2015

STATE OF NEBRASKA

STATUTES RELATING TO PHARMACY PRACTICE ACT

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

301 Centennial Mall South, Third Floor
PO Box 94986
Lincoln, NE 68509-4986

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STATUTES PERTAINING TO UNIFORM CONTROLLED SUBSTANCES ACT

28-401. Terms, defined. As used in the Uniform Controlled Substances Act, unless the context otherwise requires:

(1) Administer means to directly apply a controlled substance by injection, inhalation, ingestion, or any other means to the body of a patient or research subject;

(2) Agent means an authorized person who acts on behalf of or at the direction of another person but does not include a common or contract carrier, public warehouse keeper, or employee of a carrier or warehouse keeper;

(3) Administration means the Drug Enforcement Administration of the United States Department of Justice;

(4) Controlled substance means a drug, biological, substance, or immediate precursor in Schedules I to V of section 28-405. Controlled substance does not include distilled spirits, wine, malt beverages, tobacco, or any nonnarcotic substance if such substance may, under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq., as such act existed on January 1, 2014, and the law of this state, be lawfully sold over the counter without a prescription;

(5) Counterfeit substance means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed such substance and which thereby falsely purports or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser;

(6) Department means the Department of Health and Human Services;

(7) Division of Drug Control means the personnel of the Nebraska State Patrol who are assigned to enforce the Uniform Controlled Substances Act;

(8) Dispense means to deliver a controlled substance to an ultimate user or a research subject pursuant to a medical order issued by a practitioner authorized to prescribe, including the packaging, labeling, or compounding necessary to prepare the controlled substance for such delivery;

(9) Distribute means to deliver other than by administering or dispensing a controlled substance;

(10) Prescribe means to issue a medical order;

(11) Drug means (a) articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or any supplement to any of them, (b) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in human beings or animals, and (c) substances intended for use as a component of any article specified in subdivision (a) or (b) of this subdivision, but does not include devices or their components, parts, or accessories;

(12) Deliver or delivery means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship;

(13) Marijuana means all parts of the plant of the genus cannabis, whether growing or not, the seeds thereof, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds, but does not include the mature stalks of such plant, hashish, tetrahydrocannabinols extracted or isolated from the plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks, or the sterilized seed of such plant which is incapable of germination. When the weight of marijuana is referred to in the Uniform Controlled Substances Act, it means its weight at or about the time it is seized or otherwise comes into the possession of law enforcement authorities, whether cured or uncured at that time. When industrial hemp as defined in section 2-5701 is in the possession of a person as authorized under section 2-5701, it is not considered marijuana for purposes of the Uniform Controlled Substances Act;

(14) Manufacture means the production, preparation, propagation, conversion, or processing of a controlled substance, either directly or indirectly, by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. Manufacture does not include the preparation or compounding of a controlled substance by an individual for his or her own use, except for the preparation or compounding of components or ingredients used for or intended to be used for the manufacture of methamphetamine, or the preparation, compounding, conversion, packaging, or labeling of a controlled substance: (a) By a practitioner as an incident to his or her prescribing, administering, or dispensing of a controlled substance in the course of his or her professional practice; or (b) by a practitioner, or by his or her authorized agent under his or her supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale;

(15) Narcotic drug means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis: (a) Opium, opium poppy and poppy straw, coca leaves, and opiates; (b) a compound,

manufacture, salt, derivative, or preparation of opium, coca leaves, or opiates; or (c) a substance and any compound, manufacture, salt, derivative, or preparation thereof which is chemically equivalent to or identical with any of the substances referred to in subdivisions (a) and (b) of this subdivision, except that the words narcotic drug as used in the Uniform Controlled Substances Act does not include decocainized coca leaves or extracts of coca leaves, which extracts do not contain cocaine or ecgonine, or isoquinoline alkaloids of opium;

(16) Opiate means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability. Opiate does not include the dextrorotatory isomer of 3-methoxy-n methylmorphinan and its salts. Opiate includes its racemic and levorotatory forms;

(17) Opium poppy means the plant of the species Papaver somniferum L., except the seeds thereof;

(18) Poppy straw means all parts, except the seeds, of the opium poppy after mowing;

(19) Person means any corporation, association, partnership, limited liability company, or one or more persons;

(20) Practitioner means a physician, a physician assistant, a dentist, a veterinarian, a pharmacist, a podiatrist, an optometrist, a certified nurse midwife, a certified registered nurse anesthetist, a nurse practitioner, a scientific investigator, a pharmacy, a hospital, or any other person licensed, registered, or otherwise permitted to distribute, dispense, prescribe, conduct research with respect to, or administer a controlled substance in the course of practice or research in this state, including an emergency medical service as defined in section 38-1207;

(21) Production includes the manufacture, planting, cultivation, or harvesting of a controlled substance;

(22) Immediate precursor means a substance which is the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit such manufacture;

(23) State means the State of Nebraska;

(24) Ultimate user means a person who lawfully possesses a controlled substance for his or her own use, for the use of a member of his or her household, or for administration to an animal owned by him or her or by a member of his or her household;

(25) Hospital has the same meaning as in section 71-419;

(26) Cooperating individual means any person, other than a commissioned law enforcement officer, who acts on behalf of, at the request of, or as agent for a law enforcement agency for the purpose of gathering or obtaining evidence of offenses punishable under the Uniform Controlled Substances Act;

(27) Hashish or concentrated cannabis means (a) the separated resin, whether crude or purified, obtained from a plant of the genus cannabis or (b) any material, preparation, mixture, compound, or other substance which contains ten percent or more by weight of tetrahydrocannabinols. When resins extracted from industrial hemp as defined in section 2-5701 are in the possession of a person as authorized under section 2-5701, they are not considered hashish or concentrated cannabis for purposes of the Uniform Controlled Substances Act;

(28) Exceptionally hazardous drug means (a) a narcotic drug, (b) thiophene analog of phencyclidine, (c) phencyclidine, (d) amobarbital, (e) secobarbital, (f) pentobarbital, (g) amphetamine, or (h) methamphetamine;

(29) Imitation controlled substance means a substance which is not a controlled substance or controlled substance analogue but which, by way of express or implied representations and consideration of other relevant factors including those specified in section 28-445, would lead a reasonable person to believe the substance is a controlled substance or controlled substance analogue. A placebo or registered investigational drug manufactured, distributed, possessed, or delivered in the ordinary course of practice or research by a health care professional shall not be deemed to be an imitation controlled substance;

(30)(a) Controlled substance analogue means a substance (i) the chemical structure of which is substantially similar to the chemical structure of a Schedule I or Schedule II controlled substance as provided in section 28-405 or (ii) which has a stimulant, depressant, analgesic, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, analgesic, or hallucinogenic effect on the central nervous system of a Schedule I or Schedule II controlled substance as provided in section 28-405. A controlled substance analogue shall, to the extent intended for human consumption, be treated as a controlled substance under Schedule I of section 28-405 for purposes of the Uniform Controlled Substances Act; and

(b) Controlled substance analogue does not include (i) a controlled substance, (ii) any substance generally recognized as safe and effective within the meaning of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq., as such act existed on January 1, 2014, (iii) any substance for which there is an approved new drug application, or (iv) with respect to a particular person, any substance if an exemption is in effect for investigational use for that person, under section 505 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 355, as such section existed on January 1, 2014, to the extent conduct with respect to such substance is pursuant to such exemption;

(31) Anabolic steroid means any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids), that promotes muscle growth and includes

any controlled substance in Schedule III(d) of section 28-405. Anabolic steroid does not include any anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and has been approved by the Secretary of Health and Human Services for such administration, but if any person prescribes, dispenses, or distributes such a steroid for human use, such person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this subdivision;

(32) Chart order means an order for a controlled substance issued by a practitioner for a patient who is in the hospital where the chart is stored or for a patient receiving detoxification treatment or maintenance treatment pursuant to section 28-412. Chart order does not include a prescription;

(33) Medical order means a prescription, a chart order, or an order for pharmaceutical care issued by a practitioner;

(34) Prescription means an order for a controlled substance issued by a practitioner. Prescription does not include a chart order;

(35) Registrant means any person who has a controlled substances registration issued by the state or the administration;

(36) Reverse distributor means a person whose primary function is to act as an agent for a pharmacy, wholesaler, manufacturer, or other entity by receiving, inventorying, and managing the disposition of outdated, expired, or otherwise nonsaleable controlled substances;

(37) Signature means the name, word, or mark of a person written in his or her own hand with the intent to authenticate a writing or other form of communication or a digital signature which complies with section 86-611 or an electronic signature;

(38) Facsimile means a copy generated by a system that encodes a document or photograph into electrical signals, transmits those signals over telecommunications lines, and reconstructs the signals to create an exact duplicate of the original document at the receiving end;

(39) Electronic signature has the definition found in section 86-621;

(40) Electronic transmission means transmission of information in electronic form. Electronic transmission includes computer-to-computer transmission or computer-to-facsimile transmission;

(41) 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 center, a nursing facility, or a skilled nursing facility, as such terms are defined in the Health Care Facility Licensure Act;

(42) Compounding has the same meaning as in section 38-2811; and

(43) Cannabinoid receptor agonist shall mean any chemical compound or substance that, according to scientific or medical research, study, testing, or analysis, demonstrates the presence of binding activity at one or more of the CB1 or CB2 cell membrane receptors located within the human body.

Source: Laws 1977, LB 38, § 61; Laws 1978, LB 276, § 1; Laws 1980, LB 696, § 1; Laws 1985, LB 323, § 1; Laws 1985, LB 406, § 2; Laws 1988, LB 273, § 3; Laws 1988, LB 537, § 1; Laws 1992, LB 1019, § 30; Laws 1993, LB 121, § 175; Laws 1996, LB 1044, § 68; Laws 1996, LB 1108, § 1; Laws 1997, LB 307, § 3; Laws 1999, LB 379, § 1; Laws 2001, LB 398, § 1; Laws 2002, LB 1105, § 428; Laws 2003, LB 200, § 1; Laws 2005, LB 117, § 1; Laws 2005, LB 256, § 16; Laws 2005, LB 382, § 1; Laws 2007, LB247, § 1; Laws 2007, LB296, § 35; Laws 2007, LB463, § 1119; Laws 2009, LB195, § 1; Laws 2013, LB23, § 4; Laws 2014, LB811, § 2; Laws 2014, LB1001, § 2. **Effective Date: July 18, 2014.**

28-401.01. Act, how cited. Sections 28-401 to 28-456.01, 28-458 to 28-468, and 28-470 shall be known and may be cited as the Uniform Controlled Substances Act.

Source: Laws 1977, LB 38, § 98; R.S.1943, (1995), § 28-438; Laws 2001, LB 113, § 17; Laws 2001, LB 398, § 2; Laws 2005, LB 117, § 2; Laws 2007, LB463, § 1120; Laws 2011, LB20, § 2; Laws 2014, LB811, § 3; Laws 2015, LB390, § 3. **Effective Date: May 28, 2015**

28-401.02. Act; how construed. Nothing in the Uniform Controlled Substances Act shall be construed as authority for a practitioner to perform an act for which he or she is not authorized by the laws of this state.

Source: Laws 2001, LB 398, § 3. Operative date May 1, 2001.

28-402. **Repealed**. Laws 2001, LB 398, s. 97.

28-403. Administering secret medicine; penalty. If any physician or other person shall prescribe any drug or medicine to another person, the true nature and composition of which he does not, if inquired of, truly make known, but avow the same to be a secret medicine of composition, thereby endangering the life of such other person, he shall be guilty of a Class III misdemeanor.

Source: Laws 1977, LB 38, §63. Operative date January 1, 1979.

28-404. Controlled substances; declaration. All drugs and substances or immediate precursors listed in section 28-405 are hereby declared to be controlled substances, whether listed by official name, generic, common, or usual name, chemical name, brand, or trade name.

Source: Laws 1977, LB 38 §64; Laws 1990, LB 571, §3; Laws 1992, LB 1019, §31, Operative date April 18, 1992.

28-405. Controlled substances; schedules; enumerated.

The following are the schedules of controlled substances referred to in the Uniform Controlled Substances Act:

Schedule I

(a) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Acetylmethadol;

(2) Allylprodine;

(3) Alphacetylmethadol, except levo-alphacetylmethadol which is also known as levo-alpha-acetylmethadol, levomethadyl acetate, and LAAM;

(4) Alphameprodine;

(5) Alphamethadol;

(6) Benzethidine;

(7) Betacetylmethadol;

(8) Betameprodine;

(9) Betamethadol;

(10) Betaprodine;

(11) Clonitazene;

(12) Dextromoramide;

(13) Difenoxin;

(14) Diampromide;

(15) Diethylthiambutene;

(16) Dimenoxadol;

(17) Dimepheptanol;

(18) Dimethylthiambutene;

(19) Dioxaphetyl butyrate;

(20) Dipipanone;

(21) Ethylmethylthiambutene;

(22) Etonitazene;

(23) Etoxeridine;

(24) Furethidine;

(25) Hydroxypethidine;

(26) Ketobemidone;

(27) Levomoramide;

(28) Levophenacylmorphan;

(29) Morpheridine;

(30) Noracymethadol;

(31) Norlevorphanol;

(32) Normethadone;

(33) Norpipanone;

(34) Phenadoxone;

(35) Phenampromide;

(36) Phenomorphan;

(37) Phenoperidine;

(38) Piritramide;

(39) Proheptazine;

(40) Properidine;

(41) Propiram;

(42) Racemoramide;

(43) Trimeperidine;

(44) Alpha-methylfentanyl, N-(1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl) propionanilide, 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine;

(45) Tilidine;

(46) 3-Methylfentanyl, N-(3-methyl-1-(2-phenylethyl)-4-piperidyl)-N-phenylpropanamide, its optical and geometric isomers, salts, and salts of isomers;

(47) 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP), its optical isomers, salts, and salts of isomers;

(48) PEPAP, 1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine, its optical isomers, salts, and salts of isomers;

(49) Acetyl-alpha-methylfentanyl, N-(1-(1-methyl-2-phenethyl)-4-piperidinyl)-N-phenylacetamide, its optical isomers, salts, and salts of isomers;

(50) Alpha-methylthiofentanyl, N-(1-methyl-2-(2-thienyl)ethyl-4-piperidinyl)-N-phenylpropanamide, its optical isomers, salts, and salts of isomers;

(51) Benzylfentanyl, N-(1-benzyl-4-piperidyl)-N-phenylpropanamide, its optical isomers, salts, and salts of isomers;

(52) Beta-hydroxyfentanyl, N-(1-(2-hydroxy-2-phenethyl)-4-piperidinyl)-N-phenylpropanamide, its optical isomers, salts, and salts of isomers;

(53) Beta-hydroxy-3-methylfentanyl, (other name: N-(1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl)-N-phenylpropanamide), its optical and geometric isomers, salts, and salts of isomers;

(54) 3-methylthiofentanyl, N-(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl)-N-phenylpropanamide, its optical and geometric isomers, salts, and salts of isomers;

(55) N-(1-(2-thienyl)methyl-4-piperidyl)-N-phenylpropanamide (thenylfentanyl), its optical isomers, salts, and salts of isomers;

(56) Thiofentanyl, N-phenyl-N-(1-(2-thienyl)ethyl-4-piperidinyl)-propanamide, its optical isomers, salts, and salts of isomers; and

(57) Para-fluorofentanyl, N-(4-fluorophenyl)-N-(1-(2-phenethyl)-4-piperidinyl)propanamide, its optical isomers, salts, and salts of isomers.

(b) Any of the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine;

(2) Acetyldihydrocodeine;

(3) Benzylmorphine;

(4) Codeine methylbromide;

(5) Codeine-N-Oxide;

(6) Cyprenorphine;

(7) Desomorphine;

(8) Dihydromorphine;

(9) Drotebanol;

(10) Etorphine, except hydrochloride salt;

(11) Heroin;

(12) Hydromorphinol;

(13) Methyldesorphine;

(14) Methyldihydromorphine;

(15) Morphine methylbromide;

(16) Morphine methylsulfonate;

(17) Morphine-N-Oxide;

(18) Myrophine;

(19) Nicocodeine;

(20) Nicomorphine;

(21) Normorphine;

(22) Pholcodine; and

(23) Thebacon.

(c) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, and, for purposes of this subdivision only, isomer shall include the optical, position, and geometric isomers:

(1) Bufotenine. Trade and other names shall include, but are not limited to: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N,N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; and mappine;

(2) 4-bromo-2,5-dimethoxyamphetamine. Trade and other names shall include, but are not limited to: 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine; and 4-bromo-2,5-DMA;

(3) 4-methoxyamphetamine. Trade and other names shall include, but are not limited to: 4-methoxy-alpha-methylphenethylamine; and paramethoxyamphetamine, PMA;

(4) 4-methyl-2,5-dimethoxyamphetamine. Trade and other names shall include, but are not limited to: 4-methyl-2,5-dimethoxy-alpha-methylphenethylamine; DOM; and STP;

(5) Ibogaine. Trade and other names shall include, but are not limited to: 7-Ethyl-6,6beta,7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido (1',2':1,2) azepino (5,4-b) indole; and Tabernanthe iboga;

(6) Lysergic acid diethylamide;

(7) Marijuana;

(8) Mescaline;

(9) Peyote. Peyote shall mean all parts of the plant presently classified botanically as Lophophora williamsii Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant or its seeds or extracts;

(10) Psilocybin;

(11) Psilocyn;

(12) Tetrahydrocannabinols, including, but not limited to, synthetic equivalents of the substances contained in the plant or in the resinous extractives of cannabis, sp. or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following: Delta 1 cis or trans tetrahydrocannabinol and their optical isomers, excluding dronabinol in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the federal Food and Drug Administration; Delta 6 cis or trans tetrahydrocannabinol and their optical isomers; and Delta 3,4 cis or trans tetrahydrocannabinol and its optical isomers. Since nomenclature of these substances is not internationally standardized, compounds of these structures shall be included regardless of the numerical designation of atomic positions covered;

(13) N-ethyl-3-piperidyl benzilate;

(14) N-methyl-3-piperidyl benzilate;

(15) Thiophene analog of phencyclidine. Trade and other names shall include, but are not limited to: 1-(1-(2-thienyl)-cyclohexyl)-piperidine; 2-thienyl analog of phencyclidine; TPCP; and TCP;

(16) Hashish or concentrated cannabis;

(17) Parahexyl. Trade and other names shall include, but are not limited to: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo(b,d)pyran; and Synhexyl;

(18) Ethylamine analog of phencyclidine. Trade and other names shall include, but are not limited to: N-ethyl-1-phenylcyclohexylamine; (1-phenylcyclohexyl)ethylamine; N-(1-phenylcyclohexyl)ethylamine; cyclohexamine; and PCE;

(19) Pyrrolidine analog of phencyclidine. Trade and other names shall include, but are not limited to: 1-(1-phenylcyclohexyl)-pyrrolidine; PCPy; and PHP;

(20) Alpha-ethyltryptamine. Some trade or other names: etryptamine; Monase; alpha-ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; alpha-ET; and AET;

(21) 2,5-dimethoxy-4-ethylamphet-amine; and DOET;

(22) 1-(1-(2-thienyl)cyclohexyl)pyrrolidine; and TCPy;

(23) Alpha-methyltryptamine, which is also known as AMT;

(24) Salvia divinorum or Salvinorin A. Salvia divinorum or Salvinorin A includes all parts of the plant presently classified botanically as Salvia divinorum, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, derivative, mixture, or preparation of such plant, its seeds, or its extracts, including salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation;

(25) Any material, compound, mixture, or preparation containing any quantity of synthetically produced cannabinoids as listed in subdivisions (A) through (L) of this subdivision, including their salts, isomers, salts of isomers, and nitrogen, oxygen, or sulfur-heterocyclic analogs, unless specifically excepted elsewhere in this section. Since nomenclature of these synthetically produced cannabinoids is not internationally standardized and may continually evolve, these structures or compounds of these structures shall be included under this subdivision, regardless of their specific numerical designation of atomic positions covered, so long as it can be determined through a recognized method of scientific testing or analysis that the substance contains properties that fit within one or more of the following categories:

(A) Tetrahydrocannabinols: Meaning tetrahydrocannabinols naturally contained in a plant of the genus cannabis (cannabis plant), as well as synthetic equivalents of the substances contained in the plant, or in the resinous extractives of cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following: Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers; Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers; Delta 3,4 cis or trans tetrahydrocannabinol, and its optical isomers;

(B) Naphthoylindoles: Any compound containing a 3-(1-naphthoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 2-(4-morpholinyl)ethyl group, cyanoalkyl, 1-(N-methyl-2-piperidinyl)methyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in or on any of the listed ring systems to any extent;

(C) Naphthylmethylindoles: Any compound containing a 1 H-indol-3-yl-(1-naphthyl)methane structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 2-(4-morpholinyl)ethyl group, cyanoalkyl, 1-(N-methyl-2-piperidinyl)methyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in or on any of the listed ring systems to any extent;

(D) Naphthoylpyrroles: Any compound containing a 3-(1-naphthoyl)pyrrole structure with substitution at the nitrogen atom of the pyrrole ring by an alkyl, haloalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 2-(4-morpholinyl)ethyl group, cyanoalkyl, 1-(N-methyl-2-piperidinyl)methyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in or on any of the listed ring systems to any extent;

(E) Naphthylideneindenes: Any compound containing a naphthylideneindene structure with substitution at the 3-position of the indene ring by an alkyl, haloalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 2-(4-morpholinyl)ethyl group, cyanoalkyl, 1-(N-methyl-2-piperidinyl)methyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in or on any of the listed ring systems to any extent;

(F) Phenylacetylindoles: Any compound containing a 3-phenylacetylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 2-(4-morpholinyl)ethyl group, cyanoalkyl, 1-(N-methyl-2-piperidinyl)methyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in or on any of the listed ring systems to any extent;

(G) Cyclohexylphenols: Any compound containing a 2-(3-hydroxycyclohexyl)phenol structure with substitution at the 5-position of the phenolic ring by an alkyl, haloalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 2-(4-morpholinyl)ethyl group, cyanoalkyl, 1-(N-methyl-2-piperidinyl)methyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not substituted in or on any of the listed ring systems to any extent;

(H) Benzoylindoles: Any compound containing a 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 2-(4-morpholinyl)ethyl group, cyanoalkyl, 1-(N-methyl-2-piperidinyl)methyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in or on any of the listed ring systems to any extent;

(I) Adamantoylindoles: Any compound containing a 3-adamantoylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in or on any of the listed ring systems to any extent;

(J) Tetramethylcyclopropanoylindoles: Any compound containing a 3-tetramethylcyclopropanoylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in or on any of the listed ring systems to any extent;

(K) Indole carboxamides: Any compound containing a 1-indole-3-carboxamide structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, substitution at the carboxamide group by an alkyl, methoxy, benzyl, propionaldehyde, adamantyl, 1-naphthyl, phenyl, aminooxoalkyl group, or quinolinyl group, whether or not further substituted in or on any of the listed ring systems to any extent or to the adamantyl, 1-mapthyl, phenyl, aminooxoalkyl, benzyl, or propionaldehyde groups to any extent;

(L) Indole carboxylates: Any compound containing a 1-indole-3-carboxylate structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, halobenzyl, benzyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, substitution at the carboxylate group by an alkyl, methoxy, benzyl, propionaldehyde, adamantyl, 1-naphthyl, phenyl, aminooxoalkyl group, or quinolinyl group, whether or not further substituted in or on any of the listed ring systems to any extent or to the adamantyl, 1-mapthyl, phenyl, aminooxoalkyl, benzyl, or propionaldehyde groups to any extent; and

(M) Any nonnaturally occurring substance, chemical compound, mixture, or preparation, not specifically listed elsewhere in these schedules and which is not approved for human consumption by the federal Food and Drug Administration, containing or constituting a cannabinoid receptor agonist as defined in section 28-401;

(26) Any material, compound, mixture, or preparation containing any quantity of a substituted phenethylamine as listed in subdivisions (A) through (C) of this subdivision, unless specifically excepted, listed in another schedule, or specifically named in this schedule, that is structurally derived from phenylethan-2-amine by substitution on the phenyl ring with a fused methylenedioxy ring, fused furan ring, or a fused tetrahydrofuran ring; by substitution with two alkoxy groups; by substitution with one alkoxy and either one fused furan, tetrahydrofuran, or tetrahydropyran ring system; or by substitution with two fused ring systems from any combination of the furan, tetrahydrofuran, or tetrahydropyran ring systems, whether or not the compound is further modified in any of the following ways:

(A) Substitution of the phenyl ring by any halo, hydroxyl, alkyl, trifluoromethyl, alkoxy, or alkylthio groups; (B) substitution at the 2-position by any alkyl groups; or (C) substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl, hydroxybenzyl or methoxybenzyl groups, and including, but not limited to:

(i) 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine, which is also known as 2C-C or 2,5-Dimethoxy-4-chlorophenethylamine;

(ii) 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine, which is also known as 2C-D or 2,5-Dimethoxy-4-methylphenethylamine;

(iii) 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine, which is also known as 2C-E or 2,5-Dimethoxy-4-ethylphenethylamine;

(iv) 2-(2,5-Dimethoxyphenyl)ethanamine, which is also known as 2C-H or 2,5-Dimethoxyphenethylamine;

(v) 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine, which is also known as 2C-I or 2,5-Dimethoxy-4-iodophenethylamine;

(vi) 2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine, which is also known as 2C-N or 2,5-Dimethoxy-4-nitrophenethylamine;

(vii) 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine, which is also known as 2C-P or 2,5-Dimethoxy-4-propylphenethylamine;

(viii) 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine, which is also known as 2C-T-2 or 2,5-Dimethoxy-4-ethylthiophenethylamine;

(ix) 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine, which is also known as 2C-T-4 or 2,5-Dimethoxy-4-isopropylthiophenethylamine;

(x) 2-(4-bromo-2,5-dimethoxyphenyl)ethanamine, which is also known as 2C-B or 2,5-Dimethoxy-4-bromophenethylamine;

(xi) 2-(2,5-dimethoxy-4-(methylthio)phenyl)ethanamine, which is also known as 2C-T or 4-methylthio-2,5-dimethoxyphenethylamine;

(xii) 1-(2,5-dimethoxy-4-iodophenyl)-propan-2-amine, which is also known as DOI or 2,5-Dimethoxy-4-iodoamphetamine;

(xiii) 1-(4-Bromo-2,5-dimethoxyphenyl)-2-aminopropane, which is also known as DOB or 2,5-Dimethoxy-4-bromoamphetamine;

(xiv) 1-(4-chloro-2,5-dimethoxy-phenyl)propan-2-amine, which is also known as DOC or 2,5-Dimethoxy-4-chloroamphetamine;

(xv) 2-(4-bromo-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine, which is also known as 2C-B-NBOMe; 25B-NBOMe or 2,5-Dimethoxy-4-bromo-N-(2-methoxybenzyl)phenethylamine;

(xvi) 2-(4-iodo-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine, which is also known as 2C-I-NBOMe; 25I-NBOMe or 2,5-Dimethoxy-4-iodo-N-(2-methoxybenzyl)phenethylamine;

(xvii) N-(2-Methoxybenzyl)-2-(3,4,5-trimethoxyphenyl)ethanamine, which is also known as Mescaline-NBOMe or 3,4,5-trimethoxy-N-(2-methoxybenzyl)phenethylamine;

(xviii) 2-(4-chloro-2,5-dimethoxyphenyl)-N-[(2-methoxyphenyl)methyl]ethanamine, which is also known as 2C-C-NBOMe; or 25C-NBOMe or 2,5-Dimethoxy-4-chloro-N-(2-methoxybenzyl)phenethylamine;

(xix) 2-(7-Bromo-5-methoxy-2,3-dihydro-1-benzofuran-4-yl)ethanamine, which is also known as 2CB-5-hemiFLY;

(xx) 2-(8-bromo-2,3,6,7-tetrahydrofuro [2,3-f][1]benzofuran-4-yl)ethanamine, which is also known as 2C-B-FLY;

(xxi) 2-(10-Bromo-2,3,4,7,8,9-hexahydropyrano[2,3-g]chromen-5-yl)ethanamine, which is also known as 2C-B-butterFLY;

(xxii) N-(2-Methoxybenzyl)-1-(8-bromo-2,3,6,7- tetrahydrobenzo[1,2-b:4,5-b']difuran-4-yl)-2-aminoethane, which is also known as 2C-B-FLY-NBOMe;

(xxiii) 1-(4-Bromofuro[2,3-f][1]benzofuran-8-yl)propan-2-amine, which is also known as bromo-benzodifuranylisopropylamine or bromo-dragonFLY;

(xxiv) N-(2-Hydroxybenzyl)-4-iodo-2,5-dimethoxyphenethylamine, which is also known as 2C-INBOH or 25I-NBOH;

(xxv) 5-(2-Aminoprpyl)benzofuran, which is also known as 5-APB;
(xxvi) 6-(2-Aminopropyl)benzofuran, which is also known as 6-APB;
(xxvii) 5-(2-Aminopropyl)-2,3-dihydrobenzofuran, which is also known as 5-APDB;
(xxviii) 6-(2-Aminopropyl)-2,3-dihydrobenzofuran, which is also known as 6-APDB;
(xxix) 2,5-dimethoxy-amphetamine, which is also known as 2, 5-dimethoxy-a-methylphenethylamine; 2, 5-DMA;
(xxx) 2,5-dimethoxy-4-ethylamphetamine, which is also known as DOET;
(xxxi) 2,5-dimethoxy-4-(n)-propylthiophenethylamine, which is also known as 2C-T-7;
(xxxii) 5-methoxy-3,4-methylenedioxy-amphetamine;
(xxxiii) 4-methyl-2,5-dimethoxy-amphetamine, which is also known as 4-methyl-2,5-dimethoxy-amethylphenethylamine; DOM and STP;
(xxxiv) 3,4-methylenedioxy amphetamine, which is also known as MDA;
(xxxv) 3,4-methylenedioxymethamphetamine, which is also known as MDMA;
(xxxvi) 3,4-methylenedioxy-N-ethylamphetamine, which is also known as N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine, MDE, MDEA; and
(xxxvii) 3,4,5-trimethoxy amphetamine;
(27) Any material, compound, mixture, or preparation containing any quantity of a substituted tryptamine unless specifically excepted, listed in another schedule, or specifically named in this schedule, that is structurally derived from 2-(1H-indol-3-yl)ethanamine, which is also known as tryptamine, by mono- or di-substitution of the amine nitrogen with alkyl or alkenyl groups or by inclusion of the amino nitrogen atom in a cyclic structure whether or not the compound is further substituted at the alpha position with an alkyl group or whether or not further substituted on the indole ring to any extent with any alkyl, alkoxy, halo, hydroxyl, or acetoxy groups, and including, but not limited to:
(A) 5-methoxy-N,N-diallyltryptamine, which is also known as 5-MeO-DALT;
(B) 4-acetoxy-N,N-dimethyltryptamine, which is also known as 4-AcO-DMT or OAcetylpsilocin;
(C) 4-hydroxy-N-methyl-N-ethyltryptamine, which is also known as 4-HO-MET;
(D) 4-hydroxy-N,N-diisopropyltryptamine, which is also known as 4-HO-DIPT;
(E) 5-methoxy-N-methyl-N-isopropyltryptamine, which is also known as 5-MeOMiPT;
(F) 5-Methoxy-N,N-Dimethyltryptamine, which is also known as 5-MeO-DMT;
(G) 5-methoxy-N,N-diisopropyltryptamine, which is also known as 5-MeO-DiPT;
(H) Diethyltryptamine, which is also known as N,N-Diethyltryptamine, DET; and
(I) Dimethyltryptamine, which is also known as DMT; and
(28)(A) Any substance containing any quantity of the following materials, compounds, mixtures, or structures:
(i) 3,4-methylenedioxymethcathinone, or bk-MDMA, or methylone;
(ii) 3,4-methylenedioxypyrovalerone, or MDPV;
(iii) 4-methylmethcathinone, or 4-MMC, or mephedrone;
(iv) 4-methoxymethcathinone, or bk-PMMA, or PMMC, or methedrone;
(v) Fluoromethcathinone, or FMC;
(vi) Naphthylpyrovalerone, or naphyrone; or
(vii) Beta-keto-N-methylbenzodioxolylpropylamine or bk-MBDB or butylone; or
(B) Unless listed in another schedule, any substance which contains any quantity of any material, compound, mixture, or structure, other than bupropion, that is structurally derived by any means from 2-aminopropan-1-one by substitution at the 1-position with either phenyl, naphthyl, or thiophene ring systems, whether or not the compound is further modified in any of the following ways:
(i) Substitution in the ring system to any extent with alkyl, alkoxy, alkylenedioxy, haloalkyl, hydroxyl, or halide substituents, whether or not further substituted in the ring system by one or more other univalent substituents;
(ii) Substitution at the 3-position with an acyclic alkyl substituent; or
(iii) Substitution at the 2-amino nitrogen atom with alkyl or dialkyl groups, or by inclusion of the 2-amino nitrogen atom in a cyclic structure.
(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
(1) Mecloqualone;
(2) Methaqualone; and
(3) Gamma-Hydroxybutyric Acid. Some other names include: GHB; Gamma-hydroxybutyrate; 4-Hydroxybutyrate; 4-Hydroxybutanoic Acid; Sodium Oxybate; and Sodium Oxybutyrate.
(e) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(1) Fenethylline;
(2) N-ethylamphetamine;
(3) Aminorex; aminoxaphen; 2-amino-5-phenyl-2-oxazoline; or 4,5-dihydro-5-phenyl-2-oxazolamine;
(4) Cathinone; 2-amino-1-phenyl-1-propanone; alpha-aminopropiophenone; 2-aminopropiophenone; and norephedrone;
(5) Methcathinone, its salts, optical isomers, and salts of optical isomers. Some other names: 2-(methylamino)-propiophenone; alpha-(methylamino)propiophenone; 2-(methylamino)-1-phenylpropan-1-one; alpha-N-methylaminopropiophenone; methylcathinone; monomethylpropion; ephedrone; N-methylcathinone; AL-464; AL-422; AL-463; and UR1432;
(6) (+/-)cis-4-methylaminorex; and (+/-)cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine;
(7) N,N-dimethylamphetamine; N,N-alpha-trimethyl-benzeneethanamine; and N,N-alpha-trimethylphenethylamine; and
(8) Benzylpiperazine, 1-benzylpiperazine.
(f) Any controlled substance analogue to the extent intended for human consumption.

Schedule II

(a) Any of the following substances except those narcotic drugs listed in other schedules whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:
(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, buprenorphine, thebaine-derived butorphanol, dextrorphan, nalbuphine, nalmefene, naloxone, and naltrexone and their salts, but including the following:
(A) Raw opium;
(B) Opium extracts;
(C) Opium fluid;
(D) Powdered opium;
(E) Granulated opium;
(F) Tincture of opium;
(G) Codeine;
(H) Ethylmorphine;
(I) Etorphine hydrochloride;
(J) Hydrocodone;
(K) Hydromorphone;
(L) Metopon;
(M) Morphine;
(N) Oxycodone;
(O) Oxymorphone;
(P) Oripavine;
(Q) Thebaine; and
(R) Dihydroetorphine;
(2) Any salt, compound, derivative, or preparation thereof which is chemically equivalent to or identical with any of the substances referred to in subdivision (1) of this subdivision, except that these substances shall not include the isoquinoline alkaloids of opium;
(3) Opium poppy and poppy straw;
(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent to or identical with any of these substances, including cocaine and its salts, optical isomers, and salts of optical isomers, except that the substances shall not include decocainized coca leaves or extractions which do not contain cocaine or ecgonine; and
(5) Concentrate of poppy straw, the crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrene alkaloids of the opium poppy.
(b) Unless specifically excepted or unless in another schedule any of the following opiates, including their isomers, esters, ethers, salts, and salts of their isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan excepted:
(1) Alphaprodine;
(2) Anileridine;
(3) Bezitramide;
(4) Diphenoxylate;
(5) Fentanyl;
(6) Isomethadone;

(7) Levomethorphan;
(8) Levorphanol;
(9) Metazocine;
(10) Methadone;
(11) Methadone-intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane;
(12) Moramide-intermediate, 2-methyl-3-morpholino-1,1-diphenylpropane-carboxylic acid;
(13) Pethidine or meperidine;
(14) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
(15) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
(16) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
(17) Phenazocine;
(18) Piminodine;
(19) Racemethorphan;
(20) Racemorphan;
(21) Dihydrocodeine;
(22) Bulk Propoxyphene in nondosage forms;
(23) Sufentanil;
(24) Alfentanil;
(25) Levo-alphacetylmethadol which is also known as levo-alpha-acetylmethadol, levomethadyl acetate, and LAAM;
(26) Carfentanil;
(27) Remifentanil; and
(28) Tapentadol.
(c) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:
(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers;
(2) Phenmetrazine and its salts;
(3) Methamphetamine, its salts, isomers, and salts of its isomers;
(4) Methylphenidate; and
(5) Lisdexamfetamine, its salts, isomers, and salts of its isomers.
(d) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system, including their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designations:
(1) Amobarbital;
(2) Secobarbital;
(3) Pentobarbital;
(4) Phencyclidine; and
(5) Glutethimide.
(e) Hallucinogenic substances known as:
(1) Nabilone. Another name for nabilone: (+/-)-trans-3-(1,1-dimethylheptyl)- 6,6a,7,8,10,10a-Hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo(b,d)pyran-9-one.
(f) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:
(1) Immediate precursor to amphetamine and methamphetamine: Phenylacetone. Trade and other names shall include, but are not limited to: Phenyl-2-propanone; P2P; benzyl methyl ketone; and methyl benzyl ketone;
(2) Immediate precursors to phencyclidine, PCP:
(A) 1-phenylcyclohexylamine; or
(B) 1-piperidinocyclohexanecarbonitrile, PCC; or
(3) Immediate precursor to fentanyl; 4-anilino-N-phenethyl-4-piperidine (ANNPP).

Schedule III

(a) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system, including their salts, isomers, whether optical, position, or geometric, and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
(1) Benzphetamine;
(2) Chlorphentermine;
(3) Clortermine; and

(4) Phendimetrazine.

(b) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(1) Any substance which contains any quantity of a derivative of barbituric acid or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules of this section;

(2) Chlorhexadol;

(3) Embutramide;

(4) Lysergic acid;

(5) Lysergic acid amide;

(6) Methyprylon;

(7) Perampanel;

(8) Sulfondiethylmethane;

(9) Sulfonethylmethane;

(10) Sulfonmethane;

(11) Nalorphine;

(12) Any compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital, or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule;

(13) Any suppository dosage form containing amobarbital, secobarbital, pentobarbital, or any salt of any of these drugs and approved by the federal Food and Drug Administration for marketing only as a suppository;

(14) Any drug product containing gamma-hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under section 505 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 355, as such section existed on January 1, 2014;

(15) Ketamine, its salts, isomers, and salts of isomers. Some other names for ketamine: (+/-)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone; and

(16) Tiletamine and zolazepam or any salt thereof. Trade or other names for a tiletamine-zolazepam combination product shall include, but are not limited to: telazol. Trade or other names for tiletamine shall include, but are not limited to: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone. Trade or other names for zolazepam shall include, but are not limited to: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-(3,4-e) (1,4)-diazepin-7(1H)-one, and flupyrazapon.

(c) Unless specifically excepted or unless listed in another schedule:

(1) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(A) Not more than one and eight-tenths grams of codeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(B) Not more than one and eight-tenths grams of codeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(C) Not more than one and eight-tenths grams of dihydrocodeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(D) Not more than three hundred milligrams of ethylmorphine per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(E) Not more than five hundred milligrams of opium per one hundred milliliters or per one hundred grams, or not more than twenty-five milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; and

(F) Not more than fifty milligrams of morphine per one hundred milliliters or per one hundred grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; and

(2) Any material, compound, mixture, or preparation containing any of the following narcotic drug or its salts, as set forth below:

(A) Buprenorphine.

(d) Unless contained on the administration's list of exempt anabolic steroids as the list existed on January 1, 2014, any anabolic steroid, which shall include any material, compound, mixture, or preparation containing any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts of isomers is possible within the specific chemical designation:

(1) 3-beta,17-dihydroxy-5a-androstane;

(2) 3-alpha,17-beta-dihydroxy-5a-androstane;

(3) 5-alpha-androstan-3,17-dione;

(4) 1-androstenediol (3-beta,17-beta-dihydroxy-5-alpha-androst-1-ene);

(5) 1-androstenediol (3-alpha,17-beta-dihydroxy-5-alpha-androst-1-ene);

(6) 4-androstenediol (3-beta,17-beta-dihydroxy-androst-5-ene);

(7) 5-androstenediol (3-beta,17-beta-dihydroxy-androst-5-ene);
(8) 1-androstenedione ([5-alpha]-androst-1-en-3,17-dione);
(9) 4-androstenedione (androst-4-en-3,17-dione);
(10) 5-androstenedione (androst-5-en-3,17-dione);
(11) Bolasterone (7-alpha,17-alpha-dimethyl-17-beta-hydroxyandrost-4-en-3-one);
(12) Boldenone (17-beta-hydroxyandrost-1,4-diene-3-one);
(13) Boldione (androsta-1,4-diene-3,17-3-one);
(14) Calusterone (7-beta,17-alpha-dimethyl-17-beta-hydroxyandrost-4-en-3-one);
(15) Clostebol (4-chloro-17-beta-hydroxyandrost-4-en-3-one);
(16) Dehydrochloromethyltestosterone (4-chloro-17-beta-hydroxy-17-alpha-methyl-androst-1,4-dien-3-one);
(17) Desoxymethyltestosterone (17-alpha-methyl-5-alpha-androst-2-en-17-beta-ol) (a.k.a. 'madol');
(18) Delta-1-Dihydrotestosterone (a.k.a. '1-testosterone')(17-beta-hydroxy-5-alpha-androst-1-en-3-one);
(19) 4-Dihydrotestosterone (17-beta-hydroxy-androstan-3-one);
(20) Drostanolone (17-beta-hydroxy-2-alpha-methyl-5-alpha-androstan-3-one);
(21) Ethylestrenol (17-alpha-ethyl-17-beta-hydroxyestr-4-ene);
(22) Fluoxymesterone (9-fluoro-17-alpha-methyl-11-beta,17-beta-dihydroxyandrost-4-en-3-one);
(23) Formebulone (formebolone); (2-formyl-17-alpha-methyl-11-alpha,17-beta-dihydroxyandrost-1,4-dien-3-one);
(24) Furazabol (17-alpha-methyl-17-beta-hydroxyandrostano[2,3-c]-furazan);
(25) 13-beta-ethyl-17-beta-hydroxygon-4-en-3-one;
(26) 4-hydroxytestosterone (4,17-beta-dihydroxy-androst-4-en-3-one);
(27) 4-hydroxy-19-nortestosterone (4,17-beta-dihydroxy-estr-4-en-3-one);
(28) Mestanolone (17-alpha-methyl-17-beta-hydroxy-5-androstan-3-one);
(29) Mesterolone (17-alpha-methyl-17-beta-hydroxy-5-androstan-3-one);
(30) Methandienone (17-alpha-methyl-17-beta-hydroxyandrost-1,4-dien-3-one);
(31) Methandriol (17-alpha-methyl-3-beta,17-beta-dihydroxyandrost-5-ene);
(32) Methasterone (2-alpha,17-alpha-dimethyl-5-alpha-androstan-17-beta-ol-3-one);
(33) Methenolone (1-methyl-17-beta-hydroxy-5-alpha-androst-1-en-3-one);
(34) 17-alpha-methyl-3-beta,17-beta-dihydroxy-5a-androstane;
(35) 17-alpha-methyl-3-alpha,17-beta-dihydroxy-5a-androstane;
(36) 17-alpha-methyl-3-beta,17-beta-dihydroxyandrost-4-ene;
(37) 17-alpha-methyl-4-hydroxynandrolone (17-alpha-methyl-4-hydroxy-17-beta-hydroxyestr-4-en-3-one);
(38) Methyldienolone (17-alpha-methyl-17-beta-hydroxyestra-4,9(10)-dien-3-one);
(39) Methyltrienolone (17-alpha-methyl-17-beta-hydroxyestra-4,9,11-trien-3-one);
(40) Methyltestosterone (17-alpha-methyl-17-beta-hydroxyandrost-4-en-3-one);
(41) Mibolerone (7-alpha,17-alpha-dimethyl-17-beta-hydroxyestr-4-en-3-one);
(42) 17-alpha-methyl-delta-1-dihydrotestosterone (17-beta-hydroxy-17-alpha-methyl-5-alpha-androst-1-en-3-one) (a.k.a. '17-alpha-methyl-1-testosterone');
(43) Nandrolone (17-beta-hydroxyestr-4-en-3-one);
(44) 19-nor-4-androstenediol (3-beta, 17-beta-dihydroxyestr-4-ene);
(45) 19-nor-4-androstenediol (3-alpha, 17-beta-dihydroxyestr-4-ene);
(46) 19-nor-5-androstenediol (3-beta, 17-beta-dihydroxyestr-5-ene);
(47) 19-nor-5-androstenediol (3-alpha, 17-beta-dihydroxyestr-5-ene);
(48) 19-nor-4,9(10)-androstadienedione (estra-4,9(10)-diene-3,17-dione);
(49) 19-nor-4-androstenedione (estr-4-en-3,17-dione);
(50) 19-nor-5-androstenedione (estr-5-en-3,17-dione);
(51) Norbolethone (13-beta, 17-alpha-diethyl-17-beta-hydroxygon-4-en-3-one);
(52) Norclostebol (4-chloro-17-beta-hydroxyestr-4-en-3-one);
(53) Norethandrolone (17-alpha-ethyl-17-beta-hydroxyestr-4-en-3-one);
(54) Normethandrolone (17-alpha-methyl-17-beta-hydroxyestr-4-en-3-one);
(55) Oxandrolone (17-alpha-methyl-17-beta-hydroxy-2-oxa-[5-alpha]-androstan-3-one);
(56) Oxymesterone (17-alpha-methyl-4,17-beta-dihydroxyandrost-4-en-3-one);
(57) Oxymetholone (17-alpha-methyl-2-hydroxymethylene-17-beta-hydroxy-[5-alpha]-androstan-3-one);
(58) Prostanozol (17-beta-hydroxy-5-alpha-androstano[3,2-c]pyrazole);
(59) Stanozolol (17-alpha-methyl-17-beta-hydroxy-[5-alpha]-androst-2-eno[3,2-c]-pyrazole);
(60) Stenbolone (17-beta-hydroxy-2-methyl-[5-alpha]-androst-1-en-3-one);
(61) Testolactone (13-hydroxy-3-oxo-13,17-secoandrosta-1,4-dien-17-oic acid lactone);
(62) Testosterone (17-beta-hydroxyandrost-4-en-3-one);
(63) Tetrahydrogestrinone (13-beta, 17-alpha-diethyl-17-beta-hydroxygon-4,9,11-trien-3-one);

(64) Trenbolone (17-beta-hydroxyestr-4,9,11-trien-3-one); and

(65) Any salt, ester, or ether of a drug or substance described or listed in this subdivision if the salt, ester, or ether promotes muscle growth.

(e) Hallucinogenic substances known as:

(1) Dronabinol, synthetic, in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the federal Food and Drug Administration. Some other names for dronabinol are (6aR-trans)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo (b,d)pyran-1-ol or (-)-delta-9-(trans)-tetrahydrocannabinol.

Schedule IV

(a) Any material, compound, mixture, or preparation which contains any quantity of the following substances, including their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Barbital;

(2) Chloral betaine;

(3) Chloral hydrate;

(4) Chlordiazepoxide, but not including librax (chlordiazepoxide hydrochloride and clindinium bromide) or menrium (chlordiazepoxide and water soluble esterified estrogens);

(5) Clonazepam;

(6) Clorazepate;

(7) Diazepam;

(8) Ethchlorvynol;

(9) Ethinamate;

(10) Flurazepam;

(11) Mebutamate;

(12) Meprobamate;

(13) Methohexital;

(14) Methylphenobarbital;

(15) Oxazepam;

(16) Paraldehyde;

(17) Petrichloral;

(18) Phenobarbital;

(19) Prazepam;

(20) Alprazolam;

(21) Bromazepam;

(22) Camazepam;

(23) Clobazam;

(24) Clotiazepam;

(25) Cloxazolam;

(26) Delorazepam;

(27) Estazolam;

(28) Ethyl loflazepate;

(29) Fludiazepam;

(30) Flunitrazepam;

(31) Halazepam;

(32) Haloxazolam;

(33) Ketazolam;

(34) Loprazolam;

(35) Lorazepam;

(36) Lormetazepam;

(37) Medazepam;

(38) Nimetazepam;

(39) Nitrazepam;

(40) Nordiazepam;

(41) Oxazolam;

(42) Pinazepam;

(43) Temazepam;

(44) Tetrazepam;

(45) Triazolam;

(46) Midazolam;

(47) Quazepam;
(48) Zolpidem;
(49) Dichloralphenazone;
(50) Zaleplon;
(51) Zopiclone;
(52) Fospropofol;
(53) Alfaxalone;
(54) Suvorexant; and
(55) Carisoprodol.

