LEGISLATIVE BILL 38

Passed over the Governor's veto June 1, 1977

Introduced by Judiciary Committee, Luedtke, 28, Chmn.; DeCamp, 40; Chambers, 11; Barnett, 26; Schmit, 23

AN ACT to adopt the Nebraska Criminal Code; to provide an operative date; to provide severability; to provide duties; and to repeal Chapter 28, Reissue Revised Statutes of Nebraska, 1943, and amendments thereto, except sections 28-589.03, 28-5,103 to 28-5,106, 28-833 to 28-844, 28-1020 to 28-1031, 28-1043 to 28-1046, and 28-1108 to 28-1110, and articles 14, 15, and 16, Reissue Revised Statutes of Nebraska, 1943, and sections 28-476.01, 28-476.02, and 28-4,135.01, Revised Statutes Supplement, 1976.

Be it enacted by the people of the State of Nebraska,

Article I

Provisions Applicable to Offenses Generally

Section 1. Sections 1 to 319 of this act shall be known as the Nebraska Criminal Code.

Sec. 2. The general purposes of the provisions governing the definition of offenses are:

(1) To forbid and prevent conduct that unjustifiably and inexcusably inflicts or threatens substantial harm to individual or public interests;

(2) To subject to public control persons whose conduct indicates that they are disposed to commit crimes;

(3) To safeguard conduct that is without fault and which is essentially victimless in its effect from condemnation as criminal;

(4) To give fair warning of the nature of the conduct declared to constitute an offense; and

(5) To differentiate on reasonable grounds between serious and minor offenses.

Sec. 3. (1) The provisions of this code shall not apply to any offense committed prior to the operative date hereof. Such an offense shall be construed and punished according to the provisions of law existing at the time of the commission thereof in the same manner as if this code had not been enacted.

(2) For the purposes of this section, an offense shall be deemed to have been committed prior to the operative date of this code if any element of the offense occurred prior thereto.

(3) This code shall not bar, suspend or otherwise affect any right or liability to damages, penalty, forfeiture or other remedy authorized by law to be recovered or enforced in a civil action.

Sec. 4. The terms offense and crime are synonymous as used in this code and mean a violation of, or conduct defined by, any statute for which a fine, imprisonment, or death may be imposed.

Sec. 5. (1) For purposes of this code and any statute passed by the Legislature after the date of passage of this code, felonies are divided into six classes which are distinguished from one another by the following penalties which are authorized upon conviction:

Class I felony.....Death
Class IA felony.....Life imprisonment
Class IB felony.....Maximum-life imprisonment
Minimum-ten years imprisonment
Class II felony.....Maximum-fifty years imprisonment
Minimum-one year imprisonment
Class III felony.....Maximum-twenty years
imprisonment, or twenty-five
thousand dollars fine, or both
Minimum-one year imprisonment
Class IV felony.....Maximum-five years
imprisonment, or ten thousand
dollars fine, or both
Minimum-none

(2) All sentences of imprisonment for Class IA, IB, II, and III felonies and sentences of one year or more for Class IV felonies shall be served in institutions under the jurisdiction of the Department of Correctional Services. Sentences of less than one year shall be served in the county jail except as provided in this subsection. If the Department of Correctional Services certifies that it has programs and facilities available for persons sentenced to terms of less than one year, the court may order that any sentence of six months or more be served in any institution under the jurisdiction of the Department of Correctional Services. Any such certification shall be given by the department to the State Court Administrator, who shall forward copies thereof to each judge having jurisdiction to sentence in felony cases.

(3) Nothing in this section shall limit the authority granted in sections 29-2221 and 29-2222, Reissue Revised Statutes of Nebraska, 1943, to increase sentences for habitual criminals.

Sec. 6. (1) For purposes of this code and any statute passed by the Legislature after the date of passage of this code, misdemeanors are divided into six classes which are distinguished from one another by the following penalties which are authorized upon conviction:

Class I misdemeanor..... Maximum-not more than one year imprisonment, or one thousand dollars fine, or both
Minimum-none

Class II misdemeanor..... Maximum-six months imprisonment, or one thousand dollars fine, or both
Minimum-none

Class III misdemeanor.... Maximum-three months imprisonment, or five hundred dollars fine, or both
Minimum-none

Class IIIA misdemeanor... Maximum-seven days imprisonment, five hundred dollars fine, or both
Minimum-none

Class IV misdemeanor..... Maximum-no imprisonment, five hundred dollars fine
Minimum-one hundred dollars

Class V misdemeanor..... Maximum-no imprisonment, one hundred dollars fine
Minimum-none

(2) Sentences of imprisonment in misdemeanor cases shall be served in the county jail, except that in the following circumstances the court may, in its discretion, order that such sentences be served in institutions under the jurisdiction of the Department of Correctional Services:

(a) If the sentence is for a term of one year upon conviction of a Class I misdemeanor, or for a combined term of one year or more in the event of conviction of more than one misdemeanor offense;

(b) If the sentence is to be served concurrently with a term for conviction of a felony; or

(c) If the Department of Correctional Services has certified as provided in section 5 of this act as to the availability of facilities and programs for short-term prisoners and the sentence is for a term or combined terms of six months or more.

Sec. 7. (1) Any felony or misdemeanor defined by state statute outside of this code without specification of its class shall be punishable as provided in the statute defining it, or as otherwise provided by law outside of this code, except as provided in subsections (2) and (3) of this section.

(2) A felony defined by statute outside this code, without classification, the sentence for which exceeds the sentence authorized in this code for a Class III felony, shall constitute for sentencing purposes a Class III felony. A person adjudged guilty under such law is deemed to be convicted of a Class III felony and shall be sentenced for a felony of that class in accordance with this code.

(3) A misdemeanor defined by a statute outside this code, the sentence for which exceeds the sentence authorized in this code for a Class I misdemeanor, shall constitute for sentencing purposes a Class I misdemeanor. A person adjudged guilty under such law is deemed to be convicted of a Class I misdemeanor and shall be sentenced for a Class I misdemeanor in accordance with this code.

Sec. 8. Criminal laws enacted after the operative date of the Nebraska Criminal Code shall be classified for sentencing purposes in accordance with section 5 or 6 of this act.

Sec. 9. As used in this code, unless the context otherwise requires:

(1) Act shall mean a bodily movement, and includes words and possession of property;

(2) Aid or assist shall mean knowingly to give or lend money or credit to be used for, or to make possible or available, or to further activity thus aided or assisted;

(3) Benefit shall mean any gain or advantage to the beneficiary including any gain or advantage to another person pursuant to the desire or consent of the beneficiary;

(4) Bodily injury shall mean physical pain, illness, or any impairment of physical condition;

(5) Conduct shall mean an action or omission and its accompanying state of mind, or, where relevant, a series of acts and omissions;

(6) Deadly physical force shall mean force, the intended, natural, and probable consequence of which is to produce death, or which does, in fact, produce death;

(7) Deadly weapon shall mean any firearm, knife, bludgeon, or other device, instrument, material, or substance, whether animate or inanimate, which in the manner it is used or intended to be used is capable of producing death or serious bodily injury;

(8) Deface shall mean to alter the appearance of something by removing, distorting, adding to, or covering all or a part of the thing;

(9) Dwelling shall mean a building or other thing which is used, intended to be used, or usually used by a person for habitation;

(10) Government shall mean the United States, any state, county, municipality, or other political unit, any branch, department, agency, or subdivision of any of the foregoing, and any corporation or other entity established by law to carry out any governmental function;

(11) Governmental function shall mean any activity which a public servant is legally authorized to undertake on behalf of government;

(12) Motor vehicle shall mean every self-propelled land vehicle, not operated upon rails, except self-propelled invalid chairs;

(13) Omission shall mean a failure to perform an act as to which a duty of performance is imposed by law;

(14) Peace officer shall mean any officer or employee of the state or a political subdivision authorized by law to make arrests, and shall include members of the National Guard on active service by direction of the Governor during periods of emergency or civil disorder;

(15) Pecuniary benefit shall mean benefit in the form of money, property, commercial interest, or anything else, the primary significance of which is economic gain;

(16) Person shall mean any natural person and where relevant a corporation or an unincorporated association;

(17) Public place shall mean a place to which the public or a substantial number of the public has access,

and includes but is not limited to highways, transportation facilities, schools, places of amusement, parks, playgrounds, and the common areas of public and private buildings and facilities;

(18) Public servant shall mean any officer or employee of government, whether elected or appointed, and any person participating as an advisor, consultant, process server, or otherwise in performing a governmental function, but the term does not include witnesses;

(19) Recklessly shall mean acting with respect to a material element of an offense when any person disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the actor's situation;

(20) Serious bodily injury shall mean bodily injury which involves a substantial risk of death, or which involves substantial risk of serious permanent disfigurement, or protracted loss or impairment of the function of any part or organ of the body;

(21) Tamper shall mean to interfere with something improperly or to make unwarranted alterations in its condition;

(22) Thing of value shall mean real property, tangible and intangible personal property, contract rights, choses in action, services, and any rights of use or enjoyment connected therewith; and

(23) Voluntary act shall mean an act performed as a result of effort or determination, and includes the possession of property if the actor was aware of his physical possession or control thereof for a sufficient period to have been able to terminate it.

Article 2
Inchoate Offenses

Sec. 10. (1) A person shall be guilty of an attempt to commit a crime if he:

(a) Intentionally engages in conduct which would constitute the crime if the attendant circumstances were as he believes them to be; or

(b) Intentionally engages in conduct which, under the circumstances as he believes them to be, constitutes a substantial step in a course of conduct intended to culminate in his commission of the crime.

(2) When causing a particular result is an element of the crime, a person shall be guilty of an attempt to commit the crime if, acting with the state of mind required to establish liability with respect to the attendant circumstances specified in the definition of the crime, he intentionally engages in conduct which is a substantial step in a course of conduct intended or known to cause such a result.

(3) Conduct shall not be considered a substantial step under this section unless it is strongly corroborative of the defendant's criminal intent.

(4) Criminal attempt is:

(a) A Class II felony when the crime attempted is a Class I, Class IA, or Class IB felony;

(b) A Class III felony when the crime attempted is a Class II felony;

(c) A Class IV felony when the crime attempted is a Class III felony;

(d) A Class I misdemeanor when the crime attempted is a Class IV felony;

(e) A Class II misdemeanor when the crime attempted is a Class I misdemeanor; and

(f) A Class III misdemeanor when the crime attempted is a Class II misdemeanor.

Sec. 11. (1) A person shall be guilty of criminal conspiracy if, with intent to promote or facilitate the commission of a felony:

(a) He agrees with one or more persons that they or one or more of them shall engage in or solicit the conduct or shall cause or solicit the result specified by the definition of the offense; and

(b) He or another person with whom he conspired commits an overt act in pursuance of the conspiracy.

(2) If a person knows that one with whom he conspires to commit a crime has conspired with another person or persons to commit the same crime, he is guilty

of conspiring to commit such crime with such other person or persons whether or not he knows their identity.

(3) If a person conspires to commit a number of crimes, he is guilty of only one conspiracy so long as such multiple crimes are the object of the same agreement or continuous conspiratorial relationship.

(4) Conspiracy is a crime of the same class as the most serious offense which is an object of the conspiracy, except that conspiracy to commit a Class I felony is a Class II felony.

A person prosecuted for a criminal conspiracy shall be acquitted if such person proves by a preponderance of the evidence that his or her conduct occurred in response to an entrapment.

Sec. 12. In a prosecution for criminal conspiracy, it shall be an affirmative defense that the defendant, under circumstances manifesting a voluntary and complete renunciation of his criminal intent, gave timely warning to law enforcement authorities or otherwise made a reasonable effort to prevent the conduct or result which is the object of the conspiracy.

Sec. 13. (1) A person is guilty of being an accessory to felony if with intent to interfere with, hinder, delay, or prevent the discovery, apprehension, prosecution, conviction, or punishment of another for an offense, he:

(a) Harbors or conceals the other; or

(b) Provides or aids in providing a weapon, transportation, disguise, or other means of effecting escape or avoiding discovery or apprehension; or

(c) Conceals or destroys evidence of the crime or tampers with a witness, informant, document, or other source of information, regardless of its admissibility in evidence; or

(d) Warns the other of impending discovery or apprehension other than in connection with an effort to bring another into compliance with the law; or

(e) Volunteers false information to a peace officer; or

(f) By force, intimidation, or deception, obstructs anyone in the performance of any act which might aid in the discovery, detection, apprehension,

prosecution, conviction, or punishment of such person.

(2) Accessory to crime is a Class IV felony if the actor knows of the conduct of the other and such conduct constitutes a felony of any class.

Sec. 14. (1) A person is guilty of aiding consummation of felony if he intentionally aids another to secrete, disguise, or convert the proceeds of a felony or otherwise profit from a felony.

(2) If the crime involved is a felony of any class, aiding consummation of crime is a Class IV felony.

Sec. 15. A person who aids, abets, procures, or causes another to commit any offense may be prosecuted and punished as if he were the principal offender.

Article 3

Offenses Against the Person

Sec. 16. (1) A person is guilty of compounding a felony if he accepts or agrees to accept any pecuniary benefit or other reward or promise thereof, as consideration for:

(a) Refraining from seeking prosecution of an offender; or

(b) Refraining from reporting to law enforcement authorities the commission of any felony or information relating to a felony.

(2) It is an affirmative defense to prosecution under this section that the benefit received by the defendant did not exceed an amount which the defendant reasonably believed to be due him as restitution for harm caused by the crime.

(3) Compounding is a Class I misdemeanor.

Sec. 17. As used in sections 17 to 21 of this act, unless the context otherwise requires:

(1) Homicide shall mean the killing of a person by another;

(2) Person, when referring to the victim of a homicide, shall mean a human being who had been born and was alive at the time of the homicidal act; and

(3) Premeditation shall mean a design formed to do something before it is done.

Sec. 18. A person commits murder in the first degree if he kills another person (1) purposely and with deliberate and premeditated malice, or (2) in the perpetration of or attempt to perpetrate any sexual assault in the first degree, arson, robbery, kidnapping, hijacking of any public or private means of transportation, or burglary, or (3) by administering poison or causing the same to be done; or if by willful and corrupt perjury or subornation of the same he purposely procures the conviction and execution of any innocent person. The determination of whether murder in the first degree shall be punished as a Class I or Class IA felony shall be made pursuant to sections 29-2520 to 29-2524, Reissue Revised Statutes of Nebraska, 1943.

Sec. 19. (1) A person commits murder in the second degree if he causes the death of a person intentionally, but without premeditation.

(2) Murder in the second degree is a Class IB felony.

Sec. 20. (1) A person commits manslaughter if he kills another without malice, either upon a sudden quarrel, or causes the death of another unintentionally while in the commission of an unlawful act.

(2) Manslaughter is a Class III felony.

Sec. 21. (1) A person who causes the death of another unintentionally while engaged in the operation of a motor vehicle in violation of the law of the State of Nebraska or in violation of any city or village ordinance commits motor vehicle homicide.

(2) Except as provided in subsection (3) of this section, motor vehicle homicide is a Class I misdemeanor.

(3) If the proximate cause of the death of another is the operation of a motor vehicle in violation of section 39-669.01, 39-669.02, or 39-669.07, Reissue Revised Statutes of Nebraska, 1943, motor vehicle homicide is a Class IV felony.

Sec. 22. (1) A person commits assisting suicide when, with intent to assist another person in committing suicide, he aids and abets him in committing or attempting to commit suicide.

(2) Assisting suicide is a Class IV felony.

Sec. 23. (1) A person commits the offense of assault in the first degree if he intentionally or

knowingly causes serious bodily injury to another person.

(2) Assault in the first degree shall be a Class III felony.

Sec. 24. (1) A person commits the offense of assault in the second degree if he:

(a) Intentionally or knowingly causes bodily injury to another person with a dangerous instrument; or

(b) Recklessly causes serious bodily injury to another person with a dangerous instrument.

(2) Assault in the second degree shall be a Class IV felony.

Sec. 25. (1) A person commits the offense of assault in the third degree if he:

(a) Intentionally, knowingly, or recklessly causes bodily injury to another person; or

(b) Threatens another in a menacing manner.

(2) Assault in the third degree shall be a Class I misdemeanor unless committed in a fight or scuffle entered into by mutual consent, in which case it shall be a Class II misdemeanor.

Sec. 26. (1) A person commits terroristic threats if:

(a) He threatens to commit any crime likely to result in death or serious physical injury to another person or likely to result in substantial property damage to another person; or

(b) He intentionally makes false statements with the intent of causing the evacuation of a building, place of assembly, or facility of public transportation.

(2) Terroristic threats is a Class IV felony.

Sec. 27. As used in sections 27 to 30 of this act, unless the context otherwise requires:

(1) Restrain shall mean to restrict a person's movement in such a manner as to interfere substantially with his liberty:

(a) By means of force, threat, or deception; or

(b) If the person is under the age of eighteen or incompetent, without the consent of the relative, person, or institution having lawful custody of him; and

(2) Abduct shall mean to restrain a person with intent to prevent his liberation by:

(a) Secreting or holding him in a place where he is not likely to be found; or

(b) Endangering or threatening to endanger the safety of any human being.

Sec. 28. (1) A person commits kidnapping if he abducts another or, having abducted another, continues to restrain him with intent to do the following:

(a) Hold him for ransom or reward; or

(b) Use him as a shield or hostage; or

(c) Terrorize him or a third person; or

(d) Commit a felony; or

(e) Interfere with the performance of any government or political function.

(2) Except as provided in subsection (3) of this section, kidnapping is a Class IA felony.

(3) If the person kidnapped was voluntarily released or liberated alive by the abductor and in a safe place without having suffered serious bodily injury, prior to trial, kidnapping is a Class II felony.

Sec. 29. (1) A person commits false imprisonment in the first degree if he knowingly restrains or abducts another person (a) under terrorizing circumstances or under circumstances which expose the person to the risk of serious bodily injury; or (b) with intent to hold him in a condition of involuntary servitude.

(2) False imprisonment in the first degree is a Class IV felony.

Sec. 30. (1) A person commits false imprisonment in the second degree if he knowingly restrains another person without legal authority.

(2) In any prosecution under this section, it shall be an affirmative defense that the person

restrained (a) was on or in the immediate vicinity of the premises of a retail mercantile establishment and he was restrained for the purpose of investigation or questioning as to the ownership of any merchandise; and (b) was restrained in a reasonable manner and for not more than a reasonable time; and (c) was restrained to permit such investigation or questioning by a police officer, or by the owner of the mercantile establishment, his authorized employee or agent; and (d) that such police officer, owner, employee or agent had reasonable grounds to believe that the person so detained was committing or attempting to commit theft of merchandise on the premises; Provided, nothing in this section shall prohibit or restrict any person restrained pursuant to this section from maintaining any applicable civil remedy if no theft has occurred.

(3) False imprisonment in the second degree is a Class I misdemeanor.

Sec. 31. (1) Any person, including a natural or foster parent, who, knowing that he has no legal right to do so or, heedless in that regard, takes or entices any child under the age of eighteen years from the custody of its parent having legal custody, guardian, or other lawful custodian commits the offense of violation of custody.

(2) Except as provided in subsection (3) of this section, violation of custody is a Class II misdemeanor.

(3) Violation of custody in contravention of an order of any district or juvenile court of this state granting the custody of a child under the age of eighteen years to any person, agency, or institution, with the intent to deprive the lawful custodian of the custody of such child, is a Class IV felony.

Sec. 32. It is the intent of the Legislature to enact laws dealing with sexual assault and related criminal sexual offenses which will protect the dignity of the victim at all stages of judicial process, which will insure that the alleged offender in a criminal sexual offense case have preserved the constitutionally guaranteed due process of law procedures, and which will establish a system of investigation, prosecution, punishment, and rehabilitation for the welfare and benefit of the citizens of this state as such system is employed in the area of criminal sexual offenses.

Sec. 33. As used in sections 32 to 38 of this act, unless the context otherwise requires:

(1) Actor shall mean a person accused of sexual assault;

(2) Intimate parts shall mean the genital area, groin, inner thighs, buttocks, or breasts;

(3) Serious personal injury shall mean great bodily injury or disfigurement, extreme mental anguish or mental trauma, pregnancy, disease, or loss or impairment of a sexual or reproductive organ;

(4) Sexual contact shall mean the intentional touching of the victim's sexual or intimate parts or the intentional touching of the victim's clothing covering the immediate area of the victim's sexual or intimate parts. Sexual contact shall include only such conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification;

(5) Sexual penetration shall mean sexual intercourse in its ordinary meaning, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of the actor's body or any object manipulated by the actor into the genital or anal openings of the victim's body. Sexual penetration shall not require emission of semen; and

(6) Victim shall mean the person alleging to have been sexually assaulted.

Sec. 34. (1) Any person who subjects another person to sexual penetration and (a) overcomes the victim by force, threat of force, express or implied, coercion, or deception, (b) knew or should have known that the victim was mentally or physically incapable of resisting or appraising the nature of his or her conduct, or (c) the actor is more than eighteen years of age and the victim is less than sixteen years of age is guilty of sexual assault in the first degree.

(2) Sexual assault in the first degree is a Class II felony. The sentencing judge shall consider whether the actor shall have caused serious personal injury to the victim in reaching his decision on the sentence.

(3) Any person who shall be found guilty of sexual assault in the first degree for a second time shall be sentenced to not less than twenty-five years and shall not be eligible for parole.

Sec. 35. (1) Any person who subjects another person to sexual contact and (a) overcomes the victim by force, threat of force, express or implied, coercion, or

deception, or (b) knew or should have known that the victim was physically or mentally incapable of resisting or appraising the nature of his or her conduct is guilty of sexual assault in the second degree.

(2) Sexual assault in the second degree is a Class I misdemeanor unless the actor shall have caused serious personal injury to the victim, in which case it is a Class III felony.

Sec. 36. Upon motion to the court by either party in a prosecution in a case of sexual assault, an in camera hearing shall be conducted in the presence of the judge, under guidelines established by the judge, to determine the relevance of evidence of the victim's or the defendant's past sexual conduct.

Sec. 37. If it is determined that there is relevant evidence concerning the past sexual conduct of the victim or the defendant, such evidence shall be admissible during the prosecution, but only to the extent allowed by the judge.

Sec. 38. Specific instances of prior sexual activity between the victim and any person other than the defendant shall not be admitted into evidence in prosecutions under this act unless consent by the victim is at issue, when such evidence may be admitted if it is first established to the court at an in camera hearing that such activity shows such a relation to the conduct involved in the case and tends to establish a pattern of conduct or behavior on the part of the victim as to be relevant to the issue of consent.

Sec. 39. (1) A person commits robbery if, with the intent to steal, he forcibly and by violence, or by putting in fear, takes from the person of another any money or personal property of any value whatever.

(2) Robbery is a Class II felony.

Sec. 40. The Legislature hereby finds and declares:

(1) That the following provisions were motivated by the legislative intrusion of the United States Supreme Court by virtue of its decision removing the protection afforded the unborn. Sections 40 to 60 of this act are in no way to be construed as legislatively encouraging abortions at any stage of unborn human development, but is rather an expression of the will of the people of the State of Nebraska and the members of the Legislature to provide protection for the life of the unborn child

whenever possible;

(2) That the members of the Legislature expressly deplore the destruction of the unborn human lives which has and will occur in Nebraska as a consequence of the United States Supreme Court's decision on abortion of January 22, 1973;

(3) That it is in the interest of the people of the State of Nebraska that every precaution be taken to insure the protection of every viable unborn child being aborted, and every precaution be taken to provide life-supportive procedures to insure the unborn child its continued life after its abortion;

(4) That currently this state is prevented from providing adequate legal remedies to protect the life, health, and welfare of pregnant women and unborn human life; and

(5) That it is in the interest of the people of the State of Nebraska to maintain accurate statistical data to aid in providing proper maternal health regulations and education.

Sec. 41. As used in sections 40 to 60 of this act, unless the context otherwise requires:

(1) Abortion shall mean an act, procedure, device, or prescription administered to or prescribed for a pregnant woman by any person, including the pregnant woman herself, with either the intent or result of producing the premature expulsion, removal, or termination of the human life within the womb of the pregnant woman, except that in cases in which the unborn child's viability is threatened by continuation of the pregnancy, early delivery after viability by commonly accepted obstetrical practices shall not be construed as an abortion for the purposes of sections 40 to 60 of this act;

(2) Hospital shall mean those institutions licensed by the State Board of Health pursuant to sections 71-2017 to 71-2029, Reissue Revised Statutes of Nebraska, 1943, and amendments thereto;

(3) Consent shall mean a signed and witnessed voluntary agreement to the performance of an abortion;

(4) Physician shall mean any person licensed to practice medicine in this state as provided in sections 71-102 to 71-110, Reissue Revised Statutes of Nebraska, 1943, and amendments thereto;

(5) Pregnant shall mean that condition of a woman who has unborn human life within her as the result of conception;

(6) Conception shall mean the fecundation of the ovum by the spermatozoa;

(7) Viability shall mean that stage of human development when the life of the unborn child may be continued by natural or life-supportive systems outside the womb of the mother; and

(8) Accepted medical procedures shall mean procedures of the type and performed in a manner and in a facility which is equipped with surgical, anaesthetic, resuscitation, and laboratory equipment sufficient to meet the standards of medical care which physicians in the same neighborhood or in similar communities, engaged in the same or similar lines of work, would ordinarily exercise and devote to the benefit of their patients.

Sec. 42. Every physician consulted about abortion by an expectant mother shall inform her of agencies and services available to assist her to carry the pregnancy to natural term, and shall further inform the expectant mother as to reasonably possible medical and mental consequences resulting from the performance of an abortion. The expectant mother shall certify in writing that she has been so informed, and the written certification shall be signed by the expectant mother and by her attending physician and shall be retained as part of the permanent record of the attending physician as evidence of compliance with the requirement of informed consent. The written certification shall be in the following form:

I, ..., have been informed that agencies and services are available in Nebraska to assist me to carry my pregnancy to natural term and to provide other pregnancy information.

