

E AND R AMENDMENTS TO LB 727

Introduced by Larson, 40, Chairman Enrollment and Review

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

3           Section 1. Section 9-226, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5           9-226 The department shall have the following powers,  
6 functions, and duties:

7           (1) To issue licenses, temporary licenses, and permits;

8           (2) To deny any license or permit application or  
9 renewal license application for cause. Cause for denial of an  
10 application or renewal of a license shall include instances  
11 in which the applicant individually or, in the case of a  
12 business entity or a nonprofit organization, any officer, director,  
13 employee, or limited liability company member of the applicant,  
14 licensee, or permittee, other than an employee whose duties  
15 are purely ministerial in nature, any other person or entity  
16 directly or indirectly associated with such applicant, licensee, or  
17 permittee which directly or indirectly receives compensation other  
18 than distributions from a bona fide retirement or pension plan  
19 established pursuant to Chapter 1, subchapter D of the Internal  
20 Revenue Code from such applicant for past or present services in a  
21 consulting capacity or otherwise, the licensee, or any person with  
22 a substantial interest in the applicant, licensee, or permittee:

23           (a) Violated the provisions, requirements, conditions,

1 limitations, or duties imposed by the Nebraska Bingo Act, the  
2 Nebraska County and City Lottery Act, the Nebraska Lottery and  
3 Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska  
4 Small Lottery and Raffle Act, or the State Lottery Act or any rules  
5 or regulations adopted and promulgated pursuant to the acts;

6 (b) Knowingly caused, aided, abetted, or conspired with  
7 another to cause any person to violate any of the provisions of  
8 such acts or any rules or regulations adopted and promulgated  
9 pursuant to such acts;

10 (c) Obtained a license or permit pursuant to such acts by  
11 fraud, misrepresentation, or concealment;

12 (d) Was convicted of, forfeited bond upon a charge of, or  
13 pleaded guilty or nolo contendere to any offense or crime, whether  
14 a felony or misdemeanor, involving any gambling activity or fraud,  
15 theft, willful failure to make required payments or reports, or  
16 filing false reports with a governmental agency at any level;

17 (e) Was convicted of, forfeited bond upon a charge of, or  
18 pleaded guilty or nolo contendere to any felony other than those  
19 described in subdivision (d) of this subdivision within the ten  
20 years preceding the filing of the application;

21 (f) Denied the department or its authorized  
22 representatives, including authorized law enforcement agencies,  
23 access to any place where bingo activity required to be licensed  
24 or for which a permit is required under the Nebraska Bingo Act  
25 is being conducted or failed to produce for inspection or audit  
26 any book, record, document, or item required by law, rule, or  
27 regulation;

1           (g) Made a misrepresentation of or failed to disclose a  
2 material fact to the department;

3           (h) Failed to prove by clear and convincing evidence his,  
4 her, or its qualifications to be licensed or granted a permit in  
5 accordance with the Nebraska Bingo Act;

6           (i) Failed to pay any taxes and additions to taxes,  
7 including penalties and interest, required by the Nebraska Bingo  
8 Act, the Nebraska County and City Lottery Act, the Nebraska Lottery  
9 and Raffle Act, or the Nebraska Pickle Card Lottery Act or any  
10 other taxes imposed pursuant to the Nebraska Revenue Act of 1967;

11           (j) Failed to pay an administrative fine levied pursuant  
12 to the Nebraska Bingo Act, the Nebraska County and City Lottery  
13 Act, the Nebraska Lottery and Raffle Act, or the Nebraska Pickle  
14 Card Lottery Act;

15           (k) Failed to demonstrate good character, honesty, and  
16 integrity;

17           (l) Failed to demonstrate, either individually or, in the  
18 case of a business entity or a nonprofit organization, through  
19 its managers, employees, or agents, the ability, experience, or  
20 financial responsibility necessary to establish or maintain the  
21 activity for which the application is made; or

22           (m) Was cited and whose liquor license was suspended,  
23 canceled, or revoked by the Nebraska Liquor Control Commission for  
24 illegal gambling activities that occurred on or after July 20,  
25 2002, on or about a premises licensed by the commission pursuant  
26 to the Nebraska Liquor Control Act or the rules and regulations  
27 adopted and promulgated pursuant to such act.

1           No renewal of a license under the Nebraska Bingo Act  
2 shall be issued when the applicant for renewal would not be  
3 eligible for a license upon a first application;

4           (3) To revoke, cancel, or suspend for cause any license  
5 or permit. Cause for revocation, cancellation, or suspension of a  
6 license or permit shall include instances in which the licensee or  
7 permittee individually or, in the case of a business entity or a  
8 nonprofit organization, any officer, director, employee, or limited  
9 liability company member of the licensee or permittee, other than  
10 an employee whose duties are purely ministerial in nature, any  
11 other person or entity directly or indirectly associated with  
12 such licensee or permittee which directly or indirectly receives  
13 compensation other than distributions from a bona fide retirement  
14 or pension plan established pursuant to Chapter 1, subchapter D of  
15 the Internal Revenue Code from such licensee or permittee for past  
16 or present services in a consulting capacity or otherwise, or any  
17 person with a substantial interest in the licensee or permittee:

18           (a) Violated the provisions, requirements, conditions,  
19 limitations, or duties imposed by the Nebraska Bingo Act, the  
20 Nebraska County and City Lottery Act, the Nebraska Lottery and  
21 Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska  
22 Small Lottery and Raffle Act, the State Lottery Act, or any rules  
23 or regulations adopted and promulgated pursuant to such acts;

24           (b) Knowingly caused, aided, abetted, or conspired with  
25 another to cause any person to violate any of the provisions of  
26 the Nebraska Bingo Act or any rules or regulations adopted and  
27 promulgated pursuant to the act;

1 (c) Obtained a license or permit pursuant to the Nebraska  
2 Bingo Act by fraud, misrepresentation, or concealment;

3 (d) Was convicted of, forfeited bond upon the charge of,  
4 or pleaded guilty or nolo contendere to any offense or crime,  
5 whether a felony or a misdemeanor, involving any gambling activity  
6 or fraud, theft, willful failure to make required payments or  
7 reports, or filing false reports with a governmental agency at any  
8 level;

9 (e) Was convicted of, forfeited bond upon a charge of, or  
10 pleaded guilty or nolo contendere to any felony other than those  
11 described in subdivision (d) of this subdivision within the ten  
12 years preceding the filing of the application;

13 (f) Denied the department or its authorized  
14 representatives, including authorized law enforcement agencies,  
15 access to any place where bingo activity required to be licensed  
16 or for which a permit is required under the Nebraska Bingo Act  
17 is being conducted or failed to produce for inspection or audit  
18 any book, record, document, or item required by law, rule, or  
19 regulation;

20 (g) Made a misrepresentation of or failed to disclose a  
21 material fact to the department;

22 (h) Failed to pay any taxes and additions to taxes,  
23 including penalties and interest, required by the Nebraska Bingo  
24 Act, the Nebraska County and City Lottery Act, the Nebraska Lottery  
25 and Raffle Act, or the Nebraska Pickle Card Lottery Act or any  
26 other taxes imposed pursuant to the Nebraska Revenue Act of 1967;

27 (i) Failed to pay an administrative fine levied pursuant

1 to the Nebraska Bingo Act, the Nebraska County and City Lottery  
2 Act, the Nebraska Lottery and Raffle Act, or the Nebraska Pickle  
3 Card Lottery Act;

4 (j) Failed to demonstrate good character, honesty, and  
5 integrity;

6 (k) Failed to demonstrate, either individually or, in the  
7 case of a business entity or a nonprofit organization, through  
8 its managers, employees, or agents, the ability, experience, or  
9 financial responsibility necessary to maintain the activity for  
10 which the license was issued; or

11 (l) Was cited and whose liquor license was suspended,  
12 canceled, or revoked by the Nebraska Liquor Control Commission for  
13 illegal gambling activities that occurred on or after July 20,  
14 2002, on or about a premises licensed by the commission pursuant  
15 to the Nebraska Liquor Control Act or the rules and regulations  
16 adopted and promulgated pursuant to such act;

17 (4) To issue an order requiring a licensee, permittee, or  
18 other person to cease and desist from violations of the Nebraska  
19 Bingo Act or any rules and regulations adopted and promulgated  
20 pursuant to such act. The order shall give reasonable notice of the  
21 rights of the licensee, permittee, or other person to request a  
22 hearing and shall state the reason for the entry of the order. The  
23 notice of order to cease and desist shall be mailed ~~by certified~~  
24 ~~mail~~ to or personally served upon the licensee, permittee, or other  
25 person. If the notice of order is mailed, ~~by certified mail,~~ the  
26 date the notice is mailed shall be deemed to be the date of service  
27 of notice to the licensee, permittee, or other person. A request

1 for a hearing by the licensee, permittee, or other person shall be  
2 in writing and shall be filed with the department within thirty  
3 days after the service of the cease and desist order. If a request  
4 for hearing is not filed within the thirty-day period, the cease  
5 and desist order shall become permanent at the expiration of such  
6 period. A hearing shall be held not later than thirty days after  
7 the request for the hearing is received by the Tax Commissioner,  
8 and within twenty days after the date of the hearing, the Tax  
9 Commissioner shall issue an order vacating the cease and desist  
10 order or making it permanent as the facts require. All hearings  
11 shall be held in accordance with the rules and regulations adopted  
12 and promulgated by the department. If the licensee, permittee, or  
13 other person to whom a cease and desist order is issued fails  
14 to appear at the hearing after being duly notified, the licensee,  
15 permittee, or other person shall be deemed in default and the  
16 proceeding may be determined against the licensee, permittee, or  
17 other person upon consideration of the cease and desist order, the  
18 allegations of which may be deemed to be true;

19 (5) To levy an administrative fine on an individual,  
20 partnership, limited liability company, corporation, or  
21 organization for cause. For purposes of this subdivision,  
22 cause shall include instances in which the individual, partnership,  
23 limited liability company, corporation, or organization violated  
24 the provisions, requirements, conditions, limitations, or duties  
25 imposed by the act or any rule or regulation adopted and  
26 promulgated pursuant to the act. In determining whether to levy  
27 an administrative fine and the amount of the fine if any fine

1 is levied, the department shall take into consideration the  
2 seriousness of the violation, the intent of the violator, whether  
3 the violator voluntarily reported the violation, whether the  
4 violator derived financial gain as a result of the violation and  
5 the extent thereof, and whether the violator has had previous  
6 violations of the act, rules, or regulations. A fine levied on a  
7 violator under this section shall not exceed one thousand dollars  
8 for each violation of the act or any rule or regulation adopted and  
9 promulgated pursuant to the act plus the financial benefit derived  
10 by the violator as a result of each violation. If an administrative  
11 fine is levied, the fine shall not be paid from bingo gross  
12 receipts of an organization and shall be remitted by the violator  
13 to the department within thirty days after the date of the order  
14 issued by the department levying such fine;

15 (6) To enter or to authorize any law enforcement officer  
16 to enter at any time upon any premises where bingo activity  
17 required to be licensed or for which a permit is required under the  
18 act is being conducted to determine whether any of the provisions  
19 of the act or any rules or regulations adopted and promulgated  
20 under the act have been or are being violated and at such time to  
21 examine such premises;

22 (7) To require periodic reports of bingo activity from  
23 licensees under the act as the department deems necessary to carry  
24 out the act;

25 (8) To examine or to cause to have examined, by any  
26 agent or representative designated by the department for such  
27 purpose, any books, papers, records, or memoranda relating to



1 bingo activities of any licensee or permittee, to require by  
2 administrative order or summons the production of such documents  
3 or the attendance of any person having knowledge in the premises,  
4 to take testimony under oath, and to acquire proof material for  
5 its information. If any such person willfully refuses to make  
6 documents available for examination by the department or its agent  
7 or representative or willfully fails to attend and testify, the  
8 department may apply to a judge of the district court of the county  
9 in which such person resides for an order directing such person to  
10 comply with the department's request. If any documents requested  
11 by the department are in the custody of a corporation, the court  
12 order may be directed to any principal officer of the corporation.  
13 If the documents requested by the department are in the custody of  
14 a limited liability company, the court order may be directed to any  
15 member when management is reserved to the members or otherwise to  
16 any manager. Any person who fails or refuses to obey such a court  
17 order shall be guilty of contempt of court;

18 (9) Unless specifically provided otherwise, to compute,  
19 determine, assess, and collect the amounts required to be paid  
20 to the state as taxes imposed by the act in the same manner as  
21 provided for sales and use taxes in the Nebraska Revenue Act of  
22 1967;

23 (10) To collect license application, license renewal  
24 application, and permit fees imposed by the Nebraska Bingo Act and  
25 to prorate license fees on an annual basis. The department shall  
26 establish by rule and regulation the conditions and circumstances  
27 under which such fees may be prorated;

1                   (11) To confiscate and seize bingo supplies and equipment  
2 pursuant to section 9-262.01; and

3                   (12) To adopt and promulgate such rules and regulations,  
4 prescribe such forms, and employ such staff, including inspectors,  
5 as are necessary to carry out the act.

