

E AND R AMENDMENTS TO LB 563

Introduced by Enrollment and Review Committee: Nordquist, 7,
Chairperson

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

3 Section 1. Sections 1 to 12 of this act shall be known
4 and may be cited as the Employee Classification Act.

5 Sec. 2. For purposes of the Employee Classification Act:

6 (1) Commissioner means the Commissioner of Labor;

7 (2) Construction has the same meaning as in section
8 48-2103;

9 (3) Contractor means an individual, partnership, limited
10 liability company, corporation, or other business entity engaged
11 in a delivery service or a construction contractor business, as
12 contractor is defined in section 48-2103;

13 (4) Delivery service means the transport and delivery of
14 goods, products, supplies, or raw materials upon the highways of
15 this state;

16 (5) Department means the Department of Labor; and

17 (6) Performing services means the performance of
18 construction labor or delivery services for remuneration.

19 Sec. 3. (1) An individual performing construction labor
20 services for a contractor is presumed an employee and not an
21 independent contractor for purposes of the Employee Classification
22 Act, unless:

23 (a) The individual meets the criteria found in

1 subdivision (5) of section 48-604;

2 (b) The individual has been registered as a contractor
3 pursuant to the Contractor Registration Act at least six months
4 prior to commencing construction work for the contractor; and

5 (c) The individual has been assigned a combined tax rate
6 pursuant to subdivision (4) of section 48-649 or the employees of
7 the individual are exempted from unemployment insurance coverage
8 pursuant to subdivision (6) of section 48-604.

9 (2) An individual performing delivery services for
10 a contractor is presumed an employee and not an independent
11 contractor for purposes of the Employee Classification Act, unless
12 the individual is exempted from unemployment insurance coverage
13 pursuant to subdivision (6) of section 48-604.

14 (3) The Employee Classification Act shall not be
15 construed to affect or apply to a common-law or statutory action
16 providing for recovery in tort and shall not be construed to affect
17 or change the common-law interpretation of independent contractor
18 status as it relates to tort liability or a workers' compensation
19 claim. The act shall also not be construed to affect or alter
20 the use of the term independent contractor as interpreted by the
21 Department of Revenue and shall not be construed to affect any
22 action brought pursuant to the Nebraska Revenue Act of 1967.

23 Sec. 4. It is a violation of the Employee Classification
24 Act for a contractor to designate an individual as an independent
25 contractor who would be properly classified as an employee under
26 section 3 of this act.

27 Sec. 5. The department shall establish and operate a

1 hotline and web site for individuals to report suspected violations
2 of the Employee Classification Act. The hotline and web site
3 may be operated in conjunction with the requirements of the
4 Contractor Registration Act. At a minimum, the department shall
5 require the reporting individual to provide contact information and
6 a description of the suspected violation including the name of
7 the business and jobsite location. The department shall keep the
8 identity of the reporting individual confidential.

9 Sec. 6. The department shall timely investigate all
10 credible reports made pursuant to section 5 of this act.

11 Sec. 7. In addition to any other fines or penalties
12 provided by law, if the commissioner finds, after notice and
13 hearing, that a contractor has violated the Employee Classification
14 Act, the contractor shall be assessed, by the commissioner, a
15 five-hundred-dollar fine per each misclassified individual for
16 the first offense and a five-thousand-dollar fine per each
17 misclassified individual for each second and subsequent offense.

18 Sec. 8. Upon finding a contractor has violated the
19 Employee Classification Act, the commissioner shall instigate
20 proceedings pursuant to the Employment Security Law to collect
21 any unpaid combined taxes and interest. The commissioner shall
22 share any findings with the Department of Revenue for analysis
23 of violations of the Nebraska Revenue Act of 1967 and with the
24 Nebraska Workers' Compensation Court. Upon receipt, the Department
25 of Revenue shall promptly investigate and proceed with the
26 collection of income tax not withheld plus interest and penalties.
27 The commissioner, Department of Revenue, and Nebraska Workers'

1 Compensation Court shall refer their findings to the appropriate
2 prosecuting authority for appropriate action under the Employment
3 Security Law, the Nebraska Revenue Act of 1967, or the Nebraska
4 Workers' Compensation Act.

5 Sec. 9. The department shall annually provide a report to
6 the Legislature regarding compliance with and enforcement of the
7 Employee Classification Act. The report shall include, but not be
8 limited to, the number of reports received from both its hotline
9 and web site, the number of investigated reports, the findings
10 of the reports, the amount of combined tax, interest, and fines
11 collected, the number of referrals to the Department of Revenue,
12 Nebraska Workers' Compensation Court, and appropriate prosecuting
13 authority, and the outcome of such referrals.