I have also been informed of reasonably possible medical and mental consequences resulting from an abortion.

Date .....
Signed .....
Signed .....
Attending Physician

No abortion shall be performed on any woman without the passing of at least two days between the signing of the written certification required by this section and the actual performance of the abortion unless

an emergency situation presents imminent peril that substantially endangers the life of the woman.

Sec. 43. Violation of section 42 of this act is a Class II misdemeanor.

Sec. 44. No abortion shall be performed or prescribed after the unborn child has reached viability, except when necessary to preserve the woman from an imminent peril that substantially endangers her life or health.

Sec. 45. In any abortion performed pursuant to section 44 of this act, every precaution shall be taken, whenever possible, to insure the protection of the viable, unborn child. Any abortion procedure so employed shall be in accordance with accepted medical procedures.

Sec. 46. The commonly accepted means of care shall be employed in the treatment of any child aborted alive with any chance of survival.

Sec. 47. Violation of section 44, 45, or 46 of this act is a Class IV felony.

Sec. 48. (1) No abortion shall be performed or prescribed on any minor child sixteen years of age or younger in the State of Nebraska without her written consent and the consent of the parent or guardian of such minor child.

(2) No abortion shall be performed on any minor child in the State of Nebraska without her written consent and a written statement by her indicating that she has consulted with her parent or guardian concerning the performance of an abortion. The statement of consultation shall be in the following form:

I, ..., a minor, have advised my parent(s) or guardian that I am pregnant and contemplating an abortion and have consulted with them concerning the contemplated abortion.

Date .....

Signed .....

The written consent by the minor and the statement of consultation with the parent or guardian shall be retained as part of the permanent record of the attending physician as evidence of the requirement of consultation.

Sec. 49. The performing of an abortion without the consent or written statement required in section 48

of this act is a Class I misdemeanor.

Sec. 50. The performing of an abortion by any person other than a licensed physician is a Class IV felony.

Sec. 51. The performing of an abortion by using anything other than accepted medical procedures is a Class IV felony.

Sec. 52. No hospital, clinic, institution, or other facility in this state shall be required to admit any patient for the purpose of performing an abortion nor required to allow the performance of an abortion therein, but the hospital, clinic, institution, or other facility shall inform the patient of its policy not to participate in abortion procedures. No cause of action shall arise against any hospital, clinic, institution, or other facility for refusing to perform or allow an abortion.

Sec. 53. No person shall be required to perform or participate in any abortion, and the refusal of any person to participate in an abortion shall not be a basis for civil liability to any person. No hospital, governing board, or any other person, firm, association, or group shall terminate the employment or alter the position of, prevent or impair the practice or occupation of, or impose any other sanction or otherwise discriminate against any person who refuses to participate in an abortion.

Sec. 54. Any violation of section 53 of this act is a Class II misdemeanor.

Sec. 55. Any person whose employment or position has been in any way altered, impaired, or terminated in violation of sections 40 to 60 of this act may sue in the district court for all consequential damages, lost wages, reasonable attorney's fees incurred, and the cost of litigation.

Sec. 56. Any person whose employment or position has in any way been altered, impaired, or terminated because of his refusal to participate in an abortion shall have the right to injunctive relief, including temporary relief, pending trial upon showing of an emergency, in the district court, in accordance with the statutes, rules, and practices applicable in other similar cases.

Sec. 57. The sale, transfer, distribution, or giving away of any live or viable aborted child for any form of experimentation is a Class III felony.

Consenting to, aiding, or abetting any such sale, transfer, distribution, or other unlawful disposition of an aborted child is a Class III felony.

Sec. 58. The Bureau of Vital Statistics, Department of Health, shall establish an abortion reporting form, which shall be used for the reporting of every abortion performed or prescribed in this state. Such form shall include the following items in addition to such other information as may be necessary to complete the form:

(1) The age of the pregnant woman;

(2) The marital status of the pregnant woman;

(3) The location of the facility where the abortion was performed or prescribed;

(4) The type of procedure performed or prescribed;

(5) Complications, if any;

(6) The name of the attending physician;

(7) The name of the referring physician, agency, or service, if any;

(8) The pregnant woman's obstetrical history regarding previous pregnancies, abortions, and live births;

(9) The stated reason or reasons for which the abortion was requested;

(10) The state and county of the pregnant woman's legal residence; and

(11) The length and weight of the aborted child, when measurable.

The completed form shall be signed by the attending physician and sent to the Bureau of Vital Statistics within fifteen days after each reporting month. The completed form shall be an original, typed or written legibly in durable ink, and shall not be deemed complete unless the omission of any item of information required shall have been disclosed or satisfactorily accounted for. Carbon copies shall not be acceptable.

Sec. 59. Violation of section 58 of this act is a Class II misdemeanor.

Sec. 60. The Department of Health shall prepare and keep on permanent file compilations of the information submitted on the abortion reporting forms pursuant to such rules and regulations as established by the Department of Health, which compilations shall be a matter of public record. The Department of Health, in order to maintain and keep such compilations current, shall file with such reports any new or amended information.

Article 4
Drugs and Narcotics

Sec. 61. As used in this article, unless the context otherwise requires:

(1) Administer shall mean the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by: (a) A practitioner or, in his presence, by his authorized agent, or (b) the patient or research subject at the direction and in the presence of the practitioner;

(2) Agent shall mean an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman;

(3) Bureau shall mean the Bureau of Narcotics and Dangerous Drugs, United States Department of Justice;

(4) Controlled substance shall mean a drug, substance, or immediate precursor in Schedules I to V of section 65 of this act. The term shall not include distilled spirits, wine, malt beverages, tobacco, or any nonnarcotic substance if such substance may, under the Federal Food, Drug, and Cosmetic Act and the law of this state, be lawfully sold over the counter without a prescription;

(5) Counterfeit substance shall mean a controlled substance which, or the container or labeling of which, without authorization, bears the trade-mark, 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 shall mean the Department of Health of this state;

(7) Division of Drug Control shall mean the personnel of the Nebraska State Patrol who are assigned to enforce the provisions of this article;

(8) Bureau of Examining Boards shall mean personnel of the department responsible for the enforcement of the provisions of this article in the areas assigned to it by the provisions of this article;

(9) Dispense shall mean to deliver a controlled substance to an ultimate user or a research subject by, or pursuant to the lawful order or prescription of a physician, dentist, veterinarian, or other medical practitioner licensed under the laws of this state to prescribe drugs, including the packaging, labeling, or compounding necessary to prepare the substance for such delivery. Dispenser shall mean the apothecary, pharmacist, or other practitioner, duly licensed and who dispenses a controlled substance to an ultimate user or a research subject;

(10) Distribute shall mean to deliver other than by administering or dispensing a controlled substance. Distributor shall mean a person who so distributes a controlled substance;

(11) Prescribe shall mean the act of a physician, surgeon, dentist, veterinarian, or other medical practitioner licensed under the laws of this state, in issuing an order, prescription, or direction to a pharmacist or pharmacy to dispense a drug as required by the laws of this state;

(12) Drug shall mean (a) articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or 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 man 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;

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

(14) Marijuana shall mean all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin, but shall not include the mature stalks of such 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, except the resin extracted therefrom, fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination; and, where the weight of marijuana is referred to in this article it shall mean its weight at or about the time it is seized or otherwise comes into the possession of law enforcement authorities, whether cured or uncured at that time;

(15) Manufacture shall mean the production, preparation, propagation, compounding, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or 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, except that this term does not include the preparation or compounding of a controlled substance by an individual for his own use or the preparation, compounding, packaging, or labeling of a controlled substance: (a) By a practitioner as an incident to his prescribing, administering or dispensing of a controlled substance in the course of his professional practice, or (b) by a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale;

(16) Narcotic drug shall mean any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or 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; (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 this article shall not include decocainized coca leaves or extracts of coca leaves, which extracts do not contain cocaine or ecgonine, or isoquinoline alkaloids of opium;

(17) Opiate shall mean 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. It does not include the dextrorotatory isomer of 3-methozy-n methylmorphinan and its salts. It does include its racemic and levorotatory forms;

(18) Opium poppy shall mean the plant of the species Papaver somniferum L., except the seeds thereof;

(19) Poppy straw shall mean all parts, except the seeds, of the opium poppy, after mowing;

(20) Person shall mean any corporation, association, partnership or one or more individuals;

(21) Practitioner shall mean a physician, dentist, veterinarian, pharmacist, scientific investigator, pharmacy or hospital, licensed, registered, or otherwise permitted to distribute, dispense, prescribe, conduct research with respect to, or administer a controlled substance in the course of professional practice or research in this state, or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or administer a controlled substance in the course of professional practice or research in this state;

(22) Production shall include the manufacture, planting, cultivation, or harvesting of a controlled substance;

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

(24) State shall mean the State of Nebraska;

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

(26) Physician shall mean a person authorized by law to practice medicine in this state and any other person authorized by law to treat sick and injured human beings in this state;

(27) Dentist shall mean a person authorized by law to practice dentistry in this state;

(28) Veterinarian shall mean a person authorized by law to practice veterinary medicine in this state;

(29) Hospital shall mean an institution for the care and treatment of sick and injured human beings and approved by the department;

(30) Podiatrist shall mean a person authorized by law to practice podiatry and who has graduated from an accredited school of podiatry in or since 1935;

(31) Apothecary shall mean a licensed pharmacist as defined by the laws of this state and, where the context so requires, the owner of the store or other place of business where drugs are compounded or dispensed by a licensed pharmacist, but nothing in this subdivision shall be construed as conferring on a person who is not registered nor licensed as a pharmacist any authority, right or privilege that is not granted to him by the pharmacy laws of this state; and

(32) Nothing contained in this article shall be construed as authority for a practitioner to perform an act for which he is not authorized by the laws of this state.

Sec. 62. If any physician, or other person, while in a state of intoxication, shall prescribe any poison, drug or medicine to another person, which shall endanger the life of such other person, he shall be guilty of a Class III misdemeanor.

Sec. 63. 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 or composition, thereby endangering the life of such other person, he shall be guilty of a Class III misdemeanor.

Sec. 64. All drugs and substances or immediate precursors listed in section 65 of this act are hereby declared to be controlled substances, whether listed by official name, generic, common or usual name, chemical name, brand, or trade name.

Sec. 65. The following are the schedules of controlled substances referred to in this article:

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; (4) alphameprodine; (5) alphamethadol; (6) benzethidine; (7) betacetylmethadol; (8) betameprodine; (9) betamethadol; (10) betaprodine; (11) clonitazene; (12) dextromoramide; (13) dextrorphan; (14) diampromide; (15) diethylthiambutene; (16) dimenoxadol; (17) dimepheptanol; (18) dimethylthiambutene; (19) diozaphetyl 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; and (43) trimeperidine.

(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) etorphine; (10) heroin; (11) hydromorphinol; (12) methyldesorphine; (13) methylhydromorphine; (14) morphine methylbromide; (15) morphine methylsulfonate; (16) morphine-N-Oxide; (17) myrophine; (18) nicocodeine; (19) nicomorphine; (20) normorphine; (21) phoclodine; and (22) 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: (1) Bufotenine; (2) cyclohexamine; (3) diethyltryptamine; (4) dimethyltryptamine; (5) 4-bromo-2, 5-dimethoxyamphetamine; (6) 4-methoxyamphetamine or paramethoxyamphetamine; (7) 4-methyl-2, 5-dimethoxyamphetamine; (8) 5-methoxy-N-N, dimethyltryptamine; (9) ibogaine; (10) lysergic acid diethylamide; (11) marijuana; (12) mescaline; (13) peyote; (14) psilocybin; (15) psilocyn; (16) tetrahydrocannabinols; (17) 3,4-methylenedioxy amphetamine; (18) 5-methoxy-3, 4-methylenedioxy

amphetamine; (19) 3,4,5-trimethoxy amphetamine; (20) N-ethyl-3-piperidyl benzilate; and (21) N-methyl-3-piperidyl benzilate.

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, or 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;

(2) Any salt, compound isomer, 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; and

(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, except that the substances shall not include decocainized coca leaves or extractions which do not contain cocaine or ecgonine.

(b) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation: (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-diphenyl-propane-carboxylic acid; (13) pethidine; (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; and (21) dihydrocodeine.

(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) any substance, except an injectable liquid, which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers; and (4) methylphenidate.

(d) Unless specifically excepted or unless listed in another schedule, any injectable liquid which contains any quantity of methamphetamine, including its salts, isomers and salts of isomers.

(e) 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) Amobarbital; (2) secobarbital; (3) pentobarbital; and their salts alone, in combination with each other, or in combination with other controlled substances; and (4) methagualone.

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: (1) Benzphetamine; (2) chlorphetermine; (3) chlortermine; (4) mazindol; and (5) 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) glutethimide; (4) lysergic acid; (5) lysergic acid amide; (6) methyprylon; (7) phencyclidine; (8) thiophene analog of phencyclidine; (9) sulfondiethylmethane; (10) sulfonethylmethane; (11) sulfonmethane; and (12) nalorphine.

(c) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(1) 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;

(2) 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;

(3) Not more than three hundred milligrams of dihydrocodeinone per one hundred milliliters or not more than fifteen milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

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

(5) 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;

(6) 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;

(7) 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

(8) 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.

Schedule IV

(a) 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) Barbital; (2) chloral betaine; (3) chloral hydrate; (4) chlordiazepoxide; (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; and (18) phenobarbital;

(b) Any material, compound, mixture, or preparation which contains any quantity of fenfluramine; or

(c) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system: (1) Diethylpropion; (2) phentermine; and (3) pemoline.

Schedule V

(a) Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, 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 or any of its salts per one hundred milliliters or per one hundred grams;

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

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

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

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

(b) Any compound, mixture, or preparation, intended for use as an inhalant or inhaler which contains any quantity of mephentermine.

Sec. 66. (1) The department is authorized to promulgate rules and regulations relating to the registration and control of the manufacture, distribution, prescribing, and dispensing of controlled substances within this state. The registration shall be the responsibility of the Bureau of Examining Boards.

(2) The various fees to be paid by applicants for registrations and annual renewals thereof, as required under sections 61 to 99 of this act, shall be as follows:

(a) Registration or reregistration to manufacture controlled substances, twenty-five dollars;

(b) Registration or reregistration to distribute controlled substances, twenty-five dollars;

(c) Registration or reregistration to prescribe, administer or dispense controlled substances, five dollars;

(d) Registration or reregistration to engage in research on the use and effects of controlled substances, twenty-five dollars; and

(e) Registration or reregistration to engage in laboratory and analytical analysis of controlled substances, twenty-five dollars.

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

Sec. 67. (1) 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 annually a registration issued by the Bureau of Examining Boards in accordance with the rules and regulations promulgated by the department.

(2) The following persons shall not be required to register and may lawfully possess controlled substances under the provisions of this article:

(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 business or employment;

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

(c) An ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner.

(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.

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

Sec. 68. (1) The Bureau of Examining Boards shall register an applicant to manufacture or distribute controlled substances included in Schedules I to V of section 65 of this act unless it 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 substances defined in this article 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 of controlled substances, and the existence in the 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 and distribute controlled substances in Schedule I or II of section 65 of this act other than those specified in the registration.

(3) Practitioners shall be registered to prescribe, administer or dispense substances in Schedules II to V of section 65 of this act 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 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 69 of this act or if there are reasonable grounds to believe that the applicant will abuse or unlawfully transfer such substances or fail to safeguard adequately his supply of such substances against diversion from legitimate medical or scientific use.

(4) The department shall initially permit persons to register who own or operate any establishment engaged in the manufacture, distribution or dispensing of any controlled substances for sixty days following the effective date of this article and who are registered or licensed by the state.

(5) Compliance by manufacturers and distributors with the provisions of the Federal Controlled Dangerous Substances Act respecting registration, excluding fees, shall be deemed compliance with this section.

Sec. 69. (1) A registration pursuant to section 68 of this act to prescribe, administer, manufacture, distribute, or dispense a controlled substance may be suspended or revoked by the department upon a finding that the registrant:

(a) Has falsified any application filed pursuant to this article or required by this article;

(b) Has been convicted of a felony subsequent to being granted a registration pursuant to section 68 of this act under any law of the United States, or of any state, or has been convicted of a violation relating to any substances defined in this article as a controlled substance subsequent to being granted a registration pursuant to section 68 of this act under any law of the United States or any state; or

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

(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) Before taking action pursuant to this section or pursuant to a denial of registration or refusing a renewal of registration under section 68 of this act, the department shall serve upon the applicant or registrant an order to show cause why registration should not be denied, revoked, or suspended or why the renewal should not be refused. The order to show cause shall contain a statement of the basis thereof and shall call upon the applicant or registrant to appear before the department at a time and place stated in the order, but in no event less than thirty days after the date of service of the order, but in the case of a denial of registration or renewal the show cause order shall be served not later than thirty days before the expiration of the registration. Proceedings to deny, revoke, or suspend shall be conducted pursuant to this section in accordance with the Administrative Procedures Act. Such proceedings shall be independent of, and not in lieu of, criminal prosecutions or other proceedings under the provisions of this article or any law of the state. Proceedings to refuse renewal of registration shall not abate the existing registration which shall remain in effect pending the outcome of the administrative hearing.

(4) The department may suspend, without an order to show cause, any registration simultaneously with the institution of proceedings under this section or where renewal of registration is refused in cases where 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 68 of this act, 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 bureau shall promptly be notified of all orders suspending or revoking registration.

Sec. 70. On the operative date of this act, each registrant manufacturing, distributing or dispensing controlled substances in Schedule I, II, III, IV, or V of section 65 of this act shall keep and maintain a complete and accurate record of all stocks of such controlled substances on hand. Such records shall be maintained for two years. Each two-year period, at a time provided for by rule and regulation to be promulgated by the department, each registrant manufacturing, distributing, or dispensing controlled substances shall prepare an inventory of each controlled substance in his possession. Records and inventories shall contain such information as shall be required by rules and regulations promulgated by the department. All registration and reregistration fees shall be remitted to the Bureau of Examining Boards and credited to the Pharmacy Fund for the express purpose of the enforcement responsibilities of the department in accordance with the provisions of this article. This section shall not apply to practitioners who lawfully prescribe, administer, or occasionally dispense as a part of their professional practice, controlled substances listed in Schedule II, III, IV, or V of section 65 of this act, unless such practitioner regularly engages in dispensing any such drug or drugs to his patients for which they are charged either separately or together with charges for other professional services. Compliance with the provisions of the Federal Controlled Dangerous Substances Act respecting records and reports, with the exception of provisions as to fees, shall be deemed compliance with this section.

Sec. 71. (1) Every physician, dentist, podiatrist, veterinarian, or other person who is authorized to administer or professionally use narcotic drugs, shall keep a record of such drugs received by him, and a record of all such drugs administered, dispensed, or professionally used by him otherwise than by prescription. It shall, however, be deemed a sufficient compliance with this subsection if any such person using small quantities of solutions or other preparations of such drugs for local application, shall keep a record of the quantity, character, and potency of such solutions or other preparations purchased or made up by him, and of the dates when purchased or made up, without keeping a record of the amount of such solution or other preparation applied by him to individual patients; Provided, that no record need be kept of narcotic drugs administered, dispensed, or professionally used in the treatment of any one patient, when the amount administered, dispensed, or professionally used for that

purpose does not exceed in any forty-eight consecutive hours (a) four grains of opium, (b) one half of a grain of morphine or of any of its salts, (c) two grains of codeine or of any of its salts, (d) one-fourth of a grain of heroin or of any of its salts, or (e) a quantity of any other narcotic drug or any combination of narcotic drugs that does not exceed in pharmacologic potency any one of the drugs named above in the quantity stated; and provided further, that no record need be kept of narcotic drugs administered, dispensed, or professionally used in the treatment of any one patient, where the amount administered, dispensed, or professionally used for that purpose does not exceed in any thirty-day period twenty tablets of one-fourth grain each of morphine or any of its salts.

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

(3) Apothecaries shall keep records of all narcotic drugs received and disposed of by them, in accordance with the provisions of subsection (4) of this section.

(4) The form of records shall be prescribed by the Department of Health of the State of Nebraska. The record of narcotic drugs received shall in every case show (a) the date of receipt, (b) the name and address of the person from whom received, (c) the kind and quantity of drugs received, (d) the kind and quantity of narcotic drugs produced or removed from process of manufacture, and (e) 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 narcotic drugs 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 drugs were sold, administered, or dispensed, and the kind and quantity of drugs. Every such record shall be kept for a period of two years from the date of the transaction recorded. The keeping of a record required by or under the federal narcotic laws, containing substantially the same information as is specified above, shall constitute compliance with this section, except that every such record shall contain a detailed list of narcotic drugs

lost, destroyed, or stolen, if any, the kind and quantity of such drugs, and the date of the discovery of such loss, destruction or theft.

Sec. 72. It shall be unlawful for any duly licensed practicing physician to prescribe, or for any duly licensed practicing physician, dentist or veterinarian, to administer, in any manner or form, any cocaine, alpha or beta eucaine, morphine or opium, or any salt, compound or derivative of any of the foregoing substances, or any preparation, product or compound, containing any of the foregoing substances or any of their salts, compounds or derivatives, for, or to, any person addicted to the habitual use of cocaine, alpha or beta eucaine, morphine or opium, or any salt, compound or derivative of any of the foregoing substances, or any preparation, product or compound containing any of the foregoing substances or any of their salts, compounds or derivatives, except that a reputable and duly licensed practicing physician may personally administer to a patient who is an habitual user of such drugs, or any of them, necessary doses thereof, when it has been in good faith determined by two reputable and duly licensed practicing physicians, in consultation, to be absolutely necessary in the medical treatment of such patient, in which case, the physician administering such drugs, or any of them, shall make and keep a record in writing of the name and address of the person to whom such drugs, or any of them, were administered, the date administered, the form and quantity of drug administered, the name and address of the consulting physician, and the date and place of consultation. Such record shall be retained and preserved within the State of Nebraska, and the county where administered, for a period of at least two years, and shall always be open for inspection by the Department of Health, state, county and city health officers, county attorneys, grand juries, and all officers of the law, and by agents appointed by them, or any of them, for the purpose of making an inspection. The record shall be made at the time of each administration of such drugs, or any of them, and a copy of the record shall, within five days after each administration of such drugs, or any of them, as in this section provided, be filed with the county attorney of the county in which the administering took place, by the physician administering the drugs, or any of them, and shall have affixed thereto the signature and address of the administering physician.

Any person violating any of the provisions or requirements of this section or any part thereof shall be guilty of a Class IV felony.

Sec. 73. Controlled substances in Schedules I and II of section 65 of this act shall be distributed by a registrant to another registrant only pursuant to an order form. Compliance with the provisions of the Federal Controlled Dangerous Substances Act respecting order forms shall be deemed compliance with this section.

Sec. 74. (1) Except when dispensed or administered directly by a practitioner, other than a pharmacist, to an ultimate user, no controlled substance included in Schedule II of section 65 of this act may be dispensed without the written prescription of a practitioner; Provided, that in emergency situations, as prescribed by the department by regulation, such substance may be dispensed upon oral prescription reduced promptly to writing in conformity with subdivision (4) (b) of this section and filed by the pharmacist. No prescription for a Schedule II substance may be refilled.

(2) Except when dispensed or administered directly by a practitioner, other than a pharmacist, to an ultimate user, no other controlled substance included in Schedule III or IV of section 65 of this act which is a prescription drug as determined under the laws of this state or the laws of the United States, may be dispensed without a written or oral prescription. Such prescription may not be filled or refilled more than six months after the date thereof or be refilled more than five times after the date of the prescription, unless renewed by the practitioner.

(3) Except when dispensed or administered directly by a practitioner, other than a pharmacist, to an ultimate user, no controlled substance included in Schedule V of section 65 of this act may be dispensed without a written or oral prescription.

(4) (a) Prescriptions for all Schedule II controlled substances shall be kept in a separate file by the pharmacist and shall be maintained for a minimum of two years and shall be available to authorized agents of the Bureau of Examining Boards and the Division of Drug Control for inspection without any requirement for obtaining a search warrant.

(b) All prescriptions for controlled substances in Schedule II of section 65 of this act shall contain the name and address of the patient and the name and address of the prescribing practitioner, including the registry number under the federal narcotic laws of the prescribing practitioner. The pharmacist or practitioner filling the prescription shall write the date of filling and his own signature on the face of the prescription.

If the prescription is for an animal, it shall state the name and address of the owner of the animal and the species of the animal.

(c) Prescriptions for all controlled substances in Schedules III and IV of section 65 of this act, unless otherwise required by federal or state laws, may be filed separately by the pharmacist and shall be maintained for a minimum of two years. If filed with other prescriptions for substances classified as noncontrolled substances, the pharmacist shall be required to make all prescription files readily available and shall maintain these prescriptions for a period of two years. All such files shall be available to authorized agents of the Bureau of Examining Boards and the Division of Drug Control for inspection without any requirement for obtaining a search warrant.

(d) All prescriptions for controlled substances in Schedules III and IV of section 65 of this act shall contain the name and address of the patient and the name and address of the prescribing practitioner, including the registry number of the prescribing practitioner under the federal narcotics laws. If the prescription is for an animal, it shall state the owner's name and address and species of the animal.

(e) All prescriptions for controlled substances listed in Schedule V of section 65 of this act may be filed by the pharmacist together with other prescriptions for noncontrolled substances, unless required by other federal or state laws to be filed separately, and must be maintained for a period of two years. These prescriptions shall contain the name and address of the prescribing practitioner, including the registry number of the prescribing practitioner under the federal narcotics laws, and the name and address of the patient and shall be made readily available for inspection by an authorized agent of the Bureau of Examining Boards or Division of Drug Control, without any requirement for obtaining a search warrant.

