

2008

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**STATE OF NEBRASKA**

**STATUTES RELATING TO STATE BOARD OF HEALTH**



Department of Health and Human Services  
Division of Public Health  
Licensure Unit

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## STATUTES PERTAINING TO THE STATE BOARD OF HEALTH

**71-2601. State Board of Health; members; appointment; qualifications.** (1) The State Board of Health shall promote and protect the health and safety of all people in Nebraska.

(2) The board shall consist of seventeen members to be appointed by the Governor with the consent of a majority of the members of the Legislature. Two members shall be licensed to practice medicine and surgery in this state, one member shall be licensed to practice dentistry in this state, one member shall be licensed to practice optometry in this state, one member shall be licensed to practice veterinary medicine in this state, one member shall be licensed to practice pharmacy in this state, two members shall be licensed to practice nursing in this state, one member shall be licensed to practice osteopathic medicine and surgery or as an osteopathic physician in this state, one member shall be licensed to practice podiatry in this state, one member shall be licensed to practice chiropractic in this state, one member shall be licensed to practice physical therapy in this state, one member shall be a professional engineer in this state, one member shall be an administrator of a hospital in this state which is licensed under the Health Care Facility Licensure Act, one member shall be a credentialed mental health professional, and two members shall be public members who at all times are public-spirited citizens of Nebraska interested in the health of the people of the State of Nebraska and not less than twenty-one years of age. If a member fails at any time to meet the qualifications for the position for which he or she was appointed, such member may be removed by the Governor pursuant to section 71-2603.

(3) The Governor shall also be an ex officio member of such board but shall be permitted to vote on matters before the board only when necessary to break a tie.

Source: Laws 1953, c. 335, § 7, p. 1102; Laws 1959, c. 327, § 1, p. 1191; Laws 1967, c. 454, § 1, p. 1405; Laws 1969, c. 574, § 1, p. 2320; Laws 1971, LB 279, § 1; Laws 1978, LB 575, § 1; Laws 1989, LB 342, § 30; Laws 1993, LB 375, § 2; Laws 1995, LB 563, § 46; Laws 1997, LB 622, § 105; Laws 1999, LB 828, § 168; Laws 2000, LB 819, § 107; Laws 2003, LB 56, § 1.

**71-2602. Board; members; term; vacancy; appointment.** The Governor shall appoint the members of the State Board of Health. Each member of the board serving on October 1, 2003, shall hold office until August 1 of the calendar year in which his or her term would otherwise expire. Appointments made for the succeeding members shall be for terms of five years. The term of office of each member of the board shall expire on August 1 of the appropriate year. If a vacancy occurs prior to the expiration of a term, the Governor shall appoint a successor with similar qualifications for the remainder of the unexpired term. No member of the board shall serve more than two consecutive, full terms. If the Legislature is not in session when an appointment is made by the Governor, the member shall take office and act as a recess appointee until the Legislature convenes.

Source: Laws 1953, c. 335, § 8, p. 1102; Laws 1959, c. 327, § 2, p. 1191; Laws 1972, LB 1067, § 4; Laws 1993, LB 375, § 3; Laws 2003, LB 56, § 2.

**71-2602.01. Repealed. Laws 1993, LB 375, s. 7.**

**71-2603. Board; members; removal; grounds; procedure.** Members of the State Board of Health may be removed by the Governor for inefficiency, neglect of duty, failure to maintain the qualifications for the position for which appointed, or misconduct in office, but only after delivering to the member a copy of the charges and affording the member an opportunity of being publicly heard in person or by counsel in his or her own defense, upon not less than ten days' notice. Such hearing shall be held before the Governor. If such member is removed, the Governor shall file in the office of the Secretary of State a complete statement of all charges made against such member and the Governor's findings thereon, together with a complete record of the proceedings.

Source: Laws 1953, c. 335, § 9, p. 1103; Laws 2003, LB 56, § 3.