6                   Sec. 2. Section 9-226.01, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8                   9-226.01 (1) Before any application is denied pursuant  
9 to section 9-226, the department shall notify the applicant in  
10 writing by ~~certified~~ mail of the department's intention to deny  
11 the application and the reasons for the denial. Such notice  
12 shall inform the applicant of his or her right to request an  
13 administrative hearing for the purpose of reconsideration of the  
14 intended denial of the application. The date the notice is mailed  
15 shall be deemed to be the date of service of notice to the  
16 applicant.

17                   (2) A request for hearing by the applicant shall be in  
18 writing and shall be filed with the department within thirty days  
19 after the service of notice to the applicant of the department's  
20 intended denial of the application. If a request for hearing is not  
21 filed within the thirty-day period, the application denial shall  
22 become final at the expiration of such period.

23                   (3) If a request for hearing is filed within the  
24 thirty-day period, the Tax Commissioner shall grant the applicant  
25 a hearing and shall, at least ten days before the hearing,  
26 serve notice upon the applicant by ~~certified or registered mail,~~  
27 ~~return receipt requested,~~ mail of the time, date, and place of

1 the hearing. Such proceedings shall be considered contested cases  
2 pursuant to the Administrative Procedure Act.

3 Sec. 3. Section 9-228, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5 9-228 Before the adoption, amendment, or repeal of any  
6 rule or regulation, the suspension, revocation, or cancellation of  
7 any license or permit, or the levying of any administrative fine  
8 pursuant to section 9-226, the department shall set the matter for  
9 hearing. Such suspension, revocation, or cancellation proceedings  
10 or proceedings to levy an administrative fine shall be considered  
11 contested cases pursuant to the Administrative Procedure Act.

12 At least ten days before the hearing, the department  
13 shall (1) in the case of suspension, revocation, or cancellation  
14 proceedings or proceedings to levy an administrative fine, serve  
15 notice upon the licensee, permittee, or violator, by personal  
16 service or certified or registered mail, ~~return receipt requested,~~  
17 mail of the time, date, and place of any hearing or (2) in the case  
18 of adoption, amendment, or repeal of any rule or regulation, issue  
19 a public notice of the time, date, and place of such hearing.

20 This section shall not apply to an order of suspension  
21 by the Tax Commissioner prior to a hearing as provided in section  
22 9-227.

23 Sec. 4. Section 9-322, Reissue Revised Statutes of  
24 Nebraska, is amended to read:

25 9-322 The department shall have the following powers,  
26 functions, and duties:

27 (1) To issue licenses and temporary licenses;

1           (2) To deny any license application or renewal  
2 application for cause. Cause for denial of an application for or  
3 renewal of a license shall include instances in which the applicant  
4 individually or, in the case of a business entity or a nonprofit  
5 organization, any officer, director, employee, or limited liability  
6 company member of the applicant or licensee, other than an employee  
7 whose duties are purely ministerial in nature, any other person or  
8 entity directly or indirectly associated with such applicant or  
9 licensee which directly or indirectly receives compensation other  
10 than distributions from a bona fide retirement or pension plan  
11 established pursuant to Chapter 1, subchapter D of the Internal  
12 Revenue Code, from such applicant or licensee for past or present  
13 services in a consulting capacity or otherwise, the licensee,  
14 or any person with a substantial interest in the applicant or  
15 licensee:

16           (a) Violated the provisions, requirements, conditions,  
17 limitations, or duties imposed by the Nebraska Bingo Act, the  
18 Nebraska County and City Lottery Act, the Nebraska Lottery and  
19 Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska  
20 Small Lottery and Raffle Act, or the State Lottery Act or any rules  
21 or regulations adopted and promulgated pursuant to such acts;

22           (b) Knowingly caused, aided, abetted, or conspired with  
23 another to cause any person to violate any of the provisions of  
24 such acts or any rules or regulations adopted and promulgated  
25 pursuant to such acts;

26           (c) Obtained a license or permit pursuant to such acts by  
27 fraud, misrepresentation, or concealment;

1           (d) Was convicted of, forfeited bond upon a charge of, or  
2 pleaded guilty or nolo contendere to any offense or crime, whether  
3 a felony or misdemeanor, involving any gambling activity or fraud,  
4 theft, willful failure to make required payments or reports, or  
5 filing false reports with a governmental agency at any level;

6           (e) Was convicted of, forfeited bond upon a charge of, or  
7 pleaded guilty or nolo contendere to any felony other than those  
8 described in subdivision (d) of this subdivision within the ten  
9 years preceding the filing of the application;

10           (f) Denied the department or its authorized  
11 representatives, including authorized law enforcement agencies,  
12 access to any place where pickle card activity required to be  
13 licensed under the Nebraska Pickle Card Lottery Act is being  
14 conducted or failed to produce for inspection or audit any book,  
15 record, document, or item required by law, rule, or regulation;

16           (g) Made a misrepresentation of or failed to disclose a  
17 material fact to the department;

18           (h) Failed to prove by clear and convincing evidence his,  
19 her, or its qualifications to be licensed in accordance with the  
20 Nebraska Pickle Card Lottery Act;

21           (i) Failed to pay any taxes and additions to taxes,  
22 including penalties and interest, required by the Nebraska Bingo  
23 Act, the Nebraska County and City Lottery Act, the Nebraska Lottery  
24 and Raffle Act, or the Nebraska Pickle Card Lottery Act or any  
25 other taxes imposed pursuant to the Nebraska Revenue Act of 1967;

26           (j) Failed to pay an administrative fine levied pursuant  
27 to the Nebraska Bingo Act, the Nebraska County and City Lottery

1 Act, the Nebraska Lottery and Raffle Act, or the Nebraska Pickle  
2 Card Lottery Act;

3 (k) Failed to demonstrate good character, honesty, and  
4 integrity;

5 (l) Failed to demonstrate, either individually or, in the  
6 case of a business entity or a nonprofit organization, through  
7 its managers, employees, or agents, the ability, experience, or  
8 financial responsibility necessary to establish or maintain the  
9 activity for which the application is made; or

10 (m) Was cited and whose liquor license was suspended,  
11 canceled, or revoked by the Nebraska Liquor Control Commission for  
12 illegal gambling activities that occurred on or after July 20,  
13 2002, on or about a premises licensed by the commission pursuant  
14 to the Nebraska Liquor Control Act or the rules and regulations  
15 adopted and promulgated pursuant to such act.

16 No renewal of a license under the Nebraska Pickle Card  
17 Lottery Act shall be issued when the applicant for renewal would  
18 not be eligible for a license upon a first application;

19 (3) To revoke, cancel, or suspend for cause any license.  
20 Cause for revocation, cancellation, or suspension of a license  
21 shall include instances in which the licensee individually or,  
22 in the case of a business entity or a nonprofit organization,  
23 any officer, director, employee, or limited liability company  
24 member of the licensee, other than an employee whose duties are  
25 purely ministerial in nature, any other person or entity directly  
26 or indirectly associated with such licensee which directly or  
27 indirectly receives compensation other than distributions from

1 a bona fide retirement or pension plan established pursuant to  
2 Chapter 1, subchapter D of the Internal Revenue Code from such  
3 licensee for past or present services in a consulting capacity  
4 or otherwise, or any person with a substantial interest in the  
5 licensee:

6 (a) Violated the provisions, requirements, conditions,  
7 limitations, or duties imposed by the Nebraska Bingo Act, the  
8 Nebraska County and City Lottery Act, the Nebraska Lottery and  
9 Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska  
10 Small Lottery and Raffle Act, the State Lottery Act, or any rules  
11 or regulations adopted and promulgated pursuant to such acts;

12 (b) Knowingly caused, aided, abetted, or conspired with  
13 another to cause any person to violate any of the provisions of  
14 the Nebraska Pickle Card Lottery Act or any rules or regulations  
15 adopted and promulgated pursuant to the act;

16 (c) Obtained a license pursuant to the Nebraska Pickle  
17 Card Lottery Act by fraud, misrepresentation, or concealment;

18 (d) Was convicted of, forfeited bond upon a charge of, or  
19 pleaded guilty or nolo contendere to any offense or crime, whether  
20 a felony or misdemeanor, involving any gambling activity or fraud,  
21 theft, willful failure to make required payments or reports, or  
22 filing false reports with a governmental agency at any level;

23 (e) Was convicted of, forfeited bond upon a charge of, or  
24 pleaded guilty or nolo contendere to any felony other than those  
25 described in subdivision (d) of this subdivision within the ten  
26 years preceding the filing of the application;

27 (f) Denied the department or its authorized

1 representatives, including authorized law enforcement agencies,  
2 access to any place where pickle card activity required to be  
3 licensed under the act is being conducted or failed to produce for  
4 inspection or audit any book, record, document, or item required by  
5 law, rule, or regulation;

6 (g) Made a misrepresentation of or failed to disclose a  
7 material fact to the department;

8 (h) Failed to pay any taxes and additions to taxes,  
9 including penalties and interest, required by the Nebraska Bingo  
10 Act, the Nebraska County and City Lottery Act, the Nebraska Lottery  
11 and Raffle Act, or the Nebraska Pickle Card Lottery Act or any  
12 other taxes imposed pursuant to the Nebraska Revenue Act of 1967;

13 (i) Failed to pay an administrative fine levied pursuant  
14 to the Nebraska Bingo Act, the Nebraska County and City Lottery  
15 Act, the Nebraska Lottery and Raffle Act, or the Nebraska Pickle  
16 Card Lottery Act;

17 (j) Failed to demonstrate good character, honesty, and  
18 integrity;

19 (k) Failed to demonstrate, either individually or, in the  
20 case of a business entity or a nonprofit organization, through  
21 its managers, employees, or agents, the ability, experience, or  
22 financial responsibility necessary to maintain the activity for  
23 which the license was issued; or

24 (l) Was cited and whose liquor license was suspended,  
25 canceled, or revoked by the Nebraska Liquor Control Commission for  
26 illegal gambling activities that occurred on or after July 20,  
27 2002, on or about a premises licensed by the commission pursuant



1 to the Nebraska Liquor Control Act or the rules and regulations  
2 adopted and promulgated pursuant to such act;

