

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 539

Introduced by Watermeier, 1; Krist, 10; Larson, 40; Mello, 5.
Read first time January 21, 2015

Committee: Government, Military and Veterans Affairs

1 A BILL FOR AN ACT relating to government auditing; to amend sections
2 50-1215, 84-305, and 84-311, Reissue Revised Statutes of Nebraska,
3 and sections 50-1213, 50-1214, 77-2711, and 77-27,119, Revised
4 Statutes Cumulative Supplement, 2014; to change provisions relating
5 to access to information by the office of Legislative Audit and
6 Auditor of Public Accounts; to change and provide penalties; to
7 harmonize provisions; to repeal the original sections; and to
8 declare an emergency.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 50-1213, Revised Statutes Cumulative Supplement,
2 2014, is amended to read:

3 50-1213 (1) The office shall have access to any and all information
4 and records, confidential or otherwise, including privileged
5 communications pursuant to section 27-503, of any agency, in whatever
6 form they may be, unless the office is denied such access by federal law
7 or explicitly named and denied such access by state law. If such a law
8 exists, the agency shall provide the committee with a written explanation
9 of its inability to produce such information and records and, after
10 reasonable accommodations are made, shall grant the office access to all
11 information and records or portions thereof that can legally be reviewed.
12 Accommodations that may be negotiated between the agency and the
13 committee include, but are not limited to, a requirement that specified
14 information or records be reviewed on agency premises and a requirement
15 that specified working papers be securely stored on agency premises. An
16 agency's compliance with this subsection shall not constitute a waiver of
17 the privilege under section 27-503.

18 (2) Upon receipt of a written request by the office for access to
19 any information or records, the agency shall provide to the office as
20 soon as is practicable and without delay, but not more than three
21 business days after actual receipt of the request, either (a) the
22 requested materials or (b)(i) if there is a legal basis for refusal to
23 comply with the request, a written denial of the request together with
24 the information specified in subsection (1) of this section or (ii) if
25 the entire request cannot with reasonable good faith efforts be fulfilled
26 within three business days after actual receipt of the request due to the
27 significant difficulty or the extensiveness of the request, a written
28 explanation, including the earliest practicable date for fulfilling the
29 request, and an opportunity for the office to modify or prioritize the
30 items within the request. No delay due to the significant difficulty or
31 the extensiveness of a request for access to information or records shall

1 exceed three calendar weeks after actual receipt of such request by any
2 agency. The three business days shall be computed by excluding the day
3 the request is received, after which the designated period of time begins
4 to run. Business day does not include a Saturday, a Sunday, or a day
5 during which the offices of the custodian of the public records are
6 closed.

7 (3 2) Except as provided in this section, any confidential
8 information or confidential records shared with the office shall remain
9 confidential and shall not be shared by an employee of the office with
10 any person who is not an employee of the office, including any member of
11 the committee. If necessary for the conduct of the performance audit, the
12 office may discuss or share confidential information with the chairperson
13 of the committee. If a dispute arises between the office and the agency
14 as to the accuracy of a performance audit or preaudit inquiry involving
15 confidential information or confidential records, the Speaker of the
16 Legislature, as a member of the committee, will be allowed access to the
17 confidential information or confidential records for the purpose of
18 assessing the accuracy of the performance audit or preaudit inquiry.

19 (4 3) Except as provided in subdivision (10)(c) of section
20 77-27,119, if the speaker or chairperson knowingly divulges or makes
21 known, in any manner not permitted by law, confidential information or
22 confidential records, he or she shall be guilty of a Class III
23 misdemeanor. Except as provided in subsection (11) of section 77-2711 and
24 subdivision (10)(c) of section 77-27,119, if any employee or former
25 employee of the office knowingly divulges or makes known, in any manner
26 not permitted by law, confidential information or confidential records,
27 he or she shall be guilty of a Class III misdemeanor and, in the case of
28 an employee, shall be dismissed.

29 (5 4) No proceeding of the committee or opinion or expression of any
30 member of the committee or office employee acting at the direction of the
31 committee shall be reviewable in any court. No member of the committee or

1 office employee acting at the direction of the committee shall be
2 required to testify or produce evidence in any judicial or administrative
3 proceeding concerning matters relating to the work of the office except
4 in a proceeding brought to enforce the Legislative Performance Audit Act.

5 (6 5) Pursuant to sections 84-712 and 84-712.01 and subdivision (5)
6 of section 84-712.05, the working papers obtained or produced by the
7 committee or office shall not be considered public records. The committee
8 may make the working papers available for purposes of an external quality
9 control review as required by generally accepted government auditing
10 standards. However, any reports made from such external quality control
11 review shall not make public any information which would be considered
12 confidential when in the possession of the office.

13 Sec. 2. Section 50-1214, Revised Statutes Cumulative Supplement,
14 2014, is amended to read:

15 50-1214 (1) By majority vote, the committee may decide not to
16 include in any document that will be a public record the names of persons
17 providing information to the office or committee.

18 (2) No employee of the State of Nebraska who provides information to
19 the committee or office shall be subject to any personnel action, as
20 defined in section 81-2703, penalties, sanctions, or restrictions in
21 connection with his or her employment as a result of the provision of
22 such information.