14 Sec. 10. Every contractor shall post in a conspicuous
15 place at the job site or place of business in English and Spanish
16 the following notice:

17 (1) Every individual working for a contractor has the
18 right to be properly classified by the contractor as an employee
19 rather than an independent contractor if the individual does not
20 meet the requirements of an independent contractor under the law
21 known as the Employee Classification Act.

22 (2) If you believe you or someone else has not been
23 properly classified as an employee or an independent contractor
24 under the Employee Classification Act, contact the Department of
25 Labor.

26 Sec. 11. The state or any political subdivision entering
27 into a contract for construction or delivery service shall require

1 that each contractor or subcontractor who performs construction
2 or delivery service pursuant to the contract submit an affidavit
3 attesting that each individual performing services for such
4 contractor is properly classified under the Employee Classification
5 Act, such contractor has completed a federal I-9 immigration form
6 on file for each employee performing services, such contractor has
7 complied with section 4-114, and such contractor has no reasonable
8 basis to believe that such individual is an undocumented worker.

9 Sec. 12. Any contractor who knowingly provides a false
10 affidavit under section 11 of this act to the state or political
11 subdivision shall be subject to the penalties of perjury and upon a
12 second or subsequent violation shall not be permitted to contract
13 with the state or any political subdivision for a period of three
14 years after the date of discovery of the falsehood.

15 Sec. 13. Section 48-621, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 48-621 (1) The administrative fund shall consist of the
18 Employment Security Administration Fund and the Employment Security
19 Special Contingent Fund. Each fund shall be maintained as a
20 separate and distinct account in all respects, as follows:

21 (a) There is hereby created in the state treasury a
22 special fund to be known as the Employment Security Administration
23 Fund. All money credited to this fund is hereby appropriated and
24 made available to the Commissioner of Labor. All money in this
25 fund shall be expended solely for the purposes and in the amounts
26 found necessary as defined by the specific federal programs, state
27 statutes, and contract obligations for the proper and efficient

1 administration of all programs of the Department of Labor. The
2 fund shall consist of all money appropriated by this state and
3 all money received from the United States of America or any
4 agency thereof, including the Department of Labor and the Railroad
5 Retirement Board, or from any other source for such purpose.
6 Money received from any agency of the United States or any other
7 state as compensation for services or facilities supplied to
8 such agency, any amounts received pursuant to any surety bond or
9 insurance policy for losses sustained by the Employment Security
10 Administration Fund or by reason of damage to equipment or supplies
11 purchased from money in such fund, and any proceeds realized from
12 the sale or disposition of any equipment or supplies which may no
13 longer be necessary for the proper administration of such programs
14 shall also be credited to this fund. All money in this fund
15 shall be deposited, administered, and disbursed in the same manner
16 and under the same conditions and requirements as is provided by
17 law for other special funds in the state treasury. Any balances
18 in this fund, except balances of money therein appropriated from
19 the General Fund of this state, shall not lapse at any time but
20 shall be continuously available to the commissioner for expenditure
21 consistent with the Employment Security Law. Any money in the
22 Employment Security Administration Fund available for investment
23 shall be invested by the state investment officer pursuant to
24 the Nebraska Capital Expansion Act and the Nebraska State Funds
25 Investment Act; and

26 (b) There is hereby created in the state treasury a
27 special fund to be known as the Employment Security Special

1 Contingent Fund. Any money in the Employment Security Special
2 Contingent Fund available for investment shall be invested by
3 the state investment officer pursuant to the Nebraska Capital
4 Expansion Act and the Nebraska State Funds Investment Act. All
5 money collected under section 48-655 as interest on delinquent
6 contributions, less refunds, shall be credited to this fund from
7 the clearing account of the Unemployment Compensation Fund at the
8 end of each calendar quarter. Such money shall not be expended
9 or available for expenditure in any manner which would permit its
10 substitution for or a corresponding reduction in federal funds
11 which would in the absence of such money be available to finance
12 expenditures for the administration of the unemployment insurance
13 law, but nothing in this section shall prevent the money from being
14 used as a revolving fund to cover expenditures necessary and proper
15 under the law for which federal funds have been duly requested
16 but not yet received, subject to the charging of such expenditures
17 against such federal funds when received. The money in this fund
18 may be used by the Commissioner of Labor only as follows:

19 (i) To replace within a reasonable time any money
20 received by this state pursuant to section 302 of the federal
21 Social Security Act, as amended, and required to be paid under
22 section 48-622;

23 (ii) To meet special extraordinary and contingent
24 expenses which are deemed essential for good administration but
25 which are not provided in grants from the Secretary of Labor of the
26 United States and, for this purpose, no expenditures shall be made
27 from this fund except on written authorization by the Governor at

1 the request of the Commissioner of Labor;

2 (iii) To be transferred to the Nebraska Community College
3 Aid Cash Fund; ~~and~~

4 (iv) To be transferred to the Job Training Cash Fund;
5 and-

6 (v) To assist with enforcement of the Employee
7 Classification Act.