**71-2604. Repealed. Laws 1981, LB 249, s. 8.**

**71-2605. Board; members; per diem; expenses.** The members of the State Board of Health shall receive the sum of twenty dollars per diem, while actually engaged in the business of the board, and shall be reimbursed for the necessary expenses incurred in the performance of their duties as provided in sections 81-1174 to 81-1177 for state employees.

Source: Laws 1953, c. 335, § 11, p. 1103; Laws 1981, LB 204, § 123.

**71-2606. Board; members; chairperson; officers; election.** In the last calendar quarter of each year, the members of the State Board of Health shall meet and elect a chairperson of the board from the members and such other officers, including a vice-chairperson and a secretary, as the board deems necessary. In case of the death, resignation, or other permanent absence of the chairperson of the board, the vice-chairperson shall assume the office of chairperson and the members of the board at the next regular meeting of the board, or at a special meeting of the board pursuant to a call signed by five members

of which the other members shall have at least three days' notice, shall elect a new chairperson of the board from the members and such other new officers as the board deems necessary.

Source: Laws 1953, c. 335, § 12, p. 1103; Laws 1969, c. 575, § 1, p. 2321; Laws 2003, LB 56, § 4.

**71-2607. Board; meetings; notice; open to public.** The State Board of Health shall meet at least once each quarter and at such other times as it deems necessary. Special meetings may be held upon the call of the chairperson or pursuant to a call signed by five other members of which the chairperson and the other members of the board shall have at least three days' notice. All regular meetings shall be held in suitable offices to be provided in the state office building described in section 81-1108.37 or elsewhere. A majority of the members of the board shall constitute a quorum for the transaction of business. Every act of a majority of the members of the board shall be deemed to be the act of the board. All meetings shall be open to the public. The minutes of the meetings shall show the action of the board on matters presented and shall be open to public inspection.

Source: Laws 1953, c. 335, § 13, p. 1103; Laws 1969, c. 575, § 2, p. 2322; Laws 2003, LB 56, § 5.

**71-2608. Repealed. Laws 1981, LB 249, s. 8.**

**71-2609. Repealed. Laws 1996, LB 1044, s. 985.**

**71-2610. Board; advise Division of Public Health of the Department of Health and Human Services.** The State Board of Health shall advise the Division of Public Health of the Department of Health and Human Services regarding:

- (1) Rules and regulations for the government of the division;
- (2) The policies of the division as they relate to support provided to the board;
- (3) The policies of the division concerning the professions and occupations described in section 71-2610.01;
- (4) Communication and cooperation among the professional boards; and
- (5) Plans of organization or reorganization of the division.

Source: Laws 1953, c. 335, § 16, p. 1104; Laws 1981, LB 249, § 2; Laws 1982, LB 449, § 8; Laws 1982, LB 450, § 7; Laws 1982, LB 448, § 7; Laws 1987, LB 473, § 41; Laws 1996, LB 1044, § 632; Laws 2003, LB 56, § 6; Laws 2007, LB296, § 549. Operative date July 1, 2007.

**71-2610.01. Board; powers and duties.** The State Board of Health shall:

- (1) Adopt and promulgate rules and regulations for the government of the professions and occupations licensed, certified, registered, or issued permits by the Division of Public Health of the Department of Health and Human Services, including rules and regulations necessary to implement laws enforced by the division. These professions and occupations are those subject to the Asbestos Control Act, the Radiation Control Act, the Residential Lead-Based Paint Professions Practice Act, the Uniform Controlled Substances Act, the Uniform Credentialing Act, or the Wholesale Drug Distributor Licensing Act;
- (2) Serve in an advisory capacity for other rules and regulations adopted and promulgated by the division, including those for health care facilities and environmental health services;
- (3) Carry out its powers and duties under the Nebraska Regulation of Health Professions Act;
- (4) Appoint and remove for cause members of health-related professional boards as provided in sections 38-158 to 38-167;
- (5) At the discretion of the board, help mediate issues related to the regulation of health care professions except issues related to the discipline of health care professionals; and
- (6) Have the authority to participate in the periodic review of the regulation of health care professions.

