

LEGISLATIVE BILL 631

Approved by the Governor May 26, 2009

Introduced by Business and Labor Committee: Lathrop, 12, Chairperson; McGill, 26; Schilz, 47; Wallman, 30; White, 8.

FOR AN ACT relating to the Employment Security Law; to amend sections 48-622.01, 48-622.02, 48-622.03, 48-655, 48-665, 48-668, and 48-668.02, Reissue Revised Statutes of Nebraska, and sections 48-612.01, 48-648, 48-648.01, 48-649, 48-652, and 48-654, Revised Statutes Cumulative Supplement, 2008; to change provisions relating to information disclosure, electronic payment and filing, combined tax rate, employer accounts, unemployment compensation, and worker training programs; to harmonize provisions; to eliminate an advisory council; to repeal the original sections; to outright repeal section 48-610, Reissue Revised Statutes of Nebraska; and to declare an emergency.

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

Section 1. Section 48-612.01, Revised Statutes Cumulative Supplement, 2008, is amended to read:

48-612.01 (1) Information obtained pursuant to subsection (1) of section 48-612 may be disclosed under the following circumstances:

(a) ~~To the extent necessary for the proper presentation of the contest of an unemployment benefit claim or tax appeal.~~ Any claimant or employer or representative of a claimant or employer, as a party before an appeal tribunal or court regarding an unemployment claim or tax appeal, shall be supplied with information obtained in the administration of the Employment Security Law, to the extent necessary for the proper presentation of ~~his, her,~~ or its the claim or appeal;

(b) ~~The Nebraska Workers' Compensation Court may use the names, addresses, and identification numbers of employers~~ may be disclosed to the Nebraska Workers' Compensation Court which may use such information for purposes of enforcement of the Nebraska Workers' Compensation Act;

(c) ~~Appeals records and Appeal tribunal decisions rendered under pursuant to the Employment Security Law and designated as precedential determinations decisions by the commissioner on the coverage of employers, employment, wages, and benefit eligibility,~~ may be published in printed or electronic format if all social security numbers have been removed and such disclosure is otherwise consistent with federal and state law;

(d) To a public official for use in the performance of his or her official duties. For purposes of this subdivision, performance of official duties means the administration or enforcement of law or the execution of the official responsibilities of a federal, state, or local elected official. Administration of law includes research related to the law administered by the public official. Execution of official responsibilities does not include solicitation of contributions or expenditures to or on behalf of a candidate for public office or to a political party;

(e) To an agent or contractor of a public official to whom disclosure is permissible under subdivision (d) of this subsection;

(f) ~~Information For use in reports and publications containing information collected exclusively for statistical purposes under a cooperative agreement with the federal Bureau of Labor Statistics.~~ This subdivision does not restrict or impose any condition on the transfer of any other information to the federal Bureau of Labor Statistics under an agreement or the federal Bureau of Labor Statistics' disclosure or use of such information; and

(g) In response to a court order.

(2) Information about an individual or employer obtained pursuant to subsection (1) of section 48-612 may be disclosed to:

(a) One who acts as an agent for the individual or employer when the agent presents a written release from the individual or employer, where practicable, or other evidence of authority to act on behalf of the individual or employer;

(b) An elected official who is performing constituent services if the official presents reasonable evidence that the individual or employer has authorized such disclosure;

(c) An attorney who presents written evidence that he or she is representing the individual or employer in a matter arising under the Employment Security Law; or

(d) A third party or its agent carrying out the administration or evaluation of a public program, if that third party or agent obtains a written

release from the individual or employer to whom the information pertains. To constitute informed consent, the release shall be signed and shall include a statement:

(i) Specifically identifying the information that is to be disclosed;

(ii) That state government files will be accessed to obtain that information;

(iii) Identifying the specific purpose or purposes for which the information is sought and that information obtained under the release will only be used for that purpose or purposes; and

(iv) Identifying and describing all the parties who may receive the information disclosed.

(3) Information obtained pursuant to subsection (1) of section 48-612 may be disclosed under the following circumstances:

(a) ~~Information about an individual or employer shall only be disclosed to the respective individual or employer.~~ To an individual or employer if the information requested pertains only to the individual or employer making the request;

(b) To a local, state, or federal governmental official, other than a clerk of court, attorney, or notary public acting on behalf of a litigant, with authority to obtain such information by subpoena under state or federal law; and

(c) ~~Disclosures to~~ To a federal official for purposes of unemployment compensation program oversight and audits, including disclosures under 20 C.F.R. part 601 and 29 C.F.R. parts 96 and 97 as they existed on January 1, 2007.

(4) If the purpose for which information is provided under subsection (1), (2), or (3) of this section is not related to the administration of the Employment Security Law or the unemployment insurance compensation program of another jurisdiction, the commissioner shall recover the costs of providing such information from the requesting individual or entity prior to providing the information to such individual or entity unless the costs are nominal or the entity is a governmental agency which the commissioner has determined provides reciprocal services.

(5) Any person who receives information under subsection (1) or (2) of this section and rediscloses such information for any purpose other than the purpose for which it was originally obtained shall be guilty of a Class III misdemeanor.

