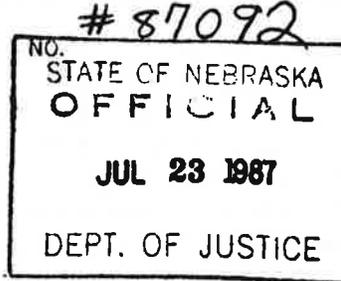


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509



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DATE: July 21, 1987

SUBJECT: Is an amendatory bill passed by the Legislature which incorrectly cites the sections which it amends constitutional under Article III, Section 14 of our State Constitution? If so, what language should be printed in the Nebraska Revised Statutes when the amendatory bill which was passed contains outdated statutory language?

REQUESTED BY: Joanne M. Pepperl  
Revisor of Statutes and Bill Drafter  
Nebraska Unicameral Legislature

WRITTEN BY: Robert M. Spire, Attorney General  
Dale A. Comer, Assistant Attorney General

In 1985, the First Session of the Eighty-Ninth Nebraska Legislature passed LB 496 which was duly signed by the Governor on June 5, 1985. That bill, which generally required seat belts to be worn in an automobile, contained seven separate sections which were placed in the Nebraska Revised Statutes by the Revisor of Statutes at Neb.Rev.Stat. §§39-6,103.04 through 6,103.08, and at Neb.Rev.Stat. §§39-669.26 and 39-6,171. The operative language of the bill requiring the use of seat belts was set out at §39-6,103.04. The 1985 Cumulative Supplement to the Nebraska statutes contained LB 496 within those various sections.

Subsequent to the passage of LB 496, there was a successful referendum petition drive to submit section 1 of the bill to the voters for their approval or rejection. Since that referendum was scheduled for November, 1986, the 1986 Cumulative Supplement to the Nebraska statutes published in the summer of 1986 contained the language of LB 496 then still in force.

On November 4, 1986, the Nebraska voters repealed section 1 of LB 496. All other sections of LB 496 were unchanged by the voter referendum, and remained in effect as set out in the Cumulative Supplement of 1986.

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In 1987, the First Session of the Ninetieth Nebraska Legislature passed LB 430 and later, LB 224, which amended Neb.Rev.Stat. §39-669.26 pertaining to the Nebraska point system for drivers licenses. Although the version of §39-669.26 contained in LB 496 and the 1986 Cumulative Supplement remained in effect, the bill drafter, through inadvertence, used the outdated language of the 1984 Reissue §39-669.26 in those 1987 bills, and referred to the 1984 Reissue section number in naming the sections amended. In light of this error, you have now asked whether LB 430 and LB 224 were passed in violation of Article III, Section 14 of our State Constitution which provides, in part, "And no law shall be amended unless the new act contain the section or sections as amended and the section or sections so amended shall be repealed." You have also inquired as to what version of §39-669.26 should be included in the 1987 Cumulative Supplement to the Nebraska Revised Statutes.

At the outset, several general rules established by our Supreme Court have application to the questions which you have raised. First of all, there is a presumption of the constitutionality of a statute duly enacted by the Legislature, and any reasonable doubt must be resolved in favor of its constitutionality. Bodenstedt v. Rickers, 189 Neb. 407, 203 N.W.2d 110 (1972); Board of Commissioners of the County of Sarpy v. McNally, 168 Neb. 23, 95 N.W.2d 153 (1959). The constitutional provisions dealing with amendments should receive a reasonable and liberal construction with a view to upholding the acts of the Legislature. State ex rel. Kaspar v. Lehmkuhl, 127 Neb. 812, 257 N.W. 229 (1934). The purpose of the provisions contained in Article III, Section 14 of our State Constitution is to prevent surreptitious legislation and impermissible confusion in the enactment of amendatory statutes, and to provide certainty in legislation. Bodenstedt v. Rickers, supra; Midwest Popcorn Company v. Johnson, 152 Neb. 867, 43 N.W.2d 174 (1950).

Your first question concerning the constitutionality of LB 430 and LB 224 is based upon their failure, through inadvertence, to name the proper sections which they amended as required by Article III, Section 14 of our State Constitution. (Both bills should have indicated that they amended §39-669.26 of the Cumulative Supplement of 1986 rather than §39-669.26 of the 1984 Reissue volume, and both bills should have included language from the 1986 Cumulative Supplement.) In an early case, our Supreme Court indicated that all that is required by the language in our Constitution concerning amendments to bills is that the amendments are plain and may be carried out, even though the section numbers of the original act and of the amendments are in confusion. State v. Babcock, 21 Neb. 599, 33 N.W. 247 (1887). If the amendments in question are not inductive of surreptitious legislation, then Article III, Section 14 is not violated.

Mehrens v. Greenleaf, 119 Neb. 82, 227 N.W. 325 (1929). It is our view that the amendments in LB 430 and in LB 224 are plain, and that it is clear which section of our statutes they intend to amend. It is also our view that the situation here is not, in any way, conducive to the passage of surreptitious legislation. Consequently, we believe that the passage of LB 430 and the passage of LB 224 were constitutional.

Our conclusion as to the constitutionality of these most recent amendments to §39-669.26 is bolstered by several older Nebraska cases where the facts before our Supreme Court were similar to the present instance. Those cases also offer guidance as to your second question concerning what language is now appropriate for §39-669.26 in the 1987 Cumulative Supplement.

In Fenton v. Yule, 27 Neb. 758, 43 N.W. 1,140 (1889), our Supreme Court considered the propriety of an amendatory act, passed in 1889, the title of which indicated that it was to amend certain sections of the Compiled Statutes of 1887. The Compiled Statutes in question included the language of a bill passed on March 30, 1887, and ignored the language of another superseding amendment to the same section passed on March 31, 1887. Therefore, the amendatory reference, as in the present case, was to statutory sections already superseded. The court held the Act of 1889 to be valid, and also held that the 1889 amendment was directed to the March 31, 1887 Act rather than to the March 30, 1887 Act even though the March 30, 1887 Act was set out in the Compiled Statutes which were referenced.

In State v. City of Kearney, 49 Neb. 325, 68 N.W. 533 (1896) and in State v. City of Wahoo, 62 Neb. 40, 86 N.W. 923 (1901), the Nebraska Supreme Court considered the same sequence of amendatory bills. On March 10, 1885, the Legislature passed a bill to amend "Section 69 of the Act of 1879." That 1879 statute had been amended in 1881 and again on March 2, 1885, yet no reference to those later amendments was made, and the 1885 Act, in effect, referred to a repealed statute. In State v. City of Kearney, supra, the Supreme Court held that the March 10, 1885 Amendment was valid. In State v. City of Wahoo, supra, the Court held that the March 10, 1885 Amendment "superseded" the March 2, 1885 Act at least so far as the two were in conflict.

On the basis of these various cases, it is our opinion that LB 430 and LB 224 amended the 1986 Cumulative Supplement version of §39-669.26, even though the title referenced and bill language itself referred to the 1984 Reissue version of that section. It is further our opinion that the language of LB 430 and LB 224 superseded the 1986 Cumulative Supplement language from LB 496 to the extent that they are inconsistent. We therefore recommend that you print the language of LB 224, as the conformed version

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of LB 430 and LB 224, in the 1987 Supplement without any language from LB 496 or the 1986 Cumulative Supplement.

Sincerely yours,

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Attorney General



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Assistant Attorney General

DAC/bae

cc: Patrick J. O'Donnell  
Clerk of the Legislature

APPROVED: -



Attorney General