All funds rendered available by law may be used by the board in administering and effecting such purposes.

Source: Laws 1981, LB 249, § 3; Laws 1992, LB 1019, § 78; Laws 1996, LB 1044, § 633; Laws 1997, LB 307, § 186; Laws 1998, LB 1073, § 124; Laws 2000, LB 1115, § 71; Laws 2003, LB 56, § 7; Laws 2005, LB 256, § 93; Laws 2007, LB296 § 550; Laws 2007, LB463, § 1206. The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

**71-2611. Board; immunity.** No member of the State Board of Health shall be liable in damages to any person for slander, libel, defamation of character, breach of any privileged communication, or otherwise for any action taken or recommendation made within the scope of the functions of such board while acting as an agent of the state if such board member acts without malice and in the reasonable belief that such action or recommendation is warranted by the facts known to him or her after a reasonable effort is made to obtain the facts on which such action is taken or recommendation is made.

Source: Laws 2003, LB 56, § 8.

**71-2612 to 71-2616. Repealed. Laws 1981, LB 249, s. 8.**

**71-2617. Health and Human Services Reimbursement Fund; created; purpose.** There is hereby created in the Department of Health and Human Services a cash fund to be known as the Health and Human Services Reimbursement Fund. Any money in the Department of Health and Human Services Regulation and Licensure Reimbursement Fund on July 1, 2007, shall be transferred to the Health and Human Services Reimbursement Fund. The fund shall be used for payment of services performed for the department for inspection and licensing of hospitals and nursing homes under Title XIX of the federal Social Security Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1971, LB 224, § 1; Laws 1996, LB 1044, § 634; Laws 2007, LB296, § 551. Operative date July 1, 2007.

**71-2618. Repealed. Laws 1996, LB 1044, s. 985.**

**71-2618.01. Repealed. Laws 1999, LB 13, s. 1.**

**71-2619. Fees; establish; disposition.** (1) The Department of Health and Human Services may by regulation establish fees to defray the costs of providing specimen containers, shipping outfits, and related supplies and fees to defray the costs of certain laboratory examinations as requested by individuals, firms, corporations, or governmental agencies in the state. Fees for the provision of certain classes of shipping outfits or specimen containers shall be no more than the actual cost of materials, labor, and delivery. Fees for the provision of shipping outfits may be made when no charge is made for service.

(2) Fees may be established by regulation for chemical or microbiological examinations of various categories of water samples. Fees established for examination of water to ascertain qualities for domestic, culinary, and associated uses shall be set to defray no more than the actual cost of the tests in the following categories: (a) Inorganic chemical assays; (b) organic pollutants; and (c) bacteriological examination to indicate sanitary quality as coliform density by membrane filter test or equivalent test.

(3) Fees for examinations of water from lakes, streams, impoundments, or similar sources, from wastewaters, or from ground water for industrial or agricultural purposes may be charged in amounts established by regulation but shall not exceed one and one-half times the limits set by regulation for examination of domestic waters.

(4) Fees may be established by regulation for chemical or microbiological examinations of various categories of samples to defray no more than the actual cost of testing. Such fees may be charged for:

- (a) Any specimen submitted for radiochemical analysis or characterization;
- (b) Any material submitted for chemical characterization or quantitation; and
- (c) Any material submitted for microbiological characterization.

(5) Fees may be established by regulation for the examinations of certain categories of biological and clinical specimens to defray no more than the actual costs of testing. Such fees may be charged for examinations pursuant to law or regulation of:

- (a) Any specimen submitted for chemical examination for assessment of health status or functional impairment;
- (b) Any specimen submitted for microbiological examination which is not related to direct human contact with the microbiological agent; and

(c) A specimen submitted for microbiological examination or procedure by an individual, firm, corporation, or governmental unit other than the department.

