemented with fidelity and which have been researched and demonstrate positive outcomes;

(d) Identify clear implementation strategies; and

(e) Identify how the impact of the program or service will be measured.

(2) Any portion of the comprehensive juvenile services plan dealing with administration, procedures, and programs of the juvenile court shall not be submitted to the commission without the concurrence of the presiding judge or judges of the court or courts having jurisdiction in juvenile cases for the geographic area to be served. Programs or services established by such plans shall conform to the family policy tenets prescribed in sections 43-532 and 43-533 and shall include policies and practices that are research-based or standardized and reliable and are implemented with fidelity and which have been researched and demonstrate positive outcomes.

(3) The commission, in consultation with the University of Nebraska at Omaha, Juvenile Justice Institute, shall contract for the development and administration of a statewide system to monitor and evaluate the effectiveness of plans and programs receiving funds from (a) the Commission Grant Program and (b) the Community-based Juvenile Services Aid Program in preventing persons from entering the juvenile justice system and in rehabilitating juvenile

offenders, including an examination of disproportionate minority contact in order to identify juvenile delinquency prevention efforts and system improvement efforts designed to reduce, without establishing or requiring numerical standards or quotas, the disproportionate number of juvenile members of minority groups who come into contact with the juvenile justice system.

(4) There is established within the commission the position of Director of the Community-based Juvenile Services Aid Program, appointed by the executive director of the commission. The director shall have extensive experience in developing and providing community-based services.

(5) The director shall be supervised by the executive director of the commission. The director shall:

(a) Provide technical assistance and guidance for the development of comprehensive juvenile services plans;

(b) Coordinate the review of the Community-based Juvenile Services Aid Program application as provided in section 43-2404.02 and make recommendations for the distribution of funds provided under the Community-based Juvenile Services Aid Program, giving priority to those grant applications funding programs and services that will divert juveniles from the juvenile justice system, impact and effectively treat juveniles within the juvenile justice system, and reduce the juvenile detention population or assist juveniles in transitioning from out-of-home placements to in-home treatments. The director shall ensure that no funds appropriated or distributed under the Community-based Juvenile Services Aid Program are used for purposes prohibited under subsection (3) of section 43-2404.02;

(c) Develop data collection and evaluation protocols, oversee statewide data collection, and generate an annual report on the effectiveness of juvenile services that receive funds from the Community-based Juvenile Services Aid Program, including an examination of disproportionate minority contact in order to identify juvenile delinquency prevention efforts and system improvement efforts designed to reduce, without establishing or requiring numerical standards or quotas, the disproportionate number of juvenile members of minority groups who come into contact with the juvenile justice system;

(d) Develop relationships and collaborate with juvenile justice system stakeholders, provide education and training as necessary, and serve on boards and committees when approved by the commission;

(e) Assist juvenile justice system stakeholders in developing policies and practices that are research-based or standardized and reliable and are implemented with fidelity and which have been researched and demonstrate positive outcomes, including an examination of disproportionate minority contact in order to identify juvenile delinquency prevention efforts and system improvement efforts designed to reduce, without establishing or requiring numerical standards or quotas, the disproportionate number of juvenile members of minority groups who come into contact with the juvenile justice system;

(f) Develop and coordinate a statewide working group as a subcommittee of the coalition to assist in regular strategic planning related to supporting, funding, monitoring, and evaluating the effectiveness of plans and programs receiving funds from the Community-based Juvenile Services Aid Program; and

(g) Work with the coalition in facilitating the coalition's obligations under the Community-based Juvenile Services Aid Program.

Source: Laws 2001, LB 640, § 6; Laws 2005, LB 193, § 1; Laws 2013, LB561, § 47; Laws 2016, LB746, § 21; Laws 2018, LB670, § 10.

43-2404.02 Community-based Juvenile Services Aid Program; created; use; reports.

(1) There is created a separate and distinct budgetary program within the commission to be known as the Community-based Juvenile Services Aid Program. Funding acquired from participation in the federal act, state General Funds, and funding acquired from other sources which may be used for purposes consistent with the Juvenile Services Act and the federal act shall be used to aid in the establishment and provision of community-based services for juveniles who come in contact with the juvenile justice system.

(2)(a) Ten percent of the annual General Fund appropriation to the Community-based Juvenile Services Aid Program, excluding administrative budget funds, shall be set aside for the development of a common data set and evaluation of the effectiveness of the Community-based Juvenile Services Aid Program. The intent in creating this common data set is to allow for evaluation of the use of the funds and the effectiveness of the programs or outcomes in the Community-based Juvenile Services Aid Program.

(b) The common data set shall be developed and maintained by the commission and shall serve as a primary data collection site for any intervention funded by the Community-based Juvenile Services Aid Program designed to serve juveniles and deter involvement in the formal juvenile justice system. The commission shall work with agencies and programs to enhance existing data sets. To ensure that the data set permits evaluation of recidivism and other measures, the commission shall work with the Office of Probation Administration, juvenile diversion programs, law enforcement, the courts, and others to compile data that demonstrates whether a youth has moved deeper into the juvenile justice system. The University of Nebraska at Omaha, Juvenile Justice Institute, shall assist with the development of common definitions, variables, and training required for data collection and reporting into the common data set by juvenile justice programs. The common data set maintained by the commission shall be provided to the University of Nebraska at Omaha, Juvenile Justice Institute, to assess the effectiveness of the Community-based Juvenile Services Aid Program.

(c) Providing the commission access to records and information for, as well as the commission granting access to records and information from, the common data set is not a violation of confidentiality provisions under any law, rule, or regulation if done in good faith for purposes of evaluation. Records and documents, regardless of physical form, that are obtained or produced or presented to the commission for the common data set are not public records for purposes of sections 84-712 to 84-712.09.

(d) The ten percent of the annual General Fund appropriation to the Community-based Juvenile Services Aid Program, excluding administrative budget funds, shall be appropriated as follows: In fiscal year 2015-16, seven percent shall go to the commission for development of the common data set and three percent shall go to the University of Nebraska at Omaha, Juvenile Justice Institute, for evaluation. In fiscal year 2016-17, six percent shall go to the

commission for development and maintenance of the common data set and four percent shall go to the University of Nebraska at Omaha, Juvenile Justice Institute, for evaluation. Every fiscal year thereafter, beginning in fiscal year 2017-18, five percent shall go to the commission for development and maintenance of the common data set and five percent shall go to the University of Nebraska at Omaha, Juvenile Justice Institute, for evaluation.

(e) The remaining funds in the annual General Fund appropriation to the Community-based Juvenile Services Aid Program shall be apportioned as aid in accordance with a formula established in rules and regulations adopted and promulgated by the commission. The formula shall be based on the total number of residents per county and federally recognized or state-recognized Indian tribe who are twelve years of age through eighteen years of age and other relevant factors as determined by the commission. The commission may require a local match of up to forty percent from the county, multiple counties, federally recognized or state-recognized Indian tribe or tribes, or any combination of the three which is receiving aid under such program. Any local expenditures for community-based programs for juveniles may be applied toward such match requirement.

(3)(a) In distributing funds provided under the Community-based Juvenile Services Aid Program, aid recipients shall prioritize programs and services that will divert juveniles from the juvenile justice system, reduce the population of juveniles in juvenile detention and secure confinement, and assist in transitioning juveniles from out-of-home placements.

(b) Funds received under the Community-based Juvenile Services Aid Program shall be used exclusively to assist the aid recipient in the implementation and operation of programs or the provision of services identified in the aid recipient's comprehensive juvenile services plan, including programs for local planning and service coordination; screening, assessment, and evaluation; diversion; alternatives to detention; family support services; treatment services; truancy prevention and intervention programs; pilot projects approved by the commission; payment of transportation costs to and from placements, evaluations, or services; personnel when the personnel are aligned with evidence-based treatment principles, programs, or practices; contracting with other state agencies or private organizations that provide evidence-based treatment or programs; preexisting programs that are aligned with evidence-based practices or best practices; and other services that will positively impact juveniles and families in the juvenile justice system.

(c) Funds received under the Community-based Juvenile Services Aid Program may be used one time by an aid recipient:

(i) To convert an existing juvenile detention facility or other existing structure for use as an alternative to detention as defined in section 43-245;

(ii) To invest in capital construction, including both new construction and renovations, for a facility for use as an alternative to detention; or

(iii) For the initial lease of a facility for use as an alternative to detention.

(d) Funds received under the Community-based Juvenile Services Aid Program shall not be used for the following:

(i) Construction of secure detention facilities, secure youth treatment facilities, or secure youth confinement facilities;

(ii) Capital construction or the lease or acquisition of facilities beyond the one-time use described in subdivision (3)(c) of this section;

(iii) Programs, services, treatments, evaluations, or other preadjudication services that are not based on or grounded in evidence-based practices, principles, and research, except that the commission may approve pilot projects that authorize the use of such aid; or

(iv) Office equipment, office supplies, or office space.

(e) Any aid not distributed to counties under this subsection shall be retained by the commission to be distributed on a competitive basis under the Community-based Juvenile Services Aid Program for a county, multiple counties, federally recognized or state-recognized Indian tribe or tribes, or any combination of the three demonstrating additional need in the funding areas identified in this subsection.

(f) If a county, multiple counties, or a federally recognized or state-recognized Indian tribe or tribes is denied aid under this section or receives no aid under this section, the entity may request an appeal pursuant to the appeal process in rules and regulations adopted and promulgated by the commission. The commission shall establish appeal and hearing procedures by December 15, 2014. The commission shall make appeal and hearing procedures available on its website.

(4)(a) Any recipient of aid under the Community-based Juvenile Services Aid Program shall electronically file an annual report as required by rules and regulations adopted and promulgated by the commission. Any program funded through the Community-based Juvenile Services Aid Program that served juveniles shall report data on the individual youth served. Any program that is not directly serving youth shall include program-level data. In either case, data collected shall include, but not be limited to, the following: The type of juvenile service, how the service met the goals of the comprehensive juvenile services plan, demographic information on the juveniles served, program outcomes, the total number of juveniles served, and the number of juveniles who completed the program or intervention.

(b) Any recipient of aid under the Community-based Juvenile Services Aid Program shall be assisted by the University of Nebraska at Omaha, Juvenile Justice Institute, in reporting in the common data set, as set forth in the rules and regulations adopted and promulgated by the commission. Community-based aid utilization and evaluation data shall be stored and maintained by the commission.

(c) Evaluation of the use of funds and the evidence of the effectiveness of the programs shall be completed by the University of Nebraska at Omaha, Juvenile Justice Institute, specifically:

(i) The varying rates of recidivism, as defined by rules and regulations adopted and promulgated by the commission, and other measures for juveniles participating in community-based programs; and

(ii) Whether juveniles are sent to staff secure or secure juvenile detention after participating in a program funded by the Community-based Juvenile Services Aid Program.

(5) The commission shall report annually to the Governor and the Legislature on the distribution and use of funds for aid appropriated under the Community-based Juvenile Services Aid Program. The report shall include, but not be

limited to, an aggregate report of the use of the Community-based Juvenile Services Aid Program funds, including the types of juvenile services and programs that were funded, whether any recipients used the funds for a purpose described in subdivision (3)(c) of this section, demographic information on the total number of juveniles served, program success rates, the total number of juveniles sent to secure juvenile detention or residential treatment and secure confinement, and a listing of the expenditures of all counties and federally recognized or state-recognized Indian tribes for detention, residential treatment, and secure confinement. The report submitted to the Legislature shall be submitted electronically.

(6) The commission shall adopt and promulgate rules and regulations for the Community-based Juvenile Services Aid Program in consultation with the Director of the Community-based Juvenile Services Aid Program, the Director of Juvenile Diversion Programs, the Office of Probation Administration, the Nebraska Association of County Officials, and the University of Nebraska at Omaha, Juvenile Justice Institute. The rules and regulations shall include, but not be limited to:

(a) The required elements of a comprehensive juvenile services plan and planning process;

(b) The Community-based Juvenile Services Aid Program formula, review process, match requirements, and fund distribution. The distribution process shall ensure a conflict of interest policy;

(c) A distribution process for funds retained under subsection (3) of this section;

(d) A plan for evaluating the effectiveness of plans and programs receiving funding;

(e) A reporting process for aid recipients;

(f) A reporting process for the commission to the Governor and Legislature. The report shall be made electronically to the Governor and the Legislature; and

(g) Requirements regarding the use of the common data set.

Source: Laws 2001, LB 640, § 7; Laws 2005, LB 193, § 2; Laws 2008, LB1014, § 54; Laws 2010, LB800, § 33; Laws 2012, LB782, § 47; Laws 2013, LB561, § 48; Laws 2014, LB464, § 30; Laws 2015, LB265, § 16; Laws 2018, LB670, § 11.

43-2409 Eligible applicants; performance review; commission; powers; use of grants; limitation.

(1) The coalition shall review periodically the performance of eligible applicants participating under the Commission Grant Program and the federal act to determine if substantial compliance criteria are being met. The commission shall establish criteria for defining substantial compliance.

(2) Grants received by an eligible applicant under the Commission Grant Program shall not be used to replace or supplant any funds currently being used to support existing programs for juveniles.

(3) Grants received under the Commission Grant Program shall not be used for capital construction or the lease or acquisition of facilities except as provided in subdivision (3)(c) of section 43-2404.02.

Source: Laws 1990, LB 663, § 9; Laws 1992, LB 447, § 11; Laws 1997, LB 424, § 6; Laws 2000, LB 1167, § 47; Laws 2001, LB 640, § 11; Laws 2018, LB670, § 12.

43-2411 Nebraska Coalition for Juvenile Justice; created; members; terms; expenses; task forces or subcommittee; authorized.

(1) The Nebraska Coalition for Juvenile Justice is created. Coalition members who are members of the judicial branch of government shall be nonvoting members of the coalition. The coalition members shall be appointed by the Governor and shall include the members required under subsection (2) or (3) of this section.

(2) Before June 15, 2018:

(a) As provided in the federal act, there shall be no less than fifteen nor more than thirty-three members of the coalition;

(b) The coalition shall include:

(i) The Administrator of the Office of Juvenile Services;

(ii) The chief executive officer of the Department of Health and Human Services or his or her designee;

(iii) The Commissioner of Education or his or her designee;

(iv) The executive director of the Nebraska Commission on Law Enforcement and Criminal Justice or his or her designee;

(v) The executive director of the Nebraska Association of County Officials or his or her designee;

(vi) The probation administrator of the Office of Probation Administration or his or her designee;

(vii) One county commissioner or supervisor;

(viii) One person with data analysis experience;

(ix) One police chief;

(x) One sheriff;

(xi) The executive director of the Foster Care Review Office;

(xii) One separate juvenile court judge;

(xiii) One county court judge;

(xiv) One representative of mental health professionals who works directly with juveniles;

(xv) Three representatives, one from each congressional district, from community-based, private nonprofit organizations who work with juvenile offenders and their families;

(xvi) One volunteer who works with juvenile offenders or potential juvenile offenders;

(xvii) One person who works with an alternative to a detention program for juveniles;

(xviii) The director or his or her designee from a youth rehabilitation and treatment center;

(xix) The director or his or her designee from a secure juvenile detention facility;

(xx) The director or his or her designee from a staff secure youth confinement facility;

(xxi) At least five members who are under twenty-four years of age when appointed;

(xxii) One person who works directly with juveniles who have learning or emotional difficulties or are abused or neglected;

(xxiii) One member of the Nebraska Commission on Law Enforcement and Criminal Justice;

(xxiv) One member of a regional behavioral health authority established under section 71-808;

(xxv) One county attorney; and

(xxvi) One public defender;

(c) A majority of the coalition members, including the chairperson, shall not be full-time employees of federal, state, or local government. At least one-fifth of the coalition members shall be under the age of twenty-four years at the time of appointment; and

(d) Except as provided in subsection (4) of this section, the terms of members appointed pursuant to subdivisions (2)(b)(vii) through (2)(b)(xxvi) of this section shall be three years, except that the terms of the initial appointments of members of the coalition shall be staggered so that one-third of the members are appointed for terms of one year, one-third for terms of two years, and one-third for terms of three years, as determined by the Governor.

(3) On and after June 15, 2018, the coalition shall include:

(a) The chief executive officer of the Department of Health and Human Services or his or her designee;

(b) The Commissioner of Education or his or her designee;

(c) The executive director of the Nebraska Commission on Law Enforcement and Criminal Justice or his or her designee;

(d) The executive director of the Nebraska Association of County Officials or his or her designee;

(e) The probation administrator of the Office of Probation Administration or his or her designee;

(f) One county commissioner or supervisor;

(g) One representative from law enforcement;

(h) The executive director of the Foster Care Review Office;

(i) One separate juvenile court judge;

(j) One county court judge;

(k) Three representatives, one from each congressional district, from community-based, private nonprofit organizations who work with juvenile offenders and their families;

(l) The director or his or her designee from a secure juvenile detention facility or a staff secure youth confinement facility;

(m) At least one member who is under twenty-four years of age when appointed, with juvenile justice experience preferred;

(n) One at-large member;

(o) One member of a regional behavioral health authority established under section 71-808;

(p) One county attorney; and

(q) One juvenile public defender or defense attorney.

(4)(a) Except as provided in subdivisions (c) through (e) of this subsection, members of the coalition serving prior to June 15, 2018, shall continue to serve on the coalition as representatives of the entity they were appointed to represent until their current terms of office expire and their successors are appointed and confirmed.

(b) The terms of the members appointed pursuant to subdivisions (3)(f) through (3)(q) of this section shall be three years.

(c) The positions created pursuant to subdivisions (2)(b)(i), (viii), (x), (xiv), (xvi), (xvii), (xviii), (xx), (xxii), and (xxiii) of this section shall cease to exist on June 15, 2018.

(d) The police chief appointed pursuant to subdivision (2)(b)(ix) of this section shall continue to serve until the representative from law enforcement under subdivision (3)(g) of this section is appointed.

(e) The director or his or her designee from a secure juvenile detention facility appointed pursuant to subdivision (2)(b)(xix) of this section shall continue to serve until the member under subdivision (3)(l) of this section is appointed.

(5) Any vacancy on the coalition shall be filled by appointment by the Governor. The coalition shall select a chairperson, a vice-chairperson, and such other officers as it deems necessary.

(6) Members of the coalition shall be reimbursed for expenses pursuant to sections 81-1174 to 81-1177.

(7) The coalition may appoint task forces or subcommittees to carry out its work. Task force and subcommittee members shall have knowledge of, responsibility for, or interest in an area related to the duties of the coalition.

Source: Laws 1990, LB 663, § 11; Laws 1996, LB 1044, § 209; Laws 1997, LB 424, § 8; Laws 2000, LB 1167, § 48; Laws 2007, LB296, § 138; Laws 2013, LB561, § 49; Laws 2018, LB670, § 13; Laws 2020, LB381, § 32.

43-2412 Coalition; powers and duties.

(1) Consistent with the purposes and objectives of the Juvenile Services Act and the federal act, the coalition shall:

(a) Make recommendations to the commission on the awarding of grants under the Commission Grant Program to eligible applicants;

(b) Prepare at least one report annually to the Governor, the Legislature, the Office of Probation Administration, and the Office of Juvenile Services. The report submitted to the Legislature shall be submitted electronically;

(c) Ensure widespread citizen involvement in all phases of its work; and

(d) Meet at least two times each year.

(2) Consistent with the purposes and objectives of the acts and within the limits of available time and appropriations, the coalition may:

(a) Assist and advise state and local agencies in the establishment of volunteer training programs and the utilization of volunteers;

(b) Apply for and receive funds from federal and private sources for carrying out its powers and duties;

(c) Provide technical assistance to eligible applicants;

(d) Identify juvenile justice issues, share information, and monitor and evaluate programs in the juvenile justice system; and

(e) Recommend guidelines and supervision procedures to be used to develop or expand local diversion programs for juveniles from the juvenile justice system.

(3) In formulating, adopting, and promulgating the recommendations and guidelines provided for in this section, the coalition shall consider the differences among counties in population, in geography, and in the availability of local resources.

Source: Laws 1990, LB 663, § 12; Laws 1992, LB 447, § 12; Laws 1997, LB 424, § 9; Laws 2000, LB 1167, § 49; Laws 2001, LB 640, § 12; Laws 2012, LB782, § 48; Laws 2013, LB561, § 50; Laws 2018, LB670, § 14.

43-2413 Repealed. Laws 2018, LB670, § 21.

ARTICLE 26

CHILD CARE

(a) QUALITY CHILD CARE ACT

Section

(a) QUALITY CHILD CARE ACT

43-2606 Providers of child care and school-age-care programs; training requirements; use of Nebraska Early Childhood Professional Record System.

(1) The Department of Health and Human Services shall adopt and promulgate rules and regulations for mandatory training requirements for providers of

child care and school-age-care programs. Such requirements shall include preservice orientation and at least four hours of annual inservice training. All child care programs required to be licensed under section 71-1911 shall show completion of a preservice orientation approved or delivered by the department prior to receiving a provisional license.

(2) Beginning January 1, 2020, for programs that report to the Nebraska Early Childhood Professional Record System created under section 71-1962, the department shall use the Nebraska Early Childhood Professional Record System to (a) document the training levels of staff in specific child care settings to assist parents in selecting optimal care settings and (b) verify minimum training requirements of employees of such programs.

(3) The training requirements shall be designed to meet the health, safety, and developmental needs of children and shall be tailored to the needs of licensed providers of child care programs. Preservice orientation and the training requirements for providers of child care programs shall include, but not be limited to, information on sudden unexpected infant death syndrome, abusive head trauma in infants and children, crying plans, and child abuse.

(4) The department shall provide or arrange for training opportunities throughout the state and shall provide information regarding training opportunities to all providers of child care programs at the time of registration or licensure, when renewing a registration, or on a yearly basis following licensure.

(5) Each provider of child care and school-age-care programs receiving orientation or training shall provide his or her social security number to the department.

(6) The department shall review and provide recommendations to the Governor for updating rules and regulations adopted and promulgated under this section at least every five years.

Source: Laws 1991, LB 836, § 6; Laws 1995, LB 401, § 6; Laws 1996, LB 1044, § 219; Laws 1997, LB 307, § 89; Laws 1997, LB 310, § 2; Laws 1997, LB 752, § 106; Laws 1999, LB 594, § 22; Laws 1999, LB 828, § 4; Laws 2006, LB 994, § 62; Laws 2007, LB296, § 149; Laws 2018, LB717, § 1; Laws 2019, LB60, § 1; Laws 2019, LB590, § 1.

(b) CHILD CARE CAPACITY BUILDING AND WORKFORCE ACT

43-2626 Child Care Capacity Building and Workforce Act, how cited.

Sections 43-2626 to 43-2639 shall be known and may be cited as the Child Care Capacity Building and Workforce Act.

Source: Laws 2024, LB164, § 30.
Operative date July 19, 2024.

43-2627 Legislative findings.

The Legislature finds that:

(1) There is a lack of licensed child care programs in Nebraska;

(2) Providing incentives and support to the child care workforce will help maintain and increase the child care capacity in Nebraska;

(3) An increased child care capacity will bolster Nebraska's economy by providing parents and guardians the ability to enter, re-enter, and remain in the workforce; and

(4) The benefits of quality child care and early childhood education are indisputable and a connection exists between a child's learning experiences before entering kindergarten and success in school.

Source: Laws 2024, LB164, § 31.
Operative date July 19, 2024.

43-2628 Terms, defined.

For purposes of the Child Care Capacity Building and Workforce Act:

(1) Capacity means the number of children receiving care or services through an approved program;

(2) Community foundation means a tax-exempt, nonprofit, autonomous, nonsectarian, philanthropic institution supported by the public with the long-term goals of:

(a) Building permanent, component funds established by many separate donors to carry out charitable interests; and

(b) Supporting the broad-based charitable interests and benefiting the residents of a defined geographic area;

(3) Department means the Department of Economic Development;

(4) Eligible recipient means:

(a) Any city of the metropolitan class, city of the primary class, city of the first class, city of the second class, village, or county;

(b) Any nonprofit organization, including any community foundation; or

(c) Any other entity determined appropriate in rules and regulations adopted and promulgated by the department;

(5) License-exempt provider means any approved license-exempt provider enrolled in the child care subsidy program pursuant to sections 68-1202 and 68-1206;

(6) Licensed child care program means a program described in section 71-1911; and

(7) Regional facilitator hub means any entity that provides administrative and technical support to any licensed child care program, including any:

(a) Nonprofit organization; or

(b) Community foundation.

Source: Laws 2024, LB164, § 32.
Operative date July 19, 2024.

43-2629 Child Care Capacity Building and Workforce Grant Program; department; statewide organization; duties.

(1) The Child Care Capacity Building and Workforce Grant Program is created.

(2) The department shall contract with a statewide organization that supports children and families to administer the program, which may include providing technical assistance to any grant recipient. Up to five percent of the money

appropriated to the department each fiscal year for purposes of the Child Care Capacity Building and Workforce Act may be reserved for such contract with a statewide organization.

(3) Under the guidance of the department, the statewide organization shall be responsible for the following under the program:

(a) Prescribing the form on which an eligible recipient may apply to receive a grant under the program;

(b) Reviewing applications and identifying potential grant recipients;

(c) Providing technical assistance to grant recipients; and

(d) Coordinating with the Department of Health and Human Services and the State Department of Education to determine if the grant request will help meet the child care needs of the eligible recipient.

(4) The Department of Economic Development shall:

(a) Award grants to eligible recipients across the state and in urban and rural areas to the fullest extent possible;

(b) Award a grant to an eligible recipient based upon a list of the potential grant recipients that are identified by the statewide organization; and

(c) Prioritize applicants that are requesting a grant to:

(i) Increase child care capacity for children three years of age or younger by creating a new licensed child care program or license-exempt child care program serving children enrolled in child care subsidy or expanding an existing licensed-child care or license-exempt child care program serving children enrolled in child care subsidy;

(ii) Support the child care workforce; or

(iii) Create a child care program in a county that is not served by any licensed or license-exempt child care program that offers full-day full-year care.

Source: Laws 2024, LB164, § 33.
Operative date July 19, 2024.

43-2630 Grant; application.

To be eligible to receive a grant under the Child Care Capacity Building and Workforce Grant Program, an eligible recipient shall complete the application form prescribed by the statewide organization and provide for a one-to-one match for the amount of the grant. The eligible recipient shall include the following required information in its grant application:

(1) A needs assessment showing the child care capacity and the needs of the eligible recipient at the time of application;

(2) How the eligible recipient plans to use the grant;

(3) How the eligible recipient plans to provide a one-to-one match for the amount of any grant received. Such match shall be in the form of:

(a) Money or other collateral;

(b) An in-kind donation, including a donation of facilities, maintenance, or equipment; or

(c) Any combination of money, collateral, or in-kind donation that is approved by the department; and

(4) Any other information required by the department.

Source: Laws 2024, LB164, § 34.
Operative date July 19, 2024.

43-2631 Grant; use.

A grant recipient under the Child Care Capacity Building and Workforce Grant Program may use the grant to provide financial or other support to:

(1) The operation of a licensed child care program;

(2) The operation of a license-exempt provider serving children enrolled in child care subsidy;

(3) The child care workforce;

(4) Parents or guardians with children in child care programs;

(5) A federal Head Start program or Early Head Start program;

(6) Start or expand any existing licensed child care program or license-exempt program serving any child on a child care subsidy;

(7) An entity other than the statewide organization contracted to administer the Child Care Capacity Building and Workforce Program that provides administrative or technical support to a child care program;

(8) Build or remodel an existing building for child care purposes;

(9) Any purpose specified in rules and regulations adopted and promulgated by the department; or

(10) Any combination of such purposes.

Source: Laws 2024, LB164, § 35.
Operative date July 19, 2024.

43-2632 Grant; match required; procedure.

(1) Each grant recipient under the Child Care Capacity Building and Workforce Grant Program shall provide the one-to-one match prior to receiving any disbursement of grant proceeds under the program.

(2) The department shall specify how a grant recipient may provide proof of a one-to-one match for a grant.

(3) The department shall disburse the grant proceeds to any grant recipient that provides satisfactory proof of a one-to-one match. The grant may be disbursed in increments as determined by the department.

Source: Laws 2024, LB164, § 36.
Operative date July 19, 2024.

43-2633 Grant; repayment.

(1)(a) If the department determines that a grant recipient used the grant other than as provided in section 43-2631, the department may request the grant recipient to repay such grant and any remaining portion of the grant in the possession of the grant recipient to the department.

(b) If the department determines that a grant recipient falsified any information provided in the application process, the department may request the grant recipient to repay any or all of the grant disbursed to the grant recipient.

(2) A grant recipient that receives a request to repay a grant pursuant to subsection (1) of this section may appeal the decision, and the appeal shall be in accordance with the Administrative Procedure Act.

(3) Any money received under this section shall be remitted to the State Treasurer for credit to the Child Care Capacity Building and Workforce Cash Fund.

Source: Laws 2024, LB164, § 37.
Operative date July 19, 2024.

Cross References

Administrative Procedure Act, see section 84-920.

43-2634 Department; report.

The department shall submit a report to the Legislature electronically on July 1, 2025, and each July 1 thereafter. Each report shall include the following:

(1) For each grant awarded under the Child Care Capacity Building and Workforce Grant Program since July 19, 2024, for the first such report and since the most recent report under this section for each subsequent report:

(a) The name of the grant recipient;

(b) The amount of the grant;

(c) The reason the grant was requested; and

(d) The number, age, and county location of any children served through a valid use of a grant described under section 43-2631;

(2) The total amount of money awarded as grants and the total number of children served under subdivision (1) of this section;

(3) A compilation of ages and county locations of all children served through a valid use of a grant described under section 43-2631;

(4) Administrative costs of the department to administer the Child Care Capacity Building and Workforce Grant Program; and

(5) Any other information the department deems relevant to the Child Care Capacity Building and Workforce Grant Program.

Source: Laws 2024, LB164, § 38.
Operative date July 19, 2024.

43-2635 Family Child Care Home Grant Program; department; duties; grant; application; use.

(1) The Family Child Care Home Grant Program is created and shall be administered by the department.

(2) The department shall provide grants for new and existing licensed family child care home programs in residential and nonresidential facilities and to create regional facilitator hubs in order to provide administrative and technical support to new and existing licensed family child care home programs in residential and nonresidential facilities.

(3) Any licensed child care provider, nonprofit organization, for-profit organization, community foundation, school, or regional facilitator hub or any other entity specified in rules and regulations adopted and promulgated by the department may apply for a grant under the Family Child Care Home Grant Program.

(4) A grant recipient under the Family Child Care Home Grant Program shall only use the grant to provide financial or other support to:

(a) An existing licensed family child care program in a residential or nonresidential building that is licensed to serve up to twelve children of mixed ages;

(b) Create a new licensed family child care home program in a residential or nonresidential building that is licensed to serve up to twelve children of mixed ages; or

(c) Regional facilitator hubs that will provide administrative and technical support to family child care home programs.

Source: Laws 2024, LB164, § 39.
Operative date July 19, 2024.

43-2636 Family Child Care Home Grant Program; department; report; contents.

The department shall submit a report to the Legislature electronically on July 1, 2025, and each July 1 thereafter. Each report shall include the following:

(1) For each grant awarded under the Family Child Care Home Grant Program since July 19, 2024, for the first such report and since the most recent report under this section for each subsequent report:

(a) The name of the grant recipient;

(b) The amount of the grant;

(c) The reason the grant was requested and how the money was used by the grant recipient; and

(d) The number, age, and county location of any children served through a valid use of a grant described under section 43-2635;

(2) The total amount of money awarded as grants and the total number of children served under subdivision (1) of this section;

(3) A compilation of ages and county locations of all children served through a valid use of a grant described under section 43-2635;

(4) Administrative costs of the department to administer the Family Child Care Home Grant Program; and

(5) Any other information the department deems relevant to the Family Child Care Home Grant Program.

Source: Laws 2024, LB164, § 40.
Operative date July 19, 2024.

43-2637 Child Care Capacity Building and Workforce Cash Fund; created; use; investment.

(1) The Child Care Capacity Building and Workforce Cash Fund is created. The department shall administer the fund for purposes of the Child Care Capacity Building and Workforce Act. The fund may consist of transfers authorized by the Legislature and any gifts, grants, bequests, or donations to the fund.

(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.

Source: Laws 2024, LB164, § 41.
Operative date July 19, 2024.

Cross References

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

43-2638 Grants; limitations.

The total amount of grants awarded under the Child Care Capacity Building and Workforce Act shall be subject to the appropriation of funds from the Child Care Capacity Building and Workforce Cash Fund.

Source: Laws 2024, LB164, § 42.
Operative date July 19, 2024.

43-2639 Rules and regulations.

The department may adopt and promulgate rules and regulations to administer the Child Care Capacity Building and Workforce Act.

Source: Laws 2024, LB164, § 43.
Operative date July 19, 2024.

ARTICLE 27

NEBRASKA UNIFORM TRANSFERS TO MINORS ACT

Section
43-2707. Other transfer by fiduciary.

43-2707 Other transfer by fiduciary.

(1) Subject to subsection (3) of this section, a personal representative or trustee may make an irrevocable transfer to another adult or trust company as custodian for the benefit of a minor pursuant to section 43-2710, in the absence of a will or under a will or trust that does not contain an authorization to do so.

(2) Subject to subsection (3) of this section, a conservator may make an irrevocable transfer to another adult or trust company as custodian for the benefit of the minor pursuant to section 43-2710.

(3) A transfer under subsection (1) or (2) of this section may be made only if (a) the personal representative, trustee, or conservator considers the transfer to be in the best interest of the minor, (b) the transfer is not prohibited by or inconsistent with provisions of the applicable will, trust agreement, or other governing instrument, and (c) the transfer is authorized by the court if it exceeds forty thousand dollars in value.

Source: Laws 1992, LB 907, § 7; Laws 2024, LB1195, § 12.
Effective date July 19, 2024.

ARTICLE 29

PARENTING ACT

Section
43-2922. Terms, defined.

43-2922 Terms, defined.

For purposes of the Parenting Act:

(1) Appropriate means reflective of the developmental abilities of the child taking into account any cultural traditions that are within the boundaries of state and federal law;

(2) Approved mediation center means a mediation center approved by the Office of Dispute Resolution;

(3) Best interests of the child means the determination made taking into account the requirements stated in section 43-2923 or the Uniform Deployed Parents Custody and Visitation Act if such act applies;

(4) Child means a minor under nineteen years of age;

(5) Child abuse or neglect has the same meaning as in section 28-710;

(6) Court conciliation program means a court-based conciliation program under the Conciliation Court Law;

(7) Custody includes legal custody and physical custody;

(8) Domestic intimate partner abuse means an act of abuse as defined in section 42-903 and a pattern or history of abuse evidenced by one or more of the following acts: Physical or sexual assault, threats of physical assault or sexual assault, stalking, harassment, mental cruelty, emotional abuse, intimidation, isolation, economic abuse, or coercion against any current or past intimate partner, or an abuser using a child to establish or maintain power and control over any current or past intimate partner, and, when they contribute to the coercion or intimidation of an intimate partner, acts of child abuse or neglect or threats of such acts, cruel mistreatment or cruel neglect of an animal as defined in section 28-1008, or threats of such acts, and other acts of abuse, assault, or harassment, or threats of such acts against other family or household members. A finding by a child protection agency shall not be considered res judicata or collateral estoppel regarding an act of child abuse or neglect or a threat of such act, and shall not be considered by the court unless each parent is afforded the opportunity to challenge any such determination;

(9) Economic abuse means causing or attempting to cause an individual to be financially dependent by maintaining total control over the individual's financial resources, including, but not limited to, withholding access to money or credit cards, forbidding attendance at school or employment, stealing from or defrauding of money or assets, exploiting the victim's resources for personal gain of the abuser, or withholding physical resources such as food, clothing, necessary medications, or shelter;

(10) Emotional abuse means a pattern of acts, threats of acts, or coercive tactics, including, but not limited to, threatening or intimidating to gain

compliance, destruction of the victim's personal property or threats to do so, violence to an animal or object in the presence of the victim as a way to instill fear, yelling, screaming, name-calling, shaming, mocking, or criticizing the victim, possessiveness, or isolation from friends and family. Emotional abuse can be verbal or nonverbal;

(11) Joint legal custody means mutual authority and responsibility of the parents for making mutual fundamental decisions regarding the child's welfare, including choices regarding education and health;

(12) Joint physical custody means mutual authority and responsibility of the parents regarding the child's place of residence and the exertion of continuous blocks of parenting time by both parents over the child for significant periods of time;

(13) Legal custody means the authority and responsibility for making fundamental decisions regarding the child's welfare, including choices regarding education and health;

(14) Mediation means a method of nonjudicial intervention in which a trained, neutral third-party mediator, who has no decisionmaking authority, provides a structured process in which individuals and families in conflict work through parenting and other related family issues with the goal of achieving a voluntary, mutually agreeable parenting plan or related resolution;

(15) Mediator means a mediator authorized to provide mediation under section 43-2938 and acting in accordance with the Parenting Act;

(16) Office of Dispute Resolution means the office established under section 25-2904;

(17) Parenting functions means those aspects of the relationship in which a parent or person in the parenting role makes fundamental decisions and performs fundamental functions necessary for the care and development of a child. Parenting functions include, but are not limited to:

(a) Maintaining a safe, stable, consistent, and nurturing relationship with the child;

(b) Attending to the ongoing developmental needs of the child, including feeding, clothing, physical care and grooming, health and medical needs, emotional stability, supervision, and appropriate conflict resolution skills and engaging in other activities appropriate to the healthy development of the child within the social and economic circumstances of the family;

(c) Attending to adequate education for the child, including remedial or other special education essential to the best interests of the child;

(d) Assisting the child in maintaining a safe, positive, and appropriate relationship with each parent and other family members, including establishing and maintaining the authority and responsibilities of each party with respect to the child and honoring the parenting plan duties and responsibilities;

(e) Minimizing the child's exposure to harmful parental conflict;

(f) Assisting the child in developing skills to maintain safe, positive, and appropriate interpersonal relationships; and

(g) Exercising appropriate support for social, academic, athletic, or other special interests and abilities of the child within the social and economic circumstances of the family;

(18) Parenting plan means a plan for parenting the child that takes into account parenting functions;

(19) Parenting time, visitation, or other access means communication or time spent between the child and parent or stepparent, the child and a court-appointed guardian, or the child and another family member or members including stepbrothers or stepsisters;

(20) Physical custody means authority and responsibility regarding the child's place of residence and the exertion of continuous parenting time for significant periods of time;

(21) Provisions for safety means a plan developed to reduce risks of harm to children and adults who are victims of child abuse or neglect, domestic intimate partner abuse, or unresolved parental conflict;

(22) Remediation process means the method established in the parenting plan which maintains the best interests of the child and provides a means to identify, discuss, and attempt to resolve future circumstantial changes or conflicts regarding the parenting functions and which minimizes repeated litigation and utilizes judicial intervention as a last resort;

(23) Specialized alternative dispute resolution means a method of nonjudicial intervention in high conflict or domestic intimate partner abuse cases in which an approved specialized mediator facilitates voluntary mutual development of and agreement to a structured parenting plan, provisions for safety, a transition plan, or other related resolution between the parties;

(24) Transition plan means a plan developed to reduce exposure of the child and the adult to ongoing unresolved parental conflict during parenting time, visitation, or other access for the exercise of parental functions; and

(25) Unresolved parental conflict means persistent conflict in which parents are unable to resolve disputes about parenting functions which has a potentially harmful impact on a child.

Source: Laws 2007, LB554, § 3; Laws 2008, LB1014, § 55; Laws 2011, LB673, § 3; Laws 2015, LB219, § 31; Laws 2019, LB595, § 36.

Cross References

Conciliation Court Law, see section 42-802.
Uniform Deployed Parents Custody and Visitation Act, see section 43-4601.

43-2924 Applicability of act.

(1) The Parenting Act shall apply to proceedings or modifications filed on or after January 1, 2008, in which parenting functions for a child are at issue (a) under Chapter 42, including, but not limited to, proceedings or modification of orders for dissolution of marriage and child custody and (b) under sections 43-1401 to 43-1418. The Parenting Act may apply to proceedings or modifications in which parenting functions for a child are at issue under Chapter 30 or 43. The Parenting Act shall also apply to subsequent modifications of bridge orders entered under section 43-246.02 by a separate juvenile court or county court sitting as a juvenile court and docketed in a district court.

(2) The Parenting Act does not apply in any action filed by a county attorney or authorized attorney pursuant to his or her duties under section 42-358, 43-512 to 43-512.18, or 43-1401 to 43-1418, the Income Withholding for Child Support Act, the Revised Uniform Reciprocal Enforcement of Support Act before January 1, 1994, or the Uniform Interstate Family Support Act for

purposes of the establishment of paternity and the establishment and enforcement of child and medical support or a bridge order entered under section 43-246.02 by a separate juvenile court or county court sitting as a juvenile court and docketed in a district court. A county attorney or authorized attorney shall not participate in the development of or court review of a parenting plan under the Parenting Act. If both parents are parties to a paternity or support action filed by a county attorney or authorized attorney, the parents may proceed with a parenting plan.

Source: Laws 2007, LB554, § 5; Laws 2008, LB1014, § 57; Laws 2017, LB180, § 3.

Cross References

Income Withholding for Child Support Act, see section 43-1701.
Revised Uniform Reciprocal Enforcement of Support Act, applicability, see section 42-7,105.
Uniform Interstate Family Support Act, see section 42-701.

43-2933 Registered sex offender; other criminal convictions; limitation on or denial of custody or access to child; presumption; modification of previous order.

(1)(a) No person shall be granted custody of, or unsupervised parenting time, visitation, or other access with, a child if the person is required to be registered as a sex offender under the Sex Offender Registration Act for an offense that would make it contrary to the best interests of the child for such access or for an offense in which the victim was a minor or if the person has been convicted under section 28-311, 28-319.01, 28-320, 28-320.01, or 28-320.02, unless the court finds that there is no significant risk to the child and states its reasons in writing or on the record.

(b) No person shall be granted custody of, or unsupervised parenting time, visitation, or other access with, a child if anyone residing in the person's household is required to register as a sex offender under the Sex Offender Registration Act as a result of a felony conviction in which the victim was a minor or for an offense that would make it contrary to the best interests of the child for such access unless the court finds that there is no significant risk to the child and states its reasons in writing or on the record.

(c) The fact that a child is permitted unsupervised contact with a person who is required, as a result of a felony conviction in which the victim was a minor, to be registered as a sex offender under the Sex Offender Registration Act shall be prima facie evidence that the child is at significant risk. When making a determination regarding significant risk to the child, the prima facie evidence shall constitute a presumption affecting the burden of producing evidence. However, this presumption shall not apply if there are factors mitigating against its application, including whether the other party seeking custody, parenting time, visitation, or other access is also required, as the result of a felony conviction in which the victim was a minor, to register as a sex offender under the Sex Offender Registration Act.

(2) Except as otherwise provided in the Nebraska Indian Child Welfare Act, 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 or 28-320 or a law in another jurisdiction similar to either section 28-319 or 28-320 and the child was conceived as a result of that violation unless the custodial parent or guardian, as defined in section 43-245, consents.

(3) A change in circumstances relating to subsection (1) or (2) of this section is sufficient grounds for modification of a previous order.

Source: Laws 2007, LB554, § 14; Laws 2017, LB289, § 23.

Cross References

Nebraska Indian Child Welfare Act, see section 43-1501.
Sex Offender Registration Act, see section 29-4001.

43-2937 Court referral to mediation or specialized alternative dispute resolution; temporary relief; specialized alternative dispute resolution rule; approval; mandatory court order; when; waiver.

(1) In addition to those cases that are mandatorily referred to mediation or specialized alternative dispute resolution under subsection (3) of this section, a court may, at any time in the proceedings upon its own motion or upon the motion of either party, refer a case to mediation or specialized alternative dispute resolution in order to attempt resolution of any relevant matter. The court may state a date for the case to return to court, and the court shall not grant an extension of such date except for cause. If the court refers a case to mediation or specialized alternative dispute resolution, the court may, if appropriate, order temporary relief, including necessary support and provision for payment of mediation costs. Court referral shall be to a mediator agreed to by the parties and approved by the court, an approved mediation center, or a court conciliation program. The State Court Administrator's office shall develop a process to approve mediators who are qualified under subsection (2) or (3) of section 43-2938.

(2) Prior to July 1, 2010, if there are allegations of domestic intimate partner abuse or unresolved parental conflict between the parties in any proceeding, mediation shall not be required pursuant to the Parenting Act or by local court rule, unless the court has established a specialized alternative dispute resolution rule approved by the State Court Administrator. The specialized alternative dispute resolution process shall include a method for court consideration of precluding or disqualifying parties from participating; provide an opportunity to educate both parties about the process; require informed consent from both parties in order to proceed; provide safety protocols, including separate individual sessions for each participant, informing each party about the process, and obtaining informed consent from each party to continue the process; allow support persons to attend sessions; and establish opt-out-for-cause provisions. On and after July 1, 2010, all trial courts shall have a mediation and specialized alternative dispute resolution rule in accordance with the act.

(3) Except as provided in subsection (4) of this section, for cases filed on or after July 1, 2010, all parties who have not submitted a parenting plan to the court within the time specified by the court shall be ordered to participate in mediation or specialized alternative dispute resolution with a mediator, a court conciliation program, or an approved mediation center as provided in section 43-2938.

(4) For good cause shown and (a) when both parents agree and such parental agreement is bona fide and not asserted to avoid the purposes of the Parenting Act, or (b) when mediation or specialized alternative dispute resolution is not possible without undue delay or hardship to either parent, the mediation or specialized alternative dispute resolution requirement may be waived by the court. In such a case where waiver of the mediation or specialized alternative

dispute resolution is sought, the court shall hold an evidentiary hearing and the burden of proof for the party or parties seeking waiver is by clear and convincing evidence.

Source: Laws 2007, LB554, § 18; Laws 2008, LB1014, § 65; Laws 2010, LB901, § 3; Laws 2019, LB595, § 37.

43-2938 Mediator; qualifications; training; approved specialized mediator; requirements.

(1) A mediator under the Parenting Act may be a court conciliation program counselor, a court conciliation program mediator, an approved mediation center affiliated mediator, a mediator approved by the Office of Dispute Resolution, or an attorney as provided in subsection (4) of this section.

(2) To qualify for inclusion in the roster of mediators maintained by the Office of Dispute Resolution as an approved Parenting Act mediator, a person shall have basic mediation training and family mediation training, approved by the Office of Dispute Resolution, and shall have served as an apprentice to a mediator as defined in section 25-2903. The training shall include, but not be limited to:

(a) Knowledge of the court system and procedures used in contested family matters;

(b) General knowledge of family law, especially regarding custody, parenting time, visitation, and other access, and support, including calculation of child support using the child support guidelines pursuant to section 42-364.16;

(c) Knowledge of other resources in the state to which parties and children can be referred for assistance;

(d) General knowledge of child development, the potential effects of dissolution or parental separation upon children, parents, and extended families, and the psychology of families;

(e) Knowledge of child abuse or neglect and domestic intimate partner abuse and their potential impact upon the safety of family members, including knowledge of provisions for safety, transition plans, domestic intimate partner abuse screening protocols, and mediation safety measures; and

(f) Knowledge in regard to the potential effects of domestic violence on a child; the nature and extent of domestic intimate partner abuse; the social and family dynamics of domestic intimate partner abuse; techniques for identifying and assisting families affected by domestic intimate partner abuse; interviewing, documentation of, and appropriate recommendations for families affected by domestic intimate partner abuse; and availability of community and legal domestic violence resources.

(3) To qualify for inclusion in the roster of mediators maintained by the Office of Dispute Resolution as an approved specialized mediator for parents involved in high conflict and situations in which abuse is present, the mediator shall apply to an approved mediation center or court conciliation program for consideration to be listed as an approved specialized mediator. The approved mediation center or court conciliation program shall submit its list of approved specialized mediators for inclusion in the roster to the Office of Dispute Resolution on an annual basis. Minimum requirements to be listed as an approved specialized mediator include:

(a) Affiliation with a court conciliation program or an approved mediation center;

(b) Meeting the minimum standards for a Parenting Act mediator under this section;

(c) Meeting additional relevant standards and qualifications as determined by the State Court Administrator; and

(d) Satisfactorily completing an additional minimum twenty-four-hour specialized alternative dispute resolution domestic mediation training course developed by entities providing domestic abuse services and mediation services for children and families and approved by the State Court Administrator. This course shall include advanced education in regard to the potential effects of domestic violence on the child; the nature and extent of domestic intimate partner abuse; the social and family dynamics of domestic intimate partner abuse; techniques for identifying and assisting families affected by domestic intimate partner abuse; and appropriate and safe mediation strategies to assist parties in developing a parenting plan, provisions for safety, and a transition plan, as necessary and relevant.

(4) In lieu of qualifying as a mediator under subsection (2) or (3) of this section, an attorney licensed to practice law in the State of Nebraska may serve as a parenting plan mediator if the parties agree to use such attorney as a mediator.

Source: Laws 2007, LB554, § 19; Laws 2019, LB595, § 38.

43-2939 Parenting Act mediator; duties; conflict of interest; report of child abuse or neglect; termination of mediation.

(1) A Parenting Act mediator, including an attorney serving as a parenting plan mediator pursuant to subsection (4) of section 43-2938, prior to meeting with the parties in an initial mediation session, shall provide an individual initial screening session with each party to assess the presence of child abuse or neglect, unresolved parental conflict, domestic intimate partner abuse, other forms of intimidation or coercion, or a party's inability to negotiate freely and make informed decisions. If any of these conditions exist, the mediator shall not proceed with the mediation session but shall proceed with a specialized alternative dispute resolution process that addresses safety measures for the parties, if the mediator is on the approved specialized list of an approved mediation center or court conciliation program, or shall refer the parties to a mediator who is so qualified. When public records such as current or expired protection orders, criminal domestic violence cases, and child abuse or neglect proceedings are provided to a mediator, such records shall be considered during the individual initial screening session to determine appropriate dispute resolution methods. The mediator has the duty to determine whether to proceed in joint session, individual sessions, or caucus meetings with the parties in order to address safety and freedom to negotiate. In any mediation or specialized alternative dispute resolution, a mediator has the ongoing duty to assess appropriateness of the process and safety of the process upon the parties.

(2) No mediator who represents or has represented one or both of the parties or has had either of the parties as a client as an attorney or a counselor shall mediate the case, unless such services have been provided to both participants and mediation shall not proceed in such cases unless the prior relationship has been disclosed, the role of the mediator has been made distinct from the earlier

relationship, and the participants have been given the opportunity to fully choose to proceed. All other potential conflicts of interest shall be disclosed and discussed before the parties decide whether to proceed with that mediator.

(3) No mediator who is also a licensed attorney may, after completion of the mediation process, represent either party in the role of attorney in the same matter through subsequent legal proceedings.

(4) The mediator shall facilitate the mediation process. Prior to the commencement of mediation, the mediator shall notify the parties that, if the mediator has reasonable cause to believe that a child has been subjected to child abuse or neglect or if the mediator observes a child being subjected to conditions or circumstances which reasonably would result in child abuse or neglect, the mediator is obligated under section 28-711 to report such information to the authorized child abuse and neglect reporting agency and shall report such information unless the information has been previously reported. The mediator shall have access to court files for purposes of mediation under the Parenting Act. The mediator shall be impartial and shall use his or her best efforts to effect an agreement or parenting plan as required under the act. The mediator may interview the child if, in the mediator's opinion, such an interview is necessary or appropriate. The parties shall not bring the child to any sessions with the mediator unless specific arrangements have been made with the mediator in advance of the session. The mediator shall assist the parties in assessing their needs and the best interests of the child involved in the proceeding and may include other persons in the mediation process as necessary or appropriate. The mediator shall advise the parties that they should consult with an attorney.