(b) Any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts, isomers, whether optical, position, or geometric, and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible: Fenfluramine.

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, whether optical, position, or geometric, and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Diethylpropion;
(2) Phentermine;
(3) Pemoline, including organometallic complexes and chelates thereof;
(4) Mazindol;
(5) Pipradrol;
(6) SPA, ((-)-1-dimethylamino- 1,2-diphenylethane);
(7) Cathine. Another name for cathine is ((+)-norpseudoephedrine);
(8) Fencamfamin;
(9) Fenproporex;
(10) Mefenorex;
(11) Modafinil; and
(12) Sibutramine.

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following narcotic drugs, or their salts or isomers calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(1) Propoxyphene in manufactured dosage forms;

(2) Not more than one milligram of difenoxin and not less than twenty-five micrograms of atropine sulfate per dosage unit; and

(3) 2-[(dimethylamino)methyl]-1-(3-methoxyphenyl)cyclohexanol, its salts, optical and geometric isomers, and salts of these isomers to include: Tramadol.

(e) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts:

(1) Pentazocine; and

(2) Butorphanol (including its optical isomers).

(f) Any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible: Lorcaserin.

(g)(1) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts, optical isomers, and salts of such optical isomers: Ephedrine.

(2) The following drug products containing ephedrine, its salts, optical isomers, and salts of such optical isomers, are excepted from subdivision (g)(1) of Schedule IV if they (A) are stored behind a counter, in an area not accessible to customers, or in a locked case so that a customer needs assistance from an employee to access the drug product; (B) are sold by a person, eighteen years of age or older, in the course of his or her employment to a customer eighteen years of age or older with the following restrictions: No customer shall be allowed to purchase, receive, or otherwise acquire more than three and six-tenths grams of ephedrine base during a twenty-four-hour period; no customer shall purchase, receive, or otherwise acquire more than nine grams of ephedrine base during a thirty-day period; and the customer shall display a valid driver's or operator's license, a Nebraska state identification card, a military identification card, an alien registration card, or a passport as proof of identification; (C) are labeled and marketed in a manner consistent with the pertinent OTC Tentative Final or Final Monograph; (D) are manufactured and distributed for legitimate medicinal use in a manner that reduces or eliminates the likelihood of abuse; and (E) are not marketed, advertised, or represented in any manner for the indication of

stimulation, mental alertness, euphoria, ecstasy, a buzz or high, heightened sexual performance, or increased muscle mass:

(i) Primatene Tablets; and

(ii) Bronkaid Dual Action Caplets.

Schedule V

(a) Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs or salts calculated as the free anhydrous base or alkaloid, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) Not more than two hundred milligrams of codeine per one hundred milliliters or per one hundred grams;

(2) Not more than one hundred milligrams of dihydrocodeine per one hundred milliliters or per one hundred grams;

(3) Not more than one hundred milligrams of ethylmorphine per one hundred milliliters or per one hundred grams;

(4) Not more than two and five-tenths milligrams of diphenoxylate and not less than twenty-five micrograms of atropine sulfate per dosage unit;

(5) Not more than one hundred milligrams of opium per one hundred milliliters or per one hundred grams; and

(6) Not more than five-tenths milligram of difenoxin and not less than twenty-five micrograms of atropine sulfate per dosage unit.

(b) Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers: Pyrovalerone.

(c) Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(1) Ezogabine (N-(2-amino-4-(4-fluorobenzylamino)-phenyl)-carbamic acid ethyl ester);

(2) Lacosamide ((R)-2-acetoamido-N-benzyl-3-methoxy-propionamide); and

(3) Pregabalin ((S)-3-(aminomethyl)-5-methylhexanoic acid).

Source: Laws 1977, LB 38, § 65; Laws 1978, LB 748, § 50; Laws 1980, LB 696, § 2; Laws 1985, LB 323, § 2; Laws 1985, LB 406, § 3; Laws 1986, LB 1160, § 1; Laws 1987, LB 473, § 1; Laws 1990, LB 571, § 6; Laws 1992, LB 1019, § 32; Laws 1994, LB 1210, § 3; Laws 1995, LB 406, § 5; Laws 1996, LB 1213, § 4; Laws 1998, LB 1073, § 8; Laws 1999, LB 594, § 1; Laws 2000, LB 1115, § 2; Laws 2001, LB 113, § 10; Laws 2002, LB 500, § 1; Laws 2003, LB 245, § 1; Laws 2005, LB 382, § 2; Laws 2007, LB247, § 2; Laws 2008, LB902, § 1; Laws 2009, LB123, § 1; Laws 2009, LB151, § 1; Laws 2010, LB792, § 1; Laws 2011, LB19, § 1; Laws 2012, LB670, § 1; Laws 2013, LB298, § 1; Laws 2014, LB811, § 4; Laws 2015, LB390, § 4.

28-406. Registration; fees. (1) The department shall issue registrations and reregistrations to manufacture, distribute, prescribe, or dispense controlled substances within this state on a biennial basis.

(2) The various fees to be paid by applicants for registrations and reregistrations, as required under the Uniform Controlled Substances Act, shall be as follows:

(a) Registration or reregistration to manufacture controlled substances, not less than one hundred dollars and not more than three hundred dollars;

(b) Registration or reregistration to distribute controlled substances, not less than one hundred dollars and not more than three hundred dollars;

(c) Registration or reregistration to prescribe, administer, or dispense controlled substances, not less than twenty dollars and not more than one hundred fifty dollars;

(d) Registration or reregistration to engage in research on the use and effects of controlled substances, not less than fifty dollars and not more than two hundred dollars;

(e) Registration or reregistration to engage in laboratory and analytical analysis of controlled substances, not less than fifty dollars and not more than two hundred dollars; and

(f) Registration or reregistration to provide detoxification treatment or maintenance treatment, not less than twenty dollars and not more than one hundred fifty dollars.

(3) The department shall remit the fees to the State Treasurer for credit to the Professional and Occupational Credentialing Cash Fund.

(4) All registrations and reregistrations shall expire on August 31 of each odd-numbered year. Registration shall be automatically denied without a hearing for nonpayment of fees. Any registration or reregistration not renewed by payment of renewal fees by October 1 of odd-numbered years shall be automatically denied and canceled on October 2 of odd-numbered years without a hearing.

(5) The department is authorized to adopt and promulgate rules and regulations necessary to implement this section.

Source: Laws 1977, LB 38, § 66; Laws 1985, LB 323, § 3; Laws 1992, LB 1019, § 33; Laws 1997, LB 307, § 4; Laws 1997, LB 550, § 1; Laws 1999, LB 594, § 2; Laws 2001, LB 398, § 4; Laws 2003, LB 242, § 2. Operative date July 1, 2004.

28-407 Registration required; exceptions. (1) Except as otherwise provided in this section, every person who manufactures, prescribes, distributes, administers, or dispenses any controlled substance within this state or who proposes to engage in the manufacture, prescribing, administering, distribution, or dispensing of any controlled substance within this state shall obtain a registration issued by the department, except that on and after January 1, 2000, health care providers credentialed by the department and facilities licensed by the department shall not be required to obtain a separate Nebraska controlled substances registration upon providing proof of a Federal Controlled Substances Registration to the department. Federal Controlled Substances Registration numbers obtained under this section shall not be public information but may be shared by the department for investigative and regulatory purposes if necessary and only under appropriate circumstances to ensure against any unauthorized access to such information.

(2) The following persons shall not be required to register and may lawfully possess controlled substances under the provisions of the Uniform Controlled Substances Act:

(a) An agent, or an employee thereof, of any practitioner, registered manufacturer, distributor, or dispenser of any controlled substance if such agent is acting in the usual course of his or her business or employment;

(b) A common or contract carrier or warehouse keeper, or an employee thereof, whose possession of any controlled substance is in the usual course of his or her business or employment; and

(c) An ultimate user or a person in possession of any controlled substance pursuant to a medical order issued by a practitioner authorized to prescribe.

(3) A separate registration shall be required at each principal place of business of professional practice where the applicant manufactures, distributes, or dispenses controlled substances, except that no registration shall be required in connection with the placement of an emergency box within a long-term care facility pursuant to the provisions of the Emergency Box Drug Act.

(4) The department is authorized to inspect the establishment of a registrant or applicant for registration in accordance with the rules and regulations promulgated.

Source: Laws 1977, LB 38, § 67; Laws 1994, LB 1210, § 4; Laws 1997, LB 307, § 5; Laws 1997, LB 550, § 2; Laws 1999, LB 828, § 1; Laws 2001, LB 398, § 5; Laws 2009, LB195, § 2. Effective Date: August 30, 2009.

28-408. Registration to manufacture or distribute controlled substances; factors considered. (1) The department shall register an applicant to manufacture or distribute controlled substances included in Schedules I to V of section 28-405 unless the department determines that the issuance of such registration is inconsistent with the public interest. In determining the public interest the department shall consider the following factors:

(a) Maintenance of effective controls against diversion of particular controlled substances and any Schedule I or II substance compounded therefrom into other than legitimate medical, scientific, or industrial channels;

(b) Compliance with applicable state and local law;

(c) Whether the applicant has been convicted of a felony under any law of the United States or of any state or has been convicted of a violation relating to any substance defined in the Uniform Controlled Substances Act as a controlled substance under any law of the United States or any state, except that such fact in itself shall not be an automatic bar to registration;

(d) Past experience in the manufacture or distribution of controlled substances, and the existence in the applicant's establishment of effective controls against diversion; and

(e) Such other factors as may be relevant to and consistent with the public health and safety.

(2) Registration granted under subsection (1) of this section shall not entitle a registrant to manufacture or distribute controlled substances in Schedule I or II of section 28-405 other than those specified in the registration.

(3) Except as otherwise provided in this section and section 28-409, practitioners shall be registered to prescribe, administer, or dispense substances in Schedules II to V of section 28-405 if they are authorized to prescribe, administer, or dispense under the laws of this state. A registration application by a practitioner who wishes to conduct research with Schedule I substances shall be referred to the department for approval or disapproval. Registration to prescribe, administer, or dispense substances in Schedules II to V of section 28-405 or registration for the purpose of bona fide research with Schedule I substances by a practitioner may be denied

only on a ground specified in subsection (1) of section 28-409 or if there are reasonable grounds to believe that the applicant will abuse or unlawfully transfer such substances or fail to safeguard adequately his or her supply of such substances against diversion from legitimate medical or scientific use.

(4) Compliance by manufacturers and distributors with the Controlled Substances Act, 21 U.S.C. 801 et seq., as such act existed on May 1, 2001, respecting registration, excluding fees, shall be deemed compliance with this section.

Source: Laws 1977, LB 38, § 68; Laws 1985, LB 323, § 4; Laws 1997, LB 307, § 6; Laws 2001, LB 398, § 6. Operative date May 1, 2001.

28-409. Registrant; disciplinary action; grounds; procedure. (1) A registration pursuant to section 28-408 to prescribe, administer, manufacture, distribute, or dispense a controlled substance may be denied, suspended, revoked, or renewal refused by the department upon a finding that the applicant or registrant:

(a) Has falsified any application filed pursuant to the Uniform Controlled Substances Act or required by the act;

(b) Has been convicted of a felony subsequent to being granted a registration pursuant to section 28-408 under any law of the United States or of any state or has been convicted of a violation relating to any substance defined in the act as a controlled substance subsequent to being granted a registration pursuant to section 28-408 under any law of the United States or of any state;

(c) Has had his or her federal registration suspended or revoked by competent federal authority and is no longer authorized by federal law to engage in the prescribing, manufacturing, distribution, or dispensing of controlled substances;

(d) Is guilty of any of the acts or offenses listed in section 38-178 for which disciplinary measures may be taken against his or her license, certificate, or registration to practice and which have a rational connection with his or her fitness to prescribe, administer, or dispense a controlled substance. The department may automatically revoke or suspend the registration of a practitioner who has had his or her license, certificate, or registration to practice revoked or suspended and is no longer authorized to prescribe, administer, or dispense under the laws of this state or who has had his or her license, certificate, or registration to practice limited or restricted and is no longer authorized to prescribe, administer, or dispense controlled substances under the laws of this state;

(e) Is habitually intoxicated or is dependent upon or actively addicted to alcohol or any controlled substance or narcotic drug; or

(f) Has violated the Uniform Controlled Substances Act or any rules or regulations adopted and promulgated pursuant to the act.

(2) The department may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.

(3) A person whose registration or renewal has been denied, revoked, or suspended shall be afforded an opportunity for a hearing in accordance with the Administrative Procedure Act. Such proceedings shall be independent of, and not in lieu of, criminal prosecutions or other proceedings under the Uniform Controlled Substances Act or any law of the state, except that such proceedings may be consolidated with proceedings under the Uniform Credentialing Act. Proceedings to refuse renewal of registration shall not abate the existing registration which shall remain in effect pending the outcome of the administrative hearing, except in cases when the department finds that there is an imminent danger to the public health or safety.

(4) The department may suspend any registration simultaneously with the institution of proceedings under this section or when renewal of registration is refused in cases when the department finds that there is an imminent danger to the public health or safety. Such suspension shall continue in effect until the conclusion of such proceedings, including judicial review thereof, unless sooner withdrawn by the department or dissolved by a court of competent jurisdiction.

(5) In the event the department suspends or revokes a registration granted under section 28-408, all controlled substances owned or possessed by the registrant pursuant to such registration at the time of suspension or the effective date of the revocation order, as the case may be, may in the discretion of the department be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all such controlled substances may be forfeited to the state.

(6) The administration shall be promptly notified of all orders limiting, suspending, or revoking registration.

Source: Laws 1977, LB 38, § 69; Laws 1985, LB 323, § 5; Laws 1991, LB 456, § 1; Laws 1994, LB 1210, § 5; Laws 2001, LB 398, § 7; Laws 2007, LB463, § 1121. Operative date December 1, 2008.

28-410. Records of registrants; inventory; violation; penalty; storage. (1) Each registrant manufacturing, distributing, or dispensing controlled substances in Schedule I, II, III, IV, or V of section 28-405 shall keep and maintain a complete and accurate record of all stocks of such controlled substances on hand. Such records shall be maintained for five years.

(2) Commencing January 1, 2009, each registrant manufacturing, distributing, storing, or dispensing such controlled substances shall prepare an annual inventory of each controlled substance in his or her possession. Such inventory shall (a) be taken within two years after the previous biennial inventory date but in no event later than December 31, 2009, and each year thereafter be taken within one year after the previous annual inventory date, (b) contain such information as shall be required by the Board of Pharmacy, (c) be copied and such copy forwarded to the department within thirty days after completion, (d) be maintained at the location listed on the registration for a period of five years, (e) contain the name, address, and Drug Enforcement Administration number of the registrant, the date and time of day the inventory was completed, and the signature of the person responsible for taking the inventory, (f) list the exact count or measure of all controlled substances listed in Schedules I, II, III, IV, and V of section 28-405, and (g) be maintained in permanent, read-only format separating the inventory for controlled substances listed in Schedules I and II of section 28-405 from the inventory for controlled substances listed in Schedules III, IV, and V of section 28-405. A registrant whose inventory fails to comply with this subsection shall be guilty of a Class IV misdemeanor.

(3) This section shall not apply to practitioners who prescribe or administer, as a part of their practice, controlled substances listed in Schedule II, III, IV, or V of section 28-405 unless such practitioner regularly engages in dispensing any such drug or drugs to his or her patients.

(4) Controlled substances shall be stored in accordance with the following:

(a) All controlled substances listed in Schedule I of section 28-405 must be stored in a locked cabinet; and

(b) All controlled substances listed in Schedule II, III, IV, or V of section 28-405 must be stored in a locked cabinet or distributed throughout the inventory of noncontrolled substances in a manner which will obstruct theft or diversion of the controlled substances.

Source: Laws 1977, LB 38, § 70; Laws 1996, LB 1108, § 2; Laws 1997, LB 307, § 7; Laws 1997, LB 550, § 3; Laws 2001, LB 398, § 8; Laws 2003, LB 242, § 3; Laws 2008, LB902, § 2. Operative date January 1, 2009.

28-411. Controlled substances; records; by whom kept; contents. (1) Every practitioner who is authorized to administer or professionally use controlled substances shall keep a record of such controlled substances received by him or her and a record of all such controlled substances administered or professionally used by him or her, other than by medical order issued by a practitioner authorized to prescribe, in accordance with subsection (4) of this section.

(2) Manufacturers, wholesalers, distributors, and reverse distributors shall keep records of all controlled substances compounded, mixed, cultivated, grown, or by any other process produced or prepared and of all controlled substances received and disposed of by them, in accordance with subsection (4) of this section.

(3) Pharmacies shall keep records of all controlled substances received and disposed of by them, in accordance with subsection (4) of this section.

(4) The record of controlled substances received shall in every case show (a) the date of receipt, (b) the name, address, and Drug Enforcement Administration number of the person receiving the controlled substances, (c) the name, address, and Drug Enforcement Administration number of the person from whom received, (d) the kind and quantity of controlled substances received, (e) the kind and quantity of controlled substances produced or removed from process of manufacture, and (f) the date of such production or removal from process of manufacture. The record shall in every case show the proportion of morphine, cocaine, or ecgonine contained in or producible from crude opium or coca leaves received or produced. The record of all controlled substances sold, administered, dispensed, or otherwise disposed of shall show the date of selling, administering, or dispensing, the name and address of the person to whom or for whose use or the owner and species of animal for which the controlled substances were sold, administered, or dispensed, and the kind and quantity of controlled substances. For any lost, destroyed, or stolen controlled substances, the record shall list the kind and quantity of such controlled substances and the discovery date of such loss, destruction, or theft. Every such record shall be kept for a period of five years from the date of the transaction recorded.

(5) Any person authorized to compound controlled substances shall comply with section 38-2867.01.

Source: Laws 1977, LB 38, § 71; Laws 1988, LB 273, § 4; Laws 1995, LB 406, § 6; Laws 1996, LB 1044, § 69; Laws 2001, LB 398, § 9; Laws 2015, LB37, § 28. **Effective Date: August 30, 2015**

28-412. Narcotic drugs; administration to narcotic-dependent person; violation; penalty. (1) It is unlawful to prescribe any narcotic drug listed in section 28-405, except buprenorphine, for the purpose of detoxification treatment or maintenance treatment except as provided in this section.

(2) A narcotic drug may be administered or dispensed to a narcotic-dependent person for detoxification treatment or maintenance treatment by a practitioner who is registered to provide detoxification treatment or maintenance treatment pursuant to section 28-406.

(3) A narcotic drug may be administered or dispensed to a narcotic-dependent person when necessary to relieve acute withdrawal symptoms pending the referral of such person for detoxification treatment or maintenance treatment by a physician who is not registered to provide detoxification treatment or maintenance treatment under section 28-406. Not more than one day's supply of narcotic drugs shall be administered or dispensed for such person's use at one time. Such treatment shall not be continued for more than three successive calendar days and may not be renewed or extended.

(4) A narcotic drug may be administered or dispensed in a hospital to maintain or detoxify a person as an incidental adjunct to medical or surgical treatment conditions other than dependence.

(5) Any person who violates this section is guilty of a Class IV felony.

(6) For purposes of this section:

(a) Detoxification treatment means the administering or dispensing of a narcotic drug in decreasing doses to a person for a specified period of time to alleviate adverse physiological or psychological effects incident to withdrawal from the continuous or sustained use of a narcotic drug and to bring such person to a narcotic drug-free state within such period of time. Detoxification treatment includes short-term detoxification treatment and long-term detoxification treatment;

(b) Long-term detoxification treatment means detoxification treatment for a period of more than thirty days but not more than one hundred eighty days;

(c) Maintenance treatment means the administering or dispensing of a narcotic drug in the treatment of a narcotic-dependent person for a period of more than twenty-one days; and

(d) Short-term detoxification treatment means detoxification treatment for a period of not more than thirty days.

Source: Laws 1977, LB 38, § 72; Laws 1996, LB 1044, § 70; Laws 1996, LB 1108, § 3; Laws 1999, LB 379, § 2; Laws 1999, LB 594, § 3; Laws 2001, LB 398, § 10; Laws 2007, LB247, § 3. Operative date June 1, 2007.

28-413. Distribution to another registrant; manner. Controlled substances listed in Schedules I and II of section 28-405 shall be distributed by a registrant to another registrant pursuant to an order form or the electronic controlled substance ordering system of the administration.

Compliance with the provisions of the Controlled Substances Act, 21 U.S.C. 801 et seq., as such act existed on January 1, 2014, respecting order forms shall be deemed compliance with this section.

Source: Laws 1977, LB 38, § 73; Laws 2001, LB 398, § 11; Laws 2014, LB811, § 5. **Effective Date: July 18, 2014.**

28-414. Controlled substance; Schedule II; prescription; contents. (1) Except as otherwise provided in this section or section 28-412 or when administered directly by a practitioner to an ultimate user, a controlled substance listed in Schedule II of section 28-405 shall not be dispensed without a prescription from a practitioner authorized to prescribe. No prescription for a controlled substance listed in Schedule II of section 28-405 shall be filled more than six months from the date of issuance. A prescription for a controlled substance listed in Schedule II of section 28-405 shall not be refilled.

(2) A prescription for controlled substances listed in Schedule II of section 28-405 must contain the following information prior to being filled by a pharmacist or dispensing practitioner: (a) Patient's name and address, (b) name of the drug, device, or biological, (c) strength of the drug or biological, (d) dosage form of the drug or biological, if applicable, (e) quantity of the drug, device, or biological prescribed, (f) directions for use, (g) date of issuance, (h) prescribing practitioner's name and address, and (i) Drug Enforcement Administration number of the prescribing practitioner. If the prescription is a written paper prescription, the paper prescription must contain the prescribing practitioner's manual signature. If the prescription is an electronic prescription, the electronic prescription must contain all of the elements in subdivisions (a) through (i) of this subsection, must be digitally signed, and must be transmitted to and received by the pharmacy electronically to meet all of the requirements of the Controlled Substances Act, 21 U.S.C. 801 et seq., as it existed on January 1, 2014, pertaining to electronic prescribing of controlled substances.

(3) In emergency situations as defined by rule and regulation of the department, a controlled substance listed in Schedule II of section 28-405 may be dispensed pursuant to an oral prescription reduced to writing in accordance with subsection (2) of this section, except for the prescribing practitioner's signature, and bearing the word "emergency".

(4)(a) In nonemergency situations:

(i) A controlled substance listed in Schedule II of section 28-405 may be dispensed pursuant to a facsimile of a written, signed paper prescription if the original written, signed paper prescription is presented to the pharmacist for review before the controlled substance is dispensed, except as provided in subdivision (a)(ii) or (iii) of this subsection;

(ii) A narcotic drug listed in Schedule II of section 28-405 may be dispensed pursuant to a facsimile of a written, signed paper prescription (A) to be compounded for direct parenteral administration to a patient for the purpose of home infusion therapy or (B) for administration to a patient enrolled in a hospice care program and bearing the words "hospice patient"; and

(iii) A controlled substance listed in Schedule II of section 28-405 may be dispensed pursuant to a facsimile of a written, signed paper prescription for administration to a resident of a long-term care facility.

(b) For purposes of subdivisions (a)(ii) and (iii) of this subsection, a facsimile of a written, signed paper prescription shall serve as the original written prescription and shall be maintained in accordance with subsection (1) of section 28-414.03.

(5)(a) A prescription for a controlled substance listed in Schedule II of section 28-405 may be partially filled if the pharmacist does not supply the full quantity prescribed and he or she makes a notation of the quantity supplied on the face of the prescription or in the electronic record. The remaining portion of the prescription may be filled within seventy-two hours of the first partial filling. The pharmacist shall notify the prescribing practitioner if the remaining portion of the prescription is not or cannot be filled within such period. No further quantity may be supplied after such period without a new written, signed paper prescription.

(b) A prescription for a controlled substance listed in Schedule II of section 28-405 written for a patient in a long-term care facility or for a patient with a medical diagnosis documenting a terminal illness may be partially filled. Such prescription shall bear the words "terminally ill" or "long-term care facility patient" on its face or in the electronic record. If there is any question whether a patient may be classified as having a terminal illness, the pharmacist shall contact the prescribing practitioner prior to partially filling the prescription. Both the pharmacist and the prescribing practitioner have a corresponding responsibility to assure that the controlled substance is for a terminally ill patient. For each partial filling, the dispensing pharmacist shall record on the back of the prescription or on another appropriate record, uniformly maintained and readily retrievable, the date of the partial filling, quantity dispensed, remaining quantity authorized to be dispensed, and the identification of the dispensing pharmacist. The total quantity of controlled substances listed in Schedule II which is dispensed in all partial fillings shall not exceed the total quantity prescribed. A prescription for a Schedule II controlled substance for a patient in a long-term care facility or a patient with a medical diagnosis documenting a terminal illness is valid for sixty days from the date of issuance or until discontinuance of the prescription, whichever occurs first.

Source: Laws 1977, LB 38, § 74; Laws 1988, LB 273, § 5; Laws 1995, LB 406, § 7; Laws 1996, LB 1108, § 4; Laws 1997, LB 307, § 8; Laws 1999, LB 594, § 4; Laws 2000, LB 819, § 65; Laws 2001, LB 398, § 12; Laws 2004, LB 1005, § 2; Laws 2005, LB 382, § 3; Laws 2007, LB463, § 1122; Laws 2009, LB195, § 3; Laws 2011, LB179, § 1; Laws 2014, LB811, § 6. **Effective Date: July 18, 2014.**

28-414.01. Controlled substance; Schedule III, IV, or V; prescription; contents. (1) Except as otherwise provided in this section or when administered directly by a practitioner to an ultimate user, a controlled substance listed in Schedule III, IV, or V of section 28-405 shall not be dispensed without a written, oral, or electronic medical order. Such medical order is valid for six months after the date of issuance. Original prescription information for any controlled substance listed in Schedule III, IV, or V of section 28-405 may be transferred between pharmacies for purposes of refill dispensing pursuant to section 38-2871.

(2) A prescription for controlled substances listed in Schedule III, IV, or V of section 28-405 must contain the following information prior to being filled by a pharmacist or dispensing practitioner: (a) Patient's name and address, (b) name of the drug, device, or biological, (c) strength of the drug or biological, (d) dosage form of the drug or biological, if applicable, (e) quantity of the drug, device, or biological prescribed, (f) directions for use, (g) date of issuance, (h) number of refills, not to exceed five refills within six months after the date of issuance, (i) prescribing practitioner's name and address, and (j) Drug Enforcement Administration number of the prescribing practitioner. If the prescription is a written paper prescription, the paper prescription must contain the prescribing practitioner's manual signature. If the prescription is an electronic prescription, the electronic prescription must contain all of the elements in subdivisions (a) through (j) of this subsection, must be digitally signed, and must be transmitted to and received by the pharmacy electronically to meet all of the requirements of 21 C.F.R. 1311, as the regulation existed on January 1, 2014, pertaining to electronic prescribing of controlled substances.

(3) A controlled substance listed in Schedule III, IV, or V of section 28-405 may be dispensed pursuant to a facsimile of a written, signed paper prescription. The facsimile of a written, signed paper prescription shall serve as the original written prescription for purposes of this subsection and shall be maintained in accordance with subsection (2) of section 28-414.03.

(4) A prescription for a controlled substance listed in Schedule III, IV, or V of section 28-405 may be partially filled if (a) each partial filling is recorded in the same manner as a refilling, (b) the total quantity dispensed in all partial fillings does not exceed the total quantity prescribed, and (c) each partial filling is dispensed within six months after the prescription was issued.

Source: Laws 2014, LB811, § 7. **Effective Date: July 18, 2014.**

28-414.02. Prescription created, signed, transmitted, and received electronically; records. (1) If a prescription is created, signed, transmitted, and received electronically, all records related to that prescription must be retained electronically.

(2) Electronic records must be maintained electronically for five years after the date of their creation or receipt.

(3) Records regarding controlled substances must be readily retrievable from all other records. Electronic records must be easily readable or easily rendered into a format that a person can read.

(4) Records of electronic prescriptions for controlled substances shall be maintained in an application that meets the requirements of 21 C.F.R. 1311, as the regulation existed on January 1, 2014. The computers on which the records are maintained may be located at another location, but the records must be readily retrievable at the registered location if requested by an agent of the department or the administration or other law enforcement agent. The electronic application must be capable of printing out or transferring the records in a format that is readily understandable to an agent of the department or the administration or other law enforcement agent at the registered location.

Source: Laws 2014, LB811, § 8. **Effective Date: July 18, 2014.**

28-414.03. Controlled substances; maintenance of records; label. (1) Paper prescriptions for all controlled substances listed in Schedule II of section 28-405 shall be kept in a separate file by the dispensing practitioner and shall be maintained for a minimum of five years. The practitioner shall make all such files readily available to the department and law enforcement for inspection without a search warrant.

(2) Prescriptions for all controlled substances listed in Schedule III, IV, or V of section 28-405 shall be maintained either separately from other prescriptions or in a form in which the information required is readily retrievable from ordinary business records of the dispensing practitioner and shall be maintained for a minimum of five years. The practitioner shall make all such records readily available to the department, the administration, and law enforcement for inspection without a search warrant.

(3) Before dispensing any controlled substance listed in Schedule II, III, IV, or V of section 28-405, the dispensing practitioner shall affix a label to the container in which the controlled substance is dispensed. Such label shall bear the name and address of the pharmacy or dispensing practitioner, the name of the patient, the date of filling, the serial number of the prescription under which it is recorded in the practitioner's prescription records, the name of the prescribing practitioner, and the directions for use of the controlled substance. Unless the prescribing practitioner writes "do not label" or words of similar import on the original paper prescription or so designates in an electronic prescription or an oral prescription, such label shall also bear the name of the controlled substance.

Source: Laws 2014, LB811, § 9. **Effective Date: July 18, 2014.**

28-414.04. Controlled substance; transfer. A registrant who is the owner of a controlled substance may transfer:

(1) Any controlled substance listed in Schedule I or II of section 28-405 to another registrant as provided by law or by rule and regulation of the department; and

(2) Any controlled substance listed in Schedule III, IV, or V of section 28-405 to another registrant if such owner complies with subsection (4) of section 28-411.

Source: Laws 2014, LB811, § 10. **Effective Date: July 18, 2014.**

28-414.05. Controlled substance; destruction; records. (1) The owner of any stock of controlled substances may cause such controlled substances to be destroyed pursuant to this section when the need for such substances ceases. Complete records of the destruction of controlled substances pursuant to this section shall be maintained by the registrant for five years after the date of destruction.

(2) If the owner is a registrant:

(a) Controlled substances listed in Schedule II, III, IV, or V of section 28-405 may be destroyed by a pharmacy inspector, by a reverse distributor, or by the administration. Upon destruction, any forms required by the administration to document such destruction shall be completed;

(b) Liquid controlled substances in opened containers which originally contained fifty milliliters or less or compounded liquid controlled substances within the facility where they were compounded may be destroyed if witnessed by two individuals credentialed under the Uniform Credentialing Act and designated by the facility and recorded in accordance with subsection (4) of section 28-411; or

(c) Solid controlled substances in opened unit-dose containers or which have been adulterated within a hospital where they were to be administered to patients in such hospital may be destroyed if witnessed by two individuals credentialed under the Uniform Credentialing Act and designated by the hospital and recorded in accordance with subsection (4) of section 28-411.

(3) If the owner is a resident of a long-term care facility or hospital, a controlled substance listed in Schedule II, III, IV, or V of section 28-405 shall be destroyed by two individuals credentialed under the Uniform Credentialing Act and designated by the facility or hospital.

Source: Laws 2014, LB811, § 11. **Effective Date: July 18, 2014.**

28-414.06. Controlled substance; practitioner; provide information; limit on liability or penalty. (1) Any practitioner who gives information to a law enforcement officer or professional board appointed pursuant to the Uniform Credentialing Act shall not be subject to any civil, criminal, or administrative liability or penalty for giving such information.

(2) As used in this section, unless the context otherwise requires:

(a) Information means information regarding unlawfully obtaining or attempting to obtain from a practitioner (i) a controlled substance, (ii) a written or oral prescription for a controlled substance, or (iii) the administration of a controlled substance; and

(b) Law enforcement officer has the definition found in section 81-1401.

Source: Laws 1988, LB 273, § 2; R.S.1943, (2008), § 28-1438.01; Laws 2014, LB811, § 12. **Effective Date: July 18, 2014.**

28-414.07. Controlled substances; chemical analysis; admissible as evidence in preliminary hearing. Whenever matter is submitted to the criminalistics laboratory of the Nebraska State Patrol for chemical analysis to determine if the matter is, or contains, a controlled substance, the report of that analysis shall be admissible in any preliminary hearing in any court in Nebraska as prima facie evidence of the identity, nature, and quantity of the matter analyzed. Nothing in this section is intended to require the use of a laboratory report in a preliminary hearing or to prohibit the use of other evidence, including circumstantial evidence, in the preliminary hearing to establish the identity, nature, and quantity of a controlled substance.

Source: Laws 1976, LB 487, § 1; R.R.S.1943, § 28-4,135.01, (1975); Laws 1984, LB 403, § 3; R.S.1943, (2008), § 28-1439; Laws 2014, LB811, § 13. **Effective Date: July 18, 2014.**

28-415. Narcotic drugs; label; requirements. (1) A manufacturer, distributor, or packager who sells or dispenses a narcotic drug or a wholesaler who sells or dispenses a narcotic drug in a package prepared by him or her shall securely affix a label to each package in which such drug is contained showing in legible English the name and address of the vendor and the quantity, kind, and form of narcotic drug contained therein. No person, except a pharmacy for the purpose of filling a medical order under the Uniform Controlled Substances Act, shall alter, deface, or remove any label so affixed.

(2) A pharmacy that sells or dispenses any narcotic drug on a prescription issued by a practitioner shall affix a label to the container in which such drug is sold or dispensed pursuant to subsection (3) of section 28-414.03. No person shall alter, deface, or remove any label so affixed.

Source: Laws 1977, LB 38, § 75; Laws 1988, LB 273, § 6; Laws 1995, LB 406, § 8; Laws 1999, LB 379, § 3; Laws 1999, LB 594, § 5; Laws 2001, LB 398, § 13; Laws 2014, LB811, § 14. **Effective Date: July 18, 2014.**

28-416. Prohibited acts; violations; penalties. (1) Except as authorized by the Uniform Controlled Substances Act, it shall be unlawful for any person knowingly or intentionally: (a) To manufacture, distribute, deliver, dispense, or possess with intent to manufacture, distribute, deliver, or dispense a controlled substance; or (b) to create, distribute, or possess with intent to distribute a counterfeit controlled substance.

(2) Except as provided in subsections (4), (5), (7), (8), (9), and (10) of this section, any person who violates subsection (1) of this section with respect to: (a) A controlled substance classified in Schedule I, II, or III of section 28-405 which is an exceptionally hazardous drug shall be guilty of a Class II felony; (b) any other controlled substance classified in Schedule I, II, or III of section 28-405 shall be guilty of a Class III felony; or (c) a controlled substance classified in Schedule IV or V of section 28-405 shall be guilty of a Class IIIA felony.

(3) A person knowingly or intentionally possessing a controlled substance, except marijuana or any substance containing a quantifiable amount of the substances, chemicals, or compounds described, defined, or delineated in subdivision (c)(25) of Schedule I of section 28-405, unless such substance was obtained directly or pursuant to a medical order issued by a practitioner authorized to prescribe while acting in the course of his or her professional practice, or except as otherwise authorized by the act, shall be guilty of a Class IV felony.

(4)(a) Except as authorized by the Uniform Controlled Substances Act, any person eighteen years of age or older who knowingly or intentionally manufactures, distributes, delivers, dispenses, or possesses with intent to manufacture, distribute, deliver, or dispense a controlled substance or a counterfeit controlled substance (i) to a person under the age of eighteen years, (ii) in, on, or within one thousand feet of the real property comprising a public or private elementary, vocational, or secondary school, a community college, a public or private college, junior college, or university, or a playground, or (iii) within one hundred feet of a public or private youth center, public swimming pool, or video arcade facility shall be punished by the next higher penalty classification than the penalty prescribed in subsection (2), (7), (8), (9), or (10) of this section, depending upon the controlled substance involved, for the first violation and for a second or subsequent violation shall be punished by the next higher penalty classification than that prescribed for a first violation of this subsection, but in no event shall such person be punished by a penalty greater than a Class IB felony.

(b) For purposes of this subsection:

(i) Playground shall mean any outdoor facility, including any parking lot appurtenant to the facility, intended for recreation, open to the public, and with any portion containing three or more apparatus intended for the recreation of children, including sliding boards, swingsets, and teeterboards;

(ii) Video arcade facility shall mean any facility legally accessible to persons under eighteen years of age, intended primarily for the use of pinball and video machines for amusement, and containing a minimum of ten pinball or video machines; and

(iii) Youth center shall mean any recreational facility or gymnasium, including any parking lot appurtenant to the facility or gymnasium, intended primarily for use by persons under eighteen years of age which regularly provides athletic, civic, or cultural activities.

(5)(a) Except as authorized by the Uniform Controlled Substances Act, it shall be unlawful for any person eighteen years of age or older to knowingly and intentionally employ, hire, use, cause, persuade, coax, induce, entice, seduce, or coerce any person under the age of eighteen years to manufacture, transport, distribute, carry, deliver, dispense, prepare for delivery, offer for delivery, or possess with intent to do the same a controlled substance or a counterfeit controlled substance.

(b) Except as authorized by the Uniform Controlled Substances Act, it shall be unlawful for any person eighteen years of age or older to knowingly and intentionally employ, hire, use, cause, persuade, coax, induce, entice, seduce, or coerce any person under the age of eighteen years to aid and abet any person in the manufacture, transportation, distribution, carrying, delivery, dispensing, preparation for delivery, offering for delivery, or possession with intent to do the same of a controlled substance or a counterfeit controlled substance.

(c) Any person who violates subdivision (a) or (b) of this subsection shall be punished by the next higher penalty classification than the penalty prescribed in subsection (2), (7), (8), (9), or (10) of this section, depending upon the controlled substance involved, for the first violation and for a second or subsequent violation shall be punished by the next higher penalty classification than that prescribed for a first violation of this subsection, but in no event shall such person be punished by a penalty greater than a Class IB felony.

(6) It shall not be a defense to prosecution for violation of subsection (4) or (5) of this section that the defendant did not know the age of the person through whom the defendant violated such subsection.

(7) Any person who violates subsection (1) of this section with respect to cocaine or any mixture or substance containing a detectable amount of cocaine in a quantity of:

(a) One hundred forty grams or more shall be guilty of a Class IB felony;

(b) At least twenty-eight grams but less than one hundred forty grams shall be guilty of a Class IC felony; or

(c) At least ten grams but less than twenty-eight grams shall be guilty of a Class ID felony.

(8) Any person who violates subsection (1) of this section with respect to base cocaine (crack) or any mixture or substance containing a detectable amount of base cocaine in a quantity of:

(a) One hundred forty grams or more shall be guilty of a Class IB felony;

(b) At least twenty-eight grams but less than one hundred forty grams shall be guilty of a Class IC felony; or

(c) At least ten grams but less than twenty-eight grams shall be guilty of a Class ID felony.

(9) Any person who violates subsection (1) of this section with respect to heroin or any mixture or substance containing a detectable amount of heroin in a quantity of:

(a) One hundred forty grams or more shall be guilty of a Class IB felony;

(b) At least twenty-eight grams but less than one hundred forty grams shall be guilty of a Class IC felony; or

(c) At least ten grams but less than twenty-eight grams shall be guilty of a Class ID felony.

(10) Any person who violates subsection (1) of this section with respect to amphetamine, its salts, optical isomers, and salts of its isomers, or with respect to methamphetamine, its salts, optical isomers, and salts of its isomers, in a quantity of:

(a) One hundred forty grams or more shall be guilty of a Class IB felony;

(b) At least twenty-eight grams but less than one hundred forty grams shall be guilty of a Class IC felony; or

(c) At least ten grams but less than twenty-eight grams shall be guilty of a Class ID felony.

(11) Any person knowingly or intentionally possessing marijuana weighing more than one ounce but not more than one pound shall be guilty of a Class III misdemeanor.

(12) Any person knowingly or intentionally possessing marijuana weighing more than one pound shall be guilty of a Class IV felony.

(13) Any person knowingly or intentionally possessing marijuana weighing one ounce or less or any substance containing a quantifiable amount of the substances, chemicals, or compounds described, defined, or delineated in subdivision (c)(25) of Schedule I of section 28-405 shall:

(a) For the first offense, be guilty of an infraction, receive a citation, be fined three hundred dollars, and be assigned to attend a course as prescribed in section 29-433 if the judge determines that attending such course is in the best interest of the individual defendant;

(b) For the second offense, be guilty of a Class IV misdemeanor, receive a citation, and be fined four hundred dollars and may be imprisoned not to exceed five days; and

(c) For the third and all subsequent offenses, be guilty of a Class IIIA misdemeanor, receive a citation, be fined five hundred dollars, and be imprisoned not to exceed seven days.

(14) Any person convicted of violating this section, if placed on probation, shall, as a condition of probation, satisfactorily attend and complete appropriate treatment and counseling on drug abuse provided by a program authorized under the Nebraska Behavioral Health Services Act or other licensed drug treatment facility.

(15) Any person convicted of violating this section, if sentenced to the Department of Correctional Services, shall attend appropriate treatment and counseling on drug abuse.

(16) Any person knowingly or intentionally possessing a firearm while in violation of subsection (1) of this section shall be punished by the next higher penalty classification than the penalty prescribed in subsection (2), (7), (8), (9), or (10) of this section, but in no event shall such person be punished by a penalty greater than a Class IB felony.

(17) A person knowingly or intentionally in possession of money used or intended to be used to facilitate a violation of subsection (1) of this section shall be guilty of a Class IV felony.

(18) In addition to the penalties provided in this section:

(a) If the person convicted or adjudicated of violating this section is eighteen years of age or younger and has one or more licenses or permits issued under the Motor Vehicle Operator's License Act:

(i) For the first offense, the court may, as a part of the judgment of conviction or adjudication, (A) impound any such licenses or permits for thirty days and (B) require such person to attend a drug education class;

(ii) For a second offense, the court may, as a part of the judgment of conviction or adjudication, (A) impound any such licenses or permits for ninety days and (B) require such person to complete no fewer than twenty and no more than forty hours of community service and to attend a drug education class; and

(iii) For a third or subsequent offense, the court may, as a part of the judgment of conviction or adjudication, (A) impound any such licenses or permits for twelve months and (B) require such person to complete no fewer than sixty hours of community service, to attend a drug education class, and to submit to a drug assessment by a licensed alcohol and drug counselor; and

(b) If the person convicted or adjudicated of violating this section is eighteen years of age or younger and does not have a permit or license issued under the Motor Vehicle Operator's License Act:

(i) For the first offense, the court may, as part of the judgment of conviction or adjudication, (A) prohibit such person from obtaining any permit or any license pursuant to the act for which such person would otherwise be eligible until thirty days after the date of such order and (B) require such person to attend a drug education class;

(ii) For a second offense, the court may, as part of the judgment of conviction or adjudication, (A) prohibit such person from obtaining any permit or any license pursuant to the act for which such person would otherwise be eligible until ninety days after the date of such order and (B) require such person to complete no fewer than twenty hours and no more than forty hours of community service and to attend a drug education class; and

(iii) For a third or subsequent offense, the court may, as part of the judgment of conviction or adjudication, (A) prohibit such person from obtaining any permit or any license pursuant to the act for which such person would otherwise be eligible until twelve months after the date of such order and (B) require such person to complete no fewer than sixty hours of community service, to attend a drug education class, and to submit to a drug assessment by a licensed alcohol and drug counselor.

A copy of an abstract of the court's conviction or adjudication shall be transmitted to the Director of Motor Vehicles pursuant to sections 60-497.01 to 60-497.04 if a license or permit is impounded or a juvenile is prohibited from obtaining a license or permit under this subsection.

Source: Laws 1977, LB 38, § 76; Laws 1978, LB 808, § 2; Laws 1980, LB 696, § 3; Laws 1985, LB 406, § 4; Laws 1986, LB 504, § 1; Laws 1989, LB 592, § 2; Laws 1991, LB 742, § 1; Laws 1993, LB 117, § 2; Laws 1995, LB 371, § 6; Laws 1997, LB 364, § 8; Laws 1999, LB 299, § 1; Laws 2001, LB 398, § 14; Laws 2003, LB 46, § 1; Laws 2004, LB 1083, § 86; Laws 2005, LB 117, § 3; Laws 2008, LB844, § 1; Laws 2010, LB800, § 4; Laws 2011, LB19, § 2; Laws 2011, LB463, § 1; Laws 2013, LB298, § 2. Effective Date: June 5, 2013.

28-417. Unlawful acts; violations; penalty. (1) It shall be unlawful for any person:

(a) To omit, remove, alter, or obliterate a symbol required by the federal Controlled Substances Act, 21 U.S.C. 801 et seq., as the act existed on September 1, 2001, or required by the laws of this state;

(b) To alter, deface, or remove any label affixed to a package of narcotic drugs;

(c) To refuse or fail to make, keep, or furnish any record, notification, order form, statement, invoice, or information required under the Uniform Controlled Substances Act;

(d) To refuse any entry into any premises for inspection authorized by the act;

(e) To keep or maintain any store, shop, warehouse, dwelling house, building, vehicle, boat, aircraft, or place whatever which such person knows or should know is resorted to by persons using controlled substances in violation of the Uniform Controlled Substances Act for the purpose of using such substances or which is used for the keeping or selling of the same in violation of the act;

(f) To whom or for whose use any controlled substance has been prescribed, sold, or dispensed by a practitioner or the owner of any animal for which any such substance has been prescribed, sold, or dispensed by a veterinarian to possess it in a container other than which it was delivered to him or her by the practitioner; or

(g) To be under the influence of any controlled substance for a purpose other than the treatment of a sickness or injury as prescribed or administered by a practitioner. In a prosecution under this subdivision, it shall not be necessary for the state to prove that the accused was under the influence of any specific controlled substance, but it shall be sufficient for a conviction under this subdivision for the state to prove that the accused was under the influence of some controlled substance by proving that the accused did manifest physical and physiological symptoms or reactions caused by the use of any controlled substance.

(2) Any person who violates this section shall be guilty of a Class III misdemeanor.

Source: Laws 1977, LB 38, § 77; Laws 1978, LB 920, § 1; Laws 1988, LB 273, § 7; Laws 2001, LB 113, § 11; Laws 2001, LB 398, § 15. Note: The changes made by LB 398 became operative May 1, 2001. The changes made by LB 113 became effective September 1, 2001.

28-418. Intentional violations; penalty. (1) It shall be unlawful for any person knowingly or intentionally:

(a) Who is a registrant to distribute a controlled substance classified in Schedule I or II of section 28-405 in the course of his or her legitimate business except in compliance with section 28-413;

(b) To use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended, or issued to another person;

(c) To acquire or obtain or to attempt to acquire or obtain possession of a controlled substance by theft, misrepresentation, fraud, forgery, deception, or subterfuge;

(d) To furnish false or fraudulent material information in or omit any material information from any application, report, or other document required to be kept or filed under the Uniform Controlled Substances Act or any record required to be kept by the act;

(e) To make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render such drug a counterfeit controlled substance;

(f) Who is subject to sections 28-406 to 28-414.05 to distribute or dispense a controlled substance in violation of sections 28-414 to 28-414.05;

(g) Who is a registrant to manufacture a controlled substance not authorized by his or her registration or to distribute or dispense a controlled substance not authorized by his or her registration to another registrant or authorized person;

(h) To possess a false or forged medical order for a controlled substance issued by a practitioner authorized to prescribe, except that this subdivision shall not apply to law enforcement officials, practitioners, or attorneys in the performance of their official lawful duties; or

(i) To communicate information to a practitioner in an effort to unlawfully procure a controlled substance, the administration of a controlled substance, or a medical order for a controlled substance issued by a practitioner authorized to prescribe.