3 (4) To issue an order requiring a licensee or other  
4 person to cease and desist from violations of the Nebraska  
5 Pickle Card Lottery Act or any rules or regulations adopted and  
6 promulgated pursuant to such act. The order shall give reasonable  
7 notice of the rights of the licensee or other person to request a  
8 hearing and shall state the reason for the entry of the order. The  
9 notice of order shall be mailed ~~by certified mail~~ to or personally  
10 served upon the licensee or other person. If the notice of order is  
11 mailed, ~~by certified mail,~~ the date the notice is mailed shall be  
12 deemed to be the date of service of notice to the licensee or other  
13 person. A request for a hearing by the licensee or other person  
14 shall be in writing and shall be filed with the department within  
15 thirty days after the service of the cease and desist order. If  
16 a request for hearing is not filed within the thirty-day period,  
17 the cease and desist order shall become permanent at the expiration  
18 of such period. A hearing shall be held not later than thirty  
19 days after the request for the hearing is received by the Tax  
20 Commissioner, and within twenty days after the date of the hearing,  
21 the Tax Commissioner shall issue an order vacating the cease and  
22 desist order or making it permanent as the facts require. All  
23 hearings shall be held in accordance with the rules and regulations  
24 adopted and promulgated by the department. If the licensee or  
25 other person to whom a cease and desist order is issued fails to  
26 appear at the hearing after being duly notified, the licensee or  
27 other person shall be deemed in default and the proceeding may be

1 determined against the licensee or other person upon consideration  
2 of the cease and desist order, the allegations of which may be  
3 deemed to be true;

4 (5) To levy an administrative fine on an individual,  
5 partnership, limited liability company, corporation, or  
6 organization for cause. For purposes of this subdivision,  
7 cause shall include instances in which the individual, partnership,  
8 limited liability company, corporation, or organization violated  
9 the provisions, requirements, conditions, limitations, or duties  
10 imposed by the act or any rule or regulation adopted and  
11 promulgated pursuant to the act. In determining whether to levy  
12 an administrative fine and the amount of the fine if any fine  
13 is levied, the department shall take into consideration the  
14 seriousness of the violation, the intent of the violator, whether  
15 the violator voluntarily reported the violation, whether the  
16 violator derived financial gain as a result of the violation and  
17 the extent thereof, and whether the violator has had previous  
18 violations of the act, rules, or regulations. A fine levied on a  
19 violator under this section shall not exceed one thousand dollars  
20 for each violation of the act or any rule or regulation adopted and  
21 promulgated pursuant to the act plus the financial benefit derived  
22 by the violator as a result of each violation. If an administrative  
23 fine is levied, the fine shall not be paid from pickle card lottery  
24 gross proceeds of an organization and shall be remitted by the  
25 violator to the department within thirty days after the date of the  
26 order issued by the department levying such fine;

27 (6) To enter or to authorize any law enforcement officer

1 to enter at any time upon any premises where lottery by the sale  
2 of pickle cards activity required to be licensed under the act is  
3 being conducted to determine whether any of the provisions of such  
4 act or any rules or regulations adopted and promulgated under such  
5 act have been or are being violated and at such time to examine  
6 such premises;

7 (7) To require periodic reports of lottery by the sale  
8 of pickle cards activity from licensed manufacturers, distributors,  
9 nonprofit organizations, sales agents, pickle card operators, and  
10 any other persons, organizations, limited liability companies, or  
11 corporations as the department deems necessary to carry out the  
12 act;

13 (8) To require annual registration of coin-operated and  
14 currency-operated devices used for the dispensing of pickle cards,  
15 to issue registration decals for such devices, to prescribe all  
16 forms necessary for the registration of such devices, and to impose  
17 administrative penalties for failure to properly register such  
18 devices;

19 (9) To examine or to cause to have examined, by any agent  
20 or representative designated by the department for such purpose,  
21 any books, papers, records, or memoranda relating to the conduct  
22 of lottery by the sale of pickle cards of any licensee, to require  
23 by administrative order or summons the production of such documents  
24 or the attendance of any person having knowledge in the premises,  
25 to take testimony under oath, and to require proof material for  
26 its information. If any such person willfully refuses to make  
27 documents available for examination by the department or its agent

1 or representative or willfully fails to attend and testify, the  
2 department may apply to a judge of the district court of the county  
3 in which such person resides for an order directing such person to  
4 comply with the department's request. If any documents requested  
5 by the department are in the custody of a corporation, the court  
6 order may be directed to any principal officer of the corporation.  
7 If the documents requested by the department are in the custody of  
8 a limited liability company, the court order may be directed to any  
9 member when management is reserved to the members or otherwise to  
10 any manager. Any person who fails or refuses to obey such a court  
11 order shall be guilty of contempt of court;

12 (10) Unless specifically provided otherwise, to compute,  
13 determine, assess, and collect the amounts required to be paid as  
14 taxes imposed by the act in the same manner as provided for sales  
15 and use taxes in the Nebraska Revenue Act of 1967;

16 (11) To collect license application and license renewal  
17 application fees imposed by the Nebraska Pickle Card Lottery Act  
18 and to prorate license fees on an annual basis. The department  
19 shall establish by rule and regulation the conditions and  
20 circumstances under which such fees may be prorated;

21 (12) To inspect pickle cards and pickle card units as  
22 provided in section 9-339;

23 (13) To confiscate, seize, or seal pickle cards, pickle  
24 card units, or coin-operated or currency-operated pickle card  
25 dispensing devices pursuant to section 9-350;

26 (14) To adopt and promulgate such rules and regulations  
27 and prescribe all forms as are necessary to carry out the Nebraska

1 Pickle Card Lottery Act; and

2 (15) To employ staff, including auditors and inspectors,  
3 as necessary to carry out the act.

4 Sec. 5. Section 9-322.02, Reissue Revised Statutes of  
5 Nebraska, is amended to read:

6 9-322.02 (1) Before any application is denied pursuant  
7 to section 9-322, the department shall notify the applicant in  
8 writing by ~~certified~~ mail of the department's intention to deny  
9 the application and the reasons for the denial. Such notice  
10 shall inform the applicant of his or her right to request an  
11 administrative hearing for the purpose of reconsideration of the  
12 intended denial of the application. The date the notice is mailed  
13 shall be deemed to be the date of service of notice to the  
14 applicant.

15 (2) A request for a hearing by the applicant shall be in  
16 writing and shall be filed with the department within thirty days  
17 after the service of notice to the applicant of the department's  
18 intended denial of the application. If a request for hearing is not  
19 filed within the thirty-day period, the application denial shall  
20 become final at the expiration of such period.

21 (3) If a request for hearing is filed within the  
22 thirty-day period, the Tax Commissioner shall grant the applicant  
23 a hearing and shall, at least ten days before the hearing,  
24 serve notice upon the applicant by ~~certified mail, return receipt~~  
25 ~~requested,~~ mail of the time, date, and place of the hearing. Such  
26 proceedings shall be considered contested cases pursuant to the  
27 Administrative Procedure Act.

1           Sec. 6. Section 9-324, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           9-324 Before the adoption, amendment, or repeal of any  
4 rule or regulation, the suspension, revocation, or cancellation  
5 of any license pursuant to section 9-322, or the levying of  
6 an administrative fine pursuant to section 9-322, the department  
7 shall set the matter for hearing. Such suspension, revocation, or  
8 cancellation proceedings or proceedings to levy an administrative  
9 fine shall be contested cases pursuant to the Administrative  
10 Procedure Act.

11           At least ten days before the hearing, the department  
12 shall (1) in the case of suspension, revocation, or cancellation  
13 proceedings or proceedings to levy an administrative fine, serve  
14 notice upon the licensee or violator by personal service or  
15 ~~certified mail, return receipt requested,~~ mail of the time, date,  
16 and place of any hearing or (2) in the case of adoption, amendment,  
17 or repeal of any rule or regulation, issue a public notice of the  
18 time, date, and place of such hearing.

19           This section shall not apply to an order of suspension  
20 by the Tax Commissioner prior to a hearing as provided in section  
21 9-323.

22           Sec. 7. Section 9-418, Reissue Revised Statutes of  
23 Nebraska, is amended to read:

24           9-418 The department shall have the following powers,  
25 functions, and duties:

26           (1) To issue licenses, temporary licenses, and permits;

27           (2) To deny any license or permit application or renewal

1 application for cause. Cause for denial of an application or  
2 renewal of a license or permit shall include instances in which the  
3 applicant individually or, in the case of a nonprofit organization,  
4 any officer, director, or employee of the applicant, licensee,  
5 or permittee, other than an employee whose duties are purely  
6 ministerial in nature, any other person or entity directly or  
7 indirectly associated with such applicant, licensee, or permittee  
8 which directly or indirectly receives compensation other than  
9 distributions from a bona fide retirement plan established pursuant  
10 to Chapter 1, subchapter D of the Internal Revenue Code from such  
11 applicant, licensee, or permittee for past or present services in  
12 a consulting capacity or otherwise, the licensee, the permittee, or  
13 any person with a substantial interest in the applicant, licensee,  
14 or permittee:

15 (a) Violated the provisions, requirements, conditions,  
16 limitations, or duties imposed by the Nebraska Bingo Act, the  
17 Nebraska County and City Lottery Act, the Nebraska Lottery and  
18 Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska  
19 Small Lottery and Raffle Act, or the State Lottery Act or any rules  
20 or regulations adopted and promulgated pursuant to such acts;

21 (b) Knowingly caused, aided, abetted, or conspired with  
22 another to cause any person to violate any of the provisions of  
23 such acts or any rules or regulations adopted and promulgated  
24 pursuant to such acts;

25 (c) Obtained a license or permit pursuant to the Nebraska  
26 Bingo Act, the Nebraska County and City Lottery Act, the Nebraska  
27 Lottery and Raffle Act, or the Nebraska Pickle Card Lottery Act by

1 fraud, misrepresentation, or concealment;

2 (d) Was convicted of, forfeited bond upon a charge of, or  
3 pleaded guilty or nolo contendere to any offense or crime, whether  
4 a felony or misdemeanor, involving any gambling activity or fraud,  
5 theft, willful failure to make required payments or reports, or  
6 filing false reports with a governmental agency at any level;

7 (e) Was convicted of, forfeited bond upon a charge of, or  
8 pleaded guilty or nolo contendere to any felony other than those  
9 described in subdivision (d) of this subdivision within the ten  
10 years preceding the filing of the application;

11 (f) Denied the department or its authorized  
12 representatives, including authorized law enforcement agencies,  
13 access to any place where lottery or raffle activity required to  
14 be licensed under the Nebraska Lottery and Raffle Act is being  
15 conducted or failed to produce for inspection or audit any book,  
16 record, document, or item required by law, rule, or regulation;

17 (g) Made a misrepresentation of or failed to disclose a  
18 material fact to the department;

19 (h) Failed to prove by clear and convincing evidence his,  
20 her, or its qualifications to be licensed in accordance with the  
21 Nebraska Lottery and Raffle Act;

22 (i) Failed to pay any taxes and additions to taxes,  
23 including penalties and interest, required by the Nebraska Bingo  
24 Act, the Nebraska County and City Lottery Act, the Nebraska Lottery  
25 and Raffle Act, or the Nebraska Pickle Card Lottery Act or any  
26 other taxes imposed pursuant to the Nebraska Revenue Act of 1967;

27 (j) Failed to pay an administrative fine levied pursuant



1 to the Nebraska Bingo Act, the Nebraska County and City Lottery  
2 Act, the Nebraska Lottery and Raffle Act, or the Nebraska Pickle  
3 Card Lottery Act;

4 (k) Failed to demonstrate good character, honesty, and  
5 integrity;

6 (l) Failed to demonstrate, either individually or, in  
7 the case of a nonprofit organization, through its managers or  
8 employees, the ability, experience, or financial responsibility  
9 necessary to establish or maintain the activity for which the  
10 application is made; or

11 (m) Was cited and whose liquor license was suspended,  
12 canceled, or revoked by the Nebraska Liquor Control Commission for  
13 illegal gambling activities that occurred on or after July 20,  
14 2002, on or about a premises licensed by the commission pursuant  
15 to the Nebraska Liquor Control Act or the rules and regulations  
16 adopted and promulgated pursuant to such act.