23 (3) Any person exercising his or her supervisory or managerial
24 authority to recommend, approve, direct, or otherwise take or affect
25 personnel action in violation of subsection (2) of this section shall be
26 guilty of a Class III misdemeanor and shall be dismissed from employment
27 with the state.

28 Sec. 3. Section 50-1215, Reissue Revised Statutes of Nebraska, is
29 amended to read:

30 50-1215 Any person who willfully fails to comply with the provisions
31 of section 50-1213 or who otherwise willfully obstructs or hinders the

1 conduct of a performance audit or preaudit inquiry or who willfully
2 misleads or attempts to mislead any person charged with the duty of
3 conducting a performance audit or preaudit inquiry shall be guilty of a
4 Class II misdemeanor.

5 Sec. 4. Section 77-2711, Revised Statutes Cumulative Supplement,
6 2014, is amended to read:

7 77-2711 (1)(a) The Tax Commissioner shall enforce sections
8 77-2701.04 to 77-2713 and may prescribe, adopt, and enforce rules and
9 regulations relating to the administration and enforcement of such
10 sections.

11 (b) The Tax Commissioner may prescribe the extent to which any
12 ruling or regulation shall be applied without retroactive effect.

13 (2) The Tax Commissioner may employ accountants, auditors,
14 investigators, assistants, and clerks necessary for the efficient
15 administration of the Nebraska Revenue Act of 1967 and may delegate
16 authority to his or her representatives to conduct hearings, prescribe
17 regulations, or perform any other duties imposed by such act.

18 (3)(a) Every seller, every retailer, and every person storing,
19 using, or otherwise consuming in this state property purchased from a
20 retailer shall keep such records, receipts, invoices, and other pertinent
21 papers in such form as the Tax Commissioner may reasonably require.

22 (b) Every such seller, retailer, or person shall keep such records
23 for not less than three years from the making of such records unless the
24 Tax Commissioner in writing sooner authorized their destruction.

25 (4) The Tax Commissioner or any person authorized in writing by him
26 or her may examine the books, papers, records, and equipment of any
27 person selling property and any person liable for the use tax and may
28 investigate the character of the business of the person in order to
29 verify the accuracy of any return made or, if no return is made by the
30 person, to ascertain and determine the amount required to be paid. In the
31 examination of any person selling property or of any person liable for

1 the use tax, an inquiry shall be made as to the accuracy of the reporting
2 of city sales and use taxes for which the person is liable under the
3 Local Option Revenue Act or sections 13-319, 13-324, and 13-2813 and the
4 accuracy of the allocation made between the various counties, cities,
5 villages, and municipal counties of the tax due. The Tax Commissioner may
6 make or cause to be made copies of resale or exemption certificates and
7 may pay a reasonable amount to the person having custody of the records
8 for providing such copies.

9 (5) The taxpayer shall have the right to keep or store his or her
10 records at a point outside this state and shall make his or her records
11 available to the Tax Commissioner at all times.

12 (6) In administration of the use tax, the Tax Commissioner may
13 require the filing of reports by any person or class of persons having in
14 his, her, or their possession or custody information relating to sales of
15 property, the storage, use, or other consumption of which is subject to
16 the tax. The report shall be filed when the Tax Commissioner requires and
17 shall set forth the names and addresses of purchasers of the property,
18 the sales price of the property, the date of sale, and such other
19 information as the Tax Commissioner may require.

20 (7) It shall be a Class I misdemeanor for the Tax Commissioner or
21 any official or employee of the Tax Commissioner, the State Treasurer, or
22 the Department of Administrative Services to make known in any manner
23 whatever the business affairs, operations, or information obtained by an
24 investigation of records and activities of any retailer or any other
25 person visited or examined in the discharge of official duty or the
26 amount or source of income, profits, losses, expenditures, or any
27 particular thereof, set forth or disclosed in any return, or to permit
28 any return or copy thereof, or any book containing any abstract or
29 particulars thereof to be seen or examined by any person not connected
30 with the Tax Commissioner. Nothing in this section shall be construed to
31 prohibit (a) the delivery to a taxpayer, his or her duly authorized

1 representative, or his or her successors, receivers, trustees, executors,
2 administrators, assignees, or guarantors, if directly interested, of a
3 certified copy of any return or report in connection with his or her tax,
4 (b) the publication of statistics so classified as to prevent the
5 identification of particular reports or returns and the items thereof,
6 (c) the inspection by the Attorney General, other legal representative of
7 the state, or county attorney of the reports or returns of any taxpayer
8 when either (i) information on the reports or returns is considered by
9 the Attorney General to be relevant to any action or proceeding
10 instituted by the taxpayer or against whom an action or proceeding is
11 being considered or has been commenced by any state agency or the county
12 or (ii) the taxpayer has instituted an action to review the tax based
13 thereon or an action or proceeding against the taxpayer for collection of
14 tax or failure to comply with the Nebraska Revenue Act of 1967 is being
15 considered or has been commenced, (d) the furnishing of any information
16 to the United States Government or to states allowing similar privileges
17 to the Tax Commissioner, (e) the disclosure of information and records to
18 a collection agency contracting with the Tax Commissioner pursuant to
19 sections 77-377.01 to 77-377.04, (f) the disclosure to another party to a
20 transaction of information and records concerning the transaction between
21 the taxpayer and the other party, (g) the disclosure of information
22 pursuant to section 77-27,195 or 77-5731, or (h) the disclosure of
23 information to the Department of Labor necessary for the administration
24 of the Employment Security Law, the Contractor Registration Act, or the
25 Employee Classification Act.