(2) Any person who violates this section shall be guilty of a Class IV felony.

Source: Laws 1977, LB 38, § 78; Laws 1988, LB 273, § 8; Laws 2001, LB 113, § 12; Laws 2001, LB 398, § 16; Laws 2014, LB811, § 15. **Effective Date: July 18, 2014.**

28-419. Inhaling or drinking certain intoxicating substances; unlawful. No person shall breathe, inhale, or drink any compound, liquid, or chemical containing acetate, acetone, benzene, butyl alcohol, cyclohexanone, ethyl acetate, ethyl alcohol, ethylene dichloride, ethylene trichloride, hexane, isopropanol, isopropyl alcohol, methyl alcohol, methyl cellosolve acetate, methyl ethyl ketone, methyl isobutyl ketone, pentachlorophenol, petroleum ether, toluene, toluol, trichloroathane, trichloroethylene, or any other substance for the purpose of inducing a condition of intoxication, stupefaction, depression, giddiness, paralysis, inebriation, excitement, or irrational behavior, or in any manner changing, distorting, or disturbing the auditory, visual, mental, or nervous processes. For the purposes of sections 28-419 to 28-424, any such condition so induced shall be deemed an intoxicated condition.

Source: Laws 1977, LB 38, § 79; Laws 2007, LB424, § 1. Effective date September 1, 2007.

28-420. Selling and offering for sale certain compounds; use; knowledge of seller; unlawful. No person shall knowingly sell or offer for sale, deliver or give to any person any compound, liquid or chemical or any other substance which will induce an intoxicated condition as defined in section 28-419, when the seller, offerer or deliverer knows or has reason to know that such compound is intended for use to induce such condition.

Source**:** Laws 1977, LB 38, § 80. Operative date January 1, 1979.

28-421. Act, exceptions. The provisions of sections 28-419 to 28-424 shall not apply to the use or sale of such substances, as defined in sections 28-419 and 28-420, when such use or sale is administered or prescribed for medical or dental purposes, nor shall the provisions of sections 28-419 to 28-424 apply to the use or sale of alcoholic liquors as defined by section 53-103.02.

Source: Laws 1977, LB 38, § 81; Laws 2010, LB861, § 5. **Effective Date: July 15, 2010.**

28-422. Selling or offering for sale certain compounds; register; maintain for one year. Every person selling or offering for sale at retail any of the substances as defined in section 28-419, shall maintain a register in which are recorded the date of each sale, the quantity sold, and the name and address of the purchaser. The record of each sale shall be available for inspection by any peace officer for at least one year.

Source**:** Laws 1977, LB 38, § 82. Operative date January 1, 1979.

28-423. Inducing or enticing; violation. No person shall induce or entice any person to violate the provisions of section 28-419, 28-420, or 28-422.

Source**:** Laws 1977, LB 38, § 83. Operative date January 1, 1979.

28-424. Violations; penalty. Any person who violates any provision of section 28-419, 28-420, 28-422, or 28-423 shall be guilty of a Class III misdemeanor.

Source**:** Laws 1977, LB 38, § 84. Operative date January 1, 1979.

28-425. Embalming fluids; use of arsenic or strychnine prohibited; label required; violation; penalty. (1) No person, firm, corporation, partnership, or limited liability company shall manufacture, give away, sell, expose for sale, or deliver any embalming fluid or other fluids of whatsoever name, to be used for or intended for use in the embalming of dead human bodies, which contain arsenic or strychnine, or preparations, compounds, or salts thereof, without having the words arsenic contained herein or strychnine contained herein, as the case may be, written or printed upon a label pasted on the bottle, cask, flask, or carboy in which such fluid shall be contained.

(2) No undertaker or other person shall embalm with, inject into, or place upon any dead human body, any fluid or preparation of any kind which contains arsenic or strychnine, or preparations, compounds, or salts thereof.

(3) Any person, firm, corporation, partnership, or limited liability company violating any of the provisions of subsection (1) or (2) of this section shall be guilty of a Class III misdemeanor.

Source**:** Laws 1977, LB 38, § 85; Laws 1993, LB 121, § 176. Effective date September 9, 1993.

28-426. Repealed. Laws 1978, LB 748, § 61.

28-427. Additional penalties. Any penalty imposed for violation of the Uniform Controlled Substances Act shall be in addition to, and not in lieu of, any civil or administrative penalty or sanction authorized by law. A conviction or acquittal under federal law or the law of another state having a substantially similar law shall be a

bar to prosecution in this state for the same act. If any person is convicted for violation of the Uniform Controlled Substances Act, in addition to any penalty imposed by the court, the court may order that such person make restitution to any law enforcement agency for reasonable expenditures made in the purchase of any controlled substances from such person or his or her agent as part of the investigation leading to such conviction.

Source: Laws 1977, LB 38, § 87; Laws 2001, LB 113, § 13. Effective date September 1, 2001.

28-428. Controlled premises, defined; inspection; procedure. (1) Administrative inspections of controlled premises are authorized in accordance with the following provisions:

(a) For purposes of the Uniform Controlled Substances Act only, controlled premises shall mean: (i) Places where persons registered or exempted from registration requirements under the act are required to keep records; and (ii) places including factories, warehouses, establishments, and conveyances where persons registered or exempted from registration requirements under the act are permitted to hold, manufacture, compound, process, sell, deliver, or otherwise dispose of any controlled substance;

(b) When so authorized by an administrative inspection or an officer of the Division of Drug Control or an authorized agent of the department, upon presenting the warrant and appropriate credentials to the owner, operator, or agent in charge, shall have the right to enter controlled premises for the purpose of conducting an administrative inspection

(c) When so authorized by an administrative inspection warrant, an officer of the Division of Drug Control or an authorized agent of the department shall have the right: (i) To inspect and copy records required by the act to be kept; (ii) to inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished material, containers, and labeling found therein, and, except as otherwise provided in subdivision (1)(e)(ii) of this section, all other things therein, including records, files, papers, processes, controls, and facilities, bearing on any violation of the act; and (iii) to inventory any stock of any controlled substance therein and obtain samples of any such substance;

(d) This section shall not be construed to prevent entries and administrative inspections including seizures of property without a warrant: (i) With the consent of the owner, operator, or agent in charge of the controlled premises; (ii) in situations presenting imminent danger to health or safety; (iii) in situations involving inspection of any conveyance when there is reasonable cause to believe that such conveyance contains substances possessed or carried in violation of the act; (iv) in any other exceptional or emergency circumstance when time or opportunity to apply for a warrant is lacking; and (v) in all other situations when a warrant is not constitutionally required; and

(e) Except when the owner, operator, or agent in charge of the controlled premises so consents in writing, no inspection authorized by this section shall extend to (i) financial data; (ii) sales data other than shipment data; or (iii) pricing data.

(2) For the purpose of the execution of administrative inspection warrants, an authorized agent of the department shall be deemed to be a peace officer.

(3) Issuance and execution of administrative inspection warrants for controlled premises shall be in accordance with the provisions of sections 29-830 to 29-835, except that inspection warrants for the purpose of the act shall be issued not only upon a showing that consent to entry for inspection purposes has been refused, but also in all cases when the judge of a court of record has been given reason to believe that consent would be refused if requested.

Source**:** Laws 1977, LB 38, § 88; Laws 1997, LB 307, § 9. Operative date July 1, 1997.

28-429. Division of Drug Control; established; personnel; powers and duties; Nebraska State Patrol Drug Control and Education Cash Fund; created; use; investment; report; contents. (1) There is hereby established in the Nebraska State Patrol a Division of Drug Control. The division shall consist of such personnel as may be designated by the Superintendent of Law Enforcement and Public Safety. It shall be the duty of the division to enforce all of the provisions of the Uniform Controlled Substances Act and any other provisions of the law dealing with controlled substances and to conduct drug education activities as directed by the superintendent. The Nebraska State Patrol shall cooperate with federal agencies, the department, other state agencies, elementary and secondary schools, and County Drug Law Enforcement and Education Fund Boards in discharging their responsibilities concerning traffic in controlled substances, in suppressing the abuse of controlled substances, and in conducting drug education activities. To this end the division is authorized to: (a) Arrange for the exchange of information between governmental officials concerning the use and abuse of controlled substances; (b) coordinate and cooperate in training programs on controlled substance law enforcement and education at the local and state levels; (c) establish a centralized unit which will accept, catalog, file, and collect statistics, including records of drug dependent persons and other controlled substance law offenders within the state, and make such information available for federal, state, and local law enforcement purposes on request; (d) cooperate in locating, eradicating, and destroying wild or illicit growth of plant species

from which controlled substances may be extracted, and for these purposes a peace officer is hereby authorized to enter onto property upon which there are no buildings or upon which there are only uninhabited buildings without first obtaining a search warrant or consent; (e) develop a priority program so as to focus the bulk of its efforts on the reduction and elimination of the most damaging drugs including narcotic drugs, depressant and stimulant drugs, and hallucinogenic drugs; and (f) develop and conduct drug education activities in cooperation with elementary and secondary schools in Nebraska and with County Drug Law Enforcement and Education Fund Boards.

(2) There is hereby created the Nebraska State Patrol Drug Control and Education Cash Fund which shall be used for the purposes of (a) obtaining evidence for enforcement of any state law relating to the control of drug abuse and (b) drug education activities conducted pursuant to subsection (1) of this section, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Nebraska State Patrol Drug Control and Education 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.

(3) For the purpose of establishing and maintaining legislative oversight and accountability, the Appropriations Committee of the Legislature shall formulate record-keeping procedures to be adhered to by the Nebraska State Patrol for all expenditures, disbursements, and transfers of cash from the Nebraska State Patrol Drug Control and Education Cash Fund. Based on these record-keeping procedures, the Nebraska State Patrol shall prepare and electronically deliver to the Clerk of the Legislature at the commencement of each succeeding session a detailed report which shall contain, but not be limited to: (a) Current total in the cash fund; (b) total amount of expenditures; (c) purpose of the expenditures to include: (i) Salaries and any expenses of all agents and informants; (ii) front money for drug purchases; (iii) names of drugs and quantity of purchases; (iv) amount of front money recovered; and (v) drug education activities; (d) total number of informers on payroll; (e) amounts delivered to patrol supervisors for distribution to agents and informants and the method of accounting for such transactions and the results procured through such transactions; and (f) a description of the drug education activities conducted since the date of the previous report. Each member of the Legislature shall receive an electronic copy of such report by making a request for it to the superintendent.

(4) The superintendent shall adopt and promulgate rules and regulations to carry out this section.

Source: Laws 1977, LB 38, § 89; Laws 1979, LB 322, § 8; Laws 1991, LB 773, § 1; Laws 1994, LB 1066, § 19; Laws 2001, LB 398, § 17; Laws 2009, First Spec. Sess., LB3, § 13; Laws 2012, LB782, § 31. Operative Date: July 19, 2012.

28-430. Department; enforce act; powers. The department shall enforce the Uniform Controlled Substances Act and shall cooperate with federal agencies, the Division of Drug Control, and other state agencies in discharging their responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To this end, it is authorized to: (1) Arrange for the exchange of information between governmental officials concerning the use and abuse of controlled substances; (2) cooperate with the Drug Enforcement Administration and the Federal Bureau of Investigation; (3) do drug accountability audits of all registered practitioners in accordance with the act; (4) provide laboratory analysis; (5) provide drug abuse education to schools, courts, and persons requesting it; and (6) rely on results, information, and evidence received from the Drug Enforcement Administration and the Federal Bureau of Investigation relating to the regulatory functions of the act, including results of inspections conducted by that agency, which may be acted upon by the department and the Division of Drug Control in the performance of their regulatory functions under the act.

Source: Laws1977,LB38,§90;Laws1984,LB403,§1;Laws1997,LB307,§10. Operative date July 1, 1997.

28-431. Seized without warrant; subject to forfeitures; disposition; manner; when; accepted as evidence; court costs and expenses. (1) The following shall be seized without warrant by an officer of the Division of Drug Control or by any peace officer and the same shall be subject to forfeiture: (a) All controlled substances which have been manufactured, distributed, dispensed, acquired, or possessed in violation of the Uniform Controlled Substances Act; (b) all raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, administering, delivering, importing, or exporting any controlled substance in violation of the act; (c) all property which is used, or is intended for use, as a container for property described in subdivisions (a) and (b) of this subsection; (d) all drug paraphernalia defined in section 28-439; (e) all books, records, and research, including, but not limited to, formulas, microfilm, tapes, and data, which are used, or intended for use, in violation of the act; (f) all conveyances including, but not limited to, aircraft, vehicles, or vessels which are used, or intended for use, in transporting any controlled substance with intent to manufacture, distribute, deliver, dispense, export, or import such controlled substance in violation of the act; and (g) all money used, or intended to be used, to facilitate a violation of the act.

(2) Any property described in subdivision (1)(f) of this section which is used, or intended for use, to transport

any property described in subdivision (1)(a) or (b) of this section is hereby declared to be a common nuisance, and any peace officer having probable cause to believe that such property is so used, or intended for such use, shall make a search thereof with or without a warrant.

(3) All money that a law enforcement agency proves was furnished by such agency shall be returned to the agency. All property seized without a search warrant shall not be subject to a replevin action and: (a) All property described in subdivisions (1)(a) to (1)(e) of this section shall be kept by the property division of the law enforcement agency which employs the officer who seized such property for so long as it is needed as evidence in any trial; and (b) when no longer required as evidence, all property described in subdivision (1)(e) of this section shall be disposed of on order of a court of record of this state in such manner as the court in its sound discretion shall direct, and all property described in subdivisions (1)(a), (b), (c), and (d) of this section, that has been used or is intended to be used in violation of the act, when no longer needed as evidence shall be destroyed by the law enforcement agency holding the same or turned over to the department for custody or destruction, except that a law enforcement agency may keep a small quantity of the property described in subdivisions (1) (a), (b), (c), and (d) of this section for training purposes or use in investigations. Any large quantity of property described in subdivisions (1)(a), (b), (c), and (d) of this section, whether seized under a search warrant or validly seized without a warrant, may be disposed of on order of a court of record of this state in such manner as the court in its sound discretion shall direct. Such an order may be given only after a proper laboratory examination and report of such property has been completed and after a hearing has been held by the court after notice to the defendant of the proposed disposition of the property. The findings in such court order as to the nature, kind, and quantity of the property so disposed of may be accepted as evidence at subsequent court proceedings in lieu of the property ordered destroyed by the court order.

(4) When any property described in subdivision (1)(f) or (g) of this section is seized, the person seizing the same shall cause to be filed, within ten days thereafter, in the district court of the county in which seizure was made, petition for disposition of such property. The proceedings shall be brought in the name of the state by the county attorney of the county in which such property was seized. The petition shall describe the property, state the name of the owner if known, allege the essential elements of the violation which is claimed to exist, and conclude with a prayer for disposition. The county attorney shall have a copy of the petition served upon the owner of or any person having an interest in the property, if known, in person or by registered or certified mail at his or her last-known address. If the owner is unknown or there is a reasonable probability that there are unknown persons with interests in the property, the county attorney shall provide notice of the seizure and petition for disposition by publication once a week for four consecutive weeks in a newspaper of general circulation in the county of the seizure. At least five days shall elapse between each publication of notice.

At any time after seizure and prior to court disposition, the owner of record of such property may petition the district court of the county in which seizure was made to release such property, and the court shall order the release of the property upon a showing by the owner that he or she had no knowledge that such property was being used in violation of the Uniform Controlled Substances Act.

Any person having an interest in the property proceeded against or any person against whom civil or criminal liability would exist if such property is in violation of the act may, within thirty days after seizure, appear and file an answer or demurrer to the petition. The answer or demurrer shall allege the claimant's interest in or liability involving such property. At least thirty but not more than ninety days after seizure, there shall be a hearing before the court. If the claimant proves by a preponderance of the evidence that he or she (a) has not used or intended to use the property to facilitate an offense in violation of the act, (b) has an interest in such property as owner or lienor or otherwise, acquired by him or her in good faith, and (c) at no time had any knowledge that such property was being or would be used in, or to facilitate, the violation of the act, the court shall order that such property or the value of the claimant's interest in such property be returned to the claimant. If there are no claims, if all claims are denied, or if the value of the property exceeds all claims granted and it is shown beyond a reasonable doubt that such property was used in violation of the act, the court shall order disposition of such property at such time as the property is no longer required as evidence in any criminal proceeding. The court may order that property described in subdivision (1)(f) of this section be sold or put to official use by the confiscating agency for a period of not more than one year and that when such property is no longer necessary for official use or at the end of two years, whichever comes first, such property shall be sold. Proceeds from the sale of the property and any money described in subdivision (1)(g) of this section shall be distributed pursuant to section 28-1439.02. Official use shall mean use directly in connection with enforcement of the act.

Any court costs and fees and storage and other proper expenses shall be charged against any person intervening as claimant or owner of the property unless such person shall establish his or her claim. If a sale is ordered, the officer holding the sale shall make a return to the court showing to whom the property was sold and for what price. This return together with the court order shall authorize the county clerk to issue a title to the purchaser of the property if such title is required under the laws of this state.

Source**:** Laws 1977, LB 38, § 91; Laws 1980, LB 991, § 7; Laws 1985, LB 247, § 1; Laws 1997, LB 307, § 11.

Operative date July 1, 1997

28-432. Complaint, pleading, or proceeding; burden of proof. (1) It shall not be necessary for the state to negate any exemption or exception set forth in the Uniform Controlled Substances Act in any complaint, information, indictment, or other pleading or in any trial, hearing, or other proceeding under the provisions of the act, and the burden of proof of any such exemption or exception shall be upon the person claiming its benefit.

(2) In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under the Uniform Controlled Substances Act, the person shall be presumed not to be the holder of such registration or form, and the burden of proof shall be upon him or her to rebut such presumption.

Source: Laws 1977, LB 38, § 92; Laws 2001, LB 113, § 14. Effective date September 1, 2001.

28-433. Appeal; procedure. All final determinations, findings, and conclusions of the department under the Uniform Controlled Substances Act shall be final and conclusive decisions of the matters involved, except that any person aggrieved by such decision may appeal the decision, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1977, LB 38, § 93; Laws 1988, LB 352, § 27; Laws 2001, LB 113, § 15. Effective date September 1, 2001.

28-434. Education and research. (1) The department and the Division of Drug Control shall carry out educational programs designed to prevent and deter misuse and abuse of controlled substances. In connection with such programs they may: (a) Promote better recognition of the problems of misuse and abuse of controlled substances within the regulated industry and among interested groups and organizations; (b) assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances; (c) consult with interested groups and organizations to aid them in solving administrative and organizational problems; (d) evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of controlled substances; (e) disseminate the results of research on misuse and abuse of controlled substances to promote a better public understanding of what problems exist and what can be done to combat them; and (f) assist in the education and training of state and local law enforcement officials in their efforts to control misuse and abuse of controlled substances.

(2) The department may encourage research on misuse and abuse of controlled substances. In connection with such research and in furtherance of the enforcement of the Uniform Controlled Substances Act, it may: (a) Establish methods to assess accurately the effects of controlled substances and to identify and characterize controlled substances with potential for abuse; (b) make studies and undertake programs of research to (i) develop new or improved approaches, techniques, systems, equipment, and devices to strengthen the enforcement of the act, (ii) determine patterns of misuse and abuse of controlled substances and the social effects thereof, and (iii) improve methods for preventing, predicting, understanding, and dealing with the misuse and abuse of controlled substances; and (c) enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations, or special projects which bear directly on misuse and abuse of controlled substances.

(3) The department may enter into contracts for educational and research activities without performance bonds.

(4) The department shall cooperate with the Division of Drug Control providing technical advice and information, including all evidence of violations of the act disclosed by drug accountability inspections. The criminalistics laboratory of the Nebraska State Patrol shall provide laboratory analysis for the Division of Drug Control and other peace officers of this state when requested for the effective administration and enforcement of the act.

(5) The department may authorize persons engaged in research on the use and effects of controlled substances to withhold the names and other identifying characteristics of persons who are subjects of such research. Persons who obtain such authorization may not be compelled in any state, civil, criminal, administrative, legislative, or other proceeding to identify the subjects of research for which such authorization was obtained.

(6) The department may authorize the possession and distribution of controlled substances by persons engaged in research. Persons who obtain this authorization shall be exempt from state prosecution for possession and distribution of controlled substances to the extent authorized by the department.

Source**:** Laws1977,LB38,§94;Laws1984,LB403,§2;Laws1997,LB307,§12. Operative date July 1, 1997.

28-435. Licensee; reporting and investigation duties. Every licensee subject to the Uniform Controlled Substances Act shall be subject to and comply with sections 38-1,124 to 38-1,126 relating to reporting and investigations.

Source: Laws 2007, LB463, § 1123. Operative date December 1, 2008.

28-435.01. Health care facility; peer review organization or professional association; report required; contents; confidentiality; immunity; failure to report; civil penalty; disposition. (1) A health care facility licensed under the Health Care Facility Licensure Act or a peer review organization or professional association relating to a profession regulated under the Uniform Controlled Substances Act shall report to the department, on a form and in the manner specified by the department, any facts known to the facility, organization, or association, including, but not limited to, the identity of the credential holder and consumer, when the facility, organization, or association:

(a) Has made payment due to adverse judgment, settlement, or award of a professional liability claim against it or a licensee, including settlements made prior to suit, arising out of the acts or omissions of the licensee; or

(b) Takes action adversely affecting the privileges or membership of a licensee in such facility, organization, or association due to alleged incompetence, professional negligence, unprofessional conduct, or physical, mental, or chemical impairment.

The report shall be made within thirty days after the date of the action or event.

(2) A report made to the department under this section shall be confidential. The facility, organization, association, or person making such report 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. Nothing in this subsection shall be construed to require production of records protected by the Health Care Quality Improvement Act or section 25-12,123 or patient safety work product under the Patient Safety Improvement Act except as otherwise provided in either of such acts or such section.

(3) Any health care facility, peer review organization, or professional association that fails or neglects to make a report or provide information as required under this section is subject to a civil penalty of five hundred dollars for the first offense and a civil penalty of up to one thousand dollars for a subsequent offense. Any civil penalty collected under this subsection shall be remitted to the State Treasurer to be disposed of in accordance with Article VII, section 5, of the Constitution of Nebraska.

(4) For purposes of this section, the department shall accept reports made to it under the Nebraska Hospital-Medical Liability Act or in accordance with national practitioner data bank requirements of the federal Health Care Quality Improvement Act of 1986, as the act existed on January 1, 2007, and may require a supplemental report to the extent such reports do not contain the information required by the department.

Source: Laws 2007, LB463, § 1124; Laws 2011, LB431, § 11. Effective Date: April 27, 2011.

28-435.02. Insurer; duty to report violations. (1) Unless such knowledge or information is based on confidential medical records protected by the confidentiality provisions of the federal Public Health Services Act, 42 U.S.C. 290dd-2, and federal administrative rules and regulations, as such act and rules and regulations existed on January 1, 2007:

(a) Any insurer having knowledge of any violation of any provision of the Uniform Controlled Substances Act governing the profession of the person being reported whether or not such person is licensed shall report the facts of such violation as known to such insurer to the department; and

(b) All insurers shall cooperate with the department and provide such information as requested by the department concerning any possible violations by any person required to be licensed whether or not such person is licensed.

(2) Such reporting shall be done on a form and in the manner specified pursuant to sections 38-1,130 and 38-1,131. Such reports shall be subject to sections 38-1,132 to 38-1,136.

Source: Laws 2007, LB463, § 1125. Operative date December 1, 2008.

28-435.03. Clerk of county or district court; report convictions and judgments; Attorney General or city or county prosecutor; provide information. The clerk of any county or district court in this state shall report to the department the conviction of any person licensed by the department under the Uniform Controlled Substances Act of any felony or of any misdemeanor involving the use, sale, distribution, administration, or dispensing of a controlled substance, alcohol or chemical impairment, or substance abuse and shall also report a judgment against any such licensee arising out of a claim of professional liability. The Attorney General or city or county prosecutor prosecuting any such criminal action and plaintiff in any such civil action shall provide the court with information concerning the license of the defendant or party. Notice to the department shall be filed within thirty days after the date of conviction or judgment in a manner agreed to by the Director of Public Health of the Division of Public Health and the State Court Administrator.

Source: Laws 2007, LB463, § 1126. Operative date December 1, 2008.

28-436. Repealed. Laws 1993, LB 627, § 26.

28-437. Uniformity of interpretation. The Uniform Controlled Substances Act shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of the act among those states which enact it.

Source: Laws 1977, LB 38, § 97; Laws 2001, LB 113, § 16. Effective date September 1, 2001.

28-438. Transferred to section 28-401.01.

28-439. Drug paraphernalia, defined; enumerated. As used in sections 28-101, 28-431, and 28-439 to 28-444, unless the context otherwise requires, drug paraphernalia shall mean all equipment, products, and materials of any kind which are used, intended for use, or designed for use, in manufacturing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of sections 28-101, 28-431, and 28-439 to 28-444 or the Uniform Controlled Substances Act. It shall include, but not be limited to, the following:

(1) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting controlled substances;

(2) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;

(3) Hypodermic syringes, needles, and other objects used, intended for use, and designed for use in parenterally injecting controlled substances into the human body; and

(4) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, which shall include but not be limited to the following:

(a) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

(b) Water pipes;

(c) Carburetion tubes and devices;

(d) Smoking and carburetion masks;

(e) Roach clips, meaning objects used to hold burning material, such as a marijuana cigarette, which has become too small or too short to be held in the hand;

(f) Miniature cocaine spoons, and cocaine vials;

(g) Chamber pipes;

(h) Carburetor pipes;

(i) Electric pipes;

(j) Air-driven pipes;

(k) Chillums;

(l) Bongs; and

(m) Ice pipes or chillers.

Source**:** Laws 1980, LB 991, § 1. Effective date April 24, 1980.

28-440. Drug paraphernalia; determination; factors considered. In determining whether an object is drug paraphernalia, a court or other authority shall consider, in addition to all other logically relevant factors, the following:

(1) Statements by an owner or by anyone in control of the object concerning its use;

(2) Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to any controlled substance;

(3) The proximity of the object, in time and space, to a direct violation of this act;

(4) The proximity of the object to any controlled substance;

(5) The existence of any residue of a controlled substance on the object;

(6) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to any person whom he or she knows, or should reasonably know, intends to use the object to facilitate a violation of sections 28-101, 28-431, and 28-439 to 28-444. The innocence of an owner, or of anyone in control of the object, as to a direct violation of sections 28-101, 28-431, and 28-439 to 28-444 shall not prevent a finding that the object is intended for use, or designed for use as drug paraphernalia;

(7) Instructions, oral or written, provided with the object concerning its use;

(8) Descriptive materials accompanying the object which explain or depict its use;

(9) National and local advertising concerning its use;

(10) The manner in which the object is displayed for sale;

(11) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

(12) Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise;

(13) The existence and scope of any legitimate use for the object in the community; and

(14) Expert testimony concerning its use.

Source**:** Laws 1980, LB 991, § 2. Effective date April 24, 1980.

28-441. Drug paraphernalia; use or possession; unlawful; penalty. (1) It shall be unlawful for any person to use, or to possess with intent to use, drug paraphernalia to manufacture, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of sections 28-101, 28-431, and 28-439 to 28-444.

(2) Any person who violates this section shall be guilty of an infraction.

Source**:** Laws 1980, LB 991, § 3. Effective date April 24, 1980.

28-442. Drug paraphernalia; deliver or manufacture; unlawful; exception; penalty. (1) It shall be unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing, or under circumstances in which one reasonably should know, that it will be used to manufacture, inject, ingest, or inhale or otherwise be used to introduce into the human body a controlled substance in violation of sections 28-101, 28-431, and 28-439 to 28-444.

(2) This section shall not apply to pharmacists who sell hypodermic syringes or needles for the prevention of the spread of infectious diseases.

(3) Any person who violates this section shall be guilty of a Class II misdemeanor.

Source: Laws 1980, LB 991, § 4; Laws 2001, LB 398, § 18. Operative date May 1, 2001.

28-443. Delivery of drug paraphernalia to a minor; penalty. Any person eighteen years of age or older who violates section 28-442 by delivering drug paraphernalia to a person under eighteen years of age who is at least three years his or her junior shall be guilty of a Class I misdemeanor.

Source: Laws 1980, LB 991, § 5. Effective date April 24, 1980.

28-444. Advertisement of drug paraphernalia; unlawful; penalty. (1) It shall be unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia.

(2) Any person who violates this section shall be guilty of a Class III misdemeanor.

Source**:** Laws 1980, LB 991, § 6. Effective date April 24, 1980.

28-445. Imitation controlled substance; prohibited acts; determination; penalties; seizure. (1) Any person who knowingly and intentionally manufactures, distributes, delivers, or possesses with intent to distribute or deliver an imitation controlled substance shall:

(a) For the first offense, be guilty of a Class III misdemeanor; and

(b) For the second and all subsequent offenses, be guilty of a Class II misdemeanor.

(2) In determining whether a substance is an imitation controlled substance the court or other authority concerned shall consider all relevant factors, including, but not limited to, the following:

(a) Whether the substance is represented as having an effect similar to or the same as an illicit controlled substance;

(b) Whether the substance is represented by way of terminology which is deceptively similar to or the same as that describing a particular controlled substance;

(c) Whether the dosage unit price substantially exceeds the reasonable price of a similar dosage unit of like chemical composition sold over the counter;

(d) Whether the substance was approved by the federal Food and Drug Administration for over-the-counter sales and contained the packaging and labeling information approved by the federal Food and Drug Administration;

(e) Whether the substance is packaged in a manner and quantity similar to or the same as that commonly used for illicit controlled substances;

(f) Whether the dosage unit appearance of the substance is deceptively similar to that of a particular controlled substance;

(g) Whether the substance is distributed to persons who represent it as a controlled substance or controlled substance analogue, under circumstances which indicate the distributor knows, intends, or should know that his or her distributee is making or will make such representations; and

(h) Whether the person in possession or control of the substance utilized deception, fraud, or evasive tactics or actions to prevent the seizure, discovery, or detection of the substance by law enforcement.

(3) Any substance possessed, distributed, or delivered in violation of this section shall be subject to seizure and forfeiture as provided in section 28-431.

Source: Laws 1985, LB 406, § 5; Laws 2014, LB811, § 16. **Effective Date: July 18, 2014.**

28-446 and 28-447. Repealed. Laws 1992, LB 1019, § 130.

28-448 Repealed. Laws 2009, LB 151, § 5.

28-449. Crystalline iodine; sale; requirements. Any person who sells crystalline iodine to another person shall require photo identification of the purchaser and shall maintain a written record for a period of five years after the sale, including the date of the sale, the name, address, and date of birth of the purchaser, and the quantity purchased.

Source: Laws 2001, LB 113, § 2. Effective date September 1, 2001.

28-450. Ephedrine, pseudoephedrine, or phenylpropanolamine; immediate precursor; prohibited acts; violation; penalty. No person shall sell, distribute, or otherwise transfer any drug product containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, if the person knows that the transferee will use the drug product as an immediate precursor to any controlled substance. No person shall unlawfully sell, distribute, or otherwise transfer such a product with reckless disregard as to how the drug product will be used. Any person who violates this section is guilty of a Class III misdemeanor.

Source: Laws 2001, LB 113, §3; Laws 2005, LB 117, §4. Effective date September 4, 2005.

28-451. Anhydrous ammonia; possession; penalty. No person shall possess anhydrous ammonia with the intent to manufacture methamphetamine. Any person who violates this section is guilty of a Class IV felony.

Source: Laws 2001, LB 113, § 4. Effective date September 1, 2001.

28-452. Ephedrine, pseudoephedrine, or phenylpropanolamine; possession; penalty. No person shall possess ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, with the intent to manufacture methamphetamine. Any person who violates this section is guilty of a Class IV felony.

Source: Laws 2001, LB 113, § 5. Effective date September 1, 2001.

28-453. Methamphetamine; retailer education program. The Nebraska State Patrol may develop and maintain a program to inform retailers about illicit methamphetamine production, distribution, and use in Nebraska and devise procedures and forms for retailers to use in reporting to the patrol suspicious purchases, thefts, or other transactions involving any products under the retailers' control which contain ephedrine, pseudoephedrine, phenylpropanolamine, or ephedra. Reporting under this section shall be voluntary. Retailers reporting information to the patrol in good faith shall be immune from civil liability.

Source: Laws 2001, LB 113, § 6. Effective date September 1, 2001.

28-454 Repealed. Laws 2009, LB 151, § 5.

28-455. Methamphetamine Awareness and Education Fund; created; use; investment. The Methamphetamine Awareness and Education Fund is created. The Nebraska Commission on Law Enforcement and Criminal Justice shall use the fund to support projects relating to educating retailers and the public on the dangers of methamphetamine. The commission may accept contributions, gifts, grants, and bequests for such purposes and remit them to the State Treasurer for credit to the fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2001, LB 113, § 8. Effective date September 1, 2001.

28-456 Phenylpropanolamine or pseudoephedrine; sold without a prescription; requirements; enforcement. (1) Any drug products containing phenylpropanolamine, pseudoephedrine, or their salts, optical isomers, or salts of such optical isomers may be sold without a prescription only if they are:

(a) Labeled and marketed in a manner consistent with the pertinent OTC Tentative Final or Final Monograph;

(b) Manufactured and distributed for legitimate medicinal use in a manner that reduces or eliminates the likelihood of abuse;

(c) Packaged as follows:

(i) Except for liquids, sold in package sizes of not more than three and six-tenths grams of pseudoephedrine base or three and six-tenths grams of phenylpropanolamine base, in blister packs, each blister containing not more than two dosage units, or if the use of blister packs is technically infeasible, in unit dose packets or pouches; and

(ii) For liquids, sold in package sizes of not more than three and six-tenths grams of pseudoephedrine base or three and six-tenths grams of phenylpropanolamine base;

(d) Sold by a person, eighteen years of age or older, in the course of his or her employment to a customer, eighteen years of age or older, with the following restrictions:

(i) No customer shall be allowed to purchase, receive, or otherwise acquire more than three and six-tenths grams of pseudoephedrine base or three and six-tenths grams of phenylpropanolamine base during a twenty-four-hour period;

(ii) No customer shall purchase, receive, or otherwise acquire more than nine grams of pseudoephedrine base or nine grams of phenylpropanolamine base during a thirty-day period; and

(iii) The customer shall display a valid driver's or operator's license, a Nebraska state identification card, a military identification card, an alien registration card, or a passport as proof of identification; and

(e) Stored behind a counter, in an area not accessible to customers, or in a locked case so that a customer needs assistance from an employee to access the drug product.

(2) Any person who sells drug products in violation of this section may be subject to a civil penalty of fifty dollars per day, and for a second or any subsequent violation, the penalty may be one hundred dollars per day. Any such drug products shall be seized and destroyed upon the finding of a violation of this section. The department, in conjunction with the Attorney General, the Nebraska State Patrol, and local law enforcement agencies, shall have authority to make inspections and investigations to enforce this section. In addition, the department may seek injunctive relief for suspected violations of this section.

Source: Laws 2001, LB 113, § 9; Laws 2005, LB 117, § 5; Laws 2007, LB218, § 1; Laws 2007, LB296, § 36; Laws 2009, LB151, § 2. Effective Date: March 19, 2009.

28-456.01. Pseudoephedrine or phenylpropanolamine; limitation on acquisition; violation; penalty. (1) No person shall purchase, receive, or otherwise acquire, other than wholesale acquisition by a retail business in the normal course of its trade or business, any drug product containing more than three and six-tenths grams of pseudoephedrine base or three and six-tenths grams of phenylpropanolamine base during a twenty-four-hour period unless purchased pursuant to a medical order. Any person who violates this section shall be guilty of a Class IV misdemeanor for the first offense and a Class III misdemeanor for each subsequent offense.

(2) No person shall purchase, receive, or otherwise acquire, other than wholesale acquisition by a retail business in the normal course of its trade or business, any drug product containing more than nine grams of pseudoephedrine base or nine grams of phenylpropanolamine base during a thirty-day period unless purchased pursuant to a medical order. Any person who violates this section shall be guilty of a Class IV misdemeanor for the first offense and a Class III misdemeanor for each subsequent offense.

Source: Laws 2005, LB 117, § 6; Laws 2009, LB151, § 3; Laws 2011, LB20, § 8. Operative Date: January 1, 2012.

28-457. Methamphetamine; prohibited acts; violation; penalties. (1) For purposes of this section:

(a) Bodily injury has the same meaning as in section 28-109;

(b) Chemical substance means a substance intended to be used as an immediate precursor or reagent in the manufacture of methamphetamine or any other chemical intended to be used in the manufacture of methamphetamine. Intent for purposes of this subdivision may be demonstrated by the substance's use, quantity, manner of storage, or proximity to other precursors or manufacturing equipment;

(c) Child means a person under the age of nineteen years;

(d) Methamphetamine means methamphetamine, its salts, optical isomers, and salts of its isomers;

(e) Paraphernalia means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in manufacturing, injecting, ingesting, inhaling, or otherwise introducing methamphetamine into the human body;

(f) Prescription has the same meaning as in section 28-401;

(g) Serious bodily injury has the same meaning as in section 28-109; and

(h) Vulnerable adult has the same meaning as in section 28-371.

(2) Any person who knowingly or intentionally causes or permits a child or vulnerable adult to inhale or have contact with methamphetamine, a chemical substance, or paraphernalia is guilty of a Class I misdemeanor. For any second or subsequent conviction under this subsection, any person so offending is guilty of a Class IV felony.

(3) Any person who knowingly or intentionally causes or permits a child or vulnerable adult to ingest methamphetamine, a chemical substance, or paraphernalia is guilty of a Class I misdemeanor. For any second

or subsequent conviction under this subsection, any person so offending shall be guilty of a Class IIIA felony.

(4) Any child or vulnerable adult who resides with a person violating subsection (2) or (3) of this section shall be taken into protective custody as provided in the Adult Protective Services Act or the Nebraska Juvenile Code.

(5) Any person who violates subsection (2) or (3) of this section and a child or vulnerable adult actually suffers serious bodily injury by ingestion of, inhalation of, or contact with methamphetamine, a chemical substance, or paraphernalia is guilty of a Class IIIA felony unless the ingestion, inhalation, or contact results in the death of the child or vulnerable adult, in which case the person is guilty of a Class IB felony.

(6) It is an affirmative defense to a violation of this section that the chemical substance was provided by lawful prescription for the child or vulnerable adult and that it was administered to the child or vulnerable adult in accordance with the prescription instructions provided with the chemical substance.

Source: Laws 2003, LB 43, § 9. Effective date August 31, 2003.

28-458. Methamphetamine precursor; terms, defined. For purposes of sections 28-458 to 28-462:

(1) Exchange means the National Precursor Log Exchange administered by the National Association of Drug Diversion Investigators;

(2) Methamphetamine precursor means any drug product containing ephedrine, pseudoephedrine, or phenylpropanolamine that is required to be documented pursuant to the logbook requirements of 21 U.S.C. 830;

(3) Seller means any person who lawfully sells a methamphetamine precursor pursuant to subdivision (1)(d) of section 28-456 or his or her employer; and

(4) Stop-sale alert means a notification sent to a seller indicating that the completion of a methamphetamine precursor sale would result in a violation of subdivision (1)(d)(i) or (ii) of section 28-456.

Source: Laws 2011, LB20, § 3. Operative Date: January 1, 2012.

28-459. Methamphetamine precursor; seller; duties; waiver authorized. (1) Beginning January 1, 2012, each seller shall, before completing a sale of a methamphetamine precursor, electronically submit required information to the exchange, if the exchange is available to sellers. Required information shall include, but not be limited to:

(a) The name, age, and address of the person purchasing, receiving, or otherwise acquiring the methamphetamine precursor;

(b) The name of the product and quantity of product purchased;

(c) The date and time of the purchase;

(d) The name or initials of the seller who sold the product; and

(e) The type of identification presented by the customer, the governmental entity that issued the identification, and the number on the identification.

(2) If a seller experiences mechanical or electronic failure of the electronic logging equipment on the sales end of the transaction or a failure of the exchange and is unable to comply with subsection (1) of this section, the seller shall maintain a written log or an alternative electronic recordkeeping mechanism or may refrain from selling any methamphetamine precursor until such time as the seller is able to comply with subsection (1) of this section.

(3) The Attorney General may grant a waiver exempting a seller from compliance with subsection (1) of this section upon a showing of good cause by the seller that he or she is otherwise unable to submit log information by electronic means, including, but not limited to, any financial, technological, or other reason which would place an undue burden on the seller, as established by the Attorney General.

(4) Whenever the exchange generates a stop-sale alert, the seller shall not complete the sale unless the seller has a reasonable fear of imminent bodily harm if he or she does not complete the sale. The exchange shall contain an override function to the stop-sale alert for the seller to use in a situation in which a reasonable fear of imminent bodily harm is present.

(5) This section does not apply if a lawful prescription for the methamphetamine precursor is presented to a pharmacist licensed under the Uniform Credentialing Act.

Source: Laws 2011, LB20, § 4. Operative Date: January 1, 2012.

28-460. Methamphetamine precursor; access to exchange to law enforcement. As a condition of use in Nebraska, the National Association of Drug Diversion Investigators shall provide real-time access to the exchange through its online portal to law enforcement in this state as authorized by the Attorney General and no fee or charge shall be imposed on a seller for the use of the exchange.

Source: Laws 2011, LB20, § 5. Operative Date: January 1, 2012.

28-461. Methamphetamine precursor; seller; immunity. A seller utilizing in good faith sections 28-458 to 28-462 shall be immune from any civil cause of action based upon an act or omission in carrying out such sections.

Source: Laws 2011, LB20, § 6. Operative Date: January 1, 2012.

28-462. Methamphetamine precursor; prohibited acts; penalty. Beginning January 1, 2013, a seller that knowingly fails to submit methamphetamine precursor information to the exchange as required by sections 28-458 to 28-462 or knowingly submits incorrect information to the exchange shall be guilty of a Class IV misdemeanor.

Source: Laws 2011, LB20, § 7. Operative Date: January 1, 2012.

28-470. Naloxone; authorized activities; immunity from administrative action or criminal prosecution.

(1) A health professional who is authorized to prescribe or dispense naloxone, if acting with reasonable care, may prescribe, administer, or dispense naloxone to any of the following persons without being subject to administrative action or criminal prosecution;

(a) A person who is apparently experiencing or who is likely to experience an opioid-related overdose; or

(b) A family member, friend, or other person in a position to assist a person who is apparently experiencing or who is likely to experience an opioid-related overdose.

(2) A family member, friend, or other person who is in a position to assist a person who is apparently experiencing or who is likely to experience an opioid-related overdose, other than an emergency responder or peace officer, is not subject to actions under the Uniform Credentialing Act, administrative action, or criminal prosecution if the person, acting in good faith, obtains naloxone from a health professional or a prescription for naloxone from a health professional and administers the naloxone obtained from the health professional or acquired pursuant to the prescription to a person who is apparently experiencing an opioid-related overdose.

(3) An emergency responder is not subject to administrative action or criminal prosecution if the emergency responder, acting in good faith, obtains naloxone from the emergency responder's emergency medical service organization and administers the naloxone to a person who is apparently experiencing an opioid-related overdose.

(4) A peace officer is not subject to administrative action or criminal prosecution if the peace officer, acting in good faith, obtains naloxone from the peace officer's law enforcement agency and administers the naloxone to a person who is apparently experiencing an opioid-related overdose.

(5) For purposes of this section:

(a) Administer has the same meaning as in section 38-2806;

(b) Dispense has the same meaning as in section 38-2817;

(c) Emergency responder means first responder, emergency medical technician, emergency medical technician-intermediate, or emergency medical technician-paramedic licensed under the Emergency Medical Services Practice Act;

(d) Health professional means a physician, physician assistant, nurse practitioner, or pharmacist licensed under the Uniform Credentialing Act;

(e) Law enforcement agency means police department, a town marshal, the office of sheriff, or the Nebraska State Patrol;

(f) Naloxone means naloxone hydrochloride; and

(g) Peace officer has the same meaning as in section 49-801.

Source: Laws 2015, LB390, § 11.

STATUTES PERTAINING TO LEGEND DRUGS AND CONTROLLED SUBSTANCES

28-1438.01 Transferred to section 28-414.06.

28-1439 Transferred to section 28-414.07.

28-1439.01. Uniform Controlled Substances Act; conviction; uncorroborated testimony; how treated. No conviction for an offense punishable under any provision of the Uniform Controlled Substances Act shall be based solely upon the uncorroborated testimony of a cooperating individual.

Source**:** Laws 1978, LB 276, § 2; R.S.1943, § 28-439, (1979); Laws 1990, LB 571, § 7; Laws 1992, LB 1019, § 34. Operative date April 18, 1992.

STATUTES PERTAINING TO CERTIFIED NURSE MIDWIFERY PRACTICE ACT
(Nurse Midwife prescribing controlled substances)

38-611. Certified nurse midwife; authorized activities. A certified nurse midwife may, under the provisions of a practice agreement, (1) attend cases of normal childbirth, (2) provide prenatal, intrapartum, and postpartum care, (3) provide normal obstetrical and gynecological services for women, and (4) provide care for the newborn immediately following birth. The conditions under which a certified nurse midwife is required to refer cases to a collaborating licensed practitioner shall be specified in the practice agreement.

Source: Laws 1984, LB 761, § 15; R.S.1943, (2003), § 71-1752; Laws 2007, LB185, § 22; Laws 2007, LB463, § 223. The changes made by LB 185 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

Title 172 Chapter 104 Practice of Certified Nurse Midwives Regulations

104-005.01(6) The statement that the specific medical functions delegated to the nurse midwife are based upon the educational preparation and continued experience of the nurse midwife. Validation and documentation of education/training and assessment of competency are the responsibility of the nurse midwife and the physician(s). Specific medical functions may include:

a. Attending cases of normal childbirth;
b. Providing prenatal, intrapartum, and postpartum care;
c. Providing normal obstetrical and gynecological services for women;
d. Providing care for the newborn immediately following birth; and
e. Prescribing legend drugs, Schedule II controlled substances for up to 72 hours and for pain control, and Schedule III, IV and V controlled substances.

STATUTES PERTAINING TO CERTIFIED REGISTERED NURSE ANESTHETIST PRACTICE ACT
(Nurse Anesthetist administration of controlled substances)

38-711. Certified registered nurse anesthetist; performance of duties. (1) The determination and administration of total anesthesia care shall be performed by the certified registered nurse anesthetist or a nurse anesthetist temporarily licensed pursuant to section 38-708 in consultation and collaboration with and with the consent of the licensed practitioner.

(2) The following duties and functions shall be considered as specific expanded role functions of the certified registered nurse anesthetist:

(a) Preanesthesia evaluation including physiological studies to determine proper anesthetic management and obtaining informed consent;
(b) Selection and application of appropriate monitoring devices;
(c) Selection and administration of anesthetic techniques;
(d) Evaluation and direction of proper postanesthesia management and dismissal from postanesthesia care;
(e) Evaluation and recording of postanesthesia course of patients; and
(f) Use of fluoroscopy in conjunction with a licensed medical radiographer in connection with the performance of authorized duties and functions upon (i) the successful completion of appropriate education and training as approved jointly by the department and the board and promulgated by the department in rules and regulations pursuant to section 71-3508 and (ii) a determination regarding the scope and supervision of such use consistent with subsection (3) of this section.

(3) The determination of other duties that are normally considered medically delegated duties to the certified registered nurse anesthetist or to a nurse anesthetist temporarily licensed pursuant to section 38-708 shall be the joint responsibility of the governing board of the hospital, medical staff, and nurse anesthetist personnel of any duly licensed hospital or, if in an office or clinic, the joint responsibility of the duly licensed practitioner and nurse anesthetist. All such duties, except in cases of emergency, shall be in writing in the form prescribed by hospital or office policy.

Source: Laws 1981, LB 379, § 31; Laws 1992, LB 1019, § 76; R.S.1943, (2003), § 71-1734; Laws 2007, LB185, § 17; Laws 2007, LB463, § 241; Laws 2008, LB928, § 4. Operative date December 1, 2008.

STATUTES PERTAINING TO MEDICINE AND SURGERY PRACTICE ACT
(Physician Assistant prescribing of drugs and devices)

38-2055 Physician assistants; prescribe drugs and devices; restrictions. A physician assistant may prescribe drugs and devices as delegated to do so by a supervising physician. Any limitation placed by the supervising physician on the prescribing authority of the physician assistant shall be recorded on the physician assistant's scope of practice agreement established pursuant to rules and regulations adopted and promulgated under the Medicine and Surgery Practice Act. All prescriptions and prescription container labels shall bear the name of the physician assistant and, if required for purposes of reimbursement, the name of the supervising physician. A physician assistant to whom has been delegated the authority to prescribe controlled substances shall obtain a federal Drug Enforcement Administration registration number.