Sec. 2. Section 48-622.01, Reissue Revised Statutes of Nebraska, is amended to read:

48-622.01 (1) There is hereby created in the state treasury a special fund to be known as the State Unemployment Insurance Trust Fund. All state unemployment insurance tax collected under sections 48-648 to 48-661, less refunds, shall be paid into the fund. Such money shall be held in trust for the sole and exclusive use of payment of unemployment insurance benefits. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act, except that interest earned on money in the fund shall be credited to the Nebraska Training and Support Trust Fund at the end of each calendar quarter.

(2) The commissioner shall have authority to determine when and in what amounts withdrawals from the State Unemployment Insurance Trust Fund for payment of benefits are necessary. Amounts withdrawn for payment of benefits shall be immediately forwarded to the Secretary of the Treasury of the United States of America to the credit of the state's account in the Unemployment Trust Fund, provisions of law in this state relating to the deposit, administration, release, or disbursement of money in the possession or custody of this state to the contrary notwithstanding.

(3) If and when the state unemployment insurance tax ceases to exist as determined by the Governor, ~~in consultation with the state advisory council,~~ all money then in the State Unemployment Insurance Trust Fund less accrued interest shall be immediately transferred to the credit of the state's account in the Unemployment Trust Fund, provisions of law in this state relating to the deposit, administration, release, or disbursement of money in the possession or custody of this state to the contrary notwithstanding. The determination to eliminate the state unemployment insurance tax shall be based on the solvency of the state's account in the Unemployment Trust Fund and the need for training of Nebraska workers. Accrued interest in the State Unemployment Insurance Trust Fund shall be credited to the Nebraska Training and Support Trust Fund.

Sec. 3. Section 48-622.02, Reissue Revised Statutes of Nebraska, is amended to read:

48-622.02 (1) There is hereby created in the state treasury a special fund to be known as the Nebraska Training and Support Trust Fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. All money deposited or paid into the fund is hereby appropriated and made available to the commissioner. No expenditures shall be made from the fund without the written authorization of the Governor upon the recommendation of the commissioner. Any interest earned on money in the State Unemployment Insurance Trust Fund shall be credited to the Nebraska Training and Support Trust Fund.

(2) Money in the Nebraska Training and Support Trust Fund shall be used for (a) administrative costs of establishing, assessing, collecting, and maintaining state unemployment insurance tax liability and payments, (b) administrative costs of creating, maintaining, and dissolving the State Unemployment Insurance Trust Fund and the Nebraska Training and Support Trust Fund, (c) support of public and private job training programs designed to train, retrain, or upgrade work skills of existing Nebraska workers, (d) recruitment of workers to Nebraska, (e) training new employees of expanding Nebraska businesses, (f) the costs of creating a common web portal for the attraction of businesses and workers to Nebraska, and ~~(d)~~ (g) payment of unemployment insurance benefits if solvency of the state's account in the Unemployment Trust Fund and of the State Unemployment Insurance Trust Fund so require.

(3) There is hereby created within the Nebraska Training and Support Trust Fund a separate account to be known as the Administrative Costs Reserve Account. Money shall be allocated from the Nebraska Training and Support Trust Fund to the Administrative Costs Reserve Account in amounts sufficient to pay the anticipated administrative costs identified in subdivisions (2)(a) and ~~(b)~~ through (g) of this section. The administrative costs determined to be applicable to creation and operation of the State Unemployment Insurance Trust Fund and the Nebraska Training and Support Trust Fund shall be paid out of the Administrative Costs Reserve Account.

Sec. 4. Section 48-622.03, Reissue Revised Statutes of Nebraska, is amended to read:

48-622.03 (1) There is hereby created as of January 1, 1996, the Nebraska Worker Training Board consisting of seven members appointed and serving for terms determined by the Governor as follows:

(a) ~~A member of the state advisory council created in section 48-610 who is a~~ representative of employers in Nebraska;

(b) ~~A member of the council who is a~~ representative of employees in Nebraska;

(c) ~~A member of the council who is a~~ representative of the public;

(d) The Commissioner of Labor or a designee;

(e) The Director of Economic Development or a designee;

(f) The Commissioner of Education or a designee; and

(g) The chairperson of the governing board of the Nebraska Community College Association or a designee.

(2) Beginning July 1, 1996, and annually thereafter, the Governor shall appoint a chairperson for the board. The chairperson shall be either the representative of the employers, the representative of the employees, or the representative of the public.

(3) Beginning July 1, 1996, and annually thereafter the board shall prepare an annual program plan for the upcoming fiscal year containing guidelines for the program financed by the Nebraska Training and Support Trust Fund. The guidelines shall include, but not be limited to, guidelines for certifying training providers, criteria for evaluating requests for the use of money under section 48-622.02, and guidelines for requiring employers to provide matching funds. The guidelines shall give priority to training that contributes to the expansion of the Nebraska workforce and increasing the pool of highly skilled workers in Nebraska.

(4) Beginning September 1, 1997, and annually thereafter, the board shall provide a report to the Governor covering the activities of the program financed by the Nebraska Training and Support Trust Fund for the previous fiscal year. The report shall contain an assessment of the effectiveness of the program and its administration.