26 (8) Notwithstanding the provisions of subsection (7) of this
27 section, the Tax Commissioner may permit the Postal Inspector of the
28 United States Postal Service or his or her delegates to inspect the
29 reports or returns of any person filed pursuant to the Nebraska Revenue
30 Act of 1967 when information on the reports or returns is relevant to any
31 action or proceeding instituted or being considered by the United States

1 Postal Service against such person for the fraudulent use of the mails to
2 carry and deliver false and fraudulent tax returns to the Tax
3 Commissioner with the intent to defraud the State of Nebraska or to evade
4 the payment of Nebraska state taxes.

5 (9) Notwithstanding the provisions of subsection (7) of this
6 section, the Tax Commissioner may permit other tax officials of this
7 state to inspect the tax returns, reports, and applications filed under
8 sections 77-2701.04 to 77-2713, but such inspection shall be permitted
9 only for purposes of enforcing a tax law and only to the extent and under
10 the conditions prescribed by the rules and regulations of the Tax
11 Commissioner.

12 (10) Notwithstanding the provisions of subsection (7) of this
13 section, the Tax Commissioner may, upon request, provide the county board
14 of any county which has exercised the authority granted by section
15 81-3716 with a list of the names and addresses of the hotels located
16 within the county for which lodging sales tax returns have been filed or
17 for which lodging sales taxes have been remitted for the county's County
18 Visitors Promotion Fund under the Nebraska Visitors Development Act.

19 The information provided by the Tax Commissioner shall indicate only
20 the names and addresses of the hotels located within the requesting
21 county for which lodging sales tax returns have been filed for a
22 specified period and the fact that lodging sales taxes remitted by or on
23 behalf of the hotel have constituted a portion of the total sum remitted
24 by the state to the county for a specified period under the provisions of
25 the Nebraska Visitors Development Act. No additional information shall be
26 revealed.

27 (11)(a) Notwithstanding the provisions of subsection (7) of this
28 section, the Tax Commissioner shall, upon written request by the Auditor
29 of Public Accounts or the Legislative Performance Audit Committee, make
30 tax returns and tax return information open to inspection by or
31 disclosure to the Auditor of Public Accounts or employees of the office

1 of Legislative Audit for the purpose of and to the extent necessary in
2 making an audit of the Department of Revenue pursuant to section 50-1205
3 or 84-304. Confidential tax returns and tax return information shall be
4 audited only upon the premises of the Department of Revenue. All audit
5 workpapers pertaining to the audit of the Department of Revenue shall be
6 stored in a secure place in the Department of Revenue.

7 (b) No employee of the Auditor of Public Accounts or the office of
8 Legislative Audit shall disclose to any person, other than another
9 Auditor of Public Accounts or office employee whose official duties
10 require such disclosure or as provided in subsections (3 2) and (4 3) of
11 section 50-1213, any return or return information described in the
12 Nebraska Revenue Act of 1967 in a form which can be associated with or
13 otherwise identify, directly or indirectly, a particular taxpayer.

14 (c) Any person who violates the provisions of this subsection shall
15 be guilty of a Class I misdemeanor. For purposes of this subsection,
16 employee includes a former Auditor of Public Accounts or office of
17 Legislative Audit employee.

18 (12) For purposes of this subsection and subsections (11) and (14)
19 of this section:

20 (a) Disclosure means the making known to any person in any manner a
21 tax return or return information;

22 (b) Return information means:

23 (i) A taxpayer's identification number and (A) the nature, source,
24 or amount of his or her income, payments, receipts, deductions,
25 exemptions, credits, assets, liabilities, net worth, tax liability, tax
26 withheld, deficiencies, overassessments, or tax payments, whether the
27 taxpayer's return was, is being, or will be examined or subject to other
28 investigation or processing or (B) any other data received by, recorded
29 by, prepared by, furnished to, or collected by the Tax Commissioner with
30 respect to a return or the determination of the existence or possible
31 existence of liability or the amount of liability of any person for any

1 tax, penalty, interest, fine, forfeiture, or other imposition or offense;
2 and

3 (ii) Any part of any written determination or any background file
4 document relating to such written determination; and

5 (c) Tax return or return means any tax or information return or
6 claim for refund required by, provided for, or permitted under sections
7 77-2701 to 77-2713 which is filed with the Tax Commissioner by, on behalf
8 of, or with respect to any person and any amendment or supplement
9 thereto, including supporting schedules, attachments, or lists which are
10 supplemental to or part of the filed return.

11 (13) Notwithstanding the provisions of subsection (7) of this
12 section, the Tax Commissioner shall, upon request, provide any
13 municipality which has adopted the local option sales tax under the Local
14 Option Revenue Act with a list of the names and addresses of the
15 retailers which have collected the local option sales tax for the
16 municipality. The request may be made annually and shall be submitted to
17 the Tax Commissioner on or before June 30 of each year. The information
18 provided by the Tax Commissioner shall indicate only the names and
19 addresses of the retailers. The Tax Commissioner may provide additional
20 information to a municipality so long as the information does not include
21 any data detailing the specific revenue, expenses, or operations of any
22 particular business.