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. Effective Date: August 30, 2009.

STATUTES PERTAINING TO NURSE PRACTITIONER PRACTICE ACT
(Nurse practitioner prescribing controlled substances)

38-2315 Nurse practitioner; functions; scope. (1) A nurse practitioner may provide health care services within specialty areas. A nurse practitioner shall function by establishing collaborative, consultative, and referral networks as appropriate with other health care professionals. Patients who require care beyond the scope of practice of a nurse practitioner shall be referred to an appropriate health care provider.

(2) Nurse practitioner practice means health promotion, health supervision, illness prevention and diagnosis, treatment, and management of common health problems and acute and chronic conditions, including:

(a) Assessing patients, ordering diagnostic tests and therapeutic treatments, synthesizing and analyzing data, and applying advanced nursing principles;

(b) Dispensing, incident to practice only, sample medications which are provided by the manufacturer and are provided at no charge to the patient; and

(c) Prescribing therapeutic measures and medications relating to health conditions within the scope of practice.

(3) A nurse practitioner who has proof of a current certification from an approved certification program in a psychiatric or mental health specialty may manage the care of patients committed under the Nebraska Mental Health Commitment Act. Patients who require care beyond the scope of practice of a nurse practitioner who has proof of a current certification from an approved certification program in a psychiatric or mental health specialty shall be referred to an appropriate health care provider.

(4) A nurse practitioner 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 nurse practitioner and are not otherwise prohibited by law.

Source: Laws 1981, LB 379, § 18; Laws 1984, LB 724, § 14; Laws 1996, LB 414, § 25; Laws 2000, LB 1115, § 44; Laws 2005, LB 256, § 57; Laws 2006, LB 994, § 96; R.S.Supp.,2006, § 71-1721; Laws 2007, LB463, § 807; Laws 2012, LB1042, § 2; Laws 2013, LB243, § 1; Laws 2015, LB107, § 5.

STATUTES PERTAINING TO THE PHARMACY PRACTICE ACT

38-2801. Act, how cited. Sections 38-2801 to 38-28,107 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. **Effective Date: August 30, 2015**

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 38-2847 apply.

Source: Laws 2007, LB463, § 898; Laws 2009, LB195, § 48; Laws 2009, LB604, § 2; Laws 2011, LB179, § 3; Laws 2015, LB37, § 30. **Effective Date: August 30, 2015**

38-2803. Accredited hospital or clinic, defined. Accredited hospital or clinic means a hospital or clinic approved by the board.

Source: Laws 1978, LB 675, § 4; Laws 1996, LB 1044, § 457; Laws 1999, LB 828, § 117; R.S.1943,

(2003), § 71-1,147.20; Laws 2007, LB463, § 899. Operative date December 1, 2008.

38-2804. Accredited pharmacy program, defined. An accredited pharmacy program means one approved by the board upon the recommendation of the accrediting committee of the Accreditation Council for Pharmacy Education. It shall be a pharmacy program which maintains at least a three-year course in pharmacy, consisting of not less than thirty-two weeks of instruction each school year. Such pharmacy program shall require as a condition to enrollment therein two full years of college or university credit. The combined course shall consist of five years of college or university credit each year of which shall consist of not less than thirty-two weeks of instruction.

Source: Laws 1927, c. 167, § 125, p. 492; C.S.1929, § 71-1806; Laws 1939, c. 91, § 2, p. 393; C.S.Supp.,1941, § 71-1806; Laws 1943, c. 151, § 3, p. 553; R.S.1943, § 71-1,146; Laws 1971, LB 350, § 4; Laws 1999, LB 828, § 111; Laws 2004, LB 1005, § 16; R.S.Supp.,2006, § 71-1,146; Laws 2007, LB463, § 900. Operative date December 1, 2008.

38-2805. Accredited school or college of pharmacy, defined. Accredited school or college of pharmacy means a school or college of pharmacy or a department of pharmacy of a university approved by the board pursuant to section 38-2804.

Source: Laws 1978, LB 675, § 5; Laws 1999, LB 828, § 118; R.S.1943, (2003), § 71-1,147.21; Laws 2007, LB463, § 901. Operative date December 1, 2008.

38-2805.01 Accrediting body, defined. Accrediting body means an entity recognized by the Centers for Medicare and Medicaid Services to provide accrediting services for the Medicare Part B Home Medical Equipment Services Benefit.

Source: Laws 2009, LB604, § 3. Effective Date: May 27, 2009.

38-2806. Administer, defined. Administer means to directly apply a drug or device by injection, inhalation, ingestion, or other means to the body of a patient or research subject.

Source: Laws 2007, LB463, § 902. Operative date December 1, 2008.

38-2807. Administration, defined. Administration means the act of (1) administering, (2) keeping a record of such activity, and (3) observing, monitoring, reporting, and otherwise taking appropriate action regarding desired effect, side effect, interaction, and contraindication associated with administering the drug or device.

Source: Laws 2007, LB463, § 903. Operative date December 1, 2008.

38-2808. Board, defined. Board means the Board of Pharmacy.

Source: Laws 2007, LB463, § 904. Operative date December 1, 2008.

38-2808.01. Calculated expiration date, defined. Calculated expiration date means the expiration date on the manufacturer's, packager's, or distributor's container or one year from the date the drug or device is repackaged, whichever is earlier.

Source: Laws 2015, LB37, § 31. **Effective Date: August 30, 2015**

38-2809. Caregiver, defined. Caregiver means any person acting as an agent on behalf of a patient or any person aiding and assisting a patient.

Source: Laws 2007, LB463, § 905. Operative date December 1, 2008.

38-2810. Chart order, defined. Chart order means an order for a drug or device issued by a practitioner for a patient who is in the hospital or long-term care facility where the chart is stored or for a patient receiving detoxification treatment or maintenance treatment pursuant to section 28-412. Chart order does not include a prescription and may not be used to authorize dispensing of a controlled substance to a patient in a long-term care facility.

Source: Laws 2007, LB463, § 906; Laws 2015, LB37, § 32. **Effective Date: August 30, 2015**

38-2811. Compounding, defined. Compounding means the preparation of components into a drug product.

Source: Laws 2007, LB463, § 907; Laws 2015, LB37, § 33. **Effective Date: August 30, 2015**

38-2812. Delegated dispensing, defined. Delegated dispensing means the practice of pharmacy by which

one or more pharmacists have jointly agreed, on a voluntary basis, to work in conjunction with one or more persons pursuant to sections 38-2872 to 38-2889 under a protocol which provides that such person may perform certain dispensing functions authorized by the pharmacist or pharmacists under certain specified conditions and limitations.

Source: Laws 2007, LB463, § 908. Operative date December 1, 2008.

38-2813. Deliver or delivery, defined. Deliver or delivery means to actually, constructively, or attempt to transfer a drug or device from one person to another, whether or not for consideration.

Source: Laws 2007, LB463, § 909. Operative date December 1, 2008.

38-2814. Device, defined. Device means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, which is prescribed by a practitioner and dispensed by a pharmacist or other person authorized by law to do so.

Source: Laws 2007, LB463, § 910. Operative date December 1, 2008.

38-2815. Dialysis drug or device distributor, defined. Dialysis drug or device distributor means a manufacturer or wholesaler who provides dialysis drugs, solutions, supplies, or devices, to persons with chronic kidney failure for self-administration at the person's home or specified address, pursuant to a prescription.

Source: Laws 2007, LB463, § 911. Operative date December 1, 2008.

38-2816. Dialysis drug or device distributor worker, defined. Dialysis drug or device distributor worker means a person working for a dialysis drug or device distributor with a delegated dispensing permit who has completed the approved training and has demonstrated proficiency to perform the task or tasks of assembling, labeling, or delivering drugs or devices pursuant to a prescription.

Source: Laws 2007, LB463, § 912. Operative date December 1, 2008.

38-2817. Dispense or dispensing, defined. (1) Dispense or dispensing means interpreting, evaluating, and implementing a medical order, including preparing and delivering a drug or device to a patient or caregiver in a suitable container appropriately labeled for subsequent administration to, or use by, a patient.

(2) Dispensing includes (a) dispensing incident to practice, (b) dispensing pursuant to a delegated dispensing permit, (c) dispensing pursuant to a medical order, and (d) any transfer of a prescription drug or device to a patient or caregiver other than by administering.

Source: Laws 2007, LB463, § 913. Operative date December 1, 2008.

38-2818. Distribute, defined. Distribute means to deliver a drug or device, other than by administering or dispensing.

Source: Laws 2007, LB463, § 914. Operative date December 1, 2008.

38-2818.01. Drug sample or sample medication; defined. Drug sample or sample medication means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug. Each sample unit shall bear a label that clearly denotes its status as a drug sample, which may include, but need not be limited to, the words sample, not for sale, or professional courtesy package.

Source: Laws 2011, LB179, § 4. Effective Date: August 27, 2011.

38-2819. Drugs, medicines, and medicinal substances, defined. Drugs, medicines, and medicinal substances means (1) articles recognized in The United States Pharmacopeia and The National Formulary, the Homeopathic Pharmacopoeia of the United States, or any supplement to any of them, (2) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of diseases in humans or animals, (3) articles, except food, intended to affect the structure or any function of the body of a human or an animal, (4) articles intended for use as a component of any articles specified in subdivision (1), (2), or (3) of this section, except any device or its components, parts, or accessories, and (5) prescription drugs or devices.

Source: Laws 2007, LB463, § 915; Laws 2015, LB37

38-2820. Electronic signature, defined. Electronic signature has the same meaning as in section 86-621.

Source: Laws 2007, LB463, § 916. Operative date December 1, 2008.

38-2821. Electronic transmission, defined. Electronic transmission means transmission of information in

electronic form. Electronic transmission may include computer-to-computer transmission or computer-to-facsimile transmission.

Source: Laws 2007, LB463, § 917. Operative date December 1, 2008.

38-2822. Facility, defined. Facility means a health care facility as defined in section 71-413.

Source: Laws 2007, LB463, § 918. Operative date December 1, 2008.

38-2823. Facsimile, defined. Facsimile means a copy generated by a system that encodes a document or photograph into electrical signals, transmits those signals over telecommunications lines, and reconstructs the signals to create an exact duplicate of the original document at the receiving end.

Source: Laws 2007, LB463, § 919. Operative date December 1, 2008.

38-2824. Graduate pharmacy education or approved program, defined. Graduate pharmacy education or approved program means a period of supervised educational training by a graduate of an accredited school or college of pharmacy, which training has been approved by the board.

Source: Laws 1978, LB 675, § 3; Laws 1996, LB 1044, § 456; Laws 1999, LB 828, § 116; R.S.1943, (2003), § 71-1,147.19; Laws 2007, LB463, § 920. Operative date December 1, 2008.

38-2825. Hospital, defined. Hospital has the same meaning as in section 71-419.

Source: Laws 2007, LB463, § 921. Operative date December 1, 2008.

38-2825.01. Hospital pharmacy, defined. Hospital pharmacy means each facility licensed as a hospital in which the compounding, preparation for administration, or dispensing of drugs or devices pursuant to a chart order occurs for patients within the confines of the hospital with oversight by a pharmacist in charge.

Source: Laws 2015, LB37, § 35. **Effective Date: August 30, 2015**

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.

Source: Laws 2007, LB463, § 922; Laws 2009, LB604, § 6; Laws 2010, LB849, § 8. **Operative Date: July 15, 2010.**

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 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. Effective Date: September 6, 2013.

38-2826.02 Medical gas, defined. Medical gas means oxygen in liquid or gaseous form intended for human consumption.

Source: Laws 2009, LB604, § 4. Effective Date: May 27, 2009.

38-2826.03 Medical gas device, defined. Medical gas device means a medical device associated with the administration of medical gas.

Source: Laws 2009, LB604, § 5. Effective Date: May 27, 2009.

38-2827 Repealed. Laws 2009, LB 604, § 12.

38-2828. Medical order, defined. Medical order means a prescription, a chart order, or an order for pharmaceutical care issued by a practitioner.

Source: Laws 2007, LB463, § 924. Operative date December 1, 2008.

38-2829. Nonprescription drugs, defined. Nonprescription drugs means nonnarcotic medicines or drugs which may be sold without a medical order and which are prepackaged for use by the consumer and labeled in accordance with the requirements of the laws and regulations of this state and the federal government.

Source: Laws 2007, LB463, § 925. Operative date December 1, 2008.

38-2830. Patient counseling, defined. Patient counseling means the verbal communication by a pharmacist, pharmacist intern, or practitioner, in a manner reflecting dignity and the right of the patient to a reasonable degree of privacy, of information to the patient or caregiver in order to improve therapeutic outcomes by maximizing proper use of prescription drugs and devices and also includes the duties set out in section 38-2869.

Source: Laws 2007, LB463, § 926. Operative date December 1, 2008.

38-2831. Pharmaceutical care, defined. (1) Pharmaceutical care means the provision of drug therapy by a pharmacist for the purpose of achieving therapeutic outcomes that improve a patient's quality of life. Such outcomes include (a) the cure of disease, (b) the elimination or reduction of a patient's symptomatology, (c) the arrest or slowing of a disease process, or (d) the prevention of a disease or symptomatology.

(2) Pharmaceutical care includes the process through which the pharmacist works in concert with the patient and his or her caregiver, physician, or other professionals in designing, implementing, and monitoring a therapeutic plan that will produce specific therapeutic outcomes for the patient.

Source: Laws 2007, LB463, § 927; Laws 2015, LB37, § 36. **Effective Date: August 30, 2015**

38-2832. Pharmacist, defined. Pharmacist means any person who is licensed by the State of Nebraska to practice pharmacy.

Source: Laws 2007, LB463, § 928. Operative date December 1, 2008.

38-2833. Pharmacist in charge, defined. Pharmacist in charge means a pharmacist who is designated on a pharmacy license or designated by a hospital as being responsible for the practice of pharmacy in the pharmacy for which a pharmacy license is issued or in a hospital pharmacy and who works within the physical confines of such pharmacy or hospital pharmacy.

Source: Laws 2007, LB463, § 929; Laws 2015, LB37, § 37. **Effective Date: August 30, 2015**

38-2834. Pharmacist intern, defined. Pharmacist intern means a person who meets the requirements of section 38-2854.

Source: Laws 2007, LB463, § 930. Operative date December 1, 2008.

38-2835. Pharmacy, defined. Pharmacy has the same meaning as in section 71-425.

Source: Laws 2007, LB463, § 931. Operative date December 1, 2008.

38-2836. Pharmacy technician, defined. Pharmacy technician means an individual registered under sections 38-2890 to 38-2897.

Source: Laws 2007, LB247, § 80; Laws 2007, LB463, § 932. Operative date December 1, 2008.

38-2837. Practice of pharmacy, defined. (1) Practice of pharmacy means (a) the interpretation, evaluation, and implementation of a medical order, (b) the dispensing of drugs and devices, (c) drug product selection, (d) the administration of drugs or devices, (e) drug utilization review, (f) patient counseling, (g) the provision of pharmaceutical care, (h) medication therapy management, and (i) the responsibility for compounding and labeling of dispensed or repackaged drugs and devices, proper and safe storage of drugs and devices, and maintenance of proper records.

(2) The active practice of pharmacy means the performance of the functions set out in this section by a pharmacist as his or her principal or ordinary occupation.

Source: Laws 2007, LB463, § 933; Laws 2015, LB37, § 38. **Effective Date: August 30, 2015**

38-2838. Practitioner, defined. Practitioner means a certified registered nurse anesthetist, a certified nurse midwife, a dentist, an optometrist, a nurse practitioner, a physician assistant, a physician, a podiatrist, or a veterinarian.

Source: Laws 2007, LB463, § 934. Operative date December 1, 2008.

38-2839. Prescribe, defined. Prescribe means to issue a medical order.

Source: Laws 2007, LB463, § 935. Operative date December 1, 2008.

38-2840. Prescription, defined. Prescription means an order for a drug or device issued by a practitioner for a specific patient, for emergency use, or for use in immunizations. Prescription does not include a chart order.
Source: Laws 2007, LB463, § 936. Operative date December 1, 2008.

38-2841. Prescription drug or device or legend drug or device, defined. (1) Prescription drug or device or legend drug or device means:
(a) A drug or device which is required under federal law to be labeled with one of the following statements prior to being dispensed or delivered:
(i) Caution: Federal law prohibits dispensing without prescription;
(ii) Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian; or
(iii) "Rx Only"; or
(b) A drug or device which is required by any applicable federal or state law to be dispensed pursuant only to a prescription or chart order or which is restricted to use by practitioners only.
(2) Prescription drug or device or legend drug or device does not include a type of device, including supplies and device components, which carries the federal Food and Drug Administration legend "Caution: federal law restricts this device to sale by or on the order of a licensed health care practitioner" or an alternative legend approved by the federal Food and Drug Administration which it recognizes, in published guidance, as conveying essentially the same message.
Source: Laws 2007, LB463, § 937; Laws 2010, LB849, § 9. **Operative Date: July 15, 2010.**

38-2842. Public health clinic, defined. Public health clinic means the department, any county, city-county, or multicounty health department, or any private not-for-profit family planning clinic licensed as a health clinic as defined in section 71-416.
Source: Laws 2007, LB463, § 938. Operative date December 1, 2008.

38-2843. Public health clinic worker, defined. Public health clinic worker means a person in a public health clinic with a delegated dispensing permit who has completed the approved training and has demonstrated proficiency to perform the task of dispensing authorized refills of contraceptives pursuant to a written prescription.
Source: Laws 2007, LB463, § 939; Laws 2015, LB37, § 39.
Effective Date: August 30, 2015

38-2844. Signature, defined. Signature means the name, word, or mark of a person written in his or her own hand with the intent to authenticate a writing or other form of communication or a digital signature which complies with section 86-611 or an electronic signature.
Source: Laws 2007, LB463, § 940. Operative date December 1, 2008.

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 verification by such pharmacist. 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. Effective Date: September 6, 2013.

38-2845.01. Telepharmacy, defined. Telepharmacy means the provision of pharmacist care, by a pharmacist located within the United States, using telecommunications, remote order entry, or other automations and technologies to deliver care to patients or their agents who are located at sites other than where the pharmacist is located.
Source: Laws 2015, LB37, § 40. **Effective Date: August 30, 2015**

38-2846. Temporary educational permit, defined. Temporary educational permit means a permit to practice pharmacy in a supervised educational program approved by the board.
Source: Laws 1978, LB 675, § 2; Laws 1999, LB 828, § 115; R.S.1943, (2003), § 71-1,147.18; Laws 2007, LB463, § 942. Operative date December 1, 2008.

38-2847. Verification, defined. 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. Verification shall occur by a pharmacist on duty in the facility, except that if 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, verification may occur by means of a real-time audiovisual communication system.

Source: Laws 2007, LB463, § 943; Laws 2013, LB326, § 2. Effective Date: September 6, 2013.

38-2849. Board; membership; qualifications. The board shall be composed of five members, including four actively practicing pharmacists, at least one of whom practices within the confines of a hospital, and one public member who is interested in the health of the people of Nebraska.

Source: Laws 2007, LB463, § 945. Operative date December 1, 2008.

38-2850. Pharmacy; practice; persons excepted. As authorized by the Uniform Credentialing Act, the practice of pharmacy may be engaged in by a pharmacist, a pharmacist intern, or a practitioner with a pharmacy license. The practice of pharmacy shall not be construed to include:

(1) Practitioners, other than veterinarians, certified nurse midwives, certified registered nurse anesthetists, nurse practitioners, and physician assistants, who dispense drugs or devices as an incident to the practice of their profession, except that if such practitioner engages in dispensing such drugs or devices to his or her patients for which such patients are charged, such practitioner shall obtain a pharmacy license;

(2) Persons who sell, offer, or expose for sale nonprescription drugs or proprietary medicines, the sale of which is not in itself a violation of the Nebraska Liquor Control Act;

(3) Medical representatives, detail persons, or persons known by some name of like import, but only to the extent of permitting the relating of pharmaceutical information to health care professionals;

(4) Licensed veterinarians practicing within the scope of their profession;

(5) Certified nurse midwives, certified registered nurse anesthetists, nurse practitioners, and physician assistants who dispense sample medications which are provided by the manufacturer and are dispensed at no charge to the patient;

(6) Optometrists who prescribe or dispense eyeglasses or contact lenses to their own patients, including contact lenses that contain and deliver ocular pharmaceutical agents as authorized under the Optometry Practice Act, and ophthalmologists who prescribe or dispense eyeglasses or contact lenses to their own patients, including contact lenses that contain and deliver ocular pharmaceutical agents;

(7) Registered nurses or licensed practical nurses employed by a hospital who administer pursuant to a chart order, or procure for such purpose, single doses of drugs or devices from original drug or device containers or properly labeled repackaged or prepackaged drug or device containers to persons registered as patients and within the confines of the hospital;

(8) Persons employed by a facility where dispensed drugs and devices are delivered from a pharmacy for pickup by a patient or caregiver and no dispensing or storage of drugs or devices occurs;

(9) Persons who sell or purchase medical products, compounds, vaccines, or serums used in the prevention or cure of animal diseases and maintenance of animal health if such medical products, compounds, vaccines, or serums are not sold or purchased under a direct, specific, written medical order of a licensed veterinarian;

(10) A person accredited by an accrediting body who, pursuant to a medical order, (a) administers, dispenses, or distributes medical gas or medical gas devices to patients or ultimate users or (b) purchases or receives medical gas or medical gas devices for administration, dispensing, or distribution to patients or ultimate users; and

(11) A person accredited by an accrediting body who, pursuant to a medical order, (a) sells, delivers, or distributes devices described in subsection (2) of section 38-2841 to patients or ultimate users or (b) purchases or receives such devices with intent to sell, deliver, or distribute to patients or ultimate users.

Source: Laws 1927, c. 167, § 121, p. 490; C.S.1929, § 71-1802; R.S.1943, § 71-1,143; Laws 1961, c. 339, § 2, p. 1062; Laws 1971, LB 350, § 2; Laws 1983, LB 476, § 7; Laws 1994, LB 900, § 3; Laws 1996, LB 414, § 7; Laws 1996, LB 1108, § 15; Laws 2000, LB 1115, § 18; Laws 2001, LB 398, § 29; Laws 2005, LB 256, § 30; R.S.Supp.,2006, § 71-1,143; Laws 2007, LB463, § 946; Laws 2009, LB604, § 7; Laws 2010, LB849, § 10; Laws 2015, LB37, § 41. **Effective Date: August 30, 2015**

38-2851. Pharmacist; license; requirements. (1) To be eligible to take the pharmacist licensure examination, every applicant must present proof of graduation from an accredited pharmacy program. A graduate of a pharmacy program located outside of the United States and which is not accredited shall be deemed to have satisfied the requirement of being a graduate of an accredited pharmacy program upon providing evidence satisfactory to the department, with the recommendation of the board, of graduation from such foreign pharmacy program and upon successfully passing an equivalency examination approved by the board.

(2) Every applicant for licensure as a pharmacist shall (a) pass a pharmacist licensure examination approved by the board, (b) have graduated from a pharmacy program pursuant to subsection (1) of this section, and (c) present proof satisfactory to the department, with the recommendation of the board, that he or she has met one of the following requirements to demonstrate his or her current competency: (i) Within the last three years, has passed a pharmacist licensure examination approved by the board; (ii) has been in the active practice of the profession of pharmacy in another state, territory, or the District of Columbia for at least one year within the three years immediately preceding the application for licensure; (iii) has become board certified in a specialty recognized by the Board of Pharmacy Specialties or its successor within the seven years immediately preceding the application for licensure; (iv) is duly licensed as a pharmacist in some other state, territory, or the District of Columbia in which, under like conditions, licensure as a pharmacist is granted in this state; or (v) has completed continuing competency in pharmacy that is approved by the Board of Pharmacy.

(3) Proof of the qualifications for licensure prescribed in this section shall be made to the satisfaction of the department, with the recommendation of the board. Graduation from an accredited pharmacy program shall be certified by the appropriate school, college, or university authority by the issuance of the degree granted to a graduate of such school, college, or university.

Source: Laws 1927, c. 167, § 123, p. 491; C.S.1929, § 71-1804; Laws 1939, c. 91, § 1, p. 393; C.S.Supp.,1941, § 71-1804; Laws 1943, c. 151, § 2, p. 552; R.S.1943, § 71-1,145; Laws 1971, LB 350, § 3; Laws 1974, LB 811, § 14; Laws 1983, LB 476, § 14; Laws 1996, LB 1044, § 449; Laws 1999, LB 828, § 110; R.S.Supp.,2000, § 71-1,145; Laws 2001, LB 398, § 30; Laws 2003, LB 242, § 51; Laws 2003, LB 245, § 13; Laws 2004, LB 1005, § 15; R.S.Supp.,2006, § 71-1,143.01; Laws 2007, LB296, § 345; Laws 2007, LB463, § 947; Laws 2011, LB179, § 5. Effective Date: August 27, 2011.

38-2852. Examination; 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 a grade of seventy-five in an examination in jurisprudence of pharmacy.

Source: Laws 2007, LB463, § 948. Operative date December 1, 2008.

38-2853. Pharmacy; temporary pharmacist license; renewal; fees. A temporary pharmacist license may be granted to persons meeting all of the qualifications for a pharmacist license except the requirement that they be citizens of the United States. Such temporary license shall be issued for a period of one year from the date of issuance and may be renewed each year thereafter for four additional years, and if the person so licensed has not become a citizen of the United States within five years of the date such temporary license was issued, such license shall terminate and the person so licensed shall have no further right to practice pharmacy in this state. If a temporary pharmacist licensee becomes a citizen of the United States while a temporary pharmacist license is in force and provides evidence thereof to the department, a pharmacist license may be issued in place of such temporary license and no additional fee shall be charged unless such temporary license had already expired, in which case a renewal fee shall be charged. The applicant for a temporary pharmacist license shall submit proof of his or her eligibility and intent to become a citizen of the United States. The fees to be paid and procedures for the denial, suspension, revocation, or reinstatement of such temporary license shall be the same as for a pharmacist license.

Source: Laws 1973, LB 515, § 6; Laws 1996, LB 1044, § 450; R.S.1943, (1996), § 71-1,145.01; Laws 2001, LB 398, § 31; R.S.1943, (2003), § 71-1,143.02; Laws 2007, LB463, § 949. Operative date December 1, 2008.

38-2854. Pharmacist intern; qualifications; registration; powers. (1) A pharmacist intern shall be (a) a student currently enrolled in an accredited pharmacy program, (b) a graduate of an accredited pharmacy program serving his or her internship, or (c) 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. Effective Date: August 27, 2011.

38-2855. Pharmacy; temporary educational permits; issuance. The department, with the recommendation of the board, shall have authority to issue temporary educational permits to qualified applicants in accordance with the Pharmacy Practice Act.

Source: Laws 1978, LB 675, § 6; Laws 1996, LB 1044, § 458; Laws 1999, LB 828, § 119; R.S.1943, (2003), § 71-1,147.22; Laws 2007, LB463, § 951. Operative date December 1, 2008.

38-2856. Temporary educational permit; practice pharmacy; conditions. The holder of a temporary educational permit shall be entitled to practice pharmacy while serving in a supervised educational program or in an approved graduate pharmacy education program conducted by an accredited hospital or clinic in the State of Nebraska or by an accredited school or college of pharmacy in the State of Nebraska. The holder of a temporary educational permit shall not be qualified to engage in the practice of pharmacy outside of the assigned training program or outside the confines of the accredited hospital or clinic or the accredited school or college.

Source: Laws 1978, LB 675, § 7; R.S.1943, (2003), § 71-1,147.23; Laws 2007, LB463, § 952. Operative date December 1, 2008.

38-2857. Temporary educational permit; issuance; when. Before any temporary educational permit is issued pursuant to the Pharmacy Practice Act, the department, with the recommendation of the board, shall determine that the applicant for such permit has met all of the requirements of the act relating to issuing any such permit.

Source: Laws 1978, LB 675, § 8; Laws 1996, LB 1044, § 459; Laws 1999, LB 828, § 120; R.S.1943, (2003), § 71-1,147.24; Laws 2007, LB463, § 953. Operative date December 1, 2008.

38-2858. Holder of temporary educational permit; rules and regulations; applicability. Except as otherwise provided by law, the holder of any temporary educational permit shall be subject to all of the rules and regulations prescribed for pharmacists regularly licensed in the State of Nebraska and such other rules and regulations as may be adopted by the department, with the recommendation of the board, with respect to such permits in order to carry out the purposes of the Pharmacy Practice Act.

Source: Laws 1978, LB 675, § 9; Laws 1996, LB 1044, § 460; Laws 1999, LB 828, § 121; R.S.1943, (2003), § 71-1,147.25; Laws 2007, LB463, § 954. Operative date December 1, 2008.

38-2859. Temporary educational permit; period valid; renewal. The duration of any temporary educational permit issued pursuant to the Pharmacy Practice Act shall be determined by the department but in no case shall it be in excess of one year. The permit may be renewed from time to time at the discretion of the department but in no case shall it be renewed for more than five one-year periods.

Source: Laws 1978, LB 675, § 10; Laws 1996, LB 1044, § 461; R.S.1943, (2003), § 71-1,147.26; Laws 2007, LB296, § 346; Laws 2007, LB463, § 955. The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-2860. Temporary educational permit. The department, with the recommendation of the board, may issue to all qualified graduates of accredited colleges of pharmacy, who are eligible for the examination provided for in section 38-2851, and who make application for such examination, a temporary educational permit. Such permit shall be issued only for the duration of the time between the date of the examination and the date of licensure granted as a result of such examination.

Source: Laws 1978, LB 675, § 11; Laws 2001, LB 398, § 40; R.S.1943, (2003), § 71-1,147.27; Laws 2007, LB463, § 956. Operative date December 1, 2008.

38-2861. Temporary educational permit; serve in approved program; application; contents. Before

granting any temporary educational permit, the department shall ascertain by evidence satisfactory to the department, with the recommendation of the board, that an accredited hospital or clinic or an accredited school or college of pharmacy in the State of Nebraska has requested the issuance of a temporary educational permit for an applicant to serve as a graduate student in its approved program for the period involved. Any application for the issuance of such permit shall be signed by the applicant requesting that such permit be issued to him or her and shall designate the specified approved graduate pharmacy educational program with respect to which such permit shall apply.

Source: Laws 1978, LB 675, § 12; Laws 1996, LB 1044, § 462; R.S.1943, (2003), § 71-1,147.28; Laws 2007, LB296, § 347; Laws 2007, LB463, § 957. The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-2862. Temporary educational permit; recommendation for issuance; by whom. The recommendation of the board to the department for the issuance of any temporary educational permits shall be made at regular meetings of the board, but the chairperson or one other member of the board, as specifically selected by the members of the board, and its executive secretary, jointly shall have the power to recommend to the department the issuance of such permits between the meetings of the board.

Source: Laws 1978, LB 675, § 13; Laws 1999, LB 828, § 122; R.S.1943, (2003), § 71-1,147.29; Laws 2007, LB463, § 958. Operative date December 1, 2008.

38-2863. Temporary educational permit; fee. The recipient of a temporary educational permit shall pay the required fee.

Source: Laws 1978, LB 675, § 14; Laws 1996, LB 1044, § 463; Laws 1999, LB 828, § 123; Laws 2003, LB 242, § 52; R.S.1943, (2003), § 71-1,147.30; Laws 2007, LB463, § 959. Operative date December 1, 2008.

38-2864. Temporary educational permit; disciplinary actions; appeal. Any temporary educational permit granted under the authority of the Pharmacy Practice Act may be suspended, limited, or revoked by the department, with the recommendation of the board, at any time upon a finding that the reasons for issuing such permit no longer exist or that the person to whom such permit has been issued is no longer qualified to hold such permit or for any reason for which a pharmacist license could be suspended, limited, or revoked. A hearing on the suspension, limitation, or revocation of the temporary educational permit by the department shall be held in the same manner as for the denial of a pharmacist license. The final order of the director may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1978, LB 675, § 15; Laws 1988, LB 352, § 119; Laws 1996, LB 1044, § 464; Laws 1999, LB 828, § 124; Laws 2001, LB 398, § 41; R.S.1943, (2003), § 71-1,147.31; Laws 2007, LB296, § 348; Laws 2007, LB463, § 960. The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-2865. Holder; temporary educational permit; receive license; when. The holder of a temporary educational permit shall not be entitled to a pharmacist license in the State of Nebraska unless and until such individual meets all of the requirements of law for issuing such pharmacist license.

Source: Laws 1978, LB 675, § 16; Laws 2001, LB 398, § 42; R.S.1943, (2003), § 71-1,147.32; Laws 2007, LB463, § 961. Operative date December 1, 2008.

38-2866. Pharmacist; powers. Unless specifically limited by the board or the department, a pharmacist may (1) engage in the practice of pharmacy and telepharmacy, (2) use automation in the practice of pharmacy and telepharmacy, (3) use the abbreviation R.P., RP, R.Ph., or RPh or the title licensed pharmacist or pharmacist, (4) enter into delegated dispensing agreements, (5) supervise pharmacy technicians and pharmacist interns, and (6) possess, without dispensing, prescription drugs and devices, including controlled substances, for purposes of administration, repackaging, or educational use in an accredited pharmacy program. A pharmacy shall not be open for the practice of pharmacy unless a pharmacist is physically present.

Source: Laws 2001, LB 398, § 33; R.S.1943, (2003), § 71-1,143.03; Laws 2007, LB463, § 962; Laws 2008, LB308, § 11; Laws 2015, LB37, § 42. **Effective Date: August 30, 2015**

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. 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. **Effective Date: August 30, 2015**

38-2867. Pharmacy; scope of practice; prohibited acts; violation; penalty. (1) Except as provided for pharmacy technicians in sections 38-2890 to 38-2897, for persons described in subdivision (10) or (11) of section 38-2850, and for individuals authorized to dispense under a delegated dispensing permit, no person other than a licensed pharmacist, a pharmacist intern, or a practitioner with a pharmacy license shall provide pharmaceutical care, compound and dispense drugs or devices, or dispense pursuant to a medical order. Notwithstanding any other provision of law to the contrary, a pharmacist or pharmacist intern may dispense drugs or devices pursuant to a medical order of a practitioner authorized to prescribe in another state if such practitioner could be authorized to prescribe such drugs or devices in this state.

(2) Except as provided for pharmacy technicians in sections 38-2890 to 38-2897, for persons described in subdivision (10) or (11) of section 38-2850, and for individuals authorized to dispense under a delegated dispensing permit, it shall be unlawful for any person to permit or direct a person who is not a pharmacist intern, a licensed pharmacist, or a practitioner with a pharmacy license to provide pharmaceutical care, compound and dispense drugs or devices, or dispense pursuant to a medical order.

(3) It shall be unlawful for any person to coerce or attempt to coerce a pharmacist to enter into a delegated dispensing agreement or to supervise any pharmacy technician for any purpose or in any manner contrary to the professional judgment of the pharmacist. Violation of this subsection by a health care professional regulated pursuant to the Uniform Credentialing Act shall be considered an act of unprofessional conduct. A violation of this subsection by a facility shall be prima facie evidence in an action against the license of the facility pursuant to the Health Care Facility Licensure Act. Any pharmacist subjected to coercion or attempted coercion pursuant to this subsection has a cause of action against the person and may recover his or her damages and reasonable attorney's fees.

(4) Violation of this section by an unlicensed person shall be a Class III misdemeanor.

Source: Laws 1927, c. 167, § 127, p. 493; C.S.1929, § 71-1808; R.S.1943, § 71-1,147; Laws 1961, c. 339, § 3, p. 1063; Laws 1971, LB 350, § 5; Laws 1983, LB 476, § 15; Laws 1993, LB 536, § 50; Laws 1994, LB 900, § 4; Laws 1996, LB 1108, § 16; Laws 1999, LB 594, § 44; Laws 2001, LB 398, § 34; R.S.1943, (2003), § 71-1,147; Laws 2007, LB236, § 30; Laws 2007, LB247, § 81; Laws 2007, LB463, § 963; Laws 2009, LB604, § 8; Laws 2010, LB849, § 11; Laws 2015, LB37, § 44. **Effective Date: August 30, 2015**

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, 2015, 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. **Effective Date: August 30, 2015**

38-2867.02. Pharmacist in charge of hospital pharmacy; duties. (1) Beginning January 1, 2017, the pharmacist in charge of a hospital pharmacy shall develop and implement policies and procedures to ensure that a pharmacist reviews all medical orders prior to the first dose being administered to a patient in the hospital. The policies and procedures may provide for either a pharmacist onsite or the use of telepharmacy to comply with this requirement.

(2) This section does not apply to the following situations:

(a) When the practitioner controls the ordering, dispensing, and administration of the drug, such as in the operating room, endoscopy suite, or emergency room; or

(b) When time does not permit the pharmacist's review, such as (i) a stat order meaning a medical order which indicates that the medication is to be given immediately and only once or (ii) when the clinical status of the patient would be significantly compromised by the delay resulting from the pharmacist's review of the order.

Source: Laws 2015, LB37, § 46. **Effective Date: August 30, 2015**

38-2868. Pharmacist; patient information; privileged. (1) Information with regard to a patient maintained by a pharmacist pursuant to the Pharmacy Practice Act shall be privileged and confidential and may be released only to (a) the patient or the caregiver of the patient or others authorized by the patient or his or her legal representative, (b) a physician treating the patient, (c) other physicians or pharmacists when, in the professional judgment of the pharmacist, such release is necessary to protect the patient's health or well-being, or (d) other persons or governmental agencies authorized by law to receive such information.

(2) Nothing in this section shall prohibit the release of confidential information to researchers conducting biomedical, pharmaco-epidemiologic, or pharmaco-economic research pursuant to health research approved by an institutional review board which is established in accordance with 21 C.F.R. parts 50 and 56 or 45 C.F.R. part 46, as such parts existed on April 1, 2006.

Source: Laws 1993, LB 536, § 56; Laws 1994, LB 900, § 8; Laws 2001, LB 398, § 46; R.S.1943, (2003), § 71-1,147.36; Laws 2007, LB463, § 964. Operative date December 1, 2008.

38-2869. Prospective drug utilization review; counseling; requirements. (1)(a) Prior to the dispensing or the delivery of a drug or device pursuant to a medical order to a patient or caregiver, a pharmacist shall in all care settings conduct a prospective drug utilization review. Such prospective drug utilization review shall involve monitoring the patient-specific medical history described in subdivision (b) of this subsection and available to the pharmacist at the practice site for:

(i) Therapeutic duplication;

(ii) Drug-disease contraindications;

(iii) Drug-drug interactions;

(iv) Incorrect drug dosage or duration of drug treatment;

(v) Drug-allergy interactions; and

(vi) Clinical abuse or misuse.

(b) A pharmacist conducting a prospective drug utilization review shall ensure that a reasonable effort is made to obtain from the patient, his or her caregiver, or his or her practitioner and to record and maintain records of the following information to facilitate such review:

(i) The name, address, telephone number, date of birth, and gender of the patient;

(ii) The patient's history of significant disease, known allergies, and drug reactions and a comprehensive list of relevant drugs and devices used by the patient; and

(iii) Any comments of the pharmacist relevant to the patient's drug therapy.

(c) The assessment of data on drug use in any prospective drug utilization review shall be based on predetermined standards which are approved by the board.

(2)(a) Prior to the dispensing or delivery of a drug or device pursuant to a prescription, the pharmacist shall ensure that a verbal offer to counsel the patient or caregiver is made. The refusal of the verbal offer to counsel must be documented. The counseling of the patient or caregiver by the pharmacist shall be on elements which, in the exercise of the pharmacist's professional judgment, the pharmacist deems significant for the patient. Such elements may include, but need not be limited to, the following:

(i) The name and description of the prescribed drug or device;

(ii) The route of administration, dosage form, dose, and duration of therapy;

(iii) Special directions and precautions for preparation, administration, and use by the patient or caregiver;

(iv) Common side effects, adverse effects or interactions, and therapeutic contraindications that may be encountered, including avoidance, and the action required if such effects, interactions, or contraindications occur;

(v) Techniques for self-monitoring drug therapy;

(vi) Proper storage;

(vii) Prescription refill information; and

(viii) Action to be taken in the event of a missed dose.

(b) The patient counseling provided for in this subsection shall be provided in person whenever practical or by the utilization of telepharmacy which is available at no cost to the patient or caregiver.

(c) Patient counseling shall be appropriate to the individual patient and shall be provided to the patient or caregiver.

(d) Written information may be provided to the patient or caregiver to supplement the patient counseling provided for in this subsection but shall not be used as a substitute for such patient counseling.

(e) A verbal offer to counsel is not required when:

(i) The pharmacist, in his or her professional judgment, determines that patient counseling may be detrimental to the patient's care or to the relationship between the patient and his or her practitioner;

(ii) The patient is a patient or resident of a health care facility or health care service licensed under the Health Care Facility Licensure Act to whom prescription drugs or devices are administered;

(iii) A medical gas or a medical gas device is administered, dispensed, or distributed by a person described in subdivision (10) of section 38-2850; or

(iv) A device described in subsection (2) of section 38-2841 is sold, distributed, or delivered by a person described in subdivision (11) of section 38-2850.

Source: Laws 1993, LB 536, § 55; Laws 1998, LB 1073, § 63; Laws 2000, LB 819, § 92; Laws 2001, LB 398, § 45; Laws 2005, LB 382, § 8; R.S.Supp.,2006, § 71-1,147.35; Laws 2007, LB247, § 26; Laws 2007, LB463, § 965; Laws 2009, LB604, § 9; Laws 2010, LB849, § 12; Laws 2015, LB37, § 47. **Effective Date: August 30, 2015**

38-2870. Medical order; duration; dispensing; transmission. (1) 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.

(2) 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.

(3) 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 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.

(4)(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. 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.

(5) The pharmacist shall exercise professional judgment regarding the accuracy, validity, and authenticity of any medical order transmitted by facsimile or electronic transmission.

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. **Effective Date: August 30, 2015**

38-2871 Prescription information; transfer; requirements. Original prescription information for any controlled substances listed in Schedule III, IV, or V of section 28-405 and other prescription drugs or devices not listed in section 28-405 may be transferred between pharmacies for the purpose of refill dispensing on a one-time basis, except that pharmacies electronically accessing a real-time, on-line data base may transfer up to the maximum refills permitted by law and as authorized by the prescribing practitioner on the prescription. Transfers are subject to the following:

(1) The transfer is communicated directly between two pharmacists or pharmacist interns except when the pharmacies can use a real-time, on-line data base;

(2) The transferring pharmacist or pharmacist intern indicates void on the record of the prescription;

(3) The transferring pharmacist or pharmacist intern indicates on the record of the prescription the name, the address, and, if a controlled substance, the Drug Enforcement Administration number of the pharmacy to which the information was transferred, the name of the pharmacist or pharmacist intern receiving the information, the date of transfer, and the name of the transferring pharmacist or pharmacist intern;

(4) The receiving pharmacist or pharmacist intern indicates on the record of the transferred prescription that the prescription is transferred;

(5) The transferred prescription includes the following information:

(a) The date of issuance of the original prescription;

(b) The original number of refills authorized;

(c) The date of original dispensing;

(d) The number of valid refills remaining;

(e) The date and location of last refill; and

(f) The name, the address, and, if a controlled substance, the Drug Enforcement Administration number of the pharmacy from which the transfer was made, the name of the pharmacist or pharmacist intern transferring the information, the original prescription number, and the date of transfer; and

(6) Both the original and transferred prescriptions must be maintained by the transferring and receiving pharmacy for a period of five years from the date of transfer.

Source: Laws 2001, LB 398, § 36; R.S.1943, (2003), § 71-1,146.02; Laws 2007, LB463, § 967; Laws 2009, LB195, § 50. Effective Date: August 30, 2009.

38-2872. Delegated dispensing agreements; authorized. A pharmacist may delegate certain specified dispensing tasks and functions under specified conditions and limitations to another person by entering into a delegated dispensing agreement which serves as the basis for a delegated dispensing permit. A delegated dispensing agreement shall include the address of the site where the dispensing will occur, the name and license number of each pharmacist who will assume the responsibilities of the delegating pharmacist, the name and signature of any individual who will be dispensing pursuant to such agreement, the manner in which inspections must be conducted and documented by the delegating pharmacist, and any other information required by the board. A delegated dispensing agreement shall not become effective until a delegated dispensing permit based upon such agreement is issued by the department, with the recommendation of the board, pursuant to section 38-2873.

Source: Laws 2001, LB 398, § 47; R.S.1943, (2003), § 71-1,147.62; Laws 2007, LB463, § 968. Operative date December 1, 2008.

38-2873 Delegated dispensing permit; requirements. (1) Any person who has entered into a delegated dispensing agreement pursuant to section 38-2872 may apply to the department for a delegated dispensing permit. An applicant shall apply at least thirty days prior to the anticipated date for commencing delegated dispensing activities. Each applicant shall (a) file an application as prescribed by the department and a copy of the delegated dispensing agreement and (b) pay any fees required by the department. A hospital applying for a delegated dispensing permit shall not be required to pay an application fee if it has a pharmacy license under the Health Care Facility Licensure Act.

(2) The department shall issue or renew a delegated dispensing permit to an applicant if the department, with the recommendation of the board, determines that:

(a) The application and delegated dispensing agreement comply with the Pharmacy Practice Act;

(b) The public health and welfare is protected and public convenience and necessity is promoted by the issuance of such permit. If the applicant is a hospital, public health clinic, or dialysis drug or device distributor, the department shall find that the public health and welfare is protected and public convenience and necessity is promoted. For any other applicant, the department may, in its discretion, require the submission of documentation to demonstrate that the public health and welfare is protected and public convenience and necessity is promoted by the issuance of the delegated dispensing permit; and

(c) The applicant has complied with any inspection requirements pursuant to section 38-2874.

(3) In addition to the requirements of subsection (2) of this section, a public health clinic (a) shall apply for a separate delegated dispensing permit for each clinic maintained on separate premises even though such clinic is operated under the same management as another clinic and (b) shall not apply for a separate delegated dispensing permit to operate an ancillary facility. For purposes of this subsection, ancillary facility means a delegated dispensing site which offers intermittent services, which is staffed by personnel from a public health clinic for which a delegated dispensing permit has been issued, and at which no legend drugs or devices are stored.

(4) A delegated dispensing permit shall not be transferable. Such permit shall expire annually on July 1 unless renewed by the department. The department, with the recommendation of the board, may adopt and promulgate rules and regulations to reinstate expired permits upon payment of a late fee.

Source: Laws 2001, LB 398, § 48; R.S.1943, (2003), § 71-1,147.63; Laws 2007, LB463, § 969; Laws 2009, LB604, § 10. Effective Date: May 27, 2009.

38-2874. Delegated dispensing site; inspection; requirements; fees. (1) Before a delegated dispensing permit may be issued by the department, with the recommendation of the board, a pharmacy inspector of the board shall conduct an onsite inspection of the delegated dispensing site. A hospital applying for a delegated dispensing permit shall not be subject to an initial inspection or inspection fees pursuant to this subsection if the delegated dispensing site was inspected by the department pursuant to licensure under the Health Care Facility Licensure Act.

(2) Each permittee shall have the delegated dispensing site inspected at least once on an annual basis. Such inspection may be conducted by self-inspection or other compliance assurance modalities, when approved by the board, as authorized in the rules and regulations of the department. A hospital with a delegated dispensing permit shall not be subject to annual inspections or inspection fees pursuant to this subsection if the delegated dispensing site was inspected by the department pursuant to licensure under the Health Care Facility Licensure Act.

(3) Any applicant or permittee who fails to meet the requirements of the board or department to dispense drugs or devices pursuant to a delegated dispensing permit shall, prior to dispensing (a) have the delegated dispensing site reinspected by a pharmacy inspector of the board and (b) pay any reinspection fees.

(4) The department, with the recommendation of the board, shall set inspection fees by rule and regulation not to exceed the fees established for pharmacy inspections required to obtain a pharmacy license under the Health Care Facility Licensure Act. The department shall remit inspection fees to the State Treasurer for credit to the Professional and Occupational Credentialing Cash Fund.

Source: Laws 2001, LB 398, § 49; Laws 2003, LB 242, § 54; R.S.1943, (2003), § 71-1,147.64; Laws 2007, LB463, § 970. Operative date December 1, 2008.

