

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 563**

FINAL READING

Introduced by Lathrop, 12; Mello, 5; Nordquist, 7.

Read first time January 21, 2009

Committee: Business and Labor

A BILL

1 FOR AN ACT relating to labor; to amend sections 77-2711 and  
2 77-27,119, Reissue Revised Statutes of Nebraska, and  
3 section 48-2115, Revised Statutes Supplement, 2009; to  
4 adopt the Employee Classification Act; to provide funding  
5 for enforcement; to allow the Department of Revenue  
6 to disclose information to the Department of Labor as  
7 prescribed; to harmonize provisions; and to repeal the  
8 original sections.

9 Be it enacted by the people of the State of Nebraska,

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

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

4           (1) Commissioner means the Commissioner of Labor;

5           (2) Construction has the same meaning as in section  
6 48-2103;

7           (3) Contractor means an individual, partnership, limited  
8 liability company, corporation, or other business entity engaged  
9 in a delivery service or a construction contractor business,  
10 as contractor is defined in section 48-2103, and includes any  
11 subcontractor performing services for a contractor;

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

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

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

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

22           (a) The individual meets the criteria found in  
23 subdivision (5) of section 48-604;

24           (b) The individual has been registered as a contractor  
25 pursuant to the Contractor Registration Act prior to commencing

1 construction work for the contractor; and

2 (c) The individual has been assigned a combined tax rate  
3 pursuant to subdivision (4) of section 48-649 or is exempted from  
4 unemployment insurance coverage pursuant to subdivision (6) of  
5 section 48-604.

6 (2) An individual performing delivery services for  
7 a contractor is presumed an employee and not an independent  
8 contractor for purposes of the Employee Classification Act, unless  
9 the individual meets the criteria found in subdivision (5) of  
10 section 48-604 or is exempted from unemployment insurance coverage  
11 pursuant to subdivision (6) of section 48-604.

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

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

25 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 may  
3 be operated in conjunction with the requirements of the Contractor  
4 Registration Act. At a minimum, the department shall require  
5 the reporting individual to provide contact information and a  
6 description of the suspected violation including the name of the  
7 business and job site location. Except to the extent needed in  
8 any administrative hearing, civil action, or criminal proceeding  
9 brought to enforce the Employment Security Law, Nebraska Revenue  
10 Act of 1967, or Nebraska Workers' Compensation Act, information  
11 obtained by the department under this section or obtained from  
12 any individual pursuant to the administration of the Employee  
13 Classification Act shall be held confidential.

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

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

23           Sec. 8. Upon finding a contractor has violated the  
24 Employee Classification Act, the commissioner shall instigate  
25 proceedings pursuant to the Employment Security Law to collect

1 any unpaid combined taxes plus interest. The commissioner shall  
2 share any violations with the Department of Revenue for analysis  
3 of violations of the Nebraska Revenue Act of 1967 and with the  
4 Nebraska Workers' Compensation Court. Upon receipt, the Department  
5 of Revenue shall promptly investigate and, if appropriate, proceed  
6 with the collection of any income tax not withheld plus interest  
7 and penalties. The commissioner, Department of Revenue, and  
8 Nebraska Workers' Compensation Court shall refer any violation  
9 reasonably believed to be a civil or criminal violation of  
10 the Employment Security Law, the Nebraska Revenue Act of 1967,  
11 the Nebraska Workers' Compensation Act, or another law to the  
12 appropriate prosecuting authority for appropriate action.

13           Sec. 9. The department shall annually provide a report to  
14 the Legislature regarding compliance with and enforcement of the  
15 Employee Classification Act. The report shall include, but not be  
16 limited to, the number of reports received from both its hotline  
17 and web site, the number of investigated reports, the findings  
18 of the reports, the amount of combined tax, interest, and fines  
19 collected, the number of referrals to the Department of Revenue,  
20 Nebraska Workers' Compensation Court, and appropriate prosecuting  
21 authority, and the outcome of such referrals.

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

25           (1) Every individual working for a contractor has the

1 right to be properly classified by the contractor as an employee  
2 rather than an independent contractor if the individual does not  
3 meet the requirements of an independent contractor under the law  
4 known as the Employee Classification Act.