(5) The mediator may terminate mediation if one or more of the following conditions exist:

(a) There is no reasonable possibility that mediation will promote the development of an effective parenting plan;

(b) Allegations are made of direct physical or significant emotional harm to a party or to a child that have not been heard and ruled upon by the court; or

(c) Mediation will otherwise fail to serve the best interests of the child.

(6) Until July 1, 2010, either party may terminate mediation at any point in the process. On and after July 1, 2010, a party may not terminate mediation until after an individual initial screening session and one mediation or specialized alternative dispute resolution session are held. The session after the individual initial screening session shall be an individual specialized alternative dispute resolution session if the screening indicated the existence of any condition specified in subsection (1) of this section.

Source: Laws 2007, LB554, § 20; Laws 2020, LB912, § 17.

ARTICLE 31

COURT PROCEEDINGS

Section
43-3102. Waiver of right to counsel by juvenile; writing; when waiver not allowed; Supreme Court; duties.

43-3102 Waiver of right to counsel by juvenile; writing; when waiver not allowed; Supreme Court; duties.

(1) In any court proceeding, any waiver of the right to counsel by a juvenile shall be made in open court, shall be recorded, and shall be confirmed in a writing signed by the juvenile.

(2) A court shall not accept a juvenile's waiver of the right to counsel unless the waiver satisfies subsection (1) of this section and is an affirmative waiver that is made intelligently, voluntarily, and understandingly. In determining whether such waiver was made intelligently, voluntarily, and understandingly, the court shall consider, among other things: (a) The age, intelligence, and education of the juvenile, (b) the juvenile's emotional stability, and (c) the complexity of the proceedings.

(3) On or before July 1, 2022, the Supreme Court shall provide, by court rule, a process to ensure that a juvenile has consulted with counsel, and if not, is provided the opportunity to consult with counsel prior to the juvenile exercising their right to waive their right to counsel.

(4) The court shall ensure that a juvenile represented by an attorney consults with his or her attorney before any waiver of counsel.

(5) No parent, guardian, custodian, or other person may waive the juvenile's right to counsel.

(6) A juvenile's right to be represented by counsel may not be waived in the following circumstances:

(a) If the juvenile is under the age of fourteen;

(b) For a detention hearing;

(c) For any dispositional hearing where out-of-home placement is sought; or

(d) If there is a motion to transfer the juvenile from juvenile court to county court or district court.

Source: Laws 2016, LB894, § 16; Laws 2021, LB307, § 3.

ARTICLE 32

MCGRUFF HOUSE

Section
43-3201. Repealed. Laws 2019, LB2, § 1.

43-3201 Repealed. Laws 2019, LB2, § 1.

ARTICLE 33

SUPPORT ENFORCEMENT

(a) LICENSE SUSPENSION ACT

Section
43-3314. Delinquent or past-due support; notice to license holder; contents.
43-3318. Certification to relevant licensing authorities; when; procedure; effect.

(e) STATE DISBURSEMENT UNIT

43-3342.03. State Disbursement Unit; support order collection; fees authorized; State Disbursement Unit Cash Fund; created; use; investment; electronic remittance by employers.
43-3342.05. Child Support Advisory Commission; created; members; terms; expenses; personnel; duties; Supreme Court; duties.

(a) LICENSE SUSPENSION ACT

43-3314 Delinquent or past-due support; notice to license holder; contents.

(1) When the department or a county attorney or authorized attorney has made reasonable efforts to verify and has reason to believe that a license holder in a case receiving services under Title IV-D of the Social Security Act, as amended, (a) is delinquent on a support order in an amount equal to the support due and payable for more than a three-month period of time, (b) is not in compliance with a payment plan for amounts due as determined by a county attorney, an authorized attorney, or the department for such past-due support, or (c) is not in compliance with a payment plan for amounts due under a support order pursuant to a court order for such past-due support, and therefor determines to certify the license holder to the appropriate licensing authority, the department, county attorney, or authorized attorney shall send written notice to the license holder by regular United States mail to the last-known address of the license holder or to the last-known address of the license holder available to the court pursuant to section 42-364.13. For purposes of this section, reasonable efforts to verify means reviewing the case file and having written or oral communication with the clerk of the court of competent jurisdiction and with the license holder. Reasonable efforts to verify may also include written or oral communication with custodial parents.

(2) The notice shall specify:

(a) That the Department of Health and Human Services, county attorney, or authorized attorney intends to certify the license holder to the Department of Motor Vehicles and to relevant licensing authorities pursuant to subsection (3) of section 43-3318 as a license holder described in subsection (1) of this section;

(b) The court or agency of competent jurisdiction which issued the support order or in which the support order is registered;

(c) That an enforcement action for a support order will incorporate any amount delinquent under the support order which may accrue in the future;

(d) That a license holder who is in violation of a support order can come into compliance by:

(i) Paying current support if a current support obligation exists; and

(ii) Paying all past-due support or, if unable to pay all past-due support and if a payment plan for such past-due support has not been determined, by making payments in accordance with a payment plan determined by the county attorney, the authorized attorney, or the Department of Health and Human Services for such past-due support; and

(e) That within thirty days after issuance of the notice, the license holder may either:

(i) Request administrative review in the manner specified in the notice to contest a mistake of fact. Mistake of fact means an error in the identity of the license holder or an error in the determination of whether the license holder is a license holder described in subsection (1) of this section; or

(ii) Seek judicial review by filing a petition in the court of competent jurisdiction of the county where the support order was issued or registered or, in the case of a foreign support order not registered in Nebraska, the court of competent jurisdiction of the county where the child resides if the child resides

in Nebraska or the court of competent jurisdiction of the county where the license holder resides if the child does not reside in Nebraska.

Source: Laws 1997, LB 752, § 14; Laws 1999, LB 594, § 30; Laws 2007, LB296, § 154; Laws 2024, LB1200, § 4.
Operative date April 16, 2024.

43-3318 Certification to relevant licensing authorities; when; procedure; effect.

(1) The Department of Health and Human Services, county attorney, authorized attorney, or court of competent jurisdiction may certify in writing to the Department of Motor Vehicles, relevant licensing authorities, and, if the license holder is a member of the Nebraska State Bar Association, the Counsel for Discipline of the Nebraska Supreme Court, that a license holder is a license holder described in subsection (1) of section 43-3314 if:

(a) The license holder does not timely request either administrative review or judicial review upon issuance of a notice under subsection (2) of section 43-3314, is still a license holder described in subsection (1) of section 43-3314 thirty-one days after issuance of the notice, and does not obtain a written confirmation of compliance from the Department of Health and Human Services, county attorney, or authorized attorney pursuant to section 43-3320 within thirty-one days after issuance of the notice;

(b) The Department of Health and Human Services issues a decision after a hearing that finds the license holder is a license holder described in subsection (1) of section 43-3314, the license holder is still a license holder described in such subsection thirty-one days after issuance of that decision, and the license holder does not seek judicial review of the decision within the ten-day appeal period provided in section 43-3317; or

(c) The court of competent jurisdiction enters a judgment on a petition for judicial review, initiated under either section 43-3315 or 43-3317, that finds the license holder is a license holder described in subsection (1) of section 43-3314.

(2) The court of competent jurisdiction, after providing appropriate notice, may certify a license holder to the Department of Motor Vehicles and relevant licensing authorities if a license holder has failed to comply with subpoenas or warrants relating to paternity or child support proceedings.

(3) If the Department of Health and Human Services, county attorney, authorized attorney, or court of competent jurisdiction determines to certify a license holder to the appropriate licensing authority, then the department, county attorney, authorized attorney, or court of competent jurisdiction shall certify a license holder in the following order and in compliance with the following restrictions:

(a) To the Department of Motor Vehicles to suspend the license holder's operator's license, except the Department of Motor Vehicles shall not suspend the license holder's commercial driver's license or restricted commercial driver's license. If a license holder possesses a commercial driver's license or restricted commercial driver's license, the Department of Health and Human Services, county attorney, authorized attorney, or court of competent jurisdiction shall certify such license holder pursuant to subdivision (b) of this subsection. If the license holder fails to come into compliance with the support order as provided in section 43-3314 or with subpoenas and warrants relating to

paternity or child support proceedings within ten working days after the date on which the license holder's operator's license suspension becomes effective, then the department, county attorney, authorized attorney, or court of competent jurisdiction may certify the license holder pursuant to subdivision (b) of this subsection without further notice;

(b) To the relevant licensing authority to suspend the license holder's recreational license once the Game and Parks Commission has operative the electronic or other automated retrieval system necessary to suspend recreational licenses. If the license holder does not have a recreational license and until the Game and Parks Commission has operative the electronic or other automated retrieval system necessary to suspend recreational licenses, the department, county attorney, authorized attorney, or court of competent jurisdiction may certify the license holder pursuant to subdivision (c) of this subsection. If the license holder fails to come into compliance with the support order as provided in section 43-3314 or with subpoenas and warrants relating to paternity or child support proceedings within ten working days after the date on which the license holder's recreational license suspension becomes effective, the department, county attorney, authorized attorney, or court of competent jurisdiction may certify the license holder pursuant to subdivision (c) of this subsection without further notice; and

(c) To the relevant licensing authority to suspend the license holder's professional license, occupational license, commercial driver's license, or restricted commercial driver's license.

(4) If the Department of Health and Human Services, county attorney, authorized attorney, or court of competent jurisdiction certifies the license holder to the Department of Motor Vehicles, the Department of Motor Vehicles shall suspend the operator's license of the license holder ten working days after the date of certification. The Department of Motor Vehicles shall without undue delay notify the license holder by regular United States mail that the license holder's operator's license will be suspended and the date the suspension becomes effective. No person shall be issued an operator's license by the State of Nebraska if at the time of application for a license the person's operator's license is suspended under this section. Any person whose operator's license has been suspended shall return his or her license to the Department of Motor Vehicles within five working days after receiving the notice of the suspension. If any person fails to return the license, the Department of Motor Vehicles shall direct any peace officer to secure possession of the operator's license and to return it to the Department of Motor Vehicles. The peace officer who is directed to secure possession of the license shall make every reasonable effort to secure the license and return it to the Department of Motor Vehicles or shall show good cause why the license cannot be returned. An appeal of the suspension of an operator's license under this section shall be pursuant to section 60-4,105. A license holder whose operator's license has been suspended under this section may apply for an employment driving permit as provided by sections 60-4,129 and 60-4,130, except that the license holder is not required to fulfill the driver improvement or driver education and training course requirements of subsection (2) of section 60-4,130.

(5) Except as provided in subsection (6) of this section as it pertains to a license holder who is a member of the Nebraska State Bar Association, if the Department of Health and Human Services, county attorney, authorized attorney, or court of competent jurisdiction certifies the license holder to a relevant

licensing authority, the relevant licensing authority, notwithstanding any other provision of law, shall suspend the license holder's professional, occupational, or recreational license and the license holder's right to renew the professional, occupational, or recreational license ten working days after the date of certification. The relevant licensing authority shall without undue delay notify the license holder by regular United States mail that the license holder's professional, occupational, or recreational license will be suspended and the date the suspension becomes effective.

(6) If the department, county attorney, authorized attorney, or court of competent jurisdiction certifies a license holder who is a member of the Nebraska State Bar Association to the Counsel for Discipline of the Nebraska Supreme Court, the Nebraska Supreme Court may suspend the license holder's license to practice law. It is the intent of the Legislature to encourage all license holders to comply with their child support obligations. Therefor, the Legislature hereby requests that the Nebraska Supreme Court adopt amendments to the rules regulating attorneys, if necessary, which provide for the discipline of an attorney who is delinquent in the payment of or fails to pay his or her child support obligation.

(7) The Department of Health and Human Services, or court of competent jurisdiction when appropriate, shall send by regular United States mail to the license holder at the license holder's last-known address a copy of any certification filed with the Department of Motor Vehicles or a relevant licensing authority and a notice which states that the license holder's operator's license will be suspended ten working days after the date of certification and that the suspension of a professional, occupational, or recreational license pursuant to subsection (5) of this section becomes effective ten working days after the date of certification.

Source: Laws 1997, LB 752, § 18; Laws 1999, LB 594, § 31; Laws 2004, LB 1207, § 43; Laws 2007, LB296, § 156; Laws 2024, LB1200, § 5.
Operative date April 16, 2024.

(e) STATE DISBURSEMENT UNIT

43-3342.03 State Disbursement Unit; support order collection; fees authorized; State Disbursement Unit Cash Fund; created; use; investment; electronic remittance by employers.

(1) All support orders shall direct payment of support as provided in section 42-369. Any support order issued prior to the date that the State Disbursement Unit becomes operative for which the payment is to be made to the clerk of the district court shall be deemed to require payment to the State Disbursement Unit after a notice to the obligor is issued. Support order payments made to the clerk of the district court shall be forwarded to the State Disbursement Unit by electronic transfer.

(2) The State Disbursement Unit may collect a fee equal to the actual cost of processing any payments for returned check charges or charges for electronic payments not accepted, except that the fee shall not exceed thirty dollars. After a payor has originated one payment resulting in a returned check or an electronic payment not accepted within a period of two years, the unit may issue a notice to the originator that, for the following year, any payment shall

be required to be paid by money order, cashier's check, certified check, or any other form of guaranteed payment as may be approved by the unit. After a payor has originated two payments resulting in returned checks or electronic payments not accepted, the unit may issue a notice to the originator that all future payments shall be paid by money order, cashier's check, certified check, or any other form of guaranteed payment as may be approved by the unit, except that pursuant to rule and regulation and at least two years after such issuance of notice, the unit may waive for good cause shown such requirements for methods of payment. The fees shall be remitted to the State Treasurer for credit to the State Disbursement Unit Cash Fund, which is hereby created, which funds shall be used to offset the expenses incurred in the collection of child support bad debt and other collection expenses incurred by the unit. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(3) The State Disbursement Unit shall use automated procedures, electronic processes, and computer-driven technology to the maximum extent feasible, efficient, and economical for the collection and disbursement of support payments.

(4) Employers with more than fifty employees who have an employee with a child support order shall remit child support payments electronically.

Source: Laws 2000, LB 972, § 3; Laws 2002, LB 1062, § 4; Laws 2005, LB 116, § 21; Laws 2008, LB620, § 1; Laws 2019, LB505, § 1.

Cross References

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

43-3342.05 Child Support Advisory Commission; created; members; terms; expenses; personnel; duties; Supreme Court; duties.

(1) The Child Support Advisory Commission is created. Commission members shall include:

(a) Two district court judges whose jurisdiction includes domestic relations, to be appointed by the Supreme Court;

(b) One member of the Nebraska State Bar Association who practices primarily in the area of domestic relations;

(c) One county attorney who works in child support;

(d) One professional who works in the field of economics or mathematics or another field of expertise relevant to child support;

(e) One custodial parent who has a court order to receive child support;

(f) One noncustodial parent who is under a support order to pay child support;

(g) The chairperson of the Judiciary Committee of the Legislature, who shall serve as the chairperson of the commission;

(h) The chairperson of the Health and Human Services Committee of the Legislature;

(i) The State Treasurer or his or her designee;

(j) The State Court Administrator or his or her designee; and

(k) The director of the Title IV-D Division or his or her designee.

(2)(a) The Supreme Court shall notify the Executive Board of the Legislative Council of its intent to review the child support guidelines pursuant to section 42-364.16. Following such notification, the chairperson of the commission shall call a meeting of the commission.

(b) Each time the commission meets pursuant to subdivision (2)(a) of this section, the Supreme Court shall make appointments to fill the membership under subdivision (1)(a) of this section and the chairperson of the Executive Board shall make appointments to fill each membership under subdivisions (1)(b) through (f) of this section. The terms of these members shall expire after the commission has fulfilled its duties pursuant to subsection (3) of this section.

(c) Members shall serve without compensation but shall be reimbursed for expenses incurred in the performance of their duties as provided in sections 81-1174 to 81-1177.

(d) If determined to be necessary to perform the duties of the commission, the commission may hire, contract, or otherwise obtain the services of consultants, researchers, aides, and other necessary support staff with prior approval of the chairperson of the Executive Board.

(e) For administrative purposes, the commission shall be managed and administered by the Legislative Council.

(3) The duties of the commission shall include, but are not limited to:

(a) Reviewing the child support guidelines adopted by the Supreme Court and recommending, if appropriate, any changes to the guidelines. Whenever practicable, the commission shall base its recommendations on economic data and statistics collected in the State of Nebraska. In reviewing the guidelines and formulating recommendations, the commission may conduct public hearings around the state; and

(b) Presenting reports, as deemed necessary, of its activities and recommendations to the Supreme Court and the Executive Board. Any reports submitted to the Executive Board shall be submitted electronically.

(4) The Supreme Court shall review the commission's reports. The Supreme Court may amend the child support guidelines established pursuant to section 42-364.16 based upon the commission's recommendations.

Source: Laws 2000, LB 972, § 5; Laws 2002, LB 1062, § 5; Laws 2006, LB 1113, § 43; Laws 2013, LB222, § 11; Laws 2020, LB381, § 33.

ARTICLE 34

EARLY CHILDHOOD INTERAGENCY COORDINATING COUNCIL

Section
43-3401. Early Childhood Interagency Coordinating Council; created; membership; terms; expenses.

43-3401 Early Childhood Interagency Coordinating Council; created; membership; terms; expenses.

The Early Childhood Interagency Coordinating Council is created. The council shall advise and assist the collaborating agencies in carrying out the provisions of the Early Intervention Act, the Quality Child Care Act, sections 79-1101 to 79-1104, and other early childhood care and education initiatives

under state supervision. Membership and activities of the council shall comply with all applicable provisions of federal law. Members of the council shall be appointed by the Governor and shall include, but not be limited to:

(1) Parents of children who require early intervention services, early childhood special education, and other early childhood care and education services; and

(2) Representatives of school districts, social services, health and medical services, family child care and center-based early childhood care and education programs, agencies providing training to staff of child care programs, resource and referral agencies, mental health services, developmental disabilities services, educational service units, Head Start, higher education, physicians, the Legislature, business persons, and the collaborating agencies.

Terms of the members shall be for three years, and a member shall not serve more than two consecutive three-year terms. Members shall be reimbursed for expenses as provided in sections 81-1174 to 81-1177, including child care expenses, with funds provided for such purposes through the Early Intervention Act, the Quality Child Care Act, and sections 79-1101 to 79-1104.

Members of the Nebraska Interagency Coordinating Council serving on July 13, 2000, shall constitute the Early Childhood Interagency Coordinating Council and shall serve for the remainder of their terms. The Governor shall make additional appointments as required by this section and to fill vacancies as needed. The Governor shall set the initial terms of additional appointees to result in staggered terms for members of the council. The Department of Health and Human Services and the State Department of Education shall provide and coordinate staff assistance to the council.

Source: Laws 2000, LB 1135, § 6; Laws 2006, LB 994, § 63; Laws 2007, LB296, § 170; Laws 2020, LB381, § 34.

Cross References

Early Intervention Act, see section 43-2501.
Quality Child Care Act, see section 43-2601.

ARTICLE 40
CHILDREN'S BEHAVIORAL HEALTH

Section
43-4001. Children's Behavioral Health Task Force; created; members; expenses; chairperson.
43-4002. Repealed. Laws 2020, LB1188, § 21.

43-4001 Children's Behavioral Health Task Force; created; members; expenses; chairperson.

(1) The Children's Behavioral Health Task Force is created. The task force shall consist of the following members:

(a) The chairperson of the Health and Human Services Committee of the Legislature or another member of the committee as his or her designee;

(b) The chairperson of the Appropriations Committee of the Legislature or another member of the committee as his or her designee;

(c) Two providers of community-based behavioral health services to children, appointed by the chairperson of the Health and Human Services Committee of the Legislature;

(d) One regional administrator appointed under section 71-808, appointed by the chairperson of the Health and Human Services Committee of the Legislature;

(e) Two representatives of organizations advocating on behalf of consumers of children's behavioral health services and their families, appointed by the chairperson of the Health and Human Services Committee of the Legislature;

(f) One juvenile court judge, appointed by the Chief Justice of the Supreme Court; and

(g) The probation administrator or his or her designee.

(2) Members of the task force shall serve without compensation but shall be reimbursed from the Nebraska Health Care Cash Fund for expenses as provided in sections 81-1174 to 81-1177.

(3) The chairperson of the Health and Human Services Committee of the Legislature or his or her designee shall serve as chairperson of the task force. Administrative and staff support for the task force shall be provided by the Health and Human Services Committee of the Legislature and the Appropriations Committee of the Legislature.

Source: Laws 2007, LB542, § 1; Laws 2008, LB928, § 14; Laws 2009, LB540, § 1; Laws 2020, LB381, § 35.

43-4002 Repealed. Laws 2020, LB1188, § 21.

ARTICLE 42

NEBRASKA CHILDREN'S COMMISSION

Section

43-4201 Legislative findings, declarations, and intent.

(1) The Legislature finds and declares that:

(a) The Health and Human Services Committee of the Legislature documented serious problems with the child welfare system in its 2011 report of the study that was conducted under Legislative Resolution 37, One Hundred Second Legislature, First Session, 2011;

(b) Improving the safety and well-being of Nebraska's children and families is a critical priority which must guide policy decisions in a variety of areas;

(c) To improve the safety and well-being of children and families in Nebraska, the legislative, judicial, and executive branches of government must work together to ensure:

(i) The integration, coordination, and accessibility of all services provided to children and families by the state, whether directly or pursuant to contract;

(ii) Reasonable access to appropriate services statewide and efficiency in service delivery; and

(iii) The availability of accurate and complete data as well as ongoing data analysis to identify important trends and problems as they arise; and

(d) As the primary state agency serving children and families, the Department of Health and Human Services must exemplify leadership, responsiveness, transparency, and efficiency and program managers within the agency must strive cooperatively to ensure that their programs view the needs of children and families comprehensively as a system rather than individually in isolation, including pooling funding when possible and appropriate.

(2) It is the intent of the Legislature in creating the Nebraska Children's Commission to provide for the needs identified in subsection (1) of this section, to provide strategic priorities for research or policy development within the child welfare system and juvenile justice system, and to provide a structure to the commission that maintains the framework of the three branches of government and their respective powers and duties.

Source: Laws 2012, LB821, § 1; Laws 2019, LB600, § 3.

43-4202 Nebraska Children's Commission; created; duties; members; expenses; meetings; staff; consultant.

(1) The Nebraska Children's Commission is created as a high-level leadership body to monitor and evaluate the child welfare and juvenile justice systems. The commission shall provide a permanent forum for collaboration among state, local, community, public, and private stakeholders in child welfare and juvenile justice programs and services.

(2)(a) The Governor shall appoint fifteen voting members. The members appointed pursuant to this subdivision shall represent stakeholders in the child welfare and juvenile justice systems and shall include: (i) A biological parent currently or previously involved in the child welfare system or juvenile justice system; (ii) a young adult previously in foster care; and (iii) a representative of a federally recognized Indian tribe residing within the State of Nebraska and appointed from a list of three nominees submitted by the Commission on Indian Affairs.

(b) The Nebraska Children's Commission shall have the following nonvoting, ex officio members: (i) The chairperson of the Health and Human Services Committee of the Legislature or a committee member designated by the chairperson; (ii) the chairperson of the Judiciary Committee of the Legislature or a committee member designated by the chairperson; (iii) the chairperson of

the Appropriations Committee of the Legislature or a committee member designated by the chairperson; (iv) three persons appointed by the State Court Administrator; (v) the executive director of the Foster Care Review Office; (vi) the Director of Children and Family Services of the Division of Children and Family Services of the Department of Health and Human Services or his or her designee; (vii) the Director of Behavioral Health of the Division of Behavioral Health of the Department of Health and Human Services or his or her designee; (viii) the Commissioner of Education or his or her designee; and (ix) the Inspector General of Nebraska Child Welfare.

(3) The nonvoting members may attend commission meetings and participate in the discussions of the commission, provide information to the commission on the policies, programs, and processes within their areas of expertise, and gather information for the commission. The commission may hire staff to carry out the responsibilities of the commission.

(4) For administrative purposes, the offices of the staff of the commission shall be located in the Foster Care Review Office. The commission may hire a consultant with experience in facilitating strategic planning to provide neutral, independent assistance in updating the statewide strategic plan.

(5) The commission, with assistance from the executive director of the Foster Care Review Office, shall employ a policy analyst to provide research and expertise to the commission relating to the child welfare system. The policy analyst shall work in conjunction with the staff of the commission. His or her responsibilities may include, but are not limited to: (a) Monitoring the Nebraska child welfare system and juvenile justice system to provide information to the commission; (b) analyzing child welfare and juvenile justice public policy through research and literature reviews and drafting policy reports when requested; (c) managing or leading projects or tasks and providing resource support to commission members and committees as determined by the chairperson of the commission; (d) serving as liaison among child welfare and juvenile justice stakeholders and the public and responding to information inquiries as required; and (e) other duties as assigned by the commission.

(6) Members of the commission shall be reimbursed for expenses as members of such commission as provided in sections 81-1174 to 81-1177. No member of the commission shall have any private financial interest, profit, or benefit from any work of the commission.

(7) It is the intent of the Legislature to fund the operations of the commission using the Nebraska Health Care Cash Fund for fiscal years 2019-20 and 2020-21.

Source: Laws 2012, LB821, § 2; Laws 2013, LB269, § 5; Laws 2013, LB530, § 5; Laws 2015, LB87, § 1; Laws 2016, LB746, § 24; Laws 2019, LB600, § 4; Laws 2020, LB381, § 36.

43-4203 Nebraska Children's Commission; duties; committees created; jurisdiction over committees; establish networks; organize subcommittees; conflict of interest.

(1) The Nebraska Children's Commission shall create a committee to examine the Office of Juvenile Services and the Juvenile Services Division of the Office of Probation Administration. Such committee shall review the role and effectiveness of out-of-home placements utilized in the juvenile justice system, including the youth rehabilitation and treatment centers, and make recommen-

dations to the commission on the juvenile justice continuum of care, including what populations should be served in out-of-home placements and what treatment services should be provided at the centers in order to appropriately serve those populations. Such committee shall also review how mental and behavioral health services are provided to juveniles in residential placements and the need for such services throughout Nebraska and make recommendations to the commission relating to those systems of care in the juvenile justice system. The committee shall collaborate with the Juvenile Justice Institute at the University of Nebraska at Omaha, the Center for Health Policy at the University of Nebraska Medical Center, the behavioral health regions as established in section 71-807, and state and national juvenile justice experts to develop recommendations. The recommendations shall include a plan to implement a continuum of care in the juvenile justice system to meet the needs of Nebraska families, including specific recommendations for the rehabilitation and treatment model. The recommendations shall be delivered to the commission and electronically to the Judiciary Committee of the Legislature annually by September 1.

(2) The commission shall collaborate with juvenile justice specialists of the Office of Probation Administration and county officials with respect to any county-operated practice model participating in the Crossover Youth Program of the Center for Juvenile Justice Reform at Georgetown University.

(3) The commission shall analyze case management workforce issues and make recommendations to the Health and Human Services Committee of the Legislature regarding:

(a) Salary comparisons with other states and the current pay structure based on job descriptions;

(b) Utilization of incentives for persons who work in the area of child welfare;

(c) Evidence-based training requirements for persons who work in the area of child welfare and their supervisors; and

(d) Collaboration with the University of Nebraska to increase and sustain such workforce.

(4) The Foster Care Reimbursement Rate Committee created pursuant to section 43-4216, the Nebraska Strengthening Families Act Committee created pursuant to section 43-4716, and the Bridge to Independence Advisory Committee created pursuant to section 43-4513 shall be under the jurisdiction of the commission.

(5) The commission shall work with the office of the State Court Administrator, as appropriate, and entities which coordinate facilitated conferencing as described in section 43-247.03.

(6) The commission shall work with administrators from each of the service areas designated pursuant to section 81-3116, the teams created pursuant to section 28-728, local foster care review boards, child advocacy centers, the teams created pursuant to the Supreme Court's Through the Eyes of the Child Initiative, community stakeholders, and advocates for child welfare programs and services to establish networks in each of such service areas. Such networks shall permit collaboration to strengthen the continuum of services available to child welfare agencies and to provide resources for children and juveniles outside the child protection system.

(7) The commission may organize subcommittees as it deems necessary. Members of the subcommittees may be members of the commission or may be individuals who have knowledge of the subcommittee's subject matter, professional expertise to assist the subcommittee in completing its assigned responsibilities, or the ability to collaborate within the subcommittee and with the commission to carry out the powers and duties of the commission. A subcommittee shall meet as necessary to complete the work delegated by the commission and shall report its findings to the relevant committee within the commission.

(8) No member of any committee or subcommittee created pursuant to this section shall have any private financial interest, profit, or benefit from any work of such committee or subcommittee.

Source: Laws 2012, LB821, § 3; Laws 2013, LB269, § 6; Laws 2013, LB530, § 6; Laws 2013, LB561, § 56; Laws 2014, LB464, § 33; Laws 2016, LB746, § 25; Laws 2018, LB732, § 1; Laws 2019, LB600, § 5; Laws 2020, LB1061, § 8.

43-4204 Strategic child welfare priorities for research or policy development.

The Nebraska Children's Commission shall determine three to five strategic child welfare priorities for research or policy development for each biennium to carry out the legislative intent stated in section 43-4201 for child welfare program and service reform in Nebraska. In determining the strategic child welfare priorities, the commission shall consider the findings and recommendations set forth in the annual report of the Foster Care Review Board, the annual report of the Office of Inspector General for Child Welfare, and the federal Child and Family Services Reviews outcomes.

Source: Laws 2012, LB821, § 4; Laws 2019, LB600, § 6.

43-4205 Repealed. Laws 2019, LB600, § 23.

43-4206 Department of Health and Human Services; Office of Probation Administration; cooperate with Nebraska Children's Commission.

The Department of Health and Human Services and the Office of Probation Administration shall fully cooperate with the Nebraska Children's Commission. The department shall provide to the commission all requested information on children and juveniles in Nebraska, including, but not limited to, departmental reports, data, programs, processes, finances, and policies.

Source: Laws 2012, LB821, § 6; Laws 2019, LB600, § 7.

43-4207 Nebraska Children's Commission; report; hearing.

The Nebraska Children's Commission shall annually provide a written report to the Governor and an electronic report to the Health and Human Services Committee of the Legislature defining its strategic child welfare priorities and progress toward addressing such priorities, summarizing reports from each committee and subcommittee of the commission, and making recommendations on or before September 1 of each year. The commission shall present a summary of such report in an annual public hearing before the Health and

Human Services Committee of the Legislature on or before December 1 of each year.

Source: Laws 2012, LB821, § 7; Laws 2015, LB87, § 2; Laws 2018, LB732, § 2; Laws 2019, LB600, § 8.

43-4208 Repealed. Laws 2019, LB600, § 23.

43-4209 Repealed. Laws 2019, LB600, § 23.

43-4210 Repealed. Laws 2019, LB600, § 23.

43-4211 Repealed. Laws 2019, LB600, § 23.

43-4213 Repealed. Laws 2019, LB600, § 23.

43-4214 Repealed. Laws 2019, LB600, § 23.

43-4215 Reimbursement rate recommendations; legislative findings and intent; Division of Children and Family Services of Department of Health and Human Services; implementation; pilot project; reports; contents.

(1) On or before July 1, 2014, the Division of Children and Family Services of the Department of Health and Human Services shall implement the reimbursement rate recommendations of the Foster Care Reimbursement Rate Committee as reported to the Legislature pursuant to section 43-4212 as such section existed before June 5, 2013.

(2) It is the intent of the Legislature to create additional levels of caregiving for youth in foster care and to create an implementation plan for treatment family care services in order to expand the service array for high-acuity youth in the foster care system.

(3) The Legislature finds that (a) there is a need for consistency in the implementation of additional tiers of caregiving across the state, (b) additional tiers of caregiving and reimbursement exist in the continuum of foster care services available in Nebraska, however, there is a variation in the rates, implementation and outcomes, (c) the use of rates outside of the established rate structure can create barriers to permanency for children entering adoption and guardianship and prohibits the state from accessing federal foster care funds that would otherwise be available under Title IV-E of the federal Social Security Act, and (d) additional tiers of caregiving should be utilized to support the exceptional caregiving needs of children.

(4) The Legislature further finds that (a) additional treatment services are needed to support the behavioral and mental health needs of youth who are at risk of entering, or who are stepping down from, congregate treatment placement, and (b) treatment family care services uses blended funding to support caregivers and prevent placement disruption.

(5) On or before October 1, 2022, the Division of Children and Family Services of the Department of Health and Human Services shall, in collaboration with the Foster Care Reimbursement Rate Committee, implement additional statewide tiers of foster care reimbursements for specialized caregiving with standardized rates for foster parents and child placing agencies.

(6)(a) On or before July 1, 2013, the Division of Children and Family Services of the Department of Health and Human Services shall develop a pilot project as provided in this subsection to implement the standardized level of care

assessment tools recommended by the Foster Care Reimbursement Rate Committee as reported to the Legislature pursuant to section 43-4212 as such section existed before June 5, 2013.

(b)(i) The pilot project shall comprise two groups: One in an urban area and one in a rural area. The size of each group shall be determined by the division to ensure an accurate estimate of the effectiveness and cost of implementing such tools statewide.

(ii) The Nebraska Children's Commission shall review and provide a progress report on the pilot project by October 1, 2013, to the department and electronically to the Health and Human Services Committee of the Legislature; shall provide to the department and electronically to the committee by December 1, 2013, a report including recommendations and any legislation necessary, including appropriations, to adopt the recommendations, regarding the adaptation or continuation of the implementation of a statewide standardized level of care assessment; and shall provide to the department and electronically to the committee by February 1, 2014, a final report and final recommendations of the commission.

Source: Laws 2013, LB530, § 2; Laws 2022, LB1173, § 10.

43-4216 Foster Care Reimbursement Rate Committee; created; members; terms; vacancies.

(1) The Foster Care Reimbursement Rate Committee is created. The committee shall be convened at least once every four years.

(2) The Foster Care Reimbursement Rate Committee shall consist of no fewer than nine members, including:

(a) The following voting members: (i) Representatives from a child welfare agency that contracts directly with foster parents, from each of the service areas designated pursuant to section 81-3116; (ii) a representative from an advocacy organization which deals with legal and policy issues that include child welfare; (iii) a representative from an advocacy organization, the singular focus of which is issues impacting children; (iv) a representative from a foster and adoptive parent association; (v) a representative from a lead agency; (vi) a representative from a child advocacy organization that supports young adults who were in foster care as children; (vii) a foster parent who contracts directly with the Department of Health and Human Services; and (viii) a foster parent who contracts with a child welfare agency; and

(b) The following nonvoting, ex officio members: (i) The chief executive officer of the Department of Health and Human Services or his or her designee and (ii) representatives from the Division of Children and Family Services of the department from each service area designated pursuant to section 81-3116, including at least one division employee with a thorough understanding of the current foster care payment system and at least one division employee with a thorough understanding of the N-FOCUS electronic data collection system. The nonvoting, ex officio members of the committee may attend committee meetings and participate in discussions of the committee and shall gather and provide information to the committee on the policies, programs, and processes of each of their respective bodies. The nonvoting, ex officio members shall not vote on decisions or recommendations by the committee.

(3) Members of the committee shall serve for terms of four years and until their successors are appointed and qualified. The Nebraska Children's Commission shall appoint the members of the committee and the chairperson of the committee and may fill vacancies on the committee as they occur.

Source: Laws 2013, LB530, § 3; Laws 2019, LB600, § 9.

43-4217 Foster Care Reimbursement Rate Committee; duties; reports.

(1) The Foster Care Reimbursement Rate Committee created in section 43-4216 shall review and make recommendations in the following areas: Foster care reimbursement rates, the statewide standardized level of care assessment, and adoption assistance payments as required by section 43-117. In making recommendations to the Legislature, the committee shall use the then-current foster care reimbursement rates as the beginning standard for setting reimbursement rates. The committee shall adjust the standard to reflect the reasonable cost of achieving measurable outcomes for all children in foster care in Nebraska. The committee shall (a) analyze then-current consumer expenditure data reflecting the costs of caring for a child in Nebraska, (b) identify and account for additional costs specific to children in foster care, and (c) apply a geographic cost-of-living adjustment for Nebraska. The reimbursement rate structure shall comply with funding requirements related to Title IV-E of the federal Social Security Act, as amended, and other federal programs as appropriate to maximize the utilization of federal funds to support foster care.

(2) The committee shall review the role and effectiveness of and make recommendations on the statewide standardized level of care assessment containing standardized criteria to determine a foster child's placement needs and to identify the appropriate foster care reimbursement rate. The committee shall review other states' assessment models and foster care reimbursement rate structures in completing the statewide standardized level of care assessment review and the standard statewide foster care reimbursement rate structure. The committee shall ensure the statewide standardized level of care assessment and the standard statewide foster care reimbursement rate structure provide incentives to tie performance in achieving the goals of safety, maintaining family connection, permanency, stability, and well-being to reimbursements received. The committee shall review and make recommendations on assistance payments to adoptive parents as required by section 43-117. The committee shall make recommendations to ensure that changes in foster care reimbursement rates do not become a disincentive to permanency.

(3) The Foster Care Reimbursement Rate Committee shall provide electronic reports with its recommendation to the Health and Human Services Committee of the Legislature on July 1, 2016, and every four years thereafter.

Source: Laws 2013, LB530, § 4; Laws 2019, LB600, § 10.

43-4218 Transferred to section 43-4716.

43-4219 Foster care reimbursement rates; increases; legislative intent.

It is the intent of the Legislature that beginning July 1, 2021, the Division of Children and Family Services of the Department of Health and Human Services shall implement a two-percent increase to foster care reimbursement rates for fiscal year 2021-22 and beginning July 1, 2022, the division shall

implement a two-percent increase to foster care reimbursement rates for fiscal year 2022-23.

Source: Laws 2021, LB100, § 3.

ARTICLE 43

OFFICE OF INSPECTOR GENERAL OF NEBRASKA CHILD WELFARE ACT

Section

43-4301 Act, how cited.

Sections 43-4301 to 43-4332 shall be known and may be cited as the Office of Inspector General of Nebraska Child Welfare Act.

Source: Laws 2012, LB821, § 8; Laws 2015, LB347, § 4; Laws 2017, LB207, § 1.

43-4318 Office; duties; reports of death, serious injury, or allegations of sexual abuse; when required; reports of occurrences at youth rehabilitation and treatment center; state agencies, law enforcement agencies, and prosecuting attorneys; cooperation; confidentiality.

(1) The office shall investigate:

(a) Allegations or incidents of possible misconduct, misfeasance, malfeasance, or violations of statutes or of rules or regulations of:

(i) The department by an employee of or person under contract with the department, a private agency, a licensed child care facility, a foster parent, or any other provider of child welfare services or which may provide a basis for discipline pursuant to the Uniform Credentialing Act;

(ii) Subject to subsection (5) of this section, the juvenile services division by an employee of or person under contract with the juvenile services division, a private agency, a licensed facility, a foster parent, or any other provider of juvenile justice services;

(iii) The commission by an employee of or person under contract with the commission related to programs and services supported by the Nebraska County Juvenile Services Plan Act, the Community-based Juvenile Services Aid Program, juvenile pretrial diversion programs, or inspections of juvenile facilities; and

(iv) A juvenile detention facility and staff secure juvenile facility by an employee of or person under contract with such facilities;

(b) Death or serious injury in foster homes, private agencies, child care facilities, juvenile detention facilities, staff secure juvenile facilities, and other programs and facilities licensed by or under contract with the department or the juvenile services division when the office, upon review, determines the death or serious injury did not occur by chance; and

(c) Death or serious injury in any case in which services are provided by the department or the juvenile services division to a child or his or her parents or any case involving an investigation under the Child Protection and Family Safety Act, which case has been open for one year or less and upon review determines the death or serious injury did not occur by chance.

(2) The department, the juvenile services division, each juvenile detention facility, and each staff secure juvenile facility shall report to the office (a) all cases of death or serious injury of a child in a foster home, private agency, child care facility or program, or other program or facility licensed by the department or inspected through the commission to the Inspector General as soon as reasonably possible after the department or the Office of Probation Administration learns of such death or serious injury and (b) all allegations of sexual abuse of a state ward, juvenile on probation, juvenile in a detention facility, and juvenile in a residential child-caring agency. For purposes of this subsection, serious injury means an injury or illness caused by suspected abuse, neglect, or maltreatment which leaves a child in critical or serious condition.

(3)(a) The Office of Juvenile Services shall report to the office of Inspector General of Nebraska Child Welfare as soon as reasonably possible after any of the following instances occur at a youth rehabilitation and treatment center:

(i) An assault;

(ii) An escape or elopement;

(iii) An attempted suicide;

(iv) Self-harm by a juvenile;

(v) Property damage not caused by normal wear and tear;

(vi) The use of mechanical restraints on a juvenile;

(vii) A significant medical event suffered by a juvenile; and

(viii) Internally substantiated violations of 34 U.S.C. 30301 et seq.

(b) The Office of Juvenile Services and the office of Inspector General of Nebraska Child Welfare shall, if requested by either party, work in collaboration to clarify the specific parameters to comply with subdivision (3)(a) of this section.

(4) The department shall notify the office of Inspector General of Nebraska Child Welfare of any leadership changes within the Office of Juvenile Services and the youth rehabilitation and treatment centers.

(5) With respect to any investigation conducted by the Inspector General pursuant to subdivision (1)(a) of this section that involves possible misconduct by an employee of the juvenile services division, the Inspector General shall immediately notify the probation administrator and provide the information pertaining to potential personnel matters to the Office of Probation Administration.

(6) Any investigation conducted by the Inspector General shall be independent of and separate from an investigation pursuant to the Child Protection and

Family Safety Act. The Inspector General and his or her staff are subject to the reporting requirements of the Child Protection and Family Safety Act.

(7) Notwithstanding the fact that a criminal investigation, a criminal prosecution, or both are in progress, all law enforcement agencies and prosecuting attorneys shall cooperate with any investigation conducted by the Inspector General and shall, immediately upon request by the Inspector General, provide the Inspector General with copies of all law enforcement reports which are relevant to the Inspector General's investigation. All law enforcement reports which have been provided to the Inspector General pursuant to this section are not public records for purposes of sections 84-712 to 84-712.09 and shall not be subject to discovery by any other person or entity. Except to the extent that disclosure of information is otherwise provided for in the Office of Inspector General of Nebraska Child Welfare Act, the Inspector General shall maintain the confidentiality of all law enforcement reports received pursuant to its request under this section. Law enforcement agencies and prosecuting attorneys shall, when requested by the Inspector General, collaborate with the Inspector General regarding all other information relevant to the Inspector General's investigation. If the Inspector General in conjunction with the Public Counsel determines it appropriate, the Inspector General may, when requested to do so by a law enforcement agency or prosecuting attorney, suspend an investigation by the office until a criminal investigation or prosecution is completed or has proceeded to a point that, in the judgment of the Inspector General, reinstatement of the Inspector General's investigation will not impede or infringe upon the criminal investigation or prosecution. Under no circumstance shall the Inspector General interview any minor who has already been interviewed by a law enforcement agency, personnel of the Division of Children and Family Services of the department, or staff of a child advocacy center in connection with a relevant ongoing investigation of a law enforcement agency.

Source: Laws 2012, LB821, § 25; Laws 2013, LB561, § 58; Laws 2014, LB853, § 28; Laws 2015, LB347, § 13; Laws 2016, LB954, § 3; Laws 2017, LB207, § 2; Laws 2018, LB1078, § 4; Laws 2020, LB1144, § 1.

Cross References

Child Protection and Family Safety Act, see section 28-710.
Nebraska County Juvenile Services Plan Act, see section 43-3501.
Uniform Credentialing Act, see section 38-101.

43-4323 Inspector General; powers; rights of person required to provide information.

The Inspector General may issue a subpoena, enforceable by action in an appropriate court, to compel any person to appear, give sworn testimony, or produce documentary or other evidence deemed relevant to a matter under his or her inquiry. A person thus required to provide information shall be paid the same fees and travel allowances and shall be accorded the same privileges and immunities as are extended to witnesses in the district courts of this state and shall also be entitled to have counsel present while being questioned. Any fees associated with counsel present under this section shall not be the responsibility of the office of Inspector General of Nebraska Child Welfare.

Source: Laws 2012, LB821, § 30; Laws 2017, LB207, § 3.

43-4325 Reports of investigations; distribution; redact confidential information; powers of office; summarized final report; release.

(1) Reports of investigations conducted by the office shall not be distributed beyond the entity that is the subject of the report without the consent of the Inspector General.

(2) Except when a report is provided to a guardian ad litem or an attorney in the juvenile court pursuant to subsection (2) of section 43-4327, the office shall redact confidential information before distributing a report of an investigation. The office may disclose confidential information to the chairperson of the Health and Human Services Committee of the Legislature or the chairperson of the Judiciary Committee of the Legislature when such disclosure is, in the judgment of the Public Counsel, desirable to keep the chairperson informed of important events, issues, and developments in the Nebraska child welfare system.

(3)(a) A summarized final report based on an investigation may be publicly released in order to bring awareness to systemic issues.

(b) Such report shall be released only:

(i) After a disclosure is made to the appropriate chairperson or chairpersons pursuant to subsection (2) of this section; and

(ii) If a determination is made by the Inspector General with the appropriate chairperson that doing so would be in the best interest of the public.

(c) If there is disagreement about whether releasing the report would be in the best interest of the public, the chairperson of the Executive Board of the Legislative Council may be asked to make the final decision.

(4) Records and documents, regardless of physical form, that are obtained or produced by the office in the course of an investigation are not public records for purposes of sections 84-712 to 84-712.09. Reports of investigations conducted by the office are not public records for purposes of sections 84-712 to 84-712.09.

(5) The office may withhold the identity of sources of information to protect from retaliation any person who files a complaint or provides information in good faith pursuant to the Office of Inspector General of Nebraska Child Welfare Act.

Source: Laws 2012, LB821, § 32; Laws 2015, LB347, § 18; Laws 2017, LB207, § 4.

43-4327 Inspector General's report of investigation; contents; distribution.

(1) The Inspector General's report of an investigation shall be in writing to the Public Counsel and shall contain recommendations. The report may recommend systemic reform or case-specific action, including a recommendation for discharge or discipline of employees or for sanctions against a foster parent, private agency, licensed child care facility, or other provider of child welfare services or juvenile justice services. All recommendations to pursue discipline shall be in writing and signed by the Inspector General. A report of an investigation shall be presented to the director, the probation administrator, or the executive director within fifteen days after the report is presented to the Public Counsel.

(2) Any person receiving a report under this section shall not further distribute the report or any confidential information contained in the report beyond the entity that is the subject of the report. The Inspector General, upon notifying the Public Counsel and the director, the probation administrator, or the executive director, may distribute the report, to the extent that it is relevant to a child's welfare, to the guardian ad litem and attorneys in the juvenile court in which a case is pending involving the child or family who is the subject of the report. The report shall not be distributed beyond the parties except through the appropriate court procedures to the judge.

(3) A report that identifies misconduct, misfeasance, malfeasance, or violation of statute, rules, or regulations by an employee of the department, the juvenile services division, the commission, a private agency, a licensed child care facility, or another provider that is relevant to providing appropriate supervision of an employee may be shared with the employer of such employee. The employer may not further distribute the report or any confidential information contained in the report.

Source: Laws 2012, LB821, § 34; Laws 2015, LB347, § 20; Laws 2017, LB207, § 5.

43-4328 Report; director, probation administrator, or executive director; accept, reject, or request modification; when final; written response; corrected report; credentialing issue; how treated.

(1) Within fifteen days after a report is presented to the director, the probation administrator, or the executive director under section 43-4327, he or she shall determine whether to accept, reject, or request in writing modification of the recommendations contained in the report. The written response may include corrections of factual errors. The Inspector General, with input from the Public Counsel, may consider the director's, probation administrator's, or executive director's request for modifications but is not obligated to accept such request. Such report shall become final upon the decision of the director, the probation administrator, or the executive director to accept or reject the recommendations in the report or, if the director, the probation administrator, or the executive director requests modifications, within fifteen days after such request or after the Inspector General incorporates such modifications, whichever occurs earlier.

(2) After the recommendations have been accepted, rejected, or modified, the report shall be presented to the foster parent, private agency, licensed child care facility, or other provider of child welfare services or juvenile justice services that is the subject of the report and to persons involved in the implementation of the recommendations in the report. Within thirty days after receipt of the report, the foster parent, private agency, licensed child care facility, or other provider may submit a written response to the office to correct any factual errors in the report and shall determine whether to accept, reject, or request in writing modification of the recommendations contained in the report. The Inspector General, with input from the Public Counsel, shall consider all materials submitted under this subsection to determine whether a corrected report shall be issued. If the Inspector General determines that a corrected report is necessary, the corrected report shall be issued within fifteen days after receipt of the written response.

(3) If the Inspector General does not issue a corrected report pursuant to subsection (2) of this section, or if the corrected report does not address all issues raised in the written response, the foster parent, private agency, licensed child care facility, or other provider may request that its written response, or portions of the response, be appended to the report or corrected report.

(4) A report which raises issues related to credentialing under the Uniform Credentialing Act shall be submitted to the appropriate credentialing board under the act.

Source: Laws 2012, LB821, § 35; Laws 2015, LB347, § 21; Laws 2017, LB207, § 6.

Cross References

Uniform Credentialing Act, see section 38-101.

43-4331 Summary of reports and investigations; contents.

On or before September 15 of each year, the Inspector General shall provide to the Health and Human Services Committee of the Legislature, the Judiciary Committee of the Legislature, the Supreme Court, and the Governor a summary of reports and investigations made under the Office of Inspector General of Nebraska Child Welfare Act for the preceding year. The summary provided to the committees shall be provided electronically. The summaries shall detail recommendations and the status of implementation of recommendations and may also include recommendations to the committees regarding issues discovered through investigation, audits, inspections, and reviews by the office that will increase accountability and legislative oversight of the Nebraska child welfare system, improve operations of the department, the juvenile services division, the commission, and the Nebraska child welfare system, or deter and identify fraud, abuse, and illegal acts. Such summary shall include summaries of alternative response cases under alternative response implemented in accordance with sections 28-710.01, 28-712, and 28-712.01 reviewed by the Inspector General. The summaries shall not contain any confidential or identifying information concerning the subjects of the reports and investigations.

Source: Laws 2012, LB821, § 38; Laws 2013, LB222, § 12; Laws 2014, LB853, § 29; Laws 2015, LB347, § 23; Laws 2020, LB1061, § 9.

43-4332 Disclosure of information by employee; personnel actions prohibited.

Any person who has authority to recommend, approve, direct, or otherwise take or affect personnel action shall not, with respect to such authority:

(1) Take personnel action against an employee because of the disclosure of information by the employee to the office which the employee reasonably believes evidences wrongdoing under the Office of Inspector General of Nebraska Child Welfare Act;

(2) Take personnel action against an employee as a reprisal for the submission of an allegation of wrongdoing under the act to the office by such employee; or

(3) Take personnel action against an employee as a reprisal for providing information or testimony pursuant to an investigation by the office.

Source: Laws 2017, LB207, § 7.

ARTICLE 44
CHILD WELFARE SERVICES

Section

43-4401 Terms, defined.

For purposes of sections 43-4401 to 43-4407:

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

(2) Service area means a geographic area administered by the department and designated pursuant to section 81-3116.