38-2875. Delegated dispensing permit; complaint; investigation; costs. If a complaint is filed against a delegated dispensing permittee or any staff member, volunteer, or consultant in association with work performed under a delegated dispensing permit and if the complaint is found to be valid, the cost of investigating the complaint and any followup inspections shall be calculated by the board based upon the actual costs incurred and the cost shall be borne by the permittee being investigated. All costs collected by the department shall be remitted to the State Treasurer for credit to the Professional and Occupational Credentialing Cash Fund. If the complaint is not found to be valid, the cost of the investigation shall be paid from the fund.

Source: Laws 1994, LB 900, § 12; Laws 1998, LB 1073, § 67; Laws 2001, LB 398, § 50; Laws 2003, LB 242, § 53; R.S.1943, (2003), § 71-1,147.42; Laws 2007, LB463, § 971. Operative date December 1, 2008.

38-2876. Delegated dispensing permit; disciplinary actions. The department, with the recommendation of the board, may deny an application for a delegated dispensing permit, revoke, limit, or suspend a delegated dispensing permit, or refuse renewal of a delegated dispensing permit for a violation of section 38-178 or 38-179 or for any violation of the Pharmacy Practice Act and any rules and regulations adopted and promulgated by the department, with the recommendation of the board, pursuant to the act.

Source: Laws 1994, LB 900, § 13; Laws 1998, LB 1073, § 68; Laws 2001, LB 398, § 51; R.S.1943, (2003),

§ 71-1,147.43; Laws 2007, LB463, § 972. Operative date December 1, 2008.

38-2877. Delegated dispensing permit; denial or disciplinary actions; notice; hearing; procedure. (1) If the department, with the recommendation of the board, determines to deny an application for a delegated dispensing permit or to revoke, limit, suspend, or refuse renewal of a delegated dispensing permit, the department shall send to the applicant or permittee, by certified mail, a notice setting forth the particular reasons for the determination. The denial, limitation, suspension, revocation, or refusal of renewal shall become final thirty days after the mailing of the notice unless the applicant or permittee, within such thirty-day period, requests a hearing in writing. The applicant or permittee shall be given a fair hearing before the department and may present such evidence as may be proper. On the basis of such evidence, the determination involved shall be affirmed or set aside, and a copy of such decision setting forth the finding of facts and the particular reasons upon which it is based shall be sent by certified mail to the applicant or permittee. The decision shall become final thirty days after a copy of such decision is mailed unless the applicant or permittee within such thirty-day period appeals the decision pursuant to section 38-2879.

(2) The procedure governing hearings authorized by this section shall be in accordance with rules and regulations adopted and promulgated by the department. A full and complete record shall be kept of all proceedings. Witnesses may be subpoenaed by either party and shall be allowed a fee at a rate prescribed by the rules and regulations adopted and promulgated by the department. The proceedings shall be summary in nature and triable as equity actions. Affidavits may be received in evidence in the discretion of the director. 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 1994, LB 900, § 14; Laws 1996, LB 1044, § 466; Laws 1998, LB 1073, § 69; Laws 2001, LB 398, § 52; R.S.1943, (2003), § 71-1,147.44; Laws 2007, LB296, § 350; Laws 2007, LB463, § 973. The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-2878. Delegated dispensing permit; orders authorized; civil penalty. (1) Upon the completion of any hearing pursuant to section 38-2877, the director shall have the authority through entry of an order to exercise in his or her discretion any or all of the following powers:

(a) Issue a censure against the permittee;

(b) Place the permittee on probation;

(c) Place a limitation or limitations on the permit and upon the right of the permittee to dispense drugs or devices to the extent, scope, or type of operation, for such time, and under such conditions as the director finds necessary and proper. The director shall consult with the board in all instances prior to issuing an order of limitation;

(d) Impose a civil penalty not to exceed twenty thousand dollars. The amount of the civil penalty, if any, shall be based on the severity of the violation. If any violation is a repeated or continuing violation, each violation or each day a violation continues shall constitute a separate violation for the purpose of computing the applicable civil penalty, if any;

(e) Enter an order of suspension of the permit;

(f) Enter an order of revocation of the permit; and

(g) Dismiss the action.

(2) The permittee shall not dispense drugs or devices after a permit is revoked or during the time for which the permit is suspended. If a permit is suspended, the suspension shall be for a definite period of time to be fixed by the director. The permit shall be automatically reinstated upon the expiration of such period if the current renewal fees have been paid. If the permit is revoked, the revocation shall be permanent, except that at any time after the expiration of two years, application may be made for reinstatement by any permittee whose permit has been revoked as provided in section 38-148.

(3) 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 a proper form of action in the name of the state in the district court of the county in which the violator resides or owns property. The department shall remit any collected civil penalty to the State Treasurer, within thirty days after receipt, for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1994, LB 900, § 15; Laws 1998, LB 1073, § 70; Laws 1999, LB 828, § 126; Laws 2001, LB 398, § 53; R.S.1943, (2003), § 71-1,147.45; Laws 2007, LB296, § 351; Laws 2007, LB463, § 974. The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

38-2879. Delegated dispensing permit; revocation or suspension; procedure; appeal. (1) A petition for the revocation or suspension of a delegated dispensing permit may be filed by the Attorney General or by the county attorney in the county in which the permittee resides or is dispensing pursuant to a delegated dispensing permit. The petition shall be filed with the board and shall be entitled In the Matter of the Revocation (or suspension) of the Permit of (name of permittee) to dispense drugs and devices. It shall state the charges against the permittee with reasonable definiteness. Upon approval of such petition by the board, it shall be forwarded to the department which shall make an order fixing a time and place for hearing thereon, which shall not be less than ten days nor more than thirty days thereafter. Notice of the filing of such petition and of the time and place of hearing shall be served upon the permittee at least ten days before such hearing.

(2) The notice of charges may be served by any sheriff or constable or by any person especially appointed by the department. The order of revocation or suspension of a permit shall be entered on record and the name of such permittee stricken from the roster of permittees, and the permittee shall not engage in the dispensing of drugs and devices after revocation of the permit or during the time for which it is suspended.

(3) Any permittee shall have the right of appeal from an order of the department denying, revoking, suspending, or refusing renewal of a delegated dispensing permit. The appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1994, LB 900, § 16; Laws 1998, LB 1073, § 71; Laws 2001, LB 398, § 54; R.S.1943, (2003), § 71-1,147.46; Laws 2007, LB463, § 975. Operative date December 1, 2008.

38-2880. Delegated dispensing permit; criminal charges; when. When appropriate, the Attorney General, with the recommendation of the board, shall initiate criminal charges against pharmacists or other persons who knowingly permit individuals dispensing pursuant to a delegated dispensing permit to perform professional duties which require the expertise or professional judgment of a pharmacist.

Source: Laws 1994, LB 900, § 17; Laws 2001, LB 398, § 55; R.S.1943, (2003), § 71-1,147.47; Laws 2007, LB463, § 976. Operative date December 1, 2008.

38-2881 Delegated dispensing permit; formularies. (1) With the recommendation of the board, the director shall approve a formulary to be used by individuals dispensing pursuant to a delegated dispensing permit. A formulary shall consist of a list of drugs or devices appropriate to delegated dispensing activities authorized by the delegated dispensing permit. Except as otherwise provided in this section, if the board finds that a formulary would be unnecessary to protect the public health and welfare and promote public convenience and necessity, the board shall recommend that no formulary be approved.

(2)(a) With the recommendation of the board, the director shall approve the formulary to be used by public health clinics dispensing pursuant to a delegated dispensing permit.

(b) The formulary for a public health clinic shall consist of a list of drugs and devices for contraception, sexually transmitted diseases, and vaginal infections which may be dispensed and stored, patient instruction requirements which shall include directions on the use of drugs and devices, potential side effects and drug interactions, criteria for contacting the on-call pharmacist, and accompanying written patient information.

(c) In no event shall the director exclude any of the provisions for patient instruction approved by the board.

(d) Drugs and devices with the following characteristics shall not be eligible to be included in the formulary:

(i) Controlled substances;

(ii) Drugs with significant dietary interactions;

(iii) Drugs with significant drug-drug interactions; and

(iv) Drugs or devices with complex counseling profiles.

(3)(a) With the recommendation of the board, the director shall approve a formulary to be used by dialysis drug or device distributors.

(b) The formulary for a dialysis drug or device distributor shall consist of a list of drugs, solutions, supplies, and devices for the treatment of chronic kidney failure which may be dispensed and stored.

(c) In no event shall the director approve for inclusion in the formulary any drug or device not approved by the board.

(d) Controlled substances shall not be eligible to be included in the formulary.

Source: Laws 1994, LB 900, § 18; Laws 1996, LB 1044, § 467; Laws 1998, LB 1073, § 72; Laws 2001, LB 398, § 56; R.S.1943, (2003), § 71-1,147.48; Laws 2007, LB296, § 352; Laws 2007, LB463, § 977; Laws 2009, LB154, § 4. Effective Date: August 30, 2009.

38-2882. Delegated dispensing permit; delegating pharmacist; duties. (1) Each delegated dispensing permittee shall have an actively practicing Nebraska-licensed pharmacist listed as the delegating pharmacist in the delegated dispensing agreement. The delegating pharmacist shall be responsible for all activities set forth in his or her delegated dispensing agreement. The delegating pharmacist shall approve and maintain a policy and

procedure manual governing those aspects of the practice of pharmacy covered by the delegated dispensing agreement.

(2) The delegating pharmacist for a public health clinic or a dialysis drug or device distributor shall be physically in the clinic or distributor's facility at least once every thirty days. The delegating pharmacist shall conduct and document monthly inspections of all activities and responsibilities listed in subsection (3) of this section and under his or her delegated dispensing agreement.

(3) The delegating pharmacist for a public health clinic shall be responsible for the security, environment, inventory, and record keeping of all drugs and devices received, stored, or dispensed by the public health clinic. The delegating pharmacist for a dialysis drug or device distributor shall be responsible for the distribution, record keeping, labeling, and delivery of all drugs and devices dispensed by the dialysis drug or device distributor.

Source: Laws 1994, LB 900, § 20; Laws 1998, LB 1073, § 74; Laws 2001, LB 398, § 57; R.S.1943, (2003), § 71-1,147.50; Laws 2007, LB463, § 978. Operative date December 1, 2008.

38-2883. Delegated dispensing permit; liability; when. The delegating pharmacist or the on-call pharmacist shall not be held liable for acts or omissions on the part of an individual dispensing pursuant to the delegated dispensing permit.

Source: Laws 1994, LB 900, § 22; Laws 2001, LB 398, § 58; R.S.1943, (2003), § 71-1,147.52; Laws 2007, LB463, § 979. Operative date December 1, 2008.

38-2884. Delegated dispensing permit; public health clinic; dispensing requirements. Under a delegated dispensing permit for a public health clinic, approved formulary drugs and devices may be dispensed by a public health clinic worker or a health care professional licensed in Nebraska to practice medicine and surgery or licensed in Nebraska as a registered nurse, licensed practical nurse, or physician assistant without the onsite services of a pharmacist if:

(1) The initial dispensing of all prescriptions for approved formulary drugs and devices is conducted by a health care professional licensed in Nebraska to practice medicine and surgery or pharmacy or licensed in Nebraska as a registered nurse, licensed practical nurse, or physician assistant;

(2) The drug or device is dispensed pursuant to a prescription written onsite by a practitioner;

(3) The only prescriptions to be refilled under the delegated dispensing permit are prescriptions for contraceptives;

(4) Prescriptions are accompanied by patient instructions and written information approved by the director;

(5) The dispensing of authorized refills of contraceptives is done by a licensed health care professional listed in subdivision (1) of this section or by a public health clinic worker;

(6) All drugs or devices are prepackaged by the manufacturer or at a public health clinic by a pharmacist into the quantity to be prescribed and dispensed at the public health clinic;

(7) All drugs and devices stored, received, or dispensed under the authority of public health clinics are properly labeled at all times. For purposes of this subdivision, properly labeled means that the label affixed to the container prior to dispensing contains the following information:

(a) The name of the manufacturer;

(b) The lot number and expiration date from the manufacturer or, if repackaged by a pharmacist, the lot number and calculated expiration date;

(c) Directions for patient use;

(d) The quantity of drug in the container;

(e) The name, strength, and dosage form of the drug; and

(f) Auxiliary labels as needed for proper adherence to any prescription;

(8) The following additional information is added to the label of each container when the drug or device is dispensed:

(a) The patient's name;

(b) The name of the prescribing health care professional;

(c) The prescription number;

(d) The date dispensed; and

(e) The name and address of the public health clinic;

(9) The only drugs and devices allowed to be dispensed or stored by public health clinics appear on the formulary approved pursuant to section 38-2881; and

(10) At any time that dispensing is occurring from a public health clinic, the delegating pharmacist for the public health clinic or on-call pharmacist in Nebraska is available, either in person or by telephone, to answer

questions from clients, staff, public health clinic workers, or volunteers. This availability shall be confirmed and documented at the beginning of each day that dispensing will occur. The delegating pharmacist or on-call pharmacist shall inform the public health clinic if he or she will not be available during the time that his or her availability is required. If a pharmacist is unavailable, no dispensing shall occur.

Source: Laws 1994, LB 900, § 23; Laws 1996, LB 1044, § 468; Laws 1996, LB 1108, § 18; Laws 1998, LB 1073, § 76; Laws 2001, LB 398, § 59; Laws 2002, LB 1062, § 34; R.S.1943, (2003), § 71-1,147.53; Laws 2007, LB296, § 353; Laws 2007, LB463, § 980; Laws 2015, LB37, § 49. **Effective Date: August 30, 2015**

38-2885. Delegated dispensing permit; worker; qualifications. No person shall act as a public health clinic worker in a public health clinic or as a dialysis drug or device distributor worker for a dialysis drug or device distributor unless the person:

(1) Is at least eighteen years of age;

(2) Has earned a high school diploma or the equivalent;

(3) Has completed approved training as provided in section 38-2886; and

(4) Has demonstrated proficiency as provided in section 38-2887.

Source: Laws 1994, LB 900, § 24; Laws 1998, LB 1073, § 77; R.S.1943, (2003), § 71-1,147.54; Laws 2007, LB463, § 981. Operative date December 1, 2008.

38-2886 Delegated dispensing permit; workers; training; requirements; documentation. (1) A delegating pharmacist shall conduct the training of public health clinic workers. The training shall be approved in advance by the board.

(2) A delegating pharmacist shall conduct training of dialysis drug or device distributor workers. The training shall be based upon the standards approved by the board.

(3) The public health clinic, the dialysis drug or device distributor, and the delegating pharmacist shall be responsible to assure that approved training has occurred and is documented.

Source: Laws 1994, LB 900, § 25; Laws 1998, LB 1073, § 78; Laws 2001, LB 398, § 60; R.S.1943, (2003), § 71-1,147.55; Laws 2007, LB463, § 982; Laws 2009, LB154, § 5. Effective Date: August 30, 2009.

38-2887. Delegated dispensing permit; worker; proficiency demonstration; supervision; liability. (1) A public health clinic worker or dialysis drug or device distributor worker shall demonstrate proficiency to the delegating pharmacist, according to the standards approved by the board. The delegating pharmacist shall document proficiency for each worker. In addition, a public health clinic worker shall be supervised by a licensed health care professional specified in subdivision (1) of section 38-2884 for the first month that such worker is dispensing refills of contraceptives.

(2) Following initial training and proficiency demonstration, the public health clinic worker or dialysis drug or device distributor worker shall demonstrate continued proficiency at least annually. A dialysis drug or device distributor worker shall attend annual training programs taught by a pharmacist. Documentation of such training shall be maintained in the worker's employee file.

(3) The public health clinic or dialysis drug or device distributor for which a public health clinic worker or dialysis drug or device distributor worker is working shall be liable for acts or omissions on the part of such worker.

Source: Laws 1994, LB 900, § 26; Laws 1996, LB 1108, § 19; Laws 1998, LB 1073, § 79; Laws 2001, LB 398, § 61; R.S.1943, (2003), § 71-1,147.56; Laws 2007, LB463, § 983; Laws 2015, LB37, § 50. **Effective Date: August 30, 2015**

38-2888 Delegated dispensing permit; licensed health care professionals; training required. A delegating pharmacist shall conduct the training of all licensed health care professionals specified in subdivision (1) of section 38-2884 and who are dispensing pursuant to the delegated dispensing permit of a public health clinic. The training shall be approved in advance by the board.

Source: Laws 1994, LB 900, § 27; Laws 1996, LB 1108, § 20; Laws 1998, LB 1073, § 80; Laws 2000, LB 1115, § 20; Laws 2001, LB 398, § 62; R.S.1943, (2003), § 71-1,147.57; Laws 2007, LB463, § 984; Laws 2009, LB154, § 6. Effective Date: August 30, 2009.

38-2889 Delegated dispensing permit; advisory committees; authorized. The board may appoint formulary advisory committees as deemed necessary for the determination of formularies for delegated dispensing permittees.

Source: Laws 1994, LB 900, § 29; Laws 1996, LB 1044, § 469; Laws 1998, LB 1073, § 82; Laws 2001, LB 398, § 63; R.S.1943, (2003), § 71-1,147.59; Laws 2007, LB296, § 354; Laws 2007, LB463, § 985; Laws 2009, LB154, § 7. Effective Date: August 30, 2009.

38-2890. Pharmacy technicians; registration; requirements. (1) All pharmacy technicians employed by a facility licensed under the Health Care Facility Licensure Act shall be registered with the Pharmacy Technician Registry created in section 38-2893.

(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) have never been convicted of any nonalcohol, drug-related misdemeanor or felony, (d) file an application with the department, and (e) pay the applicable fee. (3) Beginning January 1, 2017, a pharmacy technician shall be certified by a state or national certifying body approved by the board in order to be employed as a pharmacy technician in a health care facility.

Source: Laws 2007, LB236, § 31; R.S.Supp.,2007, § 71-1,147.65; Laws 2015, LB37, § 51. **Effective Date: August 30, 2015**

38-2891. Pharmacy technicians; authorized tasks. (1) A pharmacy technician shall only perform tasks which do not require professional judgment and which are subject to verification to assist a pharmacist in the practice of pharmacy.

(2) 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;

(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.

(3) 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. The changes made by LB 236 became effective September 1, 2007. The changes made by LB 247 became operative December 1, 2008.

38-2892. Pharmacy technicians; employer responsibility. (1) The pharmacist in charge of a pharmacy or hospital pharmacy employing pharmacy technicians shall be responsible for the supervision and performance of the pharmacy technicians.

(2) The pharmacist in charge shall be responsible for the practice of pharmacy and the onsite training, functions, supervision, and verification of the performance of pharmacy technicians. 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 data base and have a pharmacist in all pharmacies. The supervision of pharmacy technicians at a 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. **Effective Date: August 30, 2015**

38-2893 Pharmacy Technician Registry; created; contents. (1) The Pharmacy Technician Registry is created. The department shall list each pharmacy technician registration in the 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 as provided in section 38-2894.

(2) The registry shall contain the following information on each individual who meets the conditions set out in section 38-2890: (a) The individual's full name; (b) information necessary to identify the individual; and (c) any other information as the department may require by rule and regulation.

Source: Laws 2007, LB236, § 34; R.S.Supp.,2007, § 71-1,147.68; Laws 2009, LB288, § 2. Operative Date: August 30, 2009.

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 (17) and (19) through (24) 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. Operative Date: August 30, 2009.

38-2895. Pharmacy technician; discipline against supervising pharmacist; enforcement orders. (1) If a pharmacy technician performs functions requiring professional judgment and licensure as a pharmacist or performs functions without supervision and verification and such acts are known to the pharmacist supervising the pharmacy technician or the pharmacist in charge or are of such a nature that they should have been known to a reasonable person, such acts may be considered acts of unprofessional conduct on the part of the pharmacist supervising the pharmacy technician or the pharmacist in charge pursuant to section 38-178, and disciplinary measures may be taken against such pharmacist supervising the pharmacy technician or the pharmacist in charge pursuant to the Uniform Credentialing Act.

(2) Acts described in subsection (1) of this section may be grounds for the department, with the recommendation of the board, to apply to the district court in the judicial district in which the pharmacy is located for an order to cease and desist from the performance of any unauthorized acts. On or at any time after such application the court may, in its discretion, issue an order restraining such pharmacy or its agents or employees from the performance of unauthorized acts. After a hearing the court shall either grant or deny the application. Such order shall continue until the court, after a hearing, finds the basis for such order has been removed. S

S**ource:** Laws 2007, LB236, § 36; R.S.Supp.,2007, § 71-1,147.70; Laws 2007, LB247, § 84; Laws 2015, LB37, § 53. **Effective Date: August 30, 2015**

38-2896. Pharmacy technician; reapplication for registration; lifting of disciplinary sanction. A person whose registration has been denied, refused renewal, removed, or suspended from the Pharmacy Technician Registry may reapply for registration or for lifting of the disciplinary sanction at any time in accordance with the rules and regulations adopted and promulgated by the department.

Source: Laws 2007, LB236, § 37; R.S.Supp., 2007, § 71-1,147.71. Operative date December 1, 2008.

38-2897. Pharmacy technician; duty to report impaired practitioner; immunity. A pharmacy technician shall report 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. A report made to the department under this section shall be confidential. Any person making a report to the department under this section, except for those 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 by 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.

Source: Laws 2007, LB236, § 38; R.S.Supp., 2007, § 71-1,147.72. Operative date December 1, 2008.

38-2898. Fees. The department shall establish and collect fees for credentialing under the Pharmacy Practice Act as provided in sections 38-151 to 38-157.
Source: Laws 2007, LB463, § 988. Operative date December 1, 2008.

38-2899. Rules and regulations. The department, with the recommendation of the board, shall adopt and promulgate rules and regulations as deemed necessary to implement the Mail Service Pharmacy Licensure Act, the Pharmacy Practice Act, and the Uniform Controlled Substances Act. The minimum standards and requirements for the practice of pharmacy, including dispensing pursuant to a delegated dispensing permit, shall be consistent with the minimum standards and requirements established by the department for pharmacy licenses under the Health Care Facility Licensure Act.

Source: Laws 2001, LB 398, § 27; Laws 2003, LB 667, § 4; Laws 2005, LB 538, § 20; R.S.Supp.,2006, § 71-1,148; Laws 2007, LB463, § 989; Laws 2015, LB37, § 54. **Effective Date: August 30, 2015**

38-28,100. Department; drugs and devices; powers; appeal. The department may place under seal all drugs or devices that are owned by or in the possession, custody, or control of a licensee or permittee under the Pharmacy Practice Act at the time his or her license or permit is suspended or revoked or at the time the board or department refuses to renew his or her license or permit. Except as otherwise provided in this section, drugs or devices so sealed shall not be disposed of until appeal rights under the Administrative Procedure Act have expired or an appeal filed pursuant to the act has been determined. The court involved in an appeal filed pursuant to the Administrative Procedure Act may order the department during the pendency of the appeal to sell sealed drugs or devices that are perishable. The proceeds of such a sale shall be deposited with the court.
Source: Laws 2001, LB 398, § 37; R.S.1943, (2003), § 71-1,149; Laws 2007, LB463, § 990. Operative date December 1, 2008.

38-28,101. Pharmacy inspector. Only a licensed pharmacist who is or who has been engaged in the active practice of pharmacy shall be appointed by the department to serve as a pharmacy inspector with the consent and approval of the board.
Source: Laws 2007, LB463, § 991. Operative date December 1, 2008.

38-28,102. Repealed. Laws 2008, LB 308, § 17.

38-28,103. Violation; penalty. Any person who does or commits any of the acts or things prohibited by the Pharmacy Practice Act or otherwise violates any of the provisions thereof shall be guilty of a Class II misdemeanor except as otherwise specifically provided.
Source: Laws 1961, c. 339, § 16, p. 1070; Laws 1977, LB 39, § 145; Laws 1993, LB 536, § 53; Laws 1994, LB 900, § 6; Laws 2001, LB 398, § 38; R.S.1943, (2003), § 71-1,147.13; Laws 2007, LB463, § 993. Operative date December 1, 2008.

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; 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. **Effective Date: August 30, 2015**

38-28,105. Chart order; contents. A chart order must contain the following information: Patient's name; date of the order; name of the drug, device, or biological; strength of the drug or biological, if applicable; directions for administration to the patient, including the dose to be given; and prescribing practitioner's name.
Source: Laws 2015, LB37, § 56. **Effective Date: August 30, 2015**

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.

Source: Laws 2015, LB37, § 57. **Effective Date: August 30, 2015**

STATUTES PERTAINING TO COLLECTION OR RETURN OF DISPENSED DRUGS AND DEVICES

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 returned from a long-term care facility to 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.

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. **Effective Date: August 30, 2015**

STATUTES PERTAINING TO THE NEBRASKA DRUG PRODUCT SELECTION ACT

38-28,108. Nebraska Drug Product Selection Act; act, how cited. Sections 38-28,108 to 38-28,116 shall be known and may be cited as the Nebraska Drug Product Selection Act.

Source: Laws 1977, LB 103, § 8; R.S.1943, (1996), § 71-5408; Laws 2003, LB 667, § 13; R.S.1943, (2009), § 71-5401.01; Laws 2015, LB37, § 59. **Effective Date: August 30, 2015**

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 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. **Effective Date: August 30, 2015**

38-28,110. Drug product selection; terms, defined. For purposes of the Nebraska Drug Product Selection Act, unless the context otherwise requires:

(1) Bioequivalent means drug products: (a) That are legally marketed under regulations promulgated by the federal Food and Drug Administration; (b) that are the same dosage form of the identical active ingredients in the identical amounts as the drug product prescribed; (c) that comply with compendial standards and are consistent from lot to lot with respect to (i) purity of ingredients, (ii) weight variation, (iii) uniformity of content, and (iv) stability; and (d) for which the federal Food and Drug Administration has established bioequivalent standards or has determined that no bioequivalence problems exist;

(2) 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;

(3) 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;

(4) Drug product means any drug or device as defined in section 38-2841;

(5) Drug product select means to dispense, without the practitioner's express authorization, an equivalent drug product in place of the brand-name drug product contained in a medical order of such practitioner;

(6) Equivalent means drug products that are both chemically equivalent and bioequivalent; and

(7) 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 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.
Effective Date: August 30, 2015

38-28,111. Drug product selection; when.

(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 a drug product 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.

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. **Effective Date: August 30, 2015**

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, 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.
Effective Date: August 30, 2015

38-28,113. Drug product selection; pharmacist; practitioner; negligence; what constitutes.
(1) The drug product selection of any drug product by a pharmacist pursuant to the Nebraska Drug Product Selection Act shall not constitute the practice of medicine.
(2) Drug product selection of drug products 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. **Effective Date: August 30, 2015**

38-28,114. Drug; labeling; contents; violation; embargo; effect.
(1) The manufacturer, packager, or distributor of any legend drug sold, delivered, or offered for sale for human use in the State of Nebraska shall have the name and address of the manufacturer of the finished dosage form of the drug printed on the label on the container of such drug.
(2) Whenever a duly authorized agent of the department has probable cause to believe that any drug is without such labeling, the agent shall embargo such drug and shall affix an appropriate marking thereto. Such marking shall contain (a) adequate notice that the drug (i) is or is suspected of being sold, delivered, or offered for sale in violation of the Nebraska Drug Product Selection Act and (ii) has been embargoed and (b) a warning that it is unlawful for any person to remove or dispose of the embargoed drug by sale or otherwise without the permission of the agent or a court of competent jurisdiction.
Source: Laws 1977, LB 103, § 6; Laws 2001, LB 398, § 78; Laws 2003, LB 667, § 19; R.S.1943, (2009), § 71-5406; Laws 2015, LB37, § 65. **Effective Date: August 30, 2015**

38-28,115. Drug product selection; violations; penalty.
(1) In addition to any other penalties provided by law, any person who violates any provision of the Nebraska Drug Product Selection Act or any rule or regulation adopted and promulgated under the act is guilty of a Class IV misdemeanor for each violation.
(2) It is unlawful for any employer or such employer's agent to coerce a pharmacist to dispense a drug product against the professional judgment of the pharmacist or as ordered by a prescribing practitioner.
Source: Laws 1977, LB 103, § 7; Laws 1983, LB 476, § 24; Laws 1988, LB 1100, § 169; Laws 2001, LB 398, § 79; Laws 2003, LB 667, § 20; R.S.1943, (2009), § 71-5407; Laws 2015, LB37, § 66.
Effective Date: August 30, 2015

38-28,116. Drug product selection; rules and regulations. 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.
Source: Laws 2003, LB 667, § 21; R.S.1943, (2009), § 71-5409; Laws 2015, LB37, § 67.
Effective Date: August 30, 2015

STATUTES PERTAINING TO MAIL ORDER CONTACT LENS ACT

69-301. Act, how cited. Sections 69-301 to 69-307 shall be known and may be cited as the Mail Order Contact Lens Act.
Source: Laws 2001, LB 398, § 86. Operative date May 1, 2001.

69-302. Terms, defined. For purposes of the Mail Order Contact Lens Act:

(1) Contact lens prescription means a written order bearing the original signature of an optometrist or physician or an oral or electromagnetic order issued by an optometrist or physician that authorizes the dispensing of contact lenses to a patient and meets the requirements of section 69-303;

(2) Department means the Department of Health and Human Services;

(3) Mail-order ophthalmic provider means an entity that ships, mails, or in any manner delivers dispensed contact lenses to Nebraska residents;

(4) Optometrist means a person licensed to practice optometry pursuant to the Optometry Practice Act; and

(5) Physician means a person licensed to practice medicine and surgery pursuant to the Medicine and Surgery Practice Act.

Source: Laws 2001, LB 398, § 87; Laws 2007, LB296, § 294; Laws 2007, LB463, § 1176. The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

69-303. Ophthalmic provider; contact lens prescription. (1) A mail-order ophthalmic provider may dispense contact lenses in Nebraska or to a Nebraska resident if the contact lens prescription is valid. Such prescription is valid if it (a) contains the patient's name, date ordered, expiration date, instructions for use, optometrist or physician identifying information, date of patient's last examination, fabrication, and related information and (b) has not expired.

(2) Each contact lens prescription shall be valid for the duration of the prescription as indicated by the optometrist or physician or for a period of twelve months from the date of issuance, whichever period expires first. Upon expiration, an optometrist or physician may extend the prescription without further examination.

(3) An optometrist or physician shall offer the prescription to a patient following the fitting process and payment of all fees for services rendered. The patient shall mail the prescription or send a copy by facsimile or other electronic means to the mail-order ophthalmic provider.

Source: Laws 2001, LB 398, § 88. Operative date May 1, 2001.

69-304. Ophthalmic provider; registration; requirements. The department shall require and provide for an annual registration for all mail-order ophthalmic providers located outside of this state, including those providing services via the Internet, that dispense contact lenses to Nebraska residents. The department shall grant a mail-order ophthalmic provider's registration upon the disclosure and certification by such provider of the following:

(1) That it is licensed or registered to dispense contact lenses in the state where the dispensing facility is located and from where the contact lenses are dispensed, if required;

(2) The location, names, and titles of all principal corporate officers and the person who is responsible for overseeing the dispensing of contact lenses to Nebraska residents;

(3) That it complies with directions and appropriate requests for information from the regulating agency of each state where it is licensed or registered;

(4) That it will respond directly and within a reasonable period of time to all communications from the department concerning emergency circumstances arising from the dispensing of contact lenses to Nebraska residents;

(5) That it maintains its records of contact lenses dispensed to Nebraska residents so that such records are readily retrievable;

(6) That it will cooperate with the department in providing information to the regulatory agency of any state where it is licensed or registered concerning matters related to the dispensing of contact lenses to Nebraska residents;

(7) That it conducts business in a manner that conforms to the requirements of section 69-303;

(8) That it provides a toll-free telephone service for responding to patient questions and complaints during its regular hours of operation and agrees to (a) include the toll-free number in literature provided with mailed contact lenses and (b) refer all questions relating to eye care for the lenses prescribed back to the contact lens prescriber; and

(9) That it provides the following, or substantially equivalent, written notification to the patient whenever contact lenses are supplied:

WARNING: IF YOU ARE HAVING ANY OF THE FOLLOWING SYMPTOMS, REMOVE YOUR LENSES IMMEDIATELY AND CONSULT YOUR EYE CARE PRACTITIONER BEFORE WEARING YOUR LENSES AGAIN: UNEXPLAINED EYE DISCOMFORT, WATERING, VISION CHANGE, OR REDNESS.

Source: Laws 2001, LB 398, § 89. Operative date May 1, 2001.

69-305. Fees; disposition. The mail-order ophthalmic provider shall pay a fee equivalent to the annual fee for an initial or renewal permit to operate a pharmacy in Nebraska as established in and at the times provided for in the Health Care Facility Licensure Act. Such fees shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund.

Source: Laws 2001, LB 398, § 90; Laws 2003, LB 242, § 12; Laws 2007, LB296, § 295. Operative date July 1, 2007.

69-306. Act; enforcement. The department, upon the recommendation of the Board of Pharmacy, the Board of Optometry, or the Board of Medicine and Surgery, shall notify the Attorney General of any possible violations of the Mail Order Contact Lens Act. If the Attorney General has reason to believe that an out-of-state person is operating in violation of the act, the Attorney General may commence an action in the district court of Lancaster County to enjoin such person from further mailing, shipping, or otherwise delivering contact lenses into Nebraska.

Source: Laws 2001, LB 398, § 91. Operative date May 1, 2001.

69-307. Rules and regulations. The department, upon the joint recommendation of the Board of Pharmacy, Board of Optometry, and Board of Medicine and Surgery, may adopt and promulgate rules and regulations for enforcement of the Mail Order Contact Lens Act.

Source: Laws 2001, LB 398, § 92. Operative date May 1, 2001.

STATUTES PERTAINING TO MEDICINE AND SURGERY PRACTICE ACT
(Physician Assistant prescribing of drugs and devices)

71-1,107.30. Transferred to section 38-2055.

STATUTES PERTAINING TO PRACTICE OF PHARMACY

71-1,142. Repealed. Laws 2007, LB 463, § 1319.
71-1,143 and 71-1,143.01. Transferred to section 38-2850 and 38-2851.
71-1,143.02. Transferred to section 38-2853.
71-1,143.03. Transferred to section 38-2866.
71-1,144. Transferred to section 38-2854.
71-1,144.01. Repealed. Laws 2007, LB 463, § 1319.
71-1,144.02. Repealed. Laws 2000, LB 1135, § 34.
71-1,144.03 to 71-1,144.05. Repealed. Laws 2002, LB 1021, §111.
71-1,145 and 71-1,145.01. Transferred to sections 71-1,143.01 and 71-1,143.02.
71-1,146. Transferred to section 38-2804.
71-1,146.01 and 71-1,146.02. Transferred to section 38-2870 and 38-2871.
71-1,147. Transferred to section 38-2867.
71-1,147.01 to 71-1,147.12. Repealed. Laws 2000, LB 819, § 163.
71-1,147.13. Transferred to section 38-28,103.
71-1,147.14. Repealed. Laws 2001, LB 398, s. 96.
71-1,147.15. Transferred to section 38-28,102.
71-1,147.16 and 71-1,147.17. Repealed. Laws 2007, LB 463, § 1319.
71-1,147.18. Transferred to section 38-2846.
71-1,147.19. Transferred to section 38-2824.
71-1,147.20. Transferred to section 38-2803.
71-1,147.21. Transferred to section 38-2805.
71-1,147.22 to 71-1,147.32. Transferred to section 38-2855 to 38-2865.
71-1,147.33 and 71-1,147.34. Repealed. Laws 2007, LB 236, § 47.
71-1,147.35 and 71-1,147.36. Transferred to section 38-2869 and 38-2868.
71-1,147.37 and 71-1,147.38. Repealed. Laws 1999, LB 594, § 75.
71-1,147.39 to 71-1,147.41. Repealed. Laws 2001, LB 398, s. 97**.**
71-1,147.42 to 71-1,147.48. Transferred to section 38-2875 to 38-2881.
71-1,147.49. Repealed. Laws 2001, LB 398, s. 97.
71-1,147.50. Transferred to section 38-2882.
71-1,147.51. Repealed. Laws 2001, LB 398, s. 97.
71-1,147.52 to 71-1,147.57. Transferred to section 38-2883 to 38-2888.
71-1,147.58. Repealed. Laws 2001, LB 398, s. 97.
71-1,147.59. Transferred to section 38-2889.

71-1,147.60 and 71-1,147.61. Repealed. Laws 2001, LB 398, s. 97.
71-1,147.62 to 71-1,147.64. Transferred to section 38-2872 to 38-2874.
71-1,147.65 to 71-1,147.72. Transferred to section 38-2890 to 38-2897.
71-1,148 and 71-1,149. Transferred to section 38-2899 and 38-28,100.
71-1,150. Repealed. Laws 2003, LB 242, §154.
71-1,151. Repealed. Laws 2007, LB 463, § 1319.

STATUTES PERTAINING TO HEALTH CARE FACILITY LICENSURE ACT

71-401. Act, how cited. Sections 71-401 to 71-470 shall be known and may be cited as the Health Care Facility Licensure Act.
Source: Laws 2000, LB 819, § 1; Laws 2001, LB 398, § 65; Laws 2004, LB 1005, § 41; Laws 2007, LB203, § 1; Laws 2009, LB288, § 31; Laws 2010, LB849, § 19; Laws 2010, LB999, § 1; Laws 2011, LB34, § 1; Laws 2011, LB542, § 1; Laws 2012, LB1077, § 1; Laws 2013, LB459, § 1; Laws 2015, LB37, § 68. **Effective Date: August 30, 2015**

71-402. Purpose of act. The purpose of the Health Care Facility Licensure Act and the Nebraska Nursing Home Act is to protect the public health, safety, and welfare by providing for the licensure of health care facilities and health care services in the State of Nebraska and for the development, establishment, and enforcement of basic standards for such facilities and services.
Source: Laws 2000, LB 819, § 2. Operative date January 1, 2001.

71-403. Definitions, where found. For purposes of the Health Care Facility Licensure Act, unless the context otherwise requires, the definitions found in sections 71-404 to 71-431 shall apply.
Source: Laws 2000, LB 819, § 3; Laws 2007, LB203, § 2; Laws 2010, LB849, § 20; Laws 2015, LB37, § 69. **Effective Date: August 30, 2015**

71-404. Adult day service, defined. (1) Adult day service means a person or any legal entity which provides care and an array of social, medical, or other support services for a period of less than twenty-four consecutive hours in a community-based group program to four or more persons who require or request such services due to age or functional impairment.
(2) Adult day service does not include services provided under the Developmental Disabilities Services Act.
Source: Laws 2000, LB 819, § 4; Laws 2002, LB 1062, § 39. Operative date July 20, 2002.

71-405. Ambulatory surgical center, defined. (1) Ambulatory surgical center means a facility (a) where surgical services are provided to persons not requiring hospitalization who are admitted to and discharged from such facility within the same working day and are not permitted to stay overnight at such facility, (b) which meets all applicable requirements for licensure as a health clinic under the Health Care Facility Licensure Act, and (c) which has qualified for a written agreement with the Health Care Financing Administration of the United States Department of Health and Human Services or its successor to participate in medicare as an ambulatory surgical center as defined in 42 C.F.R. 416 et seq. or which receives other third-party reimbursement for such services.
(2) Ambulatory surgical center does not include an office or clinic used solely by a practitioner or group of practitioners in the practice of medicine, dentistry, or podiatry.
Source: Laws 2000, LB 819, § 5. Operative date January 1, 2001.

71-406. Assisted-living facility, defined. (1) Assisted-living facility means a facility where shelter, food, and care are provided for remuneration for a period of more than twenty-four consecutive hours to four or more persons residing at such facility who require or request such services due to age, illness, or physical disability.
(2) Assisted-living facility does not include a home, apartment, or facility where (a) casual care is provided at irregular intervals or (b) a competent person residing in such home, apartment, or facility provides for or contracts for his or her own personal or professional services if no more than twenty-five percent of persons residing in such home, apartment, or facility receive such services.
Source: Laws 2000, LB 819, § 6. Operative date January 1, 2001.

71-407. Care, defined. (1) Care means the exercise of concern or responsibility for the comfort, welfare, and habilitation of persons, including a minimum amount of supervision and assistance with or the provision of personal care, activities of daily living, health maintenance activities, or other supportive services.

(2) For purposes of this section:

(a) Activities of daily living means transfer, ambulation, exercise, toileting, eating, self-administered medication, and similar activities;

(b) Health maintenance activities means noncomplex interventions which can safely be performed according to exact directions, which do not require alteration of the standard procedure, and for which the results and resident responses are predictable; and

(c) Personal care means bathing, hair care, nail care, shaving, dressing, oral care, and similar activities.

Source: Laws 2000, LB 819, § 7. Operative date January 1, 2001.

71-408. Center or group home for the developmentally disabled, defined. Center or group home for the developmentally disabled means a facility where shelter, food, and care, advice, counseling, diagnosis, treatment, or related services are provided for a period of more than twenty-four consecutive hours to four or more persons residing at such facility who have developmental disabilities.

Source: Laws 2000, LB 819, § 8. Operative date January 1, 2001.

71-408.01. Children's day health service, defined. (1) Children's day health service means a person or any legal entity which provides specialized care and treatment, including an array of social, medical, rehabilitation, or other support services for a period of less than twenty-four consecutive hours in a community-based group program to twenty or more persons under twenty-one years of age who require such services due to medical dependence, birth trauma, congenital anomalies, developmental disorders, or functional impairment.

(2) Children's day health service does not include services provided under the Developmental Disabilities Services Act.

Source: Laws 2010, LB849, § 21. **Operative Date: July 15, 2010.**

71-409. Critical access hospital, defined. Critical access hospital means a facility (1) with acute care inpatient beds where care or treatment is provided on an outpatient basis or on an inpatient basis to persons for an average period of not more than ninety-six hours and emergency services are provided on a twenty-four-hour basis, (2) which has formal agreements with at least one hospital and other appropriate providers for services such as patient referral and transfer, communications systems, provision of emergency and nonemergency transportation, and backup medical and emergency services, and (3) which is located in a rural area. For purposes of this section, rural area means a county with a population of less than one hundred thousand residents. A facility licensed as a critical access hospital shall have no more than twenty-five acute care inpatient beds.

Source: Laws 2000, LB 819, § 9; Laws 2004, LB 1005, § 42; Laws 2005, LB 664, § 1; Laws 2008, LB797, § 5. Operative date April 1, 2008.

71-410. Department, defined. Department means the Division of Public Health of the Department of Health and Human Services.

Source: Laws 2000, LB 819, § 10; Laws 2007, LB296, § 369. Operative date July 1, 2007.

71-411. Director, defined. Director means the Director of Public Health of the Division of Public Health.

Source: Laws 2000, LB 819, § 11; Laws 2007, LB296, § 370. Operative date July 1, 2007.

71-412. General acute hospital, defined. General acute hospital means a hospital with a duly constituted governing body where medical, nursing, surgical, anesthesia, laboratory, diagnostic radiology, pharmacy, and dietary services are provided on an inpatient or outpatient basis by the organized medical staff of such hospital.

Source: Laws 2000, LB 819, § 12. Operative date January 1, 2001.

71-413. Health care facility, defined. Health care facility means an ambulatory surgical center, an assisted-living facility, a center or group home for the developmentally disabled, a critical access hospital, a general acute hospital, a health clinic, a hospital, an intermediate care facility, an intermediate care facility for persons with developmental disabilities, a long-term care hospital, a mental health center, a nursing facility, a pharmacy, a psychiatric or mental hospital, a public health clinic, a rehabilitation hospital, a skilled nursing facility, or a substance abuse treatment center.

Source: Laws 2000, LB 819, § 13; Laws 2013, LB23, § 26. Effective Date: September 6, 2013.

71-414. Health care practitioner facility, defined. Health care practitioner facility means the residence, office, or clinic of a practitioner or group of practitioners credentialed under the Uniform Credentialing Act or any distinct part of such residence, office, or clinic.

Source: Laws 2000, LB 819, § 14; Laws 2007, LB463, § 1179. Operative date December 1, 2008.

71-415. Health care service, defined. Health care service means an adult day service, a home health agency, a hospice or hospice service, a respite care service, or beginning January 1, 2011, a children's day health service. Health care service does not include an in-home personal services agency as defined in section 71-6501.

Source: Laws 2000, LB 819, § 15; Laws 2007, LB236, § 43; Laws 2010, LB849, § 22. **Operative Date: July 15, 2010.**

71-416. Health clinic, defined. (1) Health clinic means a facility where advice, counseling, diagnosis, treatment, surgery, care, or services relating to the preservation or maintenance of health are provided on an outpatient basis for a period of less than twenty-four consecutive hours to persons not residing or confined at such facility. Health clinic includes, but is not limited to, an ambulatory surgical center or a public health clinic.

(2) Health clinic does not include (a) a health care practitioner facility (i) unless such facility is an ambulatory surgical center, (ii) unless ten or more abortions, as defined in subdivision (1) of section 28-326, are performed during any one calendar week at such facility, or (iii) unless hemodialysis or labor and delivery services are provided at such facility, or (b) a facility which provides only routine health screenings, health education, or immunizations.

(3) For purposes of this section:

(a) Public health clinic means the department, any county, city-county, or multicounty health department, or any private not-for-profit family planning clinic licensed as a health clinic;

(b) Routine health screenings means the collection of health data through the administration of a screening tool designed for a specific health problem, evaluation and comparison of results to referral criteria, and referral to appropriate sources of care, if indicated; and

(c) Screening tool means a simple interview or testing procedure to collect basic information on health status.

Source: Laws 2000, LB 819, § 16. Operative date January 1, 2001.

71-417. Home health agency, defined. Home health agency means a person or any legal entity which provides skilled nursing care or a minimum of one other therapeutic service as defined by the department on a full-time, part-time, or intermittent basis to persons in a place of temporary or permanent residence used as the person's home.

Source: Laws 2000, LB 819, § 17. Operative date January 1, 2001.

71-418. Hospice or hospice service, defined. Hospice or hospice service means a person or any legal entity which provides home care, palliative care, or other supportive services to terminally ill persons and their families.

Source: Laws 2000, LB 819, § 18. Operative date January 1, 2001.

71-419. Hospital, defined. (1) Hospital means a facility where diagnosis, treatment, medical care, obstetrical care, nursing care, or related services are provided on an outpatient basis or on an inpatient basis for a period of more than twenty-four consecutive hours to persons who have an illness, injury, or deformity or to aged or infirm persons requiring or receiving convalescent care.

(2) Hospital includes a facility or part of a facility which provides space for a general acute hospital, a rehabilitation hospital, a long-term care hospital, a critical access hospital, or a psychiatric or mental hospital.

(3) Hospital does not include a health care practitioner facility in which persons do not receive care or treatment for a period of more than twenty-four consecutive hours.

Source: Laws 2000, LB 819, § 19. Operative date January 1, 2001.

71-419.01. Hospital pharmacy, defined. Hospital pharmacy means each facility licensed as a hospital in which the compounding, preparation for administration, or dispensing of drugs or devices pursuant to a chart order occurs for patients within the confines of the hospital with oversight by a pharmacist in charge.

Source: Laws 2015, LB37, § 70. **Effective Date: August 30, 2015**

71-420. Intermediate care facility, defined. Intermediate care facility means a facility where shelter, food, and nursing care or related services are provided for a period of more than twenty-four consecutive hours to persons residing at such facility who are ill, injured, or disabled and do not require hospital or skilled nursing facility care.

Source: Laws 2000, LB 819, § 20. Operative date January 1, 2001.

71-421. Intermediate care facility for persons with developmental disabilities, defined. Intermediate care facility for persons with developmental disabilities means a facility where shelter, food, and training or habilitation services, advice, counseling, diagnosis, treatment, care, nursing care, or related services are provided for a period of more than twenty-four consecutive hours to four or more persons residing at such facility who have a developmental disability.

Source: Laws 2000, LB 819, § 21; Laws 2013, LB23, § 27. Effective Date: September 6, 2013.

71-422. Long-term care hospital, defined. Long-term care hospital means a hospital or any distinct part of a hospital that provides the care and services of an intermediate care facility, a nursing facility, or a skilled nursing facility.

Source: Laws 2000, LB 819, § 22. Operative date January 1, 2001.

71-423. Mental health center, defined. Mental health center means a facility where shelter, food, and counseling, diagnosis, treatment, care, or related services are provided for a period of more than twenty-four consecutive hours to persons residing at such facility who have a mental disease, disorder, or disability.

Source: Laws 2000, LB 819, § 23. Operative date January 1, 2001.