(f) The owner of any stock of controlled substances in Schedules I and II of section 65 of this act, upon discontinuance of the dealing in such substances, may sell such substances to a manufacturer, wholesaler or apothecary, but only on an official order form as required by section 73 of this act.

(g) An apothecary, only upon an official written order, may sell to a physician, dentist, podiatrist, or veterinarian, in quantities not exceeding one ounce at any time, aqueous or oleaginous solutions of which the

content of controlled substances in Schedules I, II, and III of section 65 of this act does not exceed a proportion greater than twenty per cent of the complete solution to be used for medical purposes.

(h) No pharmacist or dispensing practitioner shall dispense any controlled substance contained in Schedule II of section 65 of this act without affixing to the container in which the substance is dispensed, a label bearing the name and address of the pharmacy or dispensing practitioner, the name and address of the patient, date compounded, the consecutive number of the prescription under which it is recorded in the pharmacist's prescription files, together with the name of the physician, dentist, veterinarian or other prescribing practitioner, who prescribes it, and the directions for the use of the drug. If indicated by the prescribing practitioner, the label shall bear the name of the substance.

(i) No pharmacist or dispensing practitioner shall dispense any controlled substance contained in Schedules III, IV and V of section 65 of this act without affixing to the container in which the substance is dispensed, a label bearing the name and address of the pharmacy or dispensing practitioner, the name of the patient, date of initial filling, the consecutive number of the prescription under which it is recorded in the pharmacist's prescription files, together with the name of the physician, dentist, veterinarian or other prescribing practitioner, who prescribes it, and the directions for the use of the drug. If indicated by the prescribing practitioner, the label shall bear the name of the substance.

Sec. 75. (1) Whenever a manufacturer sells or dispenses a narcotic drug, and whenever a wholesaler sells or dispenses a narcotic drug in a package prepared by him, he shall securely affix to each package in which the drug is contained a label 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 an apothecary for the purpose of filling a prescription under this article, shall alter, deface, or remove any label so affixed.

(2) Whenever an apothecary sells or dispenses any narcotic drug on a prescription issued by a physician, dentist, podiatrist, or veterinarian, he shall affix to the container in which such drug is sold or dispensed, a label in accordance with the requirements stated in subdivisions (4) (h) and (i) of section 74 of this act. No person shall alter, deface or remove any label so

affixed.

Sec. 76. (1) Except as authorized by this article, 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) Any person who violates subsection (1) of this section with respect to: (a) A controlled substance classified in Schedule I or II of section 65 of this act which is a narcotic drug shall be guilty of a Class III felony; (b) any other controlled substance classified in Schedule I, II, or III of section 65 of this act, shall be guilty of a Class IV felony; or (c) a controlled substance classified in Schedule IV or V of section 65 of this act, shall be guilty of a Class IV felony.

(3) A person knowingly or intentionally possessing a controlled substance, except marijuana, unless such substance was obtained directly, or pursuant to a valid prescription or order from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized by this article, shall be guilty of a Class IV felony.

(4) Any person knowingly or intentionally possessing marijuana weighing one pound or less shall be guilty of a Class IIIA misdemeanor.

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

(6) If a person is placed on probation, as a condition of probation he shall satisfactorily attend and complete appropriate treatment and counseling on drug abuse conducted by one of the community mental health facilities as provided by Chapter 71, article 50, or other licensed drug treatment facility.

(7) Any person who knowingly or intentionally delivers, distributes, or dispenses a substance that he expressly or implicitly represents to be a controlled substance which is not in fact such a substance and which endangers the life of the person using the substance or which may cause bodily injury is guilty of a Class IV felony.

Sec. 77. (1) It shall be unlawful for any person:

(a) Who is subject to the requirements of sections 66 to 74 of this act to distribute or dispense a controlled substance in violation of section 74 of this act;

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

(c) To omit, remove, alter, or obliterate a symbol required by the Federal Controlled Dangerous Substances Act or required by the laws of this state;

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

(e) To refuse or fail to make, keep or furnish any record, notification, order form, statement, invoice or information required under this article;

(f) To refuse any entry into any premises for inspection authorized by the provisions of this article;

(g) To keep or maintain any store, shop, warehouse, dwelling house, building, vehicle, boat, aircraft, or any place whatever, which is resorted to by persons using controlled substances in violation of the provisions of this article for the purpose of using such substances, or which is used for the keeping or selling of the same in violation of the provisions of this article;

(h) 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 by the practitioner; or

(i) 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 person duly authorized by law to treat sick and injured human beings. 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 the provisions of this section shall be guilty of a Class III misdemeanor.

Sec. 78. (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 65 of this act, in the course of his legitimate business, except pursuant to an order form as required by section 73 of this act;

(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 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 provisions of this article, or any record required to be kept by the provisions of this article; or

(e) To make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trade-mark, 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.

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

Sec. 79. No person shall induce or entice any person to 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 79 to 84 of this act, any such condition so induced shall be deemed an intoxicated condition.

Sec. 80. 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 79 of this act, when the seller, offerer or deliverer knows or has reason to know that such compound is intended for use to induce such condition.

Sec. 81. The provisions of sections 79 to 84 of this act shall not apply to the use or sale of such substances, as defined in sections 79 and 80 of this act, when such use or sale is administered or prescribed for medical or dental purposes, nor shall the provisions of sections 79 to 84 of this act apply to the use or sale of alcoholic liquors as defined by section 53-103, Reissue Revised Statutes of Nebraska, 1943.

Sec. 82. Every person selling or offering for sale at retail any of the substances as defined in section 79 of this act, 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.

Sec. 83. No person shall induce or entice any person to violate the provisions of section 79, 80, or 82 of this act.

Sec. 84. Any person who violates any provision of section 79, 80, 82, or 83 of this act shall be guilty of a Class III misdemeanor.

Sec. 85. (1) No person, firm, corporation, or copartnership 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, or copartnership violating any of the provisions of subsection (1) or (2) of this section shall be guilty of a Class III misdemeanor.

Sec. 86. Any penalty imposed for violation of this article 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.

Sec. 87. Any penalty imposed for violation of this article 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. Should any person be convicted for violation of this article, 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 agent as part of the investigation leading to such conviction.

Sec. 88. (1) Administrative inspections of controlled premises are authorized in accordance with the following provisions:

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

(b) When so authorized by an administrative inspection, an officer of the Division of Drug Control or an authorized agent of the Bureau of Examining Boards, 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 Bureau of Examining Boards shall have the right: (i) To inspect and copy records required by this article 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 provisions of this article; 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 where there is reasonable cause to believe that such conveyance contains substances possessed or carried in violation of the provisions of this article; (iv) in any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; and (v) in all other situations where 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 Bureau of Examining Boards 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, Reissue Revised Statutes of Nebraska, 1943; Provided, that inspection warrants for the purpose of this article shall be issued not only upon a showing that consent to entry for inspection purposes has been

refused, but also in all cases where the judge of a court of record has been given reason to believe that consent would be refused if requested.

Sec. 89. (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 the Nebraska State Patrol. It shall be the duty of the division to enforce all of the provisions of this article and any other provisions of the law dealing with controlled substances. The Division of Drug Control shall cooperate with federal agencies, the department, and other state agencies in discharging their responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. 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 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; and (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.

(2) There is hereby created in the state treasury a cash fund to be known as the Nebraska State Patrol Drug Control Cash Fund which shall be used for the purpose of obtaining evidence for enforcement of any state law relating to the control of drug abuse.

(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 Cash Fund. The procedures shall be formulated no later than January 1, 1978, and

implemented by the Nebraska State Patrol within thirty days thereafter. Based on these record-keeping procedures, the Nebraska State Patrol shall prepare and deliver to 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, and (iv) amount of front money recovered, (d) total number of informers on payroll, and (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.

Sec. 90. The department shall enforce the provisions of this article 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 Federal Bureau of Narcotics and Dangerous Drugs; (3) do drug accountability audits of all registered practitioners in accordance with the provisions of this article; (4) provide laboratory analysis upon request from the Division of Drug Control and the Bureau of Examining Boards and other peace officers of this state in accordance with the provisions of this article; (5) provide drug abuse education to schools, courts, and persons requesting it; and (6) rely on results, information, and evidence received from the Federal Bureau of Narcotics and Dangerous Drugs relating to the regulatory functions of this article, 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 provisions of this article.

Sec. 91. (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 provisions of this article; (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 provisions of this article; (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 conveyances including 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; Provided, any conveyance seized including aircraft, vehicles or vessels shall be released by the proper court upon a showing by the owner of record of such conveyance that the owner had no knowledge that such conveyance was being used in violation of any provision of this article; and (e) books, records and research, including formulas, microfilm, tapes, and data which are used, or intended for use in violation of the provisions of this article.

(2) Any conveyance, including aircraft, vehicles, or vessels, which is used, or intended for use to transport any property described in subdivisions (a) and (b) of subsection (1) of this section is hereby declared to be a common nuisance, and any peace officer having probable cause to believe that such conveyance is so used or intended for such use shall make a search thereof with or without a warrant.

(3) All property seized without a search warrant shall not be subject to a replevin action and: (a) 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 (a), (b), and (c) of subsection (1) of this section, that has been used or is intended to be used in violation of the provisions of this article, when no longer needed as evidence shall be destroyed by the law enforcement agency holding the same or the Bureau of Examining Boards or turned over to the custody of the department; Provided, that a law enforcement agency may keep a small quantity of the property described in subdivisions (a), (b), and (c) of subsection (1) of this section for training purposes or use in investigations; and provided further, that any large quantity of property described in subdivisions (a), (b), and (c) of subsection (1) 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 conveyance, including aircraft, vehicles, or vessels, is seized under subdivision (1) (d) of this section, the person seizing the same shall within five days thereafter cause to be filed in the district court of the county in which seizure was made a complaint for condemnation of the conveyance seized. The proceedings shall be brought in the name of the state by the county attorney of the county in which the conveyance was seized. The complaint shall describe the conveyance, state the name of the owner if known, allege the essential elements of the violation which is claimed to exist, and shall conclude with a prayer of due process to enforce the forfeiture. Upon the filing of such a complaint, the court shall promptly cause process to issue to the sheriff, commanding him to take possession of the conveyance described in the complaint and to hold the same for further order of the court. The sheriff shall at the time of taking possession serve a copy of the process upon the owner of the conveyance in person or by registered or certified mail at his last-known address; Provided, any conveyance seized including aircraft, vehicles or vessels shall be released by the proper court upon a showing by the owner of record of such conveyance that such owner had no knowledge that such conveyance was being used in violation of any provision of this article. At the expiration of twenty days after such seizure by the sheriff, if no claimant has appeared to defend such complaint, the court shall order the sheriff to dispose of the seized conveyance.

Any person having an interest in the conveyance proceeded against, or any person against whom a civil or criminal liability would exist if such conveyance is in violation of the provisions of this article may, within twenty days following the sheriff's taking of possession, appear and file answer or demurrer to the complaint. The answer or demurrer shall allege the interest or liability of the party filing it. In all other respects the issue shall be made up as in other civil actions. If, after a trial, or upon hearing before the court without a trial when no claimant has appeared to defend the complaint, it shall appear beyond a reasonable doubt that such conveyance was used or intended for use in transporting a

controlled substance with intent to manufacture, distribute, deliver, dispense, export, or import such controlled substance, such conveyance shall be ordered sold.

When any conveyance is ordered sold by the court, the proceeds from the sale less the legal costs and charges shall be paid to the county treasurer for disposition in the manner provided for disposition of license money under the Constitution of this state. Whenever the condemnation of the conveyance is decreed, the court shall allow the claim of any claimant to the extent of such claimant's interest, for remission or mitigation of such forfeiture if such claimant proves to the satisfaction of the court (1) that he has not committed or caused to be committed an offense in violation of the provisions of this article and has no interest in any controlled substance referred to in this article; (2) that he has an interest in such conveyance as owner or lienor or otherwise, acquired by him in good faith; and (3) that he at no time had any knowledge or reason to believe that such conveyance was being or would be used in, or to facilitate, the violation of the provisions of this article.

When a decree of condemnation is entered against any conveyance, court costs and fees and storage and other proper expenses shall be charged against the person, if any, intervening as claimant of the conveyance. When a conveyance is sold under court order, the officer holding the sale shall make a return to the court showing to whom the conveyance 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 conveyance if such conveyance requires such title under the laws of this state.

Sec. 92. (1) It shall not be necessary for the state to negate any exemption or exception set forth in this article in any complaint, information, indictment or other pleading or in any trial, hearing, or other proceeding under the provisions of this article, 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 provisions of this article, he shall be presumed not to be the holder of such registration or form, and the burden of proof shall be upon him to rebut such presumption.

Sec. 93. All final determinations, findings, and conclusions of the department under this article shall be final and conclusive decisions of the matters involved, except that any person aggrieved by such decision may obtain review of the decision under the provisions of sections 84-917 to 84-919, Reissue Revised Statutes of Nebraska, 1943.

Sec. 94. (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 provisions of this article, 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 provisions of this article, (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 Bureau of Examining Boards shall cooperate with the Division of Drug Control providing technical advice and information, including all evidence of violations of the provisions of this article disclosed by drug accountability inspections. The department shall cooperate with the Division of Drug Control and peace officers by providing laboratory analysis when requested for the effective administration and enforcement of the provisions of this article.

(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.

Sec. 95. (1) Prosecutions for any violation of law occurring prior to the operative date of this article shall not be affected or abated by reason of the passage of this article.

(2) Civil seizures or forfeitures and injunctive proceedings commenced prior to the operative date of this article shall not be affected or abated by reason of the passage of this article.

(3) All administrative proceedings pending before the department on the operative date of this article shall be continued and brought to final determination in accord with laws and regulations in effect prior to such date. Such drugs as were placed under control prior to enactment of this article which are not listed within Schedules I to IV of section 65 of this act shall automatically be controlled and listed in the appropriate schedule.

(4) The provisions of this article shall be applicable to violations of law, seizures and forfeiture,

injunctive proceedings, administrative proceedings and investigations which occur following its operative date.

Sec. 96. Any orders and rules promulgated under law and affected by this article and in effect on the operative date of this article and not in conflict with it shall continue in effect until modified, superseded, or repealed.

Sec. 97. This article shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this article among those states which enact it.

Sec. 98. This article may be cited as the Uniform Controlled Substances Act.

Sec. 99. If any section in this article or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Article 5
Offenses Against Property

Sec. 100. As used in this article, unless the context otherwise requires, building shall mean a structure which has the capacity to contain, and is designed for the shelter of man, animals, or property, and includes ships, trailers, sleeping cars, aircraft, or other vehicles or places adapted for overnight accommodations of persons or animals, or for carrying on of business therein, whether or not a person or animal is actually present. If a building is divided into units for separate occupancy, any unit not occupied by the defendant is a building of another.

Sec. 101. (1) A person commits arson in the first degree if he intentionally damages a building by starting a fire or causing an explosion, when another person is present in the building at the time and either (a) the actor knows that fact, or (b) the circumstances are such as to render the presence of a person therein a reasonable probability.

(2) Arson in the first degree is a Class II felony.

Sec. 102. (1) A person commits arson in the second degree if he intentionally damages a building by starting a fire or causing an explosion.

(2) The following affirmative defenses may be introduced into evidence upon prosecution for a violation of this section:

(a) No person other than the accused has a security or proprietary interest in the damaged building, or, if other persons have such interests, all of them consented to his conduct; or

(b) The accused's sole intent was to destroy or damage the building for a lawful and proper purpose.

(3) Arson in the second degree is a Class III felony.

Sec. 103. (1) A person commits arson in the third degree if he intentionally sets fire to, burns, causes to be burned, or by the use of any explosive, damages or destroys, or causes to be damaged or destroyed, any property of another without his consent, other than a building or occupied structure.

(2) Arson in the third degree is a Class IV felony if the damages amount to one hundred dollars or more.

(3) Arson in the third degree is a Class I misdemeanor if the damages are less than one hundred dollars.

Sec. 104. Any person who, with the intent to deceive or harm an insurer, sets fire to or burns or attempts so to do, or who causes to be burned, or who aids, counsels or procures the burning of any building or personal property, of whatsoever class or character, whether the property of himself or of another, which shall at the time be insured by any person, company or corporation against loss or damage by fire, commits a Class IV felony.

Sec. 105. Property may be lawfully destroyed by burning such structures as condemned by law, structures no longer having any value for habitation or business or no longer serving any useful value in the area in which situated, and any other combustible material that will serve to be used for test fires to educate and train members of organized fire departments and promote fire safety anywhere in Nebraska. Before any structure may be destroyed by fire for training and educational purposes it must be reported to the State Fire Marshal and a permit issued for that purpose. Any expense incurred in burning a structure shall be assumed by the organized fire department requesting this type of training for

members of its department.

Sec. 106. (1) A person commits burglary if such person willfully, maliciously, and forcibly breaks and enters any real estate or any improvements erected thereon with intent to commit any felony or with intent to steal property of any value.

(2) Burglary is a Class III felony.

Sec. 107. (1) A person commits the offense of possession of burglar's tools if:

(a) He knowingly possesses any explosive, tool, instrument, or other article adapted, designed, or commonly used for committing or facilitating the commission of an offense involving forcible entry into premises or theft by a physical taking; and

(b) He intends to use the explosive, tool, instrument, or article, or knows some person intends ultimately to use it, in the commission of an offense of the nature described in subdivision (1) (a) of this section.

(2) Possession of burglar's tools is a Class IV felony.

Sec. 108. As used in sections 108 to 117 of this act, unless the context otherwise requires:

(1) Deprive shall mean:

(a) To withhold property of another permanently or for so extended a period as to appropriate a major portion of its economic value, or with intent to restore only upon payment of reward or other compensation; or

(b) To dispose of the property of another so as to create a substantial risk that the owner will not recover it in the condition it was when the actor obtained it;

(2) Financial institution shall mean a bank, insurance company, credit union, building and loan association, investment trust, or other organization held out to the public as a place of deposit of funds or medium of savings or collective investment;

(3) Movable property shall mean property the location of which can be changed, including things growing on, affixed to, or found in land, and documents although the rights represented thereby may have no

physical location. Immovable property shall mean all other property;

(4) Obtain shall mean:

(a) In relation to property, to bring about a transfer or purported transfer of a legal interest in the property, whether to the obtainer or another; or

(b) In relation to labor or service, to secure performance thereof;

(5) Property shall mean anything of value, including real estate, tangible and intangible personal property, contract rights, credit cards, charge plates, or any other instrument which purports to evidence an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer, choses in action and other interests in or claims to wealth, admission or transportation tickets, captured or domestic animals, food and drink, electric or other power;

(6) Property of another shall mean property in which any person other than the actor has an interest which the actor is not privileged to infringe, regardless of the fact that the actor also has an interest in the property and regardless of the fact that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the actor shall not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement;

(7) Receiving shall mean acquiring possession, control or title, or lending on the security of the property; and

(8) Stolen shall mean property which has been the subject of theft or robbery or a vehicle which is received from a person who is then in violation of section 116 of this act.

Sec. 109. Conduct denominated theft in sections 108 to 117 of this act constitutes a single offense embracing the separated offenses heretofore known as larceny, embezzlement, false pretense, extortion, blackmail, fraudulent conversion, receiving stolen property, and the like. An accusation of theft may be supported by evidence that it was committed in any manner that would be theft under sections 108 to 117 of this

act, notwithstanding the specification of a different manner in the indictment or information, subject only to the power of the court to insure fair trial by granting a continuance or other appropriate relief where the conduct of the defense would be prejudiced by lack of fair notice or by surprise.

Sec. 110. (1) A person is guilty of theft if he takes, or exercises control over, movable property of another with the intent to deprive him thereof.

(2) A person is guilty of theft if he transfers immovable property of another or any interest therein with the intent to benefit himself or another not entitled thereto.

Sec. 111. A person commits theft if he obtains property of another by deception. A person deceives if he intentionally:

(1) Creates or reinforces a false impression, including false impressions as to law, value, intention, or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise; or

(2) Prevents another from acquiring information which would affect his judgment of a transaction; or

(3) Fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship; or

(4) Uses a credit card, charge plate, or any other instrument which purports to evidence an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer (a) where such instrument has been stolen, forged, revoked, or canceled, or where for any other reason its use by the actor is unauthorized, or (b) where the actor does not have the intention and ability to meet all obligations to the issuer arising out of his use of the instrument.

The word deceive does not include falsity as to matters having no pecuniary significance, or statements unlikely to deceive ordinary persons in the group addressed.

Sec. 112. (1) A person commits theft if he obtains property of another by threatening to:

(a) Inflict bodily injury on anyone or commit any other criminal offense; or

(b) Accuse anyone of a criminal offense; or

(c) Expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair his credit or business repute; or

(d) Take or withhold action as an official, or cause an official to take or withhold action; or

(e) Bring about or continue a strike, boycott, or other collective unofficial action, if the property is not demanded or received for the benefit of the group in whose interest the actor purports to act; or

(f) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

(2) It is an affirmative defense to prosecution based on subdivision (1) (b), (1) (c), or (1) (d) of this section that the property obtained by threat of accusation, exposure, lawsuit or other invocation of official action was honestly claimed as restitution or indemnification for harm done in the circumstances to which such accusation, exposure, lawsuit or other official action relates, or as compensation for property or lawful services.

Sec. 113. A person who comes into control of property of another that he knows to have been lost, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of the recipient commits theft if, with intent to deprive the owner thereof, he fails to take reasonable measures to restore the property to a person entitled to have it. Any person violating the provisions of this section shall, upon conviction thereof, be punished by the penalty prescribed in the next lower classification below the value of the item lost, mislaid, or delivered under a mistake pursuant to section 117 of this act.

Sec. 114. (1) A person commits theft if he obtains services which he knows are available only for compensation, by deception or threat, or by false token or other means to avoid payment for the service. Services include labor, professional service, telephone or other public service, accommodation in hotels, restaurants or elsewhere, admission to exhibitions, and use of vehicles or other movable property. Where compensation for service is ordinarily paid immediately

upon the rendering of such service, as in the case of hotels and restaurants, refusal to pay or absconding without payment or offer to pay gives rise to a presumption that the service was obtained by deception as to intention to pay.

(2) A person commits theft if, having control over the disposition of services of others, to which he is not entitled, he diverts such services to his own benefit or to the benefit of another not entitled thereto.

(3) Any person who makes or possesses any device, instrument, apparatus, or equipment designed or which can be used to obtain telecommunications service fraudulently or to conceal from any supplier or telecommunications service or from any lawful authority the existence or place of origin or of destination of any telecommunication; or who sells, gives or otherwise transfers to another, or offers or advertises for sale, any such device, instrument, apparatus, or equipment, or plans or instructions for making or assembling the same, under circumstances evincing an intent to use or employ such device, instrument, apparatus, or equipment, or to allow the same to be used or employed, for a purpose described in this subsection, or knowing or having reason to believe that the same is intended to be used, or that the plans or instructions are intended to be used, for making or assembling such device, instrument, apparatus, or equipment is guilty of a Class II misdemeanor.

Sec. 115. (1) A person commits the offense of unauthorized operation of a propelled vehicle if he intentionally exerts unauthorized control over another's propelled vehicle by operating the same without the owner's consent.

(2) Propelled vehicle shall mean an automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle.

(3) It shall be an affirmative defense to a prosecution under this section that the defendant reasonably believed that the owner would have authorized the use had he known of it.

(4) Unauthorized use of a propelled vehicle is a Class III misdemeanor.

Sec. 116. A person commits theft if he receives, retains, or disposes of stolen movable property of another knowing that it has been stolen, or believing that it has been stolen, unless the property is received,

retained, or disposed with intention to restore it to the owner.

Sec. 117. (1) Theft constitutes a Class III felony when the value of the thing involved is over one thousand dollars.

(2) Theft constitutes a Class IV felony when the value of the thing involved is over three hundred dollars but not over one thousand dollars.

(3) Theft constitutes a Class I misdemeanor when the value of the thing involved is less than three hundred dollars.

(4) Theft constitutes a Class II misdemeanor when the value of the thing involved is one hundred dollars or less.

Sec. 118. (1) A person commits criminal mischief if he:

(a) Damages property of another intentionally or recklessly; or

(b) Intentionally or recklessly tampers with property of another so as to endanger person or property; or

(c) Intentionally or maliciously causes another to suffer pecuniary loss by deception or threat.

(2) Criminal mischief is a Class IV felony if the actor intentionally causes pecuniary loss in excess of three hundred dollars, or a substantial interruption or impairment of public communication, transportation, supply of water, gas or power, or other public service.

(3) Criminal mischief is a Class II misdemeanor if the actor intentionally causes pecuniary loss in excess of one hundred dollars.

(4) Criminal mischief is a Class III misdemeanor if the actor intentionally or recklessly causes pecuniary loss in an amount of one hundred dollars or less, or if his action results in no pecuniary loss.

Sec. 119. (1) A person commits first degree criminal trespass if, knowing that he is not licensed or privileged to do so, he enters or secretly remains in any building or occupied structure, or any separately secured or occupied portion thereof.

(2) First degree criminal trespass is a Class I misdemeanor.

Sec. 120. (1) A person commits second degree criminal trespass if, knowing that he is not licensed or privileged to do so, he enters or remains in any place as to which notice against trespass is given by:

(a) Actual communication to the actor; or

(b) Posting in a manner prescribed by law or reasonably likely to come to the attention of intruders; or

(c) Fencing or other enclosure manifestly designed to exclude intruders.

(2) Second degree criminal trespass is a Class III misdemeanor, except as provided for in subsection (3) of this section.

