

AMENDMENTS TO LB44

(Amendments to Final Reading copy)

Introduced by Smith, 14.

1           1. Strike the original sections and all amendments thereto and  
2 insert the following new sections:

3           Section 1. Section 77-2701.13, Reissue Revised Statutes of Nebraska,  
4 is amended to read:

5           77-2701.13 (1) Engaged in business in this state means conducting  
6 operations in this state that exceed the level of activity required under  
7 the commerce clause and due process clause of the United States  
8 Constitution for a state to enforce collection responsibility on a  
9 retailer and includes, but is not limited to, any of the following:

10           (a) (1) Maintaining, occupying, or using, permanently or  
11 temporarily, directly or indirectly, or through a subsidiary or agent, by  
12 whatever name called, an office, place of distribution, sales or sample  
13 room or place, warehouse, storage place, or other place of business in  
14 this state;

15           (b) (2) Having any representative, agent, salesperson, canvasser, or  
16 solicitor operating in this state under the authority of the retailer or  
17 its subsidiary for the purpose of selling, delivering, or taking orders  
18 for any property;

19           (c) (3) Deriving rentals from a lease of property in this state by  
20 any retailer;

21           (d) (4) Soliciting retail sales of property from residents of this  
22 state on a continuous, regular, or systematic basis by means of  
23 advertising which is broadcast from or relayed from a transmitter within  
24 this state or distributed from a location within this state;

25           (e) (5) Soliciting or facilitating orders from or sales to residents  
26 of this state ~~for property by mail,~~ if the activities ~~solicitations~~ are

1 continuous, regular, seasonal, or systematic or ~~and~~ if the retailer  
2 benefits from any banking, financing, debt collection, or marketing  
3 activities occurring in this state or benefits from the location in this  
4 state of authorized installation, servicing, or repair facilities;

5 (f) (6) Being owned or controlled by the same interests which own or  
6 control any retailer engaged in business in the same or similar line of  
7 business in this state; or

8 (g) (7) Maintaining or having a franchisee or licensee operating  
9 under the retailer's trade name in this state if the franchisee or  
10 licensee is required to collect the tax under the Nebraska Revenue Act of  
11 1967.

12 (2) A person who lacks a physical presence in this state and who  
13 makes, solicits, or facilitates orders from this state of property  
14 subject to state and local sales or use taxes in this state or who makes,  
15 solicits, or facilitates retail sales of property subject to state and  
16 local sales or use taxes in this state shall be deemed to be engaged in  
17 business in this state if:

18 (a) Such person's total retail sales or property subject to state  
19 and local sales or use taxes in this state exceeded one hundred thousand  
20 dollars in the previous or current calendar year; or

21 (b) Such person made, solicited, or facilitated retail sales subject  
22 to state and local sales or use taxes in this state in two hundred or  
23 more separate transactions in the previous or current calendar year.

24 (3) The changes made in this section by this legislative bill become  
25 operative on the first day of the second calendar quarter after a  
26 controlling United States Supreme Court decision or federal legislation  
27 alters the physical presence requirement of Quill Corp. v. North Dakota,  
28 504 U.S. 298 (1992).

29 Sec. 2. Section 77-2701.32, Reissue Revised Statutes of Nebraska, is  
30 amended to read:

31 77-2701.32 (1) Retailer means any seller.

1 (2) To facilitate the proper administration of the Nebraska Revenue  
2 Act of 1967, the following persons have the duties and responsibilities  
3 of sellers for the purposes of sales and use taxes:

4 (a) Any person in the business of making sales subject to tax under  
5 section 77-2703 at auction of property owned by the person or others;

6 (b) Any person collecting the proceeds of the auction, other than  
7 the owner of the property, together with his or her principal, if any,  
8 when the person collecting the proceeds of the auction is not the  
9 auctioneer or an agent or employee of the auctioneer. The seller does not  
10 include the auctioneer in such case;

11 (c) Every person who has elected to be considered a retailer  
12 pursuant to subdivision (1) of section 77-2701.10;

13 (d) Every person operating, organizing, or promoting a flea market,  
14 craft show, fair, or similar event;~~and~~

15 (e) Every person engaged in the business of providing any service  
16 defined in subsection (4) of section 77-2701.16; ~~and -~~

17 (f) Every person making or facilitating sales in or into this state.

18 (3) For the proper administration of the Nebraska Revenue Act of  
19 1967, the following persons do not have the duties and responsibilities  
20 of a seller for purposes of sales and use taxes:

21 (a) Any person who leases or rents films when an admission tax is  
22 charged under the Nebraska Revenue Act of 1967;

23 (b) Any person who leases or rents railroad rolling stock  
24 interchanged pursuant to the provisions of the federal Interstate  
25 Commerce Act;

26 (c) Any person engaged in the business of furnishing rooms in a  
27 facility licensed under the Health Care Facility Licensure Act in which  
28 rooms, lodgings, or accommodations are regularly furnished for a  
29 consideration or a facility operated by an educational institution  
30 established under Chapter 79 or Chapter 85 in which rooms are regularly  
31 used to house students for a consideration for periods in excess of

1 thirty days; or

2 (d) Any person making sales at a flea market, craft show, fair, or  
3 similar event when such person does not have a sales tax permit and has  
4 arranged to pay sales taxes collected to the person operating,  
5 organizing, or promoting such event.

6 (4) The changes made in this section by this legislative bill become  
7 operative on the first day of the second calendar quarter after a  
8 controlling United States Supreme Court decision or federal legislation  
9 alters the physical presence requirement of Quill Corp. v. North Dakota,  
10 504 U.S. 298 (1992).

11 Sec. 3. Original sections 77-2701.13 and 77-2701.32, Reissue  
12 Revised Statutes of Nebraska, are repealed.

13 2. On page 1, strike lines 3 through 10 and insert "redefine the  
14 term engaged in business in this state for purposes of sales and use  
15 taxes; to change the persons who have certain duties and responsibilities  
16 relating to sales and use taxes; to provide operative dates for statutory  
17 changes as prescribed; and to repeal the original sections."