71-424. Nursing facility, defined. Nursing facility means a facility where medical care, nursing care, rehabilitation, or related services and associated treatment are provided for a period of more than twenty-four consecutive hours to persons residing at such facility who are ill, injured, or disabled.

Source: Laws 2000, LB 819, § 24. Operative date January 1, 2001.

71-425. Pharmacy, defined. Pharmacy means a facility advertised as a pharmacy, drug store, hospital pharmacy, dispensary, or any combination of such titles where drugs or devices are dispensed as defined in the Pharmacy Practice Act.

Source: Laws 2000, LB 819, § 25; Laws 2001, LB 398, § 66; Laws 2007, LB463, § 1180. Operative date December 1, 2008.

71-426. Psychiatric or mental hospital, defined. Psychiatric or mental hospital means a hospital that provides psychiatric services on an inpatient or outpatient basis to persons who have a mental disease, disorder, or disability.

Source: Laws 2000, LB 819, § 26. Operative date January 1, 2001.

71-427. Rehabilitation hospital, defined. Rehabilitation hospital means a hospital that provides an integrated program of medical and other services for the rehabilitation of disabled persons.

Source: Laws 2000, LB 819, § 27. Operative date January 1, 2001.

71-427.01. Representative peer review organization, defined. Representative peer review organization means a utilization and quality control peer review organization as defined in section 1152 of the Social Security Act, 42 U.S.C. 1320c-1, as such section existed on September 1, 2007.

Source: Laws 2007, LB203, § 3; Effective date September 1, 2007.

71-428. Respite care service, defined. (1) Respite care service means a person or any legal entity that provides short-term temporary care on an intermittent basis to persons with special needs when the person's primary caregiver is unavailable to provide such care.

(2) Respite care service does not include:

(a) A person or any legal entity which is licensed under the Health Care Facility Licensure Act and which provides respite care services at the licensed location;

(b) A person or legal entity which is licensed to provide child care to thirteen or more children under the Child Care Licensing Act or which is licensed as a residential child-caring agency under the Children's Residential Facilities and Placing Licensure Act;

(c) An agency that recruits, screens, or trains a person to provide respite care;

(d) An agency that matches a respite care service or other providers of respite care with a person with special needs, or refers a respite care service or other providers of respite care to a person with special needs, unless the agency receives compensation for such matching or referral from the service or provider or from or on behalf of the person with special needs;

(e) A person who provides respite care to fewer than eight unrelated persons in any seven-day period in his or her home or in the home of the recipient of the respite care; or

(f) A nonprofit agency that provides group respite care for no more than eight hours in any seven-day period.

Source: Laws 2000, LB 819, § 28; Laws 2002, LB 1062, § 40; Laws 2004, LB 1005, § 43; Laws 2005, LB 2, § 1; Laws 2013, LB265, § 39. Effective Date: May 26, 2013.

71-429. Skilled nursing facility, defined. Skilled nursing facility means a facility where medical care, skilled nursing care, rehabilitation, or related services and associated treatment are provided for a period of more than twenty-four consecutive hours to persons residing at such facility who are ill, injured, or disabled.
Source: Laws 2000, LB 819, § 29. Operative date January 1, 2001.

71-430. Substance abuse treatment center, defined. (1) Substance abuse treatment center means a facility, including any private dwelling, where shelter, food, and care, treatment, maintenance, or related services are provided in a group setting to persons who are substance abusers.
(2) Substance abuse treatment center includes programs and services that are provided on an outpatient basis primarily or exclusively to persons who are substance abusers but does not include services that can be rendered only by a physician or within a hospital.
(3) For purposes of this section:
(a) Substance abuse means the abuse of substances which have significant mood-changing or perception-changing capacities, which are likely to be physiologically or psychologically addictive, and the continued use of which may result in negative social consequences; and
(b) Abuse means the use of substances in ways that have or are likely to have significant adverse social consequences.
Source: Laws 2000, LB 819, § 30. Operative date January 1, 2001.

71-431. Treatment, defined. Treatment means a therapy, modality, product, device, or other intervention used to maintain well being or to diagnose, assess, alleviate, or prevent a disability, injury, illness, disease, or other similar condition.
Source: Laws 2000, LB 819, § 31. Operative date January 1, 2001.

71-432. Health care facility; health care service; licensure required. A health care facility or health care service shall not be established, operated, or maintained in this state without first obtaining a license issued by the department under the Health Care Facility Licensure Act. No facility or service shall hold itself out as a health care facility or health care service or as providing health care services unless licensed under the act. The department shall issue a license to health care facilities and health care services that satisfy the requirements for licensure under the act.
Source: Laws 2000, LB 819, § 32; Laws 2002, LB 1062, § 41. Operative date July 20, 2002.

71-433. Health care facility; health care service; license; application. (1) An applicant for an initial or renewal license to operate a health care facility or health care service required to be licensed under the Health Care Facility Licensure Act shall file a written application with the department. The application shall be accompanied by the license fee set pursuant to section 71-434 and shall set forth the full name and address of the facility or service to be licensed, the full name and address of the owner of such facility or service, the names of all persons in control of the facility or service, and additional information as required by the department, including affirmative evidence of the applicant's ability to comply with rules and regulations adopted and promulgated under the act. The application shall include the applicant's social security number if the applicant is an individual. The social security number shall not be public record and may only be used for administrative purposes.
(2) The application shall be signed by (a) the owner, if the applicant is an individual or partnership, (b) two of its members, if the applicant is a limited liability company, (c) two of its officers, if the applicant is a corporation, or (d) the head of the governmental unit having jurisdiction over the facility or service to be licensed, if the applicant is a governmental unit.
Source: Laws 2000, LB 819, § 33. Operative date January 1, 2001.

71-434. License fees. (1) Licensure activities under the Health Care Facility Licensure Act shall be funded by license fees. An applicant for an initial or renewal license under section 71-433 shall pay a license fee as provided in this section.
(2) License fees shall include a base fee of fifty dollars and an additional fee based on:
(a) Variable costs to the department of inspections, architectural plan reviews, and receiving and investigating complaints, including staff salaries, travel, and other similar direct and indirect costs;
(b) The number of beds available to persons residing at the health care facility;
(c) The program capacity of the health care facility or health care service; or

(d) Other relevant factors as determined by the department.

Such additional fee shall be no more than two thousand six hundred dollars for a hospital or a health clinic operating as an ambulatory surgical center, no more than two thousand dollars for an assisted-living facility, a health clinic providing hemodialysis or labor and delivery services, an intermediate care facility, an intermediate care facility for persons with developmental disabilities, a nursing facility, or a skilled nursing facility, no more than one thousand dollars for home health agencies, hospice services, and centers for the developmentally disabled, and no more than seven hundred dollars for all other health care facilities and health care services.

(3) If the licensure application is denied, the license fee shall be returned to the applicant, except that the department may retain up to twenty-five dollars as an administrative fee and may retain the entire license fee if an inspection has been completed prior to such denial.

(4) The department shall also collect the fee provided in subsection (1) of this section for reinstatement of a license that has lapsed or has been suspended or revoked. The department shall collect a fee of ten dollars for a duplicate original license.

(5) The department shall collect a fee from any applicant or licensee requesting an informal conference with a representative peer review organization under section 71-452 to cover all costs and expenses associated with such conference.

(6) The department shall adopt and promulgate rules and regulations for the establishment of license fees under this section.

(7) The department shall remit all license fees collected under this section to the State Treasurer for credit to the Health and Human Services Cash Fund. License fees collected under this section shall only be used for activities related to the licensure of health care facilities and health care services.

Source: Laws 2000, LB 819, § 34; Laws 2002, LB 1062, § 42; Laws 2003, LB 415, § 1; Laws 2005, LB 246, § 1; Laws 2007, LB203, § 4; Laws 2007, LB296, § 371; Laws 2013, LB23, § 28. Effective Date: September 6, 2013.

71-435. License; duration; issuance. (1) Except as otherwise provided in the Health Care Facility Licensure Act, licenses issued pursuant to the act shall expire one year after the date of issuance or on uniform annual dates established by the department.

(2) Licenses shall be issued only for the premises and persons named in the application and shall not be transferable or assignable. Licenses, license record information, and inspection reports shall be made available by the licensee for public inspection upon request and may be displayed in a conspicuous place on the licensed premises.

Source: Laws 2000, LB 819, § 35. Operative date January 1, 2001.

71-436. License; multiple services or locations; effect. (1) Except as otherwise provided in section 71-470, an applicant for licensure under the Health Care Facility Licensure Act shall obtain a separate license for each type of health care facility or health care service that the applicant seeks to operate. A single license may be issued for (a) a facility or service operating in separate buildings or structures on the same premises under one management, (b) an inpatient facility that provides services on an outpatient basis at multiple locations, or (c) a health clinic operating satellite clinics on an intermittent basis within a portion of the total geographic area served by such health clinic and sharing administration with such clinics. (2) The department may issue one license document that indicates the various types of health care facilities or health care services for which the entity is licensed. The department may inspect any of the locations that are covered by the license. If an entity is licensed in multiple types of licensure for one location, the department shall conduct all required inspections simultaneously for all types of licensure when requested by the entity.

Source: Laws 2000, LB 819, § 36; Laws 2002, LB 1062, § 43; Laws 2015, LB37, § 72. **Effective Date: August 30, 2015**

71-437. Provisional license; when issued. A provisional license may be issued to a health care facility or health care service that substantially complies with requirements for licensure under the Health Care Facility Licensure Act and the rules and regulations adopted and promulgated under the act if the failure to fully comply with such requirements does not pose an imminent danger of death or physical harm to the persons residing in or served by such facility or service. Such provisional license shall be valid for a period of up to one year, shall not be renewed, and may be converted to a regular license upon a showing that the facility or service fully complies with the requirements for licensure under the act and rules and regulations.

Source: Laws 2000, LB 819, § 37. Operative date January 1, 2001.

71-438. Accreditation or certification; when accepted. (1) The department may accept accreditation or certification by a recognized independent accreditation body or public agency, which has standards that are at least as stringent as those of the State of Nebraska, as evidence that the health care facility or health care service complies with the rules, regulations, and standards adopted and promulgated under the Health Care Facility Licensure Act.

(2) A facility or service licensed pursuant to an accreditation or certification accepted by the department shall notify the department if such accreditation or certification has been sanctioned, modified, terminated, or withdrawn. After giving such notice, the facility or service may continue to operate unless the department determines that the facility or service no longer meets the qualifications for licensure under the act.

Source: Laws 2000, LB 819, § 38; Laws 2002, LB 1062, § 44. Operative date July 20, 2002.

71-439. Waiver of rule, regulation, or standard; when; procedure. (1) The department may waive any rule, regulation, or standard adopted and promulgated by the department relating to construction or physical plant requirements of a licensed health care facility or health care service upon proof by the licensee satisfactory to the department (a) that such waiver would not unduly jeopardize the health, safety, or welfare of the persons residing in or served by the facility or service, (b) that such rule, regulation, or standard would create an unreasonable hardship for the facility or service, and (c) that such waiver would not cause the State of Nebraska to fail to comply with any applicable requirements of medicare or medicaid so as to make the state ineligible for the receipt of all funds to which it might otherwise be entitled.

(2) In evaluating the issue of unreasonable hardship, the department shall consider the following:

(a) The estimated cost of the modification or installation;

(b) The extent and duration of the disruption of the normal use of areas used by persons residing in or served by the facility or service resulting from construction work;

(c) The estimated period over which the cost would be recovered through reduced insurance premiums and increased reimbursement related to cost;

(d) The availability of financing; and

(e) The remaining useful life of the building.

(3) Any such waiver may be granted under such terms and conditions and for such period of time as provided in rules and regulations adopted and promulgated by the department.

Source: Laws 2000, LB 819, § 39. Operative date January 1, 2001.

71-440. Inspection by department; report. The department may inspect or provide for the inspection of any health care facility or health care service licensed under the Health Care Facility Licensure Act in such manner and at such times as provided in rules and regulations adopted and promulgated by the department. The department shall issue an inspection report and provide a copy of the report to the facility or service within ten working days after the completion of an inspection.

Source: Laws 2000, LB 819, § 40. Operative date January 1, 2001.

71-441. Inspection by State Fire Marshal; fee. The department may request the State Fire Marshal to inspect any applicant for licensure or any licensee for fire safety pursuant to section 81-502. The State Fire Marshal shall assess a fee for such inspection pursuant to section 81-505.01 payable by such applicant or licensee. The State Fire Marshal may delegate such authority to make such inspections to qualified local fire prevention personnel pursuant to section 81-502.

Source: Laws 2000, LB 819, § 41. Operative date January 1, 2001.

71-442. Alternative methods for assessing compliance. In addition to or in lieu of the authority to inspect for purposes of licensure and renewal, the department may adopt and promulgate rules and regulations which permit the use of alternative methods for assessing the compliance by a health care facility or health care service with the Health Care Facility Licensure Act and the rules and regulations adopted and promulgated under the act.

Source: Laws 2000, LB 819, § 42. Operative date January 1, 2001.

71-443. Findings of noncompliance; review, notice; statement of compliance; procedure. If the inspection report issued under section 71-440 contains findings of noncompliance by a health care facility or health care service with any applicable provisions of the Health Care Facility Licensure Act or rules and regulations adopted under the act, the department shall review such findings within twenty working days after such inspection. If the findings are supported by the evidence, the department shall proceed pursuant to sections 71-446 to 71-455, except that if the findings indicate one or more violations that create no imminent danger of death or serious physical harm and no direct or immediate adverse relationship to the health, safety, or security of the persons residing in or served by the facility or service, the department may send a letter to the facility or

service requesting a statement of compliance. The letter shall include a description of each such violation, a request that the facility or service submit a statement of compliance within ten working days, and a notice that the department may take further steps if the statement of compliance is not submitted. The statement of compliance shall indicate any steps which have been or will be taken to correct each violation and the period of time estimated to be necessary to correct each violation. If the facility or service fails to submit and implement a statement of compliance which indicates a good faith effort to correct the violations, the department may proceed pursuant to sections 71-446 to 71-455.

Source: Laws 2000, LB 819, § 43. Operative date January 1, 2001.

71-444. Complaints; investigation; immunity. (1) Any person may submit a complaint to the department and request investigation of an alleged violation of the Health Care Facility Licensure Act or rules and regulations adopted and promulgated under the act. The department shall review all complaints and determine whether to conduct an investigation. In making such determination, the department may consider factors such as:

(a) Whether the complaint pertains to a matter within the authority of the department to enforce;

(b) Whether the circumstances indicate that a complaint is made in good faith and is not malicious, frivolous, or vexatious;

(c) Whether the complaint is timely or has been delayed too long to justify present evaluation of its merit;

(d) Whether the complainant may be a necessary witness if action is taken and is willing to identify himself or herself and come forward to testify if action is taken; or

(e) Whether the information provided or within the knowledge of the complainant is sufficient to provide a reasonable basis to believe that a violation has occurred or to secure necessary evidence from other sources.

(2) A complaint submitted to the department shall be confidential. A person submitting a complaint shall be immune from criminal or civil liability of any nature, whether direct or derivative, for submitting a complaint or for disclosure of documents, records, or other information to the department.

Source: Laws 2000, LB 819, § 44. Operative date January 1, 2001.

71-445. Discrimination or retaliation prohibited. A health care facility or health care service shall not discriminate or retaliate against a person residing in, served by, or employed at such facility or service who has initiated or participated in any proceeding authorized by the Health Care Facility Licensure Act or who has presented a complaint or provided information to the administrator of such facility or service or the Department of Health and Human Services. Such person may maintain an action for any type of relief, including injunctive and declaratory relief, permitted by law.

Source: Laws 2000, LB 819, § 45; Laws 2007, LB296, § 372. Operative date July 1, 2007.

71-446. License; temporary suspension or limitation; procedure; appeal. (1) If the director determines that persons receiving care or treatment at a health care facility or by a health care service are in imminent danger of death or serious physical harm, he or she may temporarily suspend or temporarily limit the license of such facility or service and may order the immediate removal of such persons and the temporary closure of the facility or service pending further action by the department. The department shall also simultaneously institute proceedings for revocation, suspension, or limitation of the license. A hearing shall be held no later than ten days after the date of such temporary suspension or temporary limitation.

(2) A continuance of the hearing shall be granted by the department upon written request from the licensee. Such continuance shall not exceed thirty days. A temporary suspension or temporary limitation order by the director shall take effect when served upon the facility or service. A copy of the notice shall also be mailed to the holder of the license if the holder of such license is not actually involved in the daily operation of the facility or service. If the holder of the license is a corporation, a copy of the notice shall be sent to the corporation's registered agent.

(3) A temporary suspension or temporary limitation under this section shall not exceed ninety days. If a decision is not reached within that period, the temporary suspension or temporary limitation shall expire.

(4) Any person aggrieved by a decision of the department after a hearing as provided in this section may appeal under the Administrative Procedure Act.

Source: Laws 2000, LB 819, § 46. Operative date January 1, 2001.

71-447. License; denied or refused renewal; grounds. The department may deny or refuse to renew a license under the Health Care Facility Licensure Act to any health care facility or health care service that fails to meet the requirements for licensure provided in the act or in rules and regulations adopted and promulgated under the act, including (1) failing an inspection pursuant to section 71-440, (2) failing to meet a compliance assessment standard adopted under section 71-442, (3) having had a license revoked within the two-year period preceding application, or (4) any of the grounds listed in section 71-448.

Source: Laws 2000, LB 819, § 47. Operative date January 1, 2001.

71-448. License; disciplinary action; grounds. The Division of Public Health of the Department of Health and Human Services may take disciplinary action against a license issued under the Health Care Facility Licensure Act on any of the following grounds:

(1) Violation of any of the provisions of the Assisted-Living Facility Act, the Health Care Facility Licensure Act, the Nebraska Nursing Home Act, or the rules and regulations adopted and promulgated under such acts;

(2) Committing or permitting, aiding, or abetting the commission of any unlawful act;

(3) Conduct or practices detrimental to the health or safety of a person residing in, served by, or employed at the health care facility or health care service;

(4) A report from an accreditation body or public agency sanctioning, modifying, terminating, or withdrawing the accreditation or certification of the health care facility or health care service;

(5) Failure to allow an agent or employee of the Department of Health and Human Services access to the health care facility or health care service for the purposes of inspection, investigation, or other information collection activities necessary to carry out the duties of the Department of Health and Human Services;

(6) Discrimination or retaliation against a person residing in, served by, or employed at the health care facility or health care service who has submitted a complaint or information to the Department of Health and Human Services;

(7) Discrimination or retaliation against a person residing in, served by, or employed at the health care facility or health care service who has presented a grievance or information to the office of the state long-term care ombudsman;

(8) Failure to allow a state long-term care ombudsman or an ombudsman advocate access to the health care facility or health care service for the purposes of investigation necessary to carry out the duties of the office of the state long-term care ombudsman as specified in the rules and regulations adopted and promulgated by the Department of Health and Human Services;

(9) Violation of the Emergency Box Drug Act or the Pharmacy Practice Act;

(10) Failure to file a report required by section 38-1,127 or 71-552;

(11) Violation of the Medication Aide Act;

(12) Failure to file a report of suspected abuse or neglect as required by sections 28-372 and 28-711; or

(13) Violation of the Automated Medication Systems Act.

Source: Laws 2000, LB 819, § 48; Laws 2004, LB 1005, § 44; Laws 2007, LB296, § 373; Laws 2007, LB463, § 1181; Laws 2008, LB308, § 12; Laws 2011, LB591, § 4; Laws 2015, LB37, § 73. **Effective Date: August 30, 2015**

71-449. License; disciplinary actions authorized. (1) The department may impose any one or a combination of the following types of disciplinary action against the license of a health care facility or health care service:

(a) A fine not to exceed ten thousand dollars per violation;

(b) A prohibition on admissions or readmissions, a limitation on enrollment, or a prohibition or limitation on the provision of care or treatment;

(c) A period of probation not to exceed two years during which the facility or service may continue to operate under terms and conditions fixed by the order of probation;

(d) A period of suspension not to exceed three years during which the facility or service may not operate; and

(e) Revocation which is a permanent termination of the license and the licensee may not apply for a license for a minimum of two years after the effective date of the revocation.

(2) Any fine imposed and unpaid under the Health Care Facility Licensure Act 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 facility or service is located. The department shall, within thirty days after receipt, remit fines to the State Treasurer for credit to the permanent school fund.

Source: Laws 2000, LB 819, § 49. Operative date January 1, 2001.

71-450. License; disciplinary actions; considerations. (1) In determining what type of disciplinary action to impose, the department shall consider:

(a) The gravity of the violation, including the probability that death or serious physical or mental harm will result, the severity of the actual or potential harm, and the extent to which the provisions of applicable statutes, rules, and regulations were violated;

(b) The reasonableness of the diligence exercised by the health care facility or health care service in

identifying or correcting the violation;

(c) Any previous violations committed by the facility or service; and

(d) The financial benefit to the facility or service of committing or continuing the violation.

(2) The department may adopt and promulgate rules and regulations which set forth specific violations which will result in a particular disciplinary action, including the use of scope and severity determinations.

(3) If the licensee fails to correct a violation or to comply with a particular type of disciplinary action, the department may take additional disciplinary action as described in section 71-449.

Source: Laws 2000, LB 819, § 50. Operative date January 1, 2001.

71-451. License; disciplinary actions; notice. (1) If the department determines to deny, refuse renewal of, or take disciplinary action against a license, the department shall send to the applicant or licensee, by certified mail to the last address shown on the records of the department, a notice setting forth the determination, the particular reasons for the determination, including a specific description of the nature of the violation and the statute, rule, or regulation violated, and the type of disciplinary action which is pending. The denial, refusal to renew, or disciplinary action shall become final fifteen days after the mailing of the notice unless the applicant or licensee, within such fifteen-day period, makes a written request for an informal conference or a hearing pursuant to section 71-452.

(2) A copy of the notice in subsection (1) of this section shall also be mailed to the holder of the license if the holder of such license is not actually involved in the daily operation of the facility or service. If the holder of the license is a corporation, a copy of the notice shall be sent to the corporation's registered agent.

Source: Laws 2000, LB 819, § 51. Operative date January 1, 2001.

71-452. License; disciplinary actions; rights of licensee. Within fifteen days after service of a notice under section 71-451, an applicant or a licensee shall notify the director in writing that the applicant or licensee (1) desires to contest the notice and request an informal conference with a representative of the department in person or by other means at the request of the applicant or licensee, (2) desires to contest the notice and request an informal conference with a representative peer review organization with which the department has contracted, (3) desires to contest the notice and request a hearing, or (4) does not contest the notice. If the director does not receive such notification within such fifteen-day period, the action of the department shall be final.

Source: Laws 2000, LB 819, § 52; Laws 2007, LB203, § 5. Effective date September 1, 2007

71-453. License; disciplinary actions; informal conference; procedure. (1) The director shall assign a representative of the department, other than the individual who did the inspection upon which the notice is based, or a representative peer review organization to hold an informal conference with the applicant or licensee within thirty days after receipt of a request made under subdivision (1) or (2) of section 71-452. Within twenty working days after the conclusion of the conference, the representative or representative peer review organization shall report in writing to the department its conclusion regarding whether to affirm, modify, or dismiss the notice and the specific reasons for the conclusion and shall provide a copy of the report to the director and the applicant or licensee.

(2) Within ten working days after receiving a report under subsection (1) of this section, the department shall consider such report and affirm, modify, or dismiss the notice and shall state the specific reasons for such decision, including, if applicable, the specific reasons for not adopting the conclusion of the representative or representative peer review organization as contained in such report. The department shall provide the applicant or licensee with a copy of such decision by certified mail to the last address shown in the records of the department. If the applicant or licensee desires to contest an affirmed or modified notice, the applicant or licensee shall notify the director in writing within five working days after receiving such decision that the applicant or licensee requests a hearing.

(3) If an applicant or a licensee successfully demonstrates during an informal conference or a hearing that the deficiencies should not have been cited in the notice, (a) the deficiencies shall be removed from the notice and the deficiency statement and (b) any sanction imposed solely as a result of those cited deficiencies shall be rescinded.

Source: Laws 2000, LB 819, § 53; Laws 2007, LB203, § 6. Effective date September 1, 2007.

71-454. License; disciplinary actions; hearings; procedure. (1) If the applicant or licensee requests a hearing under section 71-452, the department shall hold a hearing and give the applicant or licensee the right to present such evidence as may be proper. On the basis of such evidence, the director shall affirm, modify, or set aside the determination. A copy of such decision setting forth the findings of facts and the particular reasons upon which the decision is based shall be sent by either registered or certified mail to the applicant or licensee. The decision shall become final thirty days after the copy is mailed unless the applicant or licensee, within such thirty-

day period, appeals the decision under section 71-455.

(2) The procedure governing hearings authorized by this section shall be in accordance with rules and regulations adopted and promulgated by the department. A full and complete record shall be kept of all proceedings. Witnesses may be subpoenaed by either party and shall be allowed fees at a rate prescribed by rule and regulation.

Source: Laws 2000, LB 819, § 54. Operative date January 1, 2001.

71-455. Appeals. Any party to a decision of the department under the Health Care Facility Licensure Act may appeal such decision. The appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 2000, LB 819, § 55. Operative date January 1, 2001.

71-456. License; reinstatement; when; procedure. (1) A license issued under the Health Care Facility Licensure Act that has lapsed for nonpayment of fees is eligible for reinstatement at any time by applying to the department and paying the applicable fee as provided in section 71-434.

(2) A license that has been disciplined by being placed on suspension is eligible for reinstatement at the end of the period of suspension upon successful completion of an inspection and payment of the applicable renewal fee provided in section 71-434.

(3) A license that has been disciplined by being placed on probation is eligible for reinstatement at the end of the period of probation upon successful completion of an inspection if the department determines an inspection is warranted.

(4) A license that has been disciplined by being placed on probation or suspension may be reinstated prior to the completion of the term of such probation or suspension as provided in this subsection. Upon petition from a licensee and after consideration of materials submitted with such petition, the director may order an inspection or other investigation of the licensee. On the basis of material submitted by the licensee and the results of any inspection or investigation by the department, the director shall determine whether to grant full reinstatement of the license, to modify the probation or suspension, or to deny the petition for reinstatement. The director's decision shall become final thirty days after mailing the decision to the licensee unless the licensee requests a hearing within such thirty-day period. Any requested hearing shall be held according to rules and regulations of the department for administrative hearings in contested cases. Any party to the decision shall have a right to judicial review under the Administrative Procedure Act.

(5) A license that has been disciplined by being revoked is not eligible for relicensure until two years after the date of such revocation. A reapplication for an initial license may be made at the end of such two-year period.

(6) The department may adopt and promulgate rules and regulations to carry out this section.

Source: Laws 2000, LB 819, § 56; Laws 2002, LB 1062, § 45. Operative date July 20, 2002.

71-457. Rules and regulations. (1) 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 care in any health care facility or health care service licensed under the Health Care Facility Licensure Act, the department shall adopt, promulgate, and enforce rules, regulations, and standards with respect to the different types of health care facilities and health care services, except nursing facilities and skilled nursing facilities, designed to further the accomplishment of the purposes of the act. Such rules, regulations, and standards shall be modified, amended, or rescinded from time to time in the public interest by the department.

(2) The department, with the advice of the Nursing Home Advisory Council, shall adopt, promulgate, and enforce rules, regulations, and standards with respect to nursing facilities and skilled nursing facilities. Such rules, regulations, and standards shall be in compliance with the Nebraska Nursing Home Act. Such rules, regulations, and standards shall be modified, amended, or rescinded from time to time in the public interest by the department with the advice of the Nursing Home Advisory Council.

Source: Laws 2000, LB 819, § 57. Operative date January 1, 2001.

71-458. Violations; penalty. Any person who establishes, operates, or maintains a health care facility or health care service subject to the Health Care Facility Licensure Act without first obtaining a license as required under the act or who violates any of the provisions of the act shall be guilty of a Class I misdemeanor. Each day such facility or service operates after a first conviction shall be considered a subsequent offense.

Source: Laws 2000, LB 819, § 58. Operative date January 1, 2001.

71-459. Injunction. The department may maintain an action in the name of the state for an injunction against any person for establishing, operating, or maintaining a health care facility or health care service subject to the Health Care Facility Licensure Act without first obtaining a license as required by the act. In charging any defendant in a complaint in such action, it shall be sufficient to charge that such defendant did, upon a certain day

and in a certain county, establish, operate, or maintain a health care facility or health care service without obtaining a license to do so, without alleging any further or more particular facts concerning the same.
Source: Laws 2000, LB 819, § 59. Operative date January 1, 2001.

71-460 and 71-461. Transferred to section 71-5903 and 71-5904.
71-462. Repealed. Laws 2001, LB 398, s. 96.
71-463. Repealed. Laws 2004, LB 1005, s. 144.

71-464 Itemized billing statement; duty to provide. A health care facility or a health care practitioner facility, upon written request of a patient or a patient's representative, shall provide an itemized billing statement, including diagnostic codes, without charge to the patient or patient's representative. Such itemized billing statement shall be provided within fourteen days after the request.
Source: Laws 2009, LB288, § 32. Operative Date: August 30, 2009.

71-465. Repealed. Laws 2012, LB 782, § 253.

71-466. Religious residential facility; exemption from licensure and regulation. Any facility which is used as a residence by members of an organization, association, order, or society organized and operated for religious purposes, which is not operated for financial gain or profit for the organization, association, order, or society, and which serves as a residence only for such members who in the exercise of their duties in the organization, association, order, or society are required to participate in congregant living within such a facility is exempt from the provisions of the Health Care Facility Licensure Act relating to licensure or regulation of assisted-living facilities, intermediate care facilities, and nursing facilities.
Source: Laws 2011, LB34, § 2. Effective Date: August 27, 2011.

71-467. General acute hospital; employees; influenza vaccinations; tetanus-diphtheria-pertussis vaccine; duties; record. (1) Each general acute hospital shall take all of the following actions in accordance with the guidelines of the Centers for Disease Control and Prevention of the United States Public Health Service of the United States Department of Health and Human Services as the guidelines existed on January 1, 2013:
(a) Annually offer onsite influenza vaccinations to all hospital employees;
(b) Offer to all hospital employees a single dose of tetanus-diphtheria-pertussis vaccine if they have not previously received such vaccine and regardless of the time since their most recent vaccination with such vaccine; and
(c) Require all hospital employees to be vaccinated against influenza, tetanus, diphtheria, and pertussis, except that an employee may elect not to be vaccinated.
(2) The hospital shall keep a record of which hospital employees receive the annual vaccination against influenza and a single dose of tetanus-diphtheria-pertussis vaccine and which hospital employees do not receive such vaccinations.
(3) This section shall not apply in individual cases when contraindicated or if a national shortage of the vaccine exists.
Source: Laws 2011, LB542, § 2; Laws 2013, LB458, § 1; Laws 2014, LB859, § 1. **Effective Date: July 18, 2014.**

71-468. Onsite vaccinations for influenza and pneumococcal disease. In order to prevent, detect, and control pneumonia and influenza outbreaks in Nebraska, each general acute hospital, intermediate care facility, nursing facility, and skilled nursing facility shall annually, beginning no later than October 1 and ending on the following April 1, offer onsite vaccinations for influenza and pneumococcal disease to all residents and to all inpatients prior to discharge, pursuant to procedures of the facility and in accordance with the recommendations of the advisory committee on immunization practices of the Centers for Disease Control and Prevention of the United States Public Health Service of the United States Department of Health and Human Services as the recommendations existed on January 1, 2012. This section shall not apply in individual cases when contraindicated or if a national shortage of the vaccine exists. Nothing in this section shall be construed to require any facility listed in this section to cover the cost of a vaccination provided pursuant to this section.
Source: Laws 2012, LB1077, § 2; Laws 2014, LB859, § 2. **Effective Date: July 18, 2014.**

71-469. Onsite vaccinations for diphtheria, tetanus, and pertussis. In order to prevent, detect, and control diphtheria, tetanus, and pertussis in Nebraska, each general acute hospital, intermediate care facility, nursing facility, and skilled nursing facility shall offer onsite vaccinations for diphtheria, tetanus, and pertussis to all residents and to all inpatients prior to discharge, pursuant to procedures of the facility and in accordance with the recommendations of the advisory committee on immunization practices of the Centers for Disease Control and Prevention of the United States Public Health Service of the United States Department of Health and Human Services as the recommendations existed on January 1, 2013. This section shall not apply in individual cases when contraindicated or if a national shortage of the vaccine exists. Nothing in this section shall be construed to require any facility listed in this section to bear the cost of a vaccination provided pursuant to this section.

Source: Laws 2013, LB459, § 2; Laws 2014, LB859, § 3. **Effective Date: July 18, 2014.**

71-470. Hospital pharmacy; license, when required; designate pharmacist in charge; duties; inspection. (1) A hospital in which drugs or devices are compounded, dispensed, or administered pursuant to chart orders is not required to obtain a separate license for the hospital pharmacy, except that if the compounding or dispensing of drugs or devices is done in the pharmacy at the hospital for persons not registered as patients within the confines of the hospital, the hospital shall obtain a pharmacy license. 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.

(2) Beginning January 1, 2016, each hospital shall designate a pharmacist licensed in this state as being the pharmacist in charge and responsible for the practice of pharmacy and medication use procedure in such hospital, including section 38-2867.02. The Board of Pharmacy or its designated representatives may examine and inspect the practice of pharmacy in any hospital licensed by the department.

(3) The pharmacist in charge of a hospital pharmacy shall establish and implement policies and procedures for the practice of pharmacy and medication use in the hospital.

Source: Laws 2015, LB37, § 71. **Effective Date: August 30, 2015**

STATUTES PERTAINING TO NURSE PRACTITIONER PRACTICE ACT
(Nurse practitioner prescribing controlled substances)

71-1721. Transferred to section 38-2315.

STATUTES PERTAINING TO CERTIFIED REGISTERED NURSE ANESTHETIST PRACTICE ACT
(Nurse Anesthetist administration of controlled substances)

71-1734. Transferred to section 38-711.

STATUTES PERTAINING TO CERTIFIED NURSE MIDWIFERY PRACTICE ACT
(Nurse Midwife prescribing controlled substances)

71-1752. Transferred to section 38-611.

STATUTES PERTAINING TO ADULTERATION OR MISBRANDING OF DRUGS

71-2401. Transferred to section 71-2461.

71-2402. Transferred to section 71-2470.

71-2403. Repealed. Laws 2015, LB 37, § 93.

71-2404. Transferred to section 71-2480.

71-2405. Transferred to section 71-2481.

STATUTES PERTAINING TO MAIL SERVICE PHARMACY LICENSURE ACT

71-2406. Act, how cited. Sections 71-2406 to 71-2409 shall be known and may be cited as the Mail Service Pharmacy Licensure Act.

Source: Laws 1988, LB 350, § 1; Laws 2003, LB 667, § 7. Effective date August 31, 2003.

71-2407. Mail service pharmacy license; requirements; fee. (1) Any person operating a mail service pharmacy outside of the State of Nebraska shall obtain a mail service pharmacy license prior to shipping, mailing, or in any manner delivering dispensed prescription drugs as defined in section 38-2841 into the State of Nebraska.

(2) To be qualified to hold a mail service pharmacy license, a person shall:

(a) Hold a pharmacy license or permit issued by and valid in the state in which the person is located and from which such prescription drugs will be shipped, mailed, or otherwise delivered;

(b) Be located and operating in a state in which the requirements and qualifications for obtaining and maintaining a pharmacy license or permit are considered by the Department of Health and Human Services, with the approval of the Board of Pharmacy, to be substantially equivalent to the requirements of the Health Care Facility Licensure Act;

(c) Designate the Secretary of State as his, her, or its agent for service of process in this state; and

(d) Employ on a full-time basis at least one pharmacist who holds a current unrestricted pharmacist license issued under the Uniform Credentialing Act who shall be responsible for compliance by the mail service pharmacy with the Mail Service Pharmacy Licensure Act. The mail service pharmacy shall notify the department when such pharmacist is no longer employed by such pharmacy.

(3) To obtain a mail service pharmacy license, a person shall:

(a) File an application on a form developed by the department; and

(b) Pay a fee equivalent to the fee for a pharmacy license in the State of Nebraska pursuant to section 71-434.

(4) This section does not apply to prescription drugs mailed, shipped, or otherwise delivered by a pharmaceutical company to a laboratory for the purpose of conducting clinical research.

Source: Laws 1988, LB 350, § 2; Laws 1993, LB 536, § 81; Laws 1996, LB 1044, § 622; Laws 1999, LB 594, § 58; Laws 1999, LB 828, § 163; Laws 2001, LB 398, § 69; Laws 2003, LB 667, § 8; Laws 2007, LB296, § 537; Laws 2007, LB463, § 1193. The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

71-2408. Department of Health and Human Services; disciplinary actions; violations; Attorney General; duties. (1) The Department of Health and Human Services, after notice and an opportunity for a hearing, may deny, refuse renewal of, revoke, or otherwise discipline or restrict the license of a mail service pharmacy for (a) any discipline of the pharmacy license held by such pharmacy in another state pursuant to subdivision (2)(a) of section 71-2407, (b) any violation of the Mail Service Pharmacy Licensure Act or rules and regulations adopted and promulgated under the act, or (c) conduct by such pharmacy which in this state presents a threat to the public health and safety or a danger of death or physical harm.

(2) The department, upon the recommendation of the Board of Pharmacy, shall notify the Attorney General of any possible violations of the Mail Service Pharmacy Licensure Act. If the Attorney General has reason to believe that an out-of-state person is operating in violation of the act, he or she shall commence an action in the district court of Lancaster County to enjoin any such person from further mailing, shipping, or otherwise delivering prescription drugs into the State of Nebraska.

Source: Laws 1988, LB 350, § 3; Laws 1996, LB 1044, § 623; Laws 1999, LB 828, § 164; Laws 2003, LB 667, § 9; Laws 2007, LB296, § 538. Operative date July 1, 2007.

71-2409. Rules and regulations. The Department of Health and Human Services shall, upon the recommendation of the Board of Pharmacy, adopt and promulgate rules and regulations necessary to carry out the Mail Service Pharmacy Licensure Act.

Source: Laws 1988, LB 350, § 4; Laws 1996, LB 1044, § 624; Laws 1999, LB 828, § 165; Laws 2003, LB 667, § 10; Laws 2007, LB296, § 539. Operative date July 1, 2007.

STATUTES PERTAINING TO EMERGENCY BOX DRUG ACT

71-2410. Act, how cited. Sections 71-2410 to 71-2417 shall be known and may be cited as the Emergency Box Drug Act.

Source: Laws 1994, LB 1210, §182. Operative date July 16, 1994.

71-2411. Terms, defined. For purposes of the Emergency Box Drug Act:

(1) Authorized personnel means any medical doctor, doctor of osteopathy, registered nurse, licensed practical nurse, nurse practitioner, pharmacist, or physician assistant;

(2) Department means the Department of Health and Human Services;

(3) Drug means any prescription drug or device or legend drug or device defined under section 38-2841, any nonprescription drug as defined under section 38-2829, any controlled substance as defined under section 28-405, or any device as defined under section 38-2814;

(4) Emergency box drugs means drugs required to meet the immediate therapeutic needs of patients when the drugs are not available from any other authorized source in time to sufficiently prevent risk of harm to such patients by the delay resulting from obtaining such drugs from such other authorized source;

(5) 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 center, a nursing facility, or a skilled nursing facility, as such terms are defined in the Health Care Facility Licensure Act;

(6) Multiple dose vial means any bottle in which more than one dose of a liquid drug is stored or contained;

(7) Pharmacist means a pharmacist as defined in section 38-2832 who is employed by a supplying pharmacy or who has contracted with a long-term care facility to provide consulting services; and

(8) Supplying pharmacy means a pharmacy that supplies drugs for an emergency box located in a long-term care facility. Drugs in the emergency box are owned by the supplying pharmacy.

Source: Laws 1994, LB 1210, § 183; Laws 1996, LB 1044, § 625; Laws 1997, LB 608, § 16; Laws 2000, LB 819, § 106; Laws 2001, LB 398, § 70; Laws 2007, LB296, § 540; Laws 2007, LB463, § 1194; Laws 2009, LB195, § 69; Laws 2013, LB23, § 34. Effective Date: September 6, 2013.

71-2412 Long-term care facility; emergency boxes; use; conditions. Drugs may be administered to residents of a long-term care facility by authorized personnel of the long-term care facility from the contents of emergency boxes located within such long-term care facility if such drugs and boxes meet all of the following requirements:

(1) All emergency box drugs shall be provided by and all emergency boxes containing such drugs shall be sealed by a supplying pharmacy with the seal on such emergency box to be of such a nature that it can be easily identified if it has been broken;

(2) Emergency boxes shall be stored in a medication room or other secured area within the long-term care facility. Only authorized personnel of the long-term care facility or the supplying pharmacy shall obtain access to such room or secured area, by key or combination, in order to prevent unauthorized access and to ensure a proper environment for preservation of the emergency box drugs;

(3) The exterior of each emergency box shall be labeled so as to clearly indicate that it is an emergency box for use in emergencies only. The label shall contain a listing of the drugs contained in the box, including the name, strength, route of administration, quantity, and expiration date of each drug, and the name, address, and telephone number of the supplying pharmacy;

(4) All emergency boxes shall be inspected by a pharmacist designated by the supplying pharmacy at least once every thirty days or after a reported usage of any drug to determine the expiration date and quantity of the drugs in the box. Every inspection shall be documented and the record retained by the long-term care facility for a period of five years;

(5) An emergency box shall not contain multiple dose vials, shall not contain more than ten drugs which are controlled substances, and shall contain no more than a total of fifty drugs; and

(6) All drugs in emergency boxes shall be in the original manufacturer's or distributor's containers or shall be repackaged by the supplying pharmacy and shall include the manufacturer's or distributor's name, lot number, drug name, strength, dosage form, NDC number, route of administration, and expiration date on a typewritten label. Any drug which is repackaged shall contain on the label the calculated expiration date. For purposes of the Emergency Box Drug Act, calculated expiration date has the same meaning as in subdivision (7)(b) of section 38-2884.

Source: Laws 1994, LB 1210, § 184; Laws 2002, LB 1062, § 52; Laws 2007, LB463, § 1195; Laws 2009, LB195, § 70. Effective Date: August 30, 2009.

71-2413 Drugs to be included in emergency boxes; requirements; removal; conditions; notification of supplying pharmacy; expired drugs; treatment; examination of emergency boxes; written procedures; establishment. (1) The supplying pharmacy and the medical director and quality assurance committee of the long-term care facility shall jointly determine the drugs, by identity and quantity, to be included in the emergency boxes. The supplying pharmacy shall maintain a list of emergency box drugs which is identical to the list on the exterior of the emergency box and shall make such list available to the department upon request. The supplying pharmacy shall obtain a receipt upon delivery of the emergency box to the long-term care facility signed by the director of nursing of the long-term care facility which acknowledges that the drugs initially placed in the emergency box are identical to the initial list on the exterior of the emergency box. The receipt shall be retained by the supplying pharmacy for a period of five years.

(2) Except for the removal of expired drugs as provided in subsection (4) of this section, drugs shall be removed from emergency boxes only pursuant to a prescription. Whenever access to the emergency box occurs, the prescription and proof of use shall be provided to the supplying pharmacy and shall be recorded on the resident's medical record by authorized personnel of the long-term care facility. Removal of any drug from an

emergency box by authorized personnel of the long-term care facility shall be recorded on a form showing the name of the resident who received the drug, his or her room number, the name of the drug, the strength of the drug, the quantity used, the dose administered, the route of administration, the date the drug was used, the time of usage, the disposal of waste, if any, and the signature or signatures of authorized personnel. The form shall be maintained at the long-term care facility for a period of five years from the date of removal with a copy of the form to be provided to the supplying pharmacy.

(3) Whenever an emergency box is opened, the supplying pharmacy shall be notified by the charge nurse or the director of nursing of the long-term care facility within twenty-four hours and a pharmacist designated by the supplying pharmacy shall restock and refill the box, reseal the box, and update the drug listing on the exterior of the box.

(4) Upon the expiration of any drug in the emergency box, the supplying pharmacy shall replace the expired drug, reseal the box, and update the drug listing on the exterior of the box. Emergency box drugs shall be considered inventory of the supplying pharmacy until such time as they are removed for administration.

(5) Authorized personnel of the long-term care facility shall examine the emergency boxes once every twenty-four hours and shall immediately notify the supplying pharmacy upon discovering evidence of tampering with any emergency box. Proof of examination by authorized personnel of the long-term care facility shall be recorded and maintained at the long-term care facility for a period of five years from the date of examination.

(6) The supplying pharmacy and the medical director and quality assurance committee of the long-term care facility shall jointly establish written procedures for the safe and efficient distribution of emergency box drugs.

Source: Laws 1994, LB 1210, § 185; Laws 1999, LB 828, § 166; Laws 2001, LB 398, § 71; Laws 2009, LB195, § 71. Effective Date: August 30, 2009.

71-2414 Department; powers; grounds for disciplinary action. The department shall have (1) the authority to inspect any emergency box and (2) access to the records of the supplying pharmacy and the long-term care facility for inspection. Refusal to allow the department to inspect an emergency box or to have access to records shall be grounds for a disciplinary action against the supplying pharmacy or the license of the long-term care facility.

Source: Laws 1994, LB 1210, § 186; Laws 2009, LB195, § 72. Effective Date: August 30, 2009.

71-2415 Repealed. Laws 2009, LB 195, § 111.

71-2416 Violations; department; powers; prohibited acts; violation; penalty. (1) The department may limit, suspend, or revoke the authority of a supplying pharmacy to maintain emergency boxes in a long-term care facility for any violation of the Emergency Box Drug Act. The department may limit, suspend, or revoke the authority of a long-term care facility to maintain an emergency box for any violation of the act. The taking of such action against the supplying pharmacy or the long-term care facility or both shall not prohibit the department from taking other disciplinary actions against the supplying pharmacy or the long-term care facility.

(2) If the department determines to limit, suspend, or revoke the authority of a supplying pharmacy to maintain emergency boxes in a long-term care facility or to limit, suspend, or revoke the authority of a long-term care facility to maintain an emergency box, it shall send to the supplying pharmacy or the long-term care facility a notice of such determination. The 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. The limitation, suspension, or revocation shall become final thirty days after receipt of the notice unless the supplying pharmacy or the long-term care facility, within such thirty-day period, requests a hearing in writing. The supplying pharmacy or the long-term care facility shall be given a fair hearing before the department and may present such evidence as may be proper. On the basis of such evidence, the determination involved shall be affirmed, set aside, or modified, and a copy of such decision setting forth the findings of facts and the particular reasons on which it is based shall be sent to the supplying pharmacy or the long-term care facility. The parties may appeal the final decision in accordance with the Administrative Procedure Act. Witnesses may be subpoenaed by either party and shall be allowed a fee at the statutory rate.

(3) The procedure governing hearings authorized by the Emergency Box Drug Act shall be in accordance with rules and regulations adopted and promulgated by the department.

(4) The supplying pharmacy or the long-term care facility shall not maintain an emergency box after its authority to maintain such box has been revoked or during the time such authority has been suspended. If the authority is suspended, the suspension shall be for a definite period of time. Such authority shall be automatically reinstated on the expiration of such period. If such authority has been revoked, such revocation shall be permanent, except that at any time after the expiration of two years, application for reinstatement of authority may be made to the department.

(5) Any person who commits any of the acts prohibited by the Emergency Box Drug Act shall be guilty of a Class II misdemeanor. The department may maintain an action in the name of the state against any person for maintaining an emergency box in violation of the act. Each day a violation continues shall constitute a separate violation.

Source: Laws 1994, LB 1210, § 188; Laws 1999, LB 828, § 167; Laws 2009, LB195, § 73. Effective Date: August 30, 2009.

71-2417. Controlled substance; exemption. Any emergency box containing a controlled substance listed in section 28-405 and maintained at a long-term care facility shall be exempt from subsection (3) of section 28-414.03.

Source: Laws 1994, LB 1210, § 189; Laws 1995, LB 406, § 38; Laws 1999, LB 594, § 59; Laws 2001, LB 398, § 72; Laws 2009, LB195, § 74; Laws 2014, LB811, § 27. **Effective Date: July 18, 2014.**

STATUTES PERTAINING TO PAIN MANAGEMENT WITH DRUGS

71-2418. Legislative findings. (1) The Legislature finds that many controlled substances have useful and legitimate medical and scientific purposes and are necessary to maintain the health and general welfare of the people of Nebraska. Principles of quality medical practice dictate that the people of Nebraska have access to appropriate and effective pain relief.