Source: Laws 2012, LB1160, § 1; Laws 2022, LB1173, § 11.

43-4402 Legislative findings.

The Legislature finds that the department needs a uniform electronic data collection system to collect and evaluate data regarding children served, the quality of child welfare services provided, and the outcomes produced by such child welfare services.

Source: Laws 2012, LB1160, § 2; Laws 2022, LB1173, § 12.

43-4403 Legislative intent.

It is the intent of the Legislature:

(1) To provide for (a) legislative oversight of the child welfare system through an improved electronic data collection system, (b) improved child welfare outcome measurements through increased reporting by the department, and (c) an independent evaluation of the child welfare system; and

(2) To develop an electronic data collection system to integrate child welfare information into one system to more effectively manage, track, and share information, especially in child welfare case management.

Source: Laws 2012, LB1160, § 3; Laws 2022, LB1173, § 13.

43-4406 Child welfare services; report; contents.

On or before each September 15, the department shall report electronically to the Health and Human Services Committee of the Legislature the following information regarding child welfare services, with respect to children served by the department:

(1) The percentage of children served and the allocation of the child welfare budget, categorized by service area, including:

(a) The percentage of children served, by service area and the corresponding budget allocation; and

(b) The percentage of children served who are wards of the state and the corresponding budget allocation;

(2) The number of siblings in out-of-home care placed with siblings as of the June 30 immediately preceding the date of the report, categorized by service area;

(3) The number of waivers granted under subsection (2) of section 71-1904;

(4) An update of the information in the report of the Children's Behavioral Health Task Force pursuant to sections 43-4001 to 43-4003, including:

(a) The number of children receiving mental health and substance abuse services annually by the Division of Behavioral Health of the department;

(b) The number of children receiving behavioral health services annually at the Hastings Regional Center;

(c) The number of state wards receiving behavioral health services as of September 1 immediately preceding the date of the report;

(d) Funding sources for children's behavioral health services for the fiscal year ending on the immediately preceding June 30;

(e) Expenditures in the immediately preceding fiscal year by the division, categorized by category of behavioral health service and by behavioral health region; and

(f) Expenditures in the immediately preceding fiscal year from the medical assistance program and CHIP as defined in section 68-969 for mental health and substance abuse services, for all children and for wards of the state;

(5) The following information as obtained for each service area:

(a) Case manager education, including college degree, major, and level of education beyond a baccalaureate degree;

(b) Average caseload per case manager;

(c) Average number of case managers per child during the preceding twelve months;

(d) Average number of case managers per child for children who have been in the child welfare system for three months, for six months, for twelve months, and for eighteen months and the consecutive yearly average for children until the age of majority or permanency is attained;

(e) Monthly case manager turnover;

(f) Monthly face-to-face contacts between each case manager and the children on his or her caseload;

(g) Monthly face-to-face contacts between each case manager and the parent or parents of the children on his or her caseload;

(h) Case documentation of monthly consecutive team meetings per quarter;

(i) Case documentation of monthly consecutive parent contacts per quarter;

(j) Case documentation of monthly consecutive child contacts with case manager per quarter;

(k) Case documentation of monthly consecutive contacts between child welfare service providers and case managers per quarter;

(l) Timeliness of court reports; and

(m) Non-court-involved children, including the number of children served, the types of services requested, the specific services provided, the cost of the services provided, and the funding source;

(6) All placements in residential treatment settings made or paid for by the child welfare system, the Office of Juvenile Services, the State Department of Education or local education agencies, and the medical assistance program, including, but not limited to:

(a) Child variables;

(b) Reasons for placement;

(c) The percentage of children denied medicaid-reimbursed services and denied the level of placement requested;

(d) With respect to each child in a residential treatment setting:

(i) If there was a denial of initial placement request, the length and level of each placement subsequent to denial of initial placement request and the status of each child before and immediately after, six months after, and twelve months after placement;

(ii) Funds expended and length of placements;

(iii) Number and level of placements;

(iv) Facility variables; and

(v) Identification of specific child welfare services unavailable in the child's community that, if available, could have prevented the need for residential treatment; and

(e) Identification of child welfare services unavailable in the state that, if available, could prevent out-of-state placements;

(7) For any individual involved in the child welfare system receiving a service or a placement through the department or its agent for which referral is necessary, the date when such referral was made by the department or its agent and the date and the method by which the individual receiving the services was notified of such referral. To the extent the department becomes aware of the date when the individual receiving the referral began receiving such services, the department or its agent shall document such date;

(8) The number of sexual abuse allegations that occurred for children being served by the Division of Children and Family Services of the Department of Health and Human Services and placed at a residential child-caring agency and the number of corresponding (a) screening decision occurrences by category, (b) open investigations by category, and (c) agency substantiations, court substantiations, and court-pending status cases; and

(9) Information on children who are reported or suspected victims of sex trafficking of a minor or labor trafficking of a minor, as defined in section 28-830, including:

(a) The number of reports to the statewide toll-free number pursuant to section 28-711 alleging sex trafficking of a minor or labor trafficking of a minor and the number of children alleged to be victims;

(b) The number of substantiated victims of sex trafficking of a minor or labor trafficking of a minor, including demographic information and information on whether the children were already served by the department;

(c) The number of children determined to be reported or suspected victims of sex trafficking of a minor or labor trafficking of a minor, including demographic information and information on whether the children were previously served by the department;

(d) The types and costs of services provided to children who are reported or suspected victims of sex trafficking of a minor or labor trafficking of a minor; and

(e) The number of ongoing cases opened due to allegations of sex trafficking of a minor or labor trafficking of a minor and number of children and families served through these cases.

Source: Laws 2012, LB1160, § 6; Laws 2013, LB222, § 13; Laws 2017, LB417, § 6; Laws 2018, LB1078, § 5; Laws 2019, LB519, § 15; Laws 2022, LB1173, § 14.

43-4407 Service area administrator; annual survey; duties; reports.

(1) Each service area administrator shall annually survey children, parents, foster parents, judges, guardians ad litem, attorneys representing parents, and service providers involved with the child welfare system to monitor satisfaction with (a) adequacy of communication by the case manager, (b) response by the department to requests and problems, (c) transportation issues, (d) medical and psychological services for children and parents, (e) visitation schedules, (f) payments, (g) support services to foster parents, (h) adequacy of information about foster children provided to foster parents, and (i) the case manager's fulfillment of his or her responsibilities. A summary of the survey shall be reported electronically to the Health and Human Services Committee of the Legislature on September 15, 2012, and each September 15 thereafter.

(2) Each service area administrator shall provide monthly reports to the child advocacy center that corresponds with the geographic location of the child regarding the services provided through the department when the child is identified as a voluntary or non-court-involved child welfare case. The monthly report shall include the plan implemented by the department for the child and family and the status of compliance by the family with the plan. The child advocacy center shall report electronically to the Health and Human Services Committee of the Legislature on September 15, 2012, and every September 15 thereafter, or more frequently if requested by the committee.

Source: Laws 2012, LB1160, § 7; Laws 2013, LB222, § 14; Laws 2022, LB1173, § 15.

43-4408 Repealed. Laws 2022, LB1173, § 23.

43-4409 Repealed. Laws 2022, LB1173, § 23.

43-4411 Child welfare system; legislative findings and intent.

(1) The Legislature finds that the State of Nebraska, in order to support the well-being, permanency, and safety of children and families in Nebraska's communities, needs to comprehensively transform its child welfare system. The Legislature further finds that this comprehensive transformation will require an integrated model addressing all aspects of the system and strong partnerships among the legislative, executive, and judicial branches of government and community stakeholders.

(2) It is the intent of the Legislature to:

(a) Establish an intersectoral child welfare practice model work group;

(b) Establish appropriate strategic leadership and guidance for practice and finance model development from across the three branches of government; and

(c) Appropriate funds for contractual support to build the practice and finance model for Nebraska.

Source: Laws 2022, LB1173, § 1.

43-4412 Child welfare system; terms, defined.

For purposes of sections 43-4411 to 43-4416:

(1) Child welfare system means children and families receiving, and persons providing or effecting:

(a) In-home and out-of-home child welfare case management services;

(b) Physical and behavioral health care;

(c) Youth rehabilitation and treatment center services;

(d) Adoption or guardianship assistance services;

(e) Prevention services;

(f) Post-adoption or post-guardianship related services; and

(g) Public or private education and training services;

(2) Individual with lived experience in the child welfare system means an individual who has previously received services from the child welfare system, currently receives such services, or is at risk of needing such services and who has valuable insight to contribute;

(3) Practice and finance model means an evidence-based or evidence-informed approach to the practice and financing of the child welfare system across the State of Nebraska;

(4) Strategic leadership group means the child welfare strategic leadership group created in section 43-4414; and

(5) Work group means the child welfare practice model work group created in section 43-4413.

Source: Laws 2022, LB1173, § 2.

43-4413 Child welfare system; work group; established; duties.

(1) There is hereby established a child welfare practice model work group. The work group may include, but is not limited to:

(a) The Director of Behavioral Health of the Division of Behavioral Health or the director's designee;

(b) The Director of Children and Family Services of the Division of Children and Family Services or the director's designee;

(c) The Director of Developmental Disabilities of the Division of Developmental Disabilities or the director's designee;

(d) The Director of Medicaid and Long-Term Care of the Division of Medicaid and Long-Term Care or the director's designee;

(e) The Director of Public Health of the Division of Public Health or the director's designee;

(f) The Commissioner of Education or the commissioner's designee;

(g) The State Court Administrator;

(h) A representative of the state judicial branch to be appointed by the Chief Justice; and

(i) Representatives from each federally recognized Indian tribe within the State of Nebraska, appointed by each tribe's Tribal Council or Executive Committee.

(2) The work group shall develop a practice and finance model for child welfare system transformation in Nebraska, with consultation from key stakeholders, judges from separate juvenile courts and judges of county courts sitting as juvenile courts, private child welfare providers, individuals with lived experience in the child welfare system, the Nebraska Children's Commission, the Inspector General of Nebraska Child Welfare, the Foster Care Review Office, child advocacy centers, law enforcement, and county attorneys. The practice and finance model shall include, but not be limited to:

(a) Development of a statewide mission and vision for the child welfare system in Nebraska;

(b) Development of values and practice priorities for the child welfare system in Nebraska;

(c) Development of statewide program goals and a practice and finance model for child welfare system case management and service delivery;

(d) Development of engagement strategies to support community involvement in child welfare system transformation;

(e) Development of strategies that strengthen relationships across the court system, probation, executive branch agencies, the State Department of Education, and community partners;

(f) Development of strategies that support integration across agencies;

(g) Development of accountabilities across the entire child welfare system;

(h) Evaluation of the state's Title IV-E claiming practices and identification of appropriate steps to optimize federal reimbursement for child welfare system expenditures;

(i) Opportunities and financial mechanisms for providers to pilot innovative solutions to meet program goals; and

(j) Development of a strategy for data collection and outcome monitoring.

(3) The work group shall provide monthly updates to the strategic leadership group.

Source: Laws 2022, LB1173, § 3.

43-4414 Child welfare system; strategic leadership group; members.

There is hereby established a child welfare strategic leadership group. The strategic leadership group shall be a nonvoting group that exists for purposes of receiving updates on the work group's activities. The strategic leadership group shall consist of:

(1) The chairperson of the Judiciary Committee of the Legislature;

(2) The chairperson of the Health and Human Services Committee of the Legislature;

(3) The Chief Justice or the Chief Justice's designee; and

(4) The chief executive officer of the Department of Health and Human Services or such officer's designee.

Source: Laws 2022, LB1173, § 4.

43-4415 Child welfare system; work group; consultant; submit practice and finance model framework.

(1) The Department of Health and Human Services shall contract with an outside consultant with expertise in child welfare system transformation by December 15, 2022. The consultant shall assist the work group with the development of a written framework for the practice and finance model.

(2) On or before December 1, 2023, the work group shall electronically submit the written practice and finance model framework to the Health and Human Services Committee of the Legislature.

Source: Laws 2022, LB1173, § 5.

43-4416 Child welfare system; work group; strategic leadership group; termination.

The work group and strategic leadership group shall terminate on December 31, 2023.

Source: Laws 2022, LB1173, § 6.

ARTICLE 45

YOUNG ADULT BRIDGE TO INDEPENDENCE ACT

Section

43-4502 Purpose of act.

The purpose of the Young Adult Bridge to Independence Act is to provide support for former state or tribal wards, and for other youth who are exiting state care, who are disconnected from family support, and who are at risk of

homelessness, as they transition to adulthood, become self-sufficient, and create permanent relationships. The bridge to independence program shall at all times recognize and respect the autonomy of the young adult. Nothing in the Young Adult Bridge to Independence Act shall be construed to abrogate any other rights that a person who has attained eighteen or nineteen years of age may have as an adult under state or tribal law.

Source: Laws 2013, LB216, § 2; Laws 2014, LB853, § 31; Laws 2020, LB848, § 3; Laws 2023, LB50, § 25.

43-4503 Terms, defined.

For purposes of the Young Adult Bridge to Independence Act:

(1) Age of eligibility means:

(a) Nineteen years of age; or

(b) Eighteen years of age if the young adult has attained the age of majority under tribal law;

(2) Bridge to independence program means the extended services and support available to a young adult under the Young Adult Bridge to Independence Act other than extended guardianship assistance described in section 43-4511 and extended adoption assistance described in section 43-4512;

(3) Child means an individual who has not attained twenty-one years of age;

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

(5) Supervised independent living setting means an independent supervised setting, consistent with 42 U.S.C. 672(c). Supervised independent living settings shall include, but not be limited to, single or shared apartments, houses, host homes, college dormitories, or other postsecondary educational or vocational housing;

(6) Voluntary services and support agreement means a voluntary placement agreement as defined in 42 U.S.C. 672(f) between the department and a young adult as his or her own guardian; and

(7) Young adult means an individual who has attained the age of eligibility but who has not attained twenty-one years of age.

Source: Laws 2013, LB216, § 3; Laws 2014, LB853, § 32; Laws 2015, LB243, § 15; Laws 2020, LB848, § 4.

43-4504 Bridge to independence program; availability.

The bridge to independence program is available, on a voluntary basis, to a young adult:

(1) Who has attained the age of eligibility;

(2) Who was adjudicated to be a juvenile described in:

(a) Subdivision (3)(a) of section 43-247 or the equivalent under tribal law;

(b) Subdivision (8) of section 43-247 or the equivalent under tribal law if the young adult's guardianship or state-funded adoption assistance agreement was disrupted or terminated after he or she had attained the age of sixteen years and (i) who, upon attaining the age of eligibility, was in an out-of-home placement or had been discharged to independent living or (ii) with respect to whom a kinship guardianship assistance agreement or an adoption assistance agreement was in effect pursuant to 42 U.S.C. 673 if the young adult had

attained sixteen years of age before the agreement became effective or with respect to whom a state-funded guardianship assistance agreement or a state-funded adoption assistance agreement was in effect if the young adult had attained sixteen years of age before the agreement became effective; or

(c) Subdivision (1), (2), or (3)(b) of section 43-247 and (i) after January 1, 2025, upon one day prior to attaining nineteen years of age or the age of majority under relevant tribal law, was in a court-ordered out-of-home placement and (ii) such placement had been authorized or reauthorized in the six months prior to the juvenile attaining nineteen years of age in a court order finding that it would be contrary to the welfare of the juvenile to remain in or return to the juvenile's family home;

(3) Who is:

(a) Completing secondary education or an educational program leading to an equivalent credential;

(b) Enrolled in an institution which provides postsecondary or vocational education;

(c) Employed for at least eighty hours per month;

(d) Participating in a program or activity designed to promote employment or remove barriers to employment; or

(e) Incapable of doing any of the activities described in subdivisions (3)(a) through (d) of this section due to a medical condition, which incapacity is supported by regularly updated information in the case plan of the young adult;

(4) Who is a Nebraska resident, except that this requirement shall not disqualify a young adult who was a Nebraska resident but was placed outside Nebraska pursuant to the Interstate Compact for the Placement of Children; and

(5) Who does not meet the level of care for a nursing facility as defined in section 71-424, for a skilled nursing facility as defined in section 71-429, or for an intermediate care facility for persons with developmental disabilities as defined in section 71-421.

Source: Laws 2013, LB216, § 4; Laws 2014, LB853, § 33; Laws 2015, LB243, § 16; Laws 2019, LB600, § 11; Laws 2020, LB848, § 5; Laws 2023, LB50, § 26.

Cross References

Interstate Compact for the Placement of Children, see section 43-1103.

43-4505 Extended services and support; services enumerated.

Extended services and support provided under the bridge to independence program include, but are not limited to:

(1) Medical care under the medical assistance program for young adults who meet the eligibility requirements of section 43-4504 and have signed a voluntary services and support agreement as provided in section 43-4506;

(2) Medical care under the medical assistance program for young adults who meet the eligibility requirements of subdivision (2)(c) of section 43-4504, are eligible for a category of medical assistance pursuant to section 68-915 or other medical assistance category under federal law, and have signed a voluntary services and support agreement as provided in section 43-4506;

(3) Housing, placement, and support in the form of foster care maintenance payments which shall remain at least at the rate set immediately prior to the young adult's exit from foster care. As decided by and with the young adult, young adults may reside in a foster family home, a supervised independent living setting, an institution, or a foster care facility. Placement in an institution or a foster care facility should occur only if necessary due to a young adult's developmental level or medical condition. A young adult who is residing in a foster care facility upon leaving foster care may choose to temporarily stay until he or she is able to transition to a more age-appropriate setting. For young adults residing in a supervised independent living setting:

(a) The department may send all or part of the foster care maintenance payments directly to the young adult. This should be decided on a case-by-case basis by and with the young adult in a manner that respects the independence of the young adult; and

(b) Rules and restrictions regarding housing options should be respectful of the young adult's autonomy and developmental maturity. Specifically, safety assessments of the living arrangements shall be age-appropriate and consistent with federal guidance on a supervised setting in which the individual lives independently. A clean background check shall not be required for an individual residing in the same residence as the young adult; and

(4) Case management services that are young-adult driven. Case management shall be a continuation of the independent living transition proposal in section 43-1311.03, including a written description of additional resources that will help the young adult in creating permanent relationships and preparing for the transition to adulthood and independent living. Case management shall include the development of a case plan, developed jointly by the department and the young adult, that includes a description of the identified housing situation or living arrangement, the resources to assist the young adult in the transition from the bridge to independence program to adulthood, and the needs listed in subsection (1) of section 43-1311.03. The case plan shall incorporate the independent living transition proposal in section 43-1311.03. A new plan shall be developed for young adults who have no previous independent living transition proposal. Case management shall also include, but not be limited to, documentation that assistance has been offered and provided that would help the young adult meet his or her personal goals, if such assistance is appropriate and if the young adult is eligible and consents to receive such assistance. This shall include, but not be limited to, assisting the young adult to:

(a) Obtain employment or other financial support;

(b) Obtain a government-issued identification card;

(c) Open and maintain a bank account;

(d) Obtain appropriate community resources, including health, mental health, developmental disability, and other disability services and support;

(e) When appropriate, satisfy any juvenile justice system requirements and assist with sealing the young adult's juvenile court record if the young adult is eligible under section 43-2,108.01;

(f) Complete secondary education;

(g) Apply for admission and aid for postsecondary education or vocational courses;

(h) Obtain the necessary state court findings and then apply for special immigrant juvenile status as defined in 8 U.S.C. 1101(a)(27)(J) or apply for other immigration relief that the young adult may be eligible for;

(i) Create a health care power of attorney, health care proxy, or other similar document recognized under state law, at the young adult's option, pursuant to the federal Patient Protection and Affordable Care Act, Public Law 111-148;

(j) Obtain a copy of health and education records of the young adult;

(k) Apply for any public benefits or benefits that the young adult may be eligible for or may be due through his or her parents or relatives, including, but not limited to, aid to dependent children, supplemental security income, social security disability insurance, social security survivors benefits, the Special Supplemental Nutrition Program for Women, Infants, and Children, the Supplemental Nutrition Assistance Program, and low-income home energy assistance programs;

(l) Maintain relationships with individuals who are important to the young adult, including searching for individuals with whom the young adult has lost contact;

(m) Access information about maternal and paternal relatives, including any siblings;

(n) Access young adult empowerment opportunities, such as Project Everlast and peer support groups; and

(o) Access pregnancy and parenting resources and services.

Source: Laws 2013, LB216, § 5; Laws 2014, LB853, § 34; Laws 2015, LB243, § 17; Laws 2023, LB50, § 27.

43-4508 Department; filing with juvenile court; contents; jurisdiction of court; bridge to independence program file; hearing for permanency review; appointment of hearing officer; department; duties; court review services and support; confidentiality; waiver.

(1) Within fifteen days after the voluntary services and support agreement is signed, the department shall file a petition with the juvenile court describing the young adult's current situation, including the young adult's name, date of birth, and current address and the reasons why it is in the young adult's best interests to participate in the bridge to independence program. The department shall also provide the juvenile court with a copy of the signed voluntary services and support agreement, a copy of the case plan, and any other information the department or the young adult wants the court to consider.

(2) The department shall ensure continuity of care and eligibility by working with a child who wants to participate in the bridge to independence program and, pursuant to section 43-4504, is likely to be eligible to participate in such program immediately following the termination of the juvenile court's jurisdiction pursuant to subdivision (1), (2), (3)(a), or (3)(b) of section 43-247 or subdivision (8) of section 43-247 if the young adult's guardianship or state-funded adoption assistance agreement was disrupted or terminated after he or she had attained the age of sixteen years. The voluntary services and support agreement shall be signed and the petition filed with the court upon the child's nineteenth birthday or within ten days thereafter. There shall be no interruption in the foster care maintenance payment and medical assistance coverage for a child who is eligible and chooses to participate in the bridge to independence

program immediately following the termination of the juvenile court's jurisdiction pursuant to subdivision (1), (2), (3)(a), or (3)(b) of section 43-247.

(3) The court has the jurisdiction to review the voluntary services and support agreement signed by the department and the young adult under section 43-4506 and to conduct permanency reviews as described in this section. Upon the filing of a petition under subsection (1) of this section, the court shall open a bridge to independence program file for the young adult for the purpose of determining whether continuing in such program is in the young adult's best interests and for the purpose of conducting permanency reviews.

(4) The court shall make the best interests determination as described in subsection (3) of this section not later than one hundred eighty days after the young adult and the department enter into the voluntary services and support agreement.

(5) The court shall conduct a hearing for permanency review consistent with 42 U.S.C. 675(5)(C) as described in subsection (6) of this section regarding the voluntary services and support agreement at least once per year and may conduct such hearing at additional times, but not more times than is reasonably practicable, at the request of the young adult, the department, or any other party to the proceeding. The court shall make a reasonable effort finding required by subdivision (6)(c) of this section within twelve months after the court makes its best interests determination under subsection (4) of this section. Upon the filing of the petition as provided in subsection (1) of this section or anytime thereafter, the young adult may request, in the voluntary services and support agreement or by other appropriate means, a timeframe in which the young adult prefers to have the permanency review hearing scheduled and the court shall seek to accommodate the request as practicable and consistent with 42 U.S.C. 675(5)(C). The juvenile court may request the appointment of a hearing officer pursuant to section 24-230 to conduct permanency review hearings. The department is not required to have legal counsel present at such hearings. The juvenile court shall conduct the permanency reviews in an expedited manner and shall issue findings and orders, if any, as speedily as possible.

(6)(a) The primary purpose of the permanency review is to ensure that the bridge to independence program is providing the young adult with the needed services and support to help the young adult move toward permanency and self-sufficiency. This shall include that, in all permanency reviews or hearings regarding the transition of the young adult from foster care to independent living, the court shall consult, in an age-appropriate manner, with the young adult regarding the proposed permanency or transition plan for the young adult. The young adult shall have a clear self-advocacy role in the permanency review in accordance with section 43-4510, and the hearing shall support the active engagement of the young adult in key decisions. Permanency reviews shall be conducted on the record and in an informal manner and, whenever possible, outside of the courtroom.

(b) The department shall prepare and present to the juvenile court a report, at the direction of the young adult, addressing progress made in meeting the goals in the case plan, including the independent living transition proposal, and shall propose modifications as necessary to further those goals.

(c) The court shall determine whether the bridge to independence program is providing the appropriate services and support as provided in the voluntary

services and support agreement to carry out the case plan. The court shall also determine whether reasonable efforts have been made to achieve the permanency goal as set forth in the case plan and the department's report provided under subdivision (6)(b) of this section. The court shall issue specific written findings regarding such reasonable efforts. The court has the authority to determine whether the young adult is receiving the services and support he or she is entitled to receive under the Young Adult Bridge to Independence Act and the department's policies or state or federal law to help the young adult move toward permanency and self-sufficiency. If the court believes that the young adult requires additional services and support to achieve the goals documented in the case plan or under the Young Adult Bridge to Independence Act and the department's policies or state or federal law, the court may make appropriate findings or order the department to take action to ensure that the young adult receives the identified services and support.

(7) All pleadings, filings, documents, and reports filed pursuant to this section and subdivision (11) of section 43-247 shall be confidential. The proceedings pursuant to this section and subdivision (11) of section 43-247 shall be confidential unless a young adult provides a written waiver or a verbal waiver in court. Such waiver may be made by the young adult in order to permit the proceedings to be held outside of the courtroom or for any other reason. The Foster Care Review Office shall have access to any and all pleadings, filings, documents, reports, and proceedings necessary to complete its case review process. This section shall not prevent the juvenile court from issuing an order identifying individuals and agencies who shall be allowed to receive otherwise confidential information for legitimate and official purposes as authorized by section 43-3001.

Source: Laws 2013, LB216, § 8; Laws 2014, LB853, § 37; Laws 2015, LB243, § 19; Laws 2019, LB600, § 12; Laws 2023, LB50, § 28.

43-4510 Court-appointed attorney; continuation of guardian ad litem or defense counsel; independence coordinator; duties; notice; court appointed special advocate volunteer.

(1) If desired by the young adult, the young adult shall be provided a court-appointed attorney who has received training appropriate to the role. The attorney's representation of the young adult shall be client-directed. The attorney shall protect the young adult's legal rights and vigorously advocate for the young adult's wishes and goals, including assisting the young adult as necessary to ensure that the bridge to independence program is providing the young adult with the services and support required under the Young Adult Bridge to Independence Act. For young adults who were appointed a guardian ad litem or defense counsel before the young adult attained the age of eligibility, the guardian ad litem's or defense counsel's appointment may be continued, with consent from the young adult, but under a client-directed model of representation. Before entering into a voluntary services and support agreement and at least sixty days prior to each permanency and case review, the independence coordinator shall notify the young adult of his or her right to request a client-directed attorney if the young adult would like an attorney to be appointed and shall provide the young adult with a clear and developmentally appropriate written notice regarding the young adult's right to request a client-directed attorney, the benefits and role of such attorney, and the specific steps to take to

request that an attorney be appointed if the young adult would like an attorney appointed.

(2) The court has discretion to appoint a court appointed special advocate volunteer or continue the appointment of a previously appointed court appointed special advocate volunteer with the consent of the young adult.

Source: Laws 2013, LB216, § 10; Laws 2014, LB853, § 40; Laws 2020, LB848, § 6; Laws 2023, LB50, § 29.

43-4511 Extended guardianship assistance and medical care; eligibility; use.

(1) The department shall provide extended guardianship assistance and medical care under the medical assistance program for a young adult who has attained the age of eligibility but is less than twenty-one years of age and with respect to whom a kinship guardianship assistance agreement was in effect pursuant to 42 U.S.C. 673 if the young adult had attained sixteen years of age before the agreement became effective or with respect to whom a state-funded guardianship assistance agreement was in effect if the young adult had attained sixteen years of age before the agreement became effective and if the young adult meets at least one of the following conditions for eligibility:

(a) The young adult is completing secondary education or an educational program leading to an equivalent credential;

(b) The young adult is enrolled in an institution that provides postsecondary or vocational education;

(c) The young adult is employed for at least eighty hours per month;

(d) The young adult is participating in a program or activity designed to promote employment or remove barriers to employment; or

(e) The young adult is incapable of doing any part of the activities in subdivisions (1)(a) through (d) of this section due to a medical condition, which incapacity must be supported by regularly updated information in the case plan of the young adult.

(2) The guardian shall ensure that any guardianship assistance funds provided by the department and received by the guardian shall be used for the benefit of the young adult. The department shall adopt and promulgate rules and regulations defining services and supports encompassed by such benefit.

(3) The changes made to this section by Laws 2015, LB243, become operative on July 1, 2015.

Source: Laws 2013, LB216, § 11; Laws 2014, LB853, § 41; Laws 2015, LB243, § 20; Laws 2020, LB848, § 7.

43-4511.01 Participation in extended guardianship or bridge to independence program; participation in extended adoption assistance or bridge to independence program; choice of participant; notice; contents; department; duties.

(1)(a) Young adults who are eligible to participate under both extended guardianship assistance as provided in section 43-4511 and the bridge to independence program as provided in subdivision (2)(b)(ii) of section 43-4504 may choose to participate in either program.

(b) Young adults who are eligible to participate under both extended adoption assistance as provided in section 43-4512 and the bridge to independence

program as provided in subdivision (2)(b)(ii) of section 43-4504 may choose to participate in either program.

(2) The department shall create a clear and developmentally appropriate written notice discussing the rights of young adults who are eligible under both extended guardianship assistance and the bridge to independence program and a notice for young adults who are eligible under both extended adoption assistance and the bridge to independence program. The notice shall explain the benefits and responsibilities and the process to apply. The department shall provide the written notice and make efforts to provide a verbal explanation to a young adult with respect to whom a kinship guardianship assistance agreement or an adoption assistance agreement was in effect pursuant to 42 U.S.C. 673 if the young adult had attained sixteen years of age before the agreement became effective or with respect to whom a state-funded guardianship assistance agreement or state-funded adoption assistance agreement was in effect if the young adult had attained sixteen years of age before the agreement became effective. The department shall provide the notice yearly thereafter until such young adult reaches nineteen years of age and not later than ninety days prior to the young adult attaining nineteen years of age.

Source: Laws 2015, LB243, § 21; Laws 2019, LB600, § 13; Laws 2023, LB50, § 30.

43-4512 Extended adoption assistance and medical care; eligibility; use.

(1) The department shall provide extended adoption assistance and medical care under the medical assistance program for a young adult who has attained the age of eligibility but is less than twenty-one years of age and with respect to whom an adoption assistance agreement was in effect if the young adult had attained sixteen years of age before the agreement became effective and who meets at least one of the following conditions of eligibility:

(a) The young adult is completing secondary education or an educational program leading to an equivalent credential;

(b) The young adult is enrolled in an institution that provides postsecondary or vocational education;

(c) The young adult is employed for at least eighty hours per month;

(d) The young adult is participating in a program or activity designed to promote employment or remove barriers to employment; or

(e) The young adult is incapable of doing any part of the activities in subdivisions (1)(a) through (d) of this section due to a medical condition, which incapacity must be supported by regularly updated information in the case plan of the young adult.

(2) The adoptive parent or parents shall ensure that any adoption assistance funds provided by the department and received by the adoptive parent shall be used for the benefit of the young adult. The department shall adopt and promulgate rules and regulations defining services and supports encompassed by such benefit.

Source: Laws 2013, LB216, § 12; Laws 2014, LB853, § 42; Laws 2015, LB243, § 22; Laws 2020, LB848, § 8.

43-4513 Bridge to Independence Advisory Committee; created; members; terms; duties; report; contents.

(1) The Bridge to Independence Advisory Committee is created within the Nebraska Children's Commission to advise and make recommendations to the Legislature and the Nebraska Children's Commission regarding ongoing implementation of the bridge to independence program, extended guardianship assistance described in section 43-4511, and extended adoption assistance described in section 43-4512. The Bridge to Independence Advisory Committee shall provide a written report regarding ongoing implementation, including participation in the bridge to independence program, extended guardianship assistance described in section 43-4511, and extended adoption assistance described in section 43-4512 and early discharge rates and reasons obtained from the department, to the Nebraska Children's Commission, the Health and Human Services Committee of the Legislature, the department, and the Governor by September 1 of each year. The report to the Health and Human Services Committee of the Legislature shall be submitted electronically.

(2) The members of the Bridge to Independence Advisory Committee shall include, but not be limited to, (a) representatives from all three branches of government, and the representatives from the legislative and judicial branches of government shall be nonvoting, ex officio members, (b) no less than three young adults currently or previously in foster care, which may be filled on a rotating basis by members of Project Everlast or a similar youth support or advocacy group, (c) one or more representatives from a child welfare advocacy organization, (d) one or more representatives from a child welfare service agency, and (e) one or more representatives from an agency providing independent living services.

(3) Members of the committee shall be appointed for terms of two years. The Nebraska Children's Commission shall appoint the chairperson of the committee and may fill vacancies on the committee as they occur.

Source: Laws 2013, LB216, § 13; Laws 2014, LB853, § 43; Laws 2015, LB243, § 23; Laws 2018, LB732, § 4; Laws 2019, LB600, § 14.

43-4514 Department; submit amended state plan amendment to seek federal funding; department; duties; rules and regulations; references to United States Code; how construed.

(1) The department shall submit an amended state plan amendment by October 1, 2023, to seek federal Title IV-E funding under 42 U.S.C. 672 for any newly eligible young adult who was adjudicated to be a juvenile described in subdivision (1), (2), or (3)(b) of section 43-247 and who meets the requirements under subdivision (2)(c) of section 43-4504.

(2) The department shall implement the bridge to independence program, extended guardianship assistance described in section 43-4511, and extended adoption assistance described in section 43-4512 in accordance with the federal Fostering Connections to Success and Increasing Adoptions Act of 2008, 42 U.S.C. 673 and 42 U.S.C. 675(8)(B) and in accordance with requirements necessary to obtain federal Title IV-E funding under 42 U.S.C. 672 and 42 U.S.C. 673.

(3) The department shall adopt and promulgate rules and regulations as needed to carry out this section by July 1, 2024.

(4) All references to the United States Code in the Young Adult Bridge to Independence Act refer to sections of the code as such sections existed on January 1, 2015.

Source: Laws 2013, LB216, § 14; Laws 2014, LB853, § 44; Laws 2015, LB243, § 24; Laws 2019, LB600, § 15; Laws 2023, LB50, § 31.

ARTICLE 47

NEBRASKA STRENGTHENING FAMILIES ACT

Section

43-4701 Act, how cited.

Sections 43-4701 to 43-4716 shall be known and may be cited as the Nebraska Strengthening Families Act.

Source: Laws 2016, LB746, § 1; Laws 2017, LB225, § 8; Laws 2019, LB600, § 16.

43-4702 Legislative findings and intent.

The Legislature finds that every day a parent makes important decisions about his or her child's participation in activities and that a caregiver for a child in out-of-home care is faced with making the same decisions for a child in his or her care.

The Legislature also finds that, when a caregiver makes decisions, he or she must consider applicable laws, rules, and regulations to safeguard the health and safety of a child in out-of-home care and that those laws, rules, and regulations have commonly been interpreted to prohibit children in out-of-home care from participating in extracurricular, enrichment, cultural, and social activities.

The Legislature further finds that participation in these types of activities is important to a child's well-being, not only emotionally, but in developing valuable life skills.

It is the intent of the Legislature to recognize the importance of parental rights and the different rights that exist dependent on a variety of factors, including the age and maturity of the child, the status of the case, and the child's placement.

It is the intent of the Legislature to recognize the importance of race, culture, and identity for children in out-of-home care.

It is the intent of the Legislature to recognize the importance of making every effort to normalize the lives of children in out-of-home care and to empower a

caregiver to approve or disapprove a child's participation in activities based on the caregiver's own assessment using a reasonable and prudent parent standard.

It is the intent of the Legislature to implement the federal Preventing Sex Trafficking and Strengthening Families Act, Public Law 113-183, as such act existed on January 1, 2016.

Source: Laws 2016, LB746, § 2; Laws 2017, LB225, § 9.

43-4703 Terms, defined.

For purposes of the Nebraska Strengthening Families Act:

(1) Age or developmentally appropriate means activities or items that are generally accepted as suitable for a child of the same chronological age or level of maturity or that are determined to be developmentally appropriate for a child, based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group and, in the case of a specific child, activities or items that are suitable for the child based on the developmental stages attained by the child with respect to the cognitive, emotional, physical, and behavioral capacities of the child;

(2) Caregiver means a foster parent with whom a child in foster care has been placed or a designated official for a child-care institution in which a child in foster care has been placed;

(3) Child-care institution has the definition found in 42 U.S.C. 672(c), as such section existed on January 1, 2016, and also includes the definition of residential child-caring agency as found in section 71-1926;

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

(5) Foster family home has the definition found in 42 U.S.C. 672(c), as such section existed on January 1, 2017, and also includes the definition as found in section 71-1901;

(6) Probation means the Office of Probation Administration; and

(7) Reasonable and prudent parent standard means the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interest of a child while at the same time encouraging the emotional and developmental growth of the child that a caregiver shall use when determining whether to allow a child in foster care under the responsibility of the state to participate in extracurricular, enrichment, cultural, and social activities.

Source: Laws 2016, LB746, § 3; Laws 2017, LB225, § 10.

43-4704 Rights of child; requirements for a driver's license.

(1) Every child placed by the department in a foster family home or child-care institution shall be entitled to access to reasonable opportunities to participate in age or developmentally appropriate extracurricular, enrichment, cultural, and social activities.

(2) A child in foster care shall not be required, by virtue of his or her status as a child in foster care, to meet any more requirements for a driver's license

under the Motor Vehicle Operator's License Act than any other child applying for the same license.

Source: Laws 2016, LB746, § 4; Laws 2017, LB225, § 11; Laws 2020, LB219, § 2.

Cross References

Motor Vehicle Operator's License Act, see section 60-462.

43-4706 Department; duties; contract requirements; caregiver; duties; written notice posted; normalcy plan; contents; normalcy report; contents.

(1) The department shall ensure that each foster family home and child-care institution has policies consistent with this section and that such foster family home and child-care institution promote and protect the ability of children to participate in age or developmentally appropriate extracurricular, enrichment, cultural, and social activities.

(2) A caregiver shall use a reasonable and prudent parent standard in determining whether to give permission for a child to participate in extracurricular, enrichment, cultural, and social activities. The caregiver shall take reasonable steps to determine the appropriateness of the activity in consideration of the child's age, maturity, and developmental level.

(3) The department shall require, as a condition of each contract entered into by a child-care institution to provide foster care, the presence onsite of at least one official who, with respect to any child placed at the child-care institution, is designated to be the caregiver who is (a) authorized to apply the reasonable and prudent parent standard to decisions involving the participation of the child in age or developmentally appropriate activities, (b) provided with training in how to use and apply the reasonable and prudent parent standard in the same manner as foster parents are provided training in section 43-4707, and (c) required to consult whenever possible with the child and staff members identified by the child in applying the reasonable and prudent parent standard.

(4) The department shall also require, as a condition of each contract entered into by a child-care institution to provide foster care, that all children placed at the child-care institution be notified verbally and in writing, in an age or developmentally appropriate manner, of the process for making a request to participate in age or developmentally appropriate activities and that a written notice of this process be posted in an accessible, public place in the child-care institution.

(5)(a) The department shall also require, as a condition of each contract entered into by a child-care institution to provide foster care, a written normalcy plan describing how the child-care institution will ensure that all children have access to age or developmentally appropriate activities to be filed with the department and a normalcy report regarding the implementation of the normalcy plan to be filed with the department annually by June 30. Such plans and reports shall not be required to be provided by child-care institutions physically located outside the State of Nebraska or psychiatric residential treatment facilities.

(b) The normalcy plan shall specifically address:

(i) Efforts to address barriers to normalcy that are inherent in a child-care institution setting;

(ii) Normalcy efforts for all children placed at the child-care institution, including, but not limited to, relationships with family, age or developmentally appropriate access to technology and technological skills, education and school stability, access to health care and information, and access to a sustainable and durable routine;

(iii) Procedures for developing goals and action steps in the child-care institution's case plan and case planning process related to participation in age or developmentally appropriate activities for each child placed at the child-care institution;

(iv) Policies on staffing, supervision, permission, and consent to age or developmentally appropriate activities consistent with the reasonable and prudent parent standard;

(v) A list of activities that the child-care institution provides onsite and a list of activities in the community regarding which the child-care institution will make children aware, promote, and support access;

(vi) Identified accommodations and support services so that children with disabilities and special needs can participate in age or developmentally appropriate activities to the same extent as their peers;

(vii) The individualized needs of all children involved in the system;

(viii) Efforts to reduce disproportionate impact of the system and services on families and children of color and other populations; and

(ix) Efforts to develop a youth board to assist in implementing the reasonable and prudent parent standard in the child-care institution and promoting and supporting normalcy.

(c) The normalcy report shall specifically address:

(i) Compliance with each of the plan requirements set forth in subdivisions (b)(i) through (ix) of this subsection; and

(ii) Compliance with subsections (3) and (4) of this section.

(6) The department shall make normalcy plans and reports received from contracting child-care institutions pursuant to subsection (5) of this section and plans and reports from all youth rehabilitation and treatment centers pursuant to subsection (7) of this section available upon request to the Nebraska Strengthening Families Act Committee, the Nebraska Children's Commission, probation, the Governor, and electronically to the Health and Human Services Committee of the Legislature, by September 1 of each year.

(7) All youth rehabilitation and treatment centers shall meet the requirements of subsection (5) of this section.

Source: Laws 2016, LB746, § 6; Laws 2017, LB225, § 12.

43-4707 Training for foster parents.

The department shall adopt and promulgate rules and regulations regarding training for foster parents so that foster parents will be prepared adequately with the appropriate knowledge and skills relating to the reasonable and prudent parent standard for the participation of the child in age or developmentally appropriate activities, including knowledge and skills relating to the developmental stages of the cognitive, emotional, physical, and behavioral capacities of the child and knowledge and skills related to applying the standard to decisions such as whether to allow the child to engage in extracur-

ricular, enrichment, cultural, and social activities, including sports, field trips, and overnight activities lasting one or more days and to decisions involving the signing of permission slips and arranging of transportation for the child to and from extracurricular, enrichment, cultural, and social activities. The department shall also adopt and promulgate rules and regulations regarding training for foster parents on recognizing human trafficking, including both sex trafficking and labor trafficking.

Source: Laws 2016, LB746, § 7; Laws 2017, LB225, § 13.

43-4709 Parental rights; consultation with parent; documentation; family team meeting.

(1) Nothing in the Nebraska Strengthening Families Act or the application of the reasonable and prudent parent standard shall affect the parental rights of a parent whose parental rights have not been terminated pursuant to section 43-292 with respect to his or her child.

(2) To the extent possible, a parent shall be consulted about the child's participation in age or developmentally appropriate activities in the planning process. The department shall document such consultation in the report filed pursuant to subsection (3) of section 43-285.

(3) The child's participation in extracurricular, enrichment, cultural, and social activities shall be considered at any family team meeting.

Source: Laws 2016, LB746, § 9; Laws 2017, LB225, § 14.

43-4714 Rules and regulations.

The department shall adopt and promulgate rules and regulations to carry out the Nebraska Strengthening Families Act and shall revoke any rules or regulations inconsistent with the act by October 15, 2017.

Source: Laws 2016, LB746, § 14; Laws 2017, LB225, § 16.

43-4715 Missing child; department and probation; duties.

The department and probation shall establish procedures for the immediate dissemination of a current picture and information about a child who is missing from a foster care or out-of-home placement to appropriate third parties, which may include law enforcement agencies or persons engaged in procuring, gathering, writing, editing, or disseminating news or other information to the public. Any information released to a third party under this section shall be subject to state and federal confidentiality laws and shall not include that the child is under the care, custody, or supervision of the department or under the supervision of probation. Such dissemination by probation shall be authorized by an order of a judge or court.

Source: Laws 2017, LB225, § 15.

43-4716 Nebraska Strengthening Families Act Committee; created; duties; members; term; vacancy; report; contents.

(1) The Nebraska Strengthening Families Act Committee is created.

(2) The Nebraska Strengthening Families Act Committee shall monitor and make recommendations regarding the implementation in Nebraska of the federal Preventing Sex Trafficking and Strengthening Families Act, Public Law

113-183, as such act existed on January 1, 2017, and the Nebraska Strengthening Families Act.

(3) The members of the committee shall include, but not be limited to, (a) representatives from the legislative, executive, and judicial branches of government. The representatives from the legislative and judicial branches shall be nonvoting, ex officio members, (b) no fewer than three young adults currently or previously in foster care which may be filled on a rotating basis by members of Project Everlast or a similar youth support or advocacy group, (c) a representative from the juvenile probation system, (d) the executive director of the Foster Care Review Office, (e) one or more representatives from a child welfare advocacy organization, (f) one or more representatives from a child welfare service agency, (g) one or more representatives from an agency providing independent living services, (h) one or more representatives of a child-care institution as defined in section 43-4703, (i) one or more current or former foster parents, (j) one or more parents who have experience in the foster care system, (k) one or more professionals who have relevant practical experience such as a caseworker, and (l) one or more guardians ad litem who practice in juvenile court.

(4) Members shall be appointed for terms of two years. The Nebraska Children's Commission shall appoint a chairperson or chairpersons of the committee and may fill vacancies on the committee as such vacancies occur.

(5) The committee shall provide a written report with recommendations regarding the initial and ongoing implementation of the federal Preventing Sex Trafficking and Strengthening Families Act, as such act existed on January 1, 2017, and the Nebraska Strengthening Families Act and related efforts to improve normalcy for children in foster care and related populations to the Nebraska Children's Commission, the Health and Human Services Committee of the Legislature, the Department of Health and Human Services, and the Governor by September 1 of each year. The report to the Health and Human Services Committee of the Legislature shall be submitted electronically.

Source: Laws 2016, LB746, § 23; Laws 2017, LB225, § 7; Laws 2018, LB732, § 3; R.S.Supp.,2018, § 43-4218; Laws 2019, LB600, § 17.

ARTICLE 48

JUDICIAL EMANCIPATION OF A MINOR

Section
43-4801. Procedure.
43-4802. Petition authorized.
43-4803. Petition; contents.
43-4804. Hearing.
43-4805. Notice; service.
43-4806. Summons to appear; service.
43-4807. Hearing on merits of petition.
43-4808. Objection to petition.
43-4809. Burden of proof; advisement by court; judgment of emancipation.
43-4810. Judgment of emancipation; effect; certified copy; use by third party.
43-4811. Effect on prosecution of criminal offense.
43-4812. Rescission; motion; grounds; when granted; hearing; notice; effect on prior order of custody, parenting time, or support.

43-4801 Procedure.

Sections 43-4801 to 43-4812 provide a procedure for judicial emancipation of a minor.

Source: Laws 2018, LB714, § 1.

43-4802 Petition authorized.

A minor who is at least sixteen years of age, who is married or living apart from his or her parents or legal guardian, and who is a legal resident may file a petition in the district court of his or her county of residence for a judgment of emancipation. The petition shall be signed and verified by the minor.

Source: Laws 2018, LB714, § 2.

43-4803 Petition; contents.

A petition for emancipation filed pursuant to section 43-4802 shall state:

(1) The name, age, and address of the minor;

(2) The names and addresses of the parents of the minor, if known;

(3) The name and address of any legal guardian of the minor, if known;

(4) If the name or address of a parent or legal guardian is unknown, the name and address of the child's nearest known relative residing within this state;

(5) Whether the minor is a party to or the subject of a pending judicial proceeding in this state or any other jurisdiction, or the subject of a judicial order of any description issued in connection with such pending judicial proceeding, if known;

(6) The state, county, and case number of any court case in which an order of support has been entered, if known;

(7) That the minor is seeking a judgment of emancipation;

(8) That the minor is filing the petition as a free and voluntary act; and

(9) Specific facts to support the petition, including:

(a) That the minor willingly lives apart from his or her parents or legal guardian;

(b) That the minor is able to support himself or herself without financial assistance, or, in the alternative, the minor has no parent, legal guardian, or custodian who is providing support;

(c) That the minor is mature and knowledgeable to manage his or her affairs without the guidance of a parent or legal guardian;

(d) That the minor has demonstrated an ability and commitment to obtain and maintain education, vocational training, or employment;

(e) The reasons why emancipation would be in the best interests of the minor; and

(f) The purposes for which emancipation is requested.

Source: Laws 2018, LB714, § 3.

43-4804 Hearing.

Upon the filing of a petition for emancipation, the court shall fix a time for a hearing on the petition. The hearing shall be held not less than forty-five days and not more than sixty days after the filing of such petition unless any party

for good cause shown requests a continuance of the hearing or all parties agree to a continuance.

Source: Laws 2018, LB714, § 4.

43-4805 Notice; service.

(1) Upon filing a petition pursuant to section 43-4804, and at least thirty days prior to the hearing date, the petitioner shall serve a notice of filing, together with a copy of the petition for emancipation and a summons to appear at the hearing, upon:

(a) The parents or legal guardian of the minor or, if the parents or legal guardian cannot be found, the nearest known relative of the minor residing within the state, if any; and

(b) The legal custodian of the minor, if any.

(2) Service and summons shall be made in accordance with section 25-505.01.

(3) Upon a motion and showing by affidavit that service cannot be made with reasonable diligence by any other method provided by statute, the court may permit service to be made (a) by leaving the process at the party's usual place of residence and mailing a copy by first-class mail to the party's last-known address, (b) by publication, or (c) by any manner reasonably calculated under the circumstances to provide the party with actual notice of the proceedings and an opportunity to be heard.

Source: Laws 2018, LB714, § 5.

43-4806 Summons to appear; service.

Upon filing the petition, a notice of filing, together with a copy of the petition for emancipation and a summons to appear at the hearing, shall be served:

(1)(a) Upon the parents or legal guardian of the minor or, if the parents or legal guardian cannot be found, the nearest known relative of the minor residing within the state, if any; and

(b) Upon the legal custodian of the minor, if any; or

(2) By publication pursuant to section 25-519, if service pursuant to subdivision (1) of this section is not possible.

Source: Laws 2018, LB714, § 6.

43-4807 Hearing on merits of petition.

The court shall hold a hearing on the merits of the petition no sooner than forty-five days after the date of filing but within sixty days after the date of its filing. The petitioner shall notify by certified mail the petitioner's parent or legal guardian or the petitioner's nearest known relative residing within the state, whichever is given notice under section 43-4806, if any, and the petitioner's legal custodian, if any, of the time, date, and place of the hearing at least thirty days prior to the hearing date. Proof of such notice shall be filed prior to the hearing on the petition. For good cause shown, the court may continue the initial emancipation hearing.

Source: Laws 2018, LB714, § 7.

43-4808 Objection to petition.

The minor's parent or legal guardian and the minor's legal custodian may file an objection to the petition for emancipation within thirty days of service of the notice of the hearing.

Source: Laws 2018, LB714, § 8.

43-4809 Burden of proof; advisement by court; judgment of emancipation.

(1) The minor has the burden of proving by clear and convincing evidence that the requirements for ordering emancipation under this section have been met. Prior to entering a judgment of emancipation, the court shall advise the minor of the consequences of emancipation, including, but not limited to, the benefits and services available to an emancipated minor and the risks involved with being emancipated. Such advisements shall include, at a minimum, the words to the following effect:

(a) If you become emancipated, you will have some of the rights that come with adulthood. These rights include: Handling your own affairs; living where you choose; entering into contracts; keeping and spending your money; making decisions regarding your own health care, medical care, dental care, and mental health care, without parental knowledge; enlisting in the military without your parent's consent; marrying without your parent's consent; applying for public assistance; suing someone or being sued; enrolling in school or college; and owning real property;

(b) Even if you are emancipated, you still must: Stay in school as required by Nebraska law; be subject to child labor laws and work permit rules limiting the number of hours you can work; and be of legal age to consume alcohol; and

(c) When you become emancipated: You lose your right to have financial support for basic living expenses for food, clothing, and shelter, and health care paid for by your parents or guardian; your parents or guardian will no longer be legally or financially responsible if you injure someone; and being emancipated does not automatically make you eligible for public assistance or benefits.