5 (2) If you believe you or someone else has not been  
6 properly classified as an employee or an independent contractor  
7 under the Employee Classification Act, contact the Department of  
8 Labor.

9 Sec. 11. Any contract between the state or a political  
10 subdivision and a contractor shall require that each contractor who  
11 performs construction or delivery service pursuant to the contract  
12 submit to the state or political subdivision an affidavit attesting  
13 that (1) each individual performing services for such contractor is  
14 properly classified under the Employee Classification Act, (2) such  
15 contractor has completed a federal I-9 immigration form and has  
16 such form on file for each employee performing services, (3) such  
17 contractor has complied with section 4-114, (4) such contractor  
18 has no reasonable basis to believe that any individual performing  
19 services for such contractor is an undocumented worker, and (5) as  
20 of the time of the contract, such contractor is not barred from  
21 contracting with the state or any political subdivision pursuant  
22 to section 12 of this act. Such contract shall also require that  
23 the contractor follow the provisions of the Employee Classification  
24 Act. A violation of the act by a contractor is grounds for  
25 rescission of the contract by the state or political subdivision.

1           Sec. 12. Any contractor who knowingly provides a false  
2 affidavit under section 11 of this act to the state or political  
3 subdivision shall be subject to the penalties of perjury and upon  
4 a second or subsequent violation shall be barred from contracting  
5 with the state or any political subdivision for a period of three  
6 years after the date of discovery of the falsehood.

7           Sec. 13. Section 48-2115, Revised Statutes Supplement,  
8 2009, is amended to read:

9           48-2115   There is hereby created the Contractor  
10 Registration Cash Fund to be administered by the department and  
11 used to enforce the Contractor Registration Act and the Employee  
12 Classification Act. The fund shall consist of such sums as are  
13 appropriated to it by the Legislature and any fees collected in the  
14 administration of the ~~act~~ acts that are to be credited to the fund.  
15 Any money in the fund available for investment shall be invested  
16 by the state investment officer pursuant to the Nebraska Capital  
17 Expansion Act and the Nebraska State Funds Investment Act.

18           Sec. 14. Section 77-2711, Reissue Revised Statutes of  
19 Nebraska, is amended to read:

20           77-2711   (1)(a) The Tax Commissioner shall enforce  
21 sections 77-2701.04 to 77-2713 and may prescribe, adopt, and  
22 enforce rules and regulations relating to the administration and  
23 enforcement of such sections.

24           (b) The Tax Commissioner may prescribe the extent to  
25 which any ruling or regulation shall be applied without retroactive

1 effect.

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

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

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

17 (4) The Tax Commissioner or any person authorized in  
18 writing by him or her may examine the books, papers, records, and  
19 equipment of any person selling property and any person liable for  
20 the use tax and may investigate the character of the business of  
21 the person in order to verify the accuracy of any return made or,  
22 if no return is made by the person, to ascertain and determine  
23 the amount required to be paid. In the examination of any person  
24 selling property or of any person liable for the use tax, an  
25 inquiry shall be made as to the accuracy of the reporting of city

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

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

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

20 (7) It shall be a Class I misdemeanor for the Tax  
21 Commissioner or any official or employee of the Tax Commissioner,  
22 the State Treasurer, or the Department of Administrative Services  
23 to make known in any manner whatever the business affairs,  
24 operations, or information obtained by an investigation of records  
25 and activities of any retailer or any other person visited