Sec. 5. Section 48-648, Revised Statutes Cumulative Supplement, 2008, is amended to read:

48-648 (1) Combined tax shall accrue and become payable by each employer not otherwise entitled to make payments in lieu of contributions for each calendar year in which he or she is subject to the Employment Security Law, with respect to wages for employment. Such combined tax shall become due and be paid by each employer to the commissioner for the State Unemployment

Insurance Trust Fund and the Unemployment Trust Fund in such manner and at such times as the commissioner may, by rule and regulation, prescribe and shall not be deducted, in whole or in part, from the wages of individuals in such employer's employ. The For all tax years beginning before January 1, 2010, the commissioner may require that any employer whose annual payroll for either of the two preceding calendar years has equaled or exceeded five hundred thousand dollars to file combined tax returns and pay combined taxes owed by an electronic method approved by the commissioner, except when the employer establishes to the satisfaction of the commissioner that filing the combined tax return or payment of the tax by an electronic method would work a hardship on the employer. For all tax years beginning on or after January 1, 2010, the commissioner may require any employer whose annual payroll for either of the two preceding calendar years has equaled or exceeded one hundred thousand dollars to file combined tax returns and pay combined taxes owed by an electronic method approved by the commissioner, except when the employer establishes to the satisfaction of the commissioner that filing the combined tax return or payment of the tax by an electronic method would work a hardship on the employer. In the payment of any combined tax, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent. If the combined tax due for any reporting period is less than five dollars, the employer need not remit the combined tax.

(2) If two or more related corporations or limited liability companies concurrently employ the same individual and compensate such individual through a common paymaster which is one of such corporations or limited liability companies, each such corporation or limited liability company shall be considered to have paid as remuneration to such individual only the amounts actually disbursed by it to such individual and shall not be considered to have paid as remuneration to such individual amounts actually disbursed to such individual by another of such corporations or limited liability companies. An employee of a wholly owned subsidiary shall be considered to be concurrently employed by the parent corporation, company, or other entity and the wholly owned subsidiary whether or not both companies separately provide remuneration.

(3) The professional employer organization shall report and pay combined tax, penalties, and interest owed upon wages earned by worksite employees under the client's employer account number using the client's combined tax rate. The client is liable for the payment of unpaid combined tax, penalties, and interest owed upon wages paid to worksite employees, and the worksite employees shall be considered employees of the client for purposes of the Employment Security Law.

Sec. 6. Section 48-648.01, Revised Statutes Cumulative Supplement, 2008, is amended to read:

48-648.01 The Commissioner of Labor may require by rule and regulation that each employer subject to the Employment Security Law shall submit to the commissioner quarterly wage reports on such forms and in such manner as the commissioner may prescribe. The For all tax years beginning before January 1, 2010, the commissioner may require that any employer whose annual payroll for either of the two preceding calendar years has equaled or exceeded five hundred thousand dollars to file wage reports by an electronic method approved by the commissioner, except when the employer establishes to the satisfaction of the commissioner that filing by an electronic method would work a hardship on the employer. For all tax years beginning on or after January 1, 2010, the commissioner may require any employer whose annual payroll for either of the two preceding calendar years has equaled or exceeded one hundred thousand dollars to file wage reports by an electronic method approved by the commissioner, except when the employer establishes to the satisfaction of the commissioner that filing by an electronic method would work a hardship on the employer. The quarterly wage reports shall be used by the commissioner to make monetary determinations of claims for benefits.

Sec. 7. Section 48-649, Revised Statutes Cumulative Supplement, 2008, is amended to read:

48-649 The commissioner shall, for each calendar year, determine the combined tax rate applicable to each employer on the basis of his or her actual experience in the payment of contributions and with respect to benefits charged against his or her separate experience account, in accordance with the following requirements:

(1) The commissioner shall, by December 1 of each calendar year, and based upon information available through the department, determine the state unemployment insurance tax rate for the following year. The state unemployment insurance tax rate shall be zero percent if:

(a) The average balance in the State Unemployment Insurance Trust

Fund at the end of any three months in the preceding calendar year is greater than one percent of state taxable wages for the same preceding year; or

(b) The balance in the State Unemployment Insurance Trust Fund equals or exceeds thirty percent of the average month end balance of the state's account in the Unemployment Trust Fund for the three lowest calendar months in the preceding year; ~~or~~

~~(c) The state advisory council determines that a zero percent state unemployment insurance tax rate is in the best interests of preserving the integrity of the state's account in the Unemployment Trust Fund;~~

(2) (a) If the state unemployment insurance tax rate is not zero percent as determined in this section, the combined tax rate shall be divided so that not less than eighty percent of the combined tax rate equals the contribution rate and not more than twenty percent of the combined tax rate equals the state unemployment insurance tax rate except for employers who are assigned a combined tax rate of five and four-tenths percent or more. For those employers, the state unemployment insurance tax rate shall equal zero and their combined tax rate shall equal their contribution rate.