(3) Second degree criminal trespass is a Class II misdemeanor if the offender defies an order to leave personally communicated to him by the owner of the premises or other authorized person.

Sec. 121. It is an affirmative defense to prosecution under sections 119 and 120 of this act that:

(1) A building or occupied structure involved in an offense under section 119 of this act was abandoned; or

(2) The premises were at the time open to members of the public and the actor complied with all lawful conditions imposed on access to or remaining in the premises; or

(3) The actor reasonably believed that the owner of the premises or other person empowered to license access thereto would have licensed him to enter or remain; or

(4) The actor was in the process of navigating or attempting to navigate with a nonpowered vessel any stream or river in this state and found it necessary to portage or otherwise transport the vessel around any fence or obstructions in such stream or river.

Sec. 122. (1) Any person who deposits, throws, or leaves any litter on any public or private property, or in any waters, commits the offense of littering unless:

(a) Such property is an area designated by law for the disposal of such material and such person is authorized by the proper public authority to so use such property; or

(b) The litter is placed in a receptacle or container installed on such property for such purpose.

(2) The word litter as used in this section means all rubbish, refuse, waste material, garbage, trash, debris, or other foreign substances, solid or liquid, of every form, size, kind and description.

(3) Whenever litter is thrown, deposited, dropped, or dumped from any motor vehicle in violation of this section, the operator of such motor vehicle is presumed to have caused or permitted such litter to have been so thrown, deposited, dropped, or dumped therefrom.

(4) Littering is a Class IV misdemeanor.

Article 6

Offenses Involving Fraud

Sec. 123. As used in sections 123 to 127 of this act, unless the context otherwise requires:

(1) Written instrument shall mean any paper, document, or other instrument containing written or printed matter used for purposes of reciting, embodying, conveying, or recording information, and any money, credit card, token, stamp, seal, badge, trade-mark, or any evidence or symbol of value, right, privilege, or identification which is capable of being used to the advantage or disadvantage of some person;

(2) Complete written instrument shall mean a written instrument which purports to be genuine and fully drawn with respect to every essential feature thereof;

(3) Incomplete written instrument shall mean one which contains some matter by way of content or authentication but which requires additional matter in order to render it a complete written instrument;

(4) To falsely make a written instrument shall mean to make or draw a written instrument, whether complete or incomplete, which purports to be an authentic creation of its ostensible maker, but which is not, either because the ostensible maker is fictitious or because, if real, he did not authorize the making or the drawing thereof;

(5) To falsely complete a written instrument shall mean to transform an incomplete written instrument into a complete one by adding, inserting, or changing matter without the authority of anyone entitled to grant such authority, so that the complete written instrument falsely appears or purports to be in all respects an authentic creation of or fully authorized by its ostensible maker;

(6) To falsely alter a written instrument shall mean to change a written instrument without the authority of anyone entitled to grant such authority, whether it be in complete or incomplete form, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or by any other means, so that such instrument in its thus altered form falsely appears or purports to be in all respects an authentic creation of or fully authorized by its ostensible maker;

(7) Forged instrument shall mean a written instrument which has been falsely made, completed, endorsed or altered. The terms forgery and counterfeit and their variants are intended to be synonymous in legal effect as used in this article;

(8) Possess shall mean to receive, conceal, or otherwise exercise control over; and

(9) Utter shall mean to issue, authenticate, transfer, sell, transmit, present, use, pass, or deliver, or to attempt or cause such uttering.

Sec. 124. (1) A person commits forgery in the first degree if, with intent to deceive or harm, he falsely makes, completes, endorses, alters, or utters a written instrument which is or purports to be, or which is calculated to become or to represent if completed:

(a) Part of an issue of money, stamps, securities, or other valuable instruments issued by a government or governmental agency; or

(b) Part of an issue of stock, bonds, bank notes, or other instruments representing interests in or claims against a corporate or other organization or its property.

(2) Forgery in the first degree is a Class III felony.

Sec. 125. (1) Whoever, with intent to deceive or harm, falsely makes, completes, endorses, alters, or utters any written instrument which is or purports to be,

or which is calculated to become or to represent if completed, a written instrument which does or may evidence, create, transfer, terminate, or otherwise affect a legal right, interest, obligation, or status, commits forgery in the second degree.

(2) Forgery in the second degree is a Class III felony when the face value, or purported face value, or the amount of any proceeds wrongfully procured or intended to be procured by the use of such instrument, is three hundred dollars or more.

(3) Forgery in the second degree is a Class IV felony when the face value or amount of proceeds exceeds seventy-five dollars but is less than three hundred dollars.

(4) Forgery in the second degree is a Class I misdemeanor when the face value or amount of proceeds is seventy-five dollars or less.

Sec. 126. (1) Whoever, with knowledge that it is forged and with intent to deceive or harm, possesses any forged instrument covered by section 124 or 125 of this act commits criminal possession of a forged instrument.

(2) Criminal possession of a forged instrument prohibited by section 124 of this act is a Class IV felony.

(3) Criminal possession of a forged instrument prohibited by section 125 of this act, the amount or value of which is three hundred dollars or more, is a Class IV felony.

(4) Criminal possession of a forged instrument prohibited by section 125 of this act, the amount or value of which is more than seventy-five dollars but less than three hundred dollars, is a Class I misdemeanor.

(5) Criminal possession of a forged instrument prohibited by section 125 of this act, the amount or value of which is seventy-five dollars or less, is a Class II misdemeanor.

Sec. 127. (1) A person commits criminal possession of forgery devices when:

(a) He makes or possesses with knowledge of its character any plate, die, or other device, apparatus, equipment, or article specifically designed for use in counterfeiting, unlawfully simulating, or otherwise

forging written instruments; or

(b) He makes or possesses any device, apparatus, equipment, or article capable of or adaptable to a use specified in subdivision (1) (a) of this section, with intent to use it himself, or to aid or permit another to use it, for purposes of forgery; or

(c) Illegally possesses a genuine plate, die, or other device used in the production of written instruments, with intent to deceive or harm.

(2) Criminal possession of forgery devices is a Class IV felony.

Sec. 128. (1) A person commits a criminal simulation when:

(a) With intent to deceive or harm, he makes, alters, or represents an object in such fashion that it appears to have an antiquity, rarity, source or authorship, ingredient, or composition which it does not in fact have; or

(b) With knowledge of its true character and with intent to use to deceive or harm, he utters, misrepresents, or possesses any object so simulated.

(2) Criminal simulation is a Class III misdemeanor.

Sec. 129. (1) A person commits the offense of unlawfully using slugs, if he makes, uses, or utters a slug or slugs with intent to deprive a supplier of property or service sold or offered by means of a coin machine or with knowledge that he is facilitating such a deprivation by another person.

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

(a) Slug shall mean an object which by size, shape, or any other quality is capable of being inserted, deposited, or otherwise used in a coin machine as an improper but effective substitute for a genuine coin, bill, or token;

(b) Coin machine shall mean a coin box, turnstile, vending machine, or other mechanical or electronic device or receptacle designed to receive a coin or bill of a specified denomination or a token made for the purpose and in return for the insertion or deposit thereof to mechanically offer, provide, assist in

providing or permit the acquisition of property or a public or private service; and

(c) Value of the slug or slugs shall mean the value of the coins, bills, or tokens for which they are being substituted.

(3) The making, using, or uttering of slugs of the value of one hundred dollars or more is a Class I misdemeanor.

(4) The making, using, or uttering of slugs of the value of less than one hundred dollars is a Class II misdemeanor.

Sec. 130. (1) A person commits the crime of criminal impersonation if he:

(a) Assumes a false identity and does an act in his assumed character with intent to gain a pecuniary benefit for himself or another, or to deceive or harm another; or

(b) Pretends to be a representative of some person or organization and does an act in his pretended capacity with the intent to gain a pecuniary benefit for himself or another, and to deceive or harm another; or

(c) Carries on any profession, business, or any other occupation without a license, certificate, or other authorization required by law.

(2) Criminal impersonation is a Class II misdemeanor.

Sec. 131. (1) A person commits the offense of impersonating a public servant if he falsely pretends to be a public servant other than a peace officer and performs any act in that pretended capacity.

(2) It is no defense to a prosecution under this section that the office the actor pretended to hold did not in fact exist.

(3) Impersonating a public servant is a Class III misdemeanor.

Sec. 132. (1) A person commits the offense of impersonating a peace officer if he falsely pretends to be a peace officer and performs any act in that pretended capacity.

(2) Impersonating a peace officer is a Class I misdemeanor.

Sec. 133. (1) Whoever obtains property, services, or present value of any kind by issuing or passing a check or similar signed order for the payment of money, knowing that he has no account with the drawee at the time the check or order is issued, or, if he has such an account, knowing that the check or order will not be honored by the drawee, commits the offense of issuing a bad check. Issuing a bad check is:

(a) A Class III felony if the amount of the check or order is more than one thousand dollars;

(b) A Class IV felony if the amount of the check or order is three hundred dollars or more, but less than one thousand dollars;

(c) A Class I misdemeanor if the amount of the check or order is seventy-five dollars or more, but less than three hundred dollars; and

(d) A Class II misdemeanor if the amount of the check or order is less than seventy-five dollars.

(2) For any second or subsequent offense under subdivision (1) (c) or (1) (d) of this section, any person so offending shall be guilty of a Class IV felony.

(3) Whoever otherwise issues or passes a check or similar signed order for the payment of money, knowing that he has no account with the drawee at the time the check or order is issued, or, if he has such an account, knowing that the check or order will not be honored by the drawee, commits a Class II misdemeanor.

(4) In any prosecution where the person issuing the check has an account with the drawee, he shall be presumed to have known that the check or order would not be honored if, within thirty days after issuance of the check or order, he has been notified that the drawee refused payment for lack of funds and he has failed within ten days after such notice to make the check good.

(5) Any person convicted of violating this section may, in addition to being fined or imprisoned, be ordered to make restitution to the party injured for the value of the check, draft, order, or assignment of funds and any costs of filing with the county attorney. If the court shall in addition to sentencing any person to imprisonment under this section also enter an order of restitution, the time permitted to make such restitution

shall not be concurrent with the sentence of imprisonment.

(6) The fact that restitution to the party injured has been made and that any costs of filing with the county attorney have been paid shall be a mitigating factor in the imposition of punishment for any violation of this section.

Sec. 134. (1) A person commits a Class I misdemeanor if he:

(a) Willfully and knowingly subscribes to, makes, or causes to be made any false statement or entry in the books of an organization; or

(b) Knowingly subscribes to or exhibits false papers with the intent to deceive any person or persons authorized to examine into the affairs of any such organization; or

(c) Makes, states, or publishes any false statement of the amount of the assets or liabilities of any such organization; or

(d) Fails to make true and correct entry in the books and records of such organization of its business and transactions in the manner and form prescribed by the Department of Banking; or

(e) Mutilates, alters, destroys, secretes, or removes any of the books or records of such organization, without the consent of the Director of Banking.

(2) As used in this section, organization shall mean:

(a) Any trust company transacting a business under sections 8-201 to 8-226, Reissue Revised Statutes of Nebraska, 1943, and amendments thereto; or

(b) Any association organized for the purpose set forth in section 8-302, Reissue Revised Statutes of Nebraska, 1943; or

(c) Any bank defined under subsection (4) of section 8-101, Revised Statutes Supplement, 1976; or

(d) Any cooperative credit association set forth in section 21-1301, Revised Statutes Supplement, 1976, transacting business in this state.

Sec. 135. (1) A person commits a Class I misdemeanor if he solicits, accepts, or agrees to accept any benefit as consideration for knowingly violating or agreeing to violate a duty of fidelity to which he is subject as:

(a) Agent or employee; or

(b) Trustee, guardian, or other fiduciary; or

(c) Lawyer, physician, accountant, appraiser, or other professional advisor; or

(d) Officer, director, partner, manager, or other participant in the direction of the affairs of an incorporated or unincorporated association; or

(e) Duly elected or appointed representative or trustee of a labor organization or employee of a welfare trust fund; or

(f) Arbitrator or other purportedly disinterested adjudicator or referee.

(2) A person who holds himself out to the public as being engaged in the business of making disinterested selection, appraisal, or criticism of commodities, property, or services, commits a Class I misdemeanor if he solicits, accepts, or agrees to accept any benefit to alter, modify, or change his selection, appraisal, or criticism.

(3) A person commits a Class I misdemeanor if he confers or offers or agrees to confer any benefit the acceptance of which would be an offense under subsection (1) or (2) of this section.

Sec. 136. (1) A person commits the offense of tampering with a publicly-exhibited contest if:

(a) He confers, or offers or agrees to confer, directly or indirectly, any benefit upon:

(i) A contest participant with intent to influence him not to give his best efforts in a publicly-exhibited contest; or

(ii) A contest official with intent to influence him to perform improperly his duties in connection with a publicly-exhibited contest;

(b) Being a contest participant or contest official, he intentionally solicits, accepts, or agrees

to accept, directly or indirectly, any benefit from another person with intent that he will thereby be influenced:

(i) In the case of a contest participant, not to give his best efforts in a publicly-exhibited contest; or

(ii) In the case of a contest official, to perform improperly his duties in connection with a publicly-exhibited contest; or

(c) With intent to influence the outcome of a publicly-exhibited contest he:

(i) Tampers with any contest participant, contest official, animal, equipment, or other thing involved in the conduct or operation of the contest, in a manner contrary to the rules and usages purporting to govern the contest in question; or

(ii) Substitutes a contest participant, animal, equipment, or other thing involved in the conduct or operation of the contest, for the genuine person, animal, or thing.

(2) In this section:

(a) Publicly-exhibited contest shall mean any professional or amateur sport, athletic game or contest, or race or contest involving machines, persons, or animals, viewed by the public, but shall not include an exhibition which does not purport to be and which is not represented as being such a sport, game, contest, or race;

(b) Contest participant shall mean any person who participates or expects to participate in a publicly-exhibited contest as a player, contestant, or member of a team, or as a coach, manager, trainer, or other person directly associated with a player, contestant, or team; and

(c) Contest official shall mean any person who acts or expects to act in a publicly-exhibited contest as an umpire, referee, or judge, or otherwise to officiate at a publicly-exhibited contest.

(3) Tampering with a publicly-exhibited contest is a Class II misdemeanor.

Sec. 137. As used in sections 137 to 139 of this act:

(1) Identification number shall mean a serial or motor number placed by a manufacturer upon an article as a permanent individual identifying mark;

(2) Obscure shall mean to destroy, remove, alter, conceal, or deface so as to render illegible by ordinary means of inspection; and

(3) Article shall mean any product made by a manufacturer and includes but is not limited to any appliance, radio, television, motor vehicle, tractor or other farm machinery.

Sec. 138. (1) A person commits the offense of altering an identification number if, with the intent to deceive or harm, he obscures an identification number or in the course of business he sells, offers for sale, leases or otherwise disposes of an article knowing that an identification number thereon is obscured.

(2) Altering an identification number is a Class I misdemeanor.

Sec. 139. (1) A person commits the offense of receiving an altered article if, with the intent to deceive or harm another, he buys or receives any article knowing that an identification number thereon is obscured, without first ascertaining that the person so selling or delivering the same has a legal right to do so.

(2) Receiving an altered article is a Class I misdemeanor.

Article 7
Offenses Involving the Family Relation

Sec. 140. (1) If any married person, having a husband or wife living, shall marry any other person, he shall be deemed guilty of bigamy, unless as an affirmative defense it appears that at the time of the subsequent marriage:

(a) The accused reasonably believes that the prior spouse is dead; or

(b) The prior spouse had been continually absent for a period of five years during which the accused did not know the prior spouse to be alive; or

(c) The accused reasonably believed that he was legally eligible to remarry.

(2) Any unmarried person who knowingly marries a person who is married commits bigamy.

(3) Bigamy is a Class I misdemeanor.

Sec. 141. Incestuous marriages are marriages between parents and children, grandparents and grandchildren of every degree, between brothers and sisters of the half as well as the whole blood, and between uncles and nieces, aunts and nephews. Incestuous marriages are declared to be absolutely void. This section shall extend to children and relations born out of wedlock.

Sec. 142. (1) Any person who shall intermarry or engage in sexual intercourse with any person who falls within the degrees of consanguinity set forth in section 145 of this act commits incest.

(2) A person shall not be convicted of incest or an attempt to commit incest upon the uncorroborated testimony of the person with whom the offense is alleged to have been committed.

(3) Incest is a Class III felony.

Sec. 143. (1) Any married person who deserts his or her spouse and lives, cohabits, and engages in sexual intercourse or deviate sexual intercourse with another person commits adultery.

(2) Adultery is a Class I misdemeanor.

Sec. 144. (1) Any person who abandons and neglects or refuses to maintain or provide for his spouse, or his or her child, or dependent stepchild, whether such child be born in or out of wedlock, commits abandonment of spouse, child, or dependent stepchild.

(2) For the purposes of this section, child shall mean an individual under the age of sixteen years.

(3) When any person abandons and neglects to provide for his spouse, or his or her child, or dependent stepchild for three consecutive months or more, it shall be prima facie evidence of intent to violate the provisions of subsection (1) of this section.

(4) Abandonment of spouse, child, or dependent stepchild is a Class I misdemeanor.

Sec. 145. (1) Any person who intentionally fails, refuses, or neglects to provide proper support

which he knows or reasonably should know he is legally obliged to provide to a spouse, minor child, minor stepchild, or other dependent, commits criminal nonsupport.

(2) A parent or guardian who refuses to pay hospital costs, medical costs, or any other costs arising out of or in connection with an abortion procedure performed on a minor child or minor stepchild does not commit criminal nonsupport if:

(a) Such parent or guardian was not consulted prior to the abortion procedure; or

(b) After consultation, such parent or guardian refused to grant consent for such procedure, and the abortion procedure was not necessary to preserve the minor child or stepchild from an imminent peril that substantially endangered her life or health.

(3) Support includes but is not limited to food, clothing, medical care, and shelter.

(4) This section does not exclude any applicable civil remedy.

(5) Criminal nonsupport is a Class II misdemeanor.

(6) Criminal nonsupport is a Class I misdemeanor if it is in violation of any order of any court.

Sec. 146. (1) A person commits child abuse if he knowingly, intentionally, or negligently causes or permits a minor child to be:

(a) Placed in a situation that endangers his life or health; or

(b) Cruelly confined or cruelly punished; or

(c) Deprived of necessary food, clothing, shelter, or care.

(2) The statutory privilege between patient and physician and between husband and wife shall not be available for excluding or refusing testimony in any prosecution for a violation of this section.

(3) Child abuse is a Class I misdemeanor.

Sec. 147. (1) A person commits abuse of an incompetent or disabled person if he knowingly,

intentionally, or negligently causes or permits an incompetent person or a disabled person to be:

(a) Placed in a situation that endangers his life or health; or

(b) Cruelly confined or cruelly punished; or

(c) Deprived of necessary food, clothing, shelter, or care.

(2) The statutory privilege between patient and physician and between husband and wife shall not be available for excluding or refusing testimony in any prosecution for a violation of this section.

(3) Abuse of an incompetent or disabled person is a Class I misdemeanor.

Sec. 148. (1) Any person who, by any act, encourages, causes, or contributes to the delinquency or need for special supervision of a child under eighteen years of age, so that such child becomes, or will tend to become, a delinquent child, or a child in need of special supervision, commits contributing to the delinquency of a child.

(2) The following definitions shall be applicable to this section:

(a) Delinquent child shall mean any child under the age of eighteen years who has violated any law of the state or any city or village ordinance; and

(b) A child in need of special supervision shall mean any child under the age of eighteen years (i) who, by reason of being wayward or habitually disobedient, is uncontrolled by his parent, guardian, or custodian; (ii) who is habitually truant from school or home; or (iii) who deports himself so as to injure or endanger seriously the morals or health of himself or others.

(3) Contributing to the delinquency of a child is a Class I misdemeanor.

Sec. 149. As used in sections 149 to 156 of this act, unless the context otherwise requires:

(1) Department shall mean the Department of Public Welfare;

(2) Law enforcement agency shall mean the police department or town marshal in incorporated municipalities

and the office of the sheriff in unincorporated areas;

(3) Abuse or neglect shall mean knowingly, intentionally, or negligently causing or permitting a minor child or an incompetent or disabled person to be: (a) Placed in a situation that endangers his life or physical or mental health; (b) cruelly confined or cruelly punished; (c) deprived of necessary food, clothing, shelter, or care; (d) left unattended in a motor vehicle, if such minor child is six years of age or younger; or (e) sexually abused; and

(4) Division shall mean the county division of public welfare.

Sec. 150. When any physician, medical institution, nurse, school employee, social worker, or any other person has reasonable cause to believe that a child or an incompetent or disabled person has been subjected to abuse or neglect, or observes such person being subjected to conditions or circumstances which reasonably would result in abuse or neglect, he shall report such incident or cause a report to be made to the proper law enforcement agency. Such report may be made orally by telephone, with the caller giving his name and address, and shall be followed by a written report, and to the extent available shall contain the address and age of the abused or neglected person, the address of the person or persons having custody of the abused or neglected person, the nature and extent of the abuse or neglect, or the conditions and circumstances which would reasonably result in such abuse or neglect, any evidence of previous abuse or neglect including the nature and extent, and any other information which in the opinion of the person may be helpful in establishing the cause of such abuse or neglect and the identity of the perpetrator or perpetrators.

Sec. 151. (1) Upon the receipt of a report concerning abuse or neglect as required by section 150 of this act, it shall be the duty of the law enforcement agency to make a determination as to whether or not an investigation should be made and if an investigation is deemed warranted because of alleged violations of sections 146 and 147 of this act to cause an investigation of the alleged abuse or neglect to be made, to take immediate steps to protect the abused or neglected person, and to institute legal proceedings if appropriate. All such reports shall be referred, whether an investigation is conducted or not, to the division not later than the next working day after the receipt of the report.

(2) When the law enforcement agency in any county of two hundred fifty thousand or more inhabitants shall receive a report concerning abuse or neglect pursuant to section 150 of this act, such law enforcement agency shall forward the report to the protective services unit of the county division of public welfare within one working day. The protective services unit shall forward all reports received directly by it to the appropriate law enforcement agency immediately upon receipt.

Sec. 152. (1) The division shall investigate each case of alleged abuse or neglect referred to it by a law enforcement agency and shall provide such social services as are necessary and appropriate under the circumstances to protect the abused or neglected person and preserve the family.

(2) The division may make a request for further assistance from the law enforcement agency or take such legal action as may be appropriate under the circumstances.

(3) The division shall make a written report or a case summary, as the Department of Public Welfare may require, to the proper law enforcement agency in the county and to the state Abused and Neglected Child, Incompetent and Disabled Person Registry of all reported cases of abuse or neglect and action taken with respect to all such cases on forms provided by the Department of Public Welfare.

Sec. 153. The privileged communication between patient and physician, and between husband and wife, shall not be a ground for excluding evidence in any judicial proceeding resulting from a report pursuant to sections 149 to 156 of this act.

Sec. 154. The Department of Public Welfare shall file each report of suspected abuse or neglect in a special state Abused or Neglected Child, Incompetent and Disabled Person Registry to be maintained in such department. Such files shall be confidential and access to any specific case shall be limited to a county attorney, juvenile court or county or state Director of Public Welfare in this or other states, to be used by them only for purposes connected directly with the protection of any child or incompetent or disabled person. Statistical information from such files, when not revealing names, may be released without limitation. Subject to such provisions, the records shall be maintained in accordance with regulations adopted by the Director of Public Welfare.

Sec. 155. Any person participating in an investigation or the making of a report pursuant to the provisions of sections 149 to 156 of this act or participating in a judicial proceeding resulting therefrom shall be immune from any liability, civil or criminal, that might otherwise be incurred or imposed, except for maliciously false statements.

Sec. 156. Any person who willfully fails to make any report required by the provisions of sections 149 to 156 of this act, or knowingly releases confidential information other than as provided by sections 149 to 156 of this act, shall be guilty of a Class III misdemeanor.

Article 8
Offenses Relating to Morals

Sec. 157. (1) Any person who performs, offers, or agrees to perform any act of sexual penetration, as defined in subdivision (5) of section 33 of this act, with any person not his spouse in exchange for money or other thing of value commits prostitution.

Any person violating this section shall be issued a citation in lieu of arrest pursuant to sections 29-422 to 29-430, Reissue Revised Statutes of Nebraska, 1943.

(2) Prostitution is a Class V misdemeanor.

Sec. 158. (1) A person commits pandering if such person:

(a) Entices another person to become a prostitute; or

(b) Procures or harbors therein an inmate for a house of prostitution or for any place where prostitution is practiced or allowed; or

(c) Inveigles, entices, persuades, encourages, or procures any person to come into or leave this state for the purpose of prostitution or debauchery; or

(d) Receives or gives or agrees to receive or give any money or other thing of value for procuring or attempting to procure any person to become a prostitute or commit an act of prostitution or come into this state or leave this state for the purpose of prostitution or debauchery.

(2) Pandering is a Class IV felony.

Sec. 159. (1) Any person referred to in section 158 of this act shall be a competent witness in any prosecution thereunder to testify to any and all matters, including conversation with the accused, or by the accused with third persons, in his presence, notwithstanding having married the accused either before or after the violation of any of the provisions of such section; and the act and state of marriage shall not be a defense to any violation of such section.

(2) Pandering shall be an exception to the husband-wife privilege as provided in section 25-505, Reissue Revised Statutes of Nebraska, 1943.

Sec. 160. (1) Any person who has or exercises control over the use of any place which offers seclusion or shelter for the practice of prostitution and who knowingly grants or permits the use of such place for the purpose of prostitution commits the offense of keeping a place of prostitution.

(2) Keeping a place of prostitution is a Class I misdemeanor.