1 or examined in the discharge of official duty or the amount  
2 or source of income, profits, losses, expenditures, or any  
3 particular thereof, set forth or disclosed in any return, or  
4 to permit any return or copy thereof, or any book containing  
5 any abstract or particulars thereof to be seen or examined by  
6 any person not connected with the Tax Commissioner. Nothing in  
7 this section shall be construed to prohibit (a) the delivery to  
8 a taxpayer, his or her duly authorized representative, or his  
9 or her successors, receivers, trustees, executors, administrators,  
10 assignees, or guarantors, if directly interested, of a certified  
11 copy of any return or report in connection with his or her tax,  
12 (b) the publication of statistics so classified as to prevent  
13 the identification of particular reports or returns and the items  
14 thereof, (c) the inspection by the Attorney General, other legal  
15 representative of the state, or county attorney of the reports  
16 or returns of any taxpayer when either (i) information on the  
17 reports or returns is considered by the Attorney General to be  
18 relevant to any action or proceeding instituted by the taxpayer  
19 or against whom an action or proceeding is being considered or  
20 has been commenced by any state agency or the county or (ii) the  
21 taxpayer has instituted an action to review the tax based thereon  
22 or an action or proceeding against the taxpayer for collection of  
23 tax or failure to comply with the Nebraska Revenue Act of 1967 is  
24 being considered or has been commenced, (d) the furnishing of any  
25 information to the United States Government or to states allowing

1 similar privileges to the Tax Commissioner, (e) the disclosure of  
2 information and records to a collection agency contracting with the  
3 Tax Commissioner pursuant to sections 77-377.01 to 77-377.04, (f)  
4 the disclosure to another party to a transaction of information  
5 and records concerning the transaction between the taxpayer and  
6 the other party, ~~or~~ (g) the disclosure of information pursuant to  
7 section 77-27,195 or 77-5731, or (h) the disclosure of information  
8 to the Department of Labor necessary for the administration of the  
9 Employment Security Law, the Contractor Registration Act, or the  
10 Employee Classification Act.

11 (8) Notwithstanding the provisions of subsection (7) of  
12 this section, the Tax Commissioner may permit the Postal Inspector  
13 of the United States Postal Service or his or her delegates to  
14 inspect the reports or returns of any person filed pursuant to the  
15 Nebraska Revenue Act of 1967 when information on the reports or  
16 returns is relevant to any action or proceeding instituted or being  
17 considered by the United States Postal Service against such person  
18 for the fraudulent use of the mails to carry and deliver false and  
19 fraudulent tax returns to the Tax Commissioner with the intent to  
20 defraud the State of Nebraska or to evade the payment of Nebraska  
21 state taxes.

22 (9) Notwithstanding the provisions of subsection (7) of  
23 this section, the Tax Commissioner may permit other tax officials  
24 of this state to inspect the tax returns, reports, and applications  
25 filed under sections 77-2701.04 to 77-2713, but such inspection

1 shall be permitted only for purposes of enforcing a tax law and  
2 only to the extent and under the conditions prescribed by the rules  
3 and regulations of the Tax Commissioner.

4 (10) Notwithstanding the provisions of subsection (7)  
5 of this section, the Tax Commissioner may, upon request, provide  
6 the county board of any county which has exercised the authority  
7 granted by section 81-1254 with a list of the names and addresses  
8 of the hotels located within the county for which lodging sales tax  
9 returns have been filed or for which lodging sales taxes have been  
10 remitted for the county's County Visitors Promotion Fund under the  
11 Nebraska Visitors Development Act.

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

20 (11)(a) Notwithstanding the provisions of subsection (7)  
21 of this section, the Tax Commissioner shall, upon written request  
22 by the Auditor of Public Accounts or the Legislative Performance  
23 Audit Committee, make tax returns and tax return information open  
24 to inspection by or disclosure to Auditor of Public Accounts or  
25 Legislative Performance Audit Section employees for the purpose of

1 and to the extent necessary in making an audit of the Department  
2 of Revenue pursuant to section 50-1205 or 84-304. Confidential  
3 tax returns and tax return information shall be audited only upon  
4 the premises of the Department of Revenue. All audit workpapers  
5 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  
8 Legislative Performance Audit Section shall disclose to any person,  
9 other than another Auditor of Public Accounts or Legislative  
10 Performance Audit Section employee whose official duties require  
11 such disclosure or as provided in subsections (2) and (3) of  
12 section 50-1213, any return or return information described in the  
13 Nebraska Revenue Act of 1967 in a form which can be associated  
14 with or otherwise identify, directly or indirectly, a particular  
15 taxpayer.