23 (14)(a) Notwithstanding the provisions of subsection (7) of this
24 section, the Tax Commissioner shall, upon written request, provide an
25 individual certified under subdivision (b) of this subsection
26 representing a municipality which has adopted the local option sales and
27 use tax under the Local Option Revenue Act with confidential sales and
28 use tax returns and sales and use tax return information regarding
29 taxpayers that possess a sales tax permit and the amounts remitted by
30 such permitholders at locations within the boundaries of the requesting
31 municipality or with confidential business use tax returns and business

1 use tax return information regarding taxpayers that file a Nebraska and
2 Local Business Use Tax Return and the amounts remitted by such taxpayers
3 at locations within the boundaries of the requesting municipality. Any
4 written request pursuant to this subsection shall provide the Department
5 of Revenue with no less than ten business days to prepare the sales and
6 use tax returns and sales and use tax return information requested. Such
7 returns and return information shall be viewed only upon the premises of
8 the department.

9 (b) Each municipality that seeks to request information under
10 subdivision (a) of this subsection shall certify to the Department of
11 Revenue one individual who is authorized by such municipality to make
12 such request and review the documents described in subdivision (a) of
13 this subsection. The individual may be a municipal employee or an
14 individual who contracts with the requesting municipality to provide
15 financial, accounting, or other administrative services.

16 (c) No individual certified by a municipality pursuant to
17 subdivision (b) of this subsection shall disclose to any person any
18 information obtained pursuant to a review under this subsection. An
19 individual certified by a municipality pursuant to subdivision (b) of
20 this subsection shall remain subject to this subsection after he or she
21 (i) is no longer certified or (ii) is no longer in the employment of or
22 under contract with the certifying municipality.

23 (d) Any person who violates the provisions of this subsection shall
24 be guilty of a Class I misdemeanor.

25 (e) The Department of Revenue shall not be held liable by any person
26 for an impermissible disclosure by a municipality or any agent or
27 employee thereof of any information obtained pursuant to a review under
28 this subsection.

29 (15) In all proceedings under the Nebraska Revenue Act of 1967, the
30 Tax Commissioner may act for and on behalf of the people of the State of
31 Nebraska. The Tax Commissioner in his or her discretion may waive all or

1 part of any penalties provided by the provisions of such act or interest
2 on delinquent taxes specified in section 45-104.02, as such rate may from
3 time to time be adjusted.

4 (16)(a) The purpose of this subsection is to set forth the state's
5 policy for the protection of the confidentiality rights of all
6 participants in the system operated pursuant to the streamlined sales and
7 use tax agreement and of the privacy interests of consumers who deal with
8 model 1 sellers.

9 (b) For purposes of this subsection:

10 (i) Anonymous data means information that does not identify a
11 person;

12 (ii) Confidential taxpayer information means all information that is
13 protected under a member state's laws, regulations, and privileges; and

14 (iii) Personally identifiable information means information that
15 identifies a person.

16 (c) The state agrees that a fundamental precept for model 1 sellers
17 is to preserve the privacy of consumers by protecting their anonymity.
18 With very limited exceptions, a certified service provider shall perform
19 its tax calculation, remittance, and reporting functions without
20 retaining the personally identifiable information of consumers.

21 (d) The governing board of the member states in the streamlined
22 sales and use tax agreement may certify a certified service provider only
23 if that certified service provider certifies that:

24 (i) Its system has been designed and tested to ensure that the
25 fundamental precept of anonymity is respected;

26 (ii) Personally identifiable information is only used and retained
27 to the extent necessary for the administration of model 1 with respect to
28 exempt purchasers;

29 (iii) It provides consumers clear and conspicuous notice of its
30 information practices, including what information it collects, how it
31 collects the information, how it uses the information, how long, if at

1 all, it retains the information, and whether it discloses the information
2 to member states. Such notice shall be satisfied by a written privacy
3 policy statement accessible by the public on the web site of the
4 certified service provider;

5 (iv) Its collection, use, and retention of personally identifiable
6 information is limited to that required by the member states to ensure
7 the validity of exemptions from taxation that are claimed by reason of a
8 consumer's status or the intended use of the goods or services purchased;
9 and

10 (v) It provides adequate technical, physical, and administrative
11 safeguards so as to protect personally identifiable information from
12 unauthorized access and disclosure.

13 (e) The state shall provide public notification to consumers,
14 including exempt purchasers, of the state's practices relating to the
15 collection, use, and retention of personally identifiable information.

16 (f) When any personally identifiable information that has been
17 collected and retained is no longer required for the purposes set forth
18 in subdivision (16)(d)(iv) of this section, such information shall no
19 longer be retained by the member states.

20 (g) When personally identifiable information regarding an individual
21 is retained by or on behalf of the state, it shall provide reasonable
22 access by such individual to his or her own information in the state's
23 possession and a right to correct any inaccurately recorded information.

24 (h) If anyone other than a member state, or a person authorized by
25 that state's law or the agreement, seeks to discover personally
26 identifiable information, the state from whom the information is sought
27 should make a reasonable and timely effort to notify the individual of
28 such request.

29 (i) This privacy policy is subject to enforcement by the Attorney
30 General.