17 No renewal of a license under the Nebraska Lottery and  
18 Raffle Act shall be issued when the applicant for renewal would not  
19 be eligible for a license upon a first application;

20 (3) To revoke, cancel, or suspend for cause any license  
21 or permit. Cause for revocation, cancellation, or suspension of a  
22 license or permit shall include instances in which the licensee or  
23 permittee individually or, in the case of a nonprofit organization,  
24 any officer, director, or employee of the licensee or permittee,  
25 other than an employee whose duties are purely ministerial  
26 in nature, any other person or entity directly or indirectly  
27 associated with such licensee or permittee which directly or

1 indirectly receives compensation other than distributions from  
2 a bona fide retirement plan established pursuant to Chapter 1,  
3 subchapter D of the Internal Revenue Code from such licensee or  
4 permittee for past or present services in a consulting capacity  
5 or otherwise, or any person with a substantial interest in the  
6 licensee or permittee:

7 (a) Violated the provisions, requirements, conditions,  
8 limitations, or duties imposed by the Nebraska Bingo Act, the  
9 Nebraska County and City Lottery Act, the Nebraska Lottery and  
10 Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska  
11 Small Lottery and Raffle Act, the State Lottery Act, or any rules  
12 or regulations adopted and promulgated pursuant to such acts;

13 (b) Knowingly caused, aided, abetted, or conspired with  
14 another to cause any person to violate any of the provisions of the  
15 Nebraska Lottery and Raffle Act or any rules or regulations adopted  
16 and promulgated pursuant to the act;

17 (c) Obtained a license or permit pursuant to the act by  
18 fraud, misrepresentation, or concealment;

19 (d) Was convicted of, forfeited bond upon a charge of, or  
20 pleaded guilty or nolo contendere to any offense or crime, whether  
21 a felony or misdemeanor, involving any gambling activity or fraud,  
22 theft, willful failure to make required payments or reports, or  
23 filing false reports with a governmental agency at any level;

24 (e) Was convicted of, forfeited bond upon a charge of, or  
25 pleaded guilty or nolo contendere to any felony other than those  
26 described in subdivision (d) of this subdivision within the ten  
27 years preceding filing of the application;

1           (f) Denied the department or its authorized  
2 representatives, including authorized law enforcement agencies,  
3 access to any place where lottery or raffle activity required to  
4 be licensed under the Nebraska Lottery and Raffle Act is being  
5 conducted or failed to produce for inspection or audit any book,  
6 record, document, or item required by law, rule, or regulation;

7           (g) Made a misrepresentation of or failed to disclose a  
8 material fact to the department;

9           (h) Failed to pay any taxes and additions to taxes,  
10 including penalties and interest, required by the Nebraska Bingo  
11 Act, the Nebraska County and City Lottery Act, the Nebraska Lottery  
12 and Raffle Act, or the Nebraska Pickle Card Lottery Act or any  
13 other taxes imposed pursuant to the Nebraska Revenue Act of 1967;

14           (i) Failed to pay an administrative fine levied pursuant  
15 to the Nebraska Bingo Act, the Nebraska County and City Lottery  
16 Act, the Nebraska Lottery and Raffle Act, or the Nebraska Pickle  
17 Card Lottery Act;

18           (j) Failed to demonstrate good character, honesty, and  
19 integrity;

20           (k) Failed to demonstrate, either individually or, in  
21 the case of a nonprofit organization, through its managers or  
22 employees, the ability, experience, or financial responsibility  
23 necessary to maintain the activity for which the license was  
24 issued; or

25           (l) Was cited and whose liquor license was suspended,  
26 canceled, or revoked by the Nebraska Liquor Control Commission for  
27 illegal gambling activities that occurred on or after July 20,

1 2002, on or about a premises licensed by the commission pursuant  
2 to the Nebraska Liquor Control Act or the rules and regulations  
3 adopted and promulgated pursuant to such act;

4 (4) To issue an order requiring a licensee, permittee, or  
5 other person to cease and desist from violations of the Nebraska  
6 Lottery and Raffle Act or any rules or regulations adopted and  
7 promulgated pursuant to such act. The order shall give reasonable  
8 notice of the rights of the licensee, permittee, or other person  
9 to request a hearing and shall state the reason for the entry of  
10 the order. The notice of order shall be mailed ~~by certified mail~~  
11 to or personally served upon the licensee, permittee, or other  
12 person. If the notice of order is mailed ~~by certified mail~~, the  
13 date the notice is mailed shall be deemed to be the date of service  
14 of notice to the licensee, permittee, or other person. A request  
15 for a hearing by the licensee, permittee, or other person shall be  
16 in writing and shall be filed with the department within thirty  
17 days after the service of the cease and desist order. If a request  
18 for hearing is not filed within the thirty-day period, the cease  
19 and desist order shall become permanent at the expiration of such  
20 period. A hearing shall be held not later than thirty days after  
21 the request for the hearing is received by the Tax Commissioner,  
22 and within twenty days after the date of the hearing, the Tax  
23 Commissioner shall issue an order vacating the cease and desist  
24 order or making it permanent as the facts require. All hearings  
25 shall be held in accordance with the rules and regulations adopted  
26 and promulgated by the department. If the licensee, permittee, or  
27 other person to whom a cease and desist order is issued fails

1 to appear at the hearing after being duly notified, the licensee,  
2 permittee, or other person shall be deemed in default and the  
3 proceeding may be determined against the licensee, permittee, or  
4 other person upon consideration of the cease and desist order, the  
5 allegations of which may be deemed to be true;

6 (5) To examine or to cause to have examined, by any agent  
7 or representative designated by the department for such purpose,  
8 any books, papers, records, or memoranda relating to lottery or  
9 raffle activities required to be licensed pursuant to the Nebraska  
10 Lottery and Raffle Act, to require by summons the production of  
11 such documents or the attendance of any person having knowledge in  
12 the premises, to take testimony under oath, and to require proof  
13 material for its information. If any such person willfully refuses  
14 to make documents available for examination by the department  
15 or its agent or representative or willfully fails to attend and  
16 testify, the department may apply to a judge of the district  
17 court of the county in which such person resides for an order  
18 directing such person to comply with the department's request. If  
19 any documents requested by the department are in the custody of  
20 a corporation, the court order may be directed to any principal  
21 officer of the corporation. Any person who fails or refuses to obey  
22 such a court order shall be guilty of contempt of court;

23 (6) To levy an administrative fine on an individual,  
24 partnership, limited liability company, corporation, or  
25 organization for cause. For purposes of this subdivision,  
26 cause shall include instances in which the individual, partnership,  
27 limited liability company, corporation, or organization violated

1 the provisions, requirements, conditions, limitations, or duties  
2 imposed by the act or any rule or regulation adopted and  
3 promulgated pursuant to the act. In determining whether to levy  
4 an administrative fine and the amount of the fine if any fine  
5 is levied, the department shall take into consideration the  
6 seriousness of the violation, the intent of the violator, whether  
7 the violator voluntarily reported the violation, whether the  
8 violator derived financial gain as a result of the violation and  
9 the extent thereof, and whether the violator has had previous  
10 violations of the act, rules, or regulations. A fine levied on a  
11 violator under this section shall not exceed one thousand dollars  
12 for each violation of the act or any rule or regulation adopted and  
13 promulgated pursuant to the act plus the financial benefit derived  
14 by the violator as a result of each violation. If an administrative  
15 fine is levied, the fine shall not be paid from lottery or raffle  
16 gross proceeds of an organization and shall be remitted by the  
17 violator to the department within thirty days after the date of the  
18 order issued by the department levying such fine;

19 (7) Unless specifically provided otherwise, to compute,  
20 determine, assess, and collect the amounts required to be paid  
21 to the state as taxes imposed by the act in the same manner as  
22 provided for sales and use taxes in the Nebraska Revenue Act of  
23 1967;

24 (8) To collect license application, license renewal  
25 application, and permit fees imposed by the Nebraska Lottery  
26 and Raffle Act and to prorate license fees on an annual basis. The  
27 department shall establish, by rule and regulation, the conditions

1 and circumstances under which such fees may be prorated;

2 (9) To confiscate and seize lottery or raffle tickets or  
3 stubs pursuant to section 9-432; and

4 (10) To adopt and promulgate such rules and regulations,  
5 prescribe such forms, and employ such staff, including inspectors,  
6 as are necessary to carry out the act.

7 Sec. 8. Section 9-418.01, Reissue Revised Statutes of  
8 Nebraska, is amended to read:

9 9-418.01 (1) Before any application is denied pursuant  
10 to section 9-418, the department shall notify the applicant in  
11 writing by ~~certified~~ mail of the department's intention to deny  
12 the application and the reasons for the denial. Such notice  
13 shall inform the applicant of his or her right to request an  
14 administrative hearing for the purpose of reconsideration of the  
15 intended denial of the application. The date the notice is mailed  
16 shall be deemed to be the date of service of notice to the  
17 applicant.

18 (2) A request for a hearing by the applicant shall be in  
19 writing and shall be filed with the department within thirty days  
20 after the service of notice to the applicant of the department's  
21 intended denial of the application. If a request for hearing is not  
22 filed within the thirty-day period, the denial shall become final  
23 at the expiration of such period.

24 (3) If a request for hearing is filed within the  
25 thirty-day period, the Tax Commissioner shall grant the applicant  
26 a hearing and shall, at least ten days before the hearing,  
27 serve notice upon the applicant by ~~certified mail, return receipt~~

1 ~~requested,~~ mail of the time, date, and place of the hearing. Such  
2 proceedings shall be considered contested cases pursuant to the  
3 Administrative Procedure Act.

4           Sec. 9. Section 9-420, Reissue Revised Statutes of  
5 Nebraska, is amended to read:

6           9-420 Before the adoption, amendment, or repeal of any  
7 rule or regulation, the suspension, revocation, or cancellation of  
8 any license or permit, or the levying of an administrative fine  
9 pursuant to section 9-418, the department shall set the matter for  
10 hearing. Such suspension, revocation, or cancellation proceedings  
11 or proceedings to levy an administrative fine shall be considered  
12 contested cases pursuant to the Administrative Procedure Act.

13           At least ten days before the hearing, the department  
14 shall (1) in the case of suspension, revocation, or cancellation  
15 proceedings or proceedings to levy an administrative fine, serve  
16 notice by personal service or ~~certified mail, return receipt~~  
17 ~~requested,~~ mail upon the licensee, permittee, or violator of the  
18 time, date, and place of any hearing or (2) in the case of  
19 adoption, amendment, or repeal of any rule or regulation, issue a  
20 public notice of the time, date, and place of such hearing.

21           This section shall not apply to an order of suspension  
22 by the Tax Commissioner prior to a hearing as provided in section  
23 9-419.