(b) When the state unemployment insurance tax rate is determined to be zero percent pursuant to subdivision (1) of this section, the contribution rate for all employers shall equal one hundred percent of the combined tax rate;

(3) In calendar year 2005, an employer's combined tax rate shall be three and five-tenths percent of his or her annual payroll unless and until (a) benefits have been payable from and chargeable to his or her experience account throughout the preceding one calendar year and (b) contributions have been payable to the fund and credited to his or her experience account with respect to the two preceding calendar years. Subject to fair and reasonable rules and regulations of the commissioner issued with due regard for the solvency of the fund, in calendar year 2005 the combined tax rate required of each employer who meets the requirements of subdivisions (a) and (b) of this subdivision shall be based directly on his or her contributions to and benefit experience of his or her experience account and shall be determined by the commissioner for each calendar year at its beginning. Such rate shall not be greater than three and five-tenths percent of his or her annual payroll if his or her experience account exhibits a positive balance as of the beginning of such calendar year, but for any employer who has been subject to the payment of contributions for any two preceding calendar years, regardless of whether such years are consecutive, and whose experience account exhibits a negative balance as of the beginning of such calendar year, the rate shall be greater than three and five-tenths percent of his or her annual payroll but not greater than five and four-tenths percent of his or her annual payroll until such time as the experience account exhibits a positive balance, and thereafter the rate shall not be greater than three and five-tenths percent of his or her annual payroll. For calendar year 2005, the standard rate shall be five and four-tenths percent of the employer's annual payroll. As used in this subdivision, standard rate shall mean the rate from which all reduced rates are calculated;

(4) (a) Effective January 1, 2006, an employer's combined tax rate (i) for employers other than employers engaged in the construction industry shall be the lesser of the state's average combined tax rate as determined pursuant to subdivisions (4) (e), (4) (f), and (4) (g) of this section or two and five-tenths percent and (ii) for employers in the construction industry shall be the category twenty rate determined pursuant to subdivisions (4) (e) and (4) (f) of this section, unless and until:

(A) Benefits have been payable from and chargeable to his or her experience account throughout the preceding four calendar quarters; and

(B) ~~Contributions have been payable to the fund and credited to his or her experience account with respect to~~ Wages for employment have been paid by the employer in each of the two preceding four-calendar-quarter periods.

For purposes of this subdivision (4) (a), employers engaged in the construction industry means all employers primarily engaged in business activities classified as sector 23 business activities under the North American ~~Industrial~~ Industry Classification System.

(b) In no event shall the combined tax rate for employers who fail to meet the requirements of subdivision (4) (a) of this section be less than one and twenty-five hundredths percent.

(c) ~~For any employer who has not been subject to the payment of contributions paid wages for employment during each of the two four-calendar-quarter periods ending on September 30 of any year, but has been subject to the payment of contributions paid wages for employment in any two four-calendar-quarter periods, regardless of whether such four-calendar-quarter periods are consecutive, such employer's combined tax~~

rate for the following tax year shall be:

(i) The highest combined tax rate for employers with a positive experience account balance if the employer's experience account balance exhibits a positive balance as of September 30 of the year of rate computation; or

(ii) The standard rate if the employer's experience account exhibits a negative balance as of September 30 of the year of rate computation.

(d) Beginning with rate calculations for calendar year 2006 and each year thereafter, the combined tax rate for employers who meet the requirements of subdivision (4)(a) of this section shall be calculated according to subdivisions (4)(e), (4)(f), and (4)(g) of this section and shall be based upon the employer's experience rating record and determined from the employer's reserve ratio, which is the percent obtained by dividing the amount by which, if any, the employer's contributions credited from the time the employer first or most recently became an employer, whichever date is later, and up to and including September 30 of the year the rate computation is made, plus any part of the employer's contributions due for that year paid on or before October 31 of such year, exceed the employer's benefits charged during the same period, by the employer's average annual taxable payroll for the sixteen-consecutive-calendar-quarter period ending September 30 of the year in which the rate computation is made. For an employer with less than sixteen consecutive calendar quarters of contribution experience, the employer's average taxable payroll shall be determined based upon the four-calendar-quarter periods for which contributions are payable.

(e) Each eligible experience rated employer shall be assigned to one of twenty rate categories with a corresponding experience factor as follows:

Category	Experience Factor
1	0.00
2	0.25
3	0.40
4	0.45
5	0.50
6	0.60
7	0.65
8	0.70
9	0.80
10	0.90
11	0.95
12	1.00
13	1.05
14	1.10
15	1.20
16	1.35
17	1.55
18	1.80
19	2.15
20	2.60

Eligible experience rated employers shall be assigned to rate categories from highest to lowest according to their experience reserve ratio with category one being assigned to accounts with the highest reserve ratios and category twenty being assigned to accounts with the lowest reserve ratios. Each category shall be limited to no more than five percent of the state's total taxable payroll, except that:

(i) Any employer which has a portion of its taxable wages fall into one category and a portion into the next higher category shall be assigned to the lower category; ~~and~~

(ii) No employer with a reserve ratio calculated to five decimal places equal to another employer similarly calculated shall be assigned to a higher rate than the employer to which it has the equal reserve ratio; ~~and-~~

(iii) No employer with a positive experience account balance shall be assigned to category twenty.

(f) The state's reserve ratio shall be calculated by dividing the amount available to pay benefits in the Unemployment Trust Fund and the State Unemployment Insurance Trust Fund as of September 30, 2005, and each September 30 thereafter, less any outstanding obligations and amounts appropriated therefrom by the state's total wages from the four calendar quarters ending on such September 30. For purposes of this section, total wages means all remuneration paid by an employer in employment. The state's reserve ratio shall be applied to the table in this subdivision to determine the yield factor for the upcoming rate year.