(2) The Legislature finds that the appropriate application of up-to-date knowledge and treatment modalities can serve to improve the quality of life for those patients who suffer from pain. The Legislature therefore encourages physicians to view effective pain management as a part of quality medical practice for all patients with pain, acute or chronic, including those patients who experience pain as a result of terminal illness.

(3) The Legislature finds that a physician should be able to prescribe, dispense, or administer a controlled substance in excess of the recommended dosage for the treatment of pain so long as such dosage is not administered for the purpose of causing, or the purpose of assisting in causing, death for any reason and so long as it conforms to policies and guidelines for the treatment of pain adopted by the Board of Medicine and Surgery.

(4) The Legislature finds that a health care facility, hospice, or third-party payor should not forbid or restrict the use of controlled substances appropriately administered for the treatment of pain.

Source: Laws 1999, LB 226, § 1; Laws 2007, LB463, § 1196. Operative date December 1, 2008.

71-2419. Physician, nurse, or pharmacist; disciplinary action or criminal prosecution; limitation. A physician licensed under the Medicine and Surgery Practice Act who prescribes, dispenses, or administers or a nurse licensed under the Nurse Practice Act or pharmacist licensed under the Pharmacy Practice Act who administers or dispenses a controlled substance in excess of the recommended dosage for the treatment of pain shall not be subject to discipline under the Uniform Credentialing Act or criminal prosecution under the Uniform Controlled Substances Act when: (1) In the judgment of the physician, appropriate pain management warrants such dosage; (2) the controlled substance is not administered for the purpose of causing, or the purpose of assisting in causing, death for any reason; and (3) the administration of the controlled substance conforms to policies and guidelines for the treatment of pain adopted by the Board of Medicine and Surgery.

Source: Laws 1999, LB 226, § 2; Laws 2001, LB 398, § 73; Laws 2007, LB463, § 1197. Operative date December 1, 2008.

71-2420. Board of Medicine and Surgery; duties. The Board of Medicine and Surgery shall adopt policies and guidelines for the treatment of pain to ensure that physicians who are engaged in the appropriate treatment of pain are not subject to disciplinary action, and the board shall consider policies and guidelines developed by national organizations with expertise in pain management for this purpose.

Source: Laws 1999, LB 226, § 3; Laws 2007, LB463, § 1198. Operative date December 1, 2008.

STATUTES PERTAINING TO CANCER DRUG REPOSITORY PROGRAM ACT

71-2422. Act, how cited. Sections 71-2422 to 71-2430 shall be known and may be cited as the Cancer Drug Repository Program Act.

Source: Laws 2003, LB 756, §1; Laws 2005, LB 331, §1. Effective date September 4, 2005.

71-2423. Terms, defined. For purposes of the Cancer Drug Repository Program Act:

(1) Cancer drug means a prescription drug used to treat (a) cancer or its side effects or (b) the side effects of a prescription drug used to treat cancer or its side effects;

(2) Department means the Department of Health and Human Services;
(3) Health care facility has the definition found in section 71-413;
(4) Health clinic has the definition found in section 71-416;
(5) Hospital has the definition found in section 71-419;
(6) Participant means a physician's office, pharmacy, hospital, or health clinic that has elected to voluntarily participate in the program and that accepts donated cancer drugs under the rules and regulations adopted and promulgated by the department for the program;
(7) Pharmacy has the definition found in section 71-425;
(8) Physician's office means the office of a person licensed to practice medicine and surgery or osteopathic medicine and surgery;
(9) Prescribing practitioner means a health care practitioner licensed under the Uniform Credentialing Act who is authorized to prescribe cancer drugs;
(10) Prescription drug has the definition found in section 38-2841; and
(11) Program means the cancer drug repository program established pursuant to section 71-2424.
Source: Laws 2003, LB 756, § 2; Laws 2005, LB 331, § 2; Laws 2007, LB296, § 541; Laws 2007, LB463, § 1200. The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

71-2424. Cancer drug repository program; established. The department shall establish a cancer drug repository program for accepting donated cancer drugs and dispensing such drugs to Nebraska residents. Participation in the program shall be voluntary.
Source: Laws 2003, LB 756, § 3. Operative date September 15, 2003.

71-2425. Cancer drug donation. Any person or entity, including, but not limited to, a cancer drug manufacturer or health care facility, may donate cancer drugs to the program. Cancer drugs may be donated to a participant.
Source: Laws 2003, LB 756, §4; Laws 2005, LB 331, §3. Effective date September 4, 2005.

71-2426. Cancer drug; accepted or dispensed; conditions. (1) A cancer drug shall only be accepted or dispensed under the program if such drug is in its original, unopened, sealed, and tamper-evident packaging. A cancer drug packaged in single unit doses may be accepted and dispensed if the outside packaging is opened but the single-unit-dose packaging is unopened. There shall be no limitation on the number of doses that can be donated to the program as long as the donated drugs meet the requirements of this section. An injectable cancer drug may be accepted if it does not have temperature requirements other than controlled room temperature.
(2) A cancer drug shall not be accepted or dispensed under the program if (a) such drug bears an expiration date prior to the date of donation, (b) such drug is adulterated or misbranded as defined in section 71-2461 or 71-2470, (c) such drug has expired while in the repository, or (d) such drug has restricted distribution by the federal Food and Drug Administration.
(3) Subject to limitations provided in this section, unused cancer drugs dispensed under the medical assistance program established pursuant to the Medical Assistance Act may be accepted and dispensed under the program.
Source: Laws 2003, LB 756, § 5; Laws 2005, LB 331, § 4; Laws 2006, LB 1116, § 1; Laws 2006, LB 1248, § 77; Laws 2015, LB37, § 74. **Effective Date: August 30, 2015**

71-2427. Participant; duties; fee authorized. (1) A participant shall comply with all applicable provisions of state and federal law relating to the storage, distribution, and dispensing of donated cancer drugs and shall inspect all such drugs prior to dispensing to determine if they are adulterated or misbranded as defined in section 71-2461 or 71-2470. Such drugs shall only be dispensed pursuant to a prescription issued by a prescribing practitioner. Such drugs may be distributed to another participant for dispensing.
(2) A participant may charge a handling fee for distributing or dispensing cancer drugs under the program. Such fee shall be established in rules and regulations adopted and promulgated by the department. Cancer drugs donated under the program shall not be resold.
Source: Laws 2003, LB 756, § 6; Laws 2005, LB 331, § 5; Laws 2015, LB37, § 75.
Effective Date: August 30, 2015

71-2428. Immunity. (1) Any person or entity, including a cancer drug manufacturer, which exercises reasonable care in donating, accepting, distributing, or dispensing cancer drugs under the Cancer Drug

Repository Program Act or rules and regulations adopted and promulgated under the act 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.

(2) Notwithstanding subsection (1) of this section, the donation of a cancer drug by a cancer drug manufacturer does not absolve the manufacturer of any criminal or civil liability that would have existed but for the donation, nor shall such donation increase the liability of such cancer drug manufacturer that would have existed but for the donation.

Source: Laws 2003, LB 756, § 7. Operative date September 15, 2003.

71-2429. Rules and regulations. The department, upon the recommendation of the Board of Pharmacy, shall adopt and promulgate rules and regulations to carry out the Cancer Drug Repository Program Act. Such rules and regulations shall include, but not be limited to:

(1) Eligibility criteria and other standards and procedures for participants that accept and distribute or dispense donated cancer drugs;

(2) Necessary forms for administration of the program, including, but not limited to, forms for use by persons or entities that donate, accept, distribute, or dispense cancer drugs under the program. The forms shall include the name of the person to whom the drug was originally prescribed;

(3) The maximum handling fee that may be charged by participants that accept and distribute or dispense donated cancer drugs;

(4)(a) Categories of cancer drugs that the program will accept for dispensing and (b) categories of cancer drugs that the program will not accept for dispensing and the reason that such drugs will not be accepted; and

(5) Maintenance and distribution of the participant registry established in section 71-2430.

Source: Laws 2003, LB 756, § 8; Laws 2005, LB 331, § 6; Laws 2006, LB 1116, § 2. Operative date July 1, 2006.

71-2430. Participant registry. The department shall establish and maintain a participant registry for the program. The participant registry shall include the participant's name, address, and telephone number and shall identify whether the participant is a physician's office, a pharmacy, a hospital, or a health clinic. The department shall make the participant registry available to any person or entity wishing to donate cancer drugs to the program.

Source: Laws 2005, LB 331, §7. Effective date September 4, 2005.

STATUTES PERTAINING TO COMMUNITY HEALTH CENTER RELABELING AND REDISPENSING

71-2431. Community health center; relabeling and redispensing prescription drugs; requirements. (1) Prescription drugs or devices which have been delivered to a community health center for dispensing to a patient of such health center pursuant to a valid prescription, but which are not dispensed or administered to such patient, may be delivered to a pharmacist or pharmacy under contract with the community health center for relabeling and redispensing to another patient of such health center pursuant to a valid prescription if:

(a) The decision to accept delivery of the drug or device for relabeling and redispensing rests solely with the contracting pharmacist or pharmacy;

(b) The drug or device has been in the control of the community health center at all times;

(c) The drug or device is in the original and unopened labeled container with a tamper-evident seal intact. Such container shall bear the expiration date or calculated expiration date and lot number; and

(d) The relabeling and redispensing is not otherwise prohibited by law.

(2) For purposes of this section:

(a) Administer has the definition found in section 38-2806;

(b) Calculated expiration date has the definition found in section 38-2884;

(c) Community health center means a community health center established pursuant to the Health Centers Consolidation Act of 1996, 42 U.S.C. 201 et seq., as such act existed on May 7, 2005;

(d) Deliver or delivery has the definition found in section 38-2813;

(e) Dispense or dispensing has the definition found in section 38-2817;

(f) Prescription has the definition found in section 38-2840; and

(g) Prescription drug or device has the definition found in section 38-2841.

(3) The Department of Health and Human Services, in consultation with the Board of Pharmacy, may adopt and promulgate rules and regulations to carry out this section.

Source: Laws 2005, LB 382, § 14; Laws 2007, LB296, § 542; Laws 2007, LB463, § 1201. The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

STATUTES PERTAING TO IMMUNOSUPPRESSANT DRUG REPOSITORY PROGRAM ACT

71-2436. Act, how cited. Sections 71-2436 to 71-2443 shall be known and may be cited as the Immunosuppressant Drug Repository Program Act.

Source: Laws 2006, LB 994, § 42. Operative date April 13, 2006.

71-2437. Terms, defined. For purposes of the Immunosuppressant Drug Repository Program Act:

(1) Department means the Department of Health and Human Services;

(2) Immunosuppressant drug means anti-rejection drugs that are used to reduce the body's immune system response to foreign material and inhibit a transplant recipient's immune system from rejecting a transplanted organ. Immunosuppressant drugs are available only as prescription drugs and come in tablet, capsule, and liquid forms. The recommended dosage depends on the type and form of immunosuppressant drug and the purpose for which it is being used. Immunosuppressant drug does not include drugs prescribed for inpatient use;

(3) Participant means a transplant center that has elected to voluntarily participate in the program, that has submitted written notification to the department of its intent to participate in the program, and that accepts donated immunosuppressant drugs under the rules and regulations adopted and promulgated by the department for the program;

(4) Prescribing practitioner means a health care practitioner licensed under the Uniform Credentialing Act who is authorized to prescribe immunosuppressant drugs;

(5) Prescription drug has the definition found in section 38-2841;

(6) Program means the immunosuppressant drug repository program established pursuant to section 71-2438;

(7) Transplant center means a hospital that operates an organ transplant program, including qualifying patients for transplant, registering patients on the national waiting list, performing transplant surgery, and providing care before and after transplant; and

(8) Transplant program means the organ-specific facility within a transplant center. A transplant center may have transplant programs for the transplantation of hearts, lungs, livers, kidneys, pancreata, or intestines.

Source: Laws 2006, LB 994, § 43; Laws 2007, LB296, § 544; Laws 2007, LB463, § 1202. The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

71-2438. Immunosuppressant drug repository program; established. The department shall establish an immunosuppressant drug repository program for accepting donated immunosuppressant drugs and dispensing such drugs. Participation in the program shall be voluntary.

Source: Laws 2006, LB 994, § 44. Operative date April 13, 2006.

71-2439. Immunosuppressant drug donation. Any person or entity, including, but not limited to, an immunosuppressant drug manufacturer or transplant center, may donate immunosuppressant drugs to a participant or return previously prescribed immunosuppressant drugs to the transplant center where they were originally prescribed.

Source: Laws 2006, LB 994, § 45. Operative date April 13, 2006.

71-2440. Immunosuppressant drug; accepted or dispensed; conditions. (1) An immunosuppressant drug shall only be accepted or dispensed under the program if such drug is in its original, unopened, sealed, and tamper-evident packaging. An immunosuppressant drug packaged in single unit doses may be accepted and dispensed if the outside packaging is opened but the single-unit-dose packaging is unopened. There shall be no limitation on the number of doses that can be donated to the program as long as the donated drugs meet the requirements of this section.

(2) An immunosuppressant drug shall not be accepted or dispensed under the program if (a) such drug bears an expiration date prior to the date of donation, (b) such drug is adulterated or misbranded as defined in section 71-2461 or 71-2470, or (c) such drug has restricted distribution by the federal Food and Drug Administration.

(3) Subject to limitations provided in this section, unused immunosuppressant drugs dispensed under the medical assistance program may be accepted and dispensed under the immunosuppressant drug repository program.

Source: Laws 2006, LB 994, § 46; Laws 2015, LB37, § 76. **Effective Date: August 30, 2015**

71-2441. Participant; duties; resale prohibited. (1) A participant shall comply with all applicable provisions of state and federal law relating to the storage, distribution, and dispensing of donated immunosuppressant drugs

and shall inspect all such drugs prior to dispensing to determine if the drugs are adulterated or misbranded as defined in section 71-2461 or 71-2470 or if the drugs bear an expiration date prior to the date of dispensing. Such drugs shall only be dispensed pursuant to a prescription issued by a prescribing practitioner. Such drugs may be distributed to another participant for dispensing.

(2) Immunosuppressant drugs donated under the program shall not be resold.

Source: Laws 2006, LB 994, § 47; Laws 2015, LB37, § 77. **Effective Date: August 30, 2015**

71-2442. Rules and regulations. The department, upon the recommendation of the Board of Pharmacy, shall adopt and promulgate rules and regulations to carry out the Immunosuppressant Drug Repository Program Act. Such rules and regulations shall include, but not be limited to:

(1) Eligibility criteria and other standards and procedures for participants that accept and distribute or dispense donated immunosuppressant drugs;

(2) Necessary forms for administration of the program, including, but not limited to, forms for use by persons or entities that donate, accept, distribute, or dispense immunosuppressant drugs under the program. The forms shall include the name of the person to whom the drug was originally prescribed; and

(3)(a) Categories of immunosuppressant drugs that may be donated or returned under the program and (b) categories of immunosuppressant drugs that cannot be donated or returned under the program and the reason that such drugs cannot be donated or returned.

Source: Laws 2006, LB 994, § 48. Operative date April 13, 2006.

71-2443. Immunity. (1) Any person or entity, including an immunosuppressant drug manufacturer, which exercises reasonable care in donating, accepting, distributing, or dispensing immunosuppressant drugs under the Immunosuppressant Drug Repository Program Act or rules and regulations adopted and promulgated under the act 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.

(2) Notwithstanding subsection (1) of this section, the donation of an immunosuppressant drug by a drug manufacturer does not absolve the manufacturer of any criminal or civil liability that would have existed but for the donation, nor shall such donation increase the liability of such drug manufacturer that would have existed but for the donation.

Source: Laws 2006, LB 994, § 49. Operative date April 13, 2006.

STATUTES PERTAINING TO AUTOMATED MEDICATION SYSTEMS ACT

71-2444. Act, how cited. Sections 71-2444 to 71-2452 shall be known and may be cited as the Automated Medication Systems Act.

Source: Laws 2008, LB308, § 1; Laws 2013, LB326, § 3. Effective Date: September 6, 2013.

71-2445. Terms, defined. For purposes of the Automated Medication Systems Act:

(1) Automated medication distribution machine means a type of automated medication system that stores medication to be administered to a patient by a person credentialed under the Uniform Credentialing Act;

(2) Automated medication system means a mechanical system that performs operations or activities, other than compounding, administration, or other technologies, relative to storage and packaging for dispensing or distribution of medications and that collects, controls, and maintains all transaction information and includes, but is not limited to, a prescription medication distribution machine or an automated medication distribution machine. An automated medication system may only be used in conjunction with the provision of pharmacist care;

(3) Chart order means an order for a drug or device issued by a practitioner for a patient who is in the hospital where the chart is stored, for a patient receiving detoxification treatment or maintenance treatment pursuant to section 28-412, or for a resident in a long-term care facility in which a long-term care automated pharmacy is located from which drugs will be dispensed. Chart order does not include a prescription;

(4) Hospital has the definition found in section 71-419;

(5) Long-term care automated pharmacy means a designated area in a long-term care facility where an automated medication system is located, that stores medications for dispensing pursuant to a medical order to residents in such long-term care facility, that is installed and operated by a pharmacy licensed under the Health Care Facility Licensure Act, and that is licensed under section 71-2451;

(6) 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 center, a nursing facility, or a skilled nursing facility, as such terms are defined in the Health Care Facility Licensure Act;

(7) Medical order means a prescription, a chart order, or an order for pharmaceutical care issued by a practitioner;

(8) Pharmacist means any person who is licensed by the State of Nebraska to practice pharmacy;

(9) Pharmacist care means the provision by a pharmacist of medication therapy management, with or without the dispensing of drugs or devices, intended to achieve outcomes related to the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process;

(10) Pharmacist remote order entry means entering an order into a computer system or drug utilization review by a pharmacist licensed to practice pharmacy in the State of Nebraska and located within the United States, pursuant to medical orders in a hospital, long-term care facility, or pharmacy licensed under the Health Care Facility Licensure Act;

(11) Practice of pharmacy means (a) the interpretation, evaluation, and implementation of a medical order, (b) the dispensing of drugs and devices, (c) drug product selection, (d) the administration of drugs or devices, (e) drug utilization review, (f) patient counseling, (g) the provision of pharmaceutical care, and (h) the responsibility for compounding and labeling of dispensed or repackaged drugs and devices, proper and safe storage of drugs and devices, and maintenance of proper records. The active practice of pharmacy means the performance of the functions set out in this subdivision by a pharmacist as his or her principal or ordinary occupation;

(12) Practitioner means a certified registered nurse anesthetist, a certified nurse midwife, a dentist, an optometrist, a nurse practitioner, a physician assistant, a physician, a podiatrist, or a veterinarian;

(13) Prescription means an order for a drug or device issued by a practitioner for a specific patient, for emergency use, or for use in immunizations. Prescription does not include a chart order;

(14) Prescription medication distribution machine means a type of automated medication system that packages, labels, or counts medication in preparation for dispensing of medications by a pharmacist pursuant to a prescription; and

(15) Telepharmacy means the provision of pharmacist care, by a pharmacist located within the United States, using telecommunications, remote order entry, or other automations and technologies to deliver care to patients or their agents who are located at sites other than where the pharmacist is located.

Source: Laws 2008, LB308, § 2; Laws 2009, LB195, § 75; Laws 2013, LB23, § 35; Laws 2013, LB326, § 4. Effective Date: September 6, 2013.

71-2446. Automated machine prohibited. Any automated machine that dispenses, delivers, or makes available, other than by administration, prescription medication directly to a patient or caregiver without the provision of pharmacist care is prohibited.

Source: Laws 2008, LB308, § 3; Laws 2013, LB326, § 5. Effective Date: September 6, 2013.

71-2447. Hospital, long-term care facility, or pharmacy; use of automated medication system; policies and procedures required. Any hospital, long-term care facility, or pharmacy that uses an automated medication system shall develop, maintain, and comply with policies and procedures developed in consultation with the pharmacist responsible for pharmacist care for that hospital, long-term care facility, or pharmacy. At a minimum, the policies and procedures shall address the following:

(1) The description and location within the hospital, long-term care facility, or pharmacy of the automated medication system or equipment being used;

(2) The name of the pharmacist responsible for implementation of and compliance with the policies and procedures;

(3) Medication access and information access procedures;

(4) Security of inventory and confidentiality of records in compliance with state and federal laws, rules, and regulations;

(5) A description of the process used by a pharmacist or pharmacy technician for filling an automated medication system;

(6) A description of how and by whom the automated medication system is being utilized, including processes for verifying, dispensing, and distributing medications;

(7) Staff education and training;

(8) Quality assurance and quality improvement programs and processes;

(9) Inoperability or emergency downtime procedures;

(10) Periodic system maintenance; and

(11) Medication security and controls.

Source: Laws 2008, LB308, § 4; Laws 2009, LB195, § 76; Laws 2013, LB326, § 6. Effective Date: September 6, 2013.

71-2448. Prescription medication distribution machine; requirements; location. A prescription medication distribution machine:

(1) Is subject to the requirements of section 71-2447 and, if it is in a long-term care automated pharmacy, is subject to section 71-2451; and

(2) May be operated only (a) in a licensed pharmacy where a pharmacist dispenses medications to patients for self-administration pursuant to a prescription or (b) in a long-term care automated pharmacy subject to section 71-2451.

Source: Laws 2008, LB308, § 5; Laws 2013, LB326, § 7. Effective Date: September 6, 2013.

71-2449. Automated medication distribution machine; requirements; drugs; limitations; inventory; how treated. (1) An automated medication distribution machine:

(a) Is subject to the requirements of section 71-2447 and, if it is in a long-term care automated pharmacy, is subject to section 71-2451; and

(b) May be operated in a hospital or long-term care facility for medication administration pursuant to a chart order or prescription by a licensed health care professional.

(2) Drugs placed in an automated medication distribution machine shall be in the manufacturer's original packaging or in containers repackaged in compliance with state and federal laws, rules, and regulations relating to repackaging, labeling, and record keeping.

(3) The inventory which is transferred to an automated medication distribution machine in a hospital shall be excluded from the percent of total prescription drug sales revenue described in section 71-7454.

Source: Laws 2008, LB308, § 6; Laws 2009, LB195, § 77; Laws 2013, LB326, § 8. Effective Date: September 6, 2013.

71-2450 Pharmacist providing pharmacist remote order entry; requirements. A pharmacist providing pharmacist remote order entry shall:

(1) Be located within the United States;

(2) Maintain adequate security and privacy in accordance with state and federal laws, rules, and regulations;

(3) Be linked to one or more hospitals, long-term care facilities, or pharmacies for which services are provided via computer link, video link, audio link, or facsimile transmission;

(4) Have access to each patient's medical information necessary to perform via computer link, video link, or facsimile transmission a prospective drug utilization review as specified in section 38-2869; and

(5) Be employed by or have a contractual agreement to provide such services with the hospital, long-term care facility, or pharmacy where the patient is located.

Source: Laws 2008, LB308, § 7; Laws 2009, LB195, § 78. Effective Date: August 30, 2009.

71-2451. Long-term care facility; annual license; application; contents; inspection; pharmacist; duties; dispensing of drugs; labeling requirements. (1) In order for an automated medication system to be operated in a long-term care facility, a pharmacist in charge of a pharmacy licensed under the Health Care Facility Licensure Act and located in Nebraska shall annually license the long-term care automated pharmacy in which the automated medication system is located.

(2) The pharmacist in charge of a licensed pharmacy shall submit an application for licensure or renewal of licensure to the Division of Public Health of the Department of Health and Human Services with a fee in the amount of the fee the pharmacy pays for licensure or renewal. The application shall include:

(a) The name and location of the licensed pharmacy;

(b) If controlled substances are stored in the automated medication system, the federal Drug Enforcement Administration registration number of the licensed pharmacy. After the long-term care automated pharmacy is registered with the federal Drug Enforcement Administration, the pharmacist in charge of the licensed pharmacy shall provide the federal Drug Enforcement Administration registration number of the long-term care automated pharmacy to the division and any application for renewal shall include such registration number;

(c) The location of the long-term care automated pharmacy; and

(d) The name of the pharmacist in charge of the licensed pharmacy.

(3) As part of the application process, the division shall conduct an inspection by a pharmacy inspector as provided in section 38-28,101 of the long-term care automated pharmacy. The division shall also conduct inspections of the operation of the long-term care automated pharmacy as necessary.

(4) The division shall license a long-term care automated pharmacy which meets the licensure requirements of the Automated Medication Systems Act.

(5) A pharmacist in charge of a licensed pharmacy shall apply for a separate license for each location at which it operates one or more long-term care automated pharmacies. The licensed pharmacy shall be the provider pharmacy for the long-term care automated pharmacy.

(6) The pharmacist in charge of the licensed pharmacy operating a long-term care automated pharmacy shall:

(a) Identify a pharmacist responsible for the operation, supervision, policies, and procedures of the long-term care automated pharmacy;

(b) Implement the policies and procedures developed to comply with section 71-2447;

(c) Assure compliance with the drug storage and record-keeping requirements of the Pharmacy Practice Act;

(d) Assure compliance with the labeling requirements of subsection (8) of this section;

(e) Develop and implement policies for the verification of drugs by a pharmacist prior to being loaded into the automated medication system or for the verification of drugs by a pharmacist prior to being released for administration to a resident;

(f) Develop and implement policies for inventory, security, and accountability for controlled substances; and

(g) Assure that each medical order is reviewed by a pharmacist prior to the release of the drugs by the automated medication system. Emergency doses may be taken from an automated medication system prior to review by a pharmacist if the licensed pharmacy develops and implements policies for emergency doses.

(7) Supervision by a pharmacist is sufficient for compliance with the requirement of subdivision (6)(a) of this section if the pharmacist in the licensed pharmacy monitors the automated medication system electronically and keeps records of compliance with such requirement for five years.

(8) Each drug dispensed from a long-term care automated pharmacy shall be in a package with a label containing the following information:

(a) The name and address of the long-term care automated pharmacy;

(b) The prescription number;

(c) The name, strength, and dosage form of the drug;

(d) The name of the resident;

(e) The name of the practitioner who prescribed the drug;

(f) The date of filling; and

(g) Directions for use.

(9) A prescription is required for any controlled substance dispensed from a long-term care automated pharmacy.

(10) The inventory which is transferred to a long-term care automated pharmacy shall be excluded from the percent of total prescription drug sales revenue described in section 71-7454.

Source: Laws 2013, LB326, § 9. Effective Date: September 6, 2013.

71-2451.01. Management of long-term care facility; prohibited acts. Unless otherwise allowed by state or federal law or regulation, the management of a long-term care facility at which an automated medication system is located shall not require a resident of the facility to obtain medication through the automated medication system and shall not restrict or impair the ability of a resident of the facility to obtain medications from the pharmacy of the resident's choice.

Source: Laws 2013, LB326, § 10. Effective Date: September 6, 2013.

71-2452. Violations; disciplinary action. Any person who violates the Automated Medication Systems Act may be subject to disciplinary action by the Division of Public Health of the Department of Health and Human Services under the Health Care Facility Licensure Act or the Uniform Credentialing Act.

Source: Laws 2008, LB308, § 8; Laws 2013, LB326, § 11. Effective Date: September 6, 2013.

STATUTES PERTAINING TO CORRECTIONAL FACILITIES AND JAILS RELABELING AND REDISPENSING

71-2453. Department of Correctional Services facilities, detention facilities, or jails; prescription drug or device; return for credit or relabeling and redispensing; requirements; liability; professional disciplinary action. (1) Prescription drugs or devices which have been dispensed pursuant to a valid prescription and delivered to a Department of Correctional Services facility, a criminal detention facility, a juvenile detention facility, or a jail for administration to a prisoner or detainee held at such facility or jail, but which are not administered to such prisoner or detainee, may be returned to the pharmacy from which they were dispensed under contract with the facility or jail for credit or for relabeling and redispensing and administration to another prisoner or detainee held at such facility or jail pursuant to a valid prescription as provided in this section.

(2)(a) The decision to accept return of a dispensed prescription drug or device for credit or for relabeling and redispensing rests solely with the pharmacist at the contracting pharmacy. (b) A dispensed prescription drug or device shall be properly stored and in the control of the facility or jail at all times prior to the return of the drug or device for credit or for relabeling and redispensing. The drug or device shall be returned in the original and unopened labeled container dispensed by the pharmacist with the tamper-evident seal intact, and the container shall bear the expiration date or calculated expiration date and lot number of the drug or device. (c) A prescription drug or device shall not be returned or relabeled and redispensed under this section if the drug or device is a controlled substance, if the drug has restricted distribution by the federal Food and Drug Administration, or if the relabeling and redispensing is otherwise prohibited by law.

(3) For purposes of this section:
(a) Administration has the definition found in section 38-2807;
(b) Calculated expiration date has the definition found in section 38-2808.01;
(c) Criminal detention facility has the definition found in section 83-4,125;
(d) Department of Correctional Services facility has the definition of facility found in section 83-170;
(e) Dispense or dispensing has the definition found in section 38-2817;
(f) Jail has the definition found in section 47-117;
(g) Juvenile detention facility has the definition found in section 83-4,125;
(h) Prescription has the definition found in section 38-2840; and
(i) Prescription drug or device has the definition found in section 38-2841.
(4) The Jail Standards Board, in consultation with the Board of Pharmacy, shall adopt and promulgate rules and regulations relating to the return of dispensed prescription drugs or devices for credit, relabeling, or redispensing under this section, including, but not limited to, rules and regulations relating to (a) education and training of persons authorized to administer the prescription drug or device to a prisoner or detainee, (b) the proper storage and protection of the drug or device consistent with the directions contained on the label or written drug information provided by the pharmacist for the drug or device, (c) limits on quantity to be dispensed, (d) transferability of drugs or devices for prisoners or detainees between facilities, (e) container requirements, (f) establishment of a drug formulary, and (g) fees for the pharmacy to accept the returned drug or device.
(5) Any person or entity which exercises reasonable care in accepting, distributing, or dispensing prescription drugs or devices under this section or rules and regulations adopted and promulgated under 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.
Source: Laws 2009, LB288, § 46; Laws 2011, LB274, § 2; Laws 2015, LB37, § 78. **Effective Date: August 30, 2015**

STATUTES PERTAINING TO PRESCRIPTION DRUG MONITORING PROGRAM

71-2454. Prescription drug monitoring; legislative intent. It is the intent of the Legislature that an entity described in section 71-2455 establish a system of prescription drug monitoring for the purposes of (1) preventing the misuse of controlled substances that are prescribed in an efficient and cost-effective manner and (2) allowing doctors and pharmacists to monitor the care and treatment of patients for whom such a prescription drug is prescribed to ensure that such prescription drugs are used for medically appropriate purposes and that the State of Nebraska remains on the cutting edge of medical information technology.
Source: Laws 2011, LB237, § 1; Laws 2014, LB1072, § 1. **Effective Date: July 18, 2014.**

71-2455. Prescription drug monitoring; Department of Health and Human Services; duties; powers. The Department of Health and Human Services, in collaboration with the Nebraska Health Information Initiative or any successor public-private statewide health information exchange, shall enhance or establish technology for prescription drug monitoring to carry out the purposes of section 71-2454. The department may use state funds and accept grants, gifts, or other funds in order to implement and operate the technology. The department may adopt and promulgate rules and regulations to authorize use of electronic health information, if necessary to carry out the purposes of sections 71-2454 and 71-2455.
Source: Laws 2011, LB237, § 2; Laws 2014, LB1072, § 2. **Effective Date: July 18, 2014.**

71-2456. Prescription Drug Monitoring Program Fund; created; investment. The Prescription Drug Monitoring Program Fund is created. The Department of Health and Human Services shall administer the fund which shall include any state funds, grants, or gifts received by the department for the purposes of carrying out the purposes of sections 71-2454 and 71-2455. 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 2014, LB1072, § 3.

71-2457. Act, how cited. Sections 71-2457 to 71-2483 shall be known and may be cited as the Prescription Drug Safety Act.
Source: Laws 2015, LB37, § 1. **Effective Date: August 30, 2015**

71-2458. Definitions, where found. For purposes of the Prescription Drug Safety Act, the definitions found in sections 71-2459 to 71-2476 apply.
Source: Laws 2015, LB37, § 2. **Effective Date: August 30, 2015**

71-2459. Administer, defined. Administer means to directly apply a drug or device by injection, inhalation, ingestion, or other means to the body of a patient or research subject.
Source: Laws 2015, LB37, § 3. **Effective Date: August 30, 2015**

71-2460. Administration, defined. Administration means the act of (1) administering, (2) keeping a record of such activity, and (3) observing, monitoring, reporting, and otherwise taking appropriate action regarding desired effect, side effect, interaction, and contraindication associated with administering the drug or device.
Source: Laws 2015, LB37, § 4. **Effective Date: August 30, 2015**

71-2461. Adulterated drug, defined. Adulterated drug means an article (1) if, when a drug is sold under or by the name recognized in The United States Pharmacopeia and The National Formulary, it differs from the standard of strength, quality, or purity as determined by the test laid down in The United States Pharmacopeia and The National Formulary official at the time of investigation, except that no drug defined in The United States Pharmacopeia and The National Formulary shall be deemed to be adulterated under this subdivision if the standard of strength or purity is plainly stated upon the bottle, box, or other container thereof, although the standard may differ from that determined by the test laid down in The United States Pharmacopeia and The National Formulary, or (2) if its strength or purity falls below the professed standard of quality under which it is sold.
Source: Laws 1941, c. 141, § 9, p. 560; C.S.Supp.,1941, § 81-928; R.S.1943, § 81-620; R.S.1943, (2009), § 71-2401; Laws 2015, LB37, § 5. **Effective Date: August 30, 2015**

71-2462. Chart order, defined. Chart order has the definition found in section 38-2810.
Source: Laws 2015, LB37, § 6. **Effective Date: August 30, 2015**

71-2463. Compounding, defined. Compounding means the preparation of components into a drug product.
Source: Laws 2015, LB37, § 7. **Effective Date: August 30, 2015**

71-2464. Controlled substance, defined. Controlled substance has the definition found in section 28-401.
Source: Laws 2015, LB37, § 8. **Effective Date: August 30, 2015**

71-2465. Dispense or dispensing, defined. (1) Dispense or dispensing means interpreting, evaluating, and implementing a medical order, including preparing and delivering a drug or device to a patient or caregiver as defined in section 38-2809 in a suitable container appropriately labeled for subsequent administration to, or use by, a patient.

(2) Dispensing includes (a) dispensing incident to practice, (b) dispensing pursuant to a delegated dispensing permit, (c) dispensing pursuant to a medical order, and (d) any transfer of a prescription drug or device to a patient or caregiver as defined in section 38-2809 other than by administering.
Source: Laws 2015, LB37, § 9. **Effective Date: August 30, 2015**

71-2466. Distribute, defined. Distribute means to deliver a drug or device, other than by administering or dispensing.
Source: Laws 2015, LB37, § 10. **Effective Date: August 30, 2015**

71-2467. Drugs, medicines, and medicinal substances, defined. Drugs, medicines, and medicinal substances means (1) articles recognized in The United States Pharmacopeia and The National Formulary, the Homeopathic Pharmacopoeia of the United States, or any supplement to any of them, (2) articles intended for use in the diagnosis,

cure, mitigation, treatment, or prevention of diseases in humans or animals, (3) articles, except food, intended to affect the structure or any function of the body of a human or an animal, (4) articles intended for use as a component of any articles specified in subdivision (1), (2), or (3) of this section, except any device or its components, parts, or accessories, and (5) prescription drugs or devices.

Source: Laws 2015, LB37, § 11. **Effective Date: August 30, 2015**

71-2468. 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 section 71-2479 and federal 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.

Source: Laws 2015, LB37, § 12. **Effective Date: August 30, 2015**

71-2469. Medical order, defined. Medical order means a prescription, a chart order, or an order for pharmaceutical care issued by a practitioner.

Source: Laws 2015, LB37, § 13. **Effective Date: August 30, 2015**

71-2470. Misbranded drug, defined. (1) Misbranded drug means a drug, the package or label of which bears any statement, design, or device regarding a drug, or the ingredients of substances contained therein, which is false or misleading in any particular, or any drug product which is falsely labeled with the name and place of business of the manufacturer, packager, or distributor.

(2) Misbranded drug includes an article (a) if it is an imitation of or offered for sale under the name of another article, (b) if it is labeled or branded so as to deceive or mislead the purchaser or purport to be a foreign product when not so, or if the contents of the package as originally put up have been removed, in whole or in part, and other contents have been placed in such package, or if the package fails to bear a statement, on the label, of the quantity or proportion of any alcohol, morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate or acetanilide, phenacetine (acetphenetidine), antipyrine, belladonna, or any derivative or preparation of any such substance contained therein, or (c) if its package or label bears or contains any statement, design, or device regarding the curative or therapeutic effect of such article, or any of the ingredients or substances contained therein, which is false or fraudulent.

Source: Laws 1941, c. 141, § 10, p. 561; C.S.Supp.,1941, § 81-929; R.S.1943, § 81-621; R.S.1943, (2009), § 71-2402; Laws 2015, LB37, § 14. **Effective Date: August 30, 2015**

71-2471. Pharmacist, defined. Pharmacist means any person who is licensed by the State of Nebraska to practice pharmacy as defined in section 38-2837.

Source: Laws 2015, LB37, § 15. **Effective Date: August 30, 2015**

Cross References

- **Uniform Credentialing Act,** see section 38-101.

71-2472. Pharmacy, defined. Pharmacy has the same meaning as in section 71-425.

Source: Laws 2015, LB37, § 16. **Effective Date: August 30, 2015**

71-2473. Practitioner, defined. Practitioner means a certified registered nurse anesthetist, a certified nurse midwife, a dentist, an optometrist, a nurse practitioner, a pharmacist, a physician assistant, a physician, or a podiatrist credentialed under the Uniform Credentialing Act.

Source: Laws 2015, LB37, § 17. **Effective Date: August 30, 2015**

Cross References

- **Uniform Credentialing Act,** see section 38-101.

71-2474. Prescribe, defined. Prescribe means to issue a medical order.

Source: Laws 2015, LB37, § 18. **Effective Date: August 30, 2015**

71-2475. Prescription, defined. Prescription means an order for a drug or device issued by a practitioner for a specific patient, for emergency use, or for use in immunizations. Prescription does not include a chart order.

Source: Laws 2015, LB37, § 19. **Effective Date: August 30, 2015**

71-2476. Prescription drug or device or legend drug or device, defined. (1) Prescription drug or device or legend drug or device means a drug or device:

(a) Which is required under federal law to be labeled with one of the following statements prior to being dispensed or delivered:

(i) Caution: Federal law prohibits dispensing without prescription;

(ii) Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian; or

(iii) "Rx Only"; or

(b) Which is required by any applicable federal or state law to be dispensed pursuant only to a prescription or chart order or which is restricted to use by practitioners only.

(2) Prescription drug or device or legend drug or device does not include a type of device, including supplies and device components, which carries the federal Food and Drug Administration legend "Caution: Federal law restricts this device to sale by or on the order of a licensed health care practitioner" or an alternative legend approved by the federal Food and Drug Administration which it recognizes, in published guidance, as conveying essentially the same message.

Source: Laws 2015, LB37, § 20. **Effective Date: August 30, 2015**

71-2477. Act; how construed; practitioner; duties; compound or reconstitute drug; duties.

(1) Nothing in the Prescription Drug Safety Act shall be construed as authority for a practitioner to perform any activity he or she is not otherwise authorized to perform by another law of this state.

(2) A practitioner that stores, dispenses, compounds, administers, or otherwise provides any drug to a patient shall comply with the Prescription Drug Safety Act.

(3) A practitioner or authorized person that compounds or reconstitutes any drug shall comply with section 38-2867.01.

Source: Laws 2015, LB37, § 21. **Effective Date: August 30, 2015**

71-2478. Legend drug not a controlled substance; written, oral, or electronic prescription; information required; controlled substance; requirements; prohibited acts. (1) Except as otherwise provided in this section or the Uniform Controlled Substances Act or except when administered directly by a practitioner to an ultimate user, a legend drug which is not a controlled substance shall not be dispensed without a written, oral, or electronic prescription. Such prescription shall be valid for twelve months after the date of issuance.

(2) A prescription for a legend drug which is not a controlled substance shall contain the following information prior to being filled by a pharmacist or practitioner who holds a pharmacy license under subdivision (1) of section 38-2850: (a) Patient's name, (b) name of the drug, device, or biological, (c) strength of the drug or biological, if applicable, (d) dosage form of the drug or biological, (e) quantity of the drug, device, or biological prescribed, (f) directions for use, (g) date of issuance, (h) number of authorized refills, (i) prescribing practitioner's name, and (j) 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.

(3) A written, signed paper prescription may be transmitted to the pharmacy via facsimile which shall serve as the original written prescription. An electronic prescription may be electronically or digitally signed and transmitted to the pharmacy and may serve as the original prescription.

(4) It shall be unlawful for any person knowingly or intentionally to possess or to acquire or obtain or to attempt to acquire or obtain, by means of misrepresentation, fraud, forgery, deception, or subterfuge, possession of any drug substance not classified as a controlled substance under the Uniform Controlled Substances Act which can only be lawfully dispensed, under federal statutes in effect on January 1, 2015, upon the written or oral prescription of a practitioner authorized to prescribe such substances.

Source: Laws 2015, LB37, § 22. **Effective Date: August 30, 2015**

Cross References

- **Uniform Controlled Substances Act,** see section 28-401.01.

71-2479. Legend drug not a controlled substance; prescription; retention; label; contents. (1) Any prescription for a legend drug which is not a controlled substance shall be kept by the pharmacy or the practitioner who holds a pharmacy license in a readily retrievable format and shall be maintained for a minimum of five years. The pharmacy or practitioner shall make all such files readily available to the department and law enforcement for inspection without a search warrant.

(2) Before dispensing a legend drug which is not a controlled substance pursuant to a written, oral, or electronic prescription, a label shall be affixed to the container in which the drug is dispensed. Such label shall bear (a) the name, address, and telephone number of the pharmacy or practitioner, (b) the name of the patient, (c) the date of filling, (d) the serial number of the prescription under which it is recorded in the practitioner's prescription records, (e) the name of the prescribing practitioner, (f) the directions for use, (g) the name of the drug, device, or biological unless instructed to omit by the prescribing practitioner, (h) the strength of the drug or biological, if applicable, (i) the quantity of the drug, device, or biological in the container, except unit-dose containers, (j) the dosage form of the drug or biological, and (k) any cautionary statements contained in the prescription.

Source: Laws 2015, LB37, § 23. **Effective Date: August 30, 2015**

71-2480. Drugs; adulteration or misbranding; confiscation; destruction or sale; proceeds; disposition. Any drug which is adulterated or misbranded and which is sold, offered for sale, or delivered within this state shall be liable to be proceeded against where the same is found and seized for confiscation by a process of libel for condemnation. If such drug is condemned as being adulterated or misbranded or of a poisonous or deleterious character, the drug shall be disposed of by destruction or sale as the court may direct, and the proceeds thereof, if sold, less the legal costs and charges, shall be paid into the treasury of this state, and such goods shall not be sold in any jurisdiction contrary to the Prescription Drug Safety Act or the laws of that jurisdiction. Any libel proceeding in rem may be joined with any criminal prosecution in personam or may be prosecuted separately.

Source: Laws 1941, c. 141, § 12, p. 561; C.S.Supp.,1941, § 81-931; R.S.1943, § 81-623; R.S.1943, (2009), § 71-2404; Laws 2015, LB37, § 24. **Effective Date: August 30, 2015**

71-2481. Drugs; manufacture or possession of adulterated or misbranded drugs; sale prohibited. No person shall, within this state, manufacture for sale therein or have in his or her possession with intent to sell, offer or expose for sale, or sell any remedies, medicines, or drugs which are adulterated or misbranded.

Source: Laws 1941, c. 141, § 12, p. 561; C.S.Supp.,1941, § 81-931; R.S.1943, § 81-624; R.S.1943, (2009), § 71-2405; Laws 2015, LB37, § 25. **Effective Date: August 30, 2015**

71-2482. Drugs; adulterated or misbranded; violations; penalties. Any person violating any of the provisions of section 71-2480 or 71-2481 is guilty of a Class III misdemeanor. Any person, for a second or subsequent violation of any of the provisions of section 71-2480 or 71-2481, is guilty of a Class II misdemeanor.

Source: Laws 2015, LB37, § 26. **Effective Date: August 30, 2015**

71-2483. Communication authorized. 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.

Source: Laws 2015, LB37, § 27. **Effective Date: August 30, 2015**

STATUTES PERTAINING TO POISONS

71-2501. Poison, defined; exceptions. For purposes of the Poison Control Act: (1) Poison includes: Arsenic, metallic or elemental, and all poisonous compounds and preparations thereof; corrosive sublimate; white precipitate; red precipitate, mercuric iodide; nitrate of mercury; hydrocyanic acid and all its salts and poisonous compounds; aconitine, arecoline, atropine, brucine, colchicine, coniine, daturine, delphinine, gelsemine, gelseminine, homatropine, hyoscine, hyoscyamine, lobeline, pelletierine, physostigmine, pilocarpine, sparteine, strychnine, veratrine, and all other poisonous alkaloids and their salts, poisonous compounds, and preparations; volatile or essential oil of bitter almonds, natural and artificial; aconite, belladonna, calabar bean, cantharides, colchicum, conium cotton root, cocculus indicum, datura, ergot, gelsemium, henbane, ignatia, lobelia, nux vomica, savin, scopolamine, solanum, stramonium, staphisagra, strophanthus, veratrum viride, and their pharmaceutical preparations and compounds; cantharidin, picrotoxin, elaterin, santonin, their poisonous chemical compounds and derivatives and preparations; ascaridol; volatile oil of mustard, natural and synthetic; oil of tansy; oil of savin, glacial acetic acid; trichloracetic acid; aniline oil; benzaldehyde; bromoform; carbolic acid; cresylic acid; chloral hydrate; chromic acid; croton oil; dinitrophenol; mineral acids; oxalic acid; nitrobenzene; phosphorous;

paraldehyde; picric acid; salts of antimony; salts of barium, except the sulphate, salts of cobalt, salts of chromium; salts of lead; salts of thallium; salts of zinc; carbon tetrachloride, and silver nitrate; and

(2) Poison does not include:

(a) Agricultural or garden spray, insecticides, concentrated lye, fungicides, rodent destroyers, and other preparations of whatever ingredients, preservative or otherwise for animal or poultry use, for commercial, industrial, manufacturing, or fire protection purposes or any combination of such purposes, and not for human use, when the same are properly packaged, prepared, and labeled with official poison labels in conformity with the terms and provisions of section 71-2502 or the Federal Food, Drug, and Cosmetic Act, as such act existed on May 1, 2001, or the Federal Insecticide, Fungicide, and Rodenticide Act, as such act existed on May 1, 2001;

(b) Preparations prepared by or under the supervision of a governmental agency for use by it or under its direction in the suppression of injurious insect pests and plant diseases destructive to the agricultural and horticultural interests of the state; and

(c) Preparations for the destruction of rodents, predatory animals, or noxious weeds.

Source: Laws 1941, c. 141, § 13, p. 562; C.S.Supp.,1941, § 81-932; R.S.1943, § 81-625; Laws 1957, c. 296, § 1, p. 1068; Laws 2001, LB 398, § 75; Laws 2015, LB37, § 80. **Effective Date: August 30, 2015**

71-2501.01. Act, how cited. Sections 71-2501 to 71-2512 shall be known and may be cited as the Poison Control Act.

Source: Laws 2015, LB37, § 79. **Effective Date: August 30, 2015**

71-2502. Poisons; sale; labeling required. It shall be unlawful for any person to vend, sell, dispense, give away, furnish, or otherwise dispose of, or cause to be vended, sold, dispensed, given away, furnished, or otherwise disposed of, either directly or indirectly, any poison without affixing, or causing to be affixed, to the bottle, box, vessel, or package containing the same, a label, printed or plainly written, containing the name of the article, the word poison, the name and place of business of the seller, manufacturer, packager, or distributor, and the date of sale; nor shall it be lawful for any person to deliver any of such poisons until he or she has satisfied himself or herself that the person to whom delivery is made is aware of and understands the poisonous nature of the article and that such poison is to be used for a legitimate purpose.