24           Sec. 10. Section 9-620, Reissue Revised Statutes of  
25 Nebraska, is amended to read:

26           9-620 The department shall have the following powers,  
27 functions, and duties:



1           (1) To issue licenses and temporary licenses;

2           (2) To deny any license application or renewal  
3 application for cause. Cause for denial of an application or  
4 renewal of a license shall include instances in which the  
5 applicant individually, or in the case of a business entity,  
6 any officer, director, employee, or limited liability company  
7 member of the applicant or licensee other than an employee whose  
8 duties are purely ministerial in nature, any other person or  
9 entity directly or indirectly associated with such applicant or  
10 licensee which directly or indirectly receives compensation other  
11 than distributions from a bona fide retirement or pension plan  
12 established pursuant to Chapter 1, subchapter D of the Internal  
13 Revenue Code from such applicant or licensee for past or present  
14 services in a consulting capacity or otherwise, the licensee,  
15 or any person with a substantial interest in the applicant or  
16 licensee:

17           (a) Violated the provisions, requirements, conditions,  
18 limitations, or duties imposed by the Nebraska Bingo Act, the  
19 Nebraska County and City Lottery Act, the Nebraska Lottery and  
20 Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska  
21 Small Lottery and Raffle Act, the State Lottery Act, or any rules  
22 or regulations adopted and promulgated pursuant to such acts;

23           (b) Knowingly caused, aided, abetted, or conspired with  
24 another to cause any person to violate any of the provisions of  
25 such acts or any rules or regulations adopted and promulgated  
26 pursuant to such acts;

27           (c) Obtained a license or permit pursuant to such acts by

1 fraud, misrepresentation, or concealment;

2 (d) Was convicted of, forfeited bond upon a charge of, or  
3 pleaded guilty or nolo contendere to any offense or crime, whether  
4 a felony or a misdemeanor, involving any gambling activity or  
5 fraud, theft, willful failure to make required payments or reports,  
6 or filing false reports with a governmental agency at any level;

7 (e) Was convicted of, forfeited bond upon a charge of, or  
8 pleaded guilty or nolo contendere to any felony other than those  
9 described in subdivision (d) of this subdivision within the ten  
10 years preceding the filing of the application;

11 (f) Denied the department or its authorized  
12 representatives, including authorized law enforcement agencies,  
13 access to any place where activity required to be licensed under  
14 the Nebraska County and City Lottery Act is being conducted  
15 or failed to produce for inspection or audit any book, record,  
16 document, or item required by law, rule, or regulation;

17 (g) Made a misrepresentation of or failed to disclose a  
18 material fact to the department;

19 (h) Failed to prove by clear and convincing evidence his,  
20 her, or its qualifications to be licensed in accordance with the  
21 Nebraska County and City Lottery Act;

22 (i) Failed to pay any taxes and additions to taxes,  
23 including penalties and interest, required by the Nebraska Bingo  
24 Act, the Nebraska County and City Lottery Act, the Nebraska Lottery  
25 and Raffle Act, or the Nebraska Pickle Card Lottery Act or any  
26 other taxes imposed pursuant to the Nebraska Revenue Act of 1967;

27 (j) Failed to pay an administrative fine levied pursuant

1 to the Nebraska Bingo Act, the Nebraska County and City Lottery  
2 Act, the Nebraska Lottery and Raffle Act, or the Nebraska Pickle  
3 Card Lottery Act;

4 (k) Failed to demonstrate good character, honesty, and  
5 integrity;

6 (l) Failed to demonstrate, either individually or in  
7 the case of a business entity through its managers, employees,  
8 or agents, the ability, experience, or financial responsibility  
9 necessary to establish or maintain the activity for which the  
10 application is made; or

11 (m) Was cited and whose liquor license was suspended,  
12 canceled, or revoked by the Nebraska Liquor Control Commission for  
13 illegal gambling activities that occurred on or after July 20,  
14 2002, on or about a premises licensed by the commission pursuant  
15 to the Nebraska Liquor Control Act or the rules and regulations  
16 adopted and promulgated pursuant to such act.

17 No renewal of a license under the Nebraska County and  
18 City Lottery Act shall be issued when the applicant for renewal  
19 would not be eligible for a license upon a first application;

20 (3) To revoke, cancel, or suspend for cause any license.  
21 Cause for revocation, cancellation, or suspension of a license  
22 shall include instances in which the licensee individually, or in  
23 the case of a business entity, any officer, director, employee,  
24 or limited liability company member of the licensee other than  
25 an employee whose duties are purely ministerial in nature, any  
26 other person or entity directly or indirectly associated with such  
27 licensee which directly or indirectly receives compensation other

1 than distributions from a bona fide retirement or pension plan  
2 established pursuant to Chapter 1, subchapter D of the Internal  
3 Revenue Code from such licensee for past or present services in a  
4 consulting capacity or otherwise, or any person with a substantial  
5 interest in the licensee:

6 (a) Violated the provisions, requirements, conditions,  
7 limitations, or duties imposed by the Nebraska Bingo Act, the  
8 Nebraska County and City Lottery Act, the Nebraska Lottery and  
9 Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska  
10 Small Lottery and Raffle Act, the State Lottery Act, or any rules  
11 or regulations adopted and promulgated pursuant to such acts;

12 (b) Knowingly caused, aided, abetted, or conspired with  
13 another to cause any person to violate any of the provisions of the  
14 Nebraska County and City Lottery Act or any rules or regulations  
15 adopted and promulgated pursuant to the act;

16 (c) Obtained a license pursuant to the Nebraska County  
17 and City Lottery Act by fraud, misrepresentation, or concealment;

18 (d) Was convicted of, forfeited bond upon a charge of, or  
19 pleaded guilty or nolo contendere to any offense or crime, whether  
20 a felony or a misdemeanor, involving any gambling activity or  
21 fraud, theft, willful failure to make required payments or reports,  
22 or filing false reports with a governmental agency at any level;

23 (e) Was convicted of, forfeited bond upon a charge of, or  
24 pleaded guilty or nolo contendere to any felony other than those  
25 described in subdivision (d) of this subdivision within the ten  
26 years preceding the filing of the application;

27 (f) Denied the department or its authorized

1 representatives, including authorized law enforcement agencies,  
2 access to any place where activity required to be licensed under  
3 the Nebraska County and City Lottery Act is being conducted  
4 or failed to produce for inspection or audit any book, record,  
5 document, or item required by law, rule, or regulation;

6 (g) Made a misrepresentation of or failed to disclose a  
7 material fact to the department;

8 (h) Failed to pay any taxes and additions to taxes,  
9 including penalties and interest, required by the Nebraska Bingo  
10 Act, the Nebraska County and City Lottery Act, the Nebraska Lottery  
11 and Raffle Act, or the Nebraska Pickle Card Lottery Act or any  
12 other taxes imposed pursuant to the Nebraska Revenue Act of 1967;

13 (i) Failed to pay an administrative fine levied pursuant  
14 to the Nebraska Bingo Act, the Nebraska County and City Lottery  
15 Act, the Nebraska Lottery and Raffle Act, or the Nebraska Pickle  
16 Card Lottery Act;

17 (j) Failed to demonstrate good character, honesty, and  
18 integrity;

19 (k) Failed to demonstrate, either individually or in  
20 the case of a business entity through its managers, employees,  
21 or agents, the ability, experience, or financial responsibility  
22 necessary to maintain the activity for which the license was  
23 issued; or

24 (l) Was cited and whose liquor license was suspended,  
25 canceled, or revoked by the Nebraska Liquor Control Commission for  
26 illegal gambling activities that occurred on or after July 20,  
27 2002, on or about a premises licensed by the commission pursuant

1 to the Nebraska Liquor Control Act or the rules and regulations  
2 adopted and promulgated pursuant to such act;

3 (4) To issue an order requiring a licensee or other  
4 person to cease and desist from violations of the Nebraska County  
5 and City Lottery Act or any rules or regulations adopted and  
6 promulgated pursuant to the act. The order shall give reasonable  
7 notice of the rights of the licensee or other person to request a  
8 hearing and shall state the reason for the entry of the order. The  
9 notice of order shall be mailed ~~by certified mail~~ to or personally  
10 served upon the licensee or other person. If the notice of order is  
11 mailed, ~~by certified mail,~~ the date the notice is mailed shall be  
12 deemed to be the date of service of notice to the licensee or other  
13 person. A request for a hearing by the licensee or other person  
14 shall be in writing and shall be filed with the department within  
15 thirty days after the service of the cease and desist order. If  
16 a request for hearing is not filed within the thirty-day period,  
17 the cease and desist order shall become permanent at the expiration  
18 of such period. A hearing shall be held not later than thirty  
19 days after the request for the hearing is received by the Tax  
20 Commissioner, and within twenty days after the date of the hearing,  
21 the Tax Commissioner shall issue an order vacating the cease and  
22 desist order or making it permanent as the facts require. All  
23 hearings shall be held in accordance with the rules and regulations  
24 adopted and promulgated by the department. If the licensee or  
25 other person to whom a cease and desist order is issued fails to  
26 appear at the hearing after being duly notified, the licensee or  
27 other person shall be deemed in default and the proceeding may be

1 determined against the licensee or other person upon consideration  
2 of the cease and desist order, the allegations of which may be  
3 deemed to be true;

4 (5) To levy an administrative fine on an individual,  
5 partnership, limited liability company, corporation, or  
6 organization for cause. For purposes of this subdivision,  
7 cause shall include instances in which the individual, partnership,  
8 limited liability company, corporation, or organization violated  
9 the provisions, requirements, conditions, limitations, or duties  
10 imposed by the act or any rule or regulation adopted and  
11 promulgated pursuant to the act. In determining whether to levy  
12 an administrative fine and the amount of the fine if any fine  
13 is levied, the department shall take into consideration the  
14 seriousness of the violation, the intent of the violator, whether  
15 the violator voluntarily reported the violation, whether the  
16 violator derived financial gain as a result of the violation and  
17 the extent thereof, and whether the violator has had previous  
18 violations of the act and regulations. A fine levied on a violator  
19 under this section shall not exceed twenty-five thousand dollars  
20 for each violation of the act or any rules and regulations adopted  
21 and promulgated pursuant to the act plus the financial benefit  
22 derived by the violator as a result of each violation. If an  
23 administrative fine is levied, the fine shall not be paid from  
24 lottery gross proceeds of the county, city, or village and shall be  
25 remitted by the violator to the department within thirty days from  
26 the date of the order issued by the department levying such fine;

27 (6) To enter or to authorize any law enforcement officer

1 to enter at any time upon any premises where lottery activity  
2 required to be licensed under the act is being conducted to  
3 determine whether any of the provisions of the act or any rules or  
4 regulations adopted and promulgated under it have been or are being  
5 violated and at such time to examine such premises;

6 (7) To require periodic reports of lottery activity from  
7 licensed counties, cities, villages, manufacturer-distributors, and  
8 lottery operators and any other persons, organizations, limited  
9 liability companies, or corporations as the department deems  
10 necessary to carry out the act;

11 (8) To audit, examine, or cause to have examined, by  
12 any agent or representative designated by the department for such  
13 purpose, any books, papers, records, or memoranda relating to the  
14 conduct of a lottery, to require by administrative order or summons  
15 the production of such documents or the attendance of any person  
16 having knowledge in the premises, to take testimony under oath, and  
17 to require proof material for its information. If any such person  
18 willfully refuses to make documents available for examination by  
19 the department or its agent or representative or willfully fails  
20 to attend and testify, the department may apply to a judge of  
21 the district court of the county in which such person resides for  
22 an order directing such person to comply with the department's  
23 request. If any documents requested by the department are in the  
24 custody of a corporation, the court order may be directed to any  
25 principal officer of the corporation. If the documents requested by  
26 the department are in the custody of a limited liability company,  
27 the court order may be directed to any member when management is



1 reserved to the members or otherwise to any manager. Any person who  
2 fails or refuses to obey such a court order shall be guilty of  
3 contempt of court;

4 (9) Unless specifically provided otherwise, to compute,  
5 determine, assess, and collect the amounts required to be paid as  
6 taxes imposed by the act in the same manner as provided for sales  
7 and use taxes in the Nebraska Revenue Act of 1967;

8 (10) To collect license application and license renewal  
9 application fees imposed by the Nebraska County and City Lottery  
10 Act and to prorate license fees on an annual basis. The department  
11 shall establish by rule and regulation the conditions and  
12 circumstances under which such fees may be prorated;

13 (11) To confiscate and seize lottery equipment or  
14 supplies pursuant to section 9-649;

15 (12) To investigate the activities of any person  
16 applying for a license under the act or relating to the conduct  
17 of any lottery activity under the act. Any license applicant  
18 or licensee shall produce such information, documentation, and  
19 assurances as may be required by the department to establish by a  
20 preponderance of the evidence the financial stability, integrity,  
21 and responsibility of the applicant or licensee, including, but  
22 not limited to, bank account references, business and personal  
23 income and disbursement schedules, tax returns and other reports  
24 filed with governmental agencies, business entity and personal  
25 accounting records, and check records and ledgers. Any such license  
26 applicant or licensee shall authorize the department to examine  
27 bank accounts and other such records as may be deemed necessary

1 by the department;

2 (13) To adopt and promulgate such rules and regulations  
3 and prescribe all forms as are necessary to carry out the act; and

4 (14) To employ staff, including auditors and inspectors,  
5 as necessary to carry out the act.

