

AMENDMENTS TO LB1016

Introduced by Business and Labor.

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

3           Section 1. Section 48-622.03, Revised Statutes Supplement, 2019, is  
4 amended to read:

5           48-622.03 (1) There is hereby created the Nebraska Worker Training  
6 Board. The board shall consist of seven members appointed and serving for  
7 terms determined by the Governor as follows:

8           (a) A representative of employers in Nebraska;

9           (b) A representative of employees in Nebraska;

10          (c) A representative of the public;

11          (d) The Commissioner of Labor or a designee;

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

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

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

16          (2) The chairperson of the Nebraska Worker Training Board shall be  
17 the representative of the employers in Nebraska.

18          (3) By July 1 of each year, the board shall prepare an annual  
19 program plan for the upcoming fiscal year containing guidelines for the  
20 program financed by the Nebraska Training and Support Cash Fund. The  
21 guidelines shall include, but not be limited to, guidelines for  
22 certifying training providers, criteria for evaluating requests for the  
23 use of money under section 48-622.02, and guidelines for requiring  
24 employers to provide matching funds. The guidelines shall give priority  
25 to training that contributes to the expansion of the Nebraska workforce  
26 and increasing the pool of highly skilled workers in Nebraska.

27          (4) By December 31 ~~July 1~~ of each year, the Department of Labor

1 shall provide a report to the Governor covering the activities of the  
2 program financed by the Nebraska Training and Support Cash Fund for the  
3 previous fiscal year. The report shall contain an assessment of the  
4 effectiveness of the program and its administration.

5 Sec. 2. Section 48-1228, Revised Statutes Cumulative Supplement,  
6 2018, is amended to read:

7 48-1228 Sections 48-1228 to 48-1234 and sections 3 and 6 of this act  
8 shall be known and may be cited as the Nebraska Wage Payment and  
9 Collection Act.

10 Sec. 3. An employer shall not retaliate or discriminate against an  
11 employee because the employee:

12 (1) Files a suit or complaint under the Nebraska Wage Payment and  
13 Collection Act; or

14 (2) Testifies, assists, or participates in an investigation,  
15 proceeding, or action concerning a violation of the act.

16 Sec. 4. Section 48-1231, Revised Statutes Cumulative Supplement,  
17 2018, is amended to read:

18 48-1231 (1) An employee having a claim for wages which are not paid  
19 within thirty days of the regular payday designated or agreed upon may  
20 institute suit for such unpaid wages in the proper court. If an employee  
21 establishes a claim and secures judgment on the claim, such employee  
22 shall be entitled to recover ~~(a) the full amount of the judgment and all~~  
23 ~~costs of such suit, including reasonable attorney's fees and (b) if such~~  
24 ~~employee has employed an attorney in the case, an amount for attorney's~~  
25 ~~fees assessed by the court, which fees shall not be less than twenty-five~~  
26 ~~percent of the unpaid wages. If the cause is taken to an appellate court~~  
27 ~~and the employee plaintiff recovers a judgment, the appellate court shall~~  
28 award reasonable attorney's fees to the employee tax as costs in the  
29 action, to be paid to the plaintiff, an additional amount for attorney's  
30 fees in such appellate court, which fees shall not be less than twenty-  
31 five percent of the unpaid wages. If the employee fails to recover a

1 judgment in excess of the amount that may have been tendered within  
2 thirty days of the regular payday by an employer, such employee shall not  
3 recover the attorney's fees provided by this subsection ~~section~~. If the  
4 court finds that no reasonable dispute existed as to the fact that wages  
5 were owed or as to the amount of such wages, the court may order the  
6 employee to pay the employer's attorney's fees and costs of the action as  
7 assessed by the court.

8 (2) If an employee works for an employer that is not subject to the  
9 Nebraska Fair Employment Practice Act and such employee is aggrieved by a  
10 violation of section 3 of this act, the employee may bring a suit against  
11 such employer in the proper court to recover the damages sustained by  
12 reason of such violation. If an employee prevails in a suit brought  
13 pursuant to this subsection, such employee shall be entitled to recover  
14 the full amount of the judgment and all costs of such suit, including  
15 reasonable attorney's fees. If the cause is taken to an appellate court  
16 and the employee recovers a judgment, the appellate court shall award  
17 reasonable attorney's fees to the employee.