31 (j) All other laws and regulations regarding the collection, use,

1 and maintenance of confidential taxpayer information remain fully
2 applicable and binding. Without limitation, this subsection does not
3 enlarge or limit the state's authority to:

4 (i) Conduct audits or other reviews as provided under the agreement
5 and state law;

6 (ii) Provide records pursuant to the federal Freedom of Information
7 Act, disclosure laws with governmental agencies, or other regulations;

8 (iii) Prevent, consistent with state law, disclosure of confidential
9 taxpayer information;

10 (iv) Prevent, consistent with federal law, disclosure or misuse of
11 federal return information obtained under a disclosure agreement with the
12 Internal Revenue Service; and

13 (v) Collect, disclose, disseminate, or otherwise use anonymous data
14 for governmental purposes.

15 Sec. 5. Section 77-27,119, Revised Statutes Cumulative Supplement,
16 2014, is amended to read:

17 77-27,119 (1) The Tax Commissioner shall administer and enforce the
18 income tax imposed by sections 77-2714 to 77-27,135, and he or she is
19 authorized to conduct hearings, to adopt and promulgate such rules and
20 regulations, and to require such facts and information to be reported as
21 he or she may deem necessary to enforce the income tax provisions of such
22 sections, except that such rules, regulations, and reports shall not be
23 inconsistent with the laws of this state or the laws of the United
24 States. The Tax Commissioner may for enforcement and administrative
25 purposes divide the state into a reasonable number of districts in which
26 branch offices may be maintained.

27 (2)(a) The Tax Commissioner may prescribe the form and contents of
28 any return or other document required to be filed under the income tax
29 provisions. Such return or other document shall be compatible as to form
30 and content with the return or document required by the laws of the
31 United States. The form shall have a place where the taxpayer shall

1 designate the high school district in which he or she lives and the
2 county in which the high school district is headquartered. The Tax
3 Commissioner shall adopt and promulgate such rules and regulations as may
4 be necessary to insure compliance with this requirement.

5 (b) The State Department of Education, with the assistance and
6 cooperation of the Department of Revenue, shall develop a uniform system
7 for numbering all school districts in the state. Such system shall be
8 consistent with the data processing needs of the Department of Revenue
9 and shall be used for the school district identification required by
10 subdivision (a) of this subsection.

11 (c) The proper filing of an income tax return shall consist of the
12 submission of such form as prescribed by the Tax Commissioner or an exact
13 facsimile thereof with sufficient information provided by the taxpayer on
14 the face of the form from which to compute the actual tax liability. Each
15 taxpayer shall include such taxpayer's correct social security number or
16 state identification number and the school district identification number
17 of the school district in which the taxpayer resides on the face of the
18 form. A filing is deemed to occur when the required information is
19 provided.

20 (3) The Tax Commissioner, for the purpose of ascertaining the
21 correctness of any return or other document required to be filed under
22 the income tax provisions, for the purpose of determining corporate
23 income, individual income, and withholding tax due, or for the purpose of
24 making an estimate of taxable income of any person, shall have the power
25 to examine or to cause to have examined, by any agent or representative
26 designated by him or her for that purpose, any books, papers, records, or
27 memoranda bearing upon such matters and may by summons require the
28 attendance of the person responsible for rendering such return or other
29 document or remitting any tax, or any officer or employee of such person,
30 or the attendance of any other person having knowledge in the premises,
31 and may take testimony and require proof material for his or her

1 information, with power to administer oaths or affirmations to such
2 person or persons.

3 (4) The time and place of examination pursuant to this section shall
4 be such time and place as may be fixed by the Tax Commissioner and as are
5 reasonable under the circumstances. In the case of a summons, the date
6 fixed for appearance before the Tax Commissioner shall not be less than
7 twenty days from the time of service of the summons.

8 (5) No taxpayer shall be subjected to unreasonable or unnecessary
9 examinations or investigations.

10 (6) Except in accordance with proper judicial order or as otherwise
11 provided by law, it shall be unlawful for the Tax Commissioner, any
12 officer or employee of the Tax Commissioner, any person engaged or
13 retained by the Tax Commissioner on an independent contract basis, any
14 person who pursuant to this section is permitted to inspect any report or
15 return or to whom a copy, an abstract, or a portion of any report or
16 return is furnished, any employee of the State Treasurer or the
17 Department of Administrative Services, or any other person to divulge,
18 make known, or use in any manner the amount of income or any particulars
19 set forth or disclosed in any report or return required except for the
20 purpose of enforcing sections 77-2714 to 77-27,135. The officers charged
21 with the custody of such reports and returns shall not be required to
22 produce any of them or evidence of anything contained in them in any
23 action or proceeding in any court, except on behalf of the Tax
24 Commissioner in an action or proceeding under the provisions of the tax
25 law to which he or she is a party or on behalf of any party to any action
26 or proceeding under such sections when the reports or facts shown thereby
27 are directly involved in such action or proceeding, in either of which
28 events the court may require the production of, and may admit in
29 evidence, so much of such reports or of the facts shown thereby as are
30 pertinent to the action or proceeding and no more. Nothing in this
31 section shall be construed (a) to prohibit the delivery to a taxpayer,