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

20 (12) For purposes of this subsection and subsection (11)  
21 of this section:

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

24 (b) Return information means:

25 (i) A taxpayer's identification number and (A) the

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

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

14 (c) Tax return or return means any tax or information  
15 return or claim for refund required by, provided for, or permitted  
16 under sections 77-2701 to 77-2713 which is filed with the Tax  
17 Commissioner by, on behalf of, or with respect to any person  
18 and any amendment or supplement thereto, including supporting  
19 schedules, attachments, or lists which are supplemental to or part  
20 of the filed return.

21 (13) Notwithstanding the provisions of subsection (7) of  
22 this section, the Tax Commissioner shall, upon request, provide any  
23 municipality which has adopted the local option sales tax under the  
24 Local Option Revenue Act with a list of the names and addresses  
25 of the retailers which have collected the local option sales tax

1 for the municipality. The request may be made annually and shall  
2 be submitted to the Tax Commissioner on or before June 30 of  
3 each year. The information provided by the Tax Commissioner shall  
4 indicate only the names and addresses of the retailers. The Tax  
5 Commissioner may provide additional information to a municipality  
6 so long as the information does not include any data detailing  
7 the specific revenue, expenses, or operations of any particular  
8 business.

9 (14) In all proceedings under the Nebraska Revenue Act  
10 of 1967, the Tax Commissioner may act for and on behalf of the  
11 people of the State of Nebraska. The Tax Commissioner in his or her  
12 discretion may waive all or part of any penalties provided by the  
13 provisions of such act or interest on delinquent taxes specified in  
14 section 45-104.02, as such rate may from time to time be adjusted.

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

20 (b) For purposes of this subsection:

21 (i) Anonymous data means information that does not  
22 identify a person;

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

1           (iii) Personally identifiable information means  
2 information that identifies a person.

3           (c) The state agrees that a fundamental precept for model  
4 1 sellers is to preserve the privacy of consumers by protecting  
5 their anonymity. With very limited exceptions, a certified service  
6 provider shall perform its tax calculation, remittance, and  
7 reporting functions without retaining the personally identifiable  
8 information of consumers.

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

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

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

18           (iii) It provides consumers clear and conspicuous  
19 notice of its information practices, including what information  
20 it collects, how it collects the information, how it uses the  
21 information, how long, if at all, it retains the information, and  
22 whether it discloses the information to member states. Such notice  
23 shall be satisfied by a written privacy policy statement accessible  
24 by the public on the web site of the certified service provider;

25           (iv) Its collection, use, and retention of personally

1 identifiable information is limited to that required by the member  
2 states to ensure the validity of exemptions from taxation that are  
3 claimed by reason of a consumer's status or the intended use of the  
4 goods or services purchased; and

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

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

12 (f) When any personally identifiable information that  
13 has been collected and retained is no longer required for the  
14 purposes set forth in subdivision (15)(d)(iv) of this section, such  
15 information shall no longer be retained by the member states.

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

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

1           (i) This privacy policy is subject to enforcement by the  
2 Attorney General.

3           (j) All other laws and regulations regarding the  
4 collection, use, and maintenance of confidential taxpayer  
5 information remain fully applicable and binding. Without  
6 limitation, this subsection does not enlarge or limit the state's  
7 authority to:

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

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

13           (iii) Prevent, consistent with state law, disclosure of  
14 confidential taxpayer information;

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

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

20           Sec. 15. Section 77-27,119, Reissue Revised Statutes of  
21 Nebraska, is amended to read:

22           77-27,119 (1) The Tax Commissioner shall administer and  
23 enforce the income tax imposed by sections 77-2714 to 77-27,135,  
24 and he or she is authorized to conduct hearings, to adopt and  
25 promulgate such rules and regulations, and to require such facts

1 and information to be reported as he or she may deem necessary to  
2 enforce the income tax provisions of such sections, except that  
3 such rules, regulations, and reports shall not be inconsistent with  
4 the laws of this state or the laws of the United States. The Tax  
5 Commissioner may for enforcement and administrative purposes divide  
6 the state into a reasonable number of districts in which branch  
7 offices may be maintained.