(2) If, after hearing, the court determines that emancipation is in the best interests of the minor and that the minor understands his or her rights and responsibilities under sections 43-4801 to 43-4812 as an emancipated minor, the court shall enter a judgment of emancipation. In making its determination regarding the petition for emancipation, the court shall determine whether the petitioner has proven each of the facts set forth in subdivision (9) of section 43-4803.

Source: Laws 2018, LB714, § 9.

43-4810 Judgment of emancipation; effect; certified copy; use by third party.

(1) A judgment of emancipation removes the disability of minority insofar as that disability may affect: (a) Establishment of his or her own residence; (b) incurring indebtedness or contractual obligations of any kind; (c) consenting to medical, dental, or psychiatric care without the consent, knowledge, or liability of parents or a guardian; (d) enlisting in the military without a parent's or guardian's consent; (e) marrying without a parent's or guardian's consent; (f) being individually eligible for public assistance; (g) the litigation and settlement of controversies; (h) enrolling in any school or college; and (i) acquiring, encumbering, and conveying property or any interest therein. For the purposes described in this subsection, the minor shall be considered in law as an adult

and any obligation or benefit he or she incurs is enforceable by and against such minor without regard to his or her minority.

(2) A minor emancipated by court order shall be considered to have the rights and responsibilities of an adult, except for those specific constitutional and statutory age requirements regarding voting, use of alcoholic beverages, gambling, use of tobacco, and other health and safety regulations relevant to the minor because of his or her age.

(3) The emancipated minor shall be provided a certified copy of the judgment of emancipation at the time the judgment is entered. Upon presentation of the judgment of emancipation, a third party shall be allowed to retain a copy of the same as proof of the minor's ability to act as stated in this section.

(4) Unless otherwise provided in the judgment of emancipation, the judgment of emancipation shall explicitly suspend any order regarding custody, parenting time, or support of the minor and be reported by the district court clerk to the jurisdiction that issued such order.

Source: Laws 2018, LB714, § 10.

43-4811 Effect on prosecution of criminal offense.

An emancipated minor shall not be considered an adult for prosecution of a criminal offense.

Source: Laws 2018, LB714, § 11.

43-4812 Rescission; motion; grounds; when granted; hearing; notice; effect on prior order of custody, parenting time, or support.

(1) A motion for rescission may be filed by any interested person or public agency in order to rescind a judgment of emancipation on the following grounds:

(a) The minor has become indigent and has insufficient means of support; or

(b) The judgment of emancipation was obtained by fraud, misrepresentation, or the withholding of material information.

(2) The motion for rescission shall be filed in the district court in which the petition for emancipation was filed. The motion for rescission of a judgment of emancipation shall be granted if it is proven:

(a) That rescinding the judgment of emancipation is in the best interests of the emancipated minor; and

(b)(i) That the minor has become indigent and has insufficient means of support; or

(ii) That the judgment of emancipation was obtained by fraud, misrepresentation, or the withholding of material information.

(3) Upon the filing of a motion for rescission, the court shall fix a time for a hearing on the motion. The hearing shall be held not less than forty-five days and not more than sixty days after the filing of such motion unless any party for good cause shown requests a continuance of the hearing or all parties agree to a continuance.

(4)(a) Upon filing a motion pursuant to subsection (3) of this section, and at least thirty days prior to the hearing date, the movant shall serve a notice of filing, together with a copy of the motion for rescission and a summons to appear at the hearing, upon:

(i) The emancipated person;

(ii) The parents or the person who was the legal guardian of the emancipated person or, if the parents or legal guardian cannot be found, the nearest known relative of the emancipated person residing within the state, if any; and

(iii) The legal custodian of the emancipated person prior to emancipation, if any.

(b) Service and summons shall be made in accordance with section 25-505.01.

(c) Upon a motion and showing by affidavit that service cannot be made with reasonable diligence by any other method provided by statute, the court may permit service to be made (i) by leaving the process at the party's usual place of residence and mailing a copy by first-class mail to the party's last-known address, (ii) by publication, or (iii) by any manner reasonably calculated under the circumstances to provide the party with actual notice of the proceedings and an opportunity to be heard.

(d) The emancipated minor may file a written response objecting to the motion to rescind emancipation within thirty days after service of the notice of the hearing.

(5) If, after hearing, the court determines by clear and convincing evidence that rescinding the judgment of emancipation is in the best interests of the minor because the minor has become indigent and has insufficient means of support, or because the judgment of emancipation was obtained by fraud, misrepresentation, or the withholding of material information, the court shall rescind the judgment of emancipation.

(6) If a prior order regarding custody, parenting time, or support of the minor was suspended by the judgment of emancipation, the order rescinding the judgment of emancipation shall be reported by the district court clerk to the jurisdiction that issued such order and shall serve to reinstate such prior order of custody, parenting time, or support.

(7) The parents or legal guardian or legal custodian of a minor emancipated by court order are not liable for any debts incurred by the minor child during the period of emancipation.

(8) Rescinding a judgment of emancipation does not affect an obligation, responsibility, right, or interest that arose during the period of time that the judgment of emancipation was in effect.

Source: Laws 2018, LB714, § 12.

ARTICLE 49
NEWBORN SAFE HAVEN ACT

Section

43-4901 Act, how cited.

Sections 43-4901 to 43-4903 shall be known and may be cited as the Newborn Safe Haven Act.

Source: Laws 2024, LB876, § 1.
Effective date July 19, 2024.

43-4902 Public information program.

(1) Subject to available funding, it is the intent of the Legislature to appropriate sixty-five thousand dollars to the Department of Health and Human Services for fiscal year 2024-25 and ten thousand dollars each fiscal year thereafter, to develop, implement, and maintain a public information program to inform the general public of the Newborn Safe Haven Act.

(2) Components of the program shall include, but not be limited to:

(a) Creation and maintenance of a permanent, interactive website that provides information to the public about the Newborn Safe Haven Act, including authorized drop-off locations;

(b) Distribution of literature at statewide locations, as determined by the department, including the toll-free telephone number of the National Safe Haven Alliance;

(c) Development of educational, promotional, and informational materials in print, audio, video, electronic, and other media formats which includes the toll-free telephone number of the National Safe Haven Alliance; and

(d) Training to carry out the provisions of the Newborn Safe Haven Act for emergency care providers, 911 operators, hospital staff, firefighters, law enforcement officers, or any member of the public expressing an interest in such training.

Source: Laws 2024, LB876, § 2.
Effective date July 19, 2024.

43-4903 Leaving child at a hospital, a staffed fire station, a staffed law enforcement agency, or an emergency care provider; no prosecution for crime; custody of child; duty.

(1) No person shall be prosecuted for any crime based solely upon the act of leaving a child ninety days old or younger in the custody of an employee on duty at: (a) A hospital licensed by the State of Nebraska; (b) a staffed fire station; (c) a staffed law enforcement agency; or (d) an emergency care provider.

(2) The hospital, staffed fire station, staffed law enforcement agency, or emergency care provider shall promptly contact appropriate authorities to take custody of the child.

Source: Laws 2008, LB157, § 1; Laws 2008, First Spec. Sess., LB1, § 1; R.S.1943, (2016), § 29-121; Laws 2024, LB876, § 3.
Effective date July 19, 2024.

CHAPTER 44
INSURANCE

Article.
1. Powers of Department of Insurance. 44-116.
3. General Provisions Relating to Insurance. 44-312 to 44-361.
5. Standard Provisions and Forms. 44-513.
7. General Provisions Covering Life, Sickness, and Accident Insurance. 44-714 to 44-7,120.
13. Health Carrier External Review Act. 44-1308.
19. Title Insurance.
    (b) Title Insurers Act. 44-1993.
    (c) Title Insurance Agent Act. 44-19,116.
21. Holding Companies. 44-2121 to 44-2138.
22. Variable Annuities. 44-2222.
28. Nebraska Hospital-Medical Liability Act. 44-2824 to 44-2833.
33. Legal Service Insurance Corporations. 44-3308.
36. Medicare Supplement Insurance Standards. 44-3601 to 44-3614.
40. Insurance Producers Licensing Act. 44-4052 to 44-4068.
46. Pharmacy Benefit Managers. 44-4601 to 44-4612.
51. Investments. 44-5103 to 44-5153.
58. Third-Party Administrators. 44-5807.
65. Pet Insurance Act. 44-6501 to 44-6510.
90. Risk Management and Own Risk and Solvency Assessment Act. 44-9004.
93. Travel Insurance Act. 44-9301 to 44-9310.
94. Insurance Regulatory Sandbox Act. 44-9401 to 44-9410.

ARTICLE 1
POWERS OF DEPARTMENT OF INSURANCE

Section
44-116. Examination; expenses collected; Department of Insurance Cash Fund; created; use; investment; transfers.

44-116 Examination; expenses collected; Department of Insurance Cash Fund; created; use; investment; transfers.

(1) All money collected by the Department of Insurance for examination of the affairs of domestic, foreign, or alien insurance companies and insurers as defined in and pursuant to the Insurers Examination Act or any other provision of Chapter 44 or for valuing the reserve liabilities of life insurance companies shall be remitted by the department to the State Treasurer for credit to the Department of Insurance Cash Fund, which fund is hereby created. Money in the Department of Insurance Cash Fund may be used for transfers to the General Fund at the direction of the Legislature. Any money in the Department of Insurance 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.

(2) The State Treasurer shall transfer fourteen million dollars from the Department of Insurance 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 eleven million dollars from the Department of

Insurance 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 eleven million dollars from the Department of Insurance 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 eleven million dollars from the Department of Insurance 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.

Source: Laws 1913, c. 154, § 21, p. 406; R.S.1913, § 3157; Laws 1919, c. 190, tit. V, art. III, § 14, p. 584; Laws 1921, c. 24, § 2, p. 150; C.S.1922, § 7758; Laws 1923, c. 189, § 1, p. 433; C.S.1929, § 44-214; R.S.1943, § 44-116; Laws 1955, c. 169, § 1, p. 484; Laws 1965, c. 251, § 1, p. 709; Laws 1969, c. 584, § 43, p. 2370; Laws 1983, LB 469, § 2; Laws 1989, LB 92, § 11; Laws 1991, LB 233, § 43; Laws 1993, LB 583, § 11; Laws 1994, LB 1066, § 30; Laws 2024, First Spec. Sess., LB3, § 13.
Effective date August 21, 2024.

Cross References

Insurers Examination Act, see section 44-5901.
Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

ARTICLE 3

GENERAL PROVISIONS RELATING TO INSURANCE

Section

44-312 Telehealth and telemonitoring services covered under policy, certificate, contract, or plan; insurer; duties; reimbursement rate; requirements.

(1) For purposes of this section:

(a)(i) Telehealth means the use of medical information electronically exchanged from one site to another, whether synchronously or asynchronously, to aid a health care provider in the diagnosis or treatment of a patient.

(ii) Telehealth includes (A) services originating from a patient's home or any other location where such patient is located, (B) asynchronous services involving the acquisition and storage of medical information at one site that is then forwarded to or retrieved by a health care provider at another site for medical evaluation, and (C) telemonitoring.

(iii) Telehealth also includes audio-only services for the delivery of individual behavioral health services for an established patient, when appropriate, or crisis management and intervention for an established patient as allowed by federal law; and

(b) Telemonitoring means the remote monitoring of a patient's vital signs, biometric data, or subjective data by a monitoring device which transmits such data electronically to a health care provider for analysis and storage.

(2) Any insurer offering (a) any individual or group sickness and accident insurance policy, certificate, or subscriber contract delivered, issued for delivery, or renewed in this state, (b) any hospital, medical, or surgical expense-incurred policy, except for policies that provide coverage for a specified disease or other limited-benefit coverage, or (c) any self-funded employee benefit plan to the extent not preempted by federal law, shall provide upon request to a policyholder, certificate holder, or health care provider a description of the telehealth and telemonitoring services covered under the relevant policy, certificate, contract, or plan.

(3) The description shall include:

(a) A description of services included in telehealth and telemonitoring coverage, including, but not limited to, any coverage for transmission costs;

(b) Exclusions or limitations for telehealth and telemonitoring coverage, including, but not limited to, any limitation on coverage for transmission costs; and

(c) Requirements for the licensing status of health care providers providing telehealth and telemonitoring services.

(4) Except as otherwise provided in section 44-793, the reimbursement rate for any telehealth service shall, at a minimum, be the same as a comparable in-person health care service if the licensed provider providing the telehealth service also provides in-person health care services at a physical location in Nebraska or is employed by or holds medical staff privileges at a licensed facility in Nebraska and such facility provides in-person health care services in Nebraska.

Source: Laws 2015, LB257, § 1; Laws 2021, LB400, § 1; Laws 2023, LB296, § 11.

44-314 Governmental entity offering individual or family health insurance to first responders; prohibited acts.

(1) Except as provided in subsection (2) of this section, an employer providing for an individual or family health insurance policy for a first responder employee shall not cancel such policy if the first responder suffers serious bodily injury from an event that occurs while the first responder is acting in the line of duty and that results in the first responder falling below the minimum number of working hours needed to maintain his or her regular individual or family health insurance.

(2) Subsection (1) of this section does not prohibit an employer from canceling such policy if the first responder:

(a) Voluntarily ceases to be employed with the employer; or

(b) Does not return to employment within twelve months after the date of injury.

(3) For a first responder who dies as a result of an event that occurs while the first responder is acting in the line of duty, the employer of such first responder shall not cancel any health insurance policy covering a spouse or dependent of such first responder for a period of at least twelve months following such death.

(4) For purposes of this section:

(a) Employer means any state or local governmental entity that employs a first responder;

(b) First responder means any law enforcement officer, professional firefighter, or paid individual licensed under a licensure classification in subdivision (1) of section 38-1217 who provides medical care in order to prevent loss of life or aggravation of physiological or psychological illness or injury;

(c) Law enforcement officer has the same meaning as in section 81-1401;

(d) Line of duty means any action that a first responder is authorized or obligated by law, rule, or regulation to perform, related to or as a condition of employment or service; and

(e) Professional firefighter means an individual who is a firefighter or firefighter-paramedic as a full-time career and who is a member of a paid fire department of any of the following entities within Nebraska:

(i) A municipality, including a municipality having a home rule charter or a municipal authority created pursuant to a home rule charter that has its own paid fire department;

(ii) A rural or suburban fire protection district; or

(iii) A fire service providing fire protection to state military installations.

Source: Laws 2017, LB444, § 1; Laws 2024, LB1317, § 58.
Operative date July 19, 2024.

44-319.02 Domestic companies; securities; amount required.

Every domestic insurer hereafter organized to transact the business of insurance in this state shall deposit and continually maintain with the Department of Insurance eligible securities for the benefit of all of its policyholders or policyholders and creditors in the United States in the amount of one hundred thousand dollars.

Source: Laws 1955, c. 174, § 2, p. 499; Laws 1989, LB 92, § 96; Laws 2023, LB92, § 51.

44-319.03 Domestic companies; securities; deposit; minimum required.

Every domestic assessment association hereafter organized to transact the business of insurance in this state, except (1) health and accident assessment associations and (2) assessment associations organized primarily to write insurance coverage on farm properties against the perils of fire, lightning, windstorm, and hail, shall deposit with the Department of Insurance eligible securities for the benefit of all of its policyholders or policyholders and creditors in the United States equal to one-fifth of the minimum surplus funds required of domestic mutual insurance companies licensed to write the same kind or kinds of insurance.

Source: Laws 1955, c. 174, § 3, p. 499; Laws 1993, LB 583, § 73; Laws 2023, LB92, § 52.

44-319.06 Foreign companies; securities; amount required.

No foreign insurer or assessment association now or hereafter authorized to do business in this state shall henceforth transact such business unless it shall deposit and continually maintain with the Department of Insurance or with the proper official of some one state of the United States designated by law to accept such deposit, eligible securities in the amount of not less than one hundred thousand dollars for the benefit of all of its policyholders or policyholders and creditors in the United States.

Source: Laws 1955, c. 174, § 6, p. 499; Laws 2023, LB92, § 53.

44-323 Life insurance policy, disability insurance policy, or long-term care insurance policy; living organ donor; treatment.

(1) For purposes of this section:

(a) Insurance coverage means coverage under a disability insurance, life insurance, or long-term care insurance policy; and

(b) Living organ donor means an individual who:

(i) Has donated all or part of an organ; and

(ii) Is not deceased.

(2) It shall be unlawful for an insurer to deny insurance coverage, cancel insurance coverage, or determine the price or premium for, refuse to issue, or otherwise vary any term or condition of a life insurance policy, disability insurance policy, or long-term care insurance policy solely on the basis of an individual's status as a living organ donor and without any unique and material actuarial risks in accordance with sound actuarial principles and actual and reasonably anticipated and expected experiences of such individual on the basis of the individual's status as a living organ donor.

Source: Laws 2022, LB863, § 18.

44-361 Rebates; prohibited; activities not considered a rebate; permitted conduct.

(1) No insurance company, by itself or any other party, and no insurance agent or broker, personally or by any other party, shall offer, promise, allow, give, set off, or pay, directly or indirectly, any rebate of, or part of, the premium payable on the policy, or of any policy, or agent's commission thereon, or earnings, profits, dividends, or other benefits founded, arising, accruing or to accrue thereon or therefrom, or any paid employment or contract for service, or for advice of any kind, or any other valuable consideration or inducement to, or for insurance, on any risk authorized to be taken under section 44-201 now or hereafter to be written, which is not specified in the policy contract of insurance. No such company, agent, or broker, personally or otherwise, shall offer, promise, give, sell or purchase any stock, bonds, securities or property, or any dividends or profits accruing or to accrue thereon, or other things of value whatsoever, as inducement to insurance or in connection therewith, which is not specified in the policy. No insured person or party shall receive or accept, directly or indirectly, any rebate of premium, or part thereof, or agent's or broker's commission thereon, payable on the policy, or on any policy of insurance, or any favor or advantage or share in the dividends or other benefits to accrue on, or any valuable consideration or inducement not specified in the policy contract of insurance.

(2) Extending of interest-free credit on life and liability insurance premiums or interest-free credit on crop hail insurance premiums shall not be considered a rebate of the premium for purposes of this section.

(3) Payments made pursuant to the Nebraska Right to Shop Act shall not be considered a rebate of the premium for purposes of this section.

(4)(a) The offer or provision by an insurance company or an agent or broker, by or through employees, affiliates, or third-party representatives, of value-added products or services at no or reduced cost when such products or services are not specified in the policy of insurance shall not be prohibited by this section if the product or service:

(i) Relates to the insurance coverage; and

(ii) Is primarily designed to satisfy one or more of the following:

(A) Provide loss mitigation or loss control;

(B) Reduce claim costs or claim settlement costs;

(C) Provide education about liability risks or risk of loss to persons or property;

(D) Monitor or assess risk, identify sources of risk, or develop strategies for eliminating or reducing risk;

(E) Enhance health;

(F) Enhance financial wellness through items such as education or financial planning services;

(G) Provide post-loss services;

(H) Incent behavioral changes to improve the health or reduce the risk of death or disability of a customer; or

(I) Assist in the administration of the employee or retiree benefit insurance coverage.

(b) The cost to the insurance company or agent or broker offering the product or service to any given customer shall be reasonable in comparison to that customer's premiums or insurance coverage for the policy class.

(c) If the insurance company or agent or broker is providing the product or service offered, the insurance company or agent or broker shall ensure that the customer is provided with contact information to assist the customer with questions regarding the product or service.

(d) The Director of Insurance may adopt and promulgate rules and regulations when implementing the permitted practices set forth in this subsection to ensure consumer protection. Such rules and regulations, consistent with applicable law, may address, among other issues, consumer data protections and privacy, consumer disclosure, and unfair discrimination.

(e) The availability of the value-added product or service shall be based on documented objective criteria and offered in a manner that is not unfairly discriminatory. The documented criteria shall be maintained by the insurance company or agent or broker and produced upon request by the Department of Insurance.

(f) If an insurance company or agent or broker does not have sufficient evidence, but has a good-faith belief that the product or service will achieve the purpose for which such product or service was primarily designed under subdivision (4)(a)(ii) of this section, the insurance company or agent or broker

may provide the product or service in a manner that is not unfairly discriminatory as part of a pilot or testing program for no more than one year. An insurance company or an agent or broker shall notify the Department of Insurance of any such pilot or testing program offered to consumers in this state prior to launching such pilot or testing program and may proceed with the program unless the department objects within twenty-one days of such notice.

(5) Notwithstanding the other provisions of this section, an insurance company or an agent or broker may:

(a) Offer or give noncash gifts, items, or services, including meals to or charitable donations on behalf of a customer, in connection with the marketing, sale, purchase, or retention of contracts of insurance, as long as the cost does not exceed an amount determined to be reasonable by the Director of Insurance, per policy year per term. The offer shall be made in a manner that is not unfairly discriminatory. The customer shall not be required to purchase, continue to purchase, or renew a policy in exchange for the gift, item, or service; and

(b) Conduct drawings or raffles to the extent permitted by state law, as long as there is no financial cost to entrants to participate, the drawing or raffle does not obligate participants to purchase insurance, the prizes are not valued in excess of a reasonable amount determined by the Director of Insurance, and the drawing or raffle is open to the public. The drawing or raffle must be offered in a manner that is not unfairly discriminatory. The customer shall not be required to purchase, continue to purchase, or renew a policy in order to participate in the drawing or raffle or in exchange for the drawing or raffle prize.

(6) For purposes of subsections (4) and (5) of this section, customer means a policyholder, potential policyholder, certificate holder, potential certificate holder, insured, potential insured, or applicant.

Source: Laws 1913, c. 154, § 140, p. 466; R.S.1913, § 3277; Laws 1919, c. 190, tit. V, art. XI, § 5, p. 648; C.S.1922, § 7884; C.S.1929, § 44-1105; R.S.1943, § 44-361; Laws 1961, c. 220, § 1, p. 653; Laws 1971, LB 137, § 1; Laws 1972, LB 1354, § 2; Laws 2018, LB1119, § 25; Laws 2022, LB863, § 19.

Cross References

Nebraska Right to Shop Act, see section 44-1401.

ARTICLE 5
STANDARD PROVISIONS AND FORMS

Section
44-513. Osteopathic medicine and surgery, chiropractic, optometry, psychology, dentistry, podiatry, or mental health service; policy; provisions.

44-513 Osteopathic medicine and surgery, chiropractic, optometry, psychology, dentistry, podiatry, or mental health service; policy; provisions.

Whenever any insurer provides by contract, policy, certificate, or any other means whatsoever for a service, or for the partial or total reimbursement, payment, or cost of a service, to or on behalf of any of its policyholders, group policyholders, subscribers, or group subscribers or any person or group of

persons, which service may be legally performed by a person licensed in this state for the practice of osteopathic medicine and surgery, chiropractic, optometry, psychology, dentistry, podiatry, or mental health practice or by a person who holds a privilege to practice in Nebraska as a professional counselor under the Licensed Professional Counselors Interstate Compact, the person rendering such service or such policyholder, subscriber, or other person shall be entitled to such partial or total reimbursement, payment, or cost of such service, whether the service is performed by a duly licensed medical doctor or by a duly licensed osteopathic physician, chiropractor, optometrist, psychologist, dentist, podiatrist, or mental health practitioner or duly privileged professional counselor. This section shall not limit the negotiation of preferred provider policies and contracts under sections 44-4101 to 44-4113.

Source: Laws 1967, c. 258, § 1, p. 681; Laws 1969, c. 372, § 1, p. 1330; Laws 1974, LB 712, § 1; Laws 1975, LB 190, § 1; Laws 1984, LB 902, § 15; Laws 1989, LB 342, § 2; Laws 1994, LB 1222, § 50; Laws 1995, LB 473, § 1; Laws 2022, LB752, § 26.

Cross References

Licensed Professional Counselors Interstate Compact, see section 38-4201.

ARTICLE 7

GENERAL PROVISIONS COVERING LIFE, SICKNESS, AND ACCIDENT INSURANCE

Section

44-714 Health benefit plan; plan sponsor; electronic delivery of communications; consent on behalf of covered person; conditions.

(1) For purposes of this section:

(a) Health benefit plan means a policy, a contract, a certificate, or an agreement entered into, offered by, or issued by an insurer to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including a vision or dental benefit plan. Health benefit plan shall not include any coverage pursuant to a liability insurance policy, including medical payments insurance issued as a supplement to a liability insurance policy, or a workers' compensation insurance policy; and

(b) Plan sponsor means:

(i) In the case of a health benefit plan established or maintained by a single employer, the employer;

(ii) In the case of a health benefit plan established or maintained by an employee organization, the employee organization; or

(iii) In the case of a health benefit plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan.

(2) The plan sponsor of a health benefit plan may, on behalf of covered persons in the plan, provide the consent to the delivery of all communications related to the plan by electronic means and to the electronic delivery of any health insurance identification card if, before consenting on behalf of a covered person, a plan sponsor:

(a) Confirms that the covered person routinely uses electronic communications during the normal course of employment;

(b) Provides the covered person an opportunity to opt out of delivery by electronic means; and

(c) Follows all federal and state laws relating to the electronic delivery of such information or documents.

Source: Laws 2023, LB92, § 87.

44-785 Coverage for screening mammography, digital breast tomosynthesis, bilateral whole breast ultrasound, and diagnostic magnetic resonance imaging; requirements.

(1) Notwithstanding section 44-3,131, (a) any individual or group sickness and accident insurance policy or subscriber contract delivered, issued for delivery, or renewed in this state and any hospital, medical, or surgical expense-incurred policy, except for policies that provide coverage for a specified disease or other limited-benefit coverage, and (b) any self-funded employee benefit plan to the extent not preempted by federal law shall include coverage for screening mammography, digital breast tomosynthesis, bilateral whole breast ultrasound, and diagnostic magnetic resonance imaging as follows:

(i) For a woman who is thirty-five years of age or older but younger than forty years of age, one base-line mammogram between thirty-five and forty years of age;

(ii) For a woman who is younger than forty years of age and who, based on the National Comprehensive Cancer Network Guidelines for Breast Cancer Screening and Diagnosis version 1.2022 and the recommendation of the woman's health care provider, has an increased risk of breast cancer due to (A) a family or personal history of breast cancer or prior atypical breast biopsy, (B) positive genetic testing, or (C) heterogeneous or dense breast tissue based on a breast imaging, at least one mammogram each year and additional mammograms if necessary;

(iii) For a woman who is forty years of age or older, one mammogram every year;

(iv) For a woman who, based on the National Comprehensive Cancer Network Guidelines for Breast Cancer Screening and Diagnosis version 1.2022 and

the recommendation of the woman's health care provider, has an increased risk for breast cancer due to (A) a family or personal history of breast cancer or prior atypical breast biopsy, (B) positive genetic testing, or (C) heterogeneous or dense breast tissue based on a breast imaging, one digital breast tomosynthesis each year;

(v) For a woman who, based on the National Comprehensive Cancer Network Guidelines for Breast Cancer Screening and Diagnosis version 1.2022 and the recommendation of the woman's health care provider, has an increased risk for breast cancer due to (A) a family or personal history of breast cancer or prior atypical breast biopsy, (B) positive genetic testing, or (C) heterogeneous or dense breast tissue based on a breast imaging, one bilateral whole breast ultrasound each year;

(vi) For a woman who, based on the National Comprehensive Cancer Network Guidelines for Breast Cancer Screening and Diagnosis version 1.2022 and the recommendation of the woman's health care provider, has an increased risk for breast cancer due to (A) a family or personal history of breast cancer or prior atypical breast biopsy, (B) positive genetic testing, or (C) a history of chest radiation, one diagnostic magnetic resonance imaging each year; and

(vii) For a woman who, based on national standard risk models or the National Comprehensive Cancer Network Guidelines for Breast Cancer Screening and Diagnosis, has an increased risk of breast cancer and heterogeneous or dense breast tissue, one diagnostic magnetic resonance imaging each year.

(2)(a) Except as provided in subdivision (b) of this subsection, this section prohibits the application of deductible, coinsurance, copayment, or other cost-sharing requirements contained in the policy or health benefit plan for such services.

(b) This section does not prevent application of deductible or copayment provisions contained in the policy or health benefit plan for diagnostic magnetic resonance imaging for a woman based on heterogeneous or dense breast tissue.

(c) This section does not require that coverage under an individual or group policy or health benefit plan be extended to any other procedures. The coverage provided by this section shall not be less favorable than for other radiological examinations.

(3) For purposes of this section, screening mammography shall mean radiological examination of the breast of asymptomatic women for the early detection of breast cancer, which examination shall include (a) a cranio-caudal and a medial lateral oblique view of each breast and (b) a licensed radiologist's interpretation of the results of the procedure. Screening mammography shall not include diagnostic mammography, additional projections required for lesion definition, breast ultrasound, or any breast interventional procedure. Screening mammography shall be performed by a mammogram supplier who meets the standards of the federal Mammography Quality Standards Act of 1992.

Source: Laws 1995, LB 68, § 1; Laws 2023, LB92, § 54.

44-790.01 Covered prescription insulin drug; maximum payment; ensure access; requirements.

(1) Except as provided in subsection (3) of this section, beginning January 1, 2024, and notwithstanding section 44-3,131, (a) any individual or group sickness and accident insurance policy or subscriber contract delivered, issued for delivery, or renewed in this state and any hospital, medical, or surgical expense-incurred policy, except for policies that provide coverage for a specified disease or other limited-benefit coverage, and (b) any self-funded employee benefit plan to the extent not preempted by federal law, which provides reimbursement for prescription insulin drugs shall limit the total amount that a covered individual is required to pay for each covered prescription insulin drug on the policy's, contract's, or plan's lowest brand or generic tier to a maximum of thirty-five dollars per thirty-day supply of insulin, regardless of the amount needed.

(2) Nothing in this section prevents a policy, contract, or plan from reducing the total amount that a covered individual is required to pay for each covered prescription insulin drug to an amount less than the maximum specified in subsection (1) of this section.

(3) If, due to a national shortage of an insulin drug, a covered individual cannot access a covered prescription insulin drug on the lowest brand or generic tier of the policy, contract, or plan, the policy, contract, or plan shall ensure access to an insulin drug at a maximum of thirty-five dollars per thirty-day supply, until such time that the national shortage ends to prevent disruptions in patient access to insulin.

(4) For purposes of this section, prescription insulin drug means a prescription drug that contains insulin and is used to treat diabetes.

Source: Laws 2023, LB92, § 86.

44-792 Mental health conditions; terms, defined.

For purposes of sections 44-791 to 44-795:

(1) Health insurance plan means (a) any group sickness and accident insurance policy, group health maintenance organization contract, or group subscriber contract delivered, issued for delivery, or renewed in this state and (b) any self-funded employee benefit plan to the extent not preempted by federal law. Health insurance plan includes any group policy, group contract, or group plan offered or administered by the state or its political subdivisions. Health insurance plan does not include group policies providing coverage for a specified disease, accident-only coverage, hospital indemnity coverage, disability income coverage, medicare supplement coverage, long-term care coverage, or other limited-benefit coverage. Health insurance plan does not include any policy, contract, or plan covering an employer group that covers fewer than fifteen employees;

(2) Mental health condition means any condition or disorder involving mental illness that falls under any of the diagnostic categories listed in the Mental Disorders Section of the International Classification of Disease;

(3) Mental health professional means (a) a practicing physician licensed to practice medicine in this state under the Medicine and Surgery Practice Act, (b) a practicing psychologist licensed to engage in the practice of psychology in this state as provided in section 38-3111 or as provided in similar provisions of the Psychology Interjurisdictional Compact, (c) a practicing mental health professional licensed or certified in this state as provided in the Mental Health

Practice Act, or (d) a professional counselor who holds a privilege to practice in Nebraska as a professional counselor under the Licensed Professional Counselors Interstate Compact;

(4) Rate, term, or condition means lifetime limits, annual payment limits, and inpatient or outpatient service limits. Rate, term, or condition does not include any deductibles, copayments, or coinsurance; and

(5)(a) Serious mental illness means, prior to January 1, 2002, (i) schizophrenia, (ii) schizoaffective disorder, (iii) delusional disorder, (iv) bipolar affective disorder, (v) major depression, and (vi) obsessive compulsive disorder; and

(b) Serious mental illness means, on and after January 1, 2002, any mental health condition that current medical science affirms is caused by a biological disorder of the brain and that substantially limits the life activities of the person with the serious mental illness. Serious mental illness includes, but is not limited to (i) schizophrenia, (ii) schizoaffective disorder, (iii) delusional disorder, (iv) bipolar affective disorder, (v) major depression, and (vi) obsessive compulsive disorder.

Source: Laws 1999, LB 355, § 2; Laws 2007, LB463, § 1135; Laws 2018, LB1034, § 48; Laws 2022, LB752, § 27.

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.
Psychology Interjurisdictional Compact, see section 38-3901.

44-7,102 Coverage for screening for colorectal cancer.

(1) Notwithstanding section 44-3,131, (a) any individual or group sickness and accident insurance policy, certificate, or subscriber contract delivered, issued for delivery, or renewed in this state and any hospital, medical, or surgical expense-incurred policy, except for short-term major medical policies of six months or less duration and policies that provide coverage for a specified disease or other limited-benefit coverage, and (b) any self-funded employee benefit plan to the extent not preempted by federal law shall include screening coverage for a colorectal cancer examination, laboratory tests for cancer, and a concurrent removal of polyps or biopsy, or both, for any nonsymptomatic person forty-five years of age or older covered under such policy, certificate, contract, or plan. Such screening coverage shall include a maximum of one stool-based preventive screening test as approved by the United States Preventive Services Task Force annually and a flexible sigmoidoscopy every five years, a colonoscopy every ten years, or a barium enema every five to ten years, or any combination, or the most reliable, medically recognized screening test available. The screenings selected shall be as deemed appropriate by a health care provider and the patient.

(2)(a) On or after December 31, 2023, no policy, certificate, or contract, delivered, issued for delivery, or renewed in this state, or any self-funded employee benefit plan, to the extent not preempted by federal law, shall impose a deductible, coinsurance, or any other cost-sharing requirements for screening colonoscopies as recommended by the United States Preventive Services Task Force, including those performed as a result of a positive noncolonoscopy stool-based preventive screening test.

(b) No policy, certificate, or contract, delivered, issued for delivery, or renewed in this state, or any self-funded employee benefit plan, to the extent not preempted by federal law, shall impose a deductible, coinsurance, or any other cost-sharing requirements for any service or item that is an integral part of performing a colorectal cancer screening, including:

(i) Polyp removal performed during the screening procedure;

(ii) Any pathology examination on a polyp biopsy performed as part of the screening procedure;

(iii) Required specialist consultation prior to the screening procedure;

(iv) Bowel preparation medications prescribed for the screening procedure; and

(v) Anesthesia services performed in connection with a preventive colonoscopy.

Source: Laws 2007, LB247, § 86; Laws 2022, LB863, § 20; Laws 2023, LB92, § 55; Laws 2024, LB829, § 1.
Operative date January 1, 2025.

44-7,115 Step-therapy override exception; approval; procedure; effect.

(1) A step-therapy override exception shall be approved by a health carrier or utilization review organization if any of the following circumstances apply:

(a) The prescription drug required under the step-therapy protocol is contraindicated pursuant to the drug manufacturer's prescribing information for the drug or, due to a documented adverse event with a previous use or a documented medical condition, including a comorbid condition, is likely to do any of the following:

(i) Cause an adverse reaction to the covered individual;

(ii) Decrease the ability of the covered individual to achieve or maintain reasonable functional ability in performing daily activities; or

(iii) Cause physical or mental harm to the covered individual;

(b) The prescription drug required under the step-therapy protocol is expected to be ineffective based on the known clinical characteristics of the covered person, such as the covered person's adherence to or compliance with the covered person's individual plan of care, and any of the following:

(i) The known characteristics of the prescription drug regimen as described in peer-reviewed literature or in the manufacturer's prescribing information for the drug;

(ii) The health care provider's medical judgment based on clinical practice guidelines or peer-reviewed journals; or

(iii) The covered person's documented experience with the prescription drug regimen;

(c) The covered person has had a trial of a therapeutically equivalent dose of the prescription drug under the step-therapy protocol while under the covered person's current or previous health benefit plan for a period of time to allow for a positive treatment outcome, and such prescription drug was discontinued by the covered person's health care provider due to lack of effectiveness; or

(d) The covered person is currently receiving a positive therapeutic outcome on a prescription drug selected by the covered person's health care provider for

the medical condition under consideration while under the covered person's current or previous health benefit plan. Nothing in the Step-Therapy Reform Act shall prohibit the distribution of a pharmaceutical sample, except that the pharmaceutical sample may not be used to meet the requirements of this subdivision.

(2) Upon the approval of a step-therapy override exception, the health carrier or utilization review organization shall authorize coverage for the prescription drug selected by the covered person's prescribing health care provider if the prescription drug is a covered prescription drug under the covered person's health benefit plan.

(3) Except in the case of an urgent care request, a health carrier or utilization review organization shall make a determination to approve or deny a request for a step-therapy override exception within five calendar days after receipt of complete, clinically relevant written documentation supporting a step-therapy override exception under subsection (1) of this section. In the case of an urgent care request, a health carrier or utilization review organization shall approve or deny a request for a step-therapy override exception within seventy-two hours after receipt of such documentation. If a request for a step-therapy override exception is incomplete or additional clinically relevant information is required, the health carrier or utilization review organization may request such information within the applicable time period provided in this section. Once the information is submitted, the applicable time period for approval or denial shall begin again. If a health carrier or utilization review organization fails to respond to the request for a step-therapy override exception within the applicable time, the step-therapy override exception shall be deemed granted.

(4) If a request for a step-therapy override exception is denied, the health carrier or utilization review organization shall provide the covered person or the covered person's authorized representative and the covered person's prescribing health care provider with the reason for the denial and information regarding the procedure to request external review of the denial pursuant to the Health Carrier External Review Act. Any denial of a request for a step-therapy override exception that is upheld on an internal appeal shall be considered a final adverse determination for purposes of the Health Carrier External Review Act and is eligible for a request for external review by a covered person or the covered person's authorized representative pursuant to the Health Carrier External Review Act.

(5) This section shall not be construed to prevent:

(a) A health carrier or utilization review organization from requiring a pharmacist to effect substitutions of prescription drugs consistent with section 28-414.01, 38-28,111, or 71-2478;

(b) A health care provider from prescribing a prescription drug that is determined to be medically appropriate; or

(c) A health carrier or utilization review organization from requiring a covered person to try a prescription drug with the same generic name and demonstrated bioavailability, a biosimilar, or a biological product that is an interchangeable biological product pursuant to the Nebraska Drug Product Selection Act prior to providing coverage for the equivalent branded prescription drug.

(6) For purposes of this section, biosimilar has the same meaning as defined in 42 U.S.C. 262(i)(2) or interchangeable biological product as defined in 42 U.S.C. 262(i)(3).

Source: Laws 2021, LB337, § 5; Laws 2024, LB1073, § 17.
Operative date July 19, 2024.

Cross References

Health Carrier External Review Act, see section 44-1301.
Nebraska Drug Product Selection Act, see section 38-28,108.

44-7,118 Coverage for services performed by rural emergency hospital; requirements.

Any individual or group sickness and accident insurance policy or subscriber contract, nonprofit hospital or medical service policy or plan contract, or health maintenance organization contract and any self-funded employee benefit plan to the extent not preempted by federal law or exempted by state law shall provide benefits for services when performed by a licensed rural emergency hospital if such services would be covered under such policies, contracts, or coverage if performed by a general hospital.

Source: Laws 2022, LB697, § 8.

44-7,119 Self-funded health benefit plan; not considered insurance; when; certification; required; reinsurance; authorized.

(1) A health benefit plan is not insurance and except as provided in this section is not subject to any law regarding insurance if:

(a) The health benefit plan provides health benefits under a self-funded arrangement administered by an entity licensed as a third-party administrator under the Third-Party Administrator Act; and

(b) The health benefit plan is sponsored by a nonprofit agricultural organization or an affiliate of a nonprofit agricultural organization that:

(i) Is domiciled in this state;

(ii) Was created primarily to promote programs for the development of rural communities and the economic stability and sustainability of farmers in this state pursuant to its articles of incorporation;

(iii) Provides membership opportunities for eligible persons in each county of this state;

(iv) Collects annual dues from its members;

(v) Holds regular meetings to further the purposes of its members;

(vi) Provides its members with representation on its governing board and any committees of such board; and

(vii) Contracts with the third-party administrator described in subdivision (a) of this subsection for administration of the health benefit plan.

(2) Before providing health benefits under a self-funded plan, an organization shall file a certification with the Department of Insurance verifying that the organization meets the requirements of this section. Such certification shall be filed at a time and in a manner prescribed by the Department of Insurance.

(3) The risk assumed by a health benefit plan under health care benefit coverage under this section may be reinsured by a company authorized to do business in this state.

(4) Any health benefit plan application for coverage and any contract provided to a member shall prominently state the following:

(a) The health benefit plan is not insurance;

(b) The health benefit plan is not provided by an insurance company;

(c) The health benefit plan is not subject to the laws and rules governing insurance; and

(d) The health benefit plan is not subject to the jurisdiction of the Department of Insurance.

Source: Laws 2024, LB1313, § 1.
Effective date July 19, 2024.

Cross References

Third-Party Administrator Act, see sections 44-5801 to 44-5816.

44-7,120 Lung cancer screening; deductible, coinsurance, cost-sharing requirements; prohibited, when.

Notwithstanding section 44-3,131, beginning January 1, 2025, no policy, certificate, or contract, delivered, issued for delivery, or renewed in this state, or any self-funded employee benefit plan, to the extent not preempted by federal law, shall impose a deductible, coinsurance, or any other cost-sharing requirements for lung cancer screening, including screening performed with low-dose computed tomography, for an individual at least fifty years of age and not older than eighty years of age who has a twenty-pack-per-year smoking history and currently smokes or who has quit smoking within the past fifteen years. This section shall not apply if an individual (1) has not smoked for fifteen years, (2) develops a health problem that substantially limits life expectancy, or (3) is preparing to have curative lung surgery.

Source: Laws 2024, LB1073, § 16.
Operative date July 19, 2024.

ARTICLE 13

HEALTH CARRIER EXTERNAL REVIEW ACT

Section
44-1308. Request for external review; filing; director; duties; health carrier; duties; preliminary review; contents; director; powers; notice of initial determination; contents; independent review organization; powers; duties; decision; notice; contents.

44-1308 Request for external review; filing; director; duties; health carrier; duties; preliminary review; contents; director; powers; notice of initial determination; contents; independent review organization; powers; duties; decision; notice; contents.

(1)(a) Within four months after the date of receipt of a notice of an adverse determination or final adverse determination pursuant to section 44-1305, a covered person or the covered person's authorized representative may file a request for an external review with the director.

(b) Within one business day after the date of receipt of a request for an external review pursuant to subdivision (1)(a) of this section, the director shall send a copy of the request to the health carrier.

(2) Within five business days following the date of receipt of the copy of the external review request from the director under subdivision (1)(b) of this section, the health carrier shall complete a preliminary review of the request to determine whether:

(a) The individual is or was a covered person in the health benefit plan at the time that the health care service was requested or, in the case of a retrospective review, was a covered person in the health benefit plan at the time that the health care service was provided;

(b) The health care service that is the subject of the adverse determination or the final adverse determination is a covered service under the covered person's health benefit plan, but for a determination by the health carrier that the health care service is not covered because it does not meet the health carrier's requirements for medical necessity, appropriateness, health care setting, level of care, or effectiveness;

(c) The covered person has exhausted the health carrier's internal grievance process as set forth in the Health Carrier Grievance Procedure Act unless the covered person is not required to exhaust the health carrier's internal grievance process pursuant to section 44-1307; and

(d) The covered person has provided all the information and forms required to process an external review, including the release form provided under subsection (2) of section 44-1305.

(3)(a) Within one business day after completion of the preliminary review, the health carrier shall notify the director and covered person and, if applicable, the covered person's authorized representative, in writing whether:

(i) The request is complete; and

(ii) The request is eligible for external review.

(b) If the request:

(i) Is not complete, the health carrier shall inform the covered person and, if applicable, the covered person's authorized representative and the director in writing and include in the notice what information or materials are needed to make the request complete; or

(ii) Is not eligible for external review, the health carrier shall inform the covered person and, if applicable, the covered person's authorized representative and the director in writing and include in the notice the reasons for its ineligibility.

(c)(i) The director may specify the form for the health carrier's notice of initial determination under this subsection and any supporting information to be included in the notice.

(ii) The notice of initial determination shall include a statement informing the covered person and, if applicable, the covered person's authorized representative that a health carrier's initial determination that the external review request is ineligible for review may be appealed to the director.

(d)(i) The director may determine that a request is eligible for external review under subsection (2) of this section notwithstanding a health carrier's initial determination that the request is ineligible and require that it be referred for external review.

(ii) In making a determination under subdivision (3)(d)(i) of this section, the director's decision shall be made in accordance with the terms of the covered

person's health benefit plan and shall be subject to all applicable provisions of the Health Carrier External Review Act.

(4)(a) Whenever the director receives a notice that a request is eligible for external review following the preliminary review conducted pursuant to subsection (3) of this section, the director shall, within one business day after the date of receipt of the notice:

(i) Assign an independent review organization from the list of approved independent review organizations compiled and maintained by the director pursuant to section 44-1312 to conduct the external review and notify the health carrier of the name of the assigned independent review organization; and

(ii) Notify in writing the covered person and, if applicable, the covered person's authorized representative of the request's eligibility and acceptance for external review.

(b) In reaching a decision, the assigned independent review organization is not bound by any decisions or conclusions reached during the health carrier's utilization review process as set forth in the Utilization Review Act or the health carrier's internal grievance process as set forth in the Health Carrier Grievance Procedure Act.

(c) The director shall include in the notice provided to the covered person and, if applicable, the covered person's authorized representative a statement that the covered person or his or her authorized representative may submit in writing to the assigned independent review organization within five business days following the date of receipt of the notice provided pursuant to subdivision (4)(a) of this section additional information that the independent review organization shall consider when conducting the external review. The independent review organization is not required to but may accept and consider additional information submitted after five business days.

(5)(a) Within five business days after the date of receipt of the notice provided pursuant to subdivision (4)(a) of this section, the health carrier or its designee utilization review organization shall provide to the assigned independent review organization the documents and any information considered in making the adverse determination or final adverse determination. Any documents or information solely related to cost shall not be provided.

(b) Except as provided in subdivision (5)(c) of this section, failure by the health carrier or its utilization review organization to provide the documents and information within the time specified in subdivision (5)(a) of this section shall not delay the conduct of the external review.

(c)(i) If the health carrier or its utilization review organization fails to provide the documents and information within the time specified in subdivision (5)(a) of this section, the assigned independent review organization may terminate the external review and make a decision to reverse the adverse determination or final adverse determination.

(ii) Within one business day after making the decision under subdivision (5)(c)(i) of this section, the independent review organization shall notify the covered person and, if applicable, the covered person's authorized representative, the health carrier, and the director.

(6)(a) The assigned independent review organization shall review all of the information and documents received pursuant to subsection (5) of this section

and any other information submitted in writing to the independent review organization by the covered person or the covered person's authorized representative pursuant to subdivision (4)(c) of this section.

(b) Upon receipt of any information submitted by the covered person or the covered person's authorized representative pursuant to subdivision (4)(c) of this section, the assigned independent review organization shall forward the information to the health carrier within one business day.

(7)(a) Upon receipt of the information, if any, required to be forwarded pursuant to subdivision (6)(b) of this section, the health carrier may reconsider its adverse determination or final adverse determination that is the subject of the external review.

(b) Reconsideration by the health carrier of its adverse determination or final adverse determination pursuant to subdivision (7)(a) of this section shall not delay or terminate the external review.

(c) The external review may only be terminated if the health carrier decides, upon completion of its reconsideration, to reverse its adverse determination or final adverse determination and provide coverage or payment for the health care service that is the subject of the adverse determination or final adverse determination.

(d)(i) Within one business day after making the decision to reverse its adverse determination or final adverse determination as provided in subdivision (7)(c) of this section, the health carrier shall notify the covered person and, if applicable, the covered person's authorized representative, the assigned independent review organization, and the director in writing of its decision.

(ii) The assigned independent review organization shall terminate the external review upon receipt of the notice from the health carrier sent pursuant to subdivision (7)(d)(i) of this section.

(8) In addition to the documents and information provided pursuant to subsection (5) of this section, the assigned independent review organization, to the extent the information or documents are available and the independent review organization considers them appropriate, shall consider the following in reaching a decision:

(a) The covered person's medical records;

(b) The attending health care professional's recommendation;

(c) Consulting reports from appropriate health care professionals and other documents submitted by the health carrier, covered person, the covered person's authorized representative, or the covered person's treating provider;

(d) The terms of coverage under the covered person's health benefit plan with the health carrier to ensure that the independent review organization's decision is not contrary to the terms of coverage under the covered person's health benefit plan with the health carrier;

(e) The most appropriate practice guidelines, which shall include applicable evidence-based standards and may include any other practice guidelines developed by the federal government, national or professional medical societies, boards, or associations;

(f) Any applicable clinical review criteria developed and used by the health carrier or its designee utilization review organization; and

(g) The opinion of the independent review organization's clinical reviewer or reviewers after considering subdivisions (8)(a) through (f) of this section to the extent that the information or documents are available and the clinical reviewer or reviewers consider it appropriate.

(9)(a) Within forty-five days after the date of receipt of the request for an external review, the assigned independent review organization shall provide written notice of its decision to uphold or reverse the adverse determination or the final adverse determination to the covered person, if applicable, the covered person's authorized representative, the health carrier, and the director.

(b) The independent review organization shall include in the notice sent pursuant to subdivision (9)(a) of this section:

(i) A general description of the reason for the request for external review;

(ii) The date that the independent review organization received the assignment from the director to conduct the external review;

(iii) The date that the external review was conducted;

(iv) The date of its decision;

(v) The principal reason or reasons for its decision, including what applicable, if any, evidence-based standards were a basis for its decision;

(vi) The rationale for its decision; and

(vii) References to the evidence or documentation, including the evidence-based standards, considered in reaching its decision.

(c) Upon receipt of a notice of a decision pursuant to subdivision (9)(a) of this section reversing the adverse determination or final adverse determination, the health carrier shall immediately approve the coverage that was the subject of the adverse determination or final adverse determination.

(10) The assignment by the director of an approved independent review organization to conduct an external review in accordance with this section shall be done on a random basis among those approved independent review organizations qualified to conduct the particular external review based on the nature of the health care service that is the subject of the adverse determination or final adverse determination and other circumstances, including conflict of interest concerns pursuant to subsection (4) of section 44-1313.

Source: Laws 2013, LB147, § 8; Laws 2024, LB1073, § 18.
Operative date July 19, 2024.

Cross References

Health Carrier Grievance Procedure Act, see section 44-7301.
Utilization Review Act, see section 44-5416.

ARTICLE 19

TITLE INSURANCE

(b) TITLE INSURERS ACT

(c) TITLE INSURANCE AGENT ACT

(b) TITLE INSURERS ACT

44-1993 Duties of title insurers utilizing the services of title insurance agents; liability.