Sec. 161. (1) Any person not a minor commits the offense of debauching a minor if he or she shall debauch or deprave the morals of any boy or girl under the age of seventeen years by:

(a) Lewdly inducing such boy or girl carnally to know any other person; or

(b) Soliciting any such boy or girl to visit a house of prostitution or other place where prostitution, debauchery, or other immoral practices are permitted or encouraged, for the purpose of prostitution or sexual penetration; or

(c) Arranging or assisting in arranging any meeting for such purpose between any such boy or girl and any female or male of dissolute character or any inmate of any place where prostitution, debauchery, or other immoral practices are permitted or encouraged; or

(d) Arranging or aiding or assisting in arranging any meeting between any such boy or girl and any other person for the purpose of sexual penetration.

(2) The penalty imposed by this section shall not be applicable to any person who is found to be a sexual sociopath. Any person found to be a sexual sociopath shall be treated as provided for in Chapter 29, article 29, Reissue Revised Statutes of Nebraska, 1943.

(3) Debauching a minor is a Class I misdemeanor.

Sec. 162. (1) A person, eighteen years of age or over, commits public indecency if such person performs or procures, or assists any other person to perform, in a public place and where the conduct may reasonably be expected to be viewed by members of the public:

(a) An act of sexual penetration; or

(b) An exposure of the genitals of the body done with intent to affront or alarm any person; or

(c) A lewd fondling or caressing of the body of another person of the same or opposite sex.

(2) Public indecency is a Class II misdemeanor.

Sec. 163. As used in sections 163 to 185 of this act, unless the context otherwise requires:

(1) Adult shall mean any married person or any unmarried person of the age of eighteen years or older;

(2) Distribute shall mean to transfer possession, whether with or without consideration, by any means;

(3) Disseminate shall mean to manufacture, issue, publish, sell, lend, distribute, transmit, exhibit, or present materials or to offer in person or through an agent or by placing an advertisement for the same, whether with or without consideration, or agree to do the same;

(4) Knowingly shall mean having general knowledge of, or reason to know, or a belief or reasonable ground for belief which warrants further inspection or inquiry or the character and content of any material, taken as a whole, described in this section, which is reasonably susceptible to examination by the defendant;

(5) Harmful to minors shall mean that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse, when it: (a) Predominantly appeals to the prurient, shameful, or morbid interest of minors, (b) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors, and (c) is lacking in serious literary, artistic, political, or scientific value for minors;

(6) Material or work shall mean any book or magazine, newspaper, comic book, pamphlet, or other printed or written material or any picture, drawing, photograph, figure, image, motion picture, whether or not positive or negative exhibited or screened, play, night club, or live performance, television production, other pictorial representation or electric reproduction, or any recording transcription, mechanical or otherwise, or any other articles, equipment, machines or materials;

(7) Minor shall mean any unmarried person under the age of eighteen years;

(8) Nudity shall mean the showing of the human, post-pubertal male or female genitals, pubic area or buttocks with less than a full opaque covering, or the depiction of covered male genitals in a discernibly turgid state, or the showing of the female breast with less than a full opaque covering of any portion thereof below the top of the nipple;

(9) Obscene shall mean (a) that an average person applying contemporary community standards would find that the work, material, conduct or live performance taken as a whole predominantly appeals to the prurient interest or a shameful or morbid interest in nudity, sex or excretion, (b) the work, material, conduct or live performance depicts or describes in a patently offensive way sexual conduct specifically set out in sections 163 to 185 of this act, and (c) the work, conduct, material or live performance taken as a whole lacks serious literary, artistic, political, or scientific value;

(10) Place shall mean any building, structure or place or any separate part or portion thereof or the ground itself;

(11) Person shall mean any individual, partnership, firm, association, corporation, trustee, lessee, agent, assignee, or other legal entity;

(12) Performance, whether with or without consideration, shall mean any play, motion picture, dance, or other exhibition performed before an audience;

(13) Promote shall mean to manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit or place an order for advertising, or to knowingly offer in person or through an agent or agree to do the same;

(14) Sexual conduct shall mean acts of masturbation, homosexuality, sodomy, sexual intercourse, or prolonged physical contact with a person's clothed or unclothed genitals, pubic area, or buttocks or, if such person be female, breast;

(15) Sexual excitement shall mean the condition of human male or female genitals when in a state of sexual stimulation or arousal; and

(16) Sadomasochistic abuse shall mean flagellation or torture by or upon a nude person or a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound, or otherwise physically restrained when performed to predominantly appeal to the shameful or morbid interest.

Sec. 164. It shall be unlawful for a person knowingly to sell, deliver, distribute, display for sale, or provide to a minor, or knowingly to possess with intent to sell, deliver, distribute, display for sale or provide to a minor:

(1) Any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image of a person or portion of the human body, or any replica, article or device having the appearance of either male or female genitals which predominantly pruriently, shamefully or morbidly depicts nudity, sexual conduct, sexual excitement or sadomasochistic abuse and which, taken as a whole, is harmful to minors; or

(2) Any book, pamphlet, magazine, printed matter however produced, or sound recording which contains any matter enumerated in subdivision (1) of this section, or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct, or sadomasochistic abuse, of a predominantly prurient, shameful, or morbid nature, and which, taken as a whole, is harmful to minors.

Sec. 165. It shall be unlawful for any person knowingly to exhibit to a minor or knowingly to provide to a minor an admission ticket or pass or knowingly to admit a minor to premises whereon there is exhibited a motion picture, show, or other presentation which, in whole or in part, predominantly pruriently, shamefully or morbidly depicts nudity, sexual conduct or sadomasochistic abuse and which, taken as a whole, is harmful to minors.

Sec. 166. It shall be a defense to a prosecution under sections 164 and 165 of this act that:

(1) Such person had reasonable cause to believe that the minor involved was eighteen years of age or more, and that such reasonable cause is based on but not limited to the presentation by the minor exhibited to such person of a draft card, driver's license, birth certificate, or other official or apparently official document purporting to establish that such minor was eighteen years of age or more;

(2) The minor was accompanied by his parent or guardian and such person had reasonable cause to believe that the person accompanying the minor was the parent or guardian of that minor;

(3) Such person had reasonable cause to believe that the person was the parent or guardian of the minor; and

(4) Such person's activity falls within the defenses to a prosecution contained in section 171 of this act.

Sec. 167. (1) It shall be unlawful for any minor to falsely represent to any person mentioned in section 164 or 165 of this act, or to his agent, that such minor is eighteen years of age or older, with the intent to procure any materials set forth in section 164 of this act, or with the intent to procure such minor's admission to any motion picture, show or other presentation as set forth in section 165 of this act.

(2) It shall be unlawful for any person to knowingly make a false representation to any person mentioned in section 164 or 165 of this act, or to his agent, that he is the parent or guardian of any minor, or that any minor is eighteen years of age, with the intent to procure any material set forth in section 164 of this act, or with the intent to procure such minor's admission to any motion picture, show or other presentation as set forth in section 165 of this act.

(3) It shall be unlawful for any person to hire as an employee a minor whose duties it will be to assist in any manner the sale, delivery, distribution, or exhibition of material declared obscene by sections 163 to 185 of this act; Provided, that this section shall not apply if such minor's parents or legal guardian should consent to such employment by giving the employer a written affidavit prior to the minor's employment.

Sec. 168. (1) Any person who violates section 164 or 165 of this act shall be guilty of a Class I misdemeanor.

(2) Any person who violates section 167 of this act shall be guilty of a Class II misdemeanor.

Sec. 169. (1) Any person who knowingly (a) prints, copies, manufactures, prepares, produces, or reproduces obscene material for purpose of sale or distribution, (b) publishes, circulates, sells, rents, lends, transports in intrastate commerce, or distributes or exhibits any obscene material, (c) has in his possession with intent to sell, rent, lend, transport, or distribute any obscene material, or (d) promotes any obscene material or performance shall be guilty of a Class I misdemeanor.

(2) Every person who places an order for any advertising promoting the sale or distribution of material represented or held out to be obscene, whether or not such material exists in fact or is obscene, shall be guilty of a Class I misdemeanor. In all cases in which a charge or violation of this section is brought against a person who cannot be found in this state, the executive authority of this state may demand extradition of such person from the executive authority of the state in which such person may be found.

(3) A person commits an offense of promoting obscene material if knowing its content and character he: (a) Disseminates for monetary consideration any obscene material; (b) produces, presents, or directs obscene performances for monetary consideration; or (c) participates for monetary consideration in that part of a performance which makes it obscene.

Sec. 170. (1) Criminal prosecutions involving the ultimate issue of obscenity, as distinguished from the issue of probable cause, shall be tried by jury, unless the defendant shall waive a jury trial in writing or by statement in open court entered in the minutes.

(2) The judge shall instruct the jury that the guidelines in determining whether a work, material, conduct, or live exhibition is obscene are: (a) The average person applying contemporary community standards would find the work taken as a whole goes substantially beyond contemporary limits of candor in description or presentation of such matters and predominantly appeals to the prurient, shameful, or morbid interest; (b) the work depicts in a patently offensive way sexual conduct specifically referred to in sections 163 to 185 of this act; (c) the work as a whole lacks serious literary, artistic, political, or scientific value; and (d) in applying these guidelines to the determination of whether or not the work, material, conduct or live exhibition is

obscene, each element of each guideline must be established beyond a reasonable doubt.

(3) In any proceeding, civil or criminal, under sections 163 to 185 of this act, where there is an issue as to whether or not the matter is obscene, either party shall have the right to introduce, in addition to all other relevant evidence, the testimony of expert witnesses on such issue as to any artistic, literary, scientific, political or other societal value in the determination of the issue of obscenity.

Sec. 171. It shall be a defense to a prosecution under section 169 of this act that:

(1) Such person's activity consists of teaching in regularly established and recognized educational institutions, galleries or libraries, or the publication or use of standard textbooks, films, tapes or visual aids of any such institution, or the practice of licensed practitioners of medicine or of pharmacy in their regular business or profession, or the possession by established schools teaching art, or by public art galleries, or artists or models in the necessary line of their art, or to relevant references to, or accounts or portrayal of, nudity, sex, or excretion in religion, art, literature, history, science, medicine, public health, law, the judicial process, law enforcement, education, public libraries, or news reports and news pictures by any form of news media of general circulation;

(2) Such person has no financial interest in an activity, product, or event entitling such person to participate in the promotion, management, proceeds, or profits of the activity, product, or event, and such person's only connection with the activity, product, or event entitles such person to a reasonable salary or wages for services actually rendered; and

(3) The provisions of sections 163 to 185 of this act with respect to the exhibition or the possession with the intent to exhibit of any obscene film shall not apply to a motion picture projectionist, usher, or ticket taker acting within the scope of his employment if such projectionist, usher, or ticket taker has no financial interest in the place wherein he is so employed. Such person shall be required to give testimony regarding such employment in all judicial proceedings brought under sections 163 to 185 of this act when granted immunity by the trial judge.

Sec. 172. Any city, village, or county, through its chief law enforcement officer in which a person, firm

or corporation violates or is about to violate sections 163 to 185 of this act or has in his or its possession with intent to so violate, or is about to acquire possession with intent to so violate, any work, material, conduct or live performance which is obscene or an instrument of obscene use, or purports to be for such use or purpose, may maintain an action in the district court against such person, firm or corporation for a declaratory judgment under the Uniform Declaratory Judgments Act for the purpose of obtaining a judicial determination as to whether or not such work, material, conduct or live performance is obscene.

Sec. 173. (1) The plaintiff, after the commencement of such action may, if he deems it necessary in order to prevent the continued use of such work, material, conduct or live performance, request a temporary restraining order or injunction against such person, firm or corporation to prevent the violation or further violation except as provided in this section.

(2) No other temporary restraining order or injunction shall issue in advance of final adjudication by the trial court in actions brought under the provisions of sections 172 to 174 of this act when the question of whether the work, material, conduct or live performance is obscene is in issue. If an injunction is requested, any party to the action shall be entitled to a trial of the issues within ten calendar days after service of the summons has been completed, and a decision shall be rendered by the court within two judicial days of the conclusion of the trial.

Sec. 174. If an order or judgment of injunction be entered, such order or judgment shall contain either a provision directing the person to surrender to the sheriff or police the work, material, conduct or live performance which has been adjudicated to be obscene for seizure and impoundment by the court or to destroy or remove the same from the state. No order or judgment directing such firm, person, corporation or other legal entity to destroy or to remove such work, material, conduct or live performance from the state under such supervision as the court may direct shall issue until after a final judgment has been made as the result of an appeal or in the absence of an appeal. The court shall require satisfactory proof of compliance with such order.

Sec. 175. Every person who sells, distributes, or acquires possession with intent to sell, exhibit, or distribute any of the work, material, conduct or live performance described in section 164 of this act, after service upon him of summons in such action, shall be

chargeable with knowledge of the contents thereof in any subsequent prosecution.

Sec. 176. Any person who exhibits, sells or distributes, or is about to exhibit, sell or distribute or has in his or its possession with intent to sell or distribute, or is about to acquire possession with intent to exhibit, sell or distribute, any work, material, conduct or live performance shall, if such person has genuine doubt as to the question of whether such work, material, conduct or live performance is in fact within the terms and provisions of sections 163 to 185 of this act, have the right to bring an action in the district court for declaratory judgment under the Uniform Declaratory Judgments Act against the appropriate chief law enforcement officer of the city, village or county in which the work, material, conduct or live performance is located or is intended to be disseminated, distributed, or exhibited, for a judicial determination as to whether or not such work, material, conduct or live performance is obscene. Any such action may be consolidated with a pending action brought under the provisions of sections 172 to 174 of this act, and the defendant in any action brought under this section may seek a declaratory judgment or request a temporary restraining order or an injunction therein in accordance with the provisions of sections 172 to 174 of this act.

Sec. 177. Any person who is convicted more than twice under sections 163 to 185 of this act and continues to use, occupy, establish or conduct a business selling, distributing, disseminating, or exhibiting any obscene work, material, conduct or live performance shall be deemed to be maintaining a nuisance and shall be enjoined as provided for in sections 163 to 185 of this act.

Sec. 178. Whenever a nuisance exists as provided for in sections 163 to 185 of this act, any city, village, or county, through its chief law enforcement officer, may bring an action in equity to abate such a nuisance and to perpetually enjoin the person maintaining the same from further maintenance thereof. If any person continues to use the building or place for such purpose he shall be punished as for contempt.

Sec. 179. The action provided for in section 177 of this act shall be brought in the district court of the county in which the act of nuisance is being conducted. After filing of the petition, application for a temporary injunction may be made to the district court or judge thereof who shall grant a hearing within ten calendar days after the filing.

When such application for temporary injunction is made, the court or judge thereof may, on application of the complainant, issue a restraining order as otherwise provided for in sections 25-1062 to 25-1080, Reissue Revised Statutes of Nebraska, 1943, restraining the defendant and all other persons from removing or in any manner interfering with the personal property and contents of the place where such nuisance is being conducted until the decision of the court or judge granting or refusing such temporary injunction and until the further order of the court thereon. The officers serving such restraining order shall forthwith make and return into court an inventory of the personal property and contents situated in and used in conducting or maintaining such nuisance and further violations of sections 163 to 185 of this act. The owner of any real or personal property closed or restrained or to be closed or restrained may appear between the filing of the complaint and the hearing on the application for permanent injunction, and upon payment of all costs incurred and upon the filing of a bond by the owner of the real property with sureties to be approved by the clerk of the district court in the full value of the property to be ascertained by the court, conditioned that such owner will immediately abate the nuisance and prevent the same from being established or kept until the decision of the court is rendered on the application for a permanent injunction, and the court, if satisfied with the good faith of the owner of the real property and of innocence on the part of the owner of the personal property of any knowledge of the use of such personal property as a nuisance and that, with reasonable care and diligence, such owner could not have known thereof, shall deliver such real or personal property, or both, to the respective owners thereof, and discharge or refrain from issuing at the time of the hearing on the application for the temporary injunction any order closing such real property or restraining the removal or interference with such personal property. The release of any real or personal property under this section shall not release it from any judgment, lien, penalty, or liability to which it may be subjected. In no event shall any work, material, conduct or live performance not adjudicated to be obscene under sections 163 to 185 of this act be enjoined.

Sec. 180. The action provided for in sections 163 to 185 of this act shall be set down for trial and shall have precedence over all other cases except crimes, election contests, or injunctions. In such action evidence of the general reputation of the place or an admission or finding of guilt of any person under the criminal laws of this state against obscenity at any such

place shall be admissible for the purpose of proving the existence of such nuisance and shall be prima facie evidence of such nuisance and of knowledge of and acquiescence and participation therein on the part of the person charged with maintaining such nuisance. If the existence of the nuisance is established upon the trial, a judgment shall be entered which shall perpetually enjoin the defendant or the same defendant acting directly or indirectly through other persons from further maintaining the nuisance at the place complained of or at any other location whether within or without the judicial district of the court hearing such proceedings for a period of three years.

Sec. 181. If the existence of a nuisance is admitted or established in an action as provided for in sections 163 to 185 of this act, an order of abatement shall be entered as a part of the judgment in the case, which order shall direct the removal from the place of all personal property and contents used in conducting the nuisance, and not already released under authority of the court as provided in section 179 of this act, and shall direct the sale of such thereof as belonging to the defendants notified or appearing in the manner provided for the sale of personal property under execution. Such order shall also require the renewal for one year of any bond furnished by the owner of the real property as provided for in sections 163 to 185 of this act or, if not so furnished, shall continue for one year any closing order issued at the time of the granting of the temporary injunction or, if no such closing order was then issued, shall include an order directing the effectual closing of the place against its use for any illegal purpose unless otherwise released. The owner of any place closed and not released under bond may then appear and obtain such release in the manner and upon fulfilling the requirements provided for in sections 163 to 185 of this act. The release of the property under this section shall not release it from any judgment, lien, penalty, or liability to which it may be subject. Owners of unsold personal property and contents so seized may appear and claim the same within ten days after such order of abatement is made and prove innocence to the satisfaction of the court of any knowledge of such use thereof and that with reasonable care and diligence they could not have known thereof. Every defendant in the action is presumed to have had knowledge of the general reputation of the place. If such innocence is established, such unsold personal property and contents shall be delivered to the owner, otherwise it shall be sold as provided in this section.

Sec. 182. If a tenant or occupant of a building or tenement under lawful title used such place for the purposes of committing a violation of sections 163 to 185 of this act, and if such tenant or occupant is convicted of such violation, such conviction shall make the lease or other title which he holds void at the option of the owner, and without any act of the owner, cause the right of possession to revert and vest in such owner, who may without further process of law make immediate entry upon the premises and retake possession.

Sec. 183. Obscene material or work introduced in evidence and judicially adjudicated to be obscene is contraband and there are no property rights therein. All monetary consideration received for such work, material, conduct or live performance is recoverable as damages to the county where sold or exhibited. The defendant, as part of the court order, shall be required to remove from the state all other identical copies owned or controlled by such defendant within five days after a court determination of obscenity thereof or the same shall be deemed forfeited to the state for destruction by the state.

Sec. 184. In any proceeding, civil or criminal under sections 163 to 185 of this act, the party charged with possession of any obscene material shall be required, upon application by petitioner and order of the court, to provide one copy of such material to petitioner to be used in the preparation and trial of such proceedings. Failure to comply with this section shall be punishable as contempt of court.

Sec. 185. In order to provide for the uniform application of sections 163 to 185 of this act within this state, it is intended that the sole and only regulation of the commercial distribution of any work, material, conduct or live performance described as obscene shall be under sections 163 to 185 of this act, and no municipality, county, or other governmental unit within this state shall make any law, ordinance or regulation relating to obscenity, or licenses or taxes respecting the obscene work, material, conduct or live performance as regulated by the state under sections 163 to 185 of this act. All such laws, ordinances, regulations, special or discriminatory taxes, or licenses, whether enacted or issued before or after sections 163 to 185 of this act, shall be void, unenforceable, and of no effect.

Article 9

Offenses Involving Integrity and Effectiveness of Government Operation

Sec. 186. (1) A person commits the offense of obstructing government operations if he intentionally obstructs, impairs, or perverts the administration of law or other governmental functions by force, violence, physical interference or obstacle, breach of official duty, or any other unlawful act, except that this section does not apply to flight by a person charged with crime, refusal to submit to arrest, failure to perform a legal duty other than an official duty, or any other means of avoiding compliance with law without affirmative interference with governmental functions.

(2) Obstructing government operations is a Class I misdemeanor.

Sec. 187. (1) Every person engaged in the practice of medicine and surgery, or who is in charge of any emergency room or first aid station in this state, shall report every case, in which he is consulted for treatment or treats a wound or injury of violence which appears to have been received in connection with the commission of a criminal offense, immediately to the chief of police of the municipality or to the sheriff of the county wherein the consultation or treatment occurs. Such report shall include the name of such person, the residence, if ascertainable, and a brief description of the injury. Any provision of law or rule of evidence relative to confidential communications is suspended insofar as the provisions of this section are concerned.

(2) Any person who fails to make the report required by subsection (1) of this section commits a Class III misdemeanor.

Sec. 188. (1) A person commits the offense of refusing to aid a peace officer if, upon request by a person known to him to be a peace officer, he unreasonably refuses or fails to aid such peace officer in:

(a) Apprehending any person charged with or convicted of any offense against any of the laws of this state; or

(b) Securing such offender when apprehended; or

(c) Conveying such offender to the jail of the county.

(2) Refusing to aid a peace officer is a Class II misdemeanor.

Sec. 189. (1) A person commits the offense of resisting arrest if, while intentionally preventing or attempting to prevent a peace officer, acting under color of his official authority, from effecting an arrest of the actor or another, he:

(a) Uses or threatens to use physical force or violence against the peace officer or another; or

(b) Uses any other means which creates a substantial risk of causing physical injury to the peace officer or another; or

(c) Employs means requiring substantial force to overcome resistance to effecting the arrest.

(2) It is an affirmative defense to prosecution under this section if the peace officer involved was out of uniform and did not identify himself as a peace officer by showing his credentials to the person whose arrest is attempted.

(3) Resisting arrest is a Class I misdemeanor.

(4) Resisting arrest through the use of a deadly or dangerous weapon is a Class IV felony.

Sec. 190. (1) Any person who operates any motor vehicle to flee in such vehicle in an effort to avoid arrest or citation for the violation of any law of the State of Nebraska or any city or village ordinance, commits the offense of operating a motor vehicle to avoid arrest.

(2) Operating a motor vehicle to avoid arrest is a Class I misdemeanor.

(3) The court may, as a part of the judgment of conviction under this section, order such person not to operate any motor vehicle for any purpose for a period of up to one year from the date of his release from imprisonment, or in the case of a fine only, for a period of one year from the date of satisfaction of the fine.

Sec. 191. (1) A person commits the offense of obstructing a peace officer, when, by using or threatening to use violence, force, physical interference, or obstacle, he intentionally obstructs, impairs, or hinders the enforcement of the penal law or the preservation of the peace by a peace officer or judge acting under color of his official authority.

(2) Obstructing a peace officer is a Class I misdemeanor.

Sec. 192. (1) A person commits the offense of false reporting if he:

(a) Furnishes information he knows to be false to any peace officer or other official with the intent to instigate an investigation of an alleged criminal matter or to impede the investigation of an actual criminal matter; or

(b) Furnishes information he knows to be false alleging the existence of an emergency in which human life or property are in jeopardy to any hospital, ambulance company, or other person or governmental agency which deals with emergencies involving danger to life or property; or

(c) Furnishes any information he knows to be false concerning the location of any explosive in any building or other property to any person.

(2) False reporting is a Class I misdemeanor.

Sec. 193. (1) A person commits the offense of interfering with a fireman if at any time and place where any fireman is discharging or attempting to discharge any official duties, he willfully:

(a) Resists or interferes with the lawful efforts of any fireman in the discharge or attempt to discharge an official duty; or

(b) Disobeys the lawful orders given by any fireman while performing his duties; or

(c) Engages in any disorderly conduct which delays or prevents a fire from being extinguished within a reasonable time; or

(d) Forbids or prevents others from assisting or extinguishing a fire or exhorts another person, as to whom he has no legal right or obligation to protect or control, not to assist in extinguishing a fire.

(2) As used in this section, fireman shall mean any person who is an officer, employee, or member of a fire department or fire-protection or firefighting agency of the federal government, the State of Nebraska, a city, county, city and county, district, or other public or municipal corporation or political subdivision of the state, whether such person is a volunteer or partly-paid

or fully-paid, while he is actually engaged in firefighting, fire supervision, fire suppression, fire prevention, or fire investigation.

(3) Interference with a fireman on official duty is a Class I misdemeanor.

Sec. 194. (1) Any person who shall knowingly falsify or direct or authorize the falsifying of any record of a public utility operating in the State of Nebraska in any manner affecting directly or indirectly the value of its investment or the rate of return or earnings or expenditures of such public utility or who shall certify any reports of the investment, operating receipts, or expenditures of such public utilities to any regulatory body, whether state or municipal, under any statute, order, resolution, or ordinance lawfully passed, knowing such reports so certified to contain any item or element of rebate, secret charge, bonus, or gratuity paid or promised to any officer, stockholder, agent, or other person, directly or indirectly, or knowing such report to be untrue or incomplete in any particular, without disclosing his information in such report, shall be guilty of falsifying records of a public utility.

(2) Falsifying records of a public utility is a Class I misdemeanor.

Sec. 195. (1) Any firm or corporation operating a public utility in this state which shall file with any regulatory body, whether state or municipal, under any statute, order, resolution, or ordinance lawfully passed, any report or reports containing false statements, knowing the same to be false, affecting directly or indirectly, the value of its investment or the rate of return or earnings or expenditures of such public utility shall be guilty of filing false reports with regulatory bodies.

