

## LEGISLATIVE BILL 18

Approved by the Governor May 25, 2021

Introduced by Kolterman, 24.

A BILL FOR AN ACT relating to the Imagine Nebraska Act; to amend sections 77-6810 and 77-6818, Revised Statutes Cumulative Supplement, 2020; to change provisions relating to equivalent employees and qualified locations; to repeal the original sections; and to declare an emergency.  
Be it enacted by the people of the State of Nebraska,

Section 1. Section 77-6810, Revised Statutes Cumulative Supplement, 2020, is amended to read:

77-6810 Equivalent employees means the number of employees computed by dividing the total hours paid in a year by the product of forty times the number of weeks in a year. Only the hours paid to employees who were employed in Nebraska and subject to the Nebraska income tax on compensation received from the taxpayer ~~are residents of this state~~ shall be included in such computation. A salaried employee who receives a predetermined amount of compensation each pay period on a weekly or less frequent basis is deemed to have been paid for forty hours per week during the pay period.

Sec. 2. Section 77-6818, Revised Statutes Cumulative Supplement, 2020, is amended to read:

77-6818 (1) Qualified location means a location at which the majority of the business activities conducted are within one or more of the following NAICS codes or the following descriptions:

- (a) Manufacturing - 31, 32, or 33, including pre-production services;
- (b) Testing Laboratories - 541380;
- (c) Rail Transportation - 482;
- (d) Truck Transportation - 484;
- (e) Insurance Carriers - 5241;
- (f) Wired Telecommunications Carriers - 517311;
- (g) Wireless Telecommunications Carriers (except Satellite) - 517312;
- (h) Telemarketing Bureaus and Other Contact Centers - 561422;
- (i) Data Processing, Hosting, and Related Services - 518210;
- (j) Computer Facilities Management Services - 541513;
- (k) Warehousing and Storage - 4931;
- (l) The administrative management of the taxpayer's activities, including headquarter facilities relating to such activities, or the administrative management of any of the activities of any business entity or entities in which the taxpayer or a group of its owners hold any direct or indirect ownership interest of at least ten percent, including headquarter facilities relating to such activities;
- (m) Logistics Facilities - Portions of NAICS 488210, 488310, and 488490 dealing with independently operated trucking terminals, independently operated railroad and railway terminals, and waterfront terminal and port facility operations;
- (n) Services provided on aircraft brought into this state by an individual who is a resident of another state or any other person who has a business location in another state when the aircraft is not to be registered or based in this state and will not remain in this state more than ten days after the service is completed;
- (o) The conducting of research, development, or testing, or any combination thereof, for scientific, agricultural, animal husbandry, food product, industrial, or technology purposes;
- (p) The production of electricity by using one or more sources of renewable energy to produce electricity for sale. For purposes of this subdivision, sources of renewable energy includes, but is not limited to, wind, solar, energy storage, geothermal, hydroelectric, biomass, and transmutation of elements;
- (q) Computer Systems Design and Related Services - 5415; ~~or~~
- (r) The performance of financial services. For purposes of this subdivision, financial services includes only financial services provided by any financial institution subject to tax under Chapter 77, article 38, or any person or entity licensed by the Department of Banking and Finance or the federal Securities and Exchange Commission; ~~-~~
- (s) Postharvest Crop Activities (except Cotton Ginning) - 115114; or
- (t) The processing of tangible personal property. For purposes of this subdivision, processing means to subject to a particular method, system, or technique of preparation, handling, or other treatment designed to prepare tangible personal property for market, manufacture, or other commercial use which does not result in the transformation of such property into a substantially different character.

(2)(a) Qualified location also includes any other business location if at least seventy-five percent of the revenue derived at the location is from sales to customers who are not related persons which are delivered or provided from the qualified location to a location that is not within Nebraska according to the sourcing rules in subsections (2) and (3) of section 77-2734.14.

Intermediate sales to related persons are included as sales to customers delivered or provided to a location outside Nebraska if the related person delivers or provides the goods or services to a location outside Nebraska. Even if a location meets the seventy-five percent requirement of this subdivision, such location shall not constitute a qualified location under this subdivision if the majority of the business activities conducted at such location are within any of the following NAICS codes or any combination thereof:

(i) Agriculture, Forestry, Fishing and Hunting - 11, excluding NAICS code 115114;

(ii) Transportation and Warehousing - 48-49;

(iii) Information - 51;

(iv) Utilities - 22;

(v) Mining, Quarrying, and Oil and Gas Extraction - 21;

(vi) Public Administration - 92; or

(vii) Construction - 23.

(b) The director may adopt and promulgate rules and regulations establishing an alternative method in circumstances in which subdivision (2)(a) of this section does not accurately reflect the out-of-state sales taking place at locations within Nebraska for a particular industry.

(3) The determination of the majority of the business activities shall be made based on the number of employees working in the respective business activities. The director may adopt and promulgate rules and regulations establishing an alternative method in circumstances in which other factors provide a better reflection of business activities.

(4) The delineation of the types of business activities which enable a location to constitute a qualified location is based on the state's intention to attract certain types of business activities and to responsibly accomplish the purposes of the ImagiNE Nebraska Act by directing the state's incentive capabilities towards business activities which, due to their national nature, could locate outside of Nebraska and which therefore would, through the use of incentives, be motivated to locate in Nebraska. By listing specific types of business activities in subsection (1) of this section, the state has determined such business activities by their nature meet these objectives. By specifying the national nature of a taxpayer's revenue in subsection (2) of this section, the state has determined that certain other types of business activities can meet these objectives.

Sec. 3. Original sections 77-6810 and 77-6818, Revised Statutes Cumulative Supplement, 2020, are repealed.

Sec. 4. Since an emergency exists, this act takes effect when passed and approved according to law.