(1) A title insurer shall not accept title insurance business from a title insurance agent unless there is in force a written contract between the parties which sets forth the responsibilities of each party and, when both parties share responsibility for a particular function, specifies the division of responsibilities.

(2) For each title insurance agent under contract with a title insurer, the title insurer shall have on file a statement of financial condition of each title insurance agent as of the end of the previous calendar year setting forth an income statement of title insurance business done during the preceding year and a balance sheet showing the condition of its affairs as of the prior December 31 certified by the title insurance agent as being a true and accurate representation of the title insurance agent's financial condition. Attorneys actively engaged in the practice of law, other than that related to title insurance business, are exempt from the requirements of this subsection.

(3) A title insurer shall, at least annually, conduct a review of the underwriting, claims, and escrow practices of the title insurance agent which shall include a review of the title insurance agent's title insurance policy form inventory and processing operations. If the title insurance agent does not maintain separate financial institution or trust accounts for each title insurer it represents, the title insurer shall verify that the funds held on its behalf are reasonably ascertainable from the books of account and records of the title insurance agent.

(4) Within thirty days after executing or terminating a contract with a title insurance agent, a title insurer shall provide written notification of the appointment or termination and the reason for termination to the director. Notices of appointment of a title insurance agent shall be made on a form prescribed or approved by the director.

(5) A title insurer shall maintain an inventory of all title insurance policy forms or title insurance policy numbers allocated to each title insurance agent.

(6) A title insurer shall have on file proof that each title insurance agent is licensed by this state.

(7) A title insurer shall establish the underwriting guidelines and, when applicable, limitations on title claims settlement authority to be incorporated into contracts with its title insurance agents.

(8)(a) A title insurer is liable for the defalcation, conversion, or misappropriation by a title insurance agent appointed by or under written contract with such title insurer of escrow, settlement, closing, or security deposit funds handled by such title insurance agent in contemplation of or in conjunction with the issuance of a title insurance commitment or title insurance policy by such title insurer. However, if no such title insurance commitment or title insurance policy was issued, each title insurer which appointed or maintained a written contract with such title insurance agent at the time of the discovery of the defalcation, conversion, or misappropriation shares in the liability for the defalcation, conversion, or misappropriation in the same proportion that the premium remitted to the title insurer by such title insurance agent during the twelve-month period immediately preceding the date of the discovery of the

defalcation, conversion, or misappropriation bears to the total premium remitted to all title insurers by such title insurance agent during the twelve-month period immediately preceding the date of the discovery of the defalcation, conversion, or misappropriation.

(b) For purposes of this subsection, title insurance agent includes (i) a person with whom a title insurer maintains a title insurance agency agreement and (ii) an employer or employee of a title insurance agent or of a person with whom a title insurer maintains a title insurance agency agreement.

Source: Laws 1997, LB 53, § 16; Laws 2004, LB 155, § 2; Laws 2023, LB92, § 56.

(c) TITLE INSURANCE AGENT ACT

44-19,116 Conditions for providing escrow, security, settlement, or closing services and maintaining escrow and security deposit accounts.

(1)(a) A title insurance agent may operate as an escrow, security, settlement, or closing agent subject to the requirements of subdivisions (b) through (f) of this subsection.

(b) All funds deposited with the title insurance agent in connection with an escrow, settlement, closing, or security deposit shall be submitted for collection to or deposited in a separate fiduciary trust account or accounts in a qualified financial institution no later than the close of the next business day in accordance with the following requirements:

(i) The funds shall be the property of the person or persons entitled to them under the provisions of the escrow, settlement, security deposit, or closing agreement and shall be segregated for each depository by escrow, settlement, security deposit, or closing in the records of the title insurance agent in a manner that permits the funds to be identified on an individual basis; and

(ii) The funds shall be applied only in accordance with the terms of the individual instructions or agreements under which the funds were accepted.

(c) Funds held in an escrow account shall be disbursed only pursuant to a written instruction or agreement specifying how and to whom such funds may be disbursed.

(d) Funds held in a security deposit account shall be disbursed only pursuant to a written agreement specifying:

(i) What actions the indemnitor shall take to satisfy his or her obligation under the agreement;

(ii) The duties of the title insurance agent with respect to disposition of the funds held, including a requirement to maintain evidence of the disposition of the title exception before any balance may be paid over to the depositing party or his or her designee; and

(iii) Any other provisions the director may require.

(e)(i) Disbursements may be made out of an escrow, settlement, or closing account only if funds in an amount at least equal to the disbursement have first been received and if the funds received are in one of the following forms:

(A) Lawful money of the United States;

(B) Wired funds when unconditionally held by the title insurance agent;

(C) Cashier's checks, certified checks, bank money orders, or teller's checks issued by a federally insured financial institution and unconditionally held by the title insurance agent;

(D) United States treasury checks, federal reserve bank checks, federal home loan bank checks, State of Nebraska warrants, and warrants of a city of the metropolitan or primary class; and

(E) Real-time or instant payments through the FedNow® Service of the United States Federal Reserve System or through the RTP® network of The Clearing House Payments Company L.L.C.

(ii) For purposes of this subdivision, federally insured financial institution means an institution in which monetary deposits are insured by the Federal Deposit Insurance Corporation or National Credit Union Administration.

(f) A title insurance agent who holds funds relating to an exchange under section 1031 of the Internal Revenue Code shall provide written disclosure, at or before closing, to the person whose funds are being held, on a separate paper with no other information on the paper, which states that:

(i) Such services performed by a title insurance agent are not regulated by the Department of Banking and Finance, the Department of Insurance, or any other agency of the State of Nebraska or by any agency of the United States Government;

(ii) The safety and security of such funds is not guaranteed by any agency of the State of Nebraska or of the United States Government or otherwise protected by law; and

(iii) The owner of such funds should satisfy himself or herself as to the safety and security of such funds.

(2) If the title insurance agent is appointed by two or more title insurers and maintains fiduciary trust accounts in connection with providing escrow, closing, or settlement services, the title insurance agent shall allow each title insurer access to the accounts and any or all of the supporting account information in order to ascertain the safety and security of the funds held by the title insurance agent.

(3) Nothing in the Title Insurance Agent Act shall be deemed to prohibit the recording of documents prior to the time funds are available for disbursement with respect to a transaction if all parties consent to the transaction in writing.

(4) Nothing in this section is intended to amend, alter, or supersede other sections of the act or the laws of this state or the United States regarding an escrow holder's duties and obligations.

(5) The director may prescribe a standard agreement for escrow, settlement, closing, or security deposit funds.

Source: Laws 1997, LB 53, § 39; Laws 1999, LB 259, § 7; Laws 2002, LB 1139, § 21; Laws 2003, LB 216, § 10; Laws 2004, LB 155, § 4; Laws 2024, LB1073, § 19.
Operative date April 16, 2024.

ARTICLE 21

HOLDING COMPANIES

Section
44-2121. Terms, defined.

Section
44-2132. Registration of insurers; filings required; director or commissioner; powers.
44-2138. Information; confidential treatment; sharing of information; restrictions.

44-2121 Terms, defined.

For purposes of the Insurance Holding Company System Act:

(1) An affiliate of, or person affiliated with, a specific person means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the person specified;

(2) Control, including controlling, controlled by, and under common control with, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control is presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by subsection (11) of section 44-2132 that control does not exist in fact. The director may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect;

(3) Director means the Director of Insurance;

(4) Director or commissioner of the lead state means the director or commissioner of insurance in the lead state for the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners;

(5) Enterprise risk means any activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including, but not limited to, anything that would cause the insurer's risk-based capital to fall into company action level as set forth in section 44-6011 or would cause the insurer to be in hazardous financial condition as defined by rule and regulation adopted and promulgated by the director to define standards for companies deemed to be in hazardous financial condition;

(6) Group capital calculation instructions means the group capital calculation instructions as adopted by the National Association of Insurance Commissioners and amended from time to time in accordance with its adopted procedures;

(7) Group-wide supervisor means the chief insurance regulatory official, including the director, who (a) is authorized to conduct and coordinate group-wide supervision activities of an international insurance group and (b) is from the jurisdiction determined or acknowledged by the director under section 44-2155 to have sufficient contacts with the international insurance group;

(8) An insurance holding company system shall consist of two or more affiliated persons, one or more of which is an insurer;

(9) Insurer has the same meaning as in section 44-103, except that insurer does not include agencies, authorities, or instrumentalities of the United States,

its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state;

(10) International insurance group means an insurance holding company system that has been determined by the director to be an international insurance group under section 44-2154;

(11) NAIC Liquidity Stress Test Framework means a separate publication of the National Association of Insurance Commissioners which includes a history of the National Association of Insurance Commissioners' development of regulatory liquidity stress testing, the scope criteria applicable for a specific data year, and the liquidity stress test instructions and reporting templates for a specific data year;

(12) Person means an individual, a corporation, a partnership, a limited partnership, an association, a joint-stock company, a trust, an unincorporated organization, any similar entity, or any combination of such entities acting in concert but does not include any joint-venture partnership exclusively engaged in owning, managing, leasing, or developing real or tangible personal property;

(13) Scope criteria means, as detailed in the NAIC Liquidity Stress Test Framework, the designated exposure bases along with minimum magnitudes thereof for the specified data year, used to establish a preliminary list of insurers considered scoped into the NAIC Liquidity Stress Test Framework for such data year;

(14) Security holder of a specified person means one who owns any security of such person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any such stock or obligations;

(15) Subsidiary of a specified person means an affiliate controlled by such person directly or indirectly through one or more intermediaries; and

(16) Voting security includes any security convertible into or evidencing a right to acquire a voting security.

Source: Laws 1991, LB 236, § 2; Laws 2001, LB 360, § 13; Laws 2012, LB887, § 4; Laws 2016, LB772, § 11; Laws 2022, LB863, § 21.

44-2132 Registration of insurers; filings required; director or commissioner; powers.

(1) Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the director, except that registration shall not be required for a foreign insurer subject to registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this section, subsection (1) of section 44-2133, sections 44-2134 and 44-2136, and either subsection (2) of section 44-2133 or a provision such as the following: Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions within fifteen days after the end of the month in which it learns of each such change or addition. Any insurer which is subject to registration under this section shall register within fifteen days after it becomes subject to registration and annually thereafter by May 1 of each year for the previous calendar year unless the director for good cause shown extends the time for such initial or annual registration and then within such extended time.

The director may require any insurer which is authorized to do business in the state, which is a member of an insurance holding company system, and which is not subject to registration under this section to furnish a copy of the registration statement, the summary specified in subsection (3) of this section, or other information filed by such insurer with the insurance regulatory authority of its domiciliary jurisdiction.

(2) Every insurer subject to registration shall file the registration statement with the director on a form and in a format prescribed by the National Association of Insurance Commissioners which shall contain the following current information:

(a) The capital structure, general financial condition, ownership, and management of the insurer and any person controlling the insurer;

(b) The identity and relationship of every member of the insurance holding company system;

(c) The following agreements in force and transactions currently outstanding or which have occurred during the last calendar year between such insurer and its affiliates:

(i) Loans, other investments, or purchases, sales, or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;

(ii) Purchases, sales, or exchanges of assets;

(iii) Transactions not in the ordinary course of business;

(iv) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(v) All management agreements, service contracts, and cost-sharing arrangements;

(vi) Reinsurance agreements;

(vii) Dividends and other distributions to shareholders; and

(viii) Consolidated tax allocation agreements;

(d) Any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system;

(e) If requested by the director, the insurer shall include financial statements of or within an insurance holding company system, including all affiliates. Financial statements may include, but are not limited to, annual audited financial statements filed with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended. An insurer required to file financial statements pursuant to this subdivision may satisfy the request by providing the director with the most recently filed parent corporation financial statements that have been filed with the Securities and Exchange Commission;

(f) Statements that show that the insurer's board of directors oversees corporate governance and internal controls and that the insurer's officers or senior management have approved, implemented, and continue to maintain and monitor corporate governance and internal control procedures;

(g) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the director; and

(h) Any other information required by rules and regulations which the director may adopt and promulgate.

(3) All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.

(4) It shall not be necessary to disclose on the registration statement information which is not material for the purposes of this section. Unless the director by rule, regulation, or order provides otherwise, sales, purchases, exchanges, loans, or extensions of credit, investments, or guarantees involving one-half of one percent or less of an insurer's admitted assets as of December 31 next preceding shall not be deemed material for purposes of this section. Such exclusion from the definition of material shall not apply for purposes of group capital calculation instructions or the NAIC Liquidity Stress Test Framework.

(5) Subject to the requirements of section 44-2134, each registered insurer shall give notice to the director of all dividends and other distributions to shareholders within five business days following the declaration thereof and shall not pay any such dividends or other distributions to shareholders within ten business days following receipt of such notice by the director unless for good cause shown the director has approved such payment within such ten-business-day period.

(6) Any person within an insurance holding company system subject to registration shall be required to provide complete and accurate information to an insurer when such information is reasonably necessary to enable the insurer to comply with the Insurance Holding Company System Act.

(7) The director shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

(8) The director may require or allow two or more affiliated insurers subject to registration under this section to file a consolidated registration statement.

(9) The director may allow an insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection (1) of this section and to file all information and material required to be filed under this section.

(10) This section shall not apply to any insurer, information, or transaction if and to the extent that the director by rule, regulation, or order exempts the same from this section.

(11) Any person may file with the director a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. A disclaimer of affiliation shall be deemed to have been granted unless the director, within thirty days after receipt of a complete disclaimer, notifies the filing party that the disclaimer is disallowed. If the disclaimer is disallowed, the disclaiming party may request and shall be entitled to an administrative hearing. The disclaiming party shall be relieved of its duty to register under this

section if approval of the disclaimer has been granted by the director or if the disclaimer is deemed to have been approved.

(12) The ultimate controlling person of every insurer subject to registration shall also file an annual enterprise risk report. The report shall, to the best of the ultimate controlling person's knowledge and belief, identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report shall be filed with the director or commissioner of the lead state.

(13)(a) Except as otherwise provided in this section, the ultimate controlling person of every insurer subject to registration shall concurrently file with the registration an annual group capital calculation as directed by the director or commissioner of the lead state. The annual group capital calculation shall be completed in accordance with the group capital calculation instructions, which may permit the director or commissioner of the lead state to allow a controlling person that is not the ultimate controlling person to file the annual group capital calculation. The annual group capital calculation shall be filed with the director or commissioner of the lead state. The following insurance holding company systems shall be exempt from filing an annual group capital calculation:

(i) An insurance holding company system that has only one insurer within its holding company structure, only writes business and is only licensed in its domestic state, and assumes no business from any other insurer;

(ii) An insurance holding company system that is required to perform a group capital calculation specified by the Federal Reserve Board. The director or commissioner of the lead state shall request the calculation from the Federal Reserve Board under the terms of information-sharing agreements in effect. If the Federal Reserve Board cannot share the calculation with the director or commissioner of the lead state, the insurance holding company system is not exempt from the annual group capital calculation filing requirement;

(iii) An insurance holding company system whose non-United-States group-wide supervisor is located within a reciprocal jurisdiction as described in subdivision (7)(a)(i) of section 44-416.06 that recognizes the state regulatory approach to group supervision and group capital of the United States; and

(iv) An insurance holding company system:

(A) That provides information to the director or commissioner of the lead state that meets the requirements for accreditation under the financial standards and accreditation program of the National Association of Insurance Commissioners, either directly or indirectly through the group-wide supervisor, who has determined such information is satisfactory to allow the director or commissioner of the lead state to comply with the group supervision approach of the National Association of Insurance Commissioners, as detailed in the Financial Analysis Handbook of the National Association of Insurance Commissioners; and

(B) Whose non-United-States group-wide supervisor, that is not in a reciprocal jurisdiction, recognizes and accepts, as provided in subsection (15) of this section, the group capital calculation as the worldwide group capital assessment for United States' insurance groups who operate in that jurisdiction.

(b) Notwithstanding subdivisions (13)(a)(iii) and (iv) of this section, the director or commissioner of the lead state shall require the filing of the annual

group capital calculation for the United States operations of any non-United-States-based insurance holding company system if, after any necessary consultation with other supervisors or officials, it is deemed appropriate by the director or commissioner of the lead state for prudential oversight and solvency monitoring purposes or for ensuring the competitiveness of the insurance marketplace.

(c) Notwithstanding the exemptions from filing the annual group capital calculation stated in subdivisions (13)(a)(i) through (iv) of this section, the director or commissioner of the lead state has the discretion to exempt the ultimate controlling person from filing the annual group capital calculation or to accept a limited group capital filing in accordance with subsection (14) of this section.

(d) If the director or commissioner of the lead state determines that an insurance holding company system no longer meets one or more of the requirements for an exemption from filing the annual group capital calculation under this subsection, the insurance holding company system shall file the annual group capital calculation at the next annual filing date unless given an extension by the director or commissioner of the lead state based on reasonable grounds shown.

(14)(a) The director or commissioner of the lead state has the discretion to exempt the ultimate controlling person from filing the annual group capital calculation if the director or commissioner of the lead state determines that:

(i) The holding company system has annual direct written and unaffiliated assumed premium, including international direct and assumed premium, but excluding premiums reinsured with the Federal Crop Insurance Corporation and the national flood insurance program, of less than one billion dollars;

(ii) The holding company system has no insurers within its holding company structure that are domiciled outside of the United States or one of its territories;

(iii) The holding company system has no banking, depository, or other financial entity that is subject to an identified regulatory capital framework within its holding company structure;

(iv) The holding company system attests that there are no material changes in the transactions between insurers and noninsurers in the group; and

(v) The noninsurers within the holding company system do not pose a material financial risk to the insurer's ability to honor policyholder obligations.

(b) The director or commissioner of the lead state has the discretion to accept, in lieu of the group capital calculation, a limited group capital filing if the holding company system:

(i) Has annual direct written and unaffiliated assumed premium, including international direct and assumed premium, but excluding premiums reinsured with the Federal Crop Insurance Corporation and the national flood insurance program, of less than one billion dollars;

(ii) Has no insurers within its holding company structure that are domiciled outside of the United States or one of its territories;

(iii) Does not include a banking, depository, or other financial entity that is subject to an identified regulatory capital framework; and

(iv) Attests that there are no material changes in transactions between insurers and noninsurers in the group that have occurred and the noninsurers

within the holding company system do not pose a material financial risk to the insurers ability to honor policyholder obligations.

(c) For an insurance holding company that has previously met an exemption with respect to the group capital calculation pursuant to subdivisions (14)(a) and (b) of this section, the director or commissioner of the lead state may require, at any time, the ultimate controlling person to file an annual group capital calculation, completed in accordance with the group capital calculation instructions, if:

(i) Any insurer within the insurance holding company system is in a risk-based capital company action level event as set forth in section 44-6016 or a similar standard for a non-United-States insurer;

(ii) Any insurer within the insurance holding company system meets one or more of the standards of an insurer deemed to be in hazardous financial condition as defined by rule and regulation adopted and promulgated by the director to define standards for companies deemed to be in hazardous financial condition; or

(iii) Any insurer within the insurance holding company system otherwise exhibits qualities of a troubled insurer as determined by the director or commissioner of the lead state based on unique circumstances, including, but not limited to, the type and volume of business written, ownership and organizational structure, federal agency requests, and international supervisor requests.

(15) A non-United-States jurisdiction is considered to recognize and accept the group capital calculation if:

(a) For annual group capital calculations under subdivision (13)(a)(iv) of this section:

(i) The non-United-States jurisdiction recognizes the United States state regulatory approach to group supervision and group capital by providing confirmation by a competent regulatory authority in such jurisdiction that insurers and insurance groups whose lead state is accredited by the National Association of Insurance Commissioners under its accreditation program shall be subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting, as applicable, by the lead state and will not be subject to group supervision, including worldwide group governance, solvency and capital, and reporting, at the level of the worldwide parent undertaking of the insurance or reinsurance group by the non-United-States jurisdiction; or

(ii) The non-United-States jurisdiction, if such jurisdiction has no United States insurance groups operating in such jurisdiction, indicates formally in writing to the lead state with a copy to the International Association of Insurance Supervisors that the group capital calculation is an acceptable international capital standard. Such writing will serve as the documentation otherwise required in subdivision (15)(a)(i) of this section; or

(b) The non-United-States jurisdiction provides confirmation by a competent regulatory authority in such jurisdiction that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the director or commissioner of the lead state in accordance with a memorandum of understanding or similar document between the director and such jurisdiction, including, but not limited to, the International Association of

Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the National Association of Insurance Commissioners. The director shall determine, in consultation with the National Association of Insurance Commissioners, if the requirements of the information-sharing agreements are in force.

(16)(a) A list of non-United-States jurisdictions that recognize and accept the group capital calculation shall be published through the National Association of Insurance Commissioners committee process.

(b) A list of jurisdictions that recognize and accept the group capital calculation pursuant to subdivision (13)(a)(iv) of this section shall be published in accordance with the National Association of Insurance Commissioners committee process to assist the director or commissioner of the lead state in determining which insurers shall file an annual group capital calculation. The list will clarify those situations in which a jurisdiction is exempt from filing under subdivision (13)(a)(iv) of this section. To assist with a determination under subdivision (13)(b) of this section, the list will also identify whether a jurisdiction that is exempt under subdivision (13)(a)(iii) or (iv) of this section requires a group capital filing for any United-States-based insurance group's operations in that non-United-States jurisdiction.

(c) For a non-United-States jurisdiction where no United States insurance groups operate, the confirmation provided to meet the requirement of subdivision (15)(a)(ii) of this section will serve as support for a recommendation that such non-United-States jurisdiction be published as a jurisdiction that recognizes and accepts the group capital calculation through the National Association of Insurance Commissioners committee process.

(d) If the director or commissioner of the lead state makes a determination pursuant to subdivision (13)(a)(iv) of this section that differs from the National Association of Insurance Commissioners list, the director or commissioner of the lead state shall provide thoroughly documented justification to the National Association of Insurance Commissioners and other states.

(e) Upon determination by the director or commissioner of the lead state that a non-United-States jurisdiction no longer meets one or more of the requirements to recognize and accept the group capital calculation, the director or commissioner of the lead state may provide a recommendation to the National Association of Insurance Commissioners that the non-United-States jurisdiction be removed from the list of jurisdictions that recognize and accept the group capital calculation.

(17)(a) The ultimate controlling person of every insurer that is subject to registration and scoped into the NAIC Liquidity Stress Test Framework shall file the results of a specific data year's liquidity stress test. The filing shall be made to the director or commissioner of the lead state.

(b) The NAIC Liquidity Stress Test Framework includes scope criteria applicable to a specific data year. These scope criteria are reviewed at least annually by the Financial Stability Task Force of the National Association of Insurance Commissioners or any successor to the task force. Any change to the NAIC Liquidity Stress Test Framework or to the data year for which the scope criteria are to be measured shall be effective on January 1 following the calendar year when such changes are adopted. Insurers meeting at least one threshold of the scope criteria shall be considered scoped into the NAIC Liquidity Stress Test Framework for the specified data year unless the director or commissioner of

the lead state, in consultation with the Financial Stability Task Force of the National Association of Insurance Commissioners or any successor to the task force, determines the insurer should not be scoped into the framework for such data year. Similarly, insurers that do not meet at least one threshold of the scope criteria shall be considered scoped out of the NAIC Liquidity Stress Test Framework for the specified data year unless the director or commissioner of the lead state, in consultation with the Financial Stability Task Force or any successor to the task force, determines the insurer should be scoped into the framework for that data year.

(c) In order for regulators to avoid having insurers scoped in and out of the NAIC Liquidity Stress Test Framework on a frequent basis, the director or commissioner of the lead state, in consultation with the Financial Stability Task Force or any successor to the task force, shall assess this concern as part of the determination for an insurer.

(d) The performance of, and filing of the results from, a liquidity stress test for a specific data year shall comply with the instructions and reporting templates for the NAIC Liquidity Stress Test Framework for such data year and any determinations made by the director or commissioner of the lead state, in consultation with the Financial Stability Task Force or any successor to the task force, provided within the NAIC Liquidity Stress Test Framework.

(18) The failure to file a registration statement or any summary of the registration statement thereto or enterprise risk report required by this section within the time specified for such filing shall be a violation of this section.

Source: Laws 1991, LB 236, § 12; Laws 1996, LB 689, § 2; Laws 2005, LB 119, § 11; Laws 2012, LB887, § 8; Laws 2022, LB863, § 22.

44-2138 Information; confidential treatment; sharing of information; restrictions.

(1)(a) All information, documents, and copies thereof obtained by or disclosed to the director or any other person in the course of an examination or investigation made pursuant to section 44-2137 and all information reported or provided to the director pursuant to sections 44-2132 to 44-2136 and 44-2155 shall be recognized by this state as being proprietary and containing trade secrets, shall be given confidential treatment, shall not be subject to subpoena, and shall not be made public by the director, the National Association of Insurance Commissioners and its affiliates and subsidiaries, or any other person, except to other state, federal, foreign, and international regulatory and law enforcement agencies if the recipient agrees in writing to maintain the confidentiality of the information, without the prior written consent of the insurer to which it pertains unless the director, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interest of policyholders, shareholders, or the public will be served by the publication thereof, in which event he or she may publish all or any part thereof in such manner as he or she may deem appropriate.

(b) For purposes of the information filed with the Director of Insurance pursuant to subsection (13) of section 44-2132, the director shall maintain the confidentiality of the annual group capital calculation and group capital ratio produced within the calculation and any group capital information received from an insurance holding company supervised by the Federal Reserve Board or by any United States group-wide supervisor.

(c) For purposes of the information filed with the Director of Insurance pursuant to subsection (17) of section 44-2132, the director shall maintain the confidentiality of the liquidity stress test results and supporting disclosures and any liquidity stress test information received from an insurance holding company supervised by the Federal Reserve Board and non-United-States group-wide supervisors.

(2) The director may receive information, documents, and copies of information and documents, including proprietary and trade secret information, disclosed to other state, federal, foreign, or international regulatory and law enforcement agencies and from the National Association of Insurance Commissioners and its affiliates and subsidiaries pursuant to an examination of an insurance holding company system. The director shall maintain information, documents, and copies of information and documents received pursuant to this subsection as confidential or privileged if received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the information. Such information shall not be a public record subject to disclosure by the director pursuant to sections 84-712 to 84-712.09, subject to subpoena, subject to discovery, or admissible in evidence in any private civil action, except that the director may use such information in any regulatory or legal action brought by the director. The director, and any other person while acting under the authority of the director who has received information pursuant to this subsection, may not, and shall not be required to, testify in any private civil action concerning any information subject to this section. Nothing in this section shall constitute a waiver of any applicable privilege or claim of confidentiality in the information received pursuant to this subsection as a result of information sharing authorized by this section.

(3) In order to assist in the performance of the director's duties, the director may share information, including any proprietary or trade secret document or material, with state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners, with any third-party consultant designated by the director, and with state, federal, and international law enforcement authorities, including members of any supervisory college described in section 44-2137.01, with the International Association of Insurance Supervisors, and with the Bank for International Settlements under the conditions set forth in section 44-154 if the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material, or information and has verified in writing the legal authority to maintain confidentiality. The director may only share any confidential and privileged document, material, or information filed pursuant to subsection (12) of section 44-2132 with directors or commissioners of states having statutes or regulations substantially similar to subsection (1) of this section and who have agreed in writing not to disclose such document, material, or information.

(4) The director shall enter into written agreements with the National Association of Insurance Commissioners and any third-party consultant designated by the director governing sharing and use of any document, material, or information provided pursuant to this section that shall:

(a) Specify procedures and protocols regarding the confidentiality and security of information shared with the National Association of Insurance Commissioners or any third-party consultant designated by the director pursuant to this section, including procedures and protocols for sharing by the association or any third-party consultant designated by the director with other state, federal,

or international regulators. The agreement shall provide that the recipient agrees in writing to maintain the confidentiality and privileged status of any such document, material, or information and has verified in writing the legal authority to maintain such confidentiality;

(b) Specify that ownership of any document, material, or information shared with the National Association of Insurance Commissioners or any third-party consultant designated by the director pursuant to this section remains with the director and use of any document, material, or information by the association or any third-party consultant designated by the director is subject to the direction of the director;

(c) Prohibit the National Association of Insurance Commissioners or any third-party consultant designated by the director from storing any document, material, or information shared pursuant to this section in a permanent database after the underlying analysis is completed. This subdivision does not apply to any document, material, or information filed pursuant to subsection (17) of section 44-2132;

(d) Require prompt notice to be given to an insurer whose confidential document, material, or information in the possession of the National Association of Insurance Commissioners or any third-party consultant designated by the director pursuant to this section is subject to a request or subpoena to the association or any third-party consultant designated by the director for disclosure or production;

(e) Require the National Association of Insurance Commissioners or any third-party consultant designated by the director to consent to intervention by an insurer in any judicial or administrative action in which the association or any third-party consultant designated by the director may be required to disclose confidential information about the insurer shared with the association or any third-party consultant designated by the director pursuant to this section; and

(f) For any document, material, or information filed pursuant to subsection (17) of section 44-2132, in the case of an agreement involving any third-party consultant designated by the director, provide for notification to the applicable insurers of the identity of such third-party consultant.

(5) The sharing of any document, material, or information by the director pursuant to this section shall not constitute a delegation of regulatory authority or rulemaking, and the director is solely responsible for the administration, execution, and enforcement of this section.

(6) No waiver of any applicable privilege or claim of confidentiality in any document, material, or information shall occur as a result of disclosure to the director under this section or as a result of sharing as authorized by this section.

(7) Any document, material, or information in the possession or control of the National Association of Insurance Commissioners or any third-party consultant designated by the director pursuant to this section shall be confidential and privileged, shall not be subject to public disclosure under section 84-712, shall not be subject to subpoena, and shall not be subject to discovery or admissible as evidence in any private civil action.

(8) The annual group capital calculation and resulting group capital ratio required under subsection (13) of section 44-2132 and the liquidity stress test

along with its results and supporting disclosures required under subsection (17) of section 44-2132 shall be considered regulatory tools for assessing group risks and capital adequacy and group liquidity risks, respectively, and shall not be used as a means to rank insurers or insurance holding company systems. Except as otherwise may be required under the Insurance Holding Company System Act, it is unlawful to make, publish, disseminate, circulate, place before the public, or cause directly or indirectly to be made, published, disseminated, circulated, or placed before the public in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station or any electronic means of communication available to the public, or in any other way as an advertisement, announcement, or statement containing a representation or statement with regard to the annual group capital calculation, the group capital ratio, the liquidity stress test results, or supporting disclosures for the liquidity stress test of any insurer or any insurer group, or of any component derived in the calculation by any insurer, broker, or other person engaged in any manner in the insurance business, except that if any materially false statement with respect to the annual group capital calculation, the resulting group capital ratio, an inappropriate comparison of any amount to an insurer's or insurance group's annual group capital calculation or resulting group capital ratio, liquidity stress test result, supporting disclosures for the liquidity stress test, or an inappropriate comparison of any amount to an insurer's or insurance group's liquidity stress test result or supporting disclosures is published in any written publication and the insurer is able to demonstrate to the director with substantial proof the falsity of such statement or the inappropriateness, as the case may be, then the insurer may publish announcements in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

Source: Laws 1991, LB 236, § 18; Laws 2001, LB 52, § 47; Laws 2012, LB887, § 13; Laws 2016, LB772, § 14; Laws 2022, LB863, § 23.

ARTICLE 22

VARIABLE ANNUITIES

Section
44-2222. Index-linked variable annuity; separate investment account; treatment.

44-2222 Index-linked variable annuity; separate investment account; treatment.

(1) For purposes of this section, an index-linked variable annuity is a variable annuity that includes index-linked crediting features, either in the contract or added to such contract by rider, endorsement, or amendment, that credit interest based on the performance of an index, subject to index parameters including, but not limited to, caps, participation rates, spreads or margins, trigger or step rates, or other crediting elements, and may lose value subject to limitations including, but not limited to, a floor or a buffer. An index-linked variable annuity may be combined in a single contract with a variable annuity with unitized separate accounts, a fixed annuity, or both.

(2) Notwithstanding section 44-2212, a separate investment account established to hold assets of index-linked variable annuity contracts may be uninsulated and chargeable with any liabilities arising out of any other separate investment account or any other business of the company which has no specific and determinable relation to or dependence upon such separate account.

(3) If a separate investment account established to hold assets of index-linked variable annuity contracts is uninsulated, then the following provisions shall apply:

(a) Notwithstanding section 44-402.02, such separate account is not required to have the income, gains, and losses, realized or unrealized, from assets allocated to such account credited to or charged against such account;

(b) Notwithstanding section 44-402.03, amounts allocated to such separate account and accumulations thereon must be invested and reinvested in accordance with the requirements or limitations prescribed by the laws of this state governing the investments of life insurance companies and the investments in such separate account or accounts shall be taken into account in applying investment limitations otherwise applicable to investments of such company;

(c) Notwithstanding sections 44-402.03 and 44-2213, assets, other than derivatives, may be held by such separate account, and transferred between the general account and such separate account, at book value or market value; and

(d) Notwithstanding subdivision (1) of section 44-5103, the assets of such separate account are admitted assets.

Source: Laws 2024, LB1073, § 20.
Operative date July 19, 2024.

ARTICLE 28

NEBRASKA HOSPITAL-MEDICAL LIABILITY ACT

Section

44-2824 Health care provider; qualify under act; conditions.

(1) To be qualified under the Nebraska Hospital-Medical Liability Act, a health care provider or such health care provider's employer, employee, partner, or limited liability company member shall:

(a) File with the director proof of financial responsibility, pursuant to section 44-2827 or 44-2827.01, in the amount of eight hundred thousand dollars for each occurrence. An aggregate liability amount of three million dollars for all occurrences or claims made in any policy year or risk-loss trust year for each named insured shall be provided. Such policy may be written on either an occurrence or a claims-made basis. Any risk-loss trust shall be established and maintained only on an occurrence basis. Such qualification shall remain effective only as long as insurance coverage or risk-loss trust coverage as required remains effective; and

(b) Pay the surcharge and any special surcharge levied on all health care providers pursuant to sections 44-2829 to 44-2831.

(2) Subject to the requirements in subsections (1) and (4) of this section, the qualification of a health care provider shall be either on an occurrence or claims-made basis and shall be the same as the insurance coverage provided by the insured's policy.

(3) The director shall have authority to permit qualification of health care providers who have retired or ceased doing business if such health care providers have primary insurance coverage under subsection (1) of this section.

(4) A health care provider who is not qualified under the act at the time of the alleged occurrence giving rise to a claim shall not, for purposes of that claim, qualify under the act notwithstanding subsequent filing of proof of financial responsibility and payment of a required surcharge.

(5) Qualification of a health care provider under the Nebraska Hospital-Medical Liability Act shall continue only as long as the health care provider meets the requirements for qualification. A health care provider who has once qualified under the act and who fails to renew or continue his or her qualification in the manner provided by law and by the rules and regulations of the Department of Insurance shall cease to be qualified under the act.

Source: Laws 1976, LB 434, § 24; Laws 1984, LB 692, § 7; Laws 1986, LB 1005, § 1; Laws 1990, LB 542, § 3; Laws 1993, LB 121, § 247; Laws 1994, LB 884, § 59; Laws 2004, LB 998, § 1; Laws 2005, LB 256, § 18; Laws 2023, LB92, § 57.
Operative date January 1, 2025.

44-2825 Action for injury or death; maximum amount recoverable; settlement; manner; coverage; how treated.

(1) The total amount recoverable under the Nebraska Hospital-Medical Liability Act from any and all health care providers and the Excess Liability Fund for any occurrence resulting in any injury or death of a patient may not exceed (a) five hundred thousand dollars for any occurrence on or before December 31, 1984, (b) one million dollars for any occurrence after December 31, 1984, and on or before December 31, 1992, (c) one million two hundred fifty thousand dollars for any occurrence after December 31, 1992, and on or before December 31, 2003, (d) one million seven hundred fifty thousand dollars for any occurrence after December 31, 2003, and on or before December 31, 2014, and (e) two million two hundred fifty thousand dollars for any occurrence after December 31, 2014.

(2) A health care provider qualified under the act shall not be liable to any patient or his or her representative who is covered by the act for an amount in excess of eight hundred thousand dollars for all claims or causes of action arising from any occurrence during the period that the act is effective with reference to such patient.

(3) Subject to the overall limits from all sources as provided in subsection (1) of this section, any amount due from a judgment or settlement which is in excess of the total liability of all liable health care providers shall be paid from the Excess Liability Fund pursuant to sections 44-2831 to 44-2833.

(4) Nothing in the Nebraska Hospital-Medical Liability Act shall be construed to require the Excess Liability Fund to provide coverage for the first eight hundred thousand dollars per occurrence or to provide a defense for or on behalf of a qualified health care provider after the provider's annual aggregate limit of liability amount set forth in sections 44-2824 and 44-2827 has been exhausted. A qualified health care provider's purchase of coverage with an aggregate limit of liability higher than required by sections 44-2824 and

44-2827 shall not affect the obligation of payment from the Excess Liability Fund pursuant to this section.

Source: Laws 1976, LB 434, § 25; Laws 1984, LB 692, § 8; Laws 1986, LB 1005, § 2; Laws 1992, LB 1006, § 18; Laws 2003, LB 146, § 1; Laws 2004, LB 998, § 2; Laws 2014, LB961, § 3; Laws 2023, LB92, § 58.
Operative date January 1, 2025.

44-2827 Health care provider; proof of financial responsibility; filing by insurer.

Financial responsibility of a health care provider may be established only by filing with the director proof that the health care provider is insured pursuant to sections 44-2837 to 44-2839 or by a policy of professional liability insurance in a company authorized to do business in Nebraska. Such insurance shall be in the amount of eight hundred thousand dollars per occurrence, and an aggregate liability amount of three million dollars for all occurrences or claims made in any policy year shall be provided. The filing shall state the premium charged for the policy of insurance.

Source: Laws 1976, LB 434, § 27; Laws 1986, LB 1005, § 3; Laws 2003, LB 146, § 2; Laws 2004, LB 998, § 3; Laws 2005, LB 256, § 19; Laws 2023, LB92, § 59.
Operative date January 1, 2025.

44-2831.01 Applicability of change to law.

(1) Any health care provider who has furnished proof of financial responsibility prior to January 1, 2025, under sections 44-2824 and 44-2827 shall be qualified under section 44-2824 for the remainder of the policy year or risk-loss trust year.

(2) The increases in coverage requirements made by Laws 2004, LB 998, in sections 44-2824 and 44-2827 shall apply to policies issued or renewed and risk-loss trust years that commence after January 1, 2005, and before January 1, 2025.

(3) The changes made to sections 44-2825, 44-2832, and 44-2833 by Laws 2004, LB 998, apply commencing with policies issued or renewed and risk-loss trust years that commence after January 1, 2005, and before January 1, 2025.

(4) The increases in coverage requirements made by Laws 2023, LB92, in sections 44-2824 and 44-2827 shall apply to policies issued or renewed and risk-loss trust years that commence on or after January 1, 2025.

(5) The changes made to sections 44-2825, 44-2832, and 44-2833 by Laws 2023, LB92, apply commencing with policies issued or renewed and risk-loss trust years that commence on or after January 1, 2025.

Source: Laws 2004, LB 998, § 6; Laws 2023, LB92, § 60.
Operative date January 1, 2025.

44-2832 Claims; paid; procedure; limitation.

(1) The Director of Administrative Services shall issue a warrant drawn on the fund in the amount of each claim submitted by the director. All claims against the fund shall be made on a voucher or other appropriate request by the director after he or she has received:

(a) A certified copy of a final judgment in excess of eight hundred thousand dollars against a health care provider and in excess of the amount recoverable from all health care providers;

(b) A certified copy of a court-approved settlement in excess of eight hundred thousand dollars against a health care provider and in excess of the amount recoverable from all health care providers; or

(c) In case of claims based on primary insurance issued by the risk manager under sections 44-2837 to 44-2839, a certified copy of a final judgment or court-approved settlement requiring payment from the fund.

(2) The amount paid from the fund for excess liability when added to the payments by all health care providers may not exceed the maximum amount recoverable pursuant to subsection (1) of section 44-2825. The amount paid from the fund on account of a primary insurance policy issued by the risk manager to a health care provider under sections 44-2837 to 44-2839 may not exceed eight hundred thousand dollars for any one occurrence covered by such policy under any circumstances.

Source: Laws 1976, LB 434, § 32; Laws 1984, LB 692, § 13; Laws 1986, LB 1005, § 5; Laws 2004, LB 998, § 7; Laws 2023, LB92, § 61. Operative date January 1, 2025.

44-2833 Claim; agreement to settle; procedure; settlement; judgment; appeal.

(1) If the insurer of a health care provider shall agree to settle its liability on a claim against its insured by payment of its policy limits of eight hundred thousand dollars and the claimant shall demand an amount in excess thereof for a complete and final release and if no other health care provider is involved, the procedures prescribed in this section shall be followed.

(2) A motion shall be filed by the claimant with the court in which the action is pending against the health care provider or, if no action is pending, the claimant shall file a complaint in one of the district courts of the State of Nebraska, seeking approval of an agreed settlement, if any, or demanding payment of damages from the Excess Liability Fund.

(3) A copy of such motion or complaint shall be served on the director, the health care provider, and the health care provider's insurer and shall contain sufficient information to inform the parties concerning the nature of the claim and the additional amount demanded. The health care provider and his or her insurer shall have a right to intervene and participate in the proceedings.

(4) The director, with the consent of the health care provider, may agree to a settlement with the claimant from the Excess Liability Fund. Either the director or the health care provider may file written objections to the payment of the amount demanded. The agreement or objections to the payment demanded shall be filed within twenty days after the motion or complaint is filed.

(5) After the motion or complaint, agreement, and objections, if any, have been filed, the judge shall set the matter for trial as soon as practicable. The court shall give notice of the trial to the claimant, the health care provider, and the director.

(6) At the trial, the director, the claimant, and the health care provider may introduce relevant evidence to enable the court to determine whether or not the settlement should be approved if it has been submitted on agreement without objections. If the director, the health care provider, and the claimant shall be

unable to agree on the amount, if any, to be paid out of the Excess Liability Fund, the amount of claimant's damages, if any, in excess of the eight hundred thousand dollars already paid by the insurer of the health care provider shall be determined at trial.

(7) The court shall determine the amount for which the fund is liable and render a finding and judgment accordingly. In approving a settlement or determining the amount, if any, to be paid from the Excess Liability Fund in such a case, the court shall consider the liability of the health care provider as admitted and established by evidence.

(8) Any settlement approved by the court may not be appealed. Any judgment of the court fixing damages recoverable in any such contested proceeding shall be appealable pursuant to the rules governing appeals in any other civil case.

Source: Laws 1976, LB 434, § 33; Laws 1984, LB 692, § 14; Laws 1986, LB 1005, § 6; Laws 2002, LB 876, § 74; Laws 2004, LB 998, § 8; Laws 2023, LB92, § 62.
Operative date January 1, 2025.

ARTICLE 33

LEGAL SERVICE INSURANCE CORPORATIONS

Section
44-3308. Insurer; transacting legal expense insurance; deposit of securities or surety bond; purpose; release; reduction.

44-3308 Insurer; transacting legal expense insurance; deposit of securities or surety bond; purpose; release; reduction.

(1) An insurer whose purposes according to its articles of incorporation are restricted to transacting legal expense insurance and business reasonably related thereto shall deposit with the director securities eligible for deposit by an insurance company, which shall have at all times a market value of not less than one hundred fifty thousand dollars, or as provided by subsection (7) of this section. A deposit under this section shall be held to assure the faithful performance of the insurer's obligations to its policyholders or policyholders and creditors.

(2) In lieu of any deposit of securities required under subsection (1) of this section, the insurer may file with the director a surety bond in the amount of one hundred fifty thousand dollars, or as provided by subsection (7) of this section. The bond shall be one issued by an insurance company authorized to do business in the State of Nebraska. The bond shall be for the same purposes as the deposit in lieu of which it is filed, and it shall be subject to the director's approval. No such bond shall be canceled or subject to cancellation unless at least thirty days' advance notice thereof, in writing, is filed with the director.

(3) Securities or bond posted by the insurer pursuant to subsection (1) or (2) of this section shall be for the benefit of and subject to action thereon in the event of insolvency of the insurer by any person or persons sustaining an actionable injury due to the failure of the insurer to faithfully perform its obligations to its policyholders or policyholders and creditors.

(4) The State of Nebraska shall be responsible for the safekeeping of all securities deposited with the director under this section. The securities shall not, on account of being in this state, be subject to taxation.

(5) The depositing insurer shall, during its solvency, have the right to exchange or substitute other securities of a like quality and value for securities on deposit, to receive the interest and other income accruing on such securities, and to inspect the deposit at all reasonable times.

(6) The deposit or bond shall be maintained unimpaired as long as the insurer continues in business in this state. Whenever the insurer ceases to do business and furnishes to the director proof satisfactory to the director that the insurer adequately provided for all of its obligations to its policyholders, creditors, or contract holders in this state, the director shall release the deposited securities to the parties entitled thereto, on presentation of the director's receipts for such securities, or shall release any bond filed with it in lieu of such deposit.

(7) The director may reduce the minimum market value of securities required under subsection (1) of this section or the amount of the surety bond required under subsection (2) of this section if he or she finds that the reduction is justified by:

(a) The terms and number of existing contracts with subscribers;

(b) Support by financially sound public or private organizations or agencies;

(c) Agreements with lawyers or paralegal personnel for the providing of legal services;

(d) Agreements with other persons for insuring the payment of the cost of legal services or the provision for alternative coverage in the event the insurer is unable to perform its obligations; or

(e) Other reliable financial guarantees.

(8) No part of the securities or bond to be filed under this section shall be supplied directly or indirectly by dues payments made for the purpose of meeting requirements to practice a profession.

Source: Laws 1979, LB 52, § 8; Laws 2023, LB92, § 63.

ARTICLE 36

MEDICARE SUPPLEMENT INSURANCE STANDARDS

Section

44-3601 Act, how cited.

Sections 44-3601 to 44-3614 shall be known and may be cited as the Medicare Supplement Insurance Minimum Standards Act.

Source: Laws 1980, LB 877, § 1; Laws 1981, LB 329, § 1; Laws 1988, LB 998, § 2; Laws 1992, LB 1006, § 19; Laws 2024, LB852, § 1. Operative date July 19, 2024.

44-3602 Terms, defined.

For purposes of the Medicare Supplement Insurance Minimum Standards Act:

(1) Applicant means:

(a) In the case of an individual medicare supplement policy, the person who seeks to contract for insurance benefits; and

(b) In the case of a group medicare supplement policy, the proposed certificate holder;

(2) Balance bill means charging or collecting an amount in excess of the medicare-approved amount from a medicare beneficiary;

(3) Certificate means any certificate delivered or issued for delivery in this state under a group medicare supplement policy;

(4) Certificate form means the form on which the certificate is delivered or issued for delivery by the issuer;

(5) Director means the Director of Insurance;

(6) Issuer means insurance companies, fraternal benefit societies, health care service plans, health maintenance organizations, and any other entities delivering or issuing for delivery in this state medicare supplement policies or certificates;

(7) Medicare means the Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended;

(8) Medicare-approved amount means the current payment rate listed in the applicable fee schedule established by the federal Centers for Medicare and Medicaid Services;

(9) Medicare supplement policy means a group or individual policy of sickness and accident insurance or a subscriber contract of health maintenance organizations, other than a policy issued pursuant to a contract under section 1876 of the federal Social Security Act, 42 U.S.C. 1395 et seq., or an issued policy under a demonstration project specified in 42 U.S.C. 1395ss(g)(1), which is advertised, marketed, or designed primarily as a supplement to reimbursements under medicare for the hospital, medical, or surgical expenses of persons eligible for medicare;

(10) Policy form means the form on which the policy is delivered or issued for delivery by the issuer; and

(11) Supplier has the same meaning as defined in 42 C.F.R. 400.202, as such regulation existed on January 1, 2024, including an entity or individual that sells or rents Medicare Part B covered durable medical equipment, prosthetics, orthotics, and supplies to medicare beneficiaries.

Source: Laws 1980, LB 877, § 2; Laws 1981, LB 329, § 2; Laws 1985, LB 209, § 2; Laws 1985, LB 253, § 2; Laws 1988, LB 998, § 3; Laws 1989, LB 92, § 235; Laws 1990, LB 983, § 1; Laws 1992, LB 1006, § 20; Laws 1996, LB 969, § 3; Laws 2024, LB852, § 2. Operative date July 19, 2024.

44-3612 Durable medical equipment, prosthetic, orthotic, or supply; billing; beneficiary; agreement.

A supplier that is a nonparticipating provider in the medicare program shall not balance bill a Nebraska medicare beneficiary for any durable medical equipment, prosthetic, orthotic, or supply for which the supplier has not accepted assignment, unless the beneficiary (1) agrees in writing prior to such billing to pay the additional amount and (2) pays the full amount prior to

receipt of the durable medical equipment, prosthetic, orthotic, or supply. Such agreement shall provide notification to the beneficiary that medicare reimburses eighty percent of the medicare-approved amount and that an issuer of a medicare supplement policy or certificate shall not be required to reimburse the supplier or the beneficiary in an amount greater than one hundred fifteen percent of the medicare-approved amount for durable medical equipment, prosthetics, orthotics, or supplies as provided in section 44-3613.

Source: Laws 2024, LB852, § 3.
Operative date July 19, 2024.

44-3613 Durable medical equipment, prosthetic, orthotic, or supply; reimbursement.

An issuer of a medicare supplement policy or certificate shall not be required to reimburse a supplier or beneficiary in an amount greater than one hundred fifteen percent of the medicare-approved amount for durable medical equipment, prosthetics, orthotics, or supplies. Nothing in this section shall be construed to prevent an issuer from negotiating the level and type of reimbursement with a supplier for covered durable medical equipment, prosthetics, orthotics, or supplies.

Source: Laws 2024, LB852, § 4.
Operative date July 19, 2024.

44-3614 Medicare supplement policy or certificate; eligibility by reason of disability; availability; premiums.

(1) An issuer that makes a medicare supplement policy or certificate available to an individual who is sixty-five years of age and eligible for medicare benefits as described in 42 U.S.C. 1395c(1), as such section existed on January 1, 2024, shall make at least one medicare supplement policy or certificate that meets the requirements of the Medicare Supplement Insurance Minimum Standards Act, available to an individual who is under sixty-five years of age and eligible for and enrolled in medicare by reason of disability as described in 42 U.S.C. 1395c(2), as such section existed on January 1, 2024.

(2) Premium rates for medicare supplement insurance policies or certificates may differ between an individual who qualifies for medicare who is sixty-five years of age or older and an individual who qualifies for medicare by reason of disability and who is under sixty-five years of age. Such differences in premiums shall not be excessive, inadequate, or unfairly discriminatory and shall be based on sound actuarial principles and be reasonable in relation to the benefits provided. The premium for an individual who is under sixty-five years of age shall not exceed one hundred fifty percent of the premium for a similarly situated individual who is sixty-five years of age.

(3) An individual who is under sixty-five years of age and is eligible for a medicare supplement policy or certificate by reason of disability as described in subsection (1) of this section shall be subject to the same open enrollment rules applicable to an individual who is sixty-five years of age and eligible for a medicare supplement policy or certificate as described in subsection (1) of this section beginning on the first day of the first month that the individual turns sixty-five years of age.

Source: Laws 2024, LB852, § 5.
Operative date January 1, 2025.

ARTICLE 40
INSURANCE PRODUCERS LICENSING ACT

44-4052 Licensure examination; requirements.