8 (2) (a) The Tax Commissioner may prescribe the form and  
9 contents of any return or other document required to be filed under  
10 the income tax provisions. Such return or other document shall  
11 be compatible as to form and content with the return or document  
12 required by the laws of the United States. The form shall have a  
13 place where the taxpayer shall designate the high school district  
14 in which he or she lives and the county in which the high school  
15 district is headquartered. The Tax Commissioner shall adopt and  
16 promulgate such rules and regulations as may be necessary to insure  
17 compliance with this requirement.

18 (b) The State Department of Education, with the  
19 assistance and cooperation of the Department of Revenue, shall  
20 develop a uniform system for numbering all school districts in the  
21 state. Such system shall be consistent with the data processing  
22 needs of the Department of Revenue and shall be used for the  
23 school district identification required by subdivision (a) of this  
24 subsection.

25 (c) The proper filing of an income tax return shall

1 consist of the submission of such form as prescribed by the  
2 Tax Commissioner or an exact facsimile thereof with sufficient  
3 information provided by the taxpayer on the face of the form from  
4 which to compute the actual tax liability. Each taxpayer shall  
5 include such taxpayer's correct social security number or state  
6 identification number and the school district identification number  
7 of the school district in which the taxpayer resides on the face of  
8 the form. A filing is deemed to occur when the required information  
9 is provided.

10 (3) The Tax Commissioner, for the purpose of ascertaining  
11 the correctness of any return or other document required to  
12 be filed under the income tax provisions, for the purpose of  
13 determining corporate income, individual income, and withholding  
14 tax due, or for the purpose of making an estimate of taxable income  
15 of any person, shall have the power to examine or to cause to have  
16 examined, by any agent or representative designated by him or her  
17 for that purpose, any books, papers, records, or memoranda bearing  
18 upon such matters and may by summons require the attendance of  
19 the person responsible for rendering such return or other document  
20 or remitting any tax, or any officer or employee of such person,  
21 or the attendance of any other person having knowledge in the  
22 premises, and may take testimony and require proof material for his  
23 or her information, with power to administer oaths or affirmations  
24 to such person or persons.

25 (4) The time and place of examination pursuant to this

1 section shall be such time and place as may be fixed by the Tax  
2 Commissioner and as are reasonable under the circumstances. In the  
3 case of a summons, the date fixed for appearance before the Tax  
4 Commissioner shall not be less than twenty days from the time of  
5 service of the summons.

6 (5) No taxpayer shall be subjected to unreasonable or  
7 unnecessary examinations or investigations.

8 (6) Except in accordance with proper judicial order or  
9 as otherwise provided by law, it shall be unlawful for the Tax  
10 Commissioner, any officer or employee of the Tax Commissioner,  
11 any person engaged or retained by the Tax Commissioner on an  
12 independent contract basis, any person who pursuant to this section  
13 is permitted to inspect any report or return or to whom a copy, an  
14 abstract, or a portion of any report or return is furnished, any  
15 employee of the State Treasurer or the Department of Administrative  
16 Services, or any other person to divulge, make known, or use in  
17 any manner the amount of income or any particulars set forth or  
18 disclosed in any report or return required except for the purpose  
19 of enforcing sections 77-2714 to 77-27,135. The officers charged  
20 with the custody of such reports and returns shall not be required  
21 to produce any of them or evidence of anything contained in them  
22 in any action or proceeding in any court, except on behalf of the  
23 Tax Commissioner in an action or proceeding under the provisions  
24 of the tax law to which he or she is a party or on behalf of  
25 any party to any action or proceeding under such sections when the