State's Reserve Ratio	Yield	Factor
1.45 percent and above	=	0.70
1.30 percent up to but not including 1.45	=	0.75
1.15 percent up to but not including 1.30	=	0.80
1.00 percent up to but not including 1.15	=	0.90
0.85 percent up to but not including 1.00	=	1.00
0.70 percent up to but not including 0.85	=	1.10
0.60 percent up to but not including 0.70	=	1.20
0.50 percent up to but not including 0.60	=	1.25
0.45 percent up to but not including 0.50	=	1.30
0.40 percent up to but not including 0.45	=	1.35
0.35 percent up to but not including 0.40	=	1.40
0.30 percent up to but not including 0.35	=	1.45
Below 0.30 percent	=	1.50

Once the yield factor for the upcoming rate year has been determined, it is multiplied by the amount of unemployment benefits paid from combined tax during the four calendar quarters ending September 30 of the preceding year. The resulting figure is the planned yield for the rate year. The planned yield is divided by the total taxable wages for the four calendar quarters ending September 30 of the previous year and carried to four decimal places to create the average combined tax rate for the rate year.

(g) The average combined tax rate is assigned to rate category twelve as established in subdivision (4)(e) of this section. Rates for each of the remaining nineteen categories are determined by multiplying the average combined tax rate by the experience factor associated with each category and carried to four decimal places. Employers who are delinquent in filing their combined tax reports as of October 31 of any year shall be assigned to category twenty for the following calendar year unless the delinquency is corrected prior to December 31 of the year of rate calculation.

(h) As used in this subdivision (4) of this section, standard rate means the rate assigned to category twenty for that year. For calendar years 2006 and thereafter, the standard rate shall be not less than five and four-tenths percent of the employer's annual taxable payroll;

(5) Any employer may at any time make voluntary contributions up to the amount necessary to qualify for one rate category reduction, additional to the required contributions, to the fund to be credited to his or her account. Voluntary contributions received after March 10, 2005, for rate year 2005 or January 10 for rate year 2006 and thereafter shall not be used in rate calculations for the same calendar year;

(6) As used in sections 48-648 to 48-654, the term payroll means the total amount of wages during a calendar year, except as otherwise provided in section 48-654, by which the combined tax was measured; and

(7) (a) The state or any of its instrumentalities shall make payments in lieu of contributions in an amount equal to the full amount of regular benefits plus one-half of the amount of extended benefits paid during each calendar quarter that is attributable to service in employment of the state or any of its instrumentalities. The commissioner after the end of each calendar quarter shall notify any state instrumentality or other public employer of the amount of regular benefits and one-half the amount of extended benefits paid that are attributable to service in its employment and the instrumentality or public employer so notified shall reimburse the fund within thirty days after receipt of such notice. The For all tax years beginning before January 1, 2010, the commissioner may require that any employer whose annual payroll for either of the two preceding calendar years has equaled or exceeded five hundred thousand dollars to pay the reimbursement by an electronic method approved by the commissioner, except when the employer establishes to the satisfaction of the commissioner that payment of the reimbursement by an electronic method would work a hardship on the employer. For all tax years beginning on or after January 1, 2010, the commissioner may require any employer whose annual payroll for either of the two preceding calendar years has equaled or exceeded one hundred thousand dollars to pay the reimbursement by an electronic method approved by the commissioner, except when the employer establishes to the satisfaction of the commissioner that payment of the reimbursement by an electronic method would work a hardship on the employer.

(b) After December 31, 1977, the state or any of its political subdivisions and any instrumentality of one or more of the foregoing or any other governmental entity for which services in employment as is provided by subdivision (4) (a) of section 48-604 are performed shall be required to pay contributions and after December 31, 1996, combined tax on wages paid for services rendered in its or their employment on the same basis as any other employer who is liable for the payment of combined tax under the Employment Security Law, unless the state or any political subdivision thereof and any instrumentality of one or more of the foregoing or any other governmental entity for which such services are performed files with the commissioner its written election not later than January 31, 1978, or if such employer becomes subject to this section after January 1, 1978, not later than thirty days after such subjectivity begins, to become liable to make payments in lieu of contributions in an amount equal to the full amount of regular benefits plus one-half of the amount of extended benefits paid during each calendar quarter that is attributable to service in employment of such electing employer prior to December 31, 1978, and in an amount equal to the full amount of regular benefits plus the full amount of extended benefits paid during each calendar quarter that is attributable to service in employment of such electing employer after January 1, 1979. Eligible employers electing to make payments in lieu of contributions shall not be liable for state unemployment insurance tax payments. The commissioner, after the end of each calendar quarter, shall notify any such employer that has so elected of the amount of benefits for which it is liable to pay pursuant to its election that have been paid that are attributable to service in its employment and the employer so notified shall reimburse the fund within thirty days after receipt of such notice.

(c) Any employer which makes an election in accordance with subdivision (b) of this subdivision to become liable for payments in lieu of contributions shall continue to be liable for payments in lieu of contributions for all benefits paid based upon wages paid for service in employment of such employer while such election is effective and such election shall continue until such employer files with the commissioner, not later than December 1 of any calendar year, a written notice terminating its election as of December 31 of that year and thereafter such employer shall again be liable for the payment of contributions and for the reimbursement of such benefits as may be paid based upon wages paid for services in employment of such employer while such election was effective.

Sec. 8. Section 48-652, Revised Statutes Cumulative Supplement, 2008, is amended to read:

48-652 (1) (a) A separate experience account shall be established for each employer who is liable for payment of contributions. Whenever and wherever in the Employment Security Law the terms reserve account or experience account are used, unless the context clearly indicates otherwise, such terms shall be deemed interchangeable and synonymous and reference to either of such accounts shall refer to and also include the other.