(1) A resident individual applying for an insurance producer license shall pass a written examination unless exempt pursuant to section 44-4056 or 44-4069 or subsection (4) of section 44-9304. The examination shall test the knowledge of the individual concerning the lines of authority for which application is made, the duties and responsibilities of an insurance producer, and the insurance laws, rules, and regulations of this state. Examinations required by this section shall be developed and conducted under rules and regulations adopted and promulgated by the director.

(2) The director may make arrangements, including contracting with an outside testing service, for administering examinations and collecting the nonrefundable fee set forth in section 44-4064.

(3) Each individual applying for an examination shall remit a nonrefundable fee as prescribed by the director as set forth in section 44-4064.

(4) An individual who fails to appear for the examination as scheduled or fails to pass the examination shall reapply for an examination and remit all required fees and forms before being rescheduled for another examination.

Source: Laws 2001, LB 51, § 6; Laws 2015, LB458, § 4; Laws 2018, LB1012, § 3; Laws 2022, LB863, § 24.

44-4054 License; lines of authority; renewal; procedure; licensee; duties; director; powers.

(1) Unless denied licensure pursuant to section 44-4059, a person who has met the requirements of sections 44-4052 and 44-4053 shall be issued an insurance producer license. An insurance producer may receive qualification for a license in one or more of the following lines of authority:

(a) Life insurance coverage on human lives, including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income;

(b) Accident and health or sickness, insurance coverage for sickness, bodily injury, or accidental death and may include benefits for disability income;

(c) Property insurance coverage for the direct or consequential loss or damage to property of every kind;

(d) Casualty insurance coverage against legal liability, including that for death, injury, or disability or damage to real or personal property;

(e) Variable life and variable annuity products, insurance coverage provided under variable life insurance contracts, and variable annuities;

(f) Limited line credit insurance;

(g) Limited line pre-need funeral insurance;

(h) Personal lines property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes; and

(i) Any other line of insurance permitted under Nebraska laws, rules, or regulations.

(2) An insurance producer license shall remain in effect unless revoked or suspended if the fee set forth in section 44-4064 is paid and education requirements for resident individual producers are met by the due date.

(3) All business entity licenses issued under the Insurance Producers Licensing Act shall expire on April 30 of each even-numbered year, and all producers licenses shall expire on the last day of the month of the producer's birthday in the first year after issuance in which his or her age is divisible by two. Such producer licenses may be renewed within the ninety-day period before their expiration dates. Business entity and producer licenses also may be renewed within the thirty-day period after their expiration dates upon payment of a late renewal fee as established by the director pursuant to section 44-4064 in addition to the applicable fee otherwise required for renewal of business entity and producer licenses as established by the director pursuant to such section. All business entity and producer licenses renewed within the thirty-day period after their expiration dates pursuant to this subsection shall be deemed to have been renewed before their expiration dates.

(4) The director may establish procedures for renewal of licenses by rule and regulation adopted and promulgated pursuant to the Administrative Procedure Act.

(5) An individual insurance producer who allows his or her license to lapse may, within twelve months from the due date of the renewal fee, reinstate the same license without the necessity of passing a written examination. Producer licenses reinstated pursuant to this subsection shall be issued only after payment of a reinstatement fee as established by the director pursuant to section 44-4064 in addition to the applicable fee otherwise required for renewal of producer licenses as established by the director pursuant to such section.

(6) The director may grant a licensed insurance producer who is unable to comply with license renewal procedures due to military service or some other extenuating circumstance, including, but not limited to, a long-term medical disability, a waiver of those procedures. The director may grant a producer a waiver of any examination requirement or any other fine, fee, or sanction imposed for failure to comply with renewal procedures.

(7) The license shall contain the licensee's name, address, and personal identification number, the date of issuance, the lines of authority, the expiration date, and any other information the director deems necessary.

(8) Licensees shall inform the director by any means acceptable to the director of a change of legal name or address within thirty days after the change. Any person failing to provide such notification shall be subject to a fine by the director of not more than five hundred dollars per violation, suspension of the person's license until the change of address is reported to the director, or both.

(9) The director may contract with nongovernmental entities, including the National Association of Insurance Commissioners or any affiliates or subsidiaries that the National Association of Insurance Commissioners oversees, to

perform any ministerial functions, including the collection of fees, related to producer licensing that the director may deem appropriate.

Source: Laws 2001, LB 51, § 8; Laws 2015, LB198, § 4; Laws 2023, LB92, § 64.

Cross References

Administrative Procedure Act, see section 84-920.

44-4068 Repealed. Laws 2022, LB863, § 41.

ARTICLE 46

PHARMACY BENEFIT MANAGERS

Section
44-4601. Act, how cited.
44-4602. Act; purposes.
44-4603. Terms, defined.
44-4604. Act; applicability; how construed; licensure conditions; contract requirements.
44-4605. License, required; application; fee; refusal to issue or renew; grounds; renewal; application; fee.
44-4606. Participation contract; requirements; disclosure of information; limitations; contract termination; grounds; pharmacy benefit manager, prohibited acts.
44-4607. Pharmacy audit; auditing entity; requirements; recoupment; terms and conditions; documentation requirements; appeal process; audit reports.
44-4608. Contract; pharmacy benefit manager; cost price list; duties; disputes; procedures.
44-4609. Pharmacy benefit manager; 340B entity; 340B contract pharmacy; treatment; discrimination, prohibited.
44-4610. Pharmacy benefit manager; specialty pharmacy network; exclusions.
44-4611. Act; enforcement; director; powers and duties; monetary penalty.
44-4612. Rules and regulations.

44-4601 Act, how cited.

Sections 44-4601 to 44-4612 shall be known and may be cited as the Pharmacy Benefit Manager Licensure and Regulation Act.

Source: Laws 2022, LB767, § 1.

44-4602 Act; purposes.

(1) The Pharmacy Benefit Manager Licensure and Regulation Act establishes the standards and criteria for the licensure and regulation of pharmacy benefit managers providing a claims processing service or other prescription drug or device service for a health benefit plan.

(2) The purposes of the act are to:

(a) Promote, preserve, and protect public health, safety, and welfare through effective regulation and licensure of pharmacy benefit managers;

(b) Promote the solvency of the commercial health insurance industry, the regulation of which is reserved to the states by the federal McCarran-Ferguson Act, 15 U.S.C. 1011 to 1015, as such act and sections existed on January 1, 2022, as well as provide for consumer savings and encourage fairness in prescription drug benefits;

(c) Provide for powers and duties of the director; and

(d) Prescribe monetary penalties for violations of the Pharmacy Benefit Manager Licensure and Regulation Act.

Source: Laws 2022, LB767, § 2.

44-4603 Terms, defined.

For purposes of the Pharmacy Benefit Manager Licensure and Regulation Act:

(1) Auditing entity means a pharmacy benefit manager or any person that represents a pharmacy benefit manager in conducting an audit for compliance with a contract between the pharmacy benefit manager and a pharmacy;

(2) Claims processing service means an administrative service performed in connection with the processing and adjudicating of a claim relating to a pharmacist service that includes:

(a) Receiving a payment for a pharmacist service; or

(b) Making a payment to a pharmacist or pharmacy for a pharmacist service;

(3) Covered person means a member, policyholder, subscriber, enrollee, beneficiary, dependent, or other individual participating in a health benefit plan;

(4) Director means the Director of Insurance;

(5) Health benefit plan means a policy, contract, certificate, plan, or agreement entered into, offered, or issued by a health carrier or self-funded employee benefit plan to the extent not preempted by federal law to provide, deliver, arrange for, pay for, or reimburse any of the costs of a physical, mental, or behavioral health care service;

(6) Health carrier has the same meaning as in section 44-1303;

(7) Other prescription drug or device service means a service other than a claims processing service, provided directly or indirectly, whether in connection with or separate from a claims processing service, including, but not limited to:

(a) Negotiating a rebate, discount, or other financial incentive or arrangement with a drug company;

(b) Disbursing or distributing a rebate;

(c) Managing or participating in an incentive program or arrangement for a pharmacist service;

(d) Negotiating or entering into a contractual arrangement with a pharmacist or pharmacy;

(e) Developing and maintaining a formulary;

(f) Designing a prescription benefit program; or

(g) Advertising or promoting a service;

(8) Pharmacist has the same meaning as in section 38-2832;

(9) Pharmacist service means a product, good, or service or any combination thereof provided as a part of the practice of pharmacy;

(10) Pharmacy has the same meaning as in section 71-425;

(11)(a) Pharmacy benefit manager means a person, business, or entity, including a wholly or partially owned or controlled subsidiary of a pharmacy benefit manager, that provides a claims processing service or other prescription

drug or device service for a health benefit plan to a covered person who is a resident of this state; and

(b) Pharmacy benefit manager does not include:

(i) A health care facility licensed in this state;

(ii) A health care professional licensed in this state;

(iii) A consultant who only provides advice as to the selection or performance of a pharmacy benefit manager; or

(iv) A health carrier to the extent that it performs any claims processing service or other prescription drug or device service exclusively for its enrollees; and

(12) Plan sponsor has the same meaning as in section 44-2702.

Source: Laws 2022, LB767, § 3; Laws 2024, LB1073, § 21.
Operative date July 19, 2024.

44-4604 Act; applicability; how construed; licensure conditions; contract requirements.

(1) The Pharmacy Benefit Manager Licensure and Regulation Act applies to any contract or health benefit plan issued, renewed, recredentialed, amended, or extended on or after January 1, 2023, including any claims processing service or other prescription drug or device service performed through a third party.

(2) As a condition of licensure, any contract in existence on the date a pharmacy benefit manager receives its license to do business in this state shall comply with the requirements of the act.

(3) Nothing in the act is intended or shall be construed to conflict with existing relevant federal law.

Source: Laws 2022, LB767, § 4; Laws 2024, LB1073, § 22.
Operative date July 19, 2024.

44-4605 License, required; application; fee; refusal to issue or renew; grounds; renewal; application; fee.

(1) A person shall not establish or operate as a pharmacy benefit manager in this state for a health benefit plan without first obtaining a license from the director under the Pharmacy Benefit Manager Licensure and Regulation Act.

(2) The director may adopt and promulgate rules and regulations establishing the licensing application, financial, and reporting requirements for pharmacy benefit managers under the act.

(3) A person applying for a pharmacy benefit manager license shall submit an application for licensure in the form and manner prescribed by the director.

(4) A person submitting an application for a pharmacy benefit manager license shall include with the application a nonrefundable application fee. The director shall establish the nonrefundable application fee in an amount not to exceed five hundred dollars.

(5) The director may refuse to issue or renew a license if the director determines that the applicant or any individual responsible for the conduct of affairs of the applicant is not competent, trustworthy, financially responsible, or of good personal and business reputation, has been found to have violated the

insurance laws of this state or any other jurisdiction, or has had an insurance or other certificate of authority or license denied or revoked for cause by any jurisdiction.

(6)(a) Unless surrendered, suspended, or revoked by the director, a license issued under this section is valid as long as the pharmacy benefit manager continues to do business in this state and remains in compliance with the provisions of the act and any applicable rules and regulations, including the completion of a renewal application on a form prescribed by the director and payment of an annual license renewal fee. The director shall establish the annual license renewal fee in an amount not to exceed two hundred fifty dollars.

(b) Such application and renewal fee shall be received by the director on or before thirty days prior to the anniversary of the effective date of the pharmacy benefit manager's initial or most recent license.

Source: Laws 2022, LB767, § 5.

44-4606 Participation contract; requirements; disclosure of information; limitations; contract termination; grounds; pharmacy benefit manager, prohibited acts.

(1) A participation contract between a pharmacy benefit manager and any pharmacist or pharmacy providing prescription drug coverage for a health benefit plan shall not prohibit or restrict any pharmacy or pharmacist from or penalize any pharmacy or pharmacist for disclosing to any covered person any health care information that the pharmacy or pharmacist deems appropriate regarding:

(a) The nature of treatment, risks, or an alternative to such treatment;

(b) The availability of an alternate therapy, consultation, or test;

(c) The decision of a utilization reviewer or similar person to authorize or deny a service;

(d) The process that is used to authorize or deny a health care service or benefit; or

(e) Information on any financial incentive or structure used by the health carrier.

(2) A pharmacy benefit manager shall not prohibit a pharmacy or pharmacist from discussing information regarding the total cost for a pharmacist service for a prescription drug or from selling a more affordable alternative to the covered person if a more affordable alternative is available.

(3) A pharmacy benefit manager contract with a participating pharmacist or pharmacy shall not prohibit, restrict, or limit disclosure of information to the director, law enforcement, or a state or federal governmental official, provided that:

(a) The recipient of the information represents that such recipient has the authority, to the extent provided by state or federal law, to maintain proprietary information as confidential; and

(b) Prior to disclosure of information designated as confidential, the pharmacist or pharmacy:

(i) Marks as confidential any document in which the information appears; or

(ii) Requests confidential treatment for any oral communication of the information.

(4) A pharmacy benefit manager shall not terminate the contract with or penalize a pharmacist or pharmacy due to the pharmacist or pharmacy:

(a) Disclosing information about a pharmacy benefit manager practice, except information determined to be a trade secret, as determined by state law or the director; or

(b) Sharing any portion of the pharmacy benefit manager contract with the director pursuant to a complaint or a query regarding whether the contract is in compliance with the Pharmacy Benefit Manager Licensure and Regulation Act.

(5)(a) A pharmacy benefit manager shall not require a covered person purchasing a covered prescription drug to pay an amount greater than the lesser of the covered person's cost-sharing amount under the terms of the health benefit plan or the amount the covered person would pay for the drug if the covered person were paying the cash price.

(b) Any amount paid by a covered person under subdivision (5)(a) of this section shall be attributable toward any deductible or, to the extent consistent with section 2707 of the federal Public Health Service Act, 42 U.S.C. 300gg-6, as such section existed on January 1, 2022, the annual out-of-pocket maximum under the covered person's health benefit plan.

Source: Laws 2022, LB767, § 6.

44-4607 Pharmacy audit; auditing entity; requirements; recoupment; terms and conditions; documentation requirements; appeal process; audit reports.

(1) Unless otherwise prohibited by federal law, an auditing entity conducting a pharmacy audit shall:

(a) Give any pharmacy notice fifteen business days prior to conducting an initial onsite audit;

(b) For any audit that involves clinical or professional judgment, conduct such audit by or in consultation with a pharmacist; and

(c) Audit each pharmacy under the same standards and parameters as other similarly situated pharmacies.

(2) Unless otherwise prohibited by federal law, for any pharmacy audit conducted by an auditing entity:

(a) The period covered by the audit shall not exceed twenty-four months from the date that the claim was submitted to the auditing entity, unless a longer period is required under state or federal law;

(b) If an auditing entity uses random sampling as a method for selecting a set of claims for examination, the sample size shall be appropriate for a statistically reliable sample;

(c) The auditing entity shall provide the pharmacy a masked list containing any prescription number or date range that the auditing entity is seeking to audit;

(d) No onsite audit shall take place during the first five business days of the month without the consent of the pharmacy;

(e) No auditor shall enter the area of any pharmacy where patient-specific information is available without being escorted by an employee of the pharmacy and, to the extent possible, each auditor shall remain out of the sight and hearing range of any pharmacy customer;

(f) No recoupment shall be deducted from or applied against a future remittance until after the appeal process is complete and both parties receive the results of the final audit;

(g) No pharmacy benefit manager shall require information to be written on a prescription unless such information is required to be written on the prescription by state or federal law;

(h) Recoupment may be assessed for information not written on a prescription if:

(i)(A) Such information is required in the provider manual; or

(B) The information is required by the federal Food and Drug Administration or the drug manufacturer's product safety program; and

(ii) The information required under subdivision (i)(A) or (B) of this subdivision (h) is not readily available for the auditing entity at the time of the audit; and

(i) No auditing entity or agent shall receive payment based on a percentage of any recoupment.

(3) For recoupment under the Pharmacy Benefit Manager Licensure and Regulation Act, the auditing entity shall:

(a) Include consumer-oriented parameters based on manufacturer listings in the audit parameters;

(b) Consider the pharmacy's usual and customary price for a compounded medication as the reimbursable cost, unless the pricing method is outlined in the pharmacy provider contract;

(c) Base a finding of overpayment or underpayment on the actual overpayment or underpayment and not a projection that relies on the number of patients served who have a similar diagnosis, the number of similar orders, or the number of refills for similar drugs;

(d) Not use extrapolation to calculate the recoupment or penalties unless required by state or federal law;

(e) Not include a dispensing fee in the calculation of an overpayment, unless a prescription was not actually dispensed, the prescriber denied authorization, the prescription dispensed was a medication error by the pharmacy, or the identified overpayment is solely based on an extra dispensing fee;

(f) Not consider as fraud any clerical or record-keeping error, such as a typographical error, scrivener's error, or computer error regarding a required document or record. Such error may be subject to recoupment;

(g) Not assess any recoupment in the case of an error that has no actual financial harm to the covered person or health benefit plan. An error that is the result of the pharmacy failing to comply with a formal corrective action plan may be subject to recoupment; and

(h) Not allow interest to accrue during the audit period for either party, beginning with the notice of the audit and ending with the final audit report.

(4)(a) To validate a pharmacy record and the delivery of a pharmacy service, the pharmacy may use an authentic and verifiable statement or record, including a medication administration record of a nursing home, assisted-living facility, hospital, physician, or other authorized practitioner or an additional audit documentation parameter located in the provider manual.

(b) Any legal prescription that meets the requirements in this section may be used to validate a claim in connection with a prescription, refill, or change in a prescription, including a medication administration record, fax, e-prescription, or documented telephone call from the prescriber to the prescriber's agent.

(5) The auditing entity conducting the audit shall establish a written appeal process which shall include procedures for appealing both a preliminary audit report and a final audit report.

(6)(a) A preliminary audit report shall be delivered to the pharmacy within one hundred twenty days after the conclusion of the audit.

(b) A pharmacy shall be allowed at least thirty days following receipt of a preliminary audit report to provide documentation to address any discrepancy found in the audit.

(c) A final audit report shall be delivered to the pharmacy within one hundred twenty days after receipt of the preliminary audit report or the appeal process has been exhausted, whichever is later.

(d) An auditing entity shall remit any money due to a pharmacy or pharmacist as the result of an underpayment of a claim within forty-five days after the appeal process has been exhausted and the final audit report has been issued.

(7) Where contractually required, an auditing entity shall provide a copy to the plan sponsor of any of the plan sponsor's claims that were included in the audit, and any recouped money shall be returned to the health benefit plan or plan sponsor.

(8) This section does not apply to any investigative audit that involves suspected fraud, willful misrepresentation, or abuse, or any audit completed by a state-funded health care program.

Source: Laws 2022, LB767, § 7.

44-4608 Contract; pharmacy benefit manager; cost price list; duties; disputes; procedures.

(1) With respect to each contract and contract renewal between a pharmacy benefit manager and a pharmacy, the pharmacy benefit manager shall:

(a) Update any maximum allowable cost price list at least every seven business days, noting any price change from the previous list, and provide a means by which a network pharmacy may promptly review a current price in an electronic, print, or telephonic format within one business day of any such change at no cost to the pharmacy;

(b) Maintain a procedure to eliminate a product from the maximum allowable cost price list in a timely manner to remain consistent with any change in the marketplace; and

(c) Make the maximum allowable cost price list available to each contracted pharmacy in a format that is readily accessible and usable to the contracted pharmacy.

(2) A pharmacy benefit manager shall not place a prescription drug on a maximum allowable cost price list unless the drug is available for purchase by pharmacies in this state from a national or regional drug wholesaler and is not obsolete.

(3) Each contract between a pharmacy benefit manager and a pharmacy shall include a process to appeal, investigate, and resolve disputes regarding any maximum allowable cost price. The process shall include:

(a) A fifteen-business-day limit on the right to appeal following submission of an initial claim by a pharmacy;

(b) A requirement that any appeal be investigated and resolved within seven business days after the appeal is received by the pharmacy benefit manager; and

(c) A requirement that the pharmacy benefit manager provide a reason for any denial of an appeal and identify the national drug code for the drug that may be purchased by the pharmacy at a price at or below the price on the maximum allowable cost price list as determined by the pharmacy benefit manager.

(4) If an appeal is determined to be valid by the pharmacy benefit manager, the pharmacy benefit manager shall:

(a) Make an adjustment in the drug price no later than one day after the appeal is resolved; and

(b) Permit the appealing pharmacy to reverse and rebill the claim in question, using the date of the original claim.

Source: Laws 2022, LB767, § 8.

44-4609 Pharmacy benefit manager; 340B entity; 340B contract pharmacy; treatment; discrimination, prohibited.

(1) A pharmacy benefit manager that reimburses a 340B entity or a 340B contract pharmacy for a drug that is subject to an agreement under 42 U.S.C. 256b shall not reimburse the 340B entity or the 340B contract pharmacy for the pharmacy-dispensed drug at a rate lower than that paid for the same drug to similarly situated pharmacies that are not 340B entities or 340B contract pharmacies, and shall not assess any fee, chargeback, or other adjustment upon the 340B entity or 340B contract pharmacy on the basis that the 340B entity or 340B contract pharmacy participates in the program set forth in 42 U.S.C. 256b.

(2) A pharmacy benefit manager shall not discriminate against a 340B entity or 340B contract pharmacy in a manner that prevents or interferes with a covered individual's choice to receive such drug from the corresponding 340B entity or 340B contract pharmacy.

(3) For purposes of this section:

(a) 340B contract pharmacy means any pharmacy under contract with a 340B entity to dispense drugs on behalf of such 340B entity; and

(b) 340B entity means an entity participating in the federal 340B drug discount program, as described in 42 U.S.C. 256b.

Source: Laws 2022, LB767, § 9.

44-4610 Pharmacy benefit manager; specialty pharmacy network; exclusions.

A pharmacy benefit manager shall not exclude a Nebraska pharmacy from participation in the pharmacy benefit manager's specialty pharmacy network if:

(1) The pharmacy holds a specialty pharmacy accreditation from a nationally recognized independent accrediting organization; and

(2) The pharmacy is willing to accept the terms and conditions of the pharmacy benefit manager's agreement with the pharmacy benefit manager's specialty pharmacies.

Source: Laws 2022, LB767, § 10.

44-4611 Act; enforcement; director; powers and duties; monetary penalty.

(1) The director shall enforce compliance with the requirements of the Pharmacy Benefit Manager Licensure and Regulation Act.

(2)(a) Pursuant to the Insurers Examination Act, the director may examine or audit the books and records of a pharmacy benefit manager providing a claims processing service or other prescription drug or device service for a health benefit plan to determine compliance with the act.

(b) Information or data acquired during an examination under subdivision (2)(a) of this section is:

(i) Considered proprietary and confidential;

(ii) Not subject to sections 84-712, 84-712.01, and 84-712.03 to 84-712.09;

(iii) Not subject to subpoena; and

(iv) Not subject to discovery or admissible as evidence in any private civil action.

(3) The director may use any document or information provided pursuant to subsection (3) or (4) of section 44-4606 in the performance of the director's duties to determine compliance with the Pharmacy Benefit Manager Licensure and Regulation Act.

(4) The director may impose a monetary penalty on a pharmacy benefit manager or the health carrier with which a pharmacy benefit manager is contracted for a violation of the Pharmacy Benefit Manager Licensure and Regulation Act. The director shall establish the monetary penalty for a violation of the act in an amount not to exceed one thousand dollars per entity for each violation.

Source: Laws 2022, LB767, § 11.

Cross References

Insurers Examination Act, see section 44-5901.

44-4612 Rules and regulations.

The director may adopt and promulgate rules and regulations to carry out the Pharmacy Benefit Manager Licensure and Regulation Act.

Source: Laws 2022, LB767, § 12.

ARTICLE 51

INVESTMENTS

Section
44-5103. Terms, defined.
44-5105. Authorization and approval; investment records; board of directors; duties.

44-5103 Terms, defined.

For purposes of the Insurers Investment Act:

(1) Admitted assets means the investments authorized under the act and stated at values at which they are permitted to be reported in the insurer's financial statement filed under section 44-322, except that admitted assets does not include assets of separate accounts, the investments of which are not subject to the act;

(2) Agent means a national bank, state bank, trust company, or broker-dealer that maintains an account in its name in a clearing corporation or that is a member of the Federal Reserve System and through which a custodian participates in a clearing corporation including the Treasury/Reserve Automated Debt Entry Securities System and Treasury Direct system, except that with respect to securities issued by institutions organized or existing under the laws of a foreign country or securities used to meet deposit requirements pursuant to the laws of a foreign country as a condition of doing business therein, agent may include a corporation that is organized or existing under the laws of a foreign country and that is legally qualified under those laws to accept custody of securities;

(3) Business entity means a sole proprietorship, corporation, limited liability company, association, partnership, limited liability partnership, joint-stock company, joint venture, mutual fund, trust, joint tenancy, or other similar form of business organization, whether organized for profit or not for profit;

(4) Clearing corporation means a clearing corporation as defined in subdivision (a)(5) of section 8-102, Uniform Commercial Code, that is organized for the purpose of effecting transactions in securities by computerized book-entry, except that with respect to securities issued by institutions organized or existing under the laws of a foreign country or securities used to meet the deposit requirements pursuant to the laws of a foreign country as a condition of doing business therein, clearing corporation may include a corporation that is organized or existing under the laws of a foreign country and which is legally qualified under those laws to effect transactions in securities by computerized book-entry. Clearing corporation also includes Treasury/Reserve Automated Debt Entry Securities System and Treasury Direct system;

(5) Custodian means:

(a) A national bank, state bank, Federal Home Loan Bank, or trust company that shall at all times during which it acts as a custodian pursuant to the Insurers Investment Act be no less than adequately capitalized as determined by the standards adopted by the regulator charged with establishing such standards and assessing the solvency of such institutions and that is regulated

by federal or state banking laws or the Federal Home Loan Bank Act or is a member of the Federal Reserve System and that is legally qualified to accept custody of securities in accordance with the standards set forth below, except that with respect to securities issued by institutions organized or existing under the laws of a foreign country, or securities used to meet the deposit requirements pursuant to the laws of a foreign country as a condition of doing business therein, custodian may include a bank or trust company incorporated or organized under the laws of a country other than the United States that is regulated as such by that country's government or an agency thereof that shall at all times during which it acts as a custodian pursuant to the Insurers Investment Act be no less than adequately capitalized as determined by the standards adopted by international banking authorities and that is legally qualified to accept custody of securities; or

(b) A broker-dealer that shall be registered with and subject to jurisdiction of the Securities and Exchange Commission, maintains membership in the Securities Investor Protection Corporation, and has a tangible net worth equal to or greater than two hundred fifty million dollars;

(6) Custodied securities means securities held by the custodian or its agent or in a clearing corporation, including the Treasury/Reserve Automated Debt Entry Securities System and Treasury Direct system;

(7) Direct when used in connection with the term obligation means that the designated obligor is primarily liable on the instrument representing the obligation;

(8) Director means the Director of Insurance;

(9) Insurer is defined as provided in section 44-103, and unless the context otherwise requires, insurer means domestic insurer;

(10) Mortgage means a consensual interest created by a real estate mortgage, a trust deed on real estate, or a similar instrument;

(11) Obligation means a bond, debenture, note, or other evidence of indebtedness or a participation, certificate, or other evidence of an interest in any of the foregoing;

(12) Policyholders surplus means the amount obtained by subtracting from the admitted assets (a) actual liabilities and (b) any and all reserves which by law must be maintained. In the case of a stock insurer, the policyholders surplus also includes the paid-up and issued capital stock;

(13) Primary credit source means the credit source to which an insurer looks for payment as to an investment and against which an insurer has a claim for full payment;

(14) Securities Valuation Office means the Securities Valuation Office of the National Association of Insurance Commissioners or any successor office established by the National Association of Insurance Commissioners;

(15) Security certificate has the same meaning as defined in subdivision (a)(16) of section 8-102, Uniform Commercial Code;

(16) State means any state of the United States, the District of Columbia, or any territory organized by Congress;

(17) Tangible net worth means shareholders equity, less intangible assets, as reported in the broker-dealer's most recent Annual or Transition Report pursu-

ant to section 13 or 15(d) of the Securities Exchange Act of 1934, S.E.C. Form 10-K, filed with the Securities and Exchange Commission; and

(18) Treasury/Reserve Automated Debt Entry Securities System and Treasury Direct system mean the book-entry securities systems established pursuant to 5 U.S.C. 301, 12 U.S.C. 391, and 31 U.S.C. 3101 et seq. The operation of the systems are subject to 31 C.F.R. part 357 et seq.

Source: Laws 1991, LB 237, § 3; Laws 1997, LB 273, § 2; Laws 1999, LB 259, § 11; Laws 2005, LB 119, § 13; Laws 2007, LB117, § 12; Laws 2009, LB192, § 4; Laws 2022, LB863, § 25.

44-5105 Authorization and approval; investment records; board of directors; duties.

(1) An insurer shall not make any investment, sale, loan, or exchange, except loans on its own policies or contracts, unless authorized, approved, or ratified by a majority of the members of the board of directors or by a committee of its members charged by the board of directors or bylaws with the duty of making such investment, sale, loan, or exchange. The board of directors shall further determine by formal resolution at least annually whether all investments have been made in accordance with the delegations, standards, limitations, and investment objectives prescribed by the board of directors or a committee of the board of directors charged with the responsibility to direct its investments.

(2) The board of directors, after reviewing and assessing the insurer's technical investment and administrative capabilities and expertise, shall adopt a written plan for making investments and for engaging in investment practices. The plan shall specify, unless otherwise authorized by the Director of Insurance, the quality, maturity, and diversification of investments, including investment strategies intended to assure that the investments and investment practices are appropriate for the business conducted by the insurer, its liquidity needs, and its capital and surplus. At least annually, the board of directors or a committee of the board of directors shall review and revise, as appropriate, the written plan.

(3) On no less than a quarterly basis, and more often if deemed appropriate, the board of directors or committee of the board of directors shall receive and review a summary report on the insurer's investment portfolio, investment activities, and investment practices engaged in under delegated authority, in order to determine whether the investment activity of the insurer is consistent with its written plan.

(4) The board of directors shall require that records of authorizations, approvals or other documentation as the board of directors may require, and reports of any action taken under authority delegated under the written plan shall be made available on a regular basis to the board of directors.

(5) The board of directors shall perform its duties in good faith and with that degree of care that ordinarily prudent individuals in like positions would use under similar circumstances.

(6) Each insurer shall maintain a record of its investments in a form and manner as prescribed by the Director of Insurance. Such record shall include an indication by the insurer of the provision of law under which an investment is held.

(7) For purposes of this section, board of directors includes the governing body of an insurer having authority equivalent to that of a board of directors.

Source: Laws 1991, LB 237, § 5; Laws 1997, LB 273, § 4; Laws 2022, LB863, § 26.

44-5120 Lending of securities.

(1) An insurer may lend its securities if:

(a) The securities are created or existing under the laws of the United States and, simultaneously with the delivery of the loaned securities, the insurer receives collateral from the borrower consisting of cash or securities backed by the full faith and credit of the United States or an agency or instrumentality of the United States, except that any securities provided as collateral shall not be of lesser quality than the quality of the loaned securities. Any investment made by an insurer with cash received as collateral for loaned securities shall be made in the same kinds, classes, and investment grades as those authorized under the Insurers Investment Act and in a manner that recognizes the liquidity needs of the transaction or is used by the insurer for its general corporate purposes. The securities provided as collateral shall have a market value when the loan is made of at least one hundred two percent of the market value of the loaned securities;

(b) The securities are created or existing under the laws of Canada or are securities described in section 44-5137 and, simultaneously with the delivery of the loaned securities, the insurer receives collateral from the borrower consisting of cash or securities backed by the full faith and credit of the foreign country, except that any securities provided as collateral shall not be of lesser quality than the quality of the loaned securities. Any investment made by an insurer with cash received as collateral for loaned securities shall be made in the same kinds, classes, and investment grades as those authorized under the Insurers Investment Act and in a manner that recognizes the liquidity needs of the transaction or is used by the insurer for its general corporate purposes. The securities provided as collateral shall have a market value when the loan is made of at least one hundred two percent of the market value of the loaned securities;

(c) Prior to the loan, the borrower or any indemnifying party furnishes the insurer with or the insurer otherwise obtains the most recent financial statement of the borrower or any indemnifying party;

(d) The insurer receives a reasonable fee related to the market value of the loaned securities and to the term of the loan;

(e) The loan is made pursuant to a written loan agreement; and

(f) The borrower is required to furnish by the close of each business day during the term of the loan a report of the market value of all collateral and the market value of all loaned securities as of the close of trading on the previous business day. If at the close of any business day the market value of the collateral for any loan outstanding to a borrower is less than one hundred percent of the market value of the loaned securities, the borrower shall deliver by the close of the next business day an additional amount of cash or securities. The market value of the additional securities, together with the market value of all previously delivered collateral, shall equal at least one hundred two percent of the market value of the loaned securities for that loan.

(2) An insurer shall effect securities lending only through the services of a custodian bank or similar entity as approved by the director.

(3) An insurer's investments authorized under this section shall not exceed twenty percent of its admitted assets.

Source: Laws 1991, LB 237, § 20; Laws 1997, LB 273, § 10; Laws 2002, LB 1139, § 28; Laws 2003, LB 216, § 15; Laws 2007, LB117, § 15; Laws 2022, LB863, § 27.

44-5120.01 Repurchase and reverse repurchase transactions.

(1) For purposes of this section:

(a) Acceptable collateral means:

(i) As to reverse repurchase transactions, cash, cash equivalents, highly rated business entity obligations created or existing under the laws of the United States or Canada, public equity securities that are traded on a United States exchange, and direct obligations of, or securities that are fully guaranteed as to principal and interest by, the government of the United States or an agency of the government of the United States or the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation; and

(ii) As to repurchase transactions, cash and cash equivalents;

(b) Cash equivalents means short-term, highly rated investments or securities readily convertible to known amounts of cash without penalty and so near maturity that they present insignificant risk of change in value. Cash equivalents includes government money market mutual funds and class one money market mutual funds;

(c) Highly rated means an investment with a minimum quality rating as described in subdivision (2) of section 44-5112;

(d) Repurchase transaction means a transaction in which an insurer sells securities to a business entity and is obligated to repurchase the sold securities or equivalent securities from the business entity at a specified price, either within a specified period of time or upon demand;

(e) Reverse repurchase transaction means a transaction in which an insurer purchases securities from a business entity that is obligated to repurchase the purchased securities or equivalent securities from the insurer at a specified price, either within a specified period of time or upon demand; and

(f) Short-term means investments with a remaining term to maturity of ninety days or less.

(2) An insurer may engage in repurchase and reverse repurchase transactions as set forth in this section. The insurer shall enter into a written agreement for transactions entered under this section. Such agreements shall require that each transaction terminate no more than one year from its inception.

(3) Cash received in a transaction under this section shall be invested in accordance with the Insurers Investment Act and in a manner that recognizes the liquidity needs of the transaction or is used by the insurer for its general corporate purposes.

(4) So long as the transaction remains outstanding, the insurer, or its agent or custodian, shall maintain as acceptable collateral received in a transaction under this section, either physically or through the book entry systems of the

federal reserve, depository trust company, participants' trust company, or other securities depositories approved by the director:

(a) Possession of the acceptable collateral;

(b) A perfected security interest in the acceptable collateral; or

(c) In the case of a jurisdiction outside of the United States, title to, or rights of a secured creditor to, the acceptable collateral.

(5) The limitations of sections 44-5115 and 44-5137 shall not apply to the business entity counterparty exposure created by transactions under this section. An insurer shall not enter into a transaction under this section if, as a result of and after giving effect to the transaction:

(a) The aggregate amount of securities then sold to or purchased from any one business entity counterparty under this section would exceed five percent of its admitted assets; and in calculating the amount sold to or purchased from a business entity counterparty under repurchase or reverse repurchase transactions, effect may be given to netting provisions under a master written agreement; or

(b) The aggregate amount of all securities then sold to or purchased from all business entities under this section would exceed twenty percent of its admitted assets, and in no event shall the collateral market value of all public equity securities that are traded on a United States exchange received in a reverse repurchase transaction exceed more than twenty percent of the total market value of collateral received in reverse repurchase transactions.

(6)(a) In a repurchase transaction, the insurer shall receive acceptable collateral having a market value as of the transaction date at least equal to ninety-five percent of the market value of the securities transferred by the insurer in the transaction as of that date. If at the close of any business day the market value of the acceptable collateral is less than ninety-five percent of the market value of the securities so transferred, the business entity counterparty shall be obligated to deliver, by the close of the next business day, additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, at least equals ninety-five percent of the market value of the transferred securities.

(b) In a reverse repurchase transaction, the insurer shall receive acceptable collateral having a market value at least equal to (i) one hundred two percent of the purchase price paid by the insurer for collateral excluding public equity securities that are traded on a United States exchange or (ii) one hundred ten percent of the purchase price paid by the insurer for public equity securities that are traded on a United States exchange. If at the close of any business day the market value of the acceptable collateral is less than one hundred percent of the purchase price paid by the insurer, the business entity counterparty shall be obligated to provide, by the close of the next business day, additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, at least equals the applicable percentage of such collateral as provided in this subdivision. Securities acquired by an insurer in a reverse repurchase transaction shall not be sold in a repurchase transaction, loaned in a securities lending transaction, or otherwise pledged.

Source: Laws 2003, LB 216, § 14; Laws 2022, LB863, § 28.

44-5132 Bankruptcy-remote business entity securities.

(1) An insurer may invest in a security or other instrument, excluding a mutual fund, evidencing an interest in or the right to receive payments from, or payable from distributions on, an asset, a pool of assets, or specifically divisible cash flows which are legally transferred to a special purpose bankruptcy-remote business entity on the following conditions:

(a) The business entity is established solely for the purpose of acquiring specific types of assets or rights to cash flows, issuing securities and other instruments representing an interest in or right to receive cash flows from those assets or rights, and engaging in activities required to service the assets or rights and any credit enhancement or support features held by the business entity; and

(b) The assets of the business entity consist solely of interest-bearing obligations or other contractual obligations representing the right to receive payment from the cash flows from the assets or rights. However, the existence of credit enhancements, such as letters of credit or guarantees, or other support features, shall not cause a security or other instrument to be an unauthorized investment under this section.

(2) Investments in interest-only securities, other than those with a 1 designation from the Securities Valuation Office, or other instruments shall not be authorized under this section.

(3) Any investment authorized under this section shall have a minimum quality rating as described in subdivision (2) of section 44-5112.

Source: Laws 1991, LB 237, § 32; Laws 1997, LB 273, § 16; Laws 2022, LB863, § 29.

44-5137 Foreign securities.

(1) An insurer may invest in foreign securities or other investments (a) issued in, (b) located in, (c) denominated in the currency of, (d) whose ultimate payment amounts of principal or interest are subject to fluctuations in the currency of, or (e) whose obligors are domiciled in countries other than the United States or Canada, which are substantially of the same kinds and classes as those authorized for investment under the Insurers Investment Act. A security or investment shall not be deemed to be foreign if the issuer or a guarantor against which an insurer has a claim for payment has its principal place of business or is domiciled in the United States or Canada or the primary credit source is located in the United States or Canada and, in each case, the insurer has a contractual right to bring an enforcement action in the United States or Canada.

(2) Subject to the limitations in subsection (3) of this section:

(a) An insurer's investments authorized under subsection (1) of this section in any one foreign jurisdiction whose sovereign debt has a 1 designation from the Securities Valuation Office shall not exceed ten percent of the insurer's admitted assets;

(b) An insurer's investments authorized under subsection (1) of this section in any one foreign jurisdiction whose sovereign debt has a 2 or 3 designation from the Securities Valuation Office shall not exceed five percent of the insurer's admitted assets;

(c) An insurer's investments authorized under subsection (1) of this section in any one foreign jurisdiction whose sovereign debt has a 4, 5, or 6 designation from the Securities Valuation Office shall not exceed three percent of the insurer's admitted assets;

(d) An insurer's investments authorized under subsection (1) of this section denominated in any one foreign currency shall not exceed two percent of the insurer's admitted assets;

(e) An insurer's investments authorized under subsection (1) of this section denominated in foreign currencies, in the aggregate, shall not exceed five percent of the insurer's admitted assets; and

(f) An insurer's investments authorized under subsection (1) of this section shall not be considered denominated in a foreign currency if the acquiring insurer enters into one or more contracts in transactions permitted under section 44-5149 to exchange all payments made on the foreign currency denominated investments for United States currency at a rate which effectively insulates the investment cash flows against future changes in currency exchange rates during the period the contract or contracts are in effect.

(3) An insurer's investments authorized under subsection (1) of this section shall not exceed, in the aggregate, twenty-five percent of its admitted assets.

(4) An insurer which is authorized to do business in a foreign country or which has outstanding insurance, annuity, or reinsurance contracts on lives or risks resident or located in a foreign country may, in addition to the investments authorized by subsection (1) of this section, invest in securities and investments (a) issued in, (b) located in, (c) denominated in the currency of, (d) whose ultimate payment amounts of principal and interest are subject to fluctuations in the currency of, or (e) whose obligors are domiciled in such foreign countries, which are substantially of the same kinds and classes as those authorized for investment under the act.

(5) An insurer's investments authorized under subsection (4) of this section and cash in the currency of such country which is at any time held by such insurer, in the aggregate, shall not exceed the greater of (a) one and one-half times the amount of its reserves and other obligations under such contracts or (b) the amount which such insurer is required by law to invest in such country.

(6) Any investment in debt obligations authorized under this section shall have a minimum quality rating as described in subdivision (2) of section 44-5112, except that an insurer's investment in bonds or notes secured by a mortgage on real estate located outside of the United States or Canada that otherwise complies with section 44-5143 shall not be subject to such minimum quality rating requirements.

(7) An insurer's investments made under this section shall be aggregated with investments of the same kinds and classes made under the Insurers Investment Act except section 44-5153 for purposes of determining compliance with the limitations contained in other sections.

Source: Laws 1991, LB 237, § 37; Laws 1997, LB 273, § 18; Laws 2007, LB117, § 16; Laws 2022, LB863, § 30.

44-5139 Investment trusts and investment companies.

(1) An insurer may invest in shares of a fund registered under the Investment Company Act of 1940, as amended, as a diversified open-end investment

company and in shares, interests, or participation certificates in any management type of investment trust, corporate or otherwise, subject to the following restrictions:

(a) The investment restrictions and policies relating to the investment of the assets of the trust and its activities shall be limited to the same kinds, classes, and investment grades as those authorized for investment under the Insurers Investment Act; and

(b) The assets of such investment trust shall not be less than twenty million dollars at the date of purchase.

An insurer's investments authorized under this subsection shall not exceed ten percent of its admitted assets.

(2) An insurer may invest in the shares of a fund registered under the Investment Company Act of 1940, as amended, as a diversified open-end investment company when the investment restrictions and policies relating to the investment of the assets of the fund and its activities are limited solely to (a) obligations, (b) commitments to purchase obligations, or (c) assignments of interest in obligations issued or guaranteed by the United States or its agencies or instrumentalities. An insurer's investments authorized under this subsection shall not exceed twenty-five percent of its admitted assets.

Source: Laws 1991, LB 237, § 39; Laws 2022, LB863, § 31.

44-5140 Preferred stock.

(1) An insurer may invest in the preferred stock of any corporation which:

(a) Has earned and paid regular dividends at the regular prescribed rate each year upon its preferred stock, if any is or has been outstanding, for not less than five years immediately preceding the purchase of such preferred stock or during such part of such five-year period as it has had preferred stock outstanding; and

(b) Has had no material defaults in principal payments of or interest on any obligations of such corporation and its subsidiaries having a priority equal to or higher than those purchased during the period of five years immediately preceding the date of acquisition or, if outstanding for less than five years, at any time since such obligations were issued.

The earnings of and the regular dividends paid by all predecessor, merged, consolidated, or purchased corporations may be included through the use of consolidated or pro forma statements.

(2) Except as authorized under the Insurance Holding Company System Act, an insurer shall not own more than five percent of the total issued shares of stock of any corporation other than an insurer.

(3) A life insurer's investments authorized under this section shall not exceed the greater of twenty-five percent of its admitted assets or one hundred percent of its policyholders surplus, nor shall a life insurer's investments authorized under this section that are not rated P-1 or P-2 by the Securities Valuation Office exceed ten percent of its admitted assets.

Source: Laws 1991, LB 237, § 40; Laws 2007, LB117, § 17; Laws 2023, LB92, § 65.

Cross References

Insurance Holding Company System Act, see section 44-2120.

44-5141 Common stock; equity interests.

(1) An insurer may invest in the common stock or rights to purchase or sell common stock of any corporation.

(2)(a) An insurer may invest in equity interests or rights to purchase or sell equity interests in business entities other than general partnerships unless the general partnership is wholly owned by the insurer.

(b) A life insurer shall not invest under this subsection in any investment which the life insurer may invest in under section 44-5140 or 44-5144 or subsection (1) of this section.

(3) A life insurer's investments authorized under this section shall not exceed the greater of one hundred percent of its policyholders surplus or twenty percent of its admitted assets.

Source: Laws 1991, LB 237, § 41; Laws 1997, LB 273, § 20; Laws 2007, LB117, § 18; Laws 2022, LB863, § 32; Laws 2023, LB92, § 66.

44-5143 Real estate mortgages.

(1) An insurer may invest in bonds or notes secured by a first mortgage on real estate in the United States or Canada if the amount loaned by the insurer, together with any amount secured by an equal security interest, does not exceed eighty percent of the appraised value of the real estate and improvements at the time of making the investment, or if the funds are used for a construction loan, the amount does not exceed eighty percent of the market value of the real estate together with the actual costs of improvements constructed thereon at the time of final funding by the insurer. The limitation in this subsection shall not:

(a) Apply to investments authorized under section 44-5132;

(b) Prohibit an insurer from renewing or extending a loan for the original amount when the value of such real estate has depreciated;

(c) Prohibit an insurer from accepting, as part payment for real estate sold by it, a mortgage thereon for more than eighty percent of the purchase price of such real estate; or

(d) Prohibit an insurer from advancing additional loan funds to protect its real estate security.

(2) An insurer may invest in bonds or notes secured by a first mortgage on leasehold estates in real estate located in the United States or Canada if:

(a) Such underlying real estate is unencumbered except by (i) rentals to accrue therefrom to the owner of the real estate or (ii) a fee mortgage, if there is an agreement from the lender secured by the fee mortgage to not terminate or extinguish the leasehold interest as long as the lessee is not in default;

(b) There is no condition or right of reentry or forfeiture under which such lien can be cut off, subordinated, or otherwise disturbed so long as the lessee is not in default;

(c) The amount loaned by the insurer, together with any amount secured by an equal security interest, does not exceed eighty percent of the appraised value of such leasehold with improvements at the time of making the loan, or, if the funds are used for a construction loan, the amount loaned does not exceed eighty percent of the market value of the leasehold estate together with the actual costs of improvements constructed thereon at the time of final funding by the insurer; and

(d) Such mortgage loan will be completely amortized during the unexpired portion of the lease or leasehold estate, or, if a loan has a balloon payment, the mortgage loan amortization period plus the remaining unexpired term of the lease after the maturity date of the loan is at least thirty years, except that any lease or leasehold estate that is convertible by the borrower, as lessee, or the insurer, as lender, into a fee interest for no or minimal consideration at any time during the lease term shall be treated as a fee interest for all purposes under section 44-5143 so long as the insurer's mortgage is secured by such fee interest following such conversion.

(3) Nothing in this section shall prevent any amount invested under this section that exceeds eighty percent of the appraised value of the real estate or leasehold and improvements, as the case may be, from being authorized under section 44-5153.

(4) All buildings and other real estate improvements which constitute a material part of the value of the mortgaged premises, whether estates in fee or leasehold estates or combination thereof, shall be (a)(i) substantially completed before the investment is made or (ii) of a value that is at all times substantial in value in relation to the amount of construction loan funds advanced by the insurer on account of the loan and (b) kept insured against loss or damage by fire or windstorm in a reasonable amount for the benefit of the mortgagee.

(5) Other than investments subject to section 44-5132, if there are more than four holders of the issue of such bonds or notes described in subsection (1) or (2) of this section, (a) the security of such bonds or notes, as well as all collateral papers including insurance policies executed in connection therewith, shall be made to and held by a trustee, which trustee shall be a solvent bank or trust company having a paid-in capital of not less than two hundred fifty thousand dollars, except in case of a bank or trust company incorporated under the laws of this state, in which case a paid-in capital of not less than one hundred thousand dollars shall be required, and (b) it shall be agreed that, in case of proper notification of default, such trustee, upon request of at least twenty-five percent of the holders of the par amount of the bonds outstanding and proper indemnification, shall proceed to protect the rights of such bond-holders under the provisions of the trust indenture. Nothing in this subsection shall be deemed to inhibit the ability of an insurer to rely on the provisions of section 44-5110 with regard to loan participations for loans that meet the requirements of this section.

(6)(a) An insurer may invest in notes or bonds secured by second mortgages or other second liens, including all inclusive or wraparound mortgages or liens, upon real property encumbered only by a first mortgage or lien which meets the requirements set forth in this section, subject to either of the following conditions:

(i) The insurer also owns the note or bond secured by the prior first mortgage or lien and the aggregate value of both loans does not exceed the loan to market value ratio requirements of this section; or

(ii) The note or bond is secured by an all-inclusive or wraparound lien or mortgage which conforms to the requirements set forth in subdivision (b) of this subsection, if the aggregate value of the resulting loan does not exceed the loan to market value ratio requirements of this section.

(b) For purposes of this subsection, the terms wraparound and all-inclusive lien or mortgage refer to a loan made by an insurer to a borrower on the

security of a mortgage or lien on real property other than property containing a residence of one to four units or on which a residence of one to four units is to be constructed, where such real property is encumbered by a first mortgage or lien and which loan is subject to all of the following requirements:

(i) The total amount of the obligation of the borrower to the insurer under the loan is not less than the sum of the amount disbursed by the insurer on account of the loan and the outstanding balance of the obligation secured by the preexisting lien or mortgage;

(ii) The instrument evidencing the lien or mortgage by which the obligation of the borrower to the insurer under the loan is secured, is recorded, and the lien is insured under a policy of title insurance in an amount not less than the total amount of the obligation of the borrower to the insurer under the loan; and

(iii) The insurer either (A) files for record in the office of the recorder of the county in which the real property is located a duly acknowledged request for a copy of any notice of default or of sale under the preexisting lien or (B) is entitled under applicable law to receive notice of default, sale, or foreclosure of the preexisting lien.

(7)(a) An insurer may invest in mezzanine real estate loans subject to the following conditions:

(i) The terms of the mezzanine loan agreement:

(A) Require that each pledgor abstain from granting additional security interests in the equity interest pledged;

(B) Employ techniques to minimize the likelihood or impact of a bankruptcy filing on the part of the real estate owner or the mezzanine real estate loan borrower; and

(C) Require the real estate owner, or mezzanine real estate loan borrower, to: (I) Hold no assets other than, in the case of the real estate owner, the real property, and in the case of the mezzanine borrower, the equity interest in the real estate owner; (II) not engage in any business other than, in the case of the real estate owner, the ownership and operation of the real estate, and in the case of the mezzanine real estate borrower, holding an ownership interest in the real estate owner; and (III) not incur additional debt, other than limited trade payables, a first mortgage loan, and the mezzanine real estate loan; and

(ii) At the time of the initial investment, the mezzanine real estate loan lender shall corroborate that the sum of the first mortgage and the mezzanine real estate loan does not exceed one hundred percent of the value of the real estate as evidenced by a current appraisal.