1 reports or facts shown thereby are directly involved in such action  
2 or proceeding, in either of which events the court may require the  
3 production of, and may admit in evidence, so much of such reports  
4 or of the facts shown thereby as are pertinent to the action or  
5 proceeding and no more. Nothing in this section shall be construed  
6 (a) to prohibit the delivery to a taxpayer, his or her duly  
7 authorized representative, or his or her successors, receivers,  
8 trustees, personal representatives, administrators, assignees, or  
9 guarantors, if directly interested, of a certified copy of any  
10 return or report in connection with his or her tax, (b) to  
11 prohibit the publication of statistics so classified as to prevent  
12 the identification of particular reports or returns and the items  
13 thereof, (c) to prohibit the inspection by the Attorney General,  
14 other legal representatives of the state, or a county attorney  
15 of the report or return of any taxpayer who brings an action to  
16 review the tax based thereon, against whom an action or proceeding  
17 for collection of tax has been instituted, or against whom an  
18 action, proceeding, or prosecution for failure to comply with the  
19 Nebraska Revenue Act of 1967 is being considered or has been  
20 commenced, (d) to prohibit furnishing to the Nebraska Workers'  
21 Compensation Court the names, addresses, and identification numbers  
22 of employers, and such information shall be furnished on request  
23 of the court, (e) to prohibit the disclosure of information  
24 and records to a collection agency contracting with the Tax  
25 Commissioner pursuant to sections 77-377.01 to 77-377.04, (f)

1 to prohibit the disclosure of information pursuant to section  
2 77-27,195, 77-4110, or 77-5731, (g) to prohibit the disclosure  
3 to the Public Employees Retirement Board of the addresses of  
4 individuals who are members of the retirement systems administered  
5 by the board, and such information shall be furnished to the  
6 board solely for purposes of its administration of the retirement  
7 systems upon written request, which request shall include the name  
8 and social security number of each individual for whom an address  
9 is requested, (h) ~~to prohibit the disclosure to the Department~~  
10 ~~of Labor of tax return information pertaining to individuals,~~  
11 ~~corporations, and businesses determined by the Department of Labor~~  
12 ~~to be delinquent in the payment of combined tax or in the repayment~~  
13 ~~of benefit overpayments, and such disclosure shall be strictly~~  
14 ~~limited to information necessary for the administration of the~~  
15 ~~Employment Security Law, to prohibit the disclosure of information~~  
16 ~~to the Department of Labor necessary for the administration of~~  
17 ~~the Employment Security Law, the Contractor Registration Act, or~~  
18 ~~the Employee Classification Act,~~ (i) to prohibit the disclosure  
19 to the Department of Motor Vehicles of tax return information  
20 pertaining to individuals, corporations, and businesses determined  
21 by the Department of Motor Vehicles to be delinquent in the payment  
22 of amounts due under agreements pursuant to the International Fuel  
23 Tax Agreement Act, and such disclosure shall be strictly limited  
24 to information necessary for the administration of the act, or (j)  
25 to prohibit the disclosure under section 42-358.08, 43-512.06, or

1 43-3327 to any court-appointed individuals, the county attorney,  
2 any authorized attorney, or the Department of Health and Human  
3 Services of an absent parent's address, social security number,  
4 amount of income, health insurance information, and employer's  
5 name and address for the exclusive purpose of establishing and  
6 collecting child, spousal, or medical support. Information so  
7 obtained shall be used for no other purpose. Any person who  
8 violates this subsection shall be guilty of a felony and shall upon  
9 conviction thereof be fined not less than one hundred dollars nor  
10 more than five hundred dollars, or be imprisoned not more than five  
11 years, or be both so fined and imprisoned, in the discretion of  
12 the court and shall be assessed the costs of prosecution. If the  
13 offender is an officer or employee of the state, he or she shall be  
14 dismissed from office and be ineligible to hold any public office  
15 in this state for a period of two years thereafter.

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

19 (8) Notwithstanding the provisions of subsection (6) of  
20 this section, the Tax Commissioner may permit the Secretary of the  
21 Treasury of the United States or his or her delegates or the proper  
22 officer of any state imposing an income tax, or the authorized  
23 representative of either such officer, to inspect the income tax  
24 returns of any taxpayer or may furnish to such officer or his or  
25 her authorized representative an abstract of the return of income

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

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

20 (10) (a) Notwithstanding the provisions of subsection (6)  
21 of this section, the Tax Commissioner shall, upon written request  
22 by the Auditor of Public Accounts or the Legislative Performance  
23 Audit Committee, make tax returns and tax return information  
24 open to inspection by or disclosure to officers and employees  
25 of the Auditor of Public Accounts or Legislative Performance