(b) A separate reimbursement account shall be established for each employer who is liable for payments in lieu of contributions. All benefits paid with respect to service in employment for such employer shall be charged to his or her reimbursement account and such employer shall be billed for and shall be liable for the payment of the amount charged when

billed by the commissioner. Payments in lieu of contributions received by the commissioner on behalf of each such employer shall be credited to such employer's reimbursement account, and two or more employers who are liable for payments in lieu of contributions may jointly apply to the commissioner for establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of such employers. The commissioner shall prescribe such rules and regulations as he or she deems necessary with respect to applications for establishment, maintenance, and termination of group accounts authorized by this subdivision.

(2) All contributions paid by an employer shall be credited to the experience account of such employer. State unemployment insurance tax payments shall not be credited to the experience account of each employer. Partial payments of combined tax shall be credited so that at least eighty percent of the combined tax payment excluding interest and penalty is credited first to contributions due. In addition to contributions credited to the experience account, each employer's account shall be credited as of June 30 of each calendar year with interest at a rate determined by the commissioner based on the average annual interest rate paid by the Secretary of the Treasury of the United States of America upon the state's account in the Unemployment Trust Fund for the preceding calendar year multiplied by the balance in his or her experience account at the beginning of such calendar year. If the total credits as of such date to all employers' experience accounts are equal to or greater than ninety percent of the total amount in the Unemployment Compensation Fund, no interest shall be credited for that year to any employer's account. Contributions with respect to prior years which are received on or before January 31 of any year shall be considered as having been paid at the beginning of the calendar year. All voluntary contributions which are received on or before January 10 of any year shall be considered as having been paid at the beginning of the calendar year.

(3) (a) Each experience account shall be charged only for benefits based upon wages paid by such employer. No benefits shall be charged to the experience account of any employer if (i) such benefits were paid on the basis of a period of employment from which the claimant (A) left work voluntarily without good cause, (B) left work voluntarily due to a nonwork-connected illness or injury, (C) left work voluntarily with good cause to escape abuse as defined in section 42-903 between household members as provided in subdivision (1) of section 48-628.01, (D) left work from which he or she was discharged for misconduct connected with his or her work, or (E) left work voluntarily and is entitled to unemployment benefits without disqualification in accordance with subdivision (3) or (5) of section 48-628.01 and (ii) the employer has filed timely notice of the facts on which such exemption is claimed in accordance with rules and regulations prescribed by the commissioner. No benefits shall be charged to the experience account of any employer if such benefits were paid on the basis of wages paid in the base period that are wages for insured work solely by reason of subdivision (5) (b) of section 48-627. No benefits shall be charged to the experience account of any employer if such benefits were paid during a week when the individual was participating in training approved under section 236(a) (1) of the federal Trade Act of 1974, 19 U.S.C. 2296(a) (1).

(b) Each reimbursement account shall be charged only for benefits paid that were based upon wages paid by such employer in the base period that were wages for insured work solely by reason of subdivision (5) of section 48-627.

(c) Benefits paid to an eligible individual shall be charged against the account of his or her most recent employers within his or her base period against whose accounts the maximum charges hereunder have not previously been made in the inverse chronological order in which the employment of such individual occurred. The maximum amount so charged against the account of any employer, other than an employer for which services in employment as provided in subdivision (4) (a) of section 48-604 are performed, shall not exceed the total benefit amount to which such individual was entitled as set out in section 48-626 with respect to base period wages of such individual paid by such employer plus one-half the amount of extended benefits paid to such eligible individual with respect to base period wages of such individual paid by such employer. The commissioner shall by rules and regulations prescribe the manner in which benefits shall be charged against the account of several employers for whom an individual performed employment during the same quarter or during the same base period. Any benefit check duly issued and delivered or mailed to a claimant and not presented for payment within one year from the date of its issue may be invalidated and the amount thereof credited to the Unemployment Compensation Fund, except that a substitute check may be issued and charged to the fund on proper showing at any time within the year next

following. Any charge made to an employer's account for any such invalidated check shall stand as originally made.

(4) (a) An employer's experience account shall be deemed to be terminated one calendar year after such employer has ceased to be subject to the Employment Security Law, except that if the commissioner finds that an employer's business is closed solely because of the entrance of one or more of the owners, officers, partners, or limited liability company members or the majority stockholder into the armed forces of the United States, or of any of its allies, after July 1, 1950, such employer's account shall not be terminated and, if the business is resumed within two years after the discharge or release from active duty in the armed forces of such person or persons, the employer's experience account shall be deemed to have been continuous throughout such period.

(b) An experience account terminated pursuant to this subsection shall be reinstated if (i) the employer becomes subject again to the Employment Security Law within one calendar year after termination of such experience account and the employer makes a written application for reinstatement of such experience account to the commissioner within two calendar years after termination of such experience account and (ii) the commissioner finds that the employer is operating substantially the same business as prior to the termination of such experience account.

(5) All money in the Unemployment Compensation Fund shall be kept mingled and undivided. The payment of benefits to an individual shall in no case be denied or withheld because the experience account of any employer does not have a total of contributions paid in excess of benefits charged to such experience account.