(b) The value of an insurer's investments authorized under this subsection shall not exceed three percent of its admitted assets.

(c) For purposes of this subsection, mezzanine real estate loan refers to a loan made by an insurer to a borrower on the security of debt obligation which is secured by a pledge of a direct or indirect equity interest in an entity that owns real estate.

(8) An insurer's investments authorized under this section shall not exceed forty percent of its admitted assets, and an insurer's investments authorized

under this section and section 44-5144, in the aggregate, shall not exceed fifty percent of its admitted assets.

Source: Laws 1991, LB 237, § 43; Laws 2004, LB 1047, § 18; Laws 2005, LB 119, § 15; Laws 2022, LB863, § 33.

44-5144 Real estate.

(1) An insurer may acquire and hold unencumbered real estate or certificates evidencing participation with other investors, either directly or through partnership or limited liability company interests, or other equity interests, including common and preferred equity investments, in unencumbered real estate if:

(a) The real estate is leased under a lease contract;

(b) The net amount of the annual lease payments to the owner of the real estate is sufficient to amortize the cost of the real estate within the duration of the lease, but in no event for a period of longer than forty years, and pay at least three percent per annum on the unamortized balance of the cost of the real estate; and

(c) The amount invested in any such real estate does not exceed its appraised value.

When the lessee under a lease described in this subsection is the United States or any agency or instrumentality thereof, any state or any county, municipality, district, or other governmental subdivision thereof, or any agency, board, authority, or institution established or maintained under the laws of the United States or any state thereof, such lease contract may provide that upon the termination of the term thereof, title to such real estate shall vest in the lessee.

When a lease described in this subsection is under a trust agreement which provides, among other things, that upon proper notification of default under such lease and request to such trustee by an investor or investors representing at least twenty-five percent of the equitable ownership of the real estate and proper indemnification, the trustee shall proceed to protect the rights and interest of the investors owning the equitable title to the real estate. In a governmental lease or leasehold estate under which the insurer owns an interest in a lessee that is convertible by the lessee into a fee interest for no or de minimis consideration at any time during the lease term, it shall be treated as a fee interest for all purposes under this section.

For purposes of this subsection, unencumbered real estate means real estate in which other interests may exist which if enforced would not result in the forfeiture of the insurer's interest.

(2) An insurer may also acquire and hold real estate:

(a) Mortgaged to it in good faith by way of security for a loan previously contracted or for money due;

(b) Conveyed to it in satisfaction of debts previously contracted in the course of its dealings; and

(c) Purchased at sale upon judgments, decrees, or mortgages obtained or made for such debts.

(3) An insurer may invest in real estate required for its home offices or to be otherwise occupied by the insurer or its employees in the transaction of its business and may rent the balance of the space therein. The value of an

insurer's investments authorized under this subsection shall not exceed ten percent of its admitted assets.

(4)(a) An insurer with policyholders surplus of at least one million dollars may individually or in conjunction with other investors acquire, own, hold, develop, and improve real estate that is essentially residential or commercial in character, even though subject to an existing mortgage or thereafter mortgaged by the insurer, if such real estate is located in the United States or Canada.

(b) For purposes of this subsection, real estate shall include a leasehold having an unexpired term of at least twenty years, including the term provided by any enforceable option of renewal. The income from such leasehold shall be applied so as to amortize the cost of leasehold and improvements within the lesser of eighty percent of such unexpired term or forty years from acquisition.

(c) An insurer may hold real estate or certification evidencing participation authorized under this subsection with other investors either directly or through a partnership, limited liability company, or other equity interest, including without limitation, common and preferred equity investments.

(d) The value of an insurer's investments authorized under this subsection shall not exceed ten percent of its admitted assets.

(5) An insurer may also acquire such other real estate as may be acquired ancillary to a corporate merger, acquisition, or reorganization of the insurer.

(6) The value of an insurer's investments authorized under subsections (3), (4), and (5) of this section, in the aggregate, shall not exceed fifteen percent of its admitted assets.

(7) For purposes of this section, value shall mean original cost plus any development and improvement costs whenever expended less the unpaid balance of any mortgage and annual depreciation on improvements of not less than two percent.

(8) An insurer's investments authorized under this section and section 44-5143, in the aggregate, shall not exceed fifty percent of its admitted assets.

Source: Laws 1991, LB 237, § 44; Laws 1993, LB 121, § 260; Laws 1997, LB 273, § 21; Laws 2005, LB 119, § 16; Laws 2022, LB863, § 34.

44-5149 Hedging transactions; derivative instruments.

(1) An insurer may use derivative instruments in hedging transactions if:

(a) The aggregate statement value of options, caps, floors, and warrants not attached to any financial instrument and used in hedging transactions does not exceed the lesser of seven and one-half percent of the insurer's admitted assets or seventy-five percent of the insurer's policyholders surplus;

(b) The aggregate statement value of options, caps, and floors written in hedging transactions does not exceed the lesser of three percent of the insurer's admitted assets or thirty percent of the insurer's policyholders surplus; and

(c) The aggregate potential exposure of collars, swaps, forwards, and futures used in hedging transactions does not exceed the lesser of six and one-half percent of the insurer's admitted assets or sixty-five percent of the insurer's policyholders surplus.

(2)(a) An insurer may use derivative instruments in income-generation transactions by selling:

(i) Covered call options on non-callable fixed income securities or callable fixed income securities if the option expires by its terms prior to the end of the non-callable period;

(ii) Covered call options on equity securities if the insurer holds in its portfolio, or can immediately acquire through the exercise of options, warrants, or conversion rights already owned, the equity securities subject to call during the complete term of the call option sold;

(iii) Covered puts on investments that the insurer is permitted to acquire under the Insurers Investment Act if the insurer has escrowed, or entered into a custodian agreement segregating, cash or cash equivalents with a market value equal to the amount of its purchase obligations under that put during the complete term of the put option sold; and

(iv) Covered caps or floors if the insurer holds in its portfolio the investments generating the cash flow to make the required payments under such caps or floors during the complete term that the cap or floor is outstanding.

(b) An insurer may enter into income-generation transactions under this subsection if the aggregate statement value of the fixed income assets that are subject to call or that generate the cash flows for payments under the caps or floors, plus the face value of fixed income securities underlying any derivative instrument subject to call, does not exceed the lesser of ten percent of the insurer's admitted assets or one hundred percent of the insurer's policyholders surplus.

(3) An insurer may use derivative instruments in replication transactions if:

(a) The aggregate statement value of options, caps, floors, and warrants not attached to any financial instrument and used in replication transactions does not exceed the lesser of seven and one-half percent of the insurer's admitted assets or seventy-five percent of the insurer's policyholders surplus;

(b) The aggregate statement value of options, caps, and floors written in replication transactions does not exceed the lesser of three percent of the insurer's admitted assets or thirty percent of the insurer's policyholders surplus;

(c) The aggregate potential exposure of collars, swaps, forwards, and futures used in replication transactions does not exceed the lesser of six and one-half percent of the insurer's admitted assets or sixty-five percent of the insurer's policyholders surplus;

(d) The replication transactions are limited to the replication of investments or instruments otherwise permitted under the Insurers Investment Act; and

(e) The insurer engages in hedging transactions or income generation transactions pursuant to this section and has sufficient experience with derivatives generally such that its performance and procedures reflect that the insurer has been successful in adequately identifying, measuring, monitoring, and limiting exposures associated with such transactions and that the insurer has superior corporate controls over such activities as well as a sufficient number of dedicated staff who are knowledgeable and skilled with these sophisticated financial instruments.

(4) An insurer may purchase or sell one or more derivative instruments to offset, in whole or in part, any derivative instrument previously purchased or sold, as the case may be, without regard to the quantitative limitations of this

section, provided that the derivative instrument is an exact offset to the original derivative instrument being offset.

(5) An insurer shall demonstrate to the director upon request the intended hedging, income-generation, or replication characteristics and the ongoing effectiveness of the derivative transaction or combination of the transactions through cash flow testing or other appropriate analysis.

(6) An insurer shall include all counterparty exposure amounts in determining compliance with the limitations in section 44-5115.

(7) The director may approve additional transactions involving the use of derivative instruments pursuant to rules and regulations adopted and promulgated by the director.

(8) For the investment limitations covered in subsections (1), (2), and (3) of this section, aggregate statement value and aggregate potential exposure shall be calculated net of collateral posted or received.

(9) For purposes of this section:

(a) Derivative instrument means an agreement, option, instrument, or a series or combination thereof:

(i) To make or take delivery of, or assume or relinquish, a specified amount of one or more underlying interests or to make a cash settlement in lieu thereof; or

(ii) That has a price, performance, value, or cash flow based primarily upon the actual or expected price, level, performance, value, or cash flow of one or more underlying interests.

Derivative instrument includes all investment instruments or contracts that derive all or almost all of their value from the performance of an underlying market, index, or financial instrument, including, but not limited to, options, warrants, caps, floors, collars, swaps, credit default swaps, swaptions, forwards, and futures. Derivative instrument does not include investments authorized under any other section of the Insurers Investment Act;

(b) Hedging transaction means a derivative transaction which is entered into and maintained to reduce:

(i) The risk of a change in value, yield, price, cash flow, or quantity of assets or liabilities which the insurer has acquired or incurred or anticipates acquiring or incurring; or

(ii) The currency exchange rate risk or the degree of exposure as to assets or liabilities which an insurer has acquired or incurred or anticipates acquiring or incurring;

(c) Income-generation transaction means a derivative transaction involving the writing of covered call options, covered put options, covered caps, or covered floors that is intended to generate income or enhance return; and

(d) Replication transaction means a derivative transaction or combination of derivative transactions effected either separately or in conjunction with cash market investments included in the insurer's portfolio in order to replicate the investment characteristic of another authorized transaction, investment, or instrument or that may operate as a substitute for cash market investments. A derivative transaction entered into by the insurer as a hedging or income-

generation transaction authorized pursuant to this section shall not be considered a replication transaction.

Source: Laws 1991, LB 237, § 49; Laws 1997, LB 273, § 22; Laws 2005, LB 119, § 17; Laws 2022, LB863, § 35.

44-5153 Additional authorized investments.

(1)(a)(i) A life insurer may make investments not otherwise authorized under the Insurers Investment Act in an amount, in the aggregate, not exceeding the lesser of five percent of the first five hundred million dollars of its admitted assets plus ten percent of its admitted assets exceeding five hundred million dollars or one hundred percent of its policyholders surplus.

(ii) An insurer other than a life insurer may make investments not otherwise authorized under the act in an amount, in the aggregate, not exceeding the lesser of twenty-five percent of the amount by which its admitted assets exceed its total liabilities, excluding capital, or five percent of the first five hundred million dollars of its admitted assets plus ten percent of its admitted assets exceeding five hundred million dollars.

(b) Investments authorized under this subsection shall not include obligations having 3, 4, 5, and 6 designations from the Securities Valuation Office.

(2)(a) In addition to the provisions of subdivision (1)(a)(i) of this section, a life insurer may make investments not otherwise authorized under the act in an amount not exceeding that portion of its policyholders surplus which is in excess of ten percent of its admitted assets.

(b) In addition to the provisions of subdivisions (1)(a)(ii) and (b) of this section, an insurer other than a life insurer may make investments not otherwise authorized under the act in an amount not exceeding that portion of its policyholders surplus which is in excess of fifty percent of its annual net written premiums as shown by the most recent annual financial statement filed by the insurer pursuant to section 44-322.

(3) Investments authorized under subsection (1) or (2) of this section shall not include assets held by a ceding insurer as security supporting reinsurance arrangements through which credit for reinsurance has been allowed.

(4) Investments authorized under subsection (1) or (2) of this section shall not include insurance agents' balances or amounts advanced to or owing by insurance agents.

(5) The limitations set forth in this section shall be applied at the time the investment in question is made and at the end of each calendar quarter. An insurer's investment, which at the time of its acquisition was authorized only under the provisions of this section but which has subsequently and while held by such insurer become of such character as to be authorized elsewhere under the act, shall not be included in determining the amount of such insurer's investments, in the aggregate, authorized under this section, and investments otherwise authorized under the act at the time of their acquisition shall not be included in making such determination.

(6) Derivative instruments described in subsections (1), (2), and (3) of section 44-5149 shall not be authorized investments under this section.

Source: Laws 1991, LB 237, § 53; Laws 1997, LB 273, § 25; Laws 2005, LB 119, § 18; Laws 2007, LB117, § 20; Laws 2022, LB863, § 36.

ARTICLE 58
THIRD-PARTY ADMINISTRATORS

Section
44-5807. Insurer; third-party administrator; responsibilities.

44-5807 Insurer; third-party administrator; responsibilities.

(1) If an insurer utilizes the services of a third-party administrator, the insurer shall be responsible for determining the benefits, premium rates, underwriting criteria, and claims-payment procedures and for securing reinsurance, if any. The rules pertaining to these matters shall be provided, in writing, by the insurer to the third-party administrator. The responsibilities of the third-party administrator as to any of these matters shall be set forth in the written agreement between the third-party administrator and the insurer.

(2) It shall be the sole responsibility of the insurer to provide for competent administration of its programs.

(3) In cases when a third-party administrator administers benefits for more than one hundred certificate holders or subscribers on behalf of an insurer, the insurer shall, at least semiannually, conduct a review of the operations of the third-party administrator. The director may require the insurer to conduct an onsite audit of the operations of the third-party administrator.

Source: Laws 1992, LB 1006, § 82; Laws 2024, LB1073, § 23.
Operative date July 19, 2024.

ARTICLE 65
PET INSURANCE ACT

Section
44-6501. Act, how cited.
44-6502. Act; purpose; applicability.
44-6503. Pet insurer; definitions; limitations or exclusions; use.
44-6504. Terms, defined.
44-6505. Disclosures, requirements; rights of applicant.
44-6506. Preexisting conditions; waiting periods; renewal; benefits; eligibility; limitations.
44-6507. Wellness program; restrictions.
44-6508. License; training; required.
44-6509. Rules and regulations.
44-6510. Violation; unfair trade practice.

44-6501 Act, how cited.

Sections 44-6501 to 44-6510 shall be known and may be cited as the Pet Insurance Act.

Source: Laws 2023, LB296, § 1.

44-6502 Act; purpose; applicability.

(1) The purpose of the Pet Insurance Act is to promote the public welfare by creating a comprehensive legal framework within which pet insurance may be sold in this state.

(2) The requirements of the Pet Insurance Act shall apply to pet insurance policies that are issued to any resident of this state and are sold, solicited,

negotiated, or offered in this state and pet insurance policies or certificates that are delivered or issued for delivery in this state.

(3) All other applicable provisions of the insurance laws of this state shall continue to apply to pet insurance, except that the specific provisions of the Pet Insurance Act shall supersede any general provisions of law that would otherwise be applicable to pet insurance.

Source: Laws 2023, LB296, § 2.

44-6503 Pet insurer; definitions; limitations or exclusions; use.

(1) A pet insurer that uses any of the terms defined in section 44-6504 in a policy of pet insurance shall use such terms as the terms are defined in section 44-6504. A pet insurer shall also make the specific definitions available through a clear and conspicuous link on the main page of the website of the pet insurer or pet insurer's program administrator.

(2) Nothing in the Pet Insurance Act shall prohibit or limit the types of exclusions a pet insurer may use in a pet insurance policy or require a pet insurer to use in a pet insurance policy any limitation or exclusion set forth in the Pet Insurance Act.

Source: Laws 2023, LB296, § 3.

44-6504 Terms, defined.

For purposes of the Pet Insurance Act:

(1) Chronic condition means a condition that can be treated or managed, but not cured;

(2) Congenital anomaly or disorder means a condition that is present from birth, whether inherited or caused by the environment, which may cause or contribute to illness or disease;

(3) Hereditary disorder means an abnormality that is genetically transmitted from parent to offspring and may cause illness or disease;

(4) Orthopedic condition refers to a condition affecting the bones, skeletal muscle, cartilage, tendons, ligaments, and joints. Orthopedic condition includes, but is not limited to, elbow dysplasia, hip dysplasia, intervertebral disc degeneration, patellar luxation, and ruptured cranial cruciate ligaments. Orthopedic condition does not include cancer or metabolic, hemopoietic, or autoimmune disease;

(5) Pet insurance policy means a property insurance policy that provides coverage for accidents and illnesses of pets;

(6)(a) Preexisting condition means any condition for which any of the following are true prior to the effective date of a pet insurance policy or during any waiting period under such policy:

(i) A veterinarian provided medical advice;

(ii) The pet received previous treatment; or

(iii) Based on information from verifiable sources, the pet had signs or symptoms directly related to the condition for which a claim is being made.

(b) A condition for which coverage is afforded on a policy cannot be considered a preexisting condition on any renewal of the policy;

(7) Renewal means to issue and deliver at the end of an insurance policy period a policy which supersedes a policy previously issued and delivered by the same pet insurer or affiliated pet insurer and which provides types and limits of coverage substantially similar to those contained in the policy being superseded;

(8) Veterinarian means an individual who holds a valid license to practice veterinary medicine from the appropriate licensing entity in the jurisdiction in which such veterinarian practices;

(9) Veterinary expenses means the costs associated with medical advice, diagnosis, care, or treatment provided by a veterinarian, including, but not limited to, the cost of drugs prescribed by a veterinarian;

(10) Waiting period means the period of time specified in a pet insurance policy that is required to transpire before some or all of the coverage in the policy can begin. Waiting periods may not be applied to renewals of existing coverage; and

(11) Wellness program means a subscription or reimbursement-based program that is separate from an insurance policy that provides goods and services to promote the general health, safety, or well-being of the pet. If any wellness program undertakes to indemnify another, pays a specified amount upon determinable contingencies, or provides coverage for a fortuitous event, it is transacting the business of insurance and is subject to the insurance laws of this state. This definition is not intended to classify a contract directly between a service provider and a pet owner that only involves the two parties as being in the business of insurance unless other indications of insurance exist.

Source: Laws 2023, LB296, § 4.

44-6505 Disclosures, requirements; rights of applicant.

(1) A pet insurer transacting pet insurance shall disclose to consumers:

(a) If the policy excludes coverage due to:

(i) A preexisting condition;

(ii) A hereditary condition;

(iii) A congenital anomaly or disorder; or

(iv) A chronic condition;

(b) If the policy includes any other exclusions and if so, the pet insurer shall include a statement substantially similar to the following:

Other exclusions may apply. Please refer to the exclusions section of the policy for more information;

(c) Any policy provision that limits coverage through a waiting or affiliation period, a deductible, coinsurance, or an annual or lifetime policy limit;

(d) Whether the pet insurer reduces coverage or increases premiums based on the insured's claim history, the age of the covered pet, or a change in the geographic location of the insured; and

(e) If the underwriting company differs from the brand name used to market and sell the product.

(2)(a) Unless the insured has filed a claim under the pet insurance policy, a pet insurance applicant has the right to examine and return the policy, certificate, or rider to the pet insurer or insurance producer within thirty days

from its date of receipt and to have the premium refunded if, after examination of the policy, certificate, or rider, the applicant is not satisfied for any reason.

(b) A pet insurance policy, certificate, or rider shall have a notice prominently printed on the first page or attached thereto, including specific instructions to accomplish a return, and shall include a statement substantially similar to the following:

You have up to thirty days from the day you receive this policy, certificate, or rider to review it and return it to the pet insurer if you decide not to keep it. You do not have to tell the pet insurer why you are returning it. If you decide not to keep it, simply return it to the pet insurer at the insurer's administrative office or you may return it to the insurance producer that you bought it from as long as you have not filed a claim. You must return it within thirty days after the day you first received it. The pet insurer will refund the full amount of any premium paid within thirty days after the pet insurer receives the returned policy, certificate, or rider. The premium refund will be sent directly to the person who paid it. The policy, certificate, or rider will be void as if it had never been issued.

(3) A pet insurer shall clearly disclose a summary description of the basis or formula on which the pet insurer determines claim payments under a pet insurance policy within the policy, prior to policy issuance and through a clear and conspicuous link on the main page of the website of the pet insurer or pet insurer's program administrator.

(4) A pet insurer that uses a benefit schedule to determine claim payment under a pet insurance policy shall:

(a) Clearly disclose the applicable benefit schedule in the policy; and

(b) Disclose all benefit schedules used by the pet insurer under its pet insurance policies through a clear and conspicuous link on the main page of the website of the pet insurer or pet insurer's program administrator.

(5) A pet insurer that determines claim payments under a pet insurance policy based on usual and customary fees, or any other reimbursement limitation based on prevailing veterinary expenses, shall:

(a) Include a usual-and-customary-fee limitation provision in the policy that clearly describes the pet insurer's basis for determining usual and customary fees and how that basis is applied in calculating claim payments; and

(b) Disclose the pet insurer's basis for determining usual and customary fees through a clear and conspicuous link on the main page of the website of the pet insurer or pet insurer's program administrator.

(6) If any medical examination by a veterinarian is required to effectuate coverage, the pet insurer shall clearly and conspicuously disclose the required aspects of the examination prior to purchase and disclose that examination documentation may result in a preexisting condition exclusion.

(7) Waiting periods and the requirements applicable to them shall be clearly and prominently disclosed to consumers prior to policy purchase.

(8)(a) The pet insurer shall include a summary of all policy provisions required in subsections (1) through (7) of this section in a separate document titled Insurer Disclosure of Important Policy Provisions.

(b) The pet insurer shall:

(i) Provide the consumer with a copy of the Insurer Disclosure of Important Policy Provisions document in at least twelve-point bold type; and

(ii) Post the Insurer Disclosure of Important Policy Provisions document through a clear and conspicuous link on the main page of the website of the pet insurer or pet insurer's program administrator.

(9) At the time a pet insurance policy is issued or delivered to a policyholder, the pet insurer shall include a written disclosure with the following information printed in twelve-point bold type:

(a) The mailing address, toll-free telephone number, and website of the Department of Insurance;

(b) The mailing address and customer service telephone number of the pet insurer or insurance producer of record; and

(c) If the policy was issued or delivered by an insurance producer, a statement advising the policyholder to contact the insurance producer for assistance.

(10) The disclosures required by this section shall be in addition to any other disclosure requirements required by law or rule and regulation.

Source: Laws 2023, LB296, § 5.

44-6506 Preexisting conditions; waiting periods; renewal; benefits; eligibility; limitations.

(1) A pet insurer may issue policies that exclude coverage on the basis of one or more preexisting conditions with appropriate disclosure to the consumer. The pet insurer has the burden of proving that the preexisting condition exclusion applies to the condition for which a claim is being made.

(2)(a) A pet insurer may issue policies that impose waiting periods upon effectuation of the policy that do not exceed thirty days for illness or orthopedic conditions not resulting from an accident. Waiting periods for accidents are prohibited.

(b) A pet insurer utilizing a waiting period shall include a provision in such pet insurer's policy that allows the waiting period to be waived upon completion of a medical examination. The pet insurer may require that:

(i) The examination be conducted by a veterinarian;

(ii) The examination include certain specific elements as long as such elements do not unreasonably restrict a consumer's ability to waive the waiting period; and

(iii) The examination and any required elements be documented and provided to the pet insurer.

(c) The pet insurer shall clearly and prominently disclose if the policy includes a waiting period and any requirements applicable to the waiting period to consumers prior to the policy purchase.

(3) A pet insurer shall not require a veterinary examination of the covered pet for the insured to have such insured's policy renewed.

(4) If a pet insurer includes any prescriptive, wellness, or noninsurance benefits in the policy form, then such benefits shall be considered part of the policy and the pet insurer shall follow all applicable laws, rules, and regulations related to such benefits.

(5) A consumer's eligibility to purchase a pet insurance policy shall not be based on participation, or lack of participation, in a separate wellness program.

Source: Laws 2023, LB296, § 6.

44-6507 Wellness program; restrictions.

(1) A pet insurer or insurance producer shall not market a wellness program as pet insurance.

(2) If a pet insurer or insurance producer sells a wellness program:

(a) The purchase of the wellness program shall not be a requirement to the purchase of pet insurance;

(b) The costs of the wellness program shall be separate and identifiable from any pet insurance policy sold by a pet insurer or insurance producer;

(c) The terms and conditions for the wellness program shall be separate from any pet insurance policy sold by a pet insurer or insurance producer;

(d) The products or coverage available through a wellness program shall not duplicate products or coverages available through the pet insurance policy;

(e) The advertising of the wellness program shall not be misleading; and

(f) The pet insurer or insurance producer shall provide a written disclosure to consumers in twelve-point bold font that includes:

(i) A statement that wellness programs are not insurance;

(ii) The mailing address, toll-free telephone number, and website of the Department of Insurance; and

(iii) The address and customer service telephone number of the pet insurer or insurance producer of record.

(3) Coverages included in the pet insurance policy contract described as wellness benefits are insurance.

Source: Laws 2023, LB296, § 7.

44-6508 License; training; required.

(1) An insurance producer shall not sell, solicit, or negotiate a pet insurance product until after the insurance producer is appropriately licensed and has completed the required training as provided in subsection (3) of this section.

(2) A pet insurer shall ensure that its insurance producers are appropriately trained on the coverages and conditions of such insurer's pet insurance products and have received the training required in subsection (3) of this section.

(3) Training required for an insurance producer shall include information on:

(a) Preexisting conditions and waiting periods;

(b) The differences between pet insurance and noninsurance wellness programs;

(c) Hereditary disorders, congenital anomalies or disorders, and chronic conditions, and how pet insurance policies interact with such conditions or disorders; and

(d) Rating, underwriting, renewal, and other related administrative topics.

(4) An insurance producer that has satisfied substantially similar training requirements in another state shall be considered to have satisfied the training requirements in this state.

Source: Laws 2023, LB296, § 8.

44-6509 Rules and regulations.

The Director of Insurance may adopt and promulgate rules and regulations to carry out the Pet Insurance Act.

Source: Laws 2023, LB296, § 9.

44-6510 Violation; unfair trade practice.

Any violation of the Pet Insurance Act or the rules and regulations adopted and promulgated under the act shall be considered an unfair trade practice under the Unfair Insurance Trade Practices Act in addition to any other remedies and penalties available under the laws of this state.

Source: Laws 2023, LB296, § 10.

Cross References

Unfair Insurance Trade Practices Act, see section 44-1521.

ARTICLE 90

RISK MANAGEMENT AND OWN RISK AND SOLVENCY ASSESSMENT ACT

Section
44-9004. Terms, defined.

44-9004 Terms, defined.

For purposes of the Risk Management and Own Risk and Solvency Assessment Act:

(1) Director means the Director of Insurance;

(2) Insurance group means those insurers and affiliates included within an insurance holding company system as defined in section 44-2121;

(3) Insurer has the same meaning as in section 44-103, except that it does not include agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state;

(4) Own risk and solvency assessment means a confidential internal assessment, appropriate to the nature, scale, and complexity of an insurer or insurance group, conducted by the insurer or insurance group, of the material and relevant risks associated with the insurer's or insurance group's current business plan and the sufficiency of capital resources to support those risks;

(5) Own risk and solvency assessment guidance manual means the own risk and solvency assessment guidance manual prescribed by the director which conforms substantially to the Own Risk and Solvency Assessment Guidance Manual developed and adopted by the National Association of Insurance Commissioners. A change in the own risk and solvency assessment guidance manual shall be effective on the January 1 following the calendar year in which the change has been adopted by the director; and

(6) Own risk and solvency assessment summary report means a confidential, high-level summary of an insurer's or insurance group's own risk and solvency assessment.

Source: Laws 2014, LB700, § 4; Laws 2016, LB772, § 16; Laws 2022, LB863, § 37.

ARTICLE 93

TRAVEL INSURANCE ACT

Section

44-9301 Act, how cited.

Sections 44-9301 to 44-9310 shall be known and may be cited as the Travel Insurance Act.

Source: Laws 2022, LB863, § 1.

44-9302 Act; purpose; applicability of provisions.

(1) The purpose of the Travel Insurance Act is to promote the public welfare by creating a comprehensive legal framework within which travel insurance may be sold in this state.

(2) The requirements of the Travel Insurance Act shall apply to travel insurance that covers any resident of this state or that is sold, solicited, negotiated, or offered in this state and to policies and certificates of travel insurance that are delivered or issued for delivery in this state. The act shall not apply to cancellation fee waivers or travel assistance services except as expressly provided in the act.

(3) All other applicable provisions of the insurance laws of this state shall continue to apply to travel insurance, except that the specific provisions of the Travel Insurance Act shall supersede any general provisions of law that would otherwise be applicable to travel insurance.

Source: Laws 2022, LB863, § 2.

44-9303 Terms, defined.

For purposes of the Travel Insurance Act, unless the context otherwise requires:

(1) Aggregator site means a website that provides access to information regarding insurance products from more than one insurer, including product and insurer information, for use in comparison shopping;

(2) Blanket travel insurance means a policy of travel insurance issued to any eligible group providing coverage for specific classes of persons defined in the policy with coverage provided to all members of the eligible group without a separate charge to individual members of the eligible group;

(3) Cancellation fee waiver means a contractual agreement between a supplier of travel services and its customer to waive some or all of the nonrefundable cancellation fee provisions of the supplier's underlying travel contract with or without regard to the reason for the cancellation or form of reimbursement. A cancellation fee waiver is not insurance;

(4) Department means the Department of Insurance;

(5) Director means the Director of Insurance;

(6) Eligible group means two or more persons who are engaged in a common enterprise or have an economic, educational, or social affinity or relationship, including, but not limited to:

(a)(i) Any entity engaged in the business of providing travel services, including, but not limited to, a tour operator, a lodging provider, a vacation property owner, a hotel, a resort, a travel club, a travel agency, a property manager, a cultural exchange program, and a common carrier, or (ii) the operator, owner, or lessor of a means of transportation of passengers, including, but not limited to, any airline, cruise line, railroad, steamship company, or public bus company, so long as, within the particular mode of travel, all members or customers of the group have a common exposure to risk attendant to such travel;

(b) Any college, school, or other institution of learning covering students, teachers, employees, or volunteers;

(c) Any employer covering any group of employees, volunteers, contractors, board of directors, dependents, or guests;

(d) Any sports team or camp, or any sponsor of a sports team or camp, covering participants, members, campers, employees, officials, supervisors, or volunteers;

(e) Any religious, charitable, recreational, educational, or civic organization, or any branch thereof, covering any group of members, participants, or volunteers;

(f) Any financial institution or financial institution vendor, or parent holding company, trustee, or agent of or designated by one or more financial institutions or financial institution vendors, including account holders, credit card holders, debtors, guarantors, or purchasers;

(g) Any incorporated or unincorporated association, including a labor union, having a common interest, constitution, and bylaws and organized and maintained in good faith for purposes other than obtaining insurance for members or participants of such association covering its members;

(h) Any trust or the trustees of a fund established, created, or maintained for the benefit of covering members, employees, or customers, subject to the approval of the use of such trust by the director and the requirements of the premium tax provisions in section 44-9305, in one or more associations described in subdivision (6)(g) of this section;

(i) Any entertainment production company covering any group of participants, audience members, contestants, employees, or volunteers;

(j) Any volunteer fire department or ambulance, rescue, first-aid, police, court, civil defense, or other similar volunteer group;

(k) Any preschool, daycare institution for children or adults, or senior citizen club;

(l) Any automobile or truck rental or leasing company covering a group of individuals who may become renters, lessees, or passengers defined by their travel status on the rented or leased vehicles. The common carrier, the operator, owner, or lessor of a means of transportation, or the automobile or truck rental or leasing company is the policyholder under a policy to which this subdivision applies; or

(m) Any other group if the director has determined that the members are engaged in a common enterprise or have an economic, educational, or social affinity or relationship and that issuance of the policy would not be contrary to the public interest;

(7) Fulfillment materials means documentation sent to the purchaser of a travel protection plan confirming the purchase and providing the travel protection plan's coverage and assistance details;

(8) Group travel insurance means travel insurance issued to any eligible group;

(9) Limited lines travel insurance producer means a:

(a) Licensed managing general agent or third-party administrator;

(b) Licensed insurance producer, including a limited lines insurance producer; or

(c) Travel administrator;

(10) Offer and disseminate means providing general information, including a description of the coverage and price, as well as processing the application and collecting premiums;

(11) Primary certificate holder means an individual person who elects and purchases travel insurance under a group travel insurance policy;

(12) Primary policyholder means an individual person who elects and purchases individual travel insurance;

(13) Travel administrator means a person who directly or indirectly underwrites, collects charges, collateral, or premiums from, or adjusts or settles claims on, residents of this state in connection with travel insurance. A person shall not be considered a travel administrator if such person's only actions that would otherwise cause such person to be considered a travel administrator include:

(a) A person working for a travel administrator and such person's activities are subject to the supervision and control of the travel administrator;

(b) An insurance producer selling insurance or engaged in administrative and claims-related activities within the scope of the producer's license;

(c) A registered travel retailer offering and disseminating travel insurance under the license of a limited lines travel insurance producer in accordance with the Travel Insurance Act;

(d) A person adjusting or settling claims in the normal course of that person's practice or employment as an attorney and such person does not collect charges or premiums in connection with insurance coverage; or

(e) A business entity that is affiliated with a licensed insurer while acting as a travel administrator for the direct and assumed insurance business of an affiliated insurer;

(14) Travel assistance services means noninsurance services for which the consumer is not indemnified based on a fortuitous event and if providing the service does not result in transfer or shifting of risk that would constitute the business of insurance. Travel assistance services are not insurance and not related to insurance. Travel assistance services includes, but is not limited to:

(a) Security advisories, destination information, and vaccination and immunization information services;

(b) Travel reservation services;

(c) Entertainment, activity, and event planning;

(d) Translation assistance services;

(e) Emergency messaging services;

(f) International legal and medical referral services;

(g) Medical case monitoring services;

(h) Transportation arrangement and coordination services;

(i) Emergency cash transfer assistance services;

(j) Medical prescription replacement assistance services;

(k) Passport and travel document replacement assistance services;

(l) Lost luggage assistance services;

(m) Concierge services; and

(n) Any other service that is furnished in connection with planned travel;

(15)(a) Travel insurance means insurance coverage for personal risks incident to planned travel, including: Interruption or cancellation of a trip or event; loss of baggage or personal effects; damages to accommodations or rental vehicles; sickness, accident, disability, or death occurring during travel; emergency evacuation; repatriation of remains; or any other contractual obligations to indemnify or pay a specified amount to the traveler upon determinable contingencies related to travel as approved by the director.

(b) Travel insurance does not include a major medical plan that provides comprehensive medical protection for travelers with trips lasting longer than six months, including those working or residing overseas as an expatriate, or any other product that requires a specific insurance producer license;

(16) Travel protection plan means a plan that provides travel insurance, travel assistance services, cancellation fee waivers, or any combination thereof; and

(17) Travel retailer means a business entity that makes, arranges, or offers planned travel and may offer and disseminate travel insurance as a service to its customers on behalf of and under the direction of a limited lines travel insurance producer.

Source: Laws 2022, LB863, § 3.

44-9304 License or registration required; limited lines travel insurance producer license; issuance; travel retailer; permitted activities; conditions; director; powers.

(1) No person may act as a limited lines travel insurance producer or travel retailer unless such person holds the appropriate license or registration as required by the Travel Insurance Act.

(2) The department may issue a limited lines travel insurance producer license to an individual or business entity that files with the department an application for a limited lines travel insurance producer license in a form and manner prescribed by the department. A limited lines travel insurance producer may sell, solicit, or negotiate travel insurance through a licensed insurer.

(3) A travel retailer may offer and disseminate travel insurance under a limited lines travel insurance producer only if the following conditions are met:

(a) The limited lines travel insurance producer or travel retailer provides to the purchaser of travel insurance:

(i) A description of the material terms or the actual material terms of the travel insurance policy;

(ii) A description of the process for filing a claim;

(iii) A description of the review or cancellation process for the travel insurance policy; and

(iv) The identity and contact information of the insurer and limited lines travel insurance producer;

(b)(i) The limited lines travel insurance producer, at the time of licensure, establishes and maintains a register on a form prescribed by the department of each travel retailer that offers travel insurance on behalf of such limited lines travel insurance producer. The register shall include the name, address, and contact information of the travel retailer and an officer or person who directs or controls the travel retailer's operation and the travel retailer's federal tax identification number. The limited lines travel insurance producer shall submit such register to the department upon request; and

(ii) The limited lines travel insurance producer certifies that the registered travel retailer complies with 18 U.S.C. 1033. The grounds for suspension or revocation and the penalties applicable to resident insurance producers under the Insurance Producers Licensing Act shall be applicable to limited lines travel insurance producers and travel retailers;

(c) The limited lines travel insurance producer designates one of its employees who is a licensed individual producer as the designated responsible producer responsible for the compliance with travel insurance laws and rules and regulations applicable to such limited lines travel insurance producers and travel retailers;

(d) The designated responsible producer, president, secretary, treasurer, and any other officer or person who directs or controls the limited lines travel insurance producer's insurance operations complies with the fingerprinting requirements applicable to insurance producers in the state where the limited lines travel insurance producer resides;

(e) The limited lines travel insurance producer has paid all applicable licensing fees as set forth in section 44-4064 and any other applicable state law; and

(f) The limited lines travel insurance producer requires each employee and authorized representative of the travel retailer whose duties include offering and disseminating travel insurance to receive a program of instruction or

training, which may be subject to review by the director. The training material shall include, at a minimum, instructions on the types of insurance offered, ethical sales practices, and required disclosures to prospective customers.

(4) A limited lines travel insurance producer and travel retailers registered under its license are exempt from the examination requirements in section 44-4052 and the continuing education requirements in sections 44-3901 to 44-3908.

(5) The director may take disciplinary action against a limited lines travel insurance producer pursuant to section 44-4059.

(6) Any travel retailer offering and disseminating travel insurance shall make brochures or other written materials available to a prospective purchaser that:

(a) Provide the identity and contact information of the insurer and the limited lines travel insurance producer;

(b) Explain that the purchase of travel insurance is not required in order to purchase any other product or service from the travel retailer; and

(c) Explain that an unlicensed travel retailer is permitted to provide general information about the insurance offered by the travel retailer, including a description of the coverage and price, but is not qualified or authorized to answer technical questions about the terms and conditions of the travel insurance offered by the travel retailer or to evaluate the adequacy of the customer's existing insurance coverage.

(7) A travel retailer's employee or authorized representative who is not licensed as an insurance producer shall not:

(a) Evaluate or interpret the technical terms, benefits, or conditions of the offered travel insurance coverage;

(b) Evaluate or provide advice concerning a prospective purchaser's existing insurance coverage; or

(c) Hold such travel retailer employee or authorized representative out as a licensed insurer, licensed producer, or insurance expert.

(8) A travel retailer whose insurance-related activities, and those of its employees and authorized representatives, are limited to offering and disseminating travel insurance on behalf of and under the direction of a limited lines travel insurance producer meeting the conditions stated in this section is authorized to receive related compensation for the services upon registration by the limited lines travel insurance producer.

(9) The limited lines travel insurance producer is responsible for the acts of the travel retailer and shall use reasonable means to ensure that the travel retailer complies with the Travel Insurance Act.

(10) Any person licensed in a major line of authority as an insurance producer is authorized to sell, solicit, and negotiate travel insurance. A property and casualty insurance producer is not required to become appointed by an insurer in order to sell, solicit, or negotiate travel insurance.

Source: Laws 2022, LB863, § 4.

Cross References

Insurance Producers Licensing Act, see section 44-4047.

44-9305 Premium tax; documentation; reporting.

(1) A travel insurer shall pay premium tax, as provided in Chapter 77, article 9, on travel insurance premiums paid by:

(a) An individual primary policyholder who is a resident of this state;

(b) A primary certificate holder who is a resident of this state and elects coverage under a group travel insurance policy; or

(c) A blanket travel insurance policyholder that is a resident in or has its principal place of business or the principal place of business of an affiliate or subsidiary that has purchased blanket travel insurance in this state for eligible blanket group members, subject to any apportionment rules which apply to the insurer across multiple taxing jurisdictions or that permit the insurer to allocate premium on an apportioned basis in a reasonable and equitable manner in those jurisdictions.

(2) A travel insurer shall:

(a) Document the state of residence or principal place of business of the policyholder or certificate holder; and

(b) Report as premium only the amount allocable to travel insurance only and not any amounts received for travel assistance services or cancellation fee waivers.

Source: Laws 2022, LB863, § 5.

44-9306 Travel protection plans; conditions.

Travel protection plans may be offered for one price for the combined features that the travel protection plan offers in this state if:

(1) Such plans clearly disclose to the consumer, at or prior to the time of purchase, that the plans include travel insurance, travel assistance services, and cancellation fee waivers as applicable, and the person provides information and an opportunity, at or prior to the time of purchase, for the consumer to obtain additional information regarding the features and pricing of each; and

(2) The fulfillment materials:

(a) Describe and delineate the travel insurance, travel assistance services, and cancellation fee waivers in the travel protection plans; and

(b) Include the travel insurance disclosures and contact information for persons providing the travel assistance services and cancellation fee waivers, as applicable.

Source: Laws 2022, LB863, § 6.

44-9307 Unfair Insurance Trade Practices Act; applicability; unfair trade practices.

(1) All persons offering travel insurance to residents of this state are subject to the Unfair Insurance Trade Practices Act except as otherwise provided in this section. In the event of a conflict between the Travel Insurance Act and other provisions of the insurance laws of this state regarding the sale and marketing of travel insurance and travel protection plans, the provisions of the Travel Insurance Act shall control.

(2) Offering or selling a travel insurance policy that could never result in payment of any claims for any insured under the policy is an unfair trade practice.

(3)(a) All documents provided to consumers prior to the purchase of travel insurance, including, but not limited to, sales materials, advertising materials, and marketing materials, shall be consistent with the terms of the travel policy, including, but not limited to, forms, endorsements, policies, rate filings, and certificates of insurance.

(b) For travel insurance policies or certificates that contain preexisting condition exclusions, information and an opportunity to learn more about the preexisting condition exclusions shall be provided to consumers any time prior to the time of purchase of such travel insurance and in the fulfillment materials provided.

(c)(i) Fulfillment materials and the information described in subdivision (3)(a) of section 44-9304 shall be provided to a policyholder or certificate holder as soon as practicable following the purchase of a travel protection plan. Unless the insured has either started a covered trip or filed a claim under the travel insurance policy, a policyholder or certificate holder may cancel a policy or certificate for a full refund of the travel protection plan price from the date of purchase of a travel protection plan until at least:

(A) Fifteen days following the date of delivery of the travel protection plan fulfillment materials by postal mail; or

(B) Ten days following the date of delivery of the travel protection plan fulfillment materials by means other than postal mail.

(ii) For purposes of this subdivision, delivery means handing fulfillment materials to the policyholder or certificate holder or sending fulfillment materials by postal mail or electronic means to the policyholder or certificate holder.

(d) The travel insurance policy documentation and fulfillment materials shall disclose whether the travel insurance is primary or secondary to other applicable coverage.

(e) If travel insurance is marketed directly to a consumer through an insurer's website or through an aggregator site, it shall not be an unfair trade practice or other violation of law where an accurate summary or short description of the coverage is provided on the web page, so long as the consumer has access to the full provisions of the policy through electronic means.

(4) No person offering, soliciting, or negotiating travel insurance or travel protection plans on an individual or group basis may do so by using a negative option or opt out, which requires a consumer to take an affirmative action to deselect coverage, such as unchecking a box on an electronic form, when the consumer purchases a trip.

(5) It shall be an unfair trade practice to market blanket travel insurance coverage as free.

(6) When a consumer's destination jurisdiction requires insurance coverage, it shall not be an unfair trade practice to require that a consumer choose between the following options as a condition of purchasing a trip or travel package:

(a) Purchasing the insurance coverage required by the destination jurisdiction through the travel retailer or limited lines travel insurance producer supplying the trip or travel package; or

(b) Agreeing to obtain and provide proof of insurance coverage that meets the destination jurisdiction's requirements prior to departure.

Source: Laws 2022, LB863, § 7.

Cross References

Unfair Insurance Trade Practices Act, see section 44-1521.

44-9308 Travel administrator; requirements; responsibilities.

(1) No person shall act as or represent that such person is a travel administrator for travel insurance in this state unless such person:

(a) Is a licensed property and casualty insurance producer in this state for activities permitted under such producer license;

(b) Holds a valid managing general agent license in this state; or

(c) Holds a valid third-party administrator license in this state.

(2) A travel administrator and such travel administrator's employees are exempt from the licensing requirements of adjusters for travel insurance such administrator and its employees administer.

(3) An insurer is responsible for the acts of a travel administrator administering travel insurance underwritten by the insurer and is responsible for ensuring that the travel administrator maintains all books and records relevant to the insurer to be made available by the travel administrator to the department upon request.

Source: Laws 2022, LB863, § 8.

44-9309 Travel insurance; classified as inland marine line of insurance; form; standards.

(1) Travel insurance shall be classified and filed for purposes of rates and forms under an inland marine line of insurance, however, travel insurance that provides coverage for sickness, accident, disability, or death occurring during travel, either exclusively, or in conjunction with related coverages of emergency evacuation, repatriation of remains, or incidental limited property and casualty benefits such as baggage or trip cancellation, may be filed under either an accident and health line of insurance or an inland marine line of insurance.

(2) Travel insurance may be in the form of an individual, group, or blanket policy.

(3) Eligibility and underwriting standards for travel insurance may be developed and provided based on travel protection plans designed for individual or identified marketing or distribution channels, so long as those standards also meet this state's underwriting standards for inland marine lines of insurance.

Source: Laws 2022, LB863, § 9.

44-9310 Rules and regulations.

The department may adopt and promulgate rules and regulations to carry out the Travel Insurance Act.

Source: Laws 2022, LB863, § 10.

ARTICLE 94
INSURANCE REGULATORY SANDBOX ACT

Section

44-9401 Act, how cited.

Sections 44-9401 to 44-9410 shall be known and may be cited as the Insurance Regulatory Sandbox Act.

Source: Laws 2023, LB92, § 88.

44-9402 Purpose of act.

The purpose of the Insurance Regulatory Sandbox Act is to create a regulatory sandbox program under the Department of Insurance which allows a participant to temporarily test innovative insurance products or services on a limited basis without otherwise being licensed or authorized to act under the laws of the state.

Source: Laws 2023, LB92, § 89.

44-9403 Terms, defined.

For purposes of the Insurance Regulatory Sandbox Act:

(1) Applicable agency means a department or agency of the state that, by law, regulates certain types of insurance-related business activity in the state and persons engaged in such insurance-related business activity. This includes the issuance of licenses or any other types of authorization which the department determines would otherwise regulate a sandbox participant;

(2) Applicant means an individual or entity that is applying to participate in the regulatory sandbox;

(3) Consumer means a person that purchases or otherwise enters into a transaction agreement to receive an innovative insurance product or service that is being tested by a sandbox participant;

(4) Department means the Department of Insurance;

(5) Innovation means the use or incorporation of a new or emerging technology or a new use of existing technology, including blockchain technology, to address a problem, provide a benefit, or otherwise offer a product, service, business model, or delivery mechanism that is not known by the department to have a comparable widespread offering in the state;

(6) Innovative insurance product or service means an insurance product or service that includes an innovation;

(7) Insurance product or service means an insurance-related product or service that requires state licensure, registration, or other authorization as regulated by state law, including any insurance-specific business model, delivery mechanism, or element that requires a license, registration, or other authorization;

(8) Regulatory sandbox means the program created in section 44-9404 which allows a person to temporarily test an innovative insurance product or service on a limited basis without otherwise being licensed or authorized to act under the laws of the state;

(9) Sandbox participant means a person whose application to participate in the regulatory sandbox is approved in accordance with the Insurance Regulatory Sandbox Act; and

(10) Test means to provide an innovative insurance product or service in accordance with the Insurance Regulatory Sandbox Act.

Source: Laws 2023, LB92, § 90.

44-9404 Regulatory sandbox program; department; powers and duties; application; requirements; limitations; procedure; confidentiality; deadline.

(1) The department shall create and administer a regulatory sandbox program that enables a person to obtain limited access to the market in the state to test an innovative insurance product or service without obtaining a license or without regard to other provisions of Chapter 44 or rules and regulations adopted and promulgated by the department which may be applicable, as determined by the department.

(2) In administering the regulatory sandbox, the department:

(a) Shall consult with each applicable agency;

(b) May enter into agreements with or follow the best practices of the Consumer Financial Protection Bureau or other states that are administering similar programs; and

(c) May not approve participation in the regulatory sandbox by an applicant or any other participant who has been convicted of, or pled guilty or nolo contendere to, a serious crime:

(i) Involving theft, fraud, or dishonesty; or

(ii) That bears a substantial relationship to the applicant's or participant's ability to safely or competently participate in the regulatory sandbox.

(3) An applicant for the regulatory sandbox shall submit an application to the department in a form and manner prescribed by the department. The application shall:

(a) Include a nonrefundable application fee of two hundred fifty dollars;

(b) Demonstrate the applicant is subject to the jurisdiction of the state;

(c) Demonstrate the applicant has established a physical or virtual location that is adequately accessible to the department from which testing will be developed and performed and where all required records, documents, and data will be maintained;

(d) Contain relevant personal and contact information for the application, including legal names, addresses, telephone numbers, email addresses, website addresses, and other information required by the department;

(e) Disclose any criminal conviction of the applicant or officers, directors, or other participating personnel, if any;

(f) Demonstrate that the applicant has the necessary personnel, financial and technical expertise, access to capital, and developed plans to test, monitor, and assess the innovative insurance product or service;

(g) Contain a description of the innovative insurance product or service to be tested, including statements regarding the following:

(i) How the innovative insurance product or service is subject to licensing or other authorization requirements outside of the regulatory sandbox, including a specific list of all state laws, regulations, and licensing or other requirements that the applicant is seeking to have waived during the testing period;

(ii) How the innovative insurance product or service would benefit consumers;

(iii) How the innovative insurance product or service is different from other insurance products or services available in the state;

(iv) What risks may confront consumers that use or purchase the innovative insurance product or service;

(v) How participating in the regulatory sandbox would enable a successful test of the innovative insurance product or service;

(vi) A description of how the applicant will perform ongoing duties after the test; and

(vii) How the applicant will end the test and protect consumers if the test fails, including providing evidence of sufficient liability coverage and financial reserves to protect consumers and to protect against insolvency by the applicant; and

(h) Provide any other required information as determined by the department.

(4) An applicant shall file a separate application for each innovative insurance product or service the applicant wants to test.

(5) The following items shall not be waived as part of any applicant's participation in the regulatory sandbox:

(a) Laws and regulations not under the jurisdiction of the Director of Insurance;

(b) Any law or regulation required for the department to maintain accreditation by the National Association of Insurance Commissioners;

(c) Laws regarding minimum paid-in capital or surplus required to be possessed or maintained by an insurer or product reserving laws;

(d) The Unfair Insurance Trade Practices Act and the Unfair Insurance Claims Settlement Practices Act;

(e) Any requirement for insurance producers to be licensed; and

(f) The application of any taxes or fees.

(6) After an application is filed and before approving the application, the department may seek any additional information from the applicant that the department determines is necessary.

(7) Subject to subsection (8) of this section, not later than ninety days after the day on which a complete application is received by the department, the department shall inform the applicant as to whether the application is approved for entry into the regulatory sandbox.

(8) The department and an applicant may mutually agree to extend the ninety-day timeline described in subsection (7) of this section.