18 (3) ~~(2)~~ An employer who fails to furnish a wage statement under  
19 subsection (2) of section 48-1230 shall be guilty of an infraction as  
20 defined in section 29-431 and shall be subject to a fine pursuant to  
21 section 29-436.

22 (4) If an employee institutes suit against an employer under  
23 subsection (1) or (2) of this section, any citation that is issued  
24 against such employer under section 48-1234 and that relates directly to  
25 the facts in dispute shall be admitted into evidence unless specifically  
26 excluded by the court. If a citation has been contested as described in  
27 subsection (3) of section 48-1234, it shall not be admitted into evidence  
28 under this subsection until after such contest has been resolved.

29 Sec. 5. Section 48-1234, Revised Statutes Supplement, 2019, is  
30 amended to read:

31 48-1234 (1) The Commissioner of Labor shall issue a citation to an

1 employer when an investigation reveals that the employer may have  
2 violated the Nebraska Wage Payment and Collection Act, other than a  
3 violation of subsection (2) of section 48-1230.

4 (2) When a citation is issued, the commissioner shall notify the  
5 employer of the proposed administrative penalty, if any, by certified  
6 mail or any other manner of delivery by which the United States Postal  
7 Service can verify delivery or by any method of service recognized under  
8 Chapter 25, article 5. The administrative penalty shall be not more than  
9 five hundred dollars in the case of a first violation and not more than  
10 five thousand dollars in the case of a second or subsequent violation.

11 (3) The employer has fifteen working days after the date of the  
12 citation or penalty to contest such citation or penalty. Notice of  
13 contest shall be sent to the commissioner who shall provide a hearing in  
14 accordance with the Administrative Procedure Act.

15 (4) Any employer who has an unpaid citation for a violation of the  
16 Nebraska Wage Payment and Collection Act shall be barred from contracting  
17 with the state or any political subdivision until such citation is paid.  
18 If a citation has been contested as described in subsection (3) of this  
19 section, it shall not be considered an unpaid citation under this  
20 subsection until after such contest has been resolved.

21 (5) Citations issued under this section and the names of employers  
22 who have been issued a citation shall be made available to the public  
23 upon request, except that this subsection shall not apply to any  
24 citations that are being contested as described in subsection (3) of this  
25 section.

26 Sec. 6. No later than December 1 of each year, the Department of  
27 Labor shall post information on its web site regarding compliance with  
28 and enforcement of the Nebraska Wage Payment and Collection Act and shall  
29 provide notice to the Legislature that the information was posted. The  
30 information shall include, but not be limited to, (1) the total number of  
31 reports of unpaid wages filed with the department in the prior calendar

1 year, (2) the total number of reports investigated in the prior calendar  
2 year, (3) the results of all investigations completed in the prior  
3 calendar year, including, but not limited to, the number of cases in  
4 which wages were found to be owed to an employee, the number of cases in  
5 which the employer paid wages owed to the employee during the course of  
6 the investigation, and the number of cases in which it was found that no  
7 wages were owed to an employee, (4) the number of citations issued  
8 pursuant to section 48-1234 in the prior calendar year, (5) the total  
9 amount of wages owed to employees according to the citations issued in  
10 the prior calendar year, (6) the number of employers with more than two  
11 citations in the previous five years, and (7) the number and names of  
12 employers with at least one unpaid citation from the previous five years.

13       Sec. 7. Section 48-2107, Revised Statutes Cumulative Supplement,  
14 2018, is amended to read:

15       48-2107 (1) Each application or renewal under section 48-2105 shall  
16 be signed by the applicant and accompanied by a fee not to exceed ~~of~~  
17 forty dollars. The commissioner may adopt and promulgate rules and  
18 regulations to establish the criteria for acceptability of filing  
19 documents and making payments electronically. The criteria may include  
20 requirements for electronic signatures. The commissioner may refuse to  
21 accept any electronic filings or payments that do not meet the criteria  
22 established. The fee shall not be required when an amendment to an  
23 application is submitted. The commissioner shall remit the fees collected  
24 under this subsection to the State Treasurer for credit to the Contractor  
25 and Professional Employer Organization Registration Cash Fund.