(2) Filing false reports with regulatory bodies is a Class II misdemeanor.

Sec. 196. (1) A person commits abuse of public records, if:

(a) He knowingly makes a false entry in or falsely alters any public record; or

(b) Knowing he lacks the authority to do so, he intentionally destroys, mutilates, conceals, removes, or impairs the availability of any public record; or

(c) Knowing he lacks the authority to retain the record, he refuses to deliver up a public record in his possession upon proper request of any person lawfully entitled to receive such record; or

(d) He makes, presents, or uses any record, document, or thing, knowing it to be false, and with the intention that it be taken as a genuine part of the public record.

(2) As used in this section, the term public record includes all official books, papers, or records created, received, or used by or in any governmental office or agency.

(3) Abuse of public records is a Class II misdemeanor.

Sec. 197. (1) A person commits escape if he unlawfully removes himself from official detention or fails to return to official detention following temporary leave granted for a specific purpose or limited period. Official detention shall mean arrest, detention in or transportation to any facility for custody of persons under charge or conviction of crime or contempt or for persons alleged or found to be delinquent, detention for extradition or deportation, or any other detention for law enforcement purposes; but official detention does not include supervision of probation or parole or constraint incidental to release on bail.

(2) A public servant concerned in detention commits an offense if he knowingly permits an escape. Any person who knowingly causes or facilitates an escape commits a Class IV felony.

(3) Irregularity in bringing about or maintaining detention, or lack of jurisdiction of the committing or detaining authority shall not be a defense to prosecution under this section if the escape is from a prison or other custodial facility or from detention pursuant to commitment by official proceedings. In the case of other detentions, irregularity or lack of jurisdiction shall be a defense only if:

(a) The escape involved no substantial risk of harm to the person or property of anyone other than the detainee; and

(b) The detaining authority did not act in good faith under color of law.

(4) Except as provided in subsection (5) of this section, escape is a Class IV felony.

(5) Escape is a Class III felony where:

(a) The detainee was under arrest for or detained on a felony charge or following conviction for the commission of an offense; or

(b) The actor employs force, threat, deadly weapon, or other dangerous instrumentality to effect the escape; or

(c) A public servant concerned in detention of persons convicted of crime purposely facilitates or permits an escape from a detention facility or from transportation thereto.

Sec. 198. (1) A person commits an offense if he unlawfully introduces within a detention facility, or unlawfully provides an inmate with, any weapon, tool, or other thing which may be useful for escape. An inmate commits an offense if he unlawfully procures, makes, or otherwise provides himself with, or has in his possession, any such implement of escape. Unlawfully means surreptitiously or contrary to law, regulation, or order of the detaining authority.

(2) Introducing escape implements is a Class I misdemeanor.

Sec. 199. (1) Any person who loiters about any jail in this state and engages in an unauthorized conversation with or passes any unauthorized message or messages to any inmate of such jail, or fails or refuses to leave the immediate vicinity of any jail when ordered to do so by any peace officer, commits the offense of loitering about jail.

(2) Loitering about jail is a Class III misdemeanor.

Sec. 200. (1) A person commits perjury if, having given his oath or affirmation in any judicial proceeding or to any affidavit on undertakings, bonds, or recognizances or in any other matter where an oath or affirmation is required by law, he deposes, affirms or declares any matter to be fact, knowing the same to be false, or denies any matter to be fact, knowing the same to be true.

(2) A person commits subornation of perjury if he persuades, procures, or suborns any other person to

commit perjury.

(3) Perjury and subornation of perjury are Class III felonies.

Sec. 201. As used in sections 201 to 208 of this act, unless the context otherwise requires:

(1) Juror shall mean any person who is a member of any jury or grand jury, impaneled by any court of this state or by any public servant authorized by law to impanel a jury. The word juror also includes any person who has been drawn or summoned to attend as a prospective juror;

(2) Testimony shall mean oral or written statements, documents, or any other evidence that may be offered by or through a witness in an official proceeding; and

(3) Official proceeding shall mean a proceeding heard or which may be heard before any legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or deposition in connection with any such proceeding.

Sec. 202. (1) A person commits bribery if:

(a) He offers, confers, or agrees to confer any benefit upon a public servant or peace officer with the intent to influence that public servant or peace officer to violate his public duty, or oath of office, thereby influencing the public servant's or peace officer's vote, opinion, judgment, exercise of discretion, or other action or inaction in his official capacity; or

(b) While a public servant or peace officer, he solicits, accepts, or agrees to accept any benefit upon an agreement or understanding that he will violate his public duty or oath of office by changing or amending his vote, opinion, judgment, exercise of discretion, or other action or inaction as a public servant or peace officer.

(2) It is no defense to prosecution under this section that the person sought to be influenced was not qualified to act in the desired way, whether because he had not yet assumed office, lacked jurisdiction, or for any other reason.

(3) Bribery is a Class IV felony.

Sec. 203. (1) A person commits bribery of a witness if he offers, confers, or agrees to confer any benefit upon a witness or a person he believes is about to be called as a witness in any official proceeding with intent to:

(a) Influence him to testify falsely or unlawfully withhold any testimony; or

(b) Induce him to avoid legal process summoning him to testify; or

(c) Induce him to absent himself from an official proceeding to which he has been legally summoned.

(2) Bribery of a witness is a Class IV felony.

(3) A person who is a witness or has been called as a witness in any official proceeding commits a Class IV felony if he accepts or agrees to accept any benefit from any other person for the purposes set forth in subsection (1) of this section.

Sec. 204. (1) A person commits an offense if, believing that an official proceeding or investigation of a criminal matter is pending or about to be instituted, he attempts to induce or otherwise cause a witness, informant, or juror to:

(a) Testify or inform falsely; or

(b) Withhold any testimony, information, document, or thing; or

(c) Elude legal process summoning him to testify or supply evidence; or

(d) Absent himself from any proceeding or investigation to which he has been legally summoned.

(2) Tampering with witnesses, informants, and jurors is a Class IV felony.

Sec. 205. (1) A person commits bribery of a juror if he offers, confers, or agrees to confer any benefit upon a juror with intent to influence the juror's vote, opinion, decision, or other action as a juror.

(2) Bribery of a juror is a Class IV felony.

(3) A juror commits a Class IV felony if he accepts or agrees to accept any benefit from another person for the purpose of influencing his vote, opinion,

decision, or other action as a juror.

Sec. 206. (1) A person commits jury tampering if, with intent to influence a juror's vote, opinion, decision, or other action in a case, he attempts directly or indirectly to communicate with a juror other than as a part of the proceedings in the trial of the case.

(2) Jury tampering is a Class II misdemeanor.

Sec. 207. (1) A person commits the offense of tampering with physical evidence if, believing that an official proceeding is pending or about to be instituted and acting without legal right or authority, he:

(a) Destroys, mutilates, conceals, removes, or alters physical evidence with the intent to impair its verity or availability in the pending or prospective official proceeding; or

(b) Knowingly makes, presents, or offers any false physical evidence with intent that it be introduced in the pending or prospective official proceeding.

(2) Physical evidence, as used in this section, shall mean any article, object, document, record, or other thing of physical substance.

(3) Tampering with physical evidence is a Class IV felony.

Sec. 208. (1) A person commits the offense of simulating legal process if he sends, delivers, or mails or in any manner shall cause to be sent, delivered, or mailed, any paper or document simulating or intended to simulate a summons, complaint, writ, or other court process of any kind, to any person, firm, company, or corporation, for the purpose and intent of forcing payment of any alleged claim, debt, or legal obligation.

(2) Simulating legal process is a Class III misdemeanor.

Sec. 209. (1) A public servant commits official misconduct if he knowingly violates any statute or lawfully adopted rule or regulation relating to his official duties.

(2) Official misconduct is a Class II misdemeanor.

Sec. 210. (1) Any public servant, in contemplation of official action by himself or by a

governmental unit with which he is associated, or in reliance on information to which he has access in his official capacity and which has not been made public, commits misuse of official information if he:

(a) Acquires pecuniary interest in any property, transaction, or enterprise which may be effected by such information or official action; or

(b) Speculates or wagers on the basis of such information or official action; or

(c) Aids, advises, or encourages another to do any of the foregoing with intent to confer on any person a special pecuniary benefit.

(2) Misuse of official information is a Class III misdemeanor.

Sec. 211. (1) Any public servant or peace officer who, by color of or in the execution of his office, shall designedly, willfully, or corruptly injure, deceive, harm, or oppress any person, or shall attempt to injure, deceive, harm, or oppress any person, commits oppression under color of office, and shall be answerable to the party so injured, deceived, or harmed or oppressed in treble damages.

(2) Oppression under color of office is a Class II misdemeanor.

Sec. 212. (1) When any warrant legally issued by any magistrate in this state in any criminal case shall be delivered into the hands of any constable, sheriff, or other officer, to be executed, whose duty it shall be to execute such warrant, it is hereby made the duty of such constable, sheriff, or other officer to serve the same immediately, and if such constable, sheriff, or other officer shall neglect or delay to serve any such warrant, delivered to him as aforesaid, when in his power to serve the same, either alone or by calling upon assistance according to law, he commits the offense of neglecting to serve a warrant.

(2) Neglecting to serve a warrant is a Class II misdemeanor if the offense charged for which the warrant was issued is a felony.

(3) Neglecting to serve a warrant is a Class III misdemeanor, if the offense charged for which the warrant was issued is a misdemeanor.

(4) Any constable, sheriff, or other officer who is convicted under this section shall immediately forfeit his office.

Sec. 213. (1) A person commits the offense of mutilating a flag if such person intentionally casts contempt or ridicule upon a flag by mutilating, defacing, defiling, burning, or trampling upon such flag.

(2) Flag as used in this section shall mean any flag, ensign, banner, standard, colors, or replica or representation thereof which is an official or commonly recognized symbol of the United States or the State of Nebraska.

(3) Mutilation of a flag is a Class III misdemeanor.

Article 10
Offenses Against Public Peace,
Order, and Decency

Sec. 214. As used in section 215 of this act, unless the context otherwise requires:

(1) Animal shall mean a domesticated living creature and a wild living creature previously captured. Animal does not include an uncaptured wild creature or a wild creature whose capture was accomplished by conduct at issue under section 215 of this act;

(2) Cruel mistreatment shall mean every act or omission which causes, or unreasonably permits the continuation of, unnecessary or unjustifiable pain or suffering;

(3) Cruel neglect shall mean failure to provide food, water, protection from the elements, opportunity to exercise, or other care normal, usual, and proper for an animal's health and well-being; and

(4) Abandon shall mean the leaving of an animal by its owner or other person responsible for its care or custody without making effective provisions for its proper care.

Sec. 215. (1) A person commits cruelty to animals if, except as otherwise authorized by law, he intentionally or recklessly:

(a) Subjects any animal to cruel mistreatment; or

(b) Subjects any animal in his custody to cruel neglect; or

(c) Abandons any animal; or

(d) Kills or injures any animal belonging to another.

(2) Cruelty to animals is a Class II misdemeanor.

(3) Nothing in this section shall be construed to amend or in any manner change the authority of the Game and Parks Commission, as established in Chapter 37, Reissue Revised Statutes of Nebraska, 1943, and amendments thereto, or to prohibit any conduct therein authorized or permitted.

Sec. 216. (1) A person commits indecency with an animal when such person engages in sexual intercourse or deviant sexual conduct with an animal.

(2) Indecency with an animal is a Class III misdemeanor.

Article 11
Gambling

Sec. 217. As used in this article, unless the context otherwise requires:

(1) A person advances gambling activity if, acting other than as a player, he engages in conduct that materially aids any form of gambling activity. Conduct of this nature includes but shall not be limited to conduct directed toward (a) the creation or establishment of the particular game, contest, scheme, device, or activity involved, (b) the acquisition or maintenance of premises, paraphernalia, equipment, or apparatus therefor, (c) the solicitation or inducement of persons to participate therein, (d) the actual conduct of the playing phases thereof, (e) the arrangement of any of its financial or recording phases, or (f) any other phase of its operation. A person advances gambling activity if, having substantial proprietary control or other authoritative control over premises being used with his knowledge for purposes of gambling activity, he permits that activity to occur or continue or makes no effort to prevent its occurrence or continuation;

(2) Bookmaking shall mean advancing gambling activity by unlawfully accepting bets from members of the public as a business, upon the outcome of future contingent events;

(3) Contest of chance shall mean any contest, game, gaming scheme, or gaming device in which the outcome depends in a material degree upon an element of

chance, notwithstanding that skill of the contestants may also be a factor therein;

(4) A person engages in gambling if he stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under his control or influence, upon an agreement or understanding that he or someone else will receive something of value in the event of a certain outcome, but does not include:

(a) A lawful business transaction; or

(b) Playing an amusement device that confers only an immediate and unrecorded right of replay not exchangeable for value;

(5) Gambling device shall mean any device, machine, paraphernalia, or equipment that is used or usable in the playing phases of any gambling activity, whether that activity consists of gambling between persons or gambling by a person involving the playing of a machine. Lottery tickets and other items used in the playing phases of lottery schemes are not gambling devices within this definition;

(6) Lottery shall mean a gambling scheme in which (a) the players pay or agree to pay something of value for chances, represented and differentiated by numbers or by combinations of numbers or by some other medium, one or more of which chances are to be designated the winning ones, (b) the winning chances are to be determined by a drawing or by some other method based on an element of chance, and (c) the holders of the winning chances are to receive something of value;

(7) Mutuel shall mean a form of lottery in which the winning chances or plays are not determined upon the basis of a drawing or other act on the part of persons conducting or connected with the scheme, but upon the basis of the outcome of future contingent events otherwise unrelated to the particular scheme;

(8) Player shall mean a person over the age of majority who engages in gambling solely as a contestant or bettor. A person who engages in bookmaking as defined in subdivision (2) of this section is not a player;

(9) Private place shall mean a place to which the public does not have access;

(10) A person profits from gambling activity if, other than as a player, he accepts or receives money or other property pursuant to an agreement or understanding

with any person whereby he participates or is to participate in the proceeds of gambling activity; and

(11) Something of value shall mean any money or property, any token, object, or article exchangeable for money or property, or any form of credit or promise directly or indirectly contemplating transfer of money or property or of any interest therein, or involving extension of a service, entertainment, or a privilege of playing at a game or scheme without charge.

Sec. 218. (1) A person commits the offense of promoting gambling in the first degree if he knowingly advances or profits from unlawful gambling activity by:

(a) Engaging in bookmaking to the extent that he receives or accepts in any one day more than five bets totaling more than five hundred dollars; or

(b) Receiving, in connection with a lottery or mutuel scheme or enterprise, money or written records from a person other than a player whose chances or plays are represented by such money or records; or

(c) Receiving, in connection with a lottery, mutuel, or other gambling scheme or enterprise, more than five hundred dollars of money played in the scheme or enterprise in any one day.

(2) Promoting gambling in the first degree is a Class III felony.

Sec. 219. (1) A person commits the offense of promoting gambling in the second degree if he knowingly advances or profits from gambling activity.

(2) Promoting gambling in the second degree is a Class I misdemeanor.

Sec. 220. (1) A person commits the offense of promoting gambling in the third degree if he knowingly participates in gambling as a player.

(2) Promoting gambling in the third degree is a Class IV misdemeanor.

Sec. 221. (1) A person commits the offense of possession of gambling records in the first degree if, other than as a player, he knowingly possesses any writing, paper, instrument, or article which constitutes, reflects, or represents more than five bets totaling more than five hundred dollars, and which is:

(a) Of a kind commonly used in the operation or promotion of a bookmaking scheme or enterprise; or

(b) Of a kind commonly used in the operation, promotion, or playing of a lottery or mutuel scheme or enterprise.

(2) Possession of gambling records in the first degree is a Class IV felony.

Sec. 222. (1) A person commits the offense of possession of gambling records in the second degree if, other than as a player, he knowingly possesses any writing, paper, instrument, or article which is:

(a) Of a kind commonly used in the operation or promotion of a bookmaking scheme or enterprise; or

(b) Of a kind commonly used in the operation, promotion, or playing of a lottery or mutuel scheme or enterprise.

(2) Possession of gambling records in the second degree is a Class II misdemeanor.

Sec. 223. (1) A person commits the offense of possession of a gambling device if he manufactures, sells, transports, places, possesses, or conducts or negotiates any transaction affecting or designed to affect ownership, custody, or use of any gambling device, knowing that it shall be used in the advancement of unlawful gambling activity.

(2) Possession of a gambling device is a Class I misdemeanor.

Sec. 224. In any prosecution under section 221 or 222 of this act, it shall be an affirmative defense that the writing, paper, instrument, or article possessed by the defendant was neither used nor intended to be used in the advancement of an unlawful gambling activity.

Sec. 225. (1) Proof of possession of any gambling record specified in sections 221 and 222 of this act or of any gambling device shall be prima facie evidence of possession thereof with knowledge of its contents and character.

(2) In any prosecution under this article in which it is necessary to prove the occurrence of a sporting event, a published report of its occurrence in any daily newspaper, magazine, or other periodically printed publication of general circulation shall be

admissible in evidence and shall constitute prima facie evidence of the occurrence of the event.

Sec. 226. It shall be no defense to a prosecution under any provision of this article relating to a lottery that the lottery itself is drawn or conducted outside this state and is not in violation of the laws of the jurisdiction in which it is drawn or conducted.

Sec. 227. Any gambling device or gambling record possessed in violation of any provision of this article, or any money used as a bet or stake in gambling activity in violation of any provision of this article, shall be forfeited to the state.

Sec. 228. In any prosecution for an offense defined in this article, when the defendant's status as a player constitutes an excusing condition, the fact that the defendant was a player shall constitute an affirmative defense.

Sec. 229. Nothing in this article shall be construed to:

(1) Apply to or prohibit wagering on the results of horse races by the pari-mutuel or certificate method when conducted by licensees within the race track enclosure at licensed horse race meetings; or

(2) Prohibit or punish the playing of bingo when conducted by any licensee operating pursuant to sections 9-101 to 9-121, Reissue Revised Statutes of Nebraska, 1943, and amendments thereto.

Sec. 230. Any person engaged in a bona fide business, with an established place of business in this state or, in the case of a foreign corporation, with an established place of business in another state may, solely for the purpose of business promotion and not for profit to such person, conduct contests and lotteries in which prizes are offered and awarded to participants in such contests and lotteries when no fee is required for participation therein. Such contests and lotteries may require, as a condition of participation, evidence of purchase of a product or other property, but the price charged for such product or other property shall be no greater than it would be if no contest were involved.

Sec. 231. Any bona fide nonprofit organization whose primary activities are conducted for charitable and community betterment purposes may conduct lotteries, raffles, and gift enterprises when the proceeds of such

activities are used solely for charitable or community betterment purposes and the awarding of prizes to participants.

Sec. 232. Any county, city, or village may establish and conduct lotteries when the proceeds of such lotteries are used for community betterment purposes and the awarding of prizes to participants. No county, city, or village shall establish and conduct such a lottery until such course of action has been approved by a majority of the registered voters of such county, city, or village casting ballots on the issue at a regular election or a special election called for the purpose of considering such action.

Article 12

Offenses Against Public Health and Safety

Sec. 233. As used in sections 233 to 244 of this act, unless the context otherwise requires:

(1) Fugitive from justice shall mean any person who has fled or is fleeing from any peace officer to avoid prosecution or incarceration for a felony;

(2) Knife shall mean any dagger, dirk, knife, or stiletto with a blade over three and one half inches in length, or any other dangerous instrument capable of inflicting cutting, stabbing, or tearing wounds;

(3) Knuckles and brass or iron knuckles shall mean any instrument that consists of finger rings or guards made of a hard substance and that is designed, made, or adapted for the purpose of inflicting serious bodily injury or death by striking a person with a fist enclosed in the knuckles;

(4) Machine gun shall mean any firearm, whatever its size and usual designation, that shoots automatically more than one shot, without manual reloading, by a single function of the trigger;

(5) Short rifle shall mean a rifle having a barrel less than sixteen inches long or an overall length of less than twenty-six inches; and

(6) Short shotgun shall mean a shotgun having a barrel or barrels less than eighteen inches long or an overall length of less than twenty-six inches.

Sec. 234. (1) Except as provided in subsection (2) of this section, any person who carries a weapon or weapons concealed on or about his person such as a revolver, pistol, bowie knife, dirk or knife with a dirk

blade attachment, brass or iron knuckles, or any other deadly weapon, commits the offense of carrying concealed weapons.

(2) It shall be an affirmative defense that the defendant was engaged in any lawful business, calling or employment at the time he was carrying any weapon or weapons, and the circumstances in which such person was placed at the time were such as to justify a prudent person in carrying the weapon or weapons, for the defense of his person, property or family.

(3) Carrying concealed weapons is a Class IV felony.

Sec. 235. (1) Any person or persons who shall transport or possess any machine gun, short rifle, or short shotgun commits a Class IV felony.

(2) The provisions of this section shall not be held to prohibit any act by peace officers, members of the United States armed services, or enlisted men in the National Guard of this state, in the lawful discharge of their duties, or persons qualified under the provisions of federal law relating to the short rifle, short shotgun, or machine gun.

Sec. 236. (1) Any person under the age of eighteen years who possesses a pistol, revolver, or any other form of short-barreled hand firearm commits the offense of unlawful possession of a revolver.

(2) The provisions of this section shall not apply to the issuance of such firearms to members of the armed forces of the United States, active or reserve, state militia, or Reserve Officers Training Corps, when on duty or training, or to the temporary loan of pistols, revolvers, or any other form of short-barreled firearms for instruction under the immediate supervision of a parent or guardian or adult instructor.

(3) Unlawful possession of a revolver is a Class III misdemeanor.

Sec. 237. (1) Any person who uses a firearm, knife, brass or iron knuckles, or any other deadly weapon to commit any felony which may be prosecuted in a court of this state, or any person who unlawfully possesses a firearm, knife, brass or iron knuckles, or any other deadly weapon during the commission of any felony which may be prosecuted in a court of this state commits the offense of using firearms to commit a felony.

(2) Use of firearms to commit a felony is a Class III felony.

(3) The crime defined in this section shall be treated as a separate and distinct offense from the felony being committed, and sentences imposed under the provisions of this section shall be consecutive to any other sentence imposed.

Sec. 238. (1) Any person who possesses any firearm with a barrel less than eighteen inches in length or brass or iron knuckles and who has previously been convicted of a felony or who is a fugitive from justice commits the offense of possession of firearms by a fugitive from justice.

(2) Such felony conviction may have been had in any court in the United States, the several states, territories, or possessions, or the District of Columbia.

(3) Possession of firearms by a fugitive from justice or a felon is a Class IV felony.

Sec. 239. (1) Any person who knowingly possesses, receives, sells, or leases, other than by delivery to law enforcement officials, any firearm from which the manufacturer's identification mark or serial number has been removed, defaced, altered, or destroyed, commits the offense of possession of a defaced firearm.

(2) Possession of a defaced firearm is a Class IV felony.

Sec. 240. (1) Any person who intentionally removes, defaces, covers, alters, or destroys the manufacturer's identification mark or serial number or other distinguishing numbers on any firearm commits the offense of defacing a firearm.

(2) Defacing a firearm is a Class IV felony.

Sec. 241. (1) Any person who fails or neglects to register any gun or other device designed, adapted or used for projecting darts or other missiles containing tranquilizers or other chemicals or compounds which will produce unconsciousness or temporary disability in live animals, with the county sheriff of the county in which the owner of the gun or device resides, commits the offense of failure to register tranquilizer guns.

(2) Failure to register tranquilizer guns is a Class III misdemeanor.

Sec. 242. (1) Any person, partnership or corporation selling any gun or other device as described in section 241 of this act who fails to immediately notify the sheriff of the county of the sale and giving the name and address of the purchaser thereof and the make and number of the gun or device, commits the offense of failure to notify the sheriff of the sale of tranquilizer guns.

(2) The sheriff shall keep a record of such sale with the information furnished him.

(3) Failure to notify the sheriff of the sale of tranquilizer guns is a Class III misdemeanor.

Sec. 243. The State of Nebraska herewith permits its residents, not otherwise precluded by any applicable laws, to purchase, sell, trade, convey, deliver, or transport rifles, shotguns, ammunition, reloading components or firearm accessories in Nebraska and in states contiguous to Nebraska. This authorization is enacted to implement for this state the permissive firearms sales and delivery provisions in section 922 (b), (3) (A) of Public Law 90-618 of the 90th Congress, Second Session. In the event that presently enacted federal restrictions on the purchase of rifles, shotguns, ammunition, reloading components, or firearm accessories are repealed by the United States Congress or set aside by courts of competent jurisdiction, this section shall in no way be interpreted to prohibit or restrict the purchase of shotguns, rifles, ammunition, reloading components, or firearm accessories by residents of Nebraska otherwise competent to purchase same in contiguous or other states.

Sec. 244. The presence in a motor vehicle other than a public vehicle of any firearm or instrument referred to in section 235, 238, or 239 of this act shall be prima facie evidence that it is in the possession of, and is carried by, all persons occupying such motor vehicle at the time such firearm or instrument is found, except this section shall not be applicable if such firearm or instrument is found upon the person of one of the occupants therein.