(6) A contributory or reimbursable employer shall be relieved of charges if the employer was previously charged for wages and the same wages are being used a second time to establish a new claim as a result of the October 1, 1988, change in the base period.

(7) If an individual's base period wage credits represent part-time employment for a contributory employer and the contributory employer continues to employ the individual to the same extent as during the base period, then the contributory employer's experience account shall not be charged if the contributory employer has filed timely notice of the facts on which such exemption is claimed in accordance with rules and regulations prescribed by the commissioner.

Sec. 9. Section 48-654, Revised Statutes Cumulative Supplement, 2008, is amended to read:

48-654 Subject to section 48-654.01, any employer that acquires the organization, trade, or business, or substantially all the assets thereof, of another employer shall immediately notify the commissioner thereof, and prior to September 6, 1985, shall, and on and after September 6, 1985, may, pursuant to rules and regulations prescribed by the commissioner, assume the position of such employer with respect to the resources and liabilities of such employer's experience account as if no change with respect to such employer's experience account has occurred. The commissioner may provide by rule and regulation for partial transfers of experience accounts, except that such partial transfers of accounts shall be construed to allow computation and fixing of contribution rates only on and after January 1, 1953, where an employer has transferred at any time subsequent to or on January 1, 1950, a definable and segregable portion of his or her payroll and business to a transferee-employer. For an acquisition which occurs during ~~any of the first three~~ either of the first two calendar quarters of a calendar year or during the fourth quarter of the preceding calendar year, a new rate of contributions, payable by the transferee-employer with respect to wages paid by him or her after midnight of the last day of the calendar quarter in which such acquisition occurs and prior to midnight of the ~~last day of the calendar year in which acquisition occurs~~, following September 30, shall be computed in accordance with this section. For the purpose of computing such new rate of contributions, the computation date with respect to any such acquisition shall be ~~December 31~~ September 30 of the preceding calendar year and the term payroll shall mean the total amount of wages by which contributions to the transferee's account and to the transferor's account were measured for ~~the calendar year~~ four calendar quarters ending September 30 preceding the computation date.

Sec. 10. Section 48-655, Reissue Revised Statutes of Nebraska, is amended to read:

48-655 (1) Combined taxes or payments in lieu of contributions unpaid on the date on which they are due and payable, as prescribed by the commissioner, shall bear interest at the rate of one and one-half percent per month from such date until payment, plus accrued interest, is received

by the commissioner, except that no interest shall be charged subsequent to the date of the erroneous payment of an amount equal to the amount of the delayed payment into the unemployment trust fund of another state or to the federal government. Interest collected pursuant to this section shall be paid in accordance with subdivision (1)(b) of section 48-621. If, after due notice, any employer defaults in any payment of combined taxes or payments in lieu of contributions or interest thereon, the amount due may be collected ~~(1)~~ (a) by civil action in the name of the commissioner and the employer adjudged in default shall pay the costs of such action or ~~(2)~~ (b) by setoff against any state income tax refund due the employer pursuant to sections 77-27,197 to 77-27,209. Civil actions brought under this section to collect combined taxes or interest thereon or payments in lieu of contributions or interest thereon from an employer shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under section 48-638.

(2) The commissioner may by rule and regulation provide for the offset from a person's personal federal income tax refund of contributions, penalties, and interest due and payable for which the commissioner has determined the person to be liable due to fraud and which remain uncollected for not more than ten years. Such rules and regulations shall comply with Public Law 110-328 (2008) and United States Treasury regulations and guidelines adopted pursuant thereto. The commissioner shall notify the debtor, by certified mail return receipt requested, that the commissioner plans to recover the debt through offset against any federal income tax refund, and the debtor shall be given sixty days to present evidence that all or part of the liability is either not legally enforceable or not due to fraud. The commissioner shall review any evidence presented and determine that the debt is legally enforceable and due to fraud before proceeding further with the offset. The amount recovered, less any administrative fees charged by the United States Treasury, shall be credited to the debt owed. Any determination rendered under this subsection that the person's federal income tax refund is not subject to offset does not require the commissioner to amend the commissioner's initial determination that formed the basis for the proposed offset.

Sec. 11. Section 48-665, Reissue Revised Statutes of Nebraska, is amended to read:

48-665 (1) Any person who has received any sum as benefits under the Employment Security Law to which he or she was not entitled shall be liable to repay such sum to the commissioner for the fund. Any such erroneous benefit payments shall be collectible ~~(1)~~ (a) without interest by civil action in the name of the commissioner, ~~(2)~~ (b) by offset against any future benefits payable to the claimant with respect to the benefit year current at the time of such receipt or any benefit year which may commence within three years after the end of such current benefit year, except that no such recoupment by the withholding of future benefits shall be had if such sum was received by such person without fault on his or her part and such recoupment would defeat the purpose of the Employment Security Law or would be against equity and good conscience, or ~~(3)~~ (c) by setoff against any state income tax refund due the claimant pursuant to sections 77-27,197 to 77-27,209.