1 Audit Section employees for the purpose of and to the extent  
2 necessary in making an audit of the Department of Revenue pursuant  
3 to section 50-1205 or 84-304. The Auditor of Public Accounts  
4 or Legislative Performance Audit Section shall statistically and  
5 randomly select the tax returns and tax return information to  
6 be audited based upon a computer tape provided by the Department  
7 of Revenue which contains only total population documents without  
8 specific identification of taxpayers. The Tax Commissioner shall  
9 have the authority to approve the statistical sampling method used  
10 by the Auditor of Public Accounts or Legislative Performance Audit  
11 Section. Confidential tax returns and tax return information shall  
12 be audited only upon the premises of the Department of Revenue.  
13 All audit workpapers pertaining to the audit of the Department of  
14 Revenue shall be stored in a secure place in the Department of  
15 Revenue.

16 (b) No officer or employee of the Auditor of Public  
17 Accounts or Legislative Performance Audit Section employee shall  
18 disclose to any person, other than another officer or employee of  
19 the Auditor of Public Accounts or Legislative Performance Audit  
20 Section employee whose official duties require such disclosure or  
21 as provided in subsections (2) and (3) of section 50-1213, any  
22 return or return information described in the Nebraska Revenue  
23 Act of 1967 in a form which can be associated with or otherwise  
24 identify, directly or indirectly, a particular taxpayer.

25 (c) Any person who violates the provisions of this

1 subsection shall be guilty of a Class IV felony and, in the  
2 discretion of the court, may be assessed the costs of prosecution.  
3 The guilty officer or employee shall be dismissed from employment  
4 and be ineligible to hold any position of employment with the State  
5 of Nebraska for a period of two years thereafter. For purposes of  
6 this subsection, officer or employee shall include a former officer  
7 or employee of the Auditor of Public Accounts or former Legislative  
8 Performance Audit Section employee.

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

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

18 (b) Return information shall mean:

19 (i) A taxpayer's identification number and (A) the  
20 nature, source, or amount of his or her income, payments, receipts,  
21 deductions, exemptions, credits, assets, liabilities, net worth,  
22 tax liability, tax withheld, deficiencies, overassessments, or tax  
23 payments, whether the taxpayer's return was, is being, or will be  
24 examined or subject to other investigation or processing or (B) any  
25 other data received by, recorded by, prepared by, furnished to, or

1 collected by the Tax Commissioner with respect to a return or the  
2 determination of the existence or possible existence of liability  
3 or the amount of liability of any person for any tax, penalty,  
4 interest, fine, forfeiture, or other imposition or offense; and

5 (ii) Any part of any written determination or any  
6 background file document relating to such written determination;  
7 and

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

10 (12) The Auditor of Public Accounts or the Legislative  
11 Auditor of the Legislative Performance Audit Section shall (a)  
12 notify the Tax Commissioner in writing thirty days prior to the  
13 beginning of an audit of his or her intent to conduct an audit, (b)  
14 provide an audit plan, and (c) provide a list of the tax returns  
15 and tax return information identified for inspection during the  
16 audit.

17 (13) The Auditor of Public Accounts or the Legislative  
18 Performance Audit Section shall, as a condition for receiving tax  
19 returns and tax return information: (a) Subject employees involved  
20 in the audit to the same confidential information safeguards  
21 and disclosure procedures as required of Department of Revenue  
22 employees; (b) establish and maintain a permanent system of  
23 standardized records with respect to any request for tax returns  
24 or tax return information, the reason for such request, and the  
25 date of such request and any disclosure of the tax return or

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

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

22 (15) The Tax Commissioner shall compile the school  
23 district information required by subsection (2) of this section.  
24 Insofar as it is possible, such compilation shall include, but  
25 not be limited to, the total adjusted gross income of each school

1 district in the state. The Tax Commissioner shall adopt and  
2 promulgate such rules and regulations as may be necessary to insure  
3 that such compilation does not violate the confidentiality of any  
4 individual income tax return nor conflict with any other provisions  
5 of state or federal law.

6           Sec. 16. Original sections 77-2711 and 77-27,119, Reissue  
7 Revised Statutes of Nebraska, and section 48-2115, Revised Statutes  
8 Supplement, 2009, are repealed.