Sec. 245. As used in sections 245 to 271 of this act, unless the context otherwise requires:

(1) Person shall mean any individual, corporation, company, association, firm, partnership, society, or joint stock company;

(2) Business enterprise shall mean any corporation, partnership, company, or joint stock company;

(3) Explosive materials shall mean explosives, blasting agents, and detonators;

(4) Explosives shall mean any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion, including but not limited to dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, ignited cord, and igniters, but shall not include permissible fireworks, as defined in section 273 of this act, gasoline, kerosene, naptha, turpentine, benzine, acetone, ethyl ether, benzol, fixed ammunition and primers for small arms, safety fuses, or matches;

(5) Blasting agent shall mean any material or mixture, consisting of fuel and oxidizer, intended for blasting, not otherwise defined as an explosive, but shall not include a finished product, ready for use or shipment, which cannot be detonated by means of a number eight test blasting cap when unconfined;

(6) Detonator shall mean any device containing a detonating charge that is used for initiating detonation in an explosive, including but not limited to electric blasting caps of instantaneous and delay types, blasting caps for use with safety fuses and detonating cord delay connectors;

(7) Destructive devices shall mean:

(a) Any explosive, incendiary, or poison gas (i) bomb, (ii) grenade, (iii) rocket having a propellant charge of more than four ounces, (iv) missile having an explosive or incendiary charge of more than one-quarter ounce, (v) mine, (vi) booby trap, (vii) Molotov cocktail, or (viii) any similar device, the primary or common purpose of which is to explode and to be used as a weapon against any person or property; or

(b) Any combination of parts either designed or intended for use in converting any device into a destructive device as defined in subdivision (7) (a) of this section from which a destructive device may be readily assembled. The term destructive device shall not include any device which is neither designed nor redesigned for use as a weapon to be used against person or property; any device, although originally designed for use as a weapon, which is redesigned for use as a

signaling, pyrotechnic, line throwing, safety, or similar device; surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of Section 4684(2), 4685, or 4686 of Title 10 of the United States Code; or any other device which the State Fire Marshal finds is not likely to be used as a weapon, or is an antique; or any other device possessed under circumstances negating an intent that the device be used as a weapon against any person or property;

(8) Federal permittee shall mean any lawful user of explosive materials who has obtained a federal user permit under the provisions of Chapter 40, Title 18, United States Code;

(9) Federal licensee shall mean any importer, manufacturer, or dealer in explosive materials who has obtained a federal importers', manufacturers' or dealers' license under the provisions of Chapter 40, Title 18, United States Code; and

(10) Smokeless propellants shall mean solid propellants commonly called smokeless powders in the trade and used in small arms ammunition.

Sec. 246. (1) Sections 245 to 271 of this act shall apply to persons engaged in the manufacture, ownership, possession, storage, use, transportation, purchase, sale, or gift of explosive materials, except as may be otherwise indicated herein.

(2) Sections 245 to 271 of this act shall not apply to explosive materials while being transported in conformity with federal law or regulations, nor, except as may be otherwise provided in such sections, to the ownership, possession, storage, use, transportation, purchase, or sale of explosive materials by the armed forces of the United States, the National Guard, other reserve components of the armed forces of the United States, and the duly constituted police and firefighting forces of the United States and of the state and its political subdivisions in the lawful discharge of their official duties.

Sec. 247. (1) Except as provided in subsection (2) of this section, any person who is ineligible to obtain a permit from the State Fire Marshal, who shall possess or store explosive materials, commits the offense of unlawful possession of explosive materials in the first degree.

(2) Subsection (1) of this section shall not be applicable to a federal licensee or permittee, or to any

person who has obtained a permit from the State Fire Marshal to store or use such explosive materials, or in the case of a business enterprise, a permit to purchase such explosive materials.

(3) Unlawful possession of explosive materials in the first degree is a Class IV felony.

Sec. 248. (1) Except as provided in subsection (2) of this section, any person who is eligible to obtain a permit from the State Fire Marshal, or had a valid educational, industrial, commercial, agricultural or other legitimate need for a permit, who shall possess or store explosive materials without such a permit, commits the offense of unlawful possession of explosive materials in the second degree.

(2) The exclusions provided in subsection (2) of section 247 of this act are also applicable to this section.

(3) Unlawful possession of explosive materials in the second degree is a Class I misdemeanor.

Sec. 249. (1) Any person who shall knowingly and intentionally sell, transfer, issue, or give any explosive materials to any person who does not display a valid permit issued by the State Fire Marshal authorizing the storage or use of such explosive materials, or in the case of a business enterprise, a permit to purchase such explosive materials or a federal license or permit, commits the offense of unlawful sale of explosives.

(2) Unlawful sale of explosives is a Class IV felony.

Sec. 250. (1) Any person who uses any explosive materials for any purpose whatsoever, unless such person has obtained a permit from the State Fire Marshal to use such explosive materials or uses such explosive materials under the supervision of a permitholder, commits the offense of use of explosives without a permit.

(2) Except as provided in subsection (3) of this section, use of explosives without a permit is a Class I misdemeanor.

(3) Upon a showing that the accused was eligible under existing regulations to receive a permit or had a valid educational, industrial, commercial, agricultural, or other legitimate need for a permit, use of explosives without a permit is a Class II misdemeanor.

(4) Any person under the direct and proximate supervision of a person possessing a permit to use explosive materials may also use explosive materials under such safety provisions as the State Fire Marshal may promulgate. Federal licensees and permittees shall obtain permits from the State Fire Marshal to use explosive materials.

Sec. 251. (1) Any person who knowingly withholds information or makes any false, fictitious, or misrepresented statement or furnishes or exhibits any false, fictitious, or misrepresented identification for the purpose of obtaining a permit or relief from disability under the provisions of sections 245 to 271 of this act or knowingly makes any false entry in a record which such person is required to keep pursuant to such sections or the regulations promulgated pursuant to such sections, commits the offense of obtaining a permit through false representations.

(2) Obtaining a permit through false representations is a Class IV felony.

Sec. 252. (1) Any person who has in his possession a destructive device, as defined in subdivision (7) of section 245 of this act, commits the offense of possession of a destructive device.

(2) A permit or license issued under any state or federal law to possess, own, use, distribute, sell, manufacture, store, or handle in any manner explosive materials shall not be a defense to the crime of possession of a destructive device as defined in this section.

(3) Possession of a destructive device is a Class IV felony.

Sec. 253. (1) Any person who conveys any threat or maliciously conveys to any other person false information knowing the same to be false, concerning an attempt or alleged attempt being made or to be made to kill, injure, or intimidate any individual or unlawfully to damage or destroy any building, vehicle, or other real or personal property by means of any explosive material or destructive device commits the offense of threatening the use of explosives.

(2) Threatening the use of explosives is a Class IV felony.

Sec. 254. (1) Any person who uses an explosive material or destructive device to commit any felony which

may be prosecuted in this state or who possesses an explosive during the commission of any felony which may be prosecuted in this state commits the offense of using explosives to commit a felony.

(2) Using explosives to commit a felony is a Class III felony.

(3) In the case of a second or subsequent conviction under this section, using explosives to commit a felony is a Class II felony.

Sec. 255. (1) Any person who, by means of an explosive material or destructive device, maliciously attempts to damage or destroy or does damage or destroy any building, structure, vehicle, or other real or personal property commits the offense of using explosives to damage or destroy property.

(2) Except as provided under subsection (3) or (4) of this section, using explosives to damage or destroy property is a Class III felony.

(3) If a personal injury results, using explosives to damage or destroy property is a Class II felony.

(4) If death results, using explosives to damage or destroy property shall be punished as for conviction of murder in the first degree.

Sec. 256. (1) Any person who uses explosive materials or destructive devices to intentionally kill, injure or intimidate any individual commits the offense of using explosives to kill or injure any person.

(2) Except as provided in subsection (3) or (4) of this section, using explosives to kill or injure any person is a Class III felony.

(3) If personal injury results, using explosives to kill or injure any person is a Class II felony.

(4) If death results, using explosives to kill or injure any person shall be punished as for conviction of murder in the first degree.

Sec. 257. (1) Any person who stores any explosive materials or uses in legitimate blasting operations any explosive materials in a manner not in conformity with safety regulations promulgated by the State Fire Marshal or the Secretary of the Treasury of the United States, or who stores any explosive materials

at a place not designated in a permit to store such explosive materials issued to such person by the State Fire Marshal commits the offense of storing explosives in violation of safety regulations.

(2) Storing explosives in violation of safety regulations is a Class III misdemeanor.

Sec. 258. (1) Any person who has knowledge of the theft or loss of explosive materials from his stock who fails to report such theft or loss within twenty-four hours of discovery to the State Fire Marshal commits the offense of failure to report theft of explosives.

(2) Failure to report theft of explosives is a Class III misdemeanor.

Sec. 259. With the exception of sections 245 to 258 of this act, any person who violates any other provision of sections 245 to 271 of this act or rules promulgated pursuant to such sections commits a Class III misdemeanor.

Sec. 260. The presence in a vehicle other than a public conveyance of any explosive material or destructive device shall be prima facie evidence that it is in the possession of all persons occupying such vehicle at the time such explosive material or destructive device is found, except that: (1) It such explosive material or destructive device is found upon the person of one of the occupants therein; or (2) if such explosive material or destructive device is found in a vehicle operated for hire by a driver in the due, lawful, and proper pursuit of his trade, then such presumption shall not apply to the driver. The presumption shall not apply to the occupants of a vehicle being operated in compliance with the requirements of section 257 of this act, if explosive material but no destructive device is found therein.

Sec. 261. (1) The State Fire Marshal shall have the authority to issue permits for:

(a) The storage of explosive materials;

(b) The use of explosive materials; and

(c) The purchase of explosive materials by business enterprises.

(2) The State Fire Marshal shall not issue a permit to store or use explosive materials to any person who:

(a) Is under nineteen years of age;

(b) Has been convicted in any court of a felony;

(c) Is charged with a felony;

(d) Is a fugitive from justice;

(e) Is an unlawful user of any depressant, stimulant, or narcotic drug;

(f) Has been admitted as a patient or inmate in a public or private institution for the treatment of mental or emotional disease or disorder within five years preceding the date of application; or

(g) Has no reasonable educational, industrial, commercial, agricultural, recreational, or other legitimate need for a permit to store or use explosive materials.

(3) Upon filing of a proper application and payment of the prescribed fee, and subject to the provisions of sections 245 to 271 of this act and other applicable laws, the State Fire Marshal shall issue to such applicant a permit to store explosive materials if:

(a) The applicant, including in the case of a corporation, partnership, or association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation, partnership, or association, is not a person to whom the State Fire Marshal is prohibited to issue a permit under subsection (2) of this section;

(b) The applicant has not willfully violated any of the provisions of sections 245 to 271 of this act or of Chapter 40, Title 18, United States Code; and

(c) The applicant has a place of storage for explosive materials which meets such standards of public safety, based on the class, type, and quantity of explosive materials to be stored, and security against theft as prescribed in regulations issued by the State Fire Marshal pursuant to sections 245 to 271 of this act and by the Secretary of the Treasury of the United States pursuant to Chapter 40, Title 18, United States Code.

(4) A permit for the storage of explosive materials shall specify the class, type, and quantity of explosive materials which are authorized to be stored. It shall also specify the type of security required. A permit for the storage of explosive materials shall be

valid for a period of one year unless a shorter period is specified in the permit.

(5) Upon filing of a proper application and payment of the prescribed fee, and subject to the provisions of sections 245 to 271 of this act and other applicable laws, the State Fire Marshal shall issue to such applicant a permit to use explosive materials if:

(a) The applicant is an individual to whom the State Fire Marshal is not prohibited to issue a permit under subsection (2) of this section;

(b) The applicant has not willfully violated any of the provisions of sections 245 to 271 of this act or of Chapter 40, Title 18, United States Code;

(c) The applicant has demonstrated and certified in writing that he is familiar with all published laws of this state and published local ordinances relating to the use of explosive materials applicable at the place or places he intends to use such explosive materials; and

(d) The applicant has demonstrated that he has adequate knowledge, training and experience in the use of explosive materials of the class and type for which he seeks a users permit and has passed a qualifying examination, as prescribed by the State Fire Marshal, concerning the use of such explosive materials.

(6) A permit for the use of explosive materials shall specify the class and type of explosive materials the permitholder is qualified to use. It shall be applicable to the permitholder and to any individual acting under his direct personal supervision. A permit may be issued for a single use of explosive materials, or, where the applicant is engaged or employed in a business requiring the frequent use of explosive materials, for a period of not more than two years.

(7) Upon filing of a proper application and payment of the prescribed fees and subject to the provisions of sections 245 to 271 of this act and other applicable laws, the State Fire Marshal shall issue to a business enterprise a permit to purchase explosive materials if:

(a) The business enterprise has a place of business in this state;

(b) No individual possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of the business enterprise is

a person to whom the State Fire Marshal is prohibited to issue a permit under subsection (2) of this section;

(c) An authorized officer of the business enterprise certifies that all explosive materials will be used on the date of purchase of such materials unless such business enterprise is in possession of a valid storage permit; and

(d) The business enterprise employs at least one employee having a valid use permit issued under this section.

(8) A permit for a business enterprise to purchase explosive materials shall specify the class and type of explosive materials which are authorized to be purchased. The class and type of explosive materials covered by such permit shall be the same as those specified in the use permit or permits issued to an employee or employees of the business enterprise. The permit may be issued for a period of up to two years, but shall become void if the business enterprise ceases to employ an individual having a valid use permit issued under this section for the class and type of explosive materials covered by the purchase permit of the business enterprise.

Sec. 262. Whenever the State Fire Marshal denies an application for a permit or the renewal thereof, the State Fire Marshal or his designated agent shall, within twenty days of such denial, give notice thereof and the reasons therefor in writing to the applicant, personally or by mail, to the address given in the application. The notice of denial shall also advise the applicant of his right to appeal, and set forth the steps necessary to undertake an appeal and the time limits pertaining thereto. Such denial may be appealed to the State Fire Marshal who shall follow the procedures for contested cases required by Chapter 84, article 9, Reissue Revised Statutes of Nebraska, 1943, and amendments thereto.

Sec. 263. (1) The State Fire Marshal may revoke any permit on any ground authorized in subsection (2) of section 261 of this act for the denial of a permit or for any violation of the terms of such permit, or for a violation of any provision of this article or of the rules of the State Fire Marshal, or for noncompliance with any order issued by the State Fire Marshal within the time specified in such order.

(2) Revocation of a permit for any ground authorized may be ordered only after giving written

notice and an opportunity to be heard to the holder thereof. Revocation proceedings shall be in accordance with the procedure required for contested cases, set forth in Chapter 84, article 9, Reissue Revised Statutes of Nebraska, 1943, and amendments thereto. Such notice may be given to the holder personally or by mail and shall specify the ground or grounds on which it is proposed to revoke the permit. When a permit is revoked, the State Fire Marshal may direct the disposition of the explosives held by such permittee. Upon revocation of a permit by the State Fire Marshal, the holder thereof shall surrender his permit to the State Fire Marshal at once or be subject to penalties as provided for elsewhere in sections 245 to 271 of this act.

Sec. 264. An application for a storage, use, or business enterprise purchase permit for explosive materials shall be in such form and contain such information as the State Fire Marshal shall by regulation prescribe. Each applicant for a permit shall pay a fee to be charged as set by the State Fire Marshal, but such fee shall not exceed twenty-five dollars in the case of a storage permit, five dollars in the case of a use permit, and five dollars in the case of a business enterprise purchase permit.

Sec. 265. (1) Every holder of any permit required under sections 245 to 271 of this act shall maintain an accurate inventory of all explosives in his possession and maintain records of transfers to other persons of explosive materials, such records to include a statement of intended use by the transferee, the name, date, place of birth, and social security number or taxpayer identification number, and place of residence of any natural person to whom the explosives are transferred. If the explosive materials are transferred to a corporation or other business entity, such records shall include the identity and principal and local places of business and the name, date, place of birth, and place of residence of the natural person acting as the agent of the corporation or other business entity in arranging the transfer. In the case of a federal licensee or permittee also a permitholder under the terms of sections 245 to 271 of this act, the maintenance of one set of records for the fulfilling of the record-keeping requirements of Chapter 40, Title 18, United States Code, shall be deemed compliance with the record-keeping requirements of sections 245 to 271 of this act.

(2) Every holder of any storage or business enterprise permit required under sections 245 to 271 of this act shall maintain a log describing the time, place, amount, and type of explosive used in any blasting

operations performed by him or at his direction.

Sec. 266. (1) Permitholders shall make available for inspection at all reasonable times their records kept pursuant to sections 245 to 271 of this act and the regulations issued pursuant to such sections. The State Fire Marshal may enter during business hours the premises, including places of storage, of any permitholder for the purpose of inspecting and examining (a) any records or documents required to be kept by such permitholder under the provisions of sections 245 to 271 of this act or the regulations issued pursuant to such sections, and (b) any explosive materials kept or stored by such permitholder at such premises.

(2) Holders of use permits and business enterprise purchase permits shall retain such permits and make them available to the State Fire Marshal on request. Storage permits shall be posted and kept available for inspection at all places of storage of explosive materials.

Sec. 267. No person shall transport any explosive materials into this state or within the boundaries of this state unless such person holds a permit as required by sections 245 to 271 of this act or a permit or license issued pursuant to Chapter 40, Title 18, United States Code; Provided, there is excepted from the provisions of this section common, contract, and private carriers transporting explosive materials in the lawful, ordinary course of business. Common carriers by air, highway, railway, or water transporting explosive materials into this state or within the boundaries of this state, and contract or private carriers by motor vehicle transporting explosive materials into this state or within the boundaries of this state, and which contract or private carriers are engaged in such business pursuant to certificate or permit by whatever name issued to them by any federal or state officer, agency, bureau, commission, or department shall be excepted from the provisions of this section, except as the State Fire Marshal by rule and regulation may otherwise provide. All transportation of explosive materials subject to the provisions of this section shall be in conformity with such safety regulations as the State Fire Marshal may promulgate.

Sec. 268. The State Fire Marshal may make rules supplemental to sections 245 to 271 of this act as he shall deem necessary or desirable to assure the public safety as well as to provide reasonable and adequate protection of the lives, health, and safety of persons employed in the manufacture, storage, transportation,

handling and use of explosives. The State Fire Marshal may prescribe such regulations as he may deem necessary and proper for the administration of sections 245 to 271 of this act.

Sec. 269. The provisions of sections 245 to 271 of this act and the rules adopted pursuant thereto shall be the minimum standard required and shall supersede any special law or local ordinance inconsistent therewith, and no local ordinance inconsistent therewith shall be adopted, but nothing herein contained shall prevent the enactment by local law or ordinance of additional requirements and restrictions.

Sec. 270. Any explosive materials or destructive devices involved in any violation of sections 245 to 271 of this act or any rule or regulation promulgated pursuant to such sections or in any violation of any other criminal law of this state shall be subject to seizure and disposition may be made in accordance with the method of disposition directed for contraband in section 29-820, Reissue Revised Statutes of Nebraska, 1943, whenever the seized matter results in a judicial civil or criminal action by or against any person or as the State Fire Marshal directs in the absence of such judicial action.

Sec. 271. In addition to the exceptions provided in sections 245 to 271 of this act, such sections shall not apply to:

(1) The use of explosive materials in medicines and medicinal agents in forms prescribed by the official United States Pharmacopoeia, or the National Formulary;

(2) The sale, transportation, shipment, receipt, or importation of explosive materials for delivery to any agency of the United States or to any state or political subdivision thereof;

(3) Small arms ammunition and components thereof;

(4) The storage or possession of or dealing in black powder used for recreation purposes by sportsmen;

(5) The storage or possession of or dealing in smokeless propellants, percussion caps, primers, and other components used by sportsmen in the reloading of small arms ammunition;

(6) Bona fide war trophies capable of exploding and innocently found explosive materials possessed under circumstances negating an intent to use the same

unlawfully, but the owner thereof shall surrender such items forthwith to any law enforcement officer or agency upon demand; and

(7) The storage in minimum amounts necessary for lawful educational purposes of explosive materials to be used in the natural science laboratories of any state accredited school system.

Sec. 272. (1) Any person, partnership, firm or corporation who shall load, unload, transport or cause to be transported over the public highways of this state anhydrous ammonia in a tank vehicle with a water gallon capacity of three thousand gallons or less, which will not withstand two hundred sixty-five pounds per square inch gauge pressure, or in a tank vehicle with a water gallon capacity of more than three thousand gallons which will not withstand two hundred sixty-five pounds per square inch gauge pressure and does not meet all the other requirements of the United States Department of Transportation Specifications MC 330 or MC 331, as amended and effective September 1, 1965; or any anhydrous ammonia railroad tank cars operated over the railroads of this state who fail to comply with all of the applicable requirements of the United States Department of Transportation in effect on December 25, 1969, commits the offense of unlawful transportation of anhydrous ammonia.

(2) Compliance with this section must be shown by an identification plate permanently affixed to a conspicuous place on each tank vehicle.

(3) Unlawful transportation of anhydrous ammonia is a Class II misdemeanor.

(4) Each day of a violation of this section shall constitute a separate offense, and any person, partnership, firm or corporation operating, loading or unloading a tank vehicle not in compliance with any of the provisions of this section shall be considered as a separate violator of this section.

Sec. 273. As used in sections 273 to 284 of this act, unless the context otherwise requires:

(1) Distributor shall mean any person engaged in the business of making sales of fireworks at wholesale in this state to any person engaged in the business of making sales of fireworks either as a jobber or as a retailer or both;

(2) Jobber shall mean any person engaged in the business of making sales of fireworks at wholesale to any other person engaged in the business of making sales at retail;

(3) Retailer shall mean any person engaged in the business of making sales of fireworks at retail to consumers or to persons other than distributors or jobbers;

(4) Sale shall include barter, exchange, or gift or offer therefor, and each such transaction made by any person, whether as principal, proprietor, agent, servant, or employee; and

(5) Permissible fireworks shall mean only sparklers, vesuvius fountains, spray fountains, torches, color fire cones, star and comet type color aerial shells without explosive charge for the purpose of making a noise, lady fingers, not to exceed seven-eighths of an inch in length or one-eighth inch in diameter, total pyrotechnic composition not to exceed one half grain each in weight, color wheels and any other fireworks approved under the provisions of section 279 of this act.

Sec. 274. (1) A person commits the offense of unlawful throwing of firecrackers if he throws any firecracker, or any object which explodes upon contact with another object, (a) from or into a motor vehicle; (b) onto any street, highway, or sidewalk; (c) at or near any person; (d) into any building; or (e) into or at any group of persons.

(2) Unlawful throwing of firecrackers is a Class III misdemeanor.

Sec. 275. (1) Any person, except as provided for in subsection (2) of this section, who shall use, sell, offer for sale, or keep for sale in this state any toy revolvers for shooting blank cartridges or blank cartridges for toy revolvers, commits the offense of unlawful sale of toy revolvers and blank cartridges.

(2) Caps containing dynamite may be used, kept for sale, or sold when needed for mining purposes, or for danger signals or for other necessary uses, and blank cartridges may be sold or used for ceremonial purposes, athletic or sporting events.

(3) Unlawful sale of toy revolvers and blank cartridges is a Class III misdemeanor.

Sec. 276. Except as provided in section 277 of this act, it shall be unlawful for any person to possess, sell, offer for sale, bring into this state, or discharge any fireworks other than permissible fireworks.

Sec. 277. The provisions of section 276 of this act shall not apply to:

(1) Any fireworks to be used for purposes of public exhibitions or displays and purchased from a licensed distributor or the holder of a display license to be issued by the State Fire Marshal upon payment of a fee of two hundred fifty dollars, which display license shall be good only for the calendar year in which issued and shall not authorize the holder to sell or hold for sale any permissible fireworks as defined in section 273 of this act or any firecrackers of any description, whether soft shell or hard shell; or

(2) Any public exhibition or display under the auspices of any governmental subdivision of this state, fair or agricultural society; or

(3) Any fireworks brought into this state for storage by a licensed distributor and held for sale outside of this state; or

(4) Any fireworks furnished for agricultural purposes pursuant to written authorization from the State Fire Marshal to any holder of a distributor's license; or

(5) Toy cap pistols or toy caps, each of which does not contain more than twenty-five hundredths of a grain of explosive material.

Sec. 278. (1) It shall be unlawful for any person to sell, hold for sale, or offer for sale as distributor, jobber, or retailer any fireworks in this state unless such person has first obtained a license as distributor, jobber, or retailer. Application for a license as distributor, jobber or retailer shall be made to the State Fire Marshal on forms to be prescribed by him. Each application shall be accompanied by the required fee, which shall be two hundred fifty dollars for a distributor's license, one hundred dollars for a jobber's license, and five dollars for a retailer's license. The license shall be good only for the calendar year in which issued and shall at all times be displayed at the place of business of the holder thereof.

(2) The funds received under the provisions of this section shall be deposited in the General Fund.

Sec. 279. Before any permissible fireworks may be sold, held for sale, or offered for sale in this state, they shall first be submitted to the State Fire Marshal for examination to determine their compliance with subdivision (5) of section 273 of this act and their safety for general use. Fireworks not specifically listed in subdivision (5) of section 273 of this act may be added to the list of permissible fireworks by the State Fire Marshal, by regulation, after having been submitted to him and tested to determine their safety for general use.

Sec. 280. (1) It shall be unlawful for any person not licensed as a distributor or as a jobber under the provisions of sections 273 to 284 of this act to bring any fireworks into this state.

(2) It shall be unlawful for any retailer or jobber in this state to sell any fireworks in this state which have not been purchased from a distributor licensed under the provisions of sections 273 to 284 of this act.

(3) Any person licensed under the provisions of sections 273 to 284 of this act shall keep, available for inspection by the State Fire Marshal or his agents, a copy of each invoice for fireworks purchased as long as any fireworks included on such invoice are held in his possession which invoice shall show the license number of the distributor or jobber from which the purchase was made.

Sec. 281. (1) It shall be unlawful to sell any permissible fireworks at retail within this state, outside the limits of any incorporated city or village.

(2) Permissible fireworks may be sold at retail only between June 24 and July 5 of each year.

Sec. 282. (1) Any person who violates any of the provisions of sections 276 to 281 of this act commits a Class III misdemeanor. If such person is a licensed distributor or jobber he shall be subject to the revocation of his license for a period of one year.