1 his or her duly authorized representative, or his or her successors,
2 receivers, trustees, personal representatives, administrators, assignees,
3 or guarantors, if directly interested, of a certified copy of any return
4 or report in connection with his or her tax, (b) to prohibit the
5 publication of statistics so classified as to prevent the identification
6 of particular reports or returns and the items thereof, (c) to prohibit
7 the inspection by the Attorney General, other legal representatives of
8 the state, or a county attorney of the report or return of any taxpayer
9 who brings an action to review the tax based thereon, against whom an
10 action or proceeding for collection of tax has been instituted, or
11 against whom an action, proceeding, or prosecution for failure to comply
12 with the Nebraska Revenue Act of 1967 is being considered or has been
13 commenced, (d) to prohibit furnishing to the Nebraska Workers'
14 Compensation Court the names, addresses, and identification numbers of
15 employers, and such information shall be furnished on request of the
16 court, (e) to prohibit the disclosure of information and records to a
17 collection agency contracting with the Tax Commissioner pursuant to
18 sections 77-377.01 to 77-377.04, (f) to prohibit the disclosure of
19 information pursuant to section 77-27,195, 77-4110, or 77-5731, (g) to
20 prohibit the disclosure to the Public Employees Retirement Board of the
21 addresses of individuals who are members of the retirement systems
22 administered by the board, and such information shall be furnished to the
23 board solely for purposes of its administration of the retirement systems
24 upon written request, which request shall include the name and social
25 security number of each individual for whom an address is requested, (h)
26 to prohibit the disclosure of information to the Department of Labor
27 necessary for the administration of the Employment Security Law, the
28 Contractor Registration Act, or the Employee Classification Act, (i) to
29 prohibit the disclosure to the Department of Motor Vehicles of tax return
30 information pertaining to individuals, corporations, and businesses
31 determined by the Department of Motor Vehicles to be delinquent in the

1 payment of amounts due under agreements pursuant to the International
2 Fuel Tax Agreement Act, and such disclosure shall be strictly limited to
3 information necessary for the administration of the act, (j) to prohibit
4 the disclosure under section 42-358.08, 43-512.06, or 43-3327 to any
5 court-appointed individuals, the county attorney, any authorized
6 attorney, or the Department of Health and Human Services of an absent
7 parent's address, social security number, amount of income, health
8 insurance information, and employer's name and address for the exclusive
9 purpose of establishing and collecting child, spousal, or medical
10 support, (k) to prohibit the disclosure of information to the Department
11 of Insurance, the Nebraska State Historical Society, or the State
12 Historic Preservation Officer as necessary to carry out the Department of
13 Revenue's responsibilities under the Nebraska Job Creation and Mainstreet
14 Revitalization Act, or (l) to prohibit the disclosure to the Department
15 of Insurance of information pertaining to authorization for, and use of,
16 tax credits under the New Markets Job Growth Investment Act. Information
17 so obtained shall be used for no other purpose. Any person who violates
18 this subsection shall be guilty of a felony and shall upon conviction
19 thereof be fined not less than one hundred dollars nor more than five
20 hundred dollars, or be imprisoned not more than five years, or be both so
21 fined and imprisoned, in the discretion of the court and shall be
22 assessed the costs of prosecution. If the offender is an officer or
23 employee of the state, he or she shall be dismissed from office and be
24 ineligible to hold any public office in this state for a period of two
25 years thereafter.

26 (7) Reports and returns required to be filed under income tax
27 provisions of sections 77-2714 to 77-27,135 shall be preserved until the
28 Tax Commissioner orders them to be destroyed.

29 (8) Notwithstanding the provisions of subsection (6) of this
30 section, the Tax Commissioner may permit the Secretary of the Treasury of
31 the United States or his or her delegates or the proper officer of any

1 state imposing an income tax, or the authorized representative of either
2 such officer, to inspect the income tax returns of any taxpayer or may
3 furnish to such officer or his or her authorized representative an
4 abstract of the return of income of any taxpayer or supply him or her
5 with information concerning an item of income contained in any return or
6 disclosed by the report of any investigation of the income or return of
7 income of any taxpayer, but such permission shall be granted only if the
8 statutes of the United States or of such other state, as the case may be,
9 grant substantially similar privileges to the Tax Commissioner of this
10 state as the officer charged with the administration of the income tax
11 imposed by sections 77-2714 to 77-27,135.

12 (9) Notwithstanding the provisions of subsection (6) of this
13 section, the Tax Commissioner may permit the Postal Inspector of the
14 United States Postal Service or his or her delegates to inspect the
15 reports or returns of any person filed pursuant to the Nebraska Revenue
16 Act of 1967 when information on the reports or returns is relevant to any
17 action or proceeding instituted or being considered by the United States
18 Postal Service against such person for the fraudulent use of the mails to
19 carry and deliver false and fraudulent tax returns to the Tax
20 Commissioner with the intent to defraud the State of Nebraska or to evade
21 the payment of Nebraska state taxes.

22 (10)(a) Notwithstanding the provisions of subsection (6) of this
23 section, the Tax Commissioner shall, upon written request by the Auditor
24 of Public Accounts or the Legislative Performance Audit Committee, make
25 tax returns and tax return information open to inspection by or
26 disclosure to officers and employees of the Auditor of Public Accounts or
27 employees of the office of Legislative Audit for the purpose of and to
28 the extent necessary in making an audit of the Department of Revenue
29 pursuant to section 50-1205 or 84-304. The Auditor of Public Accounts or
30 office of Legislative Audit shall statistically and randomly select the
31 tax returns and tax return information to be audited based upon a

1 computer tape provided by the Department of Revenue which contains only
2 total population documents without specific identification of taxpayers.
3 The Tax Commissioner shall have the authority to approve the statistical
4 sampling method used by the Auditor of Public Accounts or office of
5 Legislative Audit. Confidential tax returns and tax return information
6 shall be audited only upon the premises of the Department of Revenue. All
7 audit workpapers pertaining to the audit of the Department of Revenue
8 shall be stored in a secure place in the Department of Revenue.