(6) The department shall not charge fees for tests that include microbiological isolation, identification examination, or other laboratory examination for the following:

- (a) A contagious disease when the department is authorized by law or regulation to directly supervise the prevention, control, or surveillance of such contagious disease;
- (b) Any emergency when the health of the people of any part of the state is menaced or exposed pursuant to section 71-502; and

(c) When adopting or enforcing special quarantine and sanitary regulations authorized by the department.

(7) Combinations of different tests or groups of tests submitted together may be offered at rates less than those set for individual tests as allowed in this section and shall defray the actual costs.

(8) Fees may be established by regulation to defray no more than the actual costs of certifying laboratories, inspecting laboratories, and making laboratory agreements between the department and laboratories other than the Department of Health and Human Services, Division of Public Health, Environmental Laboratory for the purpose of conducting analyses of drinking water as prescribed in section 71-5306. For each laboratory applying for certification, fees shall include (a) an annual fee not to exceed one thousand eight hundred dollars per laboratory and (b) an inspection fee not to exceed three thousand dollars per certification period for each laboratory located in this state.

(9) All fees collected pursuant to this section shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund.

Source: Laws 1973, LB 583, § 2; Laws 1983, LB 617, § 21; Laws 1986, LB 1047, § 4; Laws 1996, LB 1044, § 636; Laws 2007, LB296, § 552; Laws 2008, LB928, § 20. Operative date July 18, 2008.

**71-2620. Agreements for laboratory tests; contents.** The Division of Public Health of the Department of Health and Human Services may enter into agreements, not exceeding one year in duration, with any other governmental agency relative to the provision of certain laboratory tests and services to the agency. Such services shall be provided as stipulated in the agreement and for such fee, either lump sum or by the item, as is mutually agreed upon and as complies with the provisions of section 71-2619. All laboratories performing human genetic testing for clinical diagnosis and treatment purposes shall be accredited by the College of American Pathologists or by any other national accrediting body or public agency which has requirements that are substantially equivalent to or more comprehensive than those of the college.

Source: Laws 1973, LB 583, § 3; Laws 1996, LB 1044, § 637; Laws 2001, LB 432, § 11; Laws 2007, LB296, § 553; Laws 2008, LB928, § 21. Operative date July 18, 2008.

**71-2621. Fees; laboratory tests and services; credited to Health and Human Services Cash Fund.** All fees collected for laboratory tests and services pursuant to sections 71-2619 and 71-2620 shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund, which shall be used to partially defray the costs of labor, operations, supplies, and materials in the operations of the Department of Health and Human Services, Division of Public Health, Environmental Laboratory.

Source: Laws 1973, LB 583, § 4; Laws 1996, LB 1044, § 638; Laws 2007, LB296, § 554; Laws 2008, LB928, § 22. Operative date July 18, 2008.

**71-2622. Private water supply; private sewage disposal facilities; inspection; fees.** The Department of Health and Human Services shall collect a fee of not less than sixty nor more than one hundred dollars, as determined by regulation, for each inspection of private water supply or private sewage disposal facilities requested of and made by the department in order for the person requesting the inspection to qualify for any type of commercial loan, guarantee, or other type of payment or benefit from any commercial agency or enterprise to the person applying for or receiving the same or to meet the requirements of any federal governmental agency, including, but not limited to, the Farmers Home Administration, the Federal Housing Administration, and the United States Department of Veterans Affairs, that such an inspection be conducted as a condition of applying for or receiving any type of grant, loan, guarantee, or other type of payment or benefit from such agency to the person applying for or receiving the same. All fees so collected shall be paid into the state treasury and by the State Treasurer credited to the Health and Human Services Cash Fund.

Source: Laws 1973, LB 583, § 5; Laws 1978, LB 814, § 1; Laws 1983, LB 617, § 22; Laws 1991, LB 2, § 13; Laws 1996, LB 1044, § 639; Laws 2007, LB296, § 555. Operative date July 1, 2007.

**71-2623. Repealed. Laws 1992, LB 860, s. 8.**