Source: Laws 1941, c. 141, § 14, p. 563; C.S.Supp.,1941, § 81-933; R.S.1943, § 81-626; Laws 2015, LB37, § 81. **Effective Date: August 30, 2015**

71-2503. Poisons; sale; duty of vendor to record in Poison Register. Every person who disposes of or sells at retail or furnishes any of the poisons in section 71-2501 or any other poisons which the Department of Health and Human Services may from time to time designate, as provided in section 71-2506, shall, before delivery, enter in a book kept for that purpose, to be known as the Poison Register, the date of sale, the name and address of the purchaser, the name and quantity of the poison, the purpose for which it is purchased, and the name of the dispenser, and such record shall be signed by the person to whom the poison is delivered. Such record shall be kept in the form prescribed by the department, and the book containing the same must be always open for inspection by the proper authorities, and must be preserved for at least two years after the last entry.

Source: Laws 1941, c. 141, § 14, p. 563; C.S.Supp.,1941, § 81-933; R.S.1943, § 81-627; Laws 1996, LB 1044, § 626; Laws 2007, LB296, § 545. Operative date July 1, 2007.

71-2504. Poisons; sale; false representation or use of fictitious name by purchaser, prohibited. It shall be unlawful for any person to give or sign a fictitious name or, in order to procure any poison, to make any false representation to the person from whom the same is procured; and it shall be unlawful for any person delivering any poison under the provision of section 71-2503 knowingly to make a fictitious, false or misleading entry in the Poison Register.

Source: Laws 1941, c. 141, §14, p. 564; C.S. Supp., 1941, §81-933; R.S. 1943, §81-628.

71-2505. Poisons; sale; restrictions not applicable to physicians. (1) The Poison Control Act does not apply to the dispensing of poisons or preparation of medicines by practitioners credentialed under the Uniform Credentialing Act who are duly authorized by law to administer or professionally use those poisons specifically named in section 71-2501.

(2) The Poison Control Act does not apply to the sale of patent or proprietary medicines in the original package of the manufacturer, packager, or distributor when labeled in conformity with section 71-2502.

Source: Laws 1941, c. 141, § 14, p. 564; C.S.Supp.,1941, § 81-933; R.S.1943, § 81-629; Laws 2007, LB463, § 1203; Laws 2015, LB37, § 82. **Effective Date: August 30, 2015**

71-2506. Poisons; sale; revised schedule of poisons; preparation; notice; hearing; appeal. (1) Whenever, in the judgment of the Department of Health and Human Services, it becomes necessary for the protection of the public to add any poison, not specifically enumerated in section 71-2501, the department shall have printed a revised schedule of all poisons coming under section 71-2501. The department shall forward by mail one copy to each person registered upon its books and to every person applying for same, and the revised schedule shall carry an effective date for the new poisons added. No poison shall be added by the department under this section unless the same shall be as toxic in its effect as any of the poisons enumerated under section 71-2501.

(2) Whenever the department proposes to bring any additional poisons under section 71-2501, the proposal shall be set down for hearing. At least ten days' notice of such hearing shall be given by the department. The notice shall designate the poison to be added and shall state the time and place of the hearing. Such notice shall be given by such means as the department determines to be reasonably calculated to notify the various interested parties. The department may adopt and promulgate such rules and regulations with respect to the conduct of such hearings as may be necessary.

(3) Any person aggrieved by any order of the department passed pursuant to this section may appeal such order, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1941, c. 141, § 14, p. 564; C.S.Supp.,1941, § 81-933; R.S.1943, § 81-630; Laws 1988, LB 352, § 127; Laws 1996, LB 1044, § 627; Laws 2007, LB296, § 546; Laws 2015, LB37, § 83.
Effective Date: August 30, 2015

71-2507. Poisons; sale by person not registered pharmacist prohibited; exception. It shall be unlawful for any person, other than a duly registered pharmacist, to sell or dispense poisons as named in section 71-2501, except as otherwise provided in section 71-2501.

Source: Laws 1941, c. 141, § 14, p. 565; C.S.Supp.,1941, § 81-933; R.S.1943, § 81-631; Laws 2015, LB37, § 84. **Effective Date: August 30, 2015**

71-2508. Poisons; sale to minors and incompetents, prohibited. It shall be unlawful for any person in this state to sell or deliver any poison to any minor under eighteen years of age or to any person known to be of unsound mind or under the influence of intoxicants.

Source: Laws 1941, c. 141, §14, p. 565; C.S. Supp., 1941, §81-933; R.S. 1943, §81-632.

71-2509. Poisons; restriction to sale upon prescription; power of Department of Health and Human Services. The Department of Health and Human Services may adopt and promulgate rules and regulations, whenever such action becomes necessary for the protection of the public, to prohibit the sale of any poison, subject to this section, except upon the original written, oral, or electronic medical order of practitioners credentialed under the Uniform Credentialing Act who are duly authorized by law to administer or professionally use those poisons specifically named in section 71-2501. Whenever in the opinion of the department it is in the interest of the public health, the department may adopt and promulgate rules and regulations, not inconsistent with the Poison Control Act, further restricting or prohibiting the retail sale of any poison. The rules and regulations must be applicable to all persons alike. The department shall, upon request by any person authorized by the Poison Control Act to sell or dispense any poisons, furnish such person with a list of all articles, preparations, and compounds the sale of which is prohibited or regulated by the Poison Control Act.

Source: Laws 1941, c. 141, § 14, p. 565; C.S.Supp.,1941, § 81-933; R.S.1943, § 81-633; Laws 1996, LB 1044, § 628; Laws 2007, LB296, § 547; Laws 2007, LB463, § 1204; Laws 2015, LB37, § 85.
Effective Date: August 30, 2015

71-2510. Poisons; sale upon prescription only; exceptions. The Poison Control Act does not apply to sales of poisons made to practitioners credentialed under the Uniform Credentialing Act who are duly authorized by law to administer or professionally use those poisons specifically named in section 71-2501, to sales made by any manufacturer, wholesale dealer, or licensed pharmacist to another manufacturer, wholesale dealer, or licensed pharmacist, to a hospital, college, school, or scientific or public institution, or to any person using any of such poisons in the arts or for industrial, manufacturing, or agricultural purposes and believed to be purchasing any poison for legitimate use, or to the sales of pesticides used in agricultural and industrial arts or products used for the control of insect or animal pests or weeds or fungus diseases, if in all such cases, except sales for use in industrial arts, manufacturing, or processing, the poisons are labeled in accordance with section 71-2502.

Source: Laws 1941, c. 141, § 14, p. 565; C.S.Supp.,1941, § 81-933; R.S.1943, § 81-634; Laws 1993, LB 588, § 36; Laws 2007, LB463, § 1205; Laws 2015, LB37, § 86.
Effective Date: August 30, 2015

71-2510.01. Embalming fluids; use of arsenic or strychnine prohibited; label required; violation; penalty.

(1) No person, firm, corporation, partnership, or limited liability company shall manufacture, give away, sell, expose for sale, or deliver any embalming fluid or other fluids of whatsoever name, to be used for or intended for use in the embalming of dead human bodies, which contain arsenic or strychnine, or preparations, compounds, or salts thereof, without having the words arsenic contained herein or strychnine contained herein, as the case may be, written or printed upon a label pasted on the bottle, cask, flask, or carboy in which such fluid shall be contained.

(2) No undertaker or other person shall embalm with, inject into, or place upon any dead human body, any fluid or preparation of any kind which contains arsenic or strychnine, or preparations, compounds, or salts thereof.

(3) Any person, firm, corporation, partnership, or limited liability company violating any of the provisions of subsection (1) or (2) of this section shall be guilty of a Class III misdemeanor.

Source: Laws 1977, LB 38, § 85; Laws 1993, LB 121, § 176; R.S.1943, (2008), § 28-425; Laws 2015, LB37, § 87. **Effective Date: August 30, 2015**

71-2511. Poisons; sale; violations; penalty. Any person, partnership, limited liability company, association, or corporation violating any of the provisions of sections 71-2502 to 71-2511 or any of the rules or regulations adopted and promulgated by the Department of Health and Human Services pursuant to sections 71-2502 to 71-2511 shall be deemed guilty of a Class V misdemeanor.

Source: Laws 1941, c. 141, § 14, p. 566; C.S.Supp.,1941, § 81-993; R.S.1943, § 81-635; Laws 1977, LB 39, § 166; Laws 1993, LB 121, § 431; Laws 1996, LB 1044, § 629; Laws 2007, LB296, § 548. Operative date July 1, 2007.

71-2512. Violations; penalty. Any person violating any of the provisions of the Poison Control Act, except as specific penalties are otherwise imposed, is guilty of a Class III misdemeanor. Any person, for a second or subsequent violation of any of the provisions of the Poison Control Act, when another specific penalty is not expressly imposed, is guilty of a Class II misdemeanor.

Source: Laws 1941, c. 141, § 17, p. 567; C.S.Supp.,1941, § 81-935; R.S.1943, § 81-636; Laws 1972, LB 1067, § 3; Laws 1977, LB 39, § 167; Laws 1988, LB 1100, § 131; Laws 1988, LB 1012, § 12; Laws 2015, LB37, § 88. **Effective Date: August 30, 2015**

STATUTES PERTAINING TO WHOLESALE DRUG DISTRIBUTOR LICENSING ACT

71-7401 to 71-7405. Transferred to section 71-7427 to 71-7431.
71-7406 to 71-7409. Transferred to section 71-7433 to 71-7436.
71-7410. Transferred to section 71-7438.
71-7411. Transferred to section 71-7441.
71-7412 and 71-7413. Transferred to section 71-7444 and 71-7445.
71-7414 and 71-7415. Repealed. Laws 2006, LB 994, s. 161.
71-7416. Transferred to section 71-7454.
71-7417. Transferred to section 71-7447.
71-7418 and 71-7419. Repealed. Laws 2006, LB 994, s. 161.
71-7420. Transferred to section 71-7451.
71-7421. Repealed. Laws 2006, LB 994, s. 161.
71-7422. Transferred to section 71-7463.
71-7423. Transferred to section 71-7457.
71-7424. Transferred to section 71-7453.
71-7425 and 71-7426. Transferred to section 71-7458 and 71-7459.

71-7427. Act, how cited. Sections 71-7427 to 71-7463 shall be known and may be cited as the Wholesale Drug Distributor Licensing Act.

Source: Laws 1992, LB 1019, § 1; R.S.1943, (2003), § 71-7401; Laws 2006, LB 994, § 1; Laws 2007,

LB463, § 1293. Operative date December 1, 2008.

71-7428. Definitions, where found. For purposes of the Wholesale Drug Distributor Licensing Act, the definitions found in sections 71-7429 to 71-7446 apply.
Source: Laws 1992, LB 1019, § 2; R.S.1943, (2003), § 71-7402; Laws 2006, LB 994, § 2. Operative date August 1, 2006.

71-7429. Blood, defined. Blood means whole blood collected from a single donor and processed either for transfusion or further manufacturing.
Source: Laws 1992, LB 1019, § 3; R.S.1943, (2003), § 71-7403; Laws 2006, LB 994, § 3. Operative date August 1, 2006.

71-7430. Blood component, defined. Blood component means that part of blood separated by physical or mechanical means.
Source: Laws 1992, LB 1019, § 4; R.S.1943, (2003), § 71-7404; Laws 2006, LB 994, § 4. Operative date August 1, 2006.

71-7431. Board, defined. Board means the Board of Pharmacy.
Source: Laws 1992, LB 1019, § 5; Laws 1999, LB 828, § 176; R.S.1943, (2003), § 71-7405; Laws 2006, LB 994, § 5. Operative date August 1, 2006.

71-7432. Chain pharmacy warehouse, defined. Chain pharmacy warehouse means a facility utilized as a central warehouse for intracompany sales or transfers of prescription drugs or devices by two or more pharmacies operating under common ownership or common control.
Source: Laws 2006, LB 994, § 6. Operative date August 1, 2006.

71-7433. Common control, defined. Common control means that the power to direct or cause the direction of the management and policies of a person or an organization by ownership of stock or voting rights, by contract, or otherwise is held by the same person or persons.
Source: Laws 1992, LB 1019, § 6; R.S.1943, (2003), § 71-7406; Laws 2006, LB 994, § 7. Operative date August 1, 2006.

71-7434. Department, defined. Department means the Department of Health and Human Services.
Source: Laws 1992, LB 1019, § 7; Laws 1996, LB 1044, § 778; R.S.1943, (2003), § 71-7407; Laws 2006, LB 994, § 8; Laws 2007, LB296, § 672. Operative date July 1, 2007.

71-7435. Drug sample, defined. Drug sample means a unit of a prescription drug intended to promote the sale of the drug and not intended to be sold.
Source: Laws 1992, LB 1019, § 8; R.S.1943, (2003), § 71-7408; Laws 2006, LB 994, § 9. Operative date August 1, 2006.

71-7436. Emergency medical reasons, defined. (1) Emergency medical reasons means the alleviation of a temporary shortage by transfers of prescription drugs between any of the following: (a) Holders of pharmacy licenses, (b) health care practitioner facilities as defined in section 71-414, and (c) hospitals as defined in section 71-419.
(2) Emergency medical reasons does not include regular and systematic sales to practitioners as defined in section 38-2838 of prescription drugs that will be used for routine office procedures.
Source: Laws 1992, LB 1019, § 9; Laws 1998, LB 1073, § 157; Laws 2001, LB 398, § 82; R.S.1943, (2003), § 71-7409; Laws 2006, LB 994, § 10; Laws 2007, LB463, § 1294; Laws 2015, LB37, § 89.
Effective Date: August 30, 2015

71-7437. Facility, defined. Facility means a physical structure utilized by a wholesale drug distributor for the storage, handling, or repackaging of prescription drugs or the offering of prescription drugs for sale.
Source: Laws 2006, LB 994, § 11. Operative date August 1, 2006.

71-7438. Manufacturer, defined. Manufacturer means any entity engaged in manufacturing, preparing, propagating, processing, packaging, repackaging, or labeling a prescription drug.
Source: Laws 1992, LB 1019, § 10; R.S.1943, (2003), § 71-7410; Laws 2006, LB 994, § 12; Laws 2007,

LB247, § 55. Operative date June 1, 2007.

71-7439. Normal distribution chain, defined. (1) Normal distribution chain means the transfer of a prescription drug or the co-licensed product of the original manufacturer of the finished form of a prescription drug along a chain of custody directly from the manufacturer or co-licensee of such drug to a patient or ultimate consumer of such drug.

(2) Normal distribution chain includes transfers of a prescription drug or co-licensed product:

(a) From a manufacturer or co-licensee to a wholesale drug distributor, to a pharmacy, and then to a patient or a patient's agent;

(b) From a manufacturer or co-licensee to a wholesale drug distributor, to a pharmacy, to a health care practitioner, health care practitioner facility, or hospital, and then to a patient or a patient's agent;

(c) From a manufacturer or co-licensee to a wholesale drug distributor, to a chain pharmacy warehouse, to a pharmacy affiliated with the chain pharmacy warehouse, and then to a patient or a patient's agent;

(d) From a manufacturer or co-licensee to a chain pharmacy warehouse, to a pharmacy affiliated with the chain pharmacy warehouse, and then to a patient or a patient's agent; or

(e) Recognized in rules and regulations adopted and promulgated by the department.

(3) For purposes of this section, co-licensed products means prescription drugs that have been approved by the federal Food and Drug Administration and are the subject of an arrangement by which two or more parties have the right to engage in a business activity or occupation concerning such drugs.

Source: Laws 2006, LB 994, § 13. Operative date August 1, 2006.

71-7440. Pedigree, defined. Pedigree means a written or electronic documentation of every transfer of a prescription drug as provided in sections 71-7455 and 71-7456.

Source: Laws 2006, LB 994, § 14. Operative date August 1, 2006.

71-7441. Prescription drug, defined. Prescription drug means any human drug required by federal law or regulation to be dispensed only by prescription, including finished dosage forms and active ingredients subject to section 503(b) of the Federal Food, Drug, and Cosmetic Act, as such section existed on August 1, 2006.

Source: Laws 1992, LB 1019, § 11; R.S.1943, (2003), § 71-7411; Laws 2006, LB 994, § 15. Operative date August 1, 2006.

71-7442. Repackage, defined. Repackage means repackaging or otherwise changing the container, wrapper, or labeling of a prescription drug to facilitate the wholesale distribution of such drug.

Source: Laws 2006, LB 994, § 16. Operative date August 1, 2006.

71-7443. Repackager, defined. Repackager means a person who repackages.

Source: Laws 2006, LB 994, § 17. Operative date August 1, 2006.

71-7444. Wholesale drug distribution, defined (1) Wholesale drug distribution means the distribution of prescription drugs to a person other than a consumer or patient.

(2) Wholesale drug distribution does not include:

(a) Intracompany sales of prescription drugs, including any transaction or transfer between any division, subsidiary, or parent company and an affiliated or related company under common ownership or common control;

(b) The sale, purchase, or trade of or an offer to sell, purchase, or trade a prescription drug by a charitable organization described in section 501(c)(3) of the Internal Revenue Code, a state, a political subdivision, or any other governmental agency to a nonprofit affiliate of the organization, to the extent otherwise permitted by law;

(c) The sale, purchase, or trade of or an offer to sell, purchase, or trade a prescription drug among hospitals or other health care entities operating under common ownership or common control;

(d) The sale, purchase, or trade of or an offer to sell, purchase, or trade a prescription drug for emergency medical reasons or for a practitioner to use for routine office procedures, not to exceed five percent of sales as provided in section 71-7454;

(e) The sale, purchase, or trade of, an offer to sell, purchase, or trade, or the dispensing of a prescription drug pursuant to a prescription;

(f) The distribution of drug samples by representatives of a manufacturer or of a wholesale drug distributor;

(g) The sale, purchase, or trade of blood and blood components intended for transfusion; or

(h) The delivery of or the offer to deliver a prescription drug by a common carrier solely in the usual course of business of transporting such drugs as a common carrier if the common carrier does not store, warehouse, or take legal ownership of such drugs.

Source: Laws 1992, LB 1019, § 12; Laws 1995, LB 574, § 60; R.S.1943, (2003), § 71-7412; Laws 2006, LB 994, § 18; Laws 2015, LB37, § 90.
Effective Date: August 30, 2015

71-7445. Wholesale drug distributor, defined. (1) Wholesale drug distributor means any person or entity engaged in wholesale drug distribution in this state, including manufacturers, repackagers, own-label distributors, jobbers, private-label distributors, brokers, warehouses including manufacturer and distributor warehouses, chain pharmacy warehouses, and wholesale drug warehouses, wholesale medical gas distributors, independent wholesale drug traders, and retail pharmacies that engage in wholesale drug distribution in this state.

(2) Wholesale drug distributor does not include a common carrier or other person or entity hired solely to transport prescription drugs if the common carrier, person, or entity does not store, warehouse, or take legal ownership of such drugs.

Source: Laws 1992, LB 1019, § 13; R.S.1943, (2003), § 71-7413; Laws 2006, LB 994, § 19. Operative date August 1, 2006.

71-7446. Wholesale medical gas distributor, defined. Wholesale medical gas distributor means any person engaged in the wholesale drug distribution of medical gases provided to suppliers or other entities licensed or otherwise authorized to use, administer, or distribute such gases.

Source: Laws 2006, LB 994, § 20. Operative date August 1, 2006.

71-7447. Wholesale drug distributor; licenses; requirements; exemptions (1) No person or entity may act as a wholesale drug distributor in this state without first obtaining a wholesale drug distributor license from the department. The department shall issue a license to any applicant that satisfies the requirements for licensure under the Wholesale Drug Distributor Licensing Act. Manufacturers are exempt from any licensing and other requirements of the act to the extent not required by federal law or regulation except for those requirements deemed necessary and appropriate under rules and regulations adopted and promulgated by the department.

(2) Wholesale medical gas distributors shall be exempt from any licensing and other requirements of the Wholesale Drug Distributor Licensing Act to the extent not required under federal law but shall be licensed as wholesale drug distributors by the department for the limited purpose of engaging in the wholesale distribution of medical gases upon application to the department, payment of a licensure fee, and inspection of the applicant's facility by the department, except that the applicant may submit and the department may accept an inspection accepted in another state or an inspection conducted by a nationally recognized accreditation program approved by the board. For purposes of such licensure, wholesale medical gas distributors shall only be required to provide information required under subdivisions (1)(a) through (1)(c) of section 71-7448.

(3) The Wholesale Drug Distributor Licensing Act does not apply to:

(a) An agent or employee of a licensed wholesale drug distributor who possesses drug samples when such agent or employee is acting in the usual course of his or her business or employment; or

(b) Any person who (i) engages in a wholesale transaction relating to the manufacture, distribution, sale, transfer, or delivery of medical gases the gross dollar value of which does not exceed five percent of the total retail sales of medical gases by such person during the immediately preceding calendar year and (ii) has either a pharmacy permit or license or a delegated dispensing permit or is exempt from the practice of pharmacy under subdivision (10) of section 38-2850.

Source: Laws 1992, LB 1019, § 17; Laws 1997, LB 752, § 198; Laws 2001, LB 398, § 84; Laws 2003, LB 242, § 148; R.S.1943, (2003), § 71-7417; Laws 2006, LB 994, § 21; Laws 2010, LB849, § 27; Laws 2015, LB37, § 91. **Effective Date: August 30, 2015**

71-7448. License; application; contents; examination; criminal history record information check; waiver. (1) Every applicant for an initial or renewal license as a wholesale drug distributor shall file a written application with the department. The application shall be accompanied by the fee established by the department under section 71-7450 and proof of bond or other security required under section 71-7452 and shall include the following information:

(a) The applicant's name, business address, type of business entity, and telephone number. If the applicant is a partnership, the application shall include the name of each partner and the name of the partnership. If the applicant is a corporation, the application shall include the name and title of each corporate officer and director, all corporate names of the applicant, and the applicant's state of incorporation. If the applicant is a sole proprietorship, the application shall include the name of the sole proprietor and name of the proprietorship;

(b) All trade or business names used by the applicant;

(c) The addresses and telephone numbers of all facilities used by the applicant for the storage, handling, and

wholesale distribution of prescription drugs and the names of persons in charge of such facilities. A separate license shall be obtained for each such facility;

(d) A listing of all licenses, permits, or other similar documentation issued to the applicant in any other state authorizing the applicant to purchase or possess prescription drugs;

(e) The names and addresses of the owner and manager of the applicant's wholesale drug distribution facilities, a designated representative at each such facility, and all managerial employees at each such facility; and

(f) Other information as required by the department, including affirmative evidence of the applicant's ability to comply with the Wholesale Drug Distributor Licensing Act and rules and regulations adopted and promulgated under the act.

(2) The department may require persons listed on the application to pass an examination approved by the department on laws pertaining to the wholesale distribution of prescription drugs.

(3) The application shall include the applicant's social security number if the applicant is an individual. The social security number shall not be a public record and may only be used by the department for administrative purposes.

(4) The application shall be signed by (a) the owner, if the applicant is an individual or partnership, (b) the member, if the applicant is a limited liability company with only one member, or two of its members, if the applicant is a limited liability company with two or more members, or (c) two of its officers, if the applicant is a corporation.

(5) The designated representative and the supervisor of the designated representative of a wholesale drug distributor and each owner with greater than a ten percent interest in the wholesale drug distributor, if the wholesale drug distributor is a nonpublicly held company, shall be subject to a criminal history record information check and shall provide the department or the designated agent of the department with a complete set of fingerprints for such purpose if his or her fingerprints are not already on file for such purpose. The department or the designated agent of the department shall forward such fingerprints to the Nebraska State Patrol to be submitted to the Federal Bureau of Investigation for a national criminal history record information check. Such persons shall authorize the release of the results of such criminal history record information check to the department, and the applicant shall pay the actual cost of such fingerprinting and such criminal history record information check.

(6) The department may waive certain requirements under this section upon proof satisfactory to the department that such requirements are duplicative of other requirements of law or regulation and that the granting of such exemption will not endanger the public safety.

Source: Laws 2006, LB 994, § 22. Operative date August 1, 2006.

71-7449. Designated representative; information required. Each designated representative named under subdivision (1)(e) of section 71-7448 shall provide the following information prior to the issuance of an initial or renewal license under such section:

(1) The designated representative's places of residence for the immediately preceding seven years;

(2) The designated representative's date and place of birth;

(3) All occupations, positions of employment, and offices held by the designated representative during the immediately preceding seven years and the principal businesses and the addresses of any business, corporation, or other organization in which such occupations, positions, or offices were held;

(4) Whether the designated representative has been, at any time during the immediately preceding seven years, the subject of any proceeding for the revocation of any license and, if so, the nature of the proceeding and its disposition;

(5) Whether the designated representative has been, at any time during the immediately preceding seven years, either temporarily or permanently enjoined by a court of competent jurisdiction from violations of any federal or state law regulating the possession, control, or distribution of prescription drugs, and, if so, the details of such order;

(6) A description of any involvement by the designated representative during the immediately preceding seven years, other than the ownership of stock in a publicly traded company or mutual fund, with any business which manufactured, administered, distributed, or stored prescription drugs and any lawsuits in which such businesses were named as a party;

(7) Whether the designated representative has ever been convicted of any felony and details relating to such conviction; and

(8) A photograph of the designated representative taken within the immediately preceding thirty days.

Source: Laws 2006, LB 994, § 23. Operative date August 1, 2006.

71-7450. Fees. (1) Licensure activities under the Wholesale Drug Distributor Licensing Act shall be funded by license fees. An applicant for an initial or renewal license under the act shall pay a license fee as provided in

this section.

(2) License fees shall include (a) a base fee of fifty dollars and (b) an additional fee of not more than five hundred dollars based on variable costs to the department of inspections and of receiving and investigating complaints, other similar direct and indirect costs, and other relevant factors as determined by the department.

(3) If the licensure application is denied, the license fee shall be returned to the applicant, except that the department may retain up to twenty-five dollars as an administrative fee and may retain the entire license fee if an inspection has been completed prior to such denial.

(4) The department shall also collect a fee for reinstatement of a license that has lapsed or has been suspended or revoked. The department shall collect a fee of ten dollars for a duplicate original license.

(5) The department shall remit all license fees collected under this section to the State Treasurer for credit to the Health and Human Services Cash Fund. License fees collected under this section shall only be used for activities related to the licensure of wholesale drug distributors.

Source: Laws 2006, LB 994, § 24; Laws 2007, LB296, § 673. Operative date July 1, 2007.

71-7451. License; term; renewal. A wholesale drug distributor license shall expire on July 1 of each year and may be renewed. The license shall not be transferable. The department shall mail an application for renewal to each licensee not later than June 1 of each year. If an application for renewal is received from the licensee after July 1, the department may impose a late fee and shall refuse to issue the license until such late fee and renewal fee are paid. Failure to receive an application for renewal shall not relieve the licensee from the late fee imposed by this section.

Source: Laws 1992, LB 1019, § 20; Laws 2001, LB 398, § 85; Laws 2003, LB 242, § 150; R.S.1943, (2003), § 71-7420; Laws 2006, LB 994, § 25. Operative date August 1, 2006.

71-7452. Bond or other security. An applicant for an initial or renewal license as a wholesale drug distributor shall submit to the department proof of a bond of not less than one hundred thousand dollars or other equivalent means of security acceptable to the department. The bond or other security shall be given for the purpose of securing payment of any fines or other penalties imposed by the department and any fees or costs incurred by the department relating to such applicant as authorized under the Wholesale Drug Distributor Licensing Act or rules and regulations adopted and promulgated under the act which remain unpaid by the applicant within thirty days after such fines, penalties, and costs become final. The department may make a claim against such bond or security until one year after the expiration of the license issued to the applicant under the act.

Source: Laws 2006, LB 994, § 26. Operative date August 1, 2006.

71-7453. Department; inspections; procedures; fees. (1) Each wholesale drug distributor doing business in this state shall be inspected by the department or a nationally recognized accreditation program that is approved by the board and that is acting on behalf of the department prior to the issuance of an initial or renewal license by the department under section 71-7448.

(2) The department or such nationally recognized accreditation program may provide for the inspection of any wholesale drug distributor licensed to engage in wholesale drug distribution in this state in such manner and at such times as provided in rules and regulations adopted and promulgated by the department. As part of any such inspection, the department may require an analysis of suspected prescription drugs to determine authenticity.

(3) The department may accept an inspection accepted in another state in lieu of an inspection by the department or a nationally recognized accreditation program under this section.

(4) The department or such nationally recognized accreditation program may charge and collect fees for inspection activities conducted under this section.

(5) In addition to or in lieu of the authority to inspect for purposes of licensure and renewal, the department may adopt and promulgate rules and regulations which permit the use of alternative methods for assessing the compliance by a wholesale drug distributor with the Wholesale Drug Distributor Licensing Act and the rules and regulations adopted and promulgated under the act.

Source: Laws 1992, LB 1019, § 24; R.S.1943, (2003), § 71-7424; Laws 2006, LB 994, § 27. Operative date August 1, 2006.

71-7454. Prescription drugs; restrictions on transfer; exceptions. (1) No wholesale drug distributor, manufacturer, or pharmacy shall knowingly purchase or receive any prescription drug from any source other than a person or entity licensed under the Wholesale Drug Distributor Licensing Act except transfers for emergency medical reasons and except as provided in subsection (3) of section 71-2449, the gross dollar value of which shall not exceed five percent of the total prescription drug sales revenue of the transferor or transferee holder of a pharmacy license or practitioner as defined in section 38-2838 during the immediately preceding calendar year,

and except as otherwise provided in the act.

(2) A wholesale drug distributor may receive returns or exchanges of prescription drugs from a pharmacy, chain pharmacy warehouse, health care practitioner facility as defined in section 71-414, or hospital as defined in section 71-419 pursuant to the terms and conditions agreed upon between such wholesale drug distributor and such pharmacy, chain pharmacy warehouse, health care practitioner facility, or hospital. Such returns and exchanges shall not be subject to sections 71-7455 to 71-7457. A wholesale drug distributor shall not receive from a pharmacy, chain pharmacy warehouse, health care practitioner facility, or hospital an amount or quantity of a prescription drug greater than the amount or quantity that was originally sold by the wholesale drug distributor to such pharmacy, chain pharmacy warehouse, health care practitioner facility, or hospital.

(3) A manufacturer or wholesale drug distributor shall furnish prescription drugs only to persons licensed by the department and shall verify such licensure before furnishing prescription drugs to a person not known to the manufacturer or wholesale drug distributor.

(4) Prescription drugs furnished by a manufacturer or wholesale drug distributor shall be delivered only to the premises listed on the license, except that a manufacturer or wholesale drug distributor may furnish prescription drugs to a person licensed by the department or his or her agent at the premises of the manufacturer or wholesale drug distributor if:

(a) The identity and authorization of the recipient is properly established; and

(b) This method of receipt is employed only to meet the prescription drug needs of a particular patient of the person licensed by the department.

(5) Prescription drugs may be furnished to a hospital pharmacy receiving area. Receipt of such drugs shall be acknowledged by written receipt signed by a pharmacist or other authorized personnel. The receipt shall contain the time of delivery and the type and quantity of the prescription drug received. Any discrepancy between the signed receipt and the type and quantity of prescription drug actually received shall be reported by the receiving authorized pharmacy personnel to the delivering manufacturer or wholesale drug distributor by the next business day after the delivery to the pharmacy receiving area.

(6) A manufacturer or wholesale drug distributor shall only accept payment or allow the use of credit to establish an account for the purchase of prescription drugs from the owner or owners of record, the chief executive officer, or the chief financial officer listed on the license of a person or entity legally authorized to receive prescription drugs. Any account established for the purchase of prescription drugs shall bear the name of such licensee.

Source: Laws 1992, LB 1019, § 16; Laws 1998, LB 1073, § 158; Laws 2001, LB 398, § 83; R.S.1943, (2003), § 71-7416; Laws 2006, LB 994, § 28; Laws 2007, LB463, § 1295; Laws 2008, LB308, § 13. Operative date April 22, 2008.

71-7455. Records; pedigree; requirements. (1) A wholesale drug distributor engaged in the wholesale distribution of prescription drugs in this state shall establish and maintain accurate records of all transactions regarding the receipt and distribution or other disposition of prescription drugs as provided in this section.

(2) The department shall adopt and promulgate rules and regulations to require that all prescription drugs that leave the normal distribution chain be accompanied by a paper or electronic pedigree as provided in section 71-7456. Such rules and regulations shall be adopted and promulgated no later than July 1, 2007.

(3) The department shall develop standards and requirements for electronic pedigrees in order to effectively authenticate, track, and trace prescription drugs. Prior to the development of such standards and requirements, the department shall consult with the federal Food and Drug Administration, manufacturers, wholesale drug distributors, pharmacies, and other interested parties regarding the feasibility and the ways, means, and practicality of requiring that all prescription drugs that leave the normal distribution chain be accompanied by an electronic pedigree. The standards and requirements may prescribe the information required to be included as part of the electronic pedigree. Such standards and requirements shall be developed no later than July 1, 2008. All prescription drugs that leave the normal distribution chain shall not be required to be accompanied solely by an electronic pedigree prior to such date.

(4) A retail pharmacy or chain pharmacy warehouse shall comply with the requirements of this section only if the pharmacy or chain pharmacy warehouse engages in the wholesale distribution of prescription drugs in this state.

(5) A wholesale drug distributor, other than the original manufacturer of the finished form of the prescription drug, shall verify all transactions listed on the pedigree before attempting to further distribute such drug.

Source: Laws 2006, LB 994, § 29. Operative date August 1, 2006.

71-7456. Pedigree; contents. (1) The pedigree required under section 71-7455 shall include all necessary identifying information concerning each sale or other transfer in the chain of distribution of the prescription drug from the manufacturer, through acquisition and sale by any wholesale drug distributor or repackager, until final

sale to a pharmacy or other person dispensing or administering such drug, including, but not limited to:

(a) Name of the prescription drug;

(b) Dosage form and strength of the prescription drug;

(c) Size of the container;

(d) Number of containers;

(e) Lot number of the prescription drug;

(f) Name of the original manufacturer of the finished dosage form of the prescription drug;

(g) Name, address, telephone number, and if available, the email address of each owner of the prescription drug and each wholesale drug distributor who does not take title to the prescription drug;

(h) Name and address of each location from which the prescription drug was shipped if different from the owner's;

(i) Transaction dates;

(j) Certification that each recipient has authenticated the pedigree;

(k) Name of any repackager, if applicable; and

(l) Name and address of person certifying the delivery.

(2) Each paper or electronic pedigree shall be maintained by the purchaser and the wholesale drug distributor for three years from the date of sale or transfer and available for inspection or use upon request of law enforcement or an authorized agent of the department.

Source: Laws 2006, LB 994, § 30. Operative date August 1, 2006.

71-7457. License; denied, refused renewal, suspended, limited, or revoked; grounds. (1) A wholesale drug distributor license may be denied, refused renewal, suspended, limited, or revoked by the department when the department finds that the applicant or licensee has violated any provisions of the Wholesale Drug Distributor Licensing Act or of the rules and regulations adopted and promulgated under the act or has committed any acts or offenses set forth in section 38-178, 38-179, or 71-7459. All actions and proceedings shall be carried out as specified in sections 38-177 to 38-1,115.

(2) For purposes of this section, applicant or licensee includes, but is not limited to, the board of directors, chief executive officer, and other officers of the applicant or the entity to which the license is issued and the manager of each site if more than one site is located in this state.

Source: Laws 1992, LB 1019, § 23; Laws 1994, LB 1223, § 79; Laws 1996, LB 1044, § 779; R.S.1943, (2003), § 71-7423; Laws 2006, LB 994, § 31; Laws 2007, LB296, § 674; Laws 2007, LB463, § 1296. The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

71-7458. Enforcement of act. The department, the Attorney General, or any county attorney may institute an action in the name of the state for an injunction or other process against any person to restrain or prevent any violation of the Wholesale Drug Distributor Licensing Act or any rules and regulations adopted and promulgated under the act.

Source: Laws 1992, LB 1019, § 25; R.S.1943, (2003), § 71-7425; Laws 2006, LB 994, § 32. Operative date August 1, 2006.

71-7459. Department; fines; when. (1) The department, upon issuance of a final disciplinary action against a person who violates any provision of section 71-7454, shall assess a fine of one thousand dollars against such person. For each subsequent final disciplinary action for violation of such section issued by the department against such person, the department shall assess a fine of one thousand dollars plus one thousand dollars for each final disciplinary action for violation of such section previously issued against such person, not to exceed ten thousand dollars.

(2) The department, upon issuance of a final disciplinary action against a person who fails to provide an authorized person the right of entry provided in section 71-7453, shall assess a fine of five hundred dollars against such person. For each subsequent final disciplinary action for such failure issued against such person, the department shall assess a fine equal to one thousand dollars times the number of such disciplinary actions, not to exceed ten thousand dollars. All fines collected under this section shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1992, LB 1019, § 26; R.S.1943, (2003), § 71-7426; Laws 2006, LB 994, § 33. Operative date August 1, 2006.

71-7460. Order to cease distribution. (1) If the department finds there is a reasonable probability that (a) a wholesale drug distributor has falsified a pedigree or has sold, distributed, transferred, manufactured, repackaged, handled, or held a counterfeit prescription drug intended for human use and (b) such drug could

cause serious, adverse health consequences or death,. The department shall issue an order to immediately cease distribution of such drug.

(2) Persons subjected to any order issued by the department under this section shall be provided with notice and an opportunity for an informal hearing to be held not later than ten days after the date the order was issued. If the department determines, after such hearing, that inadequate grounds exist to support the actions required by the order, the department shall vacate the order.

Source: Laws 2006, LB 994, § 34. Operative date August 1, 2006.

71-7460.01. Reporting and investigation duties. Every wholesale drug distributor licensed under the Wholesale Drug Distributor Licensing Act shall be subject to and comply with sections 38-1,124 to 38-1,126 relating to reporting and investigations.

Source: Laws 2007, LB463, § 1297; Operative date December 1, 2008.

71-7460.02. Health care facility; peer review organization, or professional association; duty to report; confidentiality; immunity; failure to report; civil penalty. (1) A health care facility licensed under the Health Care Facility Licensure Act or a peer review organization or professional association relating to a profession regulated under the Wholesale Drug Distributor Licensing Act shall report to the department, on a form and in the manner specified by the department, any facts known to the facility, organization, or association, including, but not limited to, the identity of the credential holder and consumer, when the facility, organization, or association:

(a) Has made payment due to adverse judgment, settlement, or award of a professional liability claim against it or a licensee, including settlements made prior to suit, arising out of the acts or omissions of the licensee; or

(b) Takes action adversely affecting the privileges or membership of a licensee in such facility, organization, or association due to alleged incompetence, professional negligence, unprofessional conduct, or physical, mental, or chemical impairment.

The report shall be made within thirty days after the date of the action or event.

(2) A report made to the department under this section shall be confidential. The facility, organization, association, or person making such report 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. Nothing in this subsection shall be construed to require production of records protected by the Health Care Quality Improvement Act or section 25-12,123 or patient safety work product under the Patient Safety Improvement Act except as otherwise provided in either of such acts or such section.

(3) Any health care facility, peer review organization, or professional association that fails or neglects to make a report or provide information as required under this section is subject to a civil penalty of five hundred dollars for the first offense and a civil penalty of up to one thousand dollars for a subsequent offense. Any civil penalty collected under this subsection shall be remitted to the State Treasurer to be disposed of in accordance with Article VII, section 5, of the Constitution of Nebraska.

(4) For purposes of this section, the department shall accept reports made to it under the Nebraska Hospital-Medical Liability Act or in accordance with national practitioner data bank requirements of the federal Health Care Quality Improvement Act of 1986, as the act existed on January 1, 2007, and may require a supplemental report to the extent such reports do not contain the information required by the department.

Source: Laws 2007, LB463, § 1298; Laws 2011, LB431, § 15. Effective Date: April 27, 2011.

71-7460.03. Insurer; duty to report; contents. (1) Unless such knowledge or information is based on confidential medical records protected by the confidentiality provisions of the federal Public Health Services Act, 42 U.S.C. 290dd-2, and federal administrative rules and regulations, as such act and rules and regulations existed on January 1, 2007:

(a) Any insurer having knowledge of any violation of any provision of the Wholesale Drug Distributor Licensing Act governing the profession of the person being reported whether or not such person is licensed shall report the facts of such violation as known to such insurer to the department; and

(b) All insurers shall cooperate with the department and provide such information as requested by the department concerning any possible violations by any person required to be licensed whether or not such person is licensed.

(2) Such reporting shall be done on a form and in the manner specified pursuant to sections 38-1,130 and 38-1,131. Such reports shall be subject to sections 38-1,132 to 38-1,136.

Source: Laws 2007, LB463, § 1299; Operative date December 1, 2008.

71-7460.04. Clerk of county or district court; duty to report conviction or judgment; Attorney General or city or county prosecutor; provide information. The clerk of any county or district court in this state shall report to the department the conviction of any person licensed by the department under the Wholesale Drug

Distributor Licensing Act of any felony or of any misdemeanor involving the use, sale, distribution, administration, or dispensing of a controlled substance, alcohol or chemical impairment, or substance abuse and shall also report a judgment against any such licensee arising out of a claim of professional liability. The Attorney General or city or county prosecutor prosecuting any such criminal action and plaintiff in any such civil action shall provide the court with information concerning the license of the defendant or party. Notice to the department shall be filed within thirty days after the date of conviction or judgment in a manner agreed to by the Director of Public Health of the Division of Public Health and the State Court Administrator.

Source: Laws 2007, LB463, § 1300; Operative date December 1, 2008.

71-7461. Unlawful acts. It is unlawful for any person to commit or to permit, cause, aid, or abet the commission of any of the following acts in this state:

(1) Any violation of the Wholesale Drug Distributor Licensing Act or rules and regulations adopted and promulgated under the act;

(2) Providing the department, any of its representatives, or any federal official with false or fraudulent records or making false or fraudulent statements regarding any matter under the act;

(3) Obtaining or attempting to obtain a prescription drug by fraud, deceit, or misrepresentation or engaging in misrepresentation or fraud in the distribution of a prescription drug;

(4) Except for the wholesale distribution by manufacturers of a prescription drug that has been delivered into commerce pursuant to an application approved under federal law by the federal Food and Drug Administration, the manufacture, repackaging, sale, transfer, delivery, holding, or offering for sale of any prescription drug that is adulterated, misbranded, counterfeit, suspected of being counterfeit, or otherwise rendered unfit for distribution;

(5) Except for the wholesale distribution by manufacturers of a prescription drug that has been delivered into commerce pursuant to an application approved under federal law by the federal Food and Drug Administration, the adulteration, misbranding, or counterfeiting of any prescription drug;

(6) The receipt of any prescription drug that is adulterated, misbranded, stolen, obtained by fraud or deceit, counterfeit, or suspected of being counterfeit, and the delivery or proffered delivery of such drug for pay or otherwise; and

(7) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of a prescription drug or the commission of any other act with respect to a prescription drug that results in the prescription drug being misbranded.

Source: Laws 2006, LB 994, § 35. Operative date August 1, 2006.

71-7462. Violations; penalty. Any person who knowingly and intentionally engages in wholesale drug distribution in this state in violation of the Wholesale Drug Distributor Licensing Act is guilty of a Class III felony.

Source: Laws 2006, LB 994, § 36. Operative date August 1, 2006.

71-7463. Rules and regulations. The department, upon the recommendation of the board, shall adopt and promulgate rules and regulations to carry out the Wholesale Drug Distributor Licensing Act.

Source: Laws 1992, LB 1019, § 22; R.S.1943, (2003), § 71-7422; Laws 2006, LB 994, § 37. Operative date August 1, 2006.

STATUTES PERTAINING TO MEDICAL RECORDS

71-8401. Legislative findings. The Legislature finds that medical records contain personal and sensitive information that if improperly used or released may do significant harm to a patient's interests. Patients need access to their own medical records as a matter of fairness to enable them to make informed decisions about their health care and correct inaccurate or incomplete information about themselves.

Source: Laws 1999, LB 17, § 1. Effective date August 28, 1999.

71-8402. Terms, defined. For purposes of sections 71-8401 to 71-8407:

(1) Medical records means a provider's record of a patient's health history and treatment rendered;

(2) Mental health medical records means medical records or parts thereof created by or under the direction or supervision of a licensed psychiatrist, a licensed psychologist, or a mental health practitioner licensed or certified pursuant to the Mental Health Practice Act;

(3) Patient includes a patient or former patient;

(4) Patient request or request of a patient includes the request of a patient's guardian or other authorized representative; and

(5) Provider means a physician, psychologist, chiropractor, dentist, hospital, clinic, and any other licensed or certified health care practitioner or entity.

Source: Laws 1999, LB 17, § 2; Laws 2007, LB247, § 56; Laws 2007, LB463, § 1306. The changes made by LB 247 became operative June 1, 2007. The changes made by LB 463 became operative December 1, 2008.

71-8403. Access to medical records. (1) A patient may request a copy of the patient's medical records or may request to examine such records. Access to such records shall be provided upon request pursuant to sections 71-8401 to 71-8407, except that mental health medical records may be withheld if any treating physician, psychologist, or mental health practitioner determines in his or her professional opinion that release of the records would not be in the best interest of the patient unless the release is required by court order. The request and any authorization shall be in writing. If an authorization does not contain an expiration date or specify an event the occurrence of which causes the authorization to expire, the authorization shall expire twelve months after the date the authorization was executed by the patient.

(2) Upon receiving a written request for a copy of the patient's medical records under subsection (1) of this section, the provider shall furnish the person making the request a copy of such records not later than thirty days after the written request is received.

(3) Upon receiving a written request to examine the patient's medical records under subsection (1) of this section, the provider shall, as promptly as required under the circumstances but no later than ten days after receiving the request: (a) Make the medical records available for examination during regular business hours; (b) inform the patient if the records do not exist or cannot be found; (c) if the provider does not maintain the records, inform the patient of the name and address of the provider who maintains such records, if known; or (d) if unusual circumstances have delayed handling the request, inform the patient in writing of the reasons for the delay and the earliest date, not later than twenty-one days after receiving the request, when the records will be available for examination. The provider shall furnish a copy of medical records to the patient as provided in subsection (2) of this section if requested.

(4) This section does not require the retention of records or impose liability for the destruction of records in the ordinary course of business prior to receipt of a request made under subsection (1) of this section. A provider shall not be required to disclose confidential information in any medical record concerning another patient or family member who has not consented to the release of the record.

Source: Laws 1999, LB 17, § 3; Laws 2010, LB849, § 28. **Operative Date: April 14, 2010.**

71-8404. Access; charges. Except as provided in sections 71-8405 and 71-8407, for medical records provided under section 71-8403 or under subpoena by a patient or his or her authorized representative a provider may charge no more than twenty dollars as a handling fee and may charge no more than fifty cents per page as a copying fee. A provider may charge for the reasonable cost of all duplications of medical records which cannot routinely be copied or duplicated on a standard photocopy machine. A provider may charge an amount necessary to cover the cost of labor and materials for furnishing a copy of an X-ray or similar special medical record. If the provider does not have the ability to reproduce X-rays or other records requested, the person making the request may arrange, at his or her expense, for the reproduction of such records.

Source: Laws 1999, LB 17, § 4. Effective date August 28, 1999.

71-8405. Charges; exemptions. (1) A provider shall not charge a fee for medical records requested by a patient for use in supporting an application for disability or other benefits or assistance or an appeal relating to the denial of such benefits or assistance under:

(a) Sections 43-501 to 43-536 regarding assistance for certain children;

(b) The Medical Assistance Act relating to the medical assistance program;

(c) Title II of the federal Social Security Act, as amended, 42 U.S.C. 401 et seq.;

(d) Title XVI of the federal Social Security Act, as amended, 42 U.S.C. 1382 et seq.; or

(e) Title XVIII of the federal Social Security Act, as amended, 42 U.S.C. 1395 et seq.

(2) Unless otherwise provided by law, a provider may charge a fee as provided in section 71-8404 for the medical records of a patient requested by a state or federal agency in relation to the patient's application for benefits or assistance or an appeal relating to denial of such benefits or assistance under subsection (1) of this section.

(3) A request for medical records under this section shall include a statement or document from the department or agency that administers the issuance of the assistance or benefits which confirms the application or appeal.

Source: Laws 1999, LB 17, § 5; Laws 2006, LB 1248, § 81. Operative date July 1, 2006.

71-8406. Provider; immunity. A provider who transfers or submits information in good faith to a patient's medical record shall not be liable in damages to the patient or any other person for the disclosure of such medical records as provided in sections 71-8401 to 71-8407.

Source: Laws 1999, LB 17, § 6. Effective date August 28, 1999.

71-8407. Sections; applicability. Sections 71-8401 to 71-8407 do not apply to the release of medical records under the Nebraska Workers' Compensation Act.

Source: Laws 1999, LB 17, § 7. Effective date August 28, 1999.