8 (2) (a) Money credited to the account of this state in
9 the Unemployment Trust Fund by the United States Secretary of the
10 Treasury pursuant to section 903 of the Social Security Act may
11 not be requisitioned from this state's account or used except for
12 the payment of benefits and for the payment of expenses incurred
13 for the administration of the Employment Security Law and public
14 employment offices. Such money may be requisitioned pursuant to
15 section 48-619 for the payment of benefits. Such money may also
16 be requisitioned and used for the payment of expenses incurred
17 for the administration of the Employment Security Law and public
18 employment offices but only pursuant to a specific appropriation
19 by the Legislature and only if the expenses are incurred and
20 the money is requisitioned after the date of enactment of an
21 appropriation law which specifies the purposes for which such
22 money is appropriated and the amounts appropriated therefor. Such
23 appropriation is subject to the following conditions:

24 (i) The period within which such money may be obligated
25 is limited to a period ending not more than two years after the
26 effective date of the appropriation law; and

27 (ii) The amount which may be obligated is limited to an

1 amount which does not exceed the amount by which the aggregate of
2 the amounts transferred to the account of this state pursuant to
3 section 903 of the Social Security Act exceeds the aggregate of the
4 amounts used by this state pursuant to the Employment Security Law
5 and charged against the amounts transferred to the account of this
6 state.

7 (b) For purposes of subdivision (2)(a)(ii) of this
8 section, the amounts obligated under an appropriation for the
9 administrative purposes described in such subdivision shall
10 be charged against transferred amounts at the exact time the
11 obligation is entered into.

12 (c) The appropriation, obligation, and expenditure or
13 other disposition of money appropriated under this subsection shall
14 be accounted for in accordance with standards established by the
15 United States Secretary of Labor.

16 (d) Money appropriated as provided in this subsection for
17 the payment of expenses of administration shall be requisitioned
18 as needed for the payment of obligations incurred under such
19 appropriation and, upon requisition, shall be credited to the
20 Employment Security Administration Fund from which such payments
21 shall be made. Money so credited shall, until expended, remain
22 a part of the Employment Security Administration Fund and, if it
23 will not be immediately expended, shall be returned promptly to the
24 account of this state in the Unemployment Trust Fund.

25 (e) Notwithstanding subdivision (2)(a) of this section,
26 money credited with respect to federal fiscal years 1999,
27 2000, and 2001 shall be used solely for the administration of

1 the unemployment compensation program and are not subject to
2 appropriation by the Legislature.

3 (3) There is hereby appropriated out of the funds made
4 available to this state in federal fiscal year 2002 under section
5 903(d) of the federal Social Security Act, as amended, the sum
6 of \$6,800,484, or so much thereof as may be necessary, to be
7 used, under the direction of the Department of Labor, for the
8 administration of the Employment Security Law and public employment
9 offices. The expenditure or other disposition of money appropriated
10 under this subsection shall be accounted for in accordance with
11 standards established by the United States Secretary of Labor.
12 Reed Act distributions appropriated pursuant to this subsection
13 may be amortized with federal grant funds provided pursuant to
14 Title III of the federal Social Security Act and the federal
15 Wagner-Peyser Act for the purpose of administering the state
16 unemployment compensation and employment service programs to the
17 extent allowed under such acts and the regulations adopted pursuant
18 thereto. Except as specifically provided in this subsection, all
19 provisions of subsection (2) of this section, except subdivision
20 (2)(a)(i) of this section, shall apply to this appropriation.
21 The commissioner shall submit an annual report to the Governor,
22 the Speaker of the Legislature, and the chairpersons of the
23 Appropriations Committee and the Business and Labor Committee
24 of the Legislature describing expenditures made pursuant to this
25 subsection.

26 Sec. 14. Original section 48-621, Reissue Revised
27 Statutes of Nebraska, is repealed.

1 2. On page 1, strike beginning with "adopt" in line 1
2 through line 2 and insert "amend section 48-621, Reissue Revised
3 Statutes of Nebraska; to adopt the Employee Classification Act;
4 to provide funding for enforcement; and to repeal the original
5 section.".