(2) It shall be unlawful for any person, association, partnership or corporation to have in his or its possession any fireworks in violation of any of the provisions of sections 276 to 281 of this act. If any person shall have in his possession any fireworks in violation of such sections, a warrant may be issued for the seizure of such fireworks and when the warrant is executed by the seizure of such fireworks, such fireworks shall be safely kept by the magistrate to be used as

evidence. Upon conviction of the offender, the fireworks shall be destroyed, but if the offender shall be discharged, the fireworks shall be returned to the person in whose possession they were found. Nothing in sections 276 to 281 of this act shall apply to the transportation of fireworks by regulated carriers.

Sec. 283. (1) It shall be unlawful for any person, association, partnership, or corporation to conduct fire alarm tests and fire alarm inspections without prior written certification by the State Fire Marshal as to the qualifications of such persons conducting such tests and inspections.

(2) The State Fire Marshal shall formulate reasonable guidelines to determine qualifications for fire alarm inspectors and shall administer an examination pursuant to such guidelines prior to certification of applicants.

(3) The State Fire Marshal may charge a fee to cover costs of administering such examinations not to exceed twenty-five dollars.

(4) Unlawful testing or inspection of fire alarms is a Class III misdemeanor.

Sec. 284. The State Fire Marshal shall adopt reasonable rules and regulations for the enforcement of sections 273 to 284 of this act and, together with all peace officers of the state and its political subdivisions, shall be charged with the enforcement of the provisions of sections 276 to 281 of this act.

Article 13

Miscellaneous Offenses

Sec. 285. (1) Except as provided in subsection (2) of this section, a person commits the offense of removing, abandoning, or concealing a dead human body if he:

(a) Shall dig up, disinter, remove, or carry away from its place of deposit or burial any dead human body or the remains thereof or shall attempt to do the same or shall assist, incite, or procure the same to be done;

(b) Throws away or abandons any dead human body, or any portion thereof, in any place other than a regular place for burial and under a proper death certificate issued under either section 71-182, Reissue Revised Statutes of Nebraska, 1943, or section 71-605, Revised Statutes Supplement, 1976; or

(c) Receives, conceals or disposes of any dead human body, or the remains thereof, knowing or having reason to know that the same had been dug up, disinterred or removed from its place of deposit or burial or has not been reported in a proper death certificate issued under either section 71-182, Reissue Revised Statutes of Nebraska, 1943, or section 71-605, Revised Statutes Supplement, 1976, attempts to do the same, or aids, incites, assists, or encourages the same to be done.

(2) The above-mentioned acts shall not apply to the bodies authorized to be surrendered for purposes of dissection as provided by law; nor shall they apply to the body of any person directed to be delivered up, by competent authority for purposes of dissection; nor shall they apply to nor be construed to prevent the officers of any lawfully constituted cemetery, while acting under the direction of its board of trustees, from removing any body or the remains thereof from one place of burial in said cemetery to another place in the same cemetery when disinterment and reinterment permits are secured and return made thereof as prescribed in section 71-605, Revised Statutes Supplement, 1976; nor shall they apply to nor be construed to prevent any person or persons from removing the bodies or remains thereof of their relatives or intimate friends, from one place of burial to another; Provided, that in case such last-mentioned burial had been in any lawfully constituted cemetery, consent for such removal shall be obtained from the lawfully constituted authority thereof, and permits for disinterment and reinterment are secured and return made thereof as prescribed in section 71-605, Revised Statutes Supplement, 1976.

(3) Removal, concealment, or abandonment of dead human bodies is a Class I misdemeanor.

Sec. 286. Any person who conceals the death of another person and thereby prevents a determination of the cause or circumstances of death commits a Class I misdemeanor.

Sec. 287. Whoever shall build, erect, continue or keep up any dam or other obstruction in any river or stream of water in this state and thereby raise an artificial pond, or produce stagnant waters, which shall be manifestly injurious to the public health and safety, shall be guilty of a Class III misdemeanor and the court shall, moreover, order every such nuisance to be abated or removed.

Sec. 288. Whoever shall put any dead animal, carcass or part thereof, or other filthy substance, into

any well, or into any spring, brook or branch of running water, of which use is made for domestic purposes, shall be guilty of a Class IV misdemeanor.

Sec. 289. Whoever shall put the carcass of any dead animal or the offals from any slaughter house or butcher's establishment, packing house or fish house, or any spoiled meats or spoiled fish or any putrid animal substance or the contents of any privy vault upon or into any river, bay, creek, pond, canal, road, street, alley, lot, field, meadow, public ground, market space, or common; or whoever, being the owner or owners, occupant or occupants thereof, shall knowingly permit the same to remain in any of the aforesaid situations, to the annoyance of the citizens of this state, or any of them, or shall neglect or refuse to remove or abate the nuisance occasioned thereby, within twenty-four hours after knowledge of the existence of such nuisance upon any of the above described premises owned or occupied by him, her or them, or after notice thereof in writing from the street commissioner, supervisor, constable, or any trustee or health officer of any city or precinct in which such nuisance shall exist, shall be guilty of a Class V misdemeanor. If the nuisance be not abated within twenty-four hours thereafter, it shall be deemed a second offense against the provisions of this section, and every like neglect of each twenty-four hours thereafter shall be considered an additional offense.

Sec. 290. It shall be unlawful for any railroad company operating its road in this state to bring or cause to be brought into this state from an adjoining state any empty car used for transporting hogs or sheep, or any empty combination car used for carrying grain and stock that has any filth of any kind whatever in the same; but such railroad company shall, before it allows such car or cars to pass into the state, cause the same to be thoroughly cleaned. Any person or persons or corporation violating any provision of this section shall be guilty of a Class V misdemeanor.

Sec. 291. It shall be unlawful for any person to sell or offer for sale the flesh of a diseased animal, whether such animal shall have died of disease or shall have been butchered when in a diseased condition. Any person violating the provisions of this section shall be guilty of a Class IV felony.

Sec. 292. (1) It is hereby declared unlawful for any person to water livestock at any watering trough or tanks belonging to any private owner without the consent of such owner, but this section shall not apply to livestock in transportation on railroads nor to

livestock delivered into any stockyards nor to livestock in holding pens awaiting slaughter.

(2) Violation of this section is a Class V misdemeanor.

Sec. 293. (1) A person commits the offense of refusing to yield a party line if he willfully refuses to relinquish a telephone party line, consisting of a subscriber line telephone circuit with two or more main telephone stations connected therewith, each having a distinctive ring or telephone number, after he has been requested to do so to permit another to place a call, in an emergency in which property or human life is in jeopardy and the prompt summoning of aid is essential, unless such party line is already being used for another such emergency call, or willfully interferes with such an emergency message, or requests the use of such a party line by falsely stating that the same is needed for any such purpose, knowing the statement to be false.

(2) Refusal to yield a party line is a Class III misdemeanor.

Sec. 294. (1) A person commits the offense of intimidation by phone call if with intent to terrify, intimidate, threaten, harass, annoy, or offend, he:

(a) Telephones another anonymously, whether or not conversation ensues, and disturbs the peace, quiet, and right of privacy of any person at the place where the calls are received; or

(b) Telephones another and uses indecent, lewd, lascivious, or obscene language or suggests any indecent, lewd, or lascivious act; or

(c) Telephones another and threatens to inflict injury to any person or to the property of any person; or

(d) Intentionally fails to disengage the connection; or

(e) Telephones another and attempts to extort money or other thing of value from any person.

(2) The use of indecent, lewd, or obscene language or the making of a threat or lewd suggestion shall be prima facie evidence of intent to terrify, intimidate, threaten, harass, annoy, or offend.

(3) The offense shall be deemed to have been committed either at the place where the call was made or

where it was received.

(4) Intimidation by phone call is a Class III misdemeanor.

Sec. 295. (1) A person commits the offense of interfering with a public service company if he willfully and purposely interrupts or interferes with the transmission of telegraph or telephone messages or the transmission of light, heat and power in this state.

(2) Interference with public service companies is a Class II misdemeanor.

Sec. 296. (1) Police radio set shall mean any radio set or apparatus capable of either receiving or transmitting radio frequency signals within the wavelength or channel now or which may hereafter be allocated by the Federal Communications Commission for the police radio service.

(2) A person commits the offense of interfering with the police radio system if he has in his possession or in any motor vehicle or equips or installs in or on any motor vehicle, any police radio set which:

(a) In any way intentionally interferes with the transmission or reception of radio messages by any law enforcement agency and hinders any such agency in fulfillment of its duties; or

(b) Intercepts such radio signals to evade or assist others in evading arrest; or

(c) Results in the use of such communication for monetary or personal gain.

(3) The provisions of subsection (2) of this section shall not apply to:

(a) Peace officers and members of a law enforcement agency which regularly maintains a police radio system authorized and licensed by the Federal Communications Commission;

(b) Any person who has permission in writing from the head of a law enforcement agency to possess and use any radio set or apparatus capable of receiving messages or signals within the wavelength or channel assigned to the agency granting the permission; or

(c) Legal newspapers as defined in section 25-523, Reissue Revised Statutes of Nebraska, 1943, or

radio, television or cable antenna television stations licensed pursuant to law, monitoring messages of signals for news purposes only without rebroadcasting or republishing verbatim.

(4) Interfering with the police radio system is a Class I misdemeanor.

(5) It shall be the duty of any and all peace officers to seize and hold for evidence any and all equipment possessed or used in violation of this section, and upon conviction of the person possessing or using such equipment, the court shall order such equipment destroyed or forfeited to the State of Nebraska.

Sec. 297. (1) A person commits unlawfully using a white cane or guide dog if he is not blind as defined by law and carries, displays, or otherwise makes use of a white cane or guide dog.

(2) Such use of a white cane or the use of a guide dog by a person shall be officially recognized as an indication that the bearer is blind.

(3) Unlawful use of a white cane or guide dog is a Class III misdemeanor.

Sec. 298. (1) A person commits the offense of failing to observe a blind person if as an operator of any vehicle or other conveyance, he fails to:

(a) Give special consideration to the bearer of a white cane or user of a guide dog; and

(b) Stop and remain when approaching such bearer until such time as the bearer has safely reached a position well outside the course normally used by the operator of the vehicle or other conveyance.

(2) Failure to observe a blind person is a Class III misdemeanor.

Sec. 299. As used in section 300 of this act, unless the context otherwise requires:

(1) Change key shall mean a key planned and cut to operate a specific lock;

(2) Try-out key shall mean a key which may or may not be one of a set of similar keys, each key made to operate a series or group of a total series of locks, the key or keys being constructed to take advantage of unplanned construction similarities in the series or

group of locks;

(3) Wiggle key or manipulation key shall mean a material device which may be variably positioned or manipulated in a lock's keyway until such action develops a condition within the lock which enables the lock to be operated. Wiggle keys or manipulation keys may or may not resemble normally-used keys;

(4) Master key shall mean a key planned and cut to operate all locks in a series or group of locks, each lock having its own key other than the master key for that individual lock only, and each lock constructed as a part of the series or group for operation with the master key. For the purpose of section 300 of this act, submaster keys, grand master keys, great grand master keys, emergency keys, and over-riding keys are to be considered as master keys;

(5) Keyed alike locks shall mean a series or group of locks designed and constructed to be operated with the same change key;

(6) Locksmith shall mean a person dealing in the mechanical action and the correct operation of all types of locks and cylinder devices, whose trade or occupation is primarily repairing, opening or closing such locks or devices by mechanical means other than the key designed for that particular mechanism without altering, marring, or destroying the original condition or effectiveness of such mechanism; and

(7) Key master or key cutter shall mean a person other than a locksmith, whose primary and only function is the cutting and duplicating of keys.

Sec. 300. (1) A person commits the offense of unlawful use of locks and keys if he:

(a) Sells, offers to sell, or gives to any person other than a law enforcement agency, dealer licensed under the provisions of Chapter 60, article 14, Reissue Revised Statutes of Nebraska, 1943, and amendments thereto, motor vehicle manufacturer, or person regularly carrying on the profession of a locksmith any try-out key, manipulation key, wiggle key, or any other device designed to be used in place of the normal change key of any motor vehicle; or

(b) Has in his possession any try-out key, wiggle key, manipulation key, or any other device designed to be used in place of the normal change key of any motor vehicle unless he is a locksmith, locksmith manufacturer,

dealer licensed under the provisions of Chapter 60, article 14, Reissue Revised Statutes of Nebraska, 1943, and amendments thereto, motor vehicle manufacturer, or law enforcement agency; or

(c) Duplicates a master key for anyone unless written permission has been granted by the person who has legal control of the master key. All master keys shall be stamped with the words DO NOT DUPLICATE. All duplications of master keys shall also be stamped with the words DO NOT DUPLICATE.

(2) Nothing in subsection (1) of this section shall be construed to make it unlawful if:

(a) The owner of two or more vehicles possesses a change key that can be used on two or more vehicles that he owns; or

(b) Such owner changes the locks on such vehicle so that they are keyed alike; or

(c) Any person makes or duplicates the original change keys for such an owner; or

(d) Anyone stamps any other type of key with the words DO NOT DUPLICATE.

(3) Unlawful use of locks and keys is a Class III misdemeanor.

Sec. 301. (1) A person commits the offense of unlawful picketing if, either singly or by conspiring with others, he interferes, or attempts to interfere, with any other person in the exercise of his or her lawful right to work, or right to enter upon or pursue any lawful employment he or she may desire, in any lawful occupation, self-employment, or business carried on in this state, by

(a) Using threatening language toward such person or any member of his or her immediate family, or in his, her or their presence or hearing, for the purpose of inducing or influencing, or attempting to induce or influence, such person to quit his or her employment, or to refrain from seeking or freely entering into employment, or by persisting in talking to or communicating in any manner with such person or members of his or her immediate family against his, her or their will, for such purpose; or

(b) Following or intercepting such person from or to his work, from or to his home or lodging, or about the

city, against the will of such person, for such purpose; or

(c) Menacing, threatening, coercing, intimidating, or frightening in any manner such person for such purpose; or

(d) Committing an assault upon such person for such purpose; or

(e) Picketing or patrolling the place of residence of such person, or any street, alley, road, highway, or any other place, where such person may be, or in the vicinity thereof, for such purpose, against the will of such person.

(2) Unlawful picketing is a Class III misdemeanor. Each violation shall constitute a separate offense.

Sec. 302. (1) Mass picketing shall mean any form of picketing in which there are more than two pickets at any one time within either fifty feet of any entrance to the premises being picketed or within fifty feet of any other picket or pickets, or in which pickets constitute an obstacle to the free ingress and egress to and from the premises being picketed or any other premises, or upon the public roads, streets, or highways, either by obstructing by their persons or by the placing of vehicles or other physical obstructions.

(2) A person commits the offense of mass picketing if singly or in concert with others, he engages in or aids and abets any form of picketing activity that shall constitute mass picketing as defined in subsection (1) of this section.

(3) Mass picketing is a Class III misdemeanor. Each violation shall constitute a separate offense.

(4) Any person who shall legally picket by any means or methods other than those forbidden in this section or in section 301 of this act shall visibly display on his or her person a sign showing the name of the protesting organization he or she represents. The composition of the sign shall be upper case lettering of not less than two and one half inches in height.

Sec. 303. (1) A person commits the offense of interfering with picketing if, acting separately or with others, he interferes with any picketing not described as mass picketing in section 302 of this act, except that this provision shall not apply to duly qualified peace

officers or to court action.

(2) Interfering with picketing is a Class III misdemeanor. Each violation shall constitute a separate offense.

Sec. 304. (1) A person commits the offense of intimidating pickets if he intimidates or attempts to intimidate any striker by threat of the loss of any right or condition of employment, that directly or indirectly would affect the lawful conduct of said striker in any way.

(2) Intimidation of pickets is a Class III misdemeanor. Each violation shall constitute a separate offense.

Sec. 305. (1) A person commits the offense of maintaining a nuisance if he erects, keeps up or continues and maintains any nuisance to the injury of any part of the citizens of this state.

(2) The erecting, continuing, using, or maintaining of any building, structure, or other place for the exercise of any trade, employment, manufacture, or other business which, by occasioning noxious exhalations, noisome or offensive smells, becomes injurious and dangerous to the health, comfort, or property of individuals or the public; the obstructing or impeding, without legal authority, of the passage of any navigable river, harbor, or collection of water; or the corrupting or rendering unwholesome or impure of any watercourse, stream, or water; or unlawfully diverting any such watercourse from its natural course or state to the injury or prejudice of others; and the obstructing or encumbering by fences, building, structures or otherwise of any of the public highways or streets or alleys of any city or village, shall be deemed nuisances.

(3) A person guilty of erecting, continuing, using, maintaining or causing any such nuisance shall be guilty of a violation of this section, and in every such case the offense shall be construed and held to have been committed in any county whose inhabitants are or have been injured or aggrieved thereby.

(4) Maintenance of nuisances is a Class III misdemeanor.

(5) The court, in case of conviction of such offense, shall order every such nuisance to be abated or removed.

Sec. 306. (1) Any person who shall intentionally disturb the peace and quiet of any person, family, or neighborhood commits the offense of disturbing the peace.

(2) Disturbing the peace is a Class III misdemeanor.

Sec. 307. Unless exempt under section 309 of this act, it is unlawful for any person, firm, partnership, corporation, or association knowingly to (1) transfer or cause to be transferred any sounds recorded on a phonograph record, disc, wire, tape, film, or other article on which sounds are recorded onto any other phonograph record, disc, wire, tape, film, or other article, or (2) sell, distribute, circulate, offer for sale, distribution or circulation, possess for the purpose of sale, distribution or circulation, or cause to be sold, distributed or circulated, offered for sale, distribution or circulation, or possessed for sale, distribution or circulation, any article or device on which sounds have been transferred without the consent of the person who owns the master phonograph record, master disc, master tape, master wire, master film, or other article from which the sounds are derived.

Sec. 308. It is unlawful for any person, firm, partnership, corporation, or association to sell, distribute, circulate, offer for sale, distribution or circulation, or possess for the purpose of sale, distribution or circulation, any phonograph record, disc, wire, tape, film, or other article on which sounds have been transferred unless such phonograph record, disc, wire, tape, film, or other article bears the actual name and address of the transferor of the sounds in a prominent place on its outside face or package.

Sec. 309. Sections 307 to 310 of this act do not apply to any person who transfers or causes to be transferred any sounds (1) intended for or in connection with radio or television broadcast transmission or related uses, (2) for archival purposes, (3) solely for the personal use of the person transferring or causing the transfer and without any compensation being derived by the person from the transfer, or (4) intended for use by an educational institution, school, or other person for instructional or educational uses.

Sec. 310. Any person violating the provisions of section 307 or 308 of this act shall be guilty of a Class II misdemeanor.

Sec. 311. Whereas smoking of tobacco in any form is dangerous to the health and welfare of each person, and whereas such smoking if done in any hospital patient room or patient area, elevator, indoor theater, library, art museum, concert hall, or bus which is used by or open to the public is harmful to the public health, smoking of tobacco in any form in any area specified in this section is prohibited, except that such prohibition shall not apply in any area designated as a smoking area. Each owner or proprietor of a building shall post in a conspicuous place in each elevator a notice that it is a violation of state law to smoke in such elevator. For the purposes of this section, smoking shall mean the inhaling, exhaling, or carrying of a lighted cigar, cigarette, pipe, or any other smoking materials.

Sec. 312. Any person who shall violate the provisions of section 311 of this act shall be guilty of a Class III misdemeanor.

Sec. 313. As used in sections 313 to 318 of this act, unless the context otherwise requires:

(1) Receptacle shall mean not only bottles, siphons, tins, kegs, one-eighth barrels, quarter barrels, half barrels, barrels, boxes, ice cream cabinets, cans and tubs, but all other receptacles used for holding any of the commodities in the sections mentioned; and

(2) Requirement for a written transfer, bill of sale, authority, or consent shall mean that it shall be signed by the person named in the certificate issued by the Secretary of State as provided in such sections, or by a transferee claiming under a written transfer signed by such person, or by an agent whose authority is in writing signed by such person or such transferee.

Sec. 314. Any person engaged in manufacturing, bottling or selling soda waters, mineral or aerated waters, cider, ginger ale and other unintoxicating beverages, milk, buttermilk, cream, ice cream or butter in any kind of receptacle having the name of such person or other mark or device printed, stamped, engraved, etched, blown, impressed, riveted or otherwise produced or permanently fixed upon the same, may file in the office of the Secretary of State for record a description of the name, mark, or device so used and cause such description to be printed once each week for three successive weeks in a newspaper published in the county in which the principal place of business of such person is located, or if the principal place of business of such person is located in another state, then in the county wherein the principal office or depot within the State of

Nebraska is located. It shall be the duty of the Secretary of State to issue to the person so filing for record a description of such name, mark, or device in his office, a duly attested certificate of the record of the same, for which he shall receive a fee of one dollar. Such certificate in all prosecutions under sections 313 to 318 of this act shall be prima facie evidence of the adoption of such name, mark, or device, and of the right of the person named therein to adopt and use the same.

Sec. 315. (1) A person commits unauthorized use of receptacle if he fills any receptacle bearing a name, mark, or device recorded as provided in section 314 of this act with soda water, mineral or aerated waters, cider, ginger ale and other unintoxicating beverages, milk, buttermilk, cream, ice cream or butter, or to deface, erase, obliterate, cover up or otherwise remove or conceal any such name, mark, or device on any such receptacle, or to buy, sell, give, take, dispose of in any way, traffic in or destroy any receptacle bearing any such name, mark, or device unless it is the person named in the certificate issued by the Secretary of State, as provided in section 314 of this act, or has the written consent of the person named in such certificate.

(2) Unauthorized use of receptacles is a Class III misdemeanor. Each such receptacle so unlawfully dealt with, as herein set out, shall be deemed to be a separate offense.

Sec. 316. (1) A person commits unauthorized possession of receptacle if having in possession or under control any receptacle bearing any name, mark, or device recorded as provided in section 314 of this act, and holding a written transfer or bill of sale therefor from the person named in the certificate issued by the Secretary of State as provided in such section, or other authority in writing from such person, he fails or refuses to deliver such receptacle to the person named in such certificate or to the authorized agent of such person when demanded.

(2) Unauthorized possession of receptacle is a Class III misdemeanor.

Sec. 317. Whenever any person who has filed for record any such name, mark, or device, or who has acquired from such person in writing the ownership of such name, mark, or device or the right to the exclusive use thereof, or any one representing such person, shall make oath before any county judge that he has reason to believe and does believe that any receptacle bearing such name, mark, or device is being unlawfully used or filled

or had in possession by any other person, such judge shall thereupon issue a search warrant to discover and obtain such receptacle, and may also cause the person in whose possession such receptacle shall be found to be brought before him and shall then inquire into the circumstances of such possession and if it shall be found that such person is guilty of violating any provision in sections 313 to 318 of this act, he shall be punished as prescribed in section 315 or 316 of this act and the possession of the property taken upon such warrant shall be awarded to the owner thereof. The remedy given by this section shall not be held to be exclusive, and offenders against any provision of said sections may also be prosecuted as in case of other misdemeanors.

Sec. 318. The requiring or taking of any deposit for any purpose upon such receptacle shall not be deemed nor held to be a sale, either optional or otherwise, in any proceeding under sections 313 to 318 of this act.

Sec. 319. A person commits a Class III misdemeanor if such person discharges any firearm or weapon using any form of compressed gas as a propellant from any public highway, road, or bridge in this state, unless otherwise allowed by statute.

Sec. 320. There is hereby created the Nebraska Criminal Code Review Committee. Such committee shall be in existence from the effective date of this act until July 1, 1978, on which date the committee shall cease to exist.

Sec. 321. The committee shall consist of seven members as follows:

(1) Two lay people;

(2) A county attorney;

(3) A public defender;

(4) A lawyer who is and has been a member of the bar of the State of Nebraska for five years or more;

(5) A designee of the Attorney General; and

(6) The Revisor of Statutes.

Except for the member designated by the Attorney General and the Revisor of Statutes, the Executive Board of the Legislative Council shall make the appointments to the committee.

Sec. 322. The committee shall review and study the Nebraska Criminal Code and related legislation passed by the Legislature in order to eliminate ambiguities, inconsistencies, errors, or any other defects that would disrupt the orderly implementation of such code. The committee shall provide the Legislature with technical assistance, advice, and information concerning the Nebraska Criminal Code, and on or before December 1, 1977, document its findings in the form of a report to be submitted to the Executive Board of the Legislative Council. The committee shall recommend to such board any amendments to the criminal code and related legislation that it deems necessary.

Sec. 323. The members of the committee shall be reimbursed for their actual and necessary expenses on the same basis and subject to the same conditions as full-time state employees.

Sec. 324. The Nebraska Criminal Code Review Committee may employ a general counsel and such other staff as may be necessary to carry out its duties under sections 320 to 324 of this act.

Sec. 325. Sections 320 to 324 of this act shall become operative on their effective date. The other sections of this act shall become operative on July 1, 1978.

Sec. 326. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 327. The Revisor of Statutes shall transfer sections 28-589.03, 28-5,103 to 28-5,106, 28-833 to 28-844, 28-1020 to 28-1031, 28-1043 to 28-1046, and 28-1108 to 28-1110, and articles 14, 15, and 16, Reissue Revised Statutes of Nebraska, 1943, and sections 28-476.01, 28-476.02, and 28-4,135.01, Revised Statutes Supplement, 1976, and appropriately reassign them either as one or more articles within Chapter 28, clearly identified as noncode articles, or elsewhere in the statutes, making the internal changes necessary because of such reassignment.

Sec. 328. That all provisions of Chapter 28, Reissue Revised Statutes of Nebraska, 1943, and amendments thereto, except those sections which the Revisor of Statutes is directed by section 327 of this act to reassign, are repealed.