9 (b) No officer or employee of the Auditor of Public Accounts or
10 office of Legislative Audit employee shall disclose to any person, other
11 than another officer or employee of the Auditor of Public Accounts or
12 office of Legislative Audit whose official duties require such disclosure
13 or as provided in subsections (3 2) and (4 3) of section 50-1213, any
14 return or return information described in the Nebraska Revenue Act of
15 1967 in a form which can be associated with or otherwise identify,
16 directly or indirectly, a particular taxpayer.

17 (c) Any person who violates the provisions of this subsection shall
18 be guilty of a Class IV felony and, in the discretion of the court, may
19 be assessed the costs of prosecution. The guilty officer or employee
20 shall be dismissed from employment and be ineligible to hold any position
21 of employment with the State of Nebraska for a period of two years
22 thereafter. For purposes of this subsection, officer or employee shall
23 include a former officer or employee of the Auditor of Public Accounts or
24 former employee of the office of Legislative Audit.

25 (11) For purposes of subsections (10) through (13) of this section:

26 (a) Tax returns shall mean any tax or information return or claim
27 for refund required by, provided for, or permitted under sections 77-2714
28 to 77-27,135 which is filed with the Tax Commissioner by, on behalf of,
29 or with respect to any person and any amendment or supplement thereto,
30 including supporting schedules, attachments, or lists which are
31 supplemental to or part of the filed return;

1 (b) Return information shall mean:

2 (i) A taxpayer's identification number and (A) the nature, source,
3 or amount of his or her income, payments, receipts, deductions,
4 exemptions, credits, assets, liabilities, net worth, tax liability, tax
5 withheld, deficiencies, overassessments, or tax payments, whether the
6 taxpayer's return was, is being, or will be examined or subject to other
7 investigation or processing or (B) any other data received by, recorded
8 by, prepared by, furnished to, or collected by the Tax Commissioner with
9 respect to a return or the determination of the existence or possible
10 existence of liability or the amount of liability of any person for any
11 tax, penalty, interest, fine, forfeiture, or other imposition or offense;
12 and

13 (ii) Any part of any written determination or any background file
14 document relating to such written determination; and

15 (c) Disclosures shall mean the making known to any person in any
16 manner a return or return information.

17 (12) The Auditor of Public Accounts or the Legislative Auditor shall

18 (a) notify the Tax Commissioner in writing thirty days prior to the
19 beginning of an audit of his or her intent to conduct an audit, (b)
20 provide an audit plan, and (c) provide a list of the tax returns and tax
21 return information identified for inspection during the audit.

22 (13) The Auditor of Public Accounts or the office of Legislative
23 Audit shall, as a condition for receiving tax returns and tax return
24 information: (a) Subject employees involved in the audit to the same
25 confidential information safeguards and disclosure procedures as required
26 of Department of Revenue employees; (b) establish and maintain a
27 permanent system of standardized records with respect to any request for
28 tax returns or tax return information, the reason for such request, and
29 the date of such request and any disclosure of the tax return or tax
30 return information; (c) establish and maintain a secure area or place in
31 the Department of Revenue in which the tax returns, tax return

1 information, or audit workpapers shall be stored; (d) restrict access to
2 the tax returns or tax return information only to persons whose duties or
3 responsibilities require access; (e) provide such other safeguards as the
4 Tax Commissioner determines to be necessary or appropriate to protect the
5 confidentiality of the tax returns or tax return information; (f) provide
6 a report to the Tax Commissioner which describes the procedures
7 established and utilized by the Auditor of Public Accounts or office of
8 Legislative Audit for insuring the confidentiality of tax returns, tax
9 return information, and audit workpapers; and (g) upon completion of use
10 of such returns or tax return information, return to the Tax Commissioner
11 such returns or tax return information, along with any copies.

12 (14) The Tax Commissioner may permit other tax officials of this
13 state to inspect the tax returns and reports filed under sections 77-2714
14 to 77-27,135, but such inspection shall be permitted only for purposes of
15 enforcing a tax law and only to the extent and under the conditions
16 prescribed by the rules and regulations of the Tax Commissioner.

17 (15) The Tax Commissioner shall compile the school district
18 information required by subsection (2) of this section. Insofar as it is
19 possible, such compilation shall include, but not be limited to, the
20 total adjusted gross income of each school district in the state. The Tax
21 Commissioner shall adopt and promulgate such rules and regulations as may
22 be necessary to insure that such compilation does not violate the
23 confidentiality of any individual income tax return nor conflict with any
24 other provisions of state or federal law.