(2) The commissioner may by rule and regulation provide for the offset from a person's personal federal income tax refund of any person who has received any sum as benefits under the Employment Security Law to which he or she was not entitled as a result of fraud and which remain uncollected for not more than ten years. Such rules and regulations shall comply with Public Law 110-328 (2008) and United States Treasury regulations and guidelines adopted pursuant thereto. The commissioner shall notify the debtor that the commissioner plans to recover the debt through offset against any federal income tax refund, and the debtor shall be given sixty days to present evidence that all or part of the liability is either not legally enforceable or not due to fraud. The commissioner shall review any evidence presented and determine that the debt is legally enforceable and due to fraud before proceeding further with the offset. The amount recovered, less any administrative fees charged by the United States Treasury, shall be credited to the debt owed. Any determination rendered under this subsection that the person's federal income tax refund is not subject to offset does not require the commissioner to amend the commissioner's initial determination that formed the basis for the proposed offset.

Sec. 12. Section 48-668, Reissue Revised Statutes of Nebraska, is amended to read:

48-668 (1) The commissioner is hereby authorized to enter into arrangements with the appropriate and duly authorized agencies of other states or the federal government, or both, whereby:

~~(1)~~ (a) Services performed by an individual for a single employer for which services are customarily performed by such individual in more than one state shall be deemed to be services performed entirely within any one of the states in which ~~(a)~~ (i) any part of such individual's service is performed, ~~(b)~~ (ii) such individual has his or her residence, or ~~(c)~~ (iii) the employer maintains a place of business, if there is in effect, as to such services, an election by an employer with the acquiescence of such individual, approved by the agency charged with the administration of such state's unemployment compensation law, pursuant to which services performed by such individual for such employer are deemed to be performed entirely within such state;

~~(2)~~ (b) Service performed by not more than three individuals, on any portion of a day but not necessarily simultaneously, for a single employer which customarily operates in more than one state shall be deemed to be service performed entirely within the state in which such employer maintains the headquarters of his or her business if there is in effect, as to such service, an approved election by an employer with the affirmative consent of each such individual, pursuant to which service performed by such individual for such employer is deemed to be performed entirely within such state;

~~(3)~~ (c) Potential rights to benefits under the Employment Security Law may constitute the basis for payment of benefits by another state or the federal government and potential rights to benefits accumulated under the law of another state or the federal government may constitute the basis for the payment of benefits by this state. Such benefits shall be paid under the Employment Security Law or under the law of such state or the federal government or under such combination of the provisions of both laws, as may be agreed upon as being fair and reasonable to all affected interests. No such arrangement shall be entered into unless it contains provisions for reimbursement to the fund for such benefits as are paid on the basis of wages and service subject to the law of another state or the federal government, and provision for reimbursement from the fund for such benefits as are paid by another state or the federal government on the basis of wages and service subject to the Employment Security Law. Reimbursements paid from the fund pursuant to this section shall be deemed to be benefits for the purposes of the Employment Security Law; and

~~(4)~~ (d) Wages, upon the basis of which an individual may become entitled to benefits under an employment security law of another state or of the federal government, shall be deemed to be wages for insured work for the purpose of determining his or her benefits under the Employment Security Law; and wages for insured work, on the basis of which an individual may become entitled to benefits under the Employment Security Law, shall be deemed to be wages on the basis of which unemployment insurance is payable under such law of another state or of the federal government. No such arrangement shall be entered into unless it contains provisions for reimbursement to the fund for such of the benefits paid under the Employment Security Law upon the basis of such wages and provision for reimbursement from the fund for such benefits paid under such other law upon the basis of wages for insured work, as the commissioner finds will be fair and reasonable to all affected interests. Reimbursement paid from the fund pursuant to this section shall be deemed to be benefits for the purposes of the Employment Security Law.

(2) Notwithstanding any other provisions of this section, the commissioner shall participate in any arrangements for the payment of benefits on the basis of combining an individual's wages and employment covered under the Employment Security Law with his or her wages and employment covered under the unemployment compensation laws of other states which are approved by the United States Secretary of Labor in consultation with the state unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of benefits in such situations and which include provisions for (a) applying the base period of a single state law to a claim involving the combining of an individual's wages and employment covered under two or more state unemployment compensation laws, and (b) avoiding the duplicate use of wages and employment by reason of such combining. However, no benefits paid pursuant to an agreement to combine wages entered into under this subsection shall be charged against any employer's experience account if the employer's experience account, under the same or similar circumstances, would not be charged under the Employment Security Law. Benefits received by a claimant pursuant to an agreement entered into under this subsection to which he or she is not entitled shall be credited to an employer's experience account or reimbursement account in the same manner as claims paid based solely upon the laws of this state.

Sec. 13. Section 48-668.02, Reissue Revised Statutes of Nebraska, is amended to read:

48-668.02 Reimbursements paid from the fund pursuant to ~~subsections (3) and (4)~~ subdivisions (1)(c) and (1)(d) of section 48-668 shall be deemed to be benefits for the purposes of the Employment Security Law. The commissioner is authorized to make to other state or federal agencies and to receive from such other state or federal agencies reimbursements from or to the fund in accordance with arrangements entered into pursuant to section 48-668.

Sec. 14. Original sections 48-622.01, 48-622.02, 48-622.03, 48-655, 48-665, 48-668, and 48-668.02, Reissue Revised Statutes of Nebraska, and sections 48-612.01, 48-648, 48-648.01, 48-649, 48-652, and 48-654, Revised Statutes Cumulative Supplement, 2008, are repealed.

Sec. 15. The following section is outright repealed: Section 48-610, Reissue Revised Statutes of Nebraska.

Sec. 16. Since an emergency exists, this act takes effect when passed and approved according to law.