(9) In reviewing an application under this section, the department shall consult with, and get approval from, each applicable agency before admitting an applicant into the regulatory sandbox. The consultation with an applicable agency may include seeking information about:

(a) Whether the applicable agency has previously issued a license or other authorization to the applicant;

(b) Whether the applicable agency has previously investigated, sanctioned, or pursued legal action against the applicant;

(c) Whether the applicant could obtain a license or other authorization from the applicable agency after exiting the regulatory sandbox; and

(d) Whether certain licensure or other regulations should not be waived even if the applicant is accepted into the regulatory sandbox.

(10) In reviewing an application under this section, the department shall also consider whether a competitor to the applicant is or has been a sandbox participant and weigh that as a factor in determining whether to allow the applicant to also become a sandbox participant.

(11) If the department and each applicable agency approve admitting an applicant into the regulatory sandbox, an applicant may become a sandbox participant. Applicants that become sandbox participants shall incur a participation fee set by the department. The participation fee shall be commensurate with the costs incurred by the department in administering the applicant's participation in the regulatory sandbox. Participation fees shall be dependent on factors such as the size of the applicant and the number of customers the applicant may have, but shall be set at a reasonable amount to encourage participation in the regulatory sandbox.

(12) The department may enter into agreements with other states that have enacted laws that are substantially similar to the Insurance Regulatory Sandbox Act in order to advance the purposes of the act and to facilitate the consideration of applications for participation in the regulatory sandbox from persons that have satisfied the requirements of this section and received approval for participation in similar programs in other states.

(13) The department may deny any application submitted under this section, for any reason, at the department's discretion.

(14) If the department denies an application submitted under this section, the department shall provide to the applicant a written description of the reasons for the denial.

(15) Documents, materials, and other information in the possession or control of the Director of Insurance that are obtained by, created by, or disclosed to the director or any other person under the Insurance Regulatory Sandbox Act are recognized by this state as being proprietary and to contain trade secrets. All such documents, materials, and other information shall be confidential by law and privileged, shall not be a public record subject to disclosure by the director pursuant to sections 84-712 to 84-712.09, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. The director may use the documents, materials, and other information in the furtherance of any regulatory or legal action brought as a part of the director's official duties. The director shall not

otherwise make the documents, materials, and other information public without the prior written consent of the applicant. In order to assist in the performance of the director's regulatory duties, the director:

(a) May, upon request, share documents, materials, and other information that are obtained by, created by, or disclosed to the director or any other person under the Insurance Regulatory Sandbox Act, including the confidential and privileged documents, materials, and other information subject to this subsection, with other state, federal, and international financial regulatory agencies, including members of any supervisory college under section 44-2137.01, with the National Association of Insurance Commissioners, and with any third-party consultants designated by the director, if the recipient agrees in writing to maintain the confidentiality and privileged status of the documents, materials, and other information and has verified in writing the legal authority to maintain confidentiality; and

(b) May receive documents, materials, and other information, including otherwise confidential and privileged documents, materials, and other information, from regulatory officials of other foreign or domestic jurisdictions that have enacted laws substantially similar to the Insurance Regulatory Sandbox Act, including members of any supervisory college under section 44-2137.01 and from the National Association of Insurance Commissioners, and shall maintain as confidential or privileged any documents, materials, or other information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or other information.

(16) The department shall not accept any applications for the regulatory sandbox after June 30, 2034.

Source: Laws 2023, LB92, § 91.

Cross References

Unfair Insurance Claims Settlement Practices Act, see section 44-1536.
Unfair Insurance Trade Practices Act, see section 44-1521.

44-9405 Sandbox participant; deadline; conditions on participation; scope; department; duties; immunity.

(1) If the department approves an application under section 44-9404, the sandbox participant has twelve months after the day on which the application was approved to test the innovative insurance product or service described in the sandbox participant's application.

(2) A sandbox participant testing an innovative insurance product or service within the regulatory sandbox is subject to the following:

(a) Consumers shall be residents of this state;

(b) The department may, on a case-by-case basis, specify the maximum number of consumers that may enter into an agreement with the sandbox participant to use the innovative insurance product or service; and

(c) The department may, on a case-by-case basis, specify the maximum number of innovative insurance products or services that may be offered by a sandbox participant during the test of such product or service.

(3) If a sandbox participant is accepted into the regulatory sandbox, the department shall notify other businesses in the industry that a regulatory

waiver was granted in order to afford other businesses the opportunity to apply for the same regulatory waiver if they so choose.

(4) This section does not restrict a sandbox participant who holds a license or other authorization in another jurisdiction from acting in accordance with that license or other authorization.

(5) A sandbox participant is deemed to possess an appropriate license under the laws of the state for the purposes of any provision of federal law requiring state licensure or authorization.

(6) A sandbox participant that is testing an innovative insurance product or service is not subject to state laws, regulations, licensing requirements, or authorization requirements that were identified by the sandbox participant's application and have been waived in writing by the department.

(7) Notwithstanding any other provision of the Insurance Regulatory Sandbox Act, a sandbox participant does not have immunity related to any criminal offense committed during the sandbox participant's participation in the regulatory sandbox.

(8) By written notice, the department may end a sandbox participant's participation in the regulatory sandbox at any time and for any reason, including if the department determines a sandbox participant is not operating in good faith to bring an innovative insurance product or service to market.

(9) The department and the department's employees are not liable for any business losses or the recouping of application expenses related to the regulatory sandbox, including for:

(a) Denying an applicant's application to participate in the regulatory sandbox for any reason; or

(b) Ending a sandbox participant's participation in the regulatory sandbox at any time and for any reason.

(10) No guaranty association in the state may be held liable for business losses or liabilities incurred as a result of activities undertaken by a sandbox participant while participating in the regulatory sandbox.

Source: Laws 2023, LB92, § 92.

44-9406 Disclosures to consumers; required; when; manner.

(1) Prior to the sale of an innovative insurance product or service to a consumer, the sandbox participant shall disclose the following to the consumer in a clear and conspicuous format in English and Spanish:

(a) The name and contact information of the sandbox participant;

(b) That the innovative insurance product or service is authorized pursuant to the Insurance Regulatory Sandbox Act for a temporary period of one year with a possible extension of one additional year, but for no more than two years;

(c) Any risk to the consumer associated with the purchase of the innovative insurance product or service;

(d) That neither the State of Nebraska nor the Department of Insurance recommends the innovative insurance product or service and that neither the state nor the department is subject to any liability for losses or damages caused by such product or service;

(e) That the consumer may contact the Department of Insurance to file a complaint regarding the innovative insurance product or service. Contact information for the Department of Insurance shall also be provided;

(f) That state insurance insolvency guaranty funds are not available for the innovative insurance product or service; and

(g) Any other statements or additional disclosures that may be required by the Department of Insurance.

(2) The disclosures required by subsection (1) of this section shall be provided to consumers through a written disclosure statement. Sandbox participants shall keep a signed copy of the disclosure statement on file and be able to produce the statement for the department upon request.

(3) Sandbox participants shall also note on any websites, social media postings, advertisements, and promotional materials of any kind all potential risks for consumers associated with the purchase of the innovative insurance product or service.

Source: Laws 2023, LB92, § 93.

44-9407 Sandbox testing period; termination or extension; requirements.

(1) At least thirty days before the end of the twelve-month regulatory sandbox testing period, a sandbox participant shall:

(a) Notify the department that the sandbox participant will exit the regulatory sandbox, discontinue the sandbox participant's test, and stop offering any innovative insurance product or service in the regulatory sandbox within sixty days after the day on which the twelve-month testing period ends; or

(b) Seek an extension in accordance with section 44-9408.

(2) Subject to subsection (3) of this section, if the department does not receive notification as required by subsection (1) of this section, the regulatory sandbox testing period ends at the end of the twelve-month testing period and the sandbox participant shall immediately stop offering each innovative insurance product or service being tested.

(3) If a test includes offering an innovative insurance product or service that requires ongoing duties, the sandbox participant shall continue to fulfill those duties or arrange for another person to fulfill those duties after the date on which the sandbox participant exits the regulatory sandbox.

Source: Laws 2023, LB92, § 94.

44-9408 Sandbox testing period; extension; request; requirements.

(1) Not later than thirty days before the end of the twelve-month regulatory sandbox testing period, a sandbox participant may request an extension of the regulatory sandbox testing period for the purpose of obtaining a license or other authorization.

(2) The department shall grant or deny a request for an extension by the end of the twelve-month regulatory sandbox testing period.

(3) The department may grant one extension in accordance with this section for not more than twelve months after the end of the regulatory sandbox testing period.

(4) A sandbox participant that obtains an extension in accordance with this section shall provide the department with a written report every three months

that provides an update on efforts to obtain a license or other authorization required by law, including any applications submitted for licensure or other authorization, rejected applications, or issued licenses or other authorizations.

Source: Laws 2023, LB92, § 95.

44-9409 Records, documents, data; requirements; reports; violation; department powers; report.

(1) A sandbox participant shall retain records, documents, and data produced in the ordinary course of business regarding an innovative insurance product or service tested in the regulatory sandbox.

(2) If an innovative insurance product or service fails before the end of a testing period, the sandbox participant shall notify the department and report on actions taken by the sandbox participant to ensure consumers have not been harmed as a result of the failure.

(3) The department shall establish quarterly reporting requirements for a sandbox participant, including information about any customer complaints.

(4) The department may request records, documents, and data from a sandbox participant and, upon the department's request, a sandbox participant shall make such records, documents, and data available for inspection by the department.

(5) If the department determines that a sandbox participant has engaged in, is engaging in, or is about to engage in any practice or transaction that is in violation of Chapter 44, the department may remove a sandbox participant from the regulatory sandbox. If the department determines that the practice or transaction is in violation of state or federal criminal law, the department shall remove the sandbox participant from the regulatory sandbox.

(6) The department shall provide a written report upon request by a member of the Legislature that provides information regarding each sandbox participant and that provides recommendations regarding the effectiveness of the Insurance Regulatory Sandbox Act.

Source: Laws 2023, LB92, § 96.

44-9410 Rules and regulations.

The department may adopt and promulgate rules and regulations to carry out the Insurance Regulatory Sandbox Act.

Source: Laws 2023, LB92, § 97.

CHAPTER 45
INTEREST, LOANS, AND DEBT

ARTICLE 1
INTEREST RATES AND LOANS

(f) LOAN BROKERS

(f) LOAN BROKERS

45-191.01 Loan brokerage agreement; written disclosure statement; requirements.

(1) Prior to a borrower signing a loan brokerage agreement, the loan broker shall give the borrower a written disclosure statement. The cover sheet of the disclosure statement shall have printed, in at least ten-point boldface capital letters, the title DISCLOSURES REQUIRED BY NEBRASKA LAW. The following statement, printed in at least ten-point type, shall appear under the title:

THE STATE OF NEBRASKA HAS NOT REVIEWED AND DOES NOT APPROVE, RECOMMEND, ENDORSE, OR SPONSOR ANY LOAN BROKERAGE AGREEMENT. THE INFORMATION CONTAINED IN THIS DISCLOSURE DOCUMENT HAS NOT BEEN VERIFIED BY THE STATE. IF YOU HAVE QUESTIONS, SEEK LEGAL ADVICE BEFORE YOU SIGN A LOAN BROKERAGE AGREEMENT.

Only the title and the statement shall appear on the cover sheet.

(2) The body of the disclosure statement shall contain the following information:

(a) The name, street address, and telephone number of the loan broker, the names under which the loan broker does, has done, or intends to do business, the name and street address of any parent or affiliated company, and the electronic mail and Internet address of the loan broker;

(b) A statement as to whether the loan broker does business as an individual, a partnership, a corporation, or another organizational form, including identification of the state of incorporation or formation;

(c) How long the loan broker has done business;

(d) The number of loan brokerage agreements the loan broker has entered into in the previous twelve months;

(e) The number of loans the loan broker has obtained for borrowers in the previous twelve months;

(f) A description of the services the loan broker agrees to perform for the borrower;

(g) The conditions under which the borrower is obligated to pay the loan broker. This disclosure shall be in boldface type;

(h) The names, titles, and principal occupations for the past five years of all officers, directors, or persons occupying similar positions responsible for the loan broker's business activities;

(i) A statement whether the loan broker or any person identified in subdivision (h) of this subsection:

(i) Has been convicted of a felony or misdemeanor or pleaded nolo contendere to a felony or misdemeanor charge if such felony or misdemeanor involved fraud, embezzlement, fraudulent conversion, or misappropriation of property;

(ii) Has been held liable in a civil action by final judgment or consented to the entry of a stipulated judgment if the civil action alleged fraud, embezzlement, fraudulent conversion, or misappropriation of property or the use of untrue or misleading representations in an attempt to sell or dispose of real or personal property or the use of unfair, unlawful, or deceptive business practices; or

(iii) Is subject to any currently effective injunction or restrictive order relating to business activity as the result of an action brought by a public agency or department including, but not limited to, action affecting any vocational license; and

(j) Any other information the director requires.

Source: Laws 1993, LB 270, § 3; Laws 2007, LB124, § 29; Laws 2017, LB184, § 2; Laws 2023, LB92, § 67.

45-191.04 Loan brokerage agreement; requirements; right to cancel.

(1) A loan brokerage agreement shall be in writing and shall be signed by the loan broker and the borrower. The loan broker shall furnish the borrower a copy of such signed loan brokerage agreement at the time the borrower signs it.

(2) The borrower has the right to cancel a loan brokerage agreement for any reason at any time within five business days after the date the parties sign the agreement. The loan brokerage agreement shall set forth the borrower's right to cancel and the procedures to be followed when an agreement is canceled.

(3) A loan brokerage agreement shall set forth in at least ten-point type, or handwriting of at least equivalent size, the following:

(a) The terms and conditions of payment;

(b) A full and detailed description of the acts or services the loan broker will undertake to perform for the borrower;

(c) The loan broker's principal business address, telephone number, and electronic mail and Internet address and the name, address, telephone number, and electronic mail and Internet address, if any, of its agent in the State of Nebraska authorized to receive service of process;

(d) The business form of the loan broker, whether a corporation, partnership, limited liability company, or otherwise; and

(e) The following notice of the borrower's right to cancel the loan brokerage agreement pursuant to this section:

''You have five business days in which you may cancel this agreement for any reason by mailing or delivering written notice to the loan broker. The five business days shall expire on _____ (last date to mail or deliver notice), and notice of cancellation should be mailed to _____ (loan broker's name and business street address). If you choose to mail your notice, it must be placed in the United States mail properly addressed, first-class postage prepaid, and postmarked before midnight of the above date. If you choose to deliver your notice to the loan broker directly, it must be delivered to the loan broker by the end of the normal business day on the above date. Within five business days after receipt of the notice of cancellation, the loan broker shall return to you all sums paid by you to the loan broker pursuant to this agreement.''

The notice shall be set forth immediately above the place at which the borrower signs the loan brokerage agreement.

Source: Laws 1993, LB 270, § 6; Laws 2001, LB 53, § 89; Laws 2007, LB124, § 30; Laws 2017, LB184, § 3; Laws 2023, LB92, § 68.

ARTICLE 3

INSTALLMENT SALES

Section

45-346 License; application; contents; issuance; bond; fee; term; director; duties.

(1) A license issued under the Nebraska Installment Sales Act is nontransferable and nonassignable. The same person may obtain additional licenses for each place of business operating as a sales finance company in this state upon compliance with the act as to each license, except that on or after January 1, 2020, a person is no longer required to obtain a new license for each place of business and may maintain a branch office or offices upon compliance with the act.

(2) Application for a license shall be on a form prescribed and furnished by the director and shall include, but not be limited to, (a) the applicant's name and any trade name or doing business as designation which the applicant intends to use in this state, (b) the applicant's main office address, (c) all branch office addresses at which business is to be conducted, (d) the names and titles of each director and principal officer of the applicant, (e) the names of all shareholders, partners, or members of the applicant, (f) a description of the activities of the applicant in such detail as the department may require, (g) if the applicant is an individual, his or her social security number, (h) audited financial statements showing a minimum net worth of one hundred thousand dollars, and (i) background checks as provided in section 45-354.

(3) An applicant for a license shall file with the department a surety bond in the amount of fifty thousand dollars, furnished by a surety company authorized

to do business in this state. Such bond shall be increased by an additional fifty thousand dollars for each branch location of the applicant that is licensed under the Nebraska Installment Sales Act. The bond shall be for the use of the State of Nebraska and any Nebraska resident who may have claims or causes of action against the applicant. The surety may cancel the bond only upon thirty days' written notice to the director.

(4) A license fee of one hundred fifty dollars, and, if applicable, a one-hundred-dollar fee for each branch office listed in the application, and any processing fee allowed under subsection (2) of section 45-354 shall be submitted along with each application.

(5) An initial license shall remain in full force and effect until the next succeeding December 31. Each license shall remain in force until revoked, suspended, canceled, expired, or surrendered.

(6) The director shall, after an application has been filed for a license under the act, investigate the facts, and if he or she finds that the experience, character, and general fitness of the applicant, of the members thereof if the applicant is a corporation or association, and of the officers and directors thereof if the applicant is a corporation, are such as to warrant belief that the business will be operated honestly, fairly, and efficiently within the purpose of the act, the director shall issue and deliver a license to the applicant to do business as a sales finance company in accordance with the license and the act. The director shall have the power to reject for cause any application for a license.

(7) The director shall, within his or her discretion, make an examination and inspection concerning the propriety of the issuance of a license to any applicant. The cost of such examination and inspection shall be borne by the applicant.

(8) If an applicant for a license under the act does not complete the license application and fails to respond to a notice or notices from the department to correct the deficiency or deficiencies for a period of one hundred twenty days or more after the date the department sends the initial notice to correct the deficiency or deficiencies, the department may deem the application as abandoned and may issue a notice of abandonment of the application to the applicant in lieu of proceedings to deny the application.

Source: Laws 1965, c. 268, § 13, p. 764; Laws 1997, LB 752, § 116; Laws 2004, LB 999, § 35; Laws 2005, LB 533, § 47; Laws 2007, LB124, § 34; Laws 2012, LB965, § 4; Laws 2016, LB778, § 5; Laws 2017, LB185, § 2; Laws 2019, LB355, § 4; Laws 2021, LB363, § 26; Laws 2024, LB1074, § 80.
Operative date July 19, 2024.

45-346.01 Licensee; move of main office; notice to director; maintain minimum net worth; bond; breach of security of the system; notification.

(1) A licensee may move its main office from one place to another without obtaining a new license if the licensee gives notice thereof to the director through the Nationwide Mortgage Licensing System and Registry at least thirty days prior to such move.

(2) A licensee shall notify the director through the Nationwide Mortgage Licensing System and Registry at least thirty days prior to the occurrence of any of the following:

(a) The establishment of a new branch office. Notice of each such establishment shall be accompanied by a fee of one hundred dollars and any processing fee allowed under subsection (2) of section 45-354;

(b) The relocation or closing of an existing branch office; or

(c) A change of name, trade name, or doing business as designation.

(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.

(4) A licensee shall maintain the minimum net worth as required by section 45-346 while a license issued under the Nebraska Installment Sales Act is in effect. The minimum net worth shall be proven by an annual audit conducted by a certified public accountant. A licensee shall submit a copy of the annual audit to the director as required by section 45-348 or upon written request of the director. If a licensee fails to maintain the required minimum net worth, the department may issue a notice of cancellation of the license in lieu of revocation proceedings.

(5) The surety bond or a substitute bond as required by section 45-346 shall remain in effect while a license issued under the Nebraska Installment Sales Act is in effect. If a licensee fails to maintain a surety bond or substitute bond, the licensee shall immediately cease doing business and surrender the license to the department. If the licensee does not surrender the license, the department may issue a notice of cancellation of the license in lieu of revocation proceedings.

Source: Laws 2007, LB124, § 35; Laws 2009, LB327, § 17; Laws 2012, LB965, § 5; Laws 2019, LB355, § 5; Laws 2024, LB1074, § 81. Operative date July 19, 2024.

45-354 Nationwide Mortgage Licensing System and Registry; department; participation; requirements; director; powers and duties; department; duties.

(1) Effective January 1, 2013, or within one hundred eighty days after the Nationwide Mortgage Licensing System and Registry is capable of accepting

licenses issued under the Nebraska Installment Sales Act, whichever is later, the department shall require such licensees under the 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 not be 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;

(ii) Civil or administrative records;

(iii) 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) Compliance with prelicensure education and testing and continuing education;

(d) The setting or resetting, as necessary, of renewal processing or reporting dates; 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 Nebraska Installment Sales 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 45-355.

(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 2012, LB965, § 8; Laws 2024, LB1074, § 82.
Operative date July 19, 2024.

ARTICLE 7
RESIDENTIAL MORTGAGE LICENSING

Section

45-735 Mortgage loan originator; employee or independent agent; restriction on activities and remote work arrangements; written agency contract; notification to department; fee; notice of termination.

(1) A mortgage loan originator shall be an employee or independent agent of a single licensed mortgage banker, registrant, or installment loan company that shall directly supervise, control, and maintain responsibility for the acts and omissions of the mortgage loan originator.

(2)(a) A mortgage loan originator shall not engage in mortgage loan origination activities at any location that is not a main office location of a licensed mortgage banker, registrant, or installment loan company or a branch office of a licensed mortgage banker or registrant. The licensed mortgage banker, registrant, or installment loan company shall designate the location or locations at which each mortgage loan originator is originating residential mortgage loans.

(b) The department may adopt and promulgate rules, regulations, and orders to authorize and regulate the use of remote work arrangements conducted outside of a main office location or branch office by employees or agents, including mortgage loan originators, of licensed mortgage bankers, registrants, or installment loan companies.

(3) Any licensed mortgage banker, registrant, or installment loan company who engages an independent agent as a mortgage loan originator shall maintain a written agency contract with such mortgage loan originator. Such written agency contract shall provide that the mortgage loan originator is originating loans exclusively for the licensed mortgage banker, registrant, or installment loan company.

(4) A licensed mortgage banker, registrant, or installment loan company that has hired a licensed mortgage loan originator as an employee or entered into

an independent agent agreement with such licensed mortgage loan originator shall provide notification to the department as soon as reasonably possible after entering into such relationship, along with a fee of fifty dollars. The employing entity shall not allow the mortgage loan originator to conduct such activity in this state prior to such notification to the department and confirmation that the department has received notice of the termination of the mortgage loan originator's prior employment.

(5) A licensed mortgage banker, registrant, or installment loan company shall notify the department no later than ten days after the termination, whether voluntary or involuntary, of a mortgage loan originator unless the mortgage loan originator has previously notified the department of the termination.

Source: Laws 2009, LB328, § 20; Laws 2023, LB92, § 69.

45-736 Unique identifier; use.

The unique identifier of any licensee shall be clearly shown on all residential mortgage loan application forms, solicitations, or advertisements, including business cards or websites, and any other documents as established by rule, regulation, or order of the director.

Source: Laws 2009, LB328, § 21; Laws 2012, LB965, § 18; Laws 2022, LB707, § 34.

45-737 Mortgage banker; licensee; duties.

A licensee licensed as a mortgage banker shall:

(1) Disburse required funds paid by the borrower and held in escrow for the payment of insurance payments no later than the date upon which the premium is due under the insurance policy;

(2) Disburse funds paid by the borrower and held in escrow for the payment of real estate taxes prior to the time such real estate taxes become delinquent;

(3) Pay any penalty incurred by the borrower because of the failure of the licensee to make the payments required in subdivisions (1) and (2) of this section unless the licensee establishes that the failure to timely make the payments was due solely to the fact that the borrower was sent a written notice of the amount due more than fifteen calendar days before the due date to the borrower's last-known address and failed to timely remit the amount due to the licensee;

(4) At least annually perform a complete escrow analysis. If there is a change in the amount of the periodic payments, the licensee shall mail written notice of such change to the borrower at least twenty calendar days before the effective date of the change in payment. The following information shall be provided to the borrower, without charge, in one or more reports, at least annually:

(a) The name and address of the licensee;

(b) The name and address of the borrower;

(c) A summary of the escrow account activity during the year which includes all of the following:

(i) The balance of the escrow account at the beginning of the year;

(ii) The aggregate amount of deposits to the escrow account during the year; and

(iii) The aggregate amount of withdrawals from the escrow account for each of the following categories:

(A) Payments applied to loan principal;

(B) Payments applied to interest;

(C) Payments applied to real estate taxes;

(D) Payments for real property insurance premiums; and

(E) All other withdrawals; and

(d) A summary of loan principal for the year as follows:

(i) The amount of principal outstanding at the beginning of the year;

(ii) The aggregate amount of payments applied to principal during the year; and

(iii) The amount of principal outstanding at the end of the year;

(5) Establish and maintain a toll-free telephone number or accept collect telephone calls to respond to inquiries from borrowers, if the licensee services residential mortgage loans. If a licensee ceases to service residential mortgage loans, it shall continue to maintain a toll-free telephone number or accept collect telephone calls to respond to inquiries from borrowers for a period of twelve months after the date the licensee ceased to service residential mortgage loans. A telephonic messaging service which does not permit the borrower an option of personal contact with an employee, agent, or contractor of the licensee shall not satisfy the conditions of this section. Each day such licensee fails to comply with this subdivision shall constitute a separate violation of the Residential Mortgage Licensing Act;

(6) Answer in writing, within seven business days after receipt, any written request for payoff information received from a borrower or a borrower's designated representative. This service shall be provided without charge to the borrower, except that when such information is provided upon request within sixty days after the fulfillment of a previous request, a processing fee of up to ten dollars may be charged;

(7) Record or cause to be recorded a release of mortgage pursuant to the provisions of section 76-2803 or, in the case of a trust deed, record or cause to be recorded a reconveyance pursuant to the provisions of section 76-2803;

(8) Maintain a copy of all documents and records relating to each residential mortgage loan and application for a residential mortgage loan, including, but not limited to, loan applications, federal Truth in Lending Act statements, good faith estimates, appraisals, notes, rights of rescission, and mortgages or trust deeds for a period of five years after the date the residential mortgage loan is funded or the loan application is denied or withdrawn;

(9) Notify the director in writing or through the Nationwide Mortgage Licensing System and Registry within three business days after the occurrence of any of the following:

(a) The filing of a voluntary petition in bankruptcy by the licensee or notice of a filing of an involuntary petition in bankruptcy against the licensee;

(b) The licensee has lost the ability to fund a loan or loans after it had made a loan commitment or commitments and approved a loan application or applications;

(c) Any other state or jurisdiction institutes license denial, cease and desist, suspension, or revocation procedures against the licensee;

(d) The attorney general of any state, the Consumer Financial Protection Bureau, or the Federal Trade Commission initiates an action to enforce consumer protection laws against the licensee or any of the licensee's officers, directors, shareholders, partners, members, employees, or agents;

(e) The Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Administration, or Government National Mortgage Association suspends or terminates the licensee's status as an approved seller or seller and servicer;

(f) The filing of a criminal indictment or information against the licensee or any of its officers, directors, shareholders, partners, members, employees, or agents;

(g) The licensee or any of the licensee's officers, directors, shareholders, partners, members, employees, or agents was convicted of, pleaded guilty to, or was found guilty after a plea of nolo contendere to (i) a misdemeanor under state or federal law which involves dishonesty or fraud or which involves any aspect of the mortgage banking business, depository institution business, or installment loan company business or (ii) any felony under state or federal law; or

(h)(i) Except as provided in subdivisions (9)(h)(ii) and (iii) of this section, 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.

(ii) 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.

(iii) Notice required by subdivision (9)(h) of this section may be delayed if a law enforcement agency determines that the notice will impede a criminal investigation. Notice shall be made in good faith, without unreasonable delay, and as soon as possible after the law enforcement agency determines that notification will no longer impede the investigation.

(iv) For purposes of subdivision (9)(h) of this section, the terms breach of the security of the system and personal information have the same meaning as in section 87-802; and

(10) Notify the director in writing or through the Nationwide Mortgage Licensing System and Registry within thirty days after the occurrence of a material development other than as described in subdivision (9) of this section, including, but not limited to, any of the following:

(a) Business reorganization;

(b) A change of name, trade name, doing business as designation, or main office address;

(c) The establishment of a branch office. Notice of such establishment shall be on a form prescribed by the department and accompanied by a fee of seventy-five dollars for each branch office;

(d) The relocation or closing of a branch office; or

(e) The entry of an order against the licensee or any of the licensee's officers, directors, shareholders, partners, members, employees, or agents, including orders to which the licensee or other parties consented, by any other state or federal regulator.

Source: Laws 1989, LB 272, § 14; Laws 1994, LB 1275, § 4; Laws 1995, LB 163, § 6; Laws 1995, LB 396, § 1; Laws 1996, LB 1053, § 11; Laws 2003, LB 218, § 8; Laws 2005, LB 533, § 55; Laws 2007, LB124, § 46; R.S.Supp.,2008, § 45-711; Laws 2009, LB328, § 22; Laws 2010, LB892, § 14; Laws 2013, LB290, § 4; Laws 2015, LB352, § 2; Laws 2018, LB750, § 1; Laws 2019, LB355, § 10; Laws 2024, LB1074, § 83.
Operative date July 19, 2024.

ARTICLE 9

DELAYED DEPOSIT SERVICES LICENSING ACT

Section

45-905.01 Nationwide Mortgage Licensing System and Registry; licensees; requirements; director; powers and duties.

(1) On and after January 1, 2021, licensees under the Delayed Deposit Services Licensing Act are required 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 director may establish requirements as necessary by adopting and promulgating rules and regulations or by order. The requirements may include, but are not limited to:

(a) Background checks of applicants and licensees, including, but not limited to:

(i) Fingerprints of any principal officer, director, partner, member, or sole proprietor 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;

(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 director;

(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; and

(d) 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 Delayed Deposit Services Licensing Act, the department may contract 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 applicants, licensees, or other persons subject to the act. The department may allow such system to collect licensing fees on behalf of the department and may allow such system to collect a processing fee for the services of the system directly from each applicant or licensee.

(3) The director shall regularly report enforcement actions and other relevant information to the Nationwide Mortgage Licensing System and Registry.

(4) The director shall establish a process whereby applicants and licensees may challenge information entered by the director into the Nationwide Mortgage Licensing System and Registry.

(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 such policy and the contract between the department and the system.

(6) Upon written request the department shall 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 2020, LB909, § 39; Laws 2024, LB1074, § 84.
Operative date July 19, 2024.

45-912 Licensee; duty to inform director; when; breach of security of the system; notification.

(1) A licensee shall be required to notify the director in writing through the Nationwide Mortgage Licensing System and Registry within thirty days after the occurrence of any material development, including, but not limited to:

(a) Bankruptcy or corporate reorganization;

(b) Business reorganization;

(c) Institution of license revocation procedures by any other state or jurisdiction;

(d) The filing of a criminal indictment or complaint against the licensee or any of its officers, directors, shareholders, partners, members, employees, or agents;

(e) A felony conviction against the licensee or any of the licensee's officers, directors, shareholders, partners, members, employees, or agents; or

(f) The termination of employment or association with the licensee of any of the licensee's officers, directors, shareholders, partners, members, employees, or agents for violations or suspected violations of the Delayed Deposit Services

Licensing Act, any rule, regulation, or order thereunder, or any state or federal law applicable to the licensee.

(2)(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 1994, LB 967, § 12; Laws 2006, LB 876, § 40; Laws 2020, LB909, § 42; Laws 2024, LB1074, § 85.
Operative date July 19, 2024.

45-930 Financial Literacy Cash Fund; created; use; investment.

The Financial Literacy Cash Fund is created. The fund shall consist of amounts credited to the fund from that portion of each renewal fee as provided in section 45-927, such other revenue as is incidental to administration of the fund, and transfers authorized by the Legislature. The fund shall be administered by the University of Nebraska. The fund shall be used to provide assistance to nonprofit entities that offer financial literacy programs to students in grades kindergarten through twelve and to provide assistance for the tenant assistance project administered by the Housing Justice Clinic at the University of Nebraska College of Law that provides legal services to low-income families facing eviction. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2012, LB269, § 4; Laws 2024, LB1413, § 35.
Effective date April 2, 2024.

Cross References

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

ARTICLE 10

NEBRASKA INSTALLMENT LOAN ACT

Section
45-1002. Terms, defined; act; applicability.
45-1003. Installment loans; financial institution ineligible; license required, when.
45-1005. Installment loans; license; application; fee.

45-1002 Terms, defined; act; applicability.

(1) For purposes of the Nebraska Installment Loan Act:

(a) Applicant means a person applying for a license under the act;

(b) Breach of security of the system means unauthorized acquisition of data that compromises the security, confidentiality, or integrity of the information maintained by the Nationwide Mortgage Licensing System and Registry, its affiliates, or its subsidiaries;

(c) Consumer means an individual who is a resident of Nebraska and who seeks to obtain, obtains, or has obtained a loan that is to be used primarily for personal, family, or household purposes;

(d) Department means the Department of Banking and Finance;

(e) Debt cancellation contract means a loan term or contractual arrangement modifying loan terms under which a financial institution or licensee agrees to cancel all or part of a borrower's obligation to repay an extension of credit from the financial institution or licensee upon the occurrence of a specified event. The debt cancellation contract may be separate from or a part of other loan documents. The term debt cancellation contract does not include loan payment deferral arrangements in which the triggering event is the borrower's unilateral election to defer repayment or the financial institution's or licensee's unilateral decision to allow a deferral of repayment;

(f) Debt suspension contract means a loan term or contractual arrangement modifying loan terms under which a financial institution or licensee agrees to suspend all or part of a borrower's obligation to repay an extension of credit from the financial institution or licensee upon the occurrence of a specified event. The debt suspension contract may be separate from or a part of other loan documents. The term debt suspension contract does not include loan payment deferral arrangements in which the triggering event is the borrower's unilateral election to defer repayment or the financial institution's or licensee's unilateral decision to allow a deferral of repayment;

(g) Director means the Director of Banking and Finance;

(h) Financial institution has the same meaning as in section 8-101.03;

(i) Guaranteed asset protection waiver means a waiver that is offered, sold, or provided in accordance with the Guaranteed Asset Protection Waiver Act;

(j) Licensee means any person who obtains a license under the Nebraska Installment Loan Act;

(k) Loan means a loan or any extension of credit to a consumer originated or made with an interest rate greater than the maximum interest rate allowed under section 45-101.03 and a principal balance of less than twenty-five thousand dollars;

(l)(i) Mortgage loan originator means an individual who for compensation or gain (A) takes a residential mortgage loan application or (B) offers or negotiates terms of a residential mortgage loan.

(ii) Mortgage loan originator does not include (A) any individual who is not otherwise described in subdivision (i)(A) of this subdivision and who performs purely administrative or clerical tasks on behalf of a person who is described in subdivision (i) of this subdivision, (B) a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable state law, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator, or (C) a person or entity solely involved in extensions of credit relating to time-share programs as defined in section 76-1702;

(m) Nationwide Mortgage Licensing System and Registry means a licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of mortgage loan originators, mortgage bankers, installment loan companies, and other state-regulated financial services entities and industries;

(n) Person means individual, partnership, limited liability company, association, financial institution, trust, corporation, and any other legal entity; and

(o) Real property means an owner-occupied single-family, two-family, three-family, or four-family dwelling which is located in this state, which is occupied, used, or intended to be occupied or used for residential purposes, and which is, or is intended to be, permanently affixed to the land.

(2) Except as provided in subsection (3) of section 45-1017 and subsection (4) of section 45-1019, no revenue arising under the Nebraska Installment Loan Act shall inure to any school fund of the State of Nebraska or any of its governmental subdivisions.

(3) Nothing in the Nebraska Installment Loan Act applies to any loan made by a person who is not a licensee if the interest on the loan does not exceed the maximum rate permitted by section 45-101.03.

Source: Laws 1941, c. 90, § 1, p. 345; C.S.Supp.,1941, § 45-131; Laws 1943, c. 107, § 1, p. 369; R.S.1943, § 45-114; Laws 1961, c. 225, § 1, p. 668; Laws 1963, Spec. Sess., c. 7, § 7, p. 92; Laws 1979, LB 87, § 1; Laws 1982, LB 941, § 1; Laws 1993, LB 121, § 264; Laws 1997, LB 137, § 20; Laws 1997, LB 555, § 3; R.S.1943, (1998), § 45-114; Laws 2001, LB 53, § 30; Laws 2003, LB 131, § 30; Laws 2003, LB 217, § 38; Laws 2006, LB 876, § 48; Laws 2009, LB328, § 41; Laws 2010, LB571, § 10; Laws 2010, LB892, § 19; Laws 2011, LB77, § 3; Laws 2012, LB965, § 21; Laws 2017, LB140, § 156; Laws 2023, LB92, § 70.

Cross References

Guaranteed Asset Protection Waiver Act, see section 45-1101.

45-1003 Installment loans; financial institution ineligible; license required, when.

No financial institution is eligible for a license or to make loans under the Nebraska Installment Loan Act.

A license shall be required for any person that is not a financial institution who, at or after the time a loan is made by a financial institution, markets,

owns in whole or in part, holds, acquires, services, or otherwise participates in such loan.

Source: Laws 1965, c. 31, § 3, p. 214; R.S.1943, (1987), § 8-817; Laws 1988, LB 795, § 6; R.S.1943, (1998), § 45-115; Laws 2001, LB 53, § 31; Laws 2003, LB 131, § 31; Laws 2003, LB 217, § 39; Laws 2023, LB92, § 71.

45-1005 Installment loans; license; application; fee.

Any person who desires to obtain an original license to engage in the business of lending money under the terms and conditions of the Nebraska Installment Loan Act or an original license to hold or acquire any rights of ownership, servicing, or other forms of participation in a loan under the act or to engage with, or conduct loan activity with, an installment loan borrower in connection with a loan under the act, shall apply to the department for the license under oath, on a form prescribed by the department, pay an original license fee of five hundred dollars, and submit background checks as provided in section 45-1033.01. If the applicant is an individual, the application shall include the applicant's social security number.

Source: Laws 1941, c. 90, § 5, p. 346; C.S.Supp.,1941, § 45-133; R.S. 1943, § 45-117; Laws 1973, LB 39, § 1; Laws 1979, LB 87, § 2; Laws 1997, LB 555, § 5; Laws 1997, LB 752, § 115; R.S.1943, (1998), § 45-117; Laws 2001, LB 53, § 33; Laws 2005, LB 533, § 58; Laws 2010, LB892, § 20; Laws 2021, LB363, § 28; Laws 2024, LB1074, § 86.
Operative date July 19, 2024.

45-1006 Installment loans; application hearing; protest; procedure.

(1) When an application for an original installment loan license has been accepted by the director as substantially complete, notice of the filing of the application shall be published by the department three successive weeks in a legal newspaper published in or of general circulation in the county where the applicant proposes to operate the business of lending money. A public hearing shall be held on each application except as provided in subsection (2) of this section. The date for hearing shall not be less than thirty days after the last publication. Written protest against the issuance of the license may be filed with the department by any person not less than five days before the date set for hearing. The director, in his or her discretion, may grant a continuance. The costs of the hearing shall be paid by the applicant. The director may deny any application for license after hearing. The director shall, in his or her discretion, make examination and inspection concerning the propriety of the issuance of a license to any applicant. The cost of such examination and inspection shall be paid by the applicant.

(2) The director may waive the hearing requirements of subsection (1) of this section if (a) the applicant (i) does not originate loans under the Nebraska Installment Loan Act or (ii) has held, and operated under, a license to engage in the business of lending money in Nebraska pursuant to the Nebraska Installment Loan Act for at least one calendar year immediately prior to the filing of the application, (b) no written protest against the issuance of the license has been filed with the department within fifteen days after publication of a notice of the filing of the application one time in a newspaper of general circulation in

the county where the applicant proposes to operate the business of lending money, and (c) in the judgment of the director, the experience, character, and general fitness of the applicant warrant the belief that the applicant will comply with the Nebraska Installment Loan Act.

(3) The expense of any publication made pursuant to this section shall be paid by the applicant.

Source: Laws 1941, c. 90, § 11, p. 349; C.S.Supp.,1941, § 45-139; R.S. 1943, § 45-118; Laws 1997, LB 555, § 6; Laws 1999, LB 396, § 25; R.S.Supp.,2000, § 45-118; Laws 2001, LB 53, § 34; Laws 2005, LB 533, § 59; Laws 2008, LB851, § 25; Laws 2023, LB92, § 72.

45-1018 Licensees; reports; breach of security of the system; notification.

(1) A licensee shall on or before March 1 of each year file with the department a report of the licensee's earnings and operations for the preceding calendar year, and its assets at the end of the year, and giving such other relevant information as the department may reasonably require. The report shall be made under oath and shall be in the form and manner prescribed by the department.

(2) A licensee shall submit a mortgage report of condition as required by section 45-726, on or before a date or dates established by rule, regulation, or order of the director.

(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 1941, c. 90, § 25, p. 355; C.S.Supp.,1941, § 45-153; R.S. 1943, § 45-131; R.S.1943, (1998), § 45-131; Laws 2001, LB 53, § 46; Laws 2003, LB 217, § 40; Laws 2004, LB 999, § 39; Laws 2009, LB328, § 45; Laws 2010, LB892, § 21; Laws 2013, LB279, § 6; Laws 2024, LB1074, § 87.
Operative date July 19, 2024.

45-1033.01 License and registration under Nationwide Mortgage Licensing System and Registry; department; powers and duties; director; powers and duties.

(1) The department shall require licensees 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 not be 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;

(ii) Civil or administrative records;

(iii) 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) Compliance with prelicensure education and testing and continuing education;

(d) The setting or resetting, as necessary, of renewal processing or reporting dates; 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 Nebraska Installment Loan 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 violations of the act pertaining to residential mortgage loans, as defined in section 45-702, as well as enforcement actions and other relevant information, to the Nationwide Mortgage Licensing System and Registry subject to the provisions contained in section 45-1033.02.

(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 security breach 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 2009, LB328, § 50; Laws 2010, LB892, § 22; Laws 2024, LB1074, § 88.
Operative date July 19, 2024.

ARTICLE 13

MEDICAL DEBT RELIEF ACT

Section
45-1301. Act, how cited.
45-1302. Terms, defined.
45-1303. Medical Debt Relief Program; established; State Treasurer; medical debt relief coordinator; duties.
45-1304. State Treasurer; report; contents.
45-1305. Discharge of medical debt; contributions; how treated.
45-1306. Medical Debt Relief Fund; created; use; investment.
45-1307. Rules and regulations.

45-1301 Act, how cited.

Sections 45-1301 to 45-1307 shall be known and may be cited as the Medical Debt Relief Act.

Source: Laws 2024, LB937, § 43.
Operative date July 19, 2024.

45-1302 Terms, defined.

For purposes of the Medical Debt Relief Act:

(1) Bad debt expense means the cost of care for which a health care provider expected payment from the patient or a third-party payor, but which the health care provider subsequently determines to be uncollectible;

(2) Eligible resident means an individual eligible for relief who:

(a) Is a resident of the State of Nebraska; and

(b) Has a household income at or below four hundred percent of the federal poverty guidelines or has medical debt equal to five percent or more of the individual's household income;

(3) Health care provider means:

(a) A facility licensed under the Health Care Facility Licensure Act; and

(b) A health care professional licensed under the Uniform Credentialing Act;

(4) Medical debt means an obligation to pay money arising from the receipt of health care services;

(5) Medical debt relief means the discharge of a patient's medical debt;

(6) Medical debt relief coordinator means a person, company, partnership, or other entity that is able to discharge medical debt of an eligible resident in a manner that does not result in taxable income for the eligible resident; and

(7) Program means the Medical Debt Relief Program established in section 45-1303.

Source: Laws 2024, LB937, § 44.
Operative date July 19, 2024.

Cross References

Health Care Facility Licensure Act, see section 71-401.
Uniform Credentialing Act, see section 38-101.

45-1303 Medical Debt Relief Program; established; State Treasurer; medical debt relief coordinator; duties.

(1) The Medical Debt Relief Program is established for the purpose of discharging medical debt of eligible residents by contracting with a medical debt relief coordinator as described in subsection (3) of this section. The State Treasurer shall administer the program.

(2) Money appropriated to the State Treasurer or otherwise contributed for the program shall be used exclusively for the program, including contracting with a medical debt relief coordinator and providing money to be used by the medical debt relief coordinator to discharge medical debt of eligible residents. Money used in contracting with a medical debt relief coordinator may also be used for the payment of services provided by the medical debt relief coordinator to discharge medical debt of eligible residents based on a budget approved by the State Treasurer.

(3)(a) The State Treasurer shall enter into a contract with a medical debt relief coordinator to purchase and discharge medical debt owed by eligible residents with money allocated for the program.

(b) The State Treasurer shall implement a competitive bidding process to determine which medical debt relief coordinator to use, unless the State Treasurer determines that only a single medical debt relief coordinator has the capacity and willingness to carry out the duties specified in the Medical Debt Relief Act.

(c) In contracting with the State Treasurer, a medical debt relief coordinator shall adhere to the following:

(i) The medical debt relief coordinator shall review the medical debt accounts of each health care provider willing to donate or sell medical debt accounts in this state;

(ii) The medical debt relief coordinator may negotiate for and elect to buy the dischargeable medical debt from a health care provider that identifies the accounts described in subdivision (3)(c)(i) of this section as a bad debt expense and agrees to sell the debt for less than the original value;

(iii) After the purchase and discharge of medical debt from a health care provider, the medical debt relief coordinator shall notify all eligible residents

whose medical debt has been discharged under the program, in a manner approved by the State Treasurer, that they no longer have specified medical debt owed to the relevant health care provider;

(iv) A medical debt relief coordinator shall make its best efforts to ensure parity and equity in the purchasing and discharging of medical debt to ensure that all eligible residents have an equal opportunity of receiving medical debt relief regardless of their geographical location or their race, color, religion, sex, disability, age, or national origin;

(v) A medical debt relief coordinator shall report to the State Treasurer summary statistics regarding eligible residents whose medical debt has been discharged; and

(vi) A medical debt relief coordinator may not attempt to seek payment from an eligible resident for medical debt purchased by the medical debt relief coordinator.

(d) A medical debt relief coordinator shall continue to fulfill its contractual obligations to the State Treasurer until all money contracted to the medical debt relief coordinator is exhausted, regardless of whether money allocated to the program has been exhausted.

(e) If a medical debt relief coordinator attempts to seek payment from an eligible resident for medical debt purchased by the medical debt relief coordinator or fails to carry out the responsibilities described in its contract with the State Treasurer, the medical debt relief coordinator shall be considered in breach of contract and the contract provisions that apply in the case of a breach of contract shall apply.

(f) Health care providers that are willing to sell medical debt to the medical debt relief coordinator shall provide necessary information to, and otherwise coordinate with, the medical debt relief coordinator as needed to carry out the purposes of the Medical Debt Relief Act.

Source: Laws 2024, LB937, § 45.
Operative date July 19, 2024.

45-1304 State Treasurer; report; contents.

(1) On or before October 1, 2025, and on or before October 1 of each year thereafter for as long as medical debt relief coordinators are fulfilling their contractual obligations under the Medical Debt Relief Act, the State Treasurer shall submit an annual report regarding the program in accordance with this section.

(2) Each report under this section shall contain the following information for the most recently completed fiscal year:

(a) The amount of medical debt purchased and discharged under the program;

(b) The number of eligible residents who received medical debt relief under the program;

(c) The characteristics of such eligible residents as described in subdivision (3)(c)(iv) of section 45-1303;

(d) The number of such eligible residents whose income was calculated at one hundred percent, one hundred fifty percent, and two hundred percent of the federal poverty guidelines;

(e) The number and characteristics of the health care providers from whom medical debt was purchased and discharged;

(f) The number and characteristics of the medical debt relief coordinators contracted with for the purposes of purchasing and discharging medical debt; and

(g) The number of private individuals and private entities that made a contribution to the Medical Debt Relief Fund and the total amount of such contributions.

(3) Each report under this section shall be submitted electronically to the Governor and the Clerk of the Legislature.

Source: Laws 2024, LB937, § 46.
Operative date July 19, 2024.

45-1305 Discharge of medical debt; contributions; how treated.

(1) The amount of interest and principal balance of medical debt discharged under the program shall not be considered income for income tax purposes as provided in section 77-2716.

(2) Contributions to the Medical Debt Relief Fund made by any private individual or private entity shall be tax deductible for income tax purposes as provided in section 77-2716.

Source: Laws 2024, LB937, § 47.
Operative date July 19, 2024.

45-1306 Medical Debt Relief Fund; created; use; investment.

The Medical Debt Relief Fund is created. The fund shall be administered by the State Treasurer and shall be used to carry out the Medical Debt Relief Act. The fund shall consist of money transferred to the fund by the Legislature and money donated as gifts, bequests, or other contributions from public or private entities. 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, LB937, § 48.
Operative date July 19, 2024.

Cross References

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

45-1307 Rules and regulations.

The State Treasurer may adopt and promulgate rules and regulations to carry out the Medical Debt Relief Act.

Source: Laws 2024, LB937, § 49.
Operative date July 19, 2024.

CHAPTER 46
IRRIGATION AND REGULATION OF WATER

ARTICLE 1
IRRIGATION DISTRICTS

(v) SURFACE WATER IRRIGATION INFRASTRUCTURE

(v) SURFACE WATER IRRIGATION INFRASTRUCTURE

46-1,164 Surface Water Irrigation Infrastructure Fund; created; use; investment.

There is hereby created the Surface Water Irrigation Infrastructure Fund to be administered by the Department of Natural Resources. The fund shall be used to provide grants in accordance with section 46-1,165 to irrigation districts. There shall be a one-time transfer of fifty million dollars from the Cash Reserve Fund to the Surface Water Irrigation Infrastructure Fund to carry out the purposes of section 46-1,165. Any money in the Surface Water Irrigation Infrastructure Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Investment earnings from investment of money in the fund shall be credited to the fund.

Source: Laws 2022, LB1012, § 9; Laws 2023, LB818, § 11.

Cross References

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

46-1,165 Surface water irrigation infrastructure; grants; matching funds.

The Department of Natural Resources shall establish procedures and criteria for awarding grants to irrigation districts from the Surface Water Irrigation Infrastructure Fund to be used for repair or construction of any headgate, flume, diversion structure, check valve, or any other physical structure used for irrigation projects. The department may award grants, not to exceed five million dollars per applicant, to an irrigation district that applies to the department based on criteria and procedures established by the department. In order to receive a grant under this section, a grant applicant shall provide matching funds equal to ten percent of the grant amount awarded for such project.

Source: Laws 2022, LB1012, § 10.

ARTICLE 2
GENERAL PROVISIONS

(m) UNDERGROUND WATER STORAGE

(m) UNDERGROUND WATER STORAGE

46-296 Terms, defined.

For purposes of sections 46-202 and 46-295 to 46-2,106, unless the context otherwise requires:

(1) Department means the Department of Natural Resources;

(2) Director means the Director of Natural Resources;

(3) Person means a natural person, partnership, limited liability company, association, corporation, municipality, or agency or political subdivision of the state or of the federal government;

(4) Underground water storage means the act of storing or recharging water in underground strata. Such water shall be known as water stored underground but does not include ground water as defined in section 46-706 which occurs naturally;

(5) Intentional underground water storage means underground water storage which is an intended purpose or result of a water project or use. Such storage may be accomplished by any lawful means such as injection wells, infiltration basins, canals, reservoirs, and other reasonable methods; and

(6) Incidental underground water storage means underground water storage which occurs as an indirect result, rather than an intended or planned purpose, of a water project or use and includes, but is not limited to, seepage from reservoirs, canals, and laterals, and deep percolation from irrigated lands.

Source: Laws 1983, LB 198, § 2; Laws 1985, LB 488, § 7; Laws 1993, LB 121, § 277; Laws 1996, LB 108, § 5; Laws 2000, LB 900, § 137; Laws 2004, LB 962, § 27; Laws 2024, LB1368, § 8.
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