6 Sec. 11. Section 9-622, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8 9-622 (1) Before any application is denied pursuant  
9 to section 9-620, the department shall notify the applicant in  
10 writing by ~~certified~~ mail of the department's intention to deny  
11 the application and the reasons for the denial. Such notice  
12 shall inform the applicant of his or her right to request an  
13 administrative hearing for the purpose of reconsideration of the  
14 intended denial of the application. The date the notice is mailed  
15 shall be deemed to be the date of service of notice to the  
16 applicant.

17 (2) A request for a hearing by the applicant shall be in  
18 writing and shall be filed with the department within thirty days  
19 after the service of notice to the applicant of the department's  
20 intended denial of the application. If a request for hearing is not  
21 filed within the thirty-day period, the application denial shall  
22 become final at the expiration of such period.

23 (3) If a request for hearing is filed within the  
24 thirty-day period, the Tax Commissioner shall grant the applicant  
25 a hearing and shall, at least ten days before the hearing,  
26 serve notice upon the applicant by ~~certified mail, return receipt~~  
27 ~~requested,~~ mail of the time, date, and place of the hearing. Such

1 proceedings shall be considered contested cases pursuant to the  
2 Administrative Procedure Act.

3           Sec. 12. Section 9-623, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5           9-623 Before the adoption, amendment, or repeal of any  
6 rule or regulation, the suspension, revocation, or cancellation  
7 of any license pursuant to section 9-620, or the levying of  
8 an administrative fine pursuant to such section, the department  
9 shall set the matter for hearing. Such suspension, revocation, or  
10 cancellation proceedings or proceedings to levy an administrative  
11 fine shall be contested cases pursuant to the Administrative  
12 Procedure Act.

13           At least ten days before the hearing, the department  
14 shall (1) in the case of suspension, revocation, or cancellation  
15 proceedings or proceedings to levy an administrative fine, serve  
16 notice upon the licensee or violator by personal service or  
17 ~~certified mail, return receipt requested,~~ mail of the time, date,  
18 and place of any hearing or (2) in the case of adoption, amendment,  
19 or repeal of any rule or regulation, issue a public notice of the  
20 time, date, and place of such hearing.

21           Sec. 13. Section 9-820, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23           9-820 Notices of hearings related to contracts awarded  
24 by the Tax Commissioner and copies of all orders and decisions of  
25 the Tax Commissioner concerning such contracts shall be ~~sent by~~  
26 ~~certified or registered mail, return receipt requested,~~ mailed to  
27 the address of record of the appropriate party or parties.

1           Sec. 14. Section 57-706, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           57-706 The Tax Commissioner, whenever he or she deems  
4 it necessary to insure compliance with the provisions of sections  
5 57-701 to ~~57-715,~~ 57-719, may require any person subject to the  
6 tax to deposit with the Tax Commissioner suitable indemnity bond  
7 to insure payment of the taxes, levied under the provisions of  
8 sections 57-701 to ~~57-715,~~ 57-719, as the Tax Commissioner may  
9 determine. Such security may be used if it becomes necessary to  
10 collect any tax, interest, or penalty due. Notice of the use  
11 thereof shall be given to such person by ~~either registered or~~  
12 ~~certified~~ mail.

13           Sec. 15. Section 57-1206, Reissue Revised Statutes of  
14 Nebraska, is amended to read:

15           57-1206 The Tax Commissioner, whenever he or she deems it  
16 necessary to insure compliance with sections 57-1201 to 57-1214,  
17 may require any person subject to the tax imposed by section  
18 57-1202 to deposit with the Tax Commissioner a suitable indemnity  
19 bond to insure payment of the tax as the Tax Commissioner may  
20 determine. Such security may be used if it becomes necessary to  
21 collect any tax, interest, or penalty due. Notice of the use of  
22 the bond shall be given to such person by ~~either registered or~~  
23 ~~certified~~ mail.

24           Sec. 16. Section 66-486, Reissue Revised Statutes of  
25 Nebraska, is amended to read:

26           66-486 (1) In lieu of the expense of collecting and  
27 remitting the motor vehicle fuel tax and furnishing the security

1 pursuant to Chapter 66, article 4, and complying with the statutes  
2 and rules and regulations related thereto, the producer, supplier,  
3 distributor, wholesaler, or importer shall be entitled to deduct  
4 and withhold a commission of five percent on the first five  
5 thousand dollars and two and one-half percent upon all amounts  
6 above five thousand dollars remitted each reporting period.

7 (2) In lieu of the expense of collecting and remitting  
8 the diesel fuel tax and furnishing the security pursuant to Chapter  
9 66, article 4, and complying with the statutes and rules and  
10 regulations related thereto, the producer, supplier, distributor,  
11 wholesaler, or importer shall be entitled to deduct and withhold a  
12 commission of two percent upon the first five thousand dollars and  
13 one-half of one percent upon all amounts in excess of five thousand  
14 dollars remitted each reporting period.

15 (3) Except as otherwise provided in Chapter 66, article  
16 4, the per-gallon amount of the tax shall be added to the selling  
17 price of every gallon of such motor fuels sold in this state and  
18 shall be collected from the purchaser so that the ultimate consumer  
19 bears the burden of the tax. The tax shall be a direct tax on  
20 the retail or ultimate consumer precollected for the purpose of  
21 convenience and facility to the consumer. The levy and assessment  
22 on the producer, supplier, distributor, wholesaler, or importer as  
23 specified in Chapter 66, article 4, shall be as agents of the state  
24 for the precollection of the tax. The provisions of this section  
25 shall in no way affect the method of collecting the tax as provided  
26 in Chapter 66, article 4. The tax imposed by this section shall be  
27 collected and paid at the time, in the manner, and by those persons

1 specified in Chapter 66, article 4.

2 (4) In consideration of receiving the commission, the  
3 producer, supplier, distributor, wholesaler, or importer shall not  
4 be entitled to any deductions, credits, or refunds arising out  
5 of such producer's, supplier's, distributor's, wholesaler's, or  
6 importer's failure or inability to collect any such taxes from any  
7 subsequent purchaser of motor fuels.

8 (5) For purposes of this section, reporting period means  
9 calendar month unless otherwise provided by rules and regulations  
10 of the department, but under no circumstance shall such reporting  
11 period extend beyond an annual basis.

12 (6) A producer, supplier, distributor, wholesaler, or  
13 importer shall not be entitled to the commission provided under  
14 subsection (1) or (2) of this section for the amount of any  
15 understatement of or refund of any such taxes collected as a result  
16 of a final assessment occurring pursuant to a notice of deficiency  
17 determination under section 66-722.

18 Sec. 17. Section 66-488, Reissue Revised Statutes of  
19 Nebraska, is amended to read:

20 66-488 (1) Every producer, supplier, distributor,  
21 wholesaler, importer, and exporter who engages in the sale,  
22 distribution, delivery, and use of motor fuels shall render and  
23 have on file with the department a return reporting the number of  
24 gallons of motor fuels, based on gross gallons, received, imported,  
25 or exported and unloaded and emptied or caused to be received,  
26 imported, or exported and unloaded and emptied by such producer,  
27 supplier, distributor, wholesaler, or importer in the State of

1 Nebraska and the number of gallons of motor fuels produced,  
2 refined, manufactured, blended, or compounded by such producer,  
3 supplier, distributor, wholesaler, or importer within the State  
4 of Nebraska, during the preceding reporting period, and defining  
5 the nature of such motor fuels. The return shall also show such  
6 information as the department reasonably requires for the proper  
7 administration and enforcement of sections 66-482 to 66-4,149. The  
8 return shall contain a declaration, by the person making the same,  
9 to the effect that the statements contained therein are true and  
10 are made under penalties of perjury, which declaration shall have  
11 the same force and effect as a verification of the return and shall  
12 be in lieu of such verification. The return shall be signed by the  
13 producer, supplier, distributor, wholesaler, importer, or exporter  
14 or a principal officer, general agent, managing agent, attorney in  
15 fact, chief accountant, or other responsible representative of the  
16 producer, supplier, distributor, wholesaler, importer, or exporter,  
17 and such return shall be entitled to be received in evidence in all  
18 courts of this state and shall be prima facie evidence of the facts  
19 therein stated. The producer, supplier, distributor, wholesaler,  
20 importer, or exporter shall file the return in such format  
21 as prescribed by the department on or before the ~~twenty-fifth~~  
22 twentieth day of the next succeeding calendar month following the  
23 reporting period to which it relates. If the final filing date for  
24 such return falls on a Saturday, Sunday, or legal holiday, the next  
25 secular or business day shall be the final filing date. The return  
26 shall be considered filed on time if transmitted or postmarked  
27 before midnight of the final filing date.

1           (2) For purposes of this section, reporting period means  
2 calendar month unless otherwise provided by rules and regulations  
3 of the department, but under no circumstance shall such reporting  
4 period extend beyond an annual basis.

5           Sec. 18. Section 66-489.02, Reissue Revised Statutes of  
6 Nebraska, is amended to read:

7           66-489.02 (1) For tax periods beginning on and after  
8 July 1, 2009, at the time of filing the return required by  
9 section 66-488, the producer, supplier, distributor, wholesaler, or  
10 importer shall, in addition to the other taxes provided for by law,  
11 pay a tax at the rate of five percent of the average wholesale  
12 price of gasoline for the gallons of the motor fuels as shown  
13 by the return, except that there shall be no tax on the motor  
14 fuels reported if they are otherwise exempted by sections 66-482 to  
15 66-4,149.

16           (2) The department shall calculate the average wholesale  
17 price of gasoline on April 1, 2009, and on each April 1 and October  
18 1 thereafter. The average wholesale price on April 1 shall apply  
19 to returns for the tax periods beginning on and after July 1, and  
20 the average wholesale price on October 1 shall apply to returns  
21 for the tax periods beginning on and after January 1. The average  
22 wholesale price shall be determined using data available from the  
23 ~~Energy Information Administration of the United States Department~~  
24 ~~of Energy~~ State Energy Office and shall be a ~~single, statewide~~  
25 an average wholesale price per gallon of gasoline sold in the  
26 state over the previous six-month period, excluding any state or  
27 federal excise tax or environmental fees. The change in the average



1 wholesale price between two six-month periods shall be adjusted  
2 so that the increase or decrease in the tax provided for in this  
3 section or section 66-6,109.02 does not exceed one cent per gallon.

4 (3) All sums of money received under this section shall  
5 be credited to the Highway Trust Fund. Credits and refunds of such  
6 tax allowed to producers, suppliers, distributors, wholesalers, or  
7 importers shall be paid from the Highway Trust Fund. The balance of  
8 the amount credited, after credits and refunds, shall be allocated  
9 as follows:

10 (a) Sixty-six percent to the Highway Cash Fund for the  
11 Department of Roads;

12 (b) Seventeen percent to the Highway Allocation Fund for  
13 allocation to the various counties for road purposes; and

14 (c) Seventeen percent to the Highway Allocation Fund for  
15 allocation to the various municipalities for street purposes.

16 Sec. 19. Section 66-525, Reissue Revised Statutes of  
17 Nebraska, is amended to read:

18 66-525 The department may require every railroad or  
19 railroad company, motor truck or motor truck transportation  
20 company, water transportation company, pipeline company, and other  
21 person transporting or bringing into the State of Nebraska or  
22 transporting from a refinery, ethanol or biodiesel facility,  
23 pipeline, pipeline terminal, or barge terminal within the State of  
24 Nebraska for the purpose of delivery within or export from this  
25 state any motor vehicle fuel or diesel fuel which is or may be  
26 produced and compounded for the purpose of operating or propelling  
27 any motor vehicle, to furnish a return on forms prescribed by

1 the department to be delivered and on file in the office of the  
2 department by the ~~twenty-fifth~~ twentieth day of each calendar  
3 month, showing all quantities of such motor vehicle fuel or diesel  
4 fuel transported during the preceding calendar month for which  
5 the report is made, giving the name of the consignee, the point  
6 at which delivery was made, the date of delivery, the method  
7 of delivery, the quantity of each such shipment, and such other  
8 information as the department requires.

9           Sec. 20. Section 66-6,110, Reissue Revised Statutes of  
10 Nebraska, is amended to read:

11           66-6,110 Each retailer shall file a tax return with the  
12 department on forms prescribed by the department. Annual returns  
13 are required if the retailer's yearly tax liability is less  
14 than two hundred fifty dollars. Quarterly returns are required  
15 if the retailer's yearly tax liability is at least two hundred  
16 fifty dollars but less than six thousand dollars. Monthly returns  
17 are required if the retailer's yearly tax liability is at least  
18 six thousand dollars. The return shall contain a declaration by  
19 the person making the return to the effect that the statements  
20 contained in the return are true and are made under penalties  
21 of law, which declaration has the same force and effect as a  
22 verification of the return and is in lieu of such verification.  
23 The return shall show such information as the department reasonably  
24 requires for the proper administration and enforcement of the  
25 Compressed Fuel Tax Act. The retailer shall file the return in  
26 such format as prescribed by the department on or before the  
27 ~~twenty-fifth~~ twentieth day of the next succeeding calendar month

1 following the reporting period to which it relates. If the final  
2 filing date falls on a Saturday, Sunday, or legal holiday, the next  
3 secular or business day is the final filing date. The return is  
4 filed on time if transmitted or postmarked before midnight of the  
5 final filing date.

6 Sec. 21. Section 66-6,113, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8 66-6,113 (1) In lieu of the expense of remitting the  
9 compressed fuel tax and complying with the statutes and rules and  
10 regulations related thereto, every retailer shall be entitled to  
11 deduct and withhold a commission of two percent upon the first five  
12 thousand dollars and one-half of one percent upon all amounts in  
13 excess of five thousand dollars remitted each tax period.

14 (2) Except as otherwise provided in the Compressed Fuel  
15 Tax Act, the per-gallon amount of the tax shall be added to the  
16 selling price of every gallon of such compressed fuel sold in  
17 this state and shall be collected from the purchaser so that the  
18 ultimate consumer bears the burden of the tax. The tax shall be a  
19 direct tax on the retail or ultimate consumer precollected for the  
20 purpose of convenience and facility to the consumer. The levy and  
21 assessment on the retailer as specified in the act shall be as an  
22 agent of the state for the precollection of the tax. The provisions  
23 of this section shall in no way affect the method of collecting the  
24 tax as provided in the act. The tax imposed by this section shall  
25 be collected and paid at the time, in the manner, and by those  
26 persons specified in the act.

27 (3) In consideration of receiving the commission provided

1 under subsection (1) of this section, the retailer shall not be  
2 entitled to any deductions, credits, or refunds arising out of such  
3 retailer's failure or inability to collect any such taxes from any  
4 subsequent purchaser of compressed fuel.

5 (4) A retailer shall not be entitled to a commission  
6 provided under subsection (1) of this section for the amount of any  
7 understatement or refund of any such taxes collected as a result  
8 of a final assessment occurring pursuant to a notice of deficiency  
9 determination under section 66-722.

10 Sec. 22. Section 66-712, Revised Statutes Supplement,  
11 2011, is amended to read:

12 66-712 For purposes of the Compressed Fuel Tax Act,  
13 the International Fuel Tax Agreement Act, and sections 66-482 to  
14 66-4,149, 66-501 to 66-531, and 66-712 to ~~66-737~~; 66-736:

15 (1) Department means the Motor Fuel Tax Enforcement and  
16 Collection Division of the Department of Revenue, except that for  
17 purposes of enforcement of the International Fuel Tax Agreement  
18 Act, department means the Division of Motor Carrier Services of the  
19 Department of Motor Vehicles;

20 (2) Motor fuel means any fuel defined as motor vehicle  
21 fuel in section 66-482, any fuel defined as diesel fuel in  
22 section 66-482, and any fuel defined as compressed fuel in section  
23 66-6,100;

24 (3) Motor fuel laws means the Compressed Fuel Tax Act  
25 and sections 66-482 to 66-4,149, 66-501 to 66-531, and 66-712 to  
26 ~~66-737~~, 66-736, except that for purposes of enforcement of the  
27 International Fuel Tax Agreement Act, motor fuel laws means the

1 provisions of the International Fuel Tax Agreement Act and sections  
2 66-712 to ~~66-737~~, 66-736; and

3 (4) Person means any individual, firm, partnership,  
4 limited liability company, company, agency, association,  
5 corporation, state, county, municipality, or other political  
6 subdivision. Whenever a fine, imprisonment, or both are prescribed  
7 or imposed in sections 66-712 to ~~66-737~~, 66-736, the word person  
8 as applied to a partnership, a limited liability company, or an  
9 association means the partners or members thereof.

10 Sec. 23. Section 66-721, Reissue Revised Statutes of  
11 Nebraska, is amended to read:

12 66-721 All notices by the department required by the  
13 motor fuel laws shall be mailed by ~~registered or certified mail,~~  
14 ~~return receipt requested,~~ to the address of the licensee or  
15 permitholder as shown on the records of the department.

16 Sec. 24. Section 66-722, Reissue Revised Statutes of  
17 Nebraska, is amended to read:

18 66-722 (1) As soon as practical after a return is filed,  
19 the department shall examine it to determine the correct amount  
20 of tax. If the department finds that the amount of tax shown on  
21 the return is less than the correct amount, it shall notify the  
22 taxpayer of the amount of the deficiency determined.

23 (2) If any person fails to file a return or has  
24 improperly purchased motor fuel without the payment of tax, the  
25 department shall estimate the person's liability from any available  
26 information and notify the person of the amount of the deficiency  
27 determined.

1           (3) The amount of the deficiency determined shall  
2 constitute a final assessment together with interest and penalties  
3 sixty days after the date on which notice was mailed to the  
4 taxpayer at his or her last-known address unless a written protest  
5 is filed with the department within such sixty-day period.

6           (4) The final assessment provisions of this section shall  
7 constitute a final decision of the agency for purposes of the  
8 Administrative Procedure Act.

9           (5) An assessment made by the department shall be  
10 presumed to be correct. In any case when the validity of the  
11 assessment is questioned, the burden shall be on the person who  
12 challenges the assessment to establish by a preponderance of the  
13 evidence that the assessment is erroneous or excessive.

14           (6) (a) Except in the case of a fraudulent return or of  
15 neglect or refusal to make a return, the notice of a proposed  
16 deficiency determination shall be mailed within three years after  
17 the ~~twenty-fifth~~ twentieth day of the month following the end of  
18 the period for which the amount proposed is to be determined or  
19 within three years after the return is filed, whichever period  
20 expires later.

21           (b) The taxpayer and the department may agree, prior to  
22 the expiration of the period in subdivision (a) of this subsection,  
23 to extend the period during which the notice of a deficiency  
24 determination can be mailed. The extension of the period for the  
25 mailing of a deficiency determination shall also extend the period  
26 during which a refund can be claimed.

27           Sec. 25. Section 66-738, Revised Statutes Supplement,

1 2011, is amended to read:

2           66-738 The Motor Fuel Tax Enforcement and Collection

3 Division is hereby created within the Department of Revenue. The

4 division shall be funded by a separate appropriation program within

5 the department. All provisions of the Compressed Fuel Tax Act,

6 the Petroleum Release Remedial Action Act, the State Aeronautics

7 Department Act, and sections 66-482 to 66-4,149, 66-501 to 66-531,

8 and 66-712 to ~~66-737~~, 66-736, pertaining to the Department of

9 Revenue, the Tax Commissioner, or the division, shall be entirely

10 and separately undertaken and enforced by the division, except

11 that the division may utilize services provided by other programs

12 of the Department of Revenue in functional areas known on July

13 1, 1991, as the budget subprograms designated revenue operations

14 and administration. Appropriations for the division that are used

15 to fund costs allocated for such functional operations shall be

16 expended by the division in an appropriate pro rata share and

17 shall be subject to audit by the Auditor of Public Accounts, at

18 such time as he or she determines necessary, which audit shall be

19 provided to the budget division of the Department of Administrative

20 Services and the Legislative Fiscal Analyst by October 1 of the

21 year under audit. Audit information useful to other divisions of

22 the Department of Revenue may be shared by the Motor Fuel Tax

23 Enforcement and Collection Division with the other divisions of

24 the department and the Division of Motor Carrier Services of the

25 Department of Motor Vehicles, but audits shall not be considered

26 as a functional operation for purposes of this section. Except

27 for staff performing in functional areas, staff funded from the

1 separate appropriation program shall only be utilized to carry out  
2 the provisions of such acts and sections. The auditors and field  
3 investigators in the Motor Fuel Tax Enforcement and Collection  
4 Division shall be adequately trained for the purposes of motor fuel  
5 tax enforcement and collection. The Tax Commissioner shall hire  
6 for or assign to the division sufficient staff to carry out the  
7 responsibility of the division for the enforcement of the motor  
8 fuel laws.

9 Funds appropriated to the division may also be used to  
10 contract with other public agencies or private entities to aid in  
11 the issuance of motor fuel delivery permit numbers as provided in  
12 subsection (2) of section 66-503, and such contracted funds shall  
13 only be used for such purpose. The amount of any contracts entered  
14 into pursuant to this section shall be appropriated and accounted  
15 for in a separate budget subprogram of the division.

16 Sec. 26. Section 66-1521, Revised Statutes Cumulative  
17 Supplement, 2010, is amended to read:

18 66-1521 (1) A petroleum release remedial action fee is  
19 hereby imposed upon the producer, refiner, importer, distributor,  
20 wholesaler, or supplier who engages in the sale, distribution,  
21 delivery, and use of petroleum within this state, except that the  
22 fee shall not be imposed on petroleum that is exported. The fee  
23 shall also be imposed on diesel fuel which is indelibly dyed. The  
24 amount of the fee shall be nine-tenths of one cent per gallon on  
25 motor vehicle fuel as defined in section 66-482 and three-tenths of  
26 one cent per gallon on diesel fuel as defined in section 66-482.  
27 The amount of the fee shall be used first for payment of claims



1 approved by the State Claims Board pursuant to section 66-1531;  
2 second, up to three million dollars of the fee per year shall be  
3 used for reimbursement of owners and operators under the Petroleum  
4 Release Remedial Action Act for investigations of releases ordered  
5 pursuant to section 81-15,124; and third, the remainder of the fee  
6 shall be used for any other purpose authorized by section 66-1519.  
7 The fee shall be paid by all producers, refiners, importers,  
8 distributors, wholesalers, and suppliers subject to the fee by  
9 filing a monthly return on or before the ~~twenty-fifth~~ twentieth  
10 day of the calendar month following the monthly period to which it  
11 relates. The pertinent provisions, specifically including penalty  
12 provisions, of the motor fuel laws as defined in section 66-712  
13 shall apply to the administration and collection of the fee except  
14 for the treatment given refunds. There shall be a refund allowed  
15 on any fee paid on petroleum which was taxed and then exported,  
16 destroyed, or purchased for use by the United States Government  
17 or its agencies. The department may also adjust for all errors in  
18 the payment of the fee. In each calendar year, no claim for refund  
19 related to the fee can be for an amount less than ten dollars.

20 (2) No producer, refiner, importer, distributor,  
21 wholesaler, or supplier shall engage in the sale, distribution,  
22 delivery, or use of petroleum in this state without having first  
23 obtained a petroleum release remedial action license. Application  
24 for a license shall be made to the Motor Fuel Tax Enforcement  
25 and Collection Division of the Department of Revenue upon a form  
26 prepared and furnished by the division. If the applicant is an  
27 individual, the application shall include the applicant's social

1 security number. Failure to obtain a license prior to engaging  
2 in the sale, distribution, delivery, or use of petroleum shall  
3 be a Class IV misdemeanor. The division may suspend or cancel  
4 the license of any producer, refiner, importer, distributor,  
5 wholesaler, or supplier who fails to pay the fee imposed by  
6 subsection (1) of this section in the same manner as licenses are  
7 suspended or canceled pursuant to section 66-720.

8 (3) The division may adopt and promulgate rules and  
9 regulations necessary to carry out this section.

10 (4) The division shall deduct and withhold from the  
11 petroleum release remedial action fee collected pursuant to this  
12 section an amount sufficient to reimburse the direct costs of  
13 collecting and administering the petroleum release remedial action  
14 fee. Such costs shall not exceed one hundred fifty thousand dollars  
15 for each fiscal year. The one hundred fifty thousand dollars shall  
16 be prorated, based on the number of months the fee is collected,  
17 whenever the fee is collected for only a portion of a year. The  
18 amount deducted and withheld for costs shall be deposited in the  
19 Petroleum Release Remedial Action Collection Fund which is hereby  
20 created. The Petroleum Release Remedial Action Collection Fund  
21 shall be appropriated to the Department of Revenue, except that  
22 transfers may be made from the fund to the General Fund at the  
23 direction of the Legislature. Any money in the Petroleum Release  
24 Remedial Action Collection Fund available for investment shall be  
25 invested by the state investment officer pursuant to the Nebraska  
26 Capital Expansion Act and the Nebraska State Funds Investment Act.

27 (5) The division shall collect the fee imposed by

1 subsection (1) of this section.

2           Sec. 27. Section 76-908, Reissue Revised Statutes of  
3 Nebraska, is amended to read:

4           76-908 Any person paying the documentary stamp tax  
5 imposed by section 76-901 may claim a refund if the payment  
6 of such tax was (1) the result of a misunderstanding or honest  
7 mistake of the taxpayer, (2) the result of a clerical error on  
8 the part of the register of deeds or the taxpayer, or (3) invalid  
9 for any reason. Within two years after payment of such tax, the  
10 taxpayer shall file in the office of the register of deeds of  
11 the county in which the tax was paid a written claim on a form  
12 prescribed by the Tax Commissioner and evidence in support thereof,  
13 stating the reason for the claim. The register of deeds shall,  
14 within thirty days after such filing, make a recommendation of  
15 approval or denial and forward the recommendation together with  
16 a copy of the claim and evidence filed to the Tax Commissioner.  
17 Within thirty days after the forwarding of such recommendation the  
18 Tax Commissioner shall, upon consideration of the recommendation  
19 of the register of deeds and the claim and evidence filed by the  
20 taxpayer, render his or her decision approving or rejecting the  
21 claim for a refund in whole or in part. A copy of the decision of  
22 the Tax Commissioner shall be ~~forwarded~~ mailed to the register of  
23 deeds and to the last-known address of the taxpayer ~~by certified~~  
24 ~~mail~~ within ten days after the decision is rendered. Upon approval  
25 by the Tax Commissioner of a refund for all or a portion of the  
26 documentary stamp tax paid, the register of deeds is authorized to  
27 make such refund from the currently collected documentary stamp tax

1 funds presently in the office of the register of deeds. A taxpayer  
2 denied a refund under this section, in whole or in part, may appeal  
3 the decision of the Tax Commissioner, and the appeal shall be in  
4 accordance with the Administrative Procedure Act.

5           Sec. 28. Section 77-377.01, Reissue Revised Statutes of  
6 Nebraska, is amended to read:

7           77-377.01 The Tax Commissioner may, for the purposes of  
8 collecting delinquent taxes due from a taxpayer and in addition  
9 to exercising those powers in section 77-27,107, contract with any  
10 collection agency licensed pursuant to the Collection Agency Act,  
11 within or without the state, for the collection of such delinquent  
12 taxes, including penalties and interest thereon. Such delinquent  
13 tax claims may be assigned to the collection agency, for the  
14 purpose of litigation in the agency's name and at the agency's  
15 expense, as a means of facilitating and expediting the collection  
16 process.

17           For purposes of this section, a delinquent tax claim  
18 shall be defined as a tax liability that is due and owing for  
19 a period longer than six months and for which the taxpayer has  
20 been ~~given~~ mailed at least three notices requesting payment.  
21 At least one notice, ~~one of which shall have been sent by~~  
22 ~~certified or registered mail.~~ The notice sent by certified or  
23 ~~registered mail~~ shall include a statement that the matter of such  
24 taxpayer's delinquency may be referred to a collection agency in  
25 the taxpayer's home state.

26           Sec. 29. Section 77-3,116, Reissue Revised Statutes of  
27 Nebraska, is amended to read:

1           77-3,116 The Department of Revenue and the Department of  
2 Labor shall cooperate and participate in the collection of data  
3 for the study. Other state agencies, including the University of  
4 Nebraska, shall assist in the study or the update as requested by  
5 the Department of Revenue and as any necessary funds are available.  
6 Any agency may contract with the Department of Revenue to provide  
7 such assistance. The Department of Revenue may also contract  
8 with an independent entity for the entity to conduct or assist  
9 in conducting such study or update. The department, other state  
10 agency, or independent entity preparing the material or study shall  
11 utilize and consider, along with other information, the results  
12 of any available study relating to the items listed in section  
13 77-3,115 and conducted or contracted for by the Legislature in the  
14 year prior to April 16, 1992.

15           A preliminary report of the initial study's models and  
16 initial findings shall be reported by the Department of Revenue  
17 to the chairpersons of the Appropriations Committee and Revenue  
18 Committee of the Legislature, the Clerk of the Legislature, and the  
19 Governor by December 1, 1992. The initial study shall be completed  
20 and the department shall report its findings to the same entities  
21 by December 1, 1993. The study shall be updated and the update  
22 shall be reported to the same entities ~~(1) on December 1, 1994,~~  
23 ~~and every four years thereafter or (2) more often if determined~~  
24 ~~appropriate by the Tax Commissioner and if the data or economic~~  
25 ~~circumstances reported in the previous report have changed to such~~  
26 ~~a degree as to vary the conclusions in the previous report or~~  
27 ~~update. on December 1, 2013, and every two years thereafter.~~

1           Any models developed for the initial study or update  
2 shall be shared with the Legislative Fiscal Analyst. The Department  
3 of Revenue shall include in its budget request for every other  
4 biennium following the 1991-93 biennium sufficient appropriation  
5 authority to conduct or contract for the required update.

6           Sec. 30. Section 77-612, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8           77-612 On or before July 1, the Property Tax  
9 Administrator shall mail a draft appraisal to each railroad company  
10 required to file pursuant to section 77-603. The Property Tax  
11 Administrator shall, on or before July 15 of each year, notify by  
12 ~~certified~~ mail each railroad company of the total allocated value  
13 of its operating property. If a railroad company feels aggrieved,  
14 such railroad company may, on or before August 1, file with the  
15 Tax Commissioner an administrative appeal in writing stating that  
16 it claims the valuation is unjust or inequitable, the amount which  
17 it is claimed the valuation should be, and the excess therein and  
18 asking for an adjustment of the valuation by the Tax Commissioner.  
19 The Tax Commissioner shall act upon the appeal and shall issue a  
20 written order mailed to the company within seven days after the  
21 date of the order. The order may be appealed within thirty days  
22 after the date of the order to the Tax Equalization and Review  
23 Commission in accordance with section 77-5013.

24           Sec. 31. Section 77-802, Reissue Revised Statutes of  
25 Nebraska, is amended to read:

26           77-802 The Property Tax Administrator shall apportion the  
27 total taxable value including the franchise value to all taxing

1 subdivisions in proportion to the ratio of the original cost of  
2 all operating real and tangible personal property of that public  
3 service entity having a situs in that taxing subdivision to the  
4 original cost of all operating real and tangible personal property  
5 of that public service entity having a situs in the state.

6           If the apportionment in accordance with this section does  
7 not fairly represent the proportion of the taxable value, including  
8 franchise value properly allocable to the county, the taxpayer may  
9 petition for or the Property Tax Administrator may require the  
10 inclusion of any other method to effectuate an equitable allocation  
11 of the value of the public service entity for purposes of taxation.

12           On or before July 25, the Property Tax Administrator  
13 shall mail a draft appraisal to each public service entity as  
14 defined in section 77-801.01. On or before August 10, the Property  
15 Tax Administrator shall, by ~~certified~~ mail, notify each public  
16 service entity of its taxable value and the distribution of that  
17 value to the taxing subdivisions in which the entity has situs.  
18 On or before August 10, the Property Tax Administrator shall also  
19 certify to the county assessors the taxable value so determined.

20           Sec. 32. Section 77-1375, Reissue Revised Statutes of  
21 Nebraska, is amended to read:

22           77-1375 (1) If improvements on leased land are to be  
23 assessed separately to the owner of the improvements, the actual  
24 value of the real property shall be determined without regard to  
25 the fact that the owner of the improvements is not the owner of the  
26 land upon which such improvements have been placed.

27           (2) If the owner of the improvements claims that the

1 value of his or her interest in the real property is reduced by  
2 reason of uncertainty in the term of his or her tenancy or because  
3 of the prospective termination or expiration of the term, he or she  
4 shall serve notice of such claim in writing by ~~certified~~ mail on  
5 the owner of the land before January 1 and shall at the same time  
6 serve similar notice on the county assessor, together with his or  
7 her affidavit that he or she has served notice on the owner of the  
8 land.

9 (3) If the county assessor finds, on the basis of the  
10 evidence submitted, that the claim is valid, he or she shall  
11 proceed to apportion the total value of the real property between  
12 the owner of the improvements and the owner of the land as their  
13 respective interests appear.

14 (4) The county assessor shall give notice to the parties  
15 of his or her findings by ~~certified~~ mail on or before June 1.

16 (5) The proportions so established shall continue from  
17 year to year unless changed by the county assessor after notice  
18 on or before June 1 or a claim is filed by either the owner of  
19 the improvements or the owner of the land in accordance with the  
20 procedure provided in this section.

21 Sec. 33. Section 77-1780, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23 77-1780 (1) Pursuant to this section, the Tax  
24 Commissioner may approve the claim for refund, in whole or in part.

25 (2) The Tax Commissioner shall grant a hearing prior to  
26 taking any action on a claim for a refund if requested in writing  
27 by the taxpayer when the claim is filed or prior to any action



1 being taken on the claim.

2 (3) The Tax Commissioner shall notify the taxpayer in  
3 writing of the denial of his or her claim for a refund. The  
4 notification shall be made by ~~either certified or registered~~ mail.

5 (4) Upon approval, the Tax Commissioner shall cause:

6 (a) A refund to be paid from the fund to which the tax  
7 was originally deposited;

8 (b) A credit to be established against the subsequent  
9 tax liability of the taxpayer if the amount of the credit does  
10 not exceed twelve times the average monthly tax liability of the  
11 taxpayer; or

12 (c) A credit to be applied to any other existing  
13 liability for any other tax collected by the Tax Commissioner.

14 (5) The payment of the claim for a refund, the allowance  
15 of a credit, or the application of the refund to an existing  
16 balance, in whole or in part, shall be considered a final decision  
17 of the Tax Commissioner for the purposes of the Administrative  
18 Procedure Act.

19 (6) Interest shall be paid from the date of overpayment  
20 or the date the tax was required to be paid, whichever is later,  
21 until the date the overpayment is refunded, credited, or applied