25 Sec. 6. Section 84-305, Reissue Revised Statutes of Nebraska, is
26 amended to read:

27 84-305 (1) The Auditor of Public Accounts shall have access to any
28 and all information and records, confidential or otherwise, including
29 privileged communications pursuant to section 27-503, all records of any
30 public entity, in whatever form or mode the records may be, unless the
31 auditor is denied such access by federal law or explicitly named and

1 denied such access by state law. If such a law exists, the public entity
2 shall provide the auditor with a written explanation of its inability to
3 produce such information and records and, after reasonable accommodations
4 are made, shall grant the auditor access to all information and records
5 or portions thereof that can legally be reviewed. A public entity's
6 compliance with this subsection shall not constitute a waiver of the
7 privilege under section 27-503 auditor's access to the records is
8 specifically prohibited or limited by federal or state law.

9 (2) Upon receipt of a written request by the Auditor of Public
10 Accounts for access to any information or records, the public entity
11 shall provide to the auditor as soon as is practicable and without delay,
12 but not more than three business days after actual receipt of the request
13 either (a) the requested materials or (b)(i) if there is a legal basis
14 for refusal to comply with the request, a written denial of the request
15 together with the information specified in subsection (1) of this section
16 or (ii) if the entire request cannot with reasonable good faith efforts
17 be fulfilled within three business days after actual receipt of the
18 request due to the significant difficulty or the extensiveness of the
19 request, a written explanation, including the earliest practicable date
20 for fulfilling the request, and an opportunity for the auditor to modify
21 or prioritize the items within the request. No delay due to the
22 significant difficulty or the extensiveness of any request for access to
23 information or records shall exceed three calendar weeks after actual
24 receipt of such request by any public entity. The three business days
25 shall be computed by excluding the day the request is received, after
26 which the designated period of time begins to run. Business day does not
27 include a Saturday, a Sunday, or a day during which the offices of the
28 custodian of the public records are closed.

29 (3) No provisions of state law shall be construed to change the
30 nonpublic nature of the data obtained as a result of the access. When an
31 audit or investigative finding emanates from nonpublic data which is

1 nonpublic pursuant to federal or state law, all the nonpublic information
2 shall not be made public.

3 Sec. 7. Any person who willfully fails to comply with the
4 provisions of section 84-305 or who otherwise willfully obstructs or
5 hinders the conduct of an audit, examination, or related activity by he
6 Auditor of Public Accounts or who willfully misleads or attempts to
7 mislead any person charged with the duty of conducting such audit,
8 examination, or related activity shall be guilty of a Class II
9 misdemeanor.

10 Sec. 8. Section 84-311, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 84-311 (1) All final audit reports issued by the Auditor of Public
13 Accounts shall be maintained permanently as a public record in the office
14 of the Auditor of Public Accounts. Working papers and other audit files
15 maintained by the Auditor of Public Accounts are not public records and
16 are exempt from sections 84-712 to 84-712.05. The information contained
17 in working papers and audit files prepared pursuant to a specific audit
18 is not subject to disclosure except to a county attorney or the Attorney
19 General in connection with an investigation made or action taken in the
20 course of the attorney's official duties or to the Legislative
21 Performance Audit Committee in the course of the committee's official
22 duties and pursuant to the requirements of subdivision (16) of section
23 50-1205 or subdivision (5) of section 84-304. A public entity being
24 audited and any federal agency that has made a grant to such public
25 entity shall also have access to the relevant working papers and audit
26 files, except that such access shall not include information that would
27 disclose or otherwise indicate the identity of any individual who has
28 confidentially provided the Auditor of Public Accounts with allegations
29 of wrongdoing regarding, or other information pertaining to, the public
30 entity being audited. ~~Public entities being audited and the federal~~
31 agencies that have made grants to public entities being audited shall

1 ~~also have access to the relevant working papers and audit files.~~ For
2 purposes of this subsection, working papers means those documents
3 containing evidence to support the auditor's findings, opinions,
4 conclusions, and judgments and includes the collection of evidence
5 prepared or obtained by the auditor during the audit. The Auditor of
6 Public Accounts may make the working papers available for purposes of an
7 external quality control review as required by generally accepted
8 government auditing standards. However, any reports made from such
9 external quality control review shall not make public any information
10 which would be considered confidential under this section when in the
11 possession of the Auditor of Public Accounts.

12 (2) If the Auditor of Public Accounts or any employee of the Auditor
13 of Public Accounts knowingly divulges or makes known in any manner not
14 permitted by law any record, document, or information, the disclosure of
15 which is restricted by law, he or she is subject to the same penalties
16 provided in section 84-712.09.

17 Sec. 9. (1) The Auditor of Public Accounts may decide not to
18 include in any document that will be a public record the names of persons
19 providing information to the Auditor of Public Accounts.

20 (2) No employee of the State of Nebraska or any of its political
21 subdivisions who provides information to the Auditor of Public Accounts
22 shall be subject to any personnel action, as defined in section 81-2703,
23 in connection with his or her employment as a result of providing such
24 information.

25 (3) Any person exercising his or her supervisory or managerial
26 authority to recommend, approve, direct, or otherwise take or affect
27 personnel action in violation of subsection (2) of this section shall be
28 guilty of a Class III misdemeanor and shall be dismissed from employment
29 with the state or political subdivision.

30 Sec. 10. Original sections 50-1215, 84-305, and 84-311, Reissue
31 Revised Statutes of Nebraska, and sections 50-1213, 50-1214, 77-2711, and

1 77-27,119, Revised Statutes Cumulative Supplement, 2014, are repealed.

2 Sec. 11. Since an emergency exists, this act takes effect when
3 passed and approved according to law.