26       (2) A contractor shall not be required to pay the fee under  
27 subsection (1) of this section if (a) the contractor is self-employed and  
28 does not pay more than three thousand dollars annually to employ other  
29 persons in the business and the application contains a statement made  
30 under oath or equivalent affirmation setting forth such information or  
31 (b) the contractor only engages in the construction of water wells or

1 installation of septic systems. At any time that a contractor no longer  
2 qualifies for exemption from the fee, the fee shall be paid to the  
3 department. Any false statement made under subdivision (2)(a) of this  
4 section shall be a violation of section 28-915.01.

5 (3) The commissioner shall charge an additional fee of twenty-five  
6 dollars for the registration of each nonresident contractor and a fee of  
7 twenty-five dollars for the registration of each contract to which a  
8 nonresident contractor is a party if the total contract price or  
9 compensation to be received is more than ten thousand dollars. The  
10 commissioner shall remit the fees collected under this subsection to the  
11 State Treasurer for credit to the General Fund.

12 Sec. 8. Section 48-2907, Revised Statutes Cumulative Supplement,  
13 2018, is amended to read:

14 48-2907 (1) In addition to any other fines or penalties provided by  
15 law, if the commissioner may issue a citation to a contractor when an  
16 investigation reveals finds, after notice and hearing, that a contractor  
17 has violated the Employee Classification Act. ~~, the contractor shall be~~  
18 ~~assessed, by the commissioner, a five-hundred-dollar fine~~

19 (2) When a citation is issued, the commissioner shall notify the  
20 contractor of the proposed administrative penalty, if any, by certified  
21 mail or any other manner of delivery by which the United States Postal  
22 Service can verify delivery or by any method of service recognized under  
23 Chapter 25, article 5. The administrative penalty shall be not more than  
24 five hundred dollars per each misclassified individual for the first  
25 offense and not more than five thousand dollars a five-thousand-dollar  
26 fine per each misclassified individual for each second or and subsequent  
27 offense.

28 (3) The contractor has fifteen working days after the date of the  
29 citation or penalty to contest such citation or penalty. Notice of  
30 contest shall be sent to the commissioner who shall provide a hearing in  
31 accordance with the Administrative Procedure Act.

1           (4) A contractor who is assessed an administrative penalty for a  
2 violation of the Employee Classification Act shall pay such  
3 administrative penalty no later than ten days after the date the penalty  
4 becomes final and not subject to further appeal. A ~~(2)~~ Any contractor who  
5 has an unpaid administrative penalty in violation of this subsection  
6 finishes for a violation of the Employee Classification Act shall be barred  
7 from contracting with the state or any political subdivision until such  
8 administrative penalty is finished are paid.

9           Sec. 9. Sections 2, 3, 4, 5, 6, and 11 of this act become operative  
10 on October 1, 2020. The other sections of this act become operative on  
11 their effective date.

12           Sec. 10. Original sections 48-2107 and 48-2907, Revised Statutes  
13 Cumulative Supplement, 2018, and section 48-622.03, Revised Statutes  
14 Supplement, 2019, are repealed.

15           Sec. 11. Original sections 48-1228 and 48-1231, Revised Statutes  
16 Cumulative Supplement, 2018, and section 48-1234, Revised Statutes  
17 Supplement, 2019, are repealed.

18           Sec. 12. The following sections are outright repealed: Sections  
19 48-209, 48-210, 48-211, 48-440, 48-501.01, 48-503, 48-504, 48-505,  
20 48-506, 48-507, 48-508, 48-510, 48-511, 48-512, 48-513, 48-514, 48-515,  
21 48-516, 48-517, 48-518, 48-519, 48-520, 48-521, 48-523, and 48-524,  
22 Reissue Revised Statutes of Nebraska.

23           Sec. 13. Since an emergency exists, this act takes effect when  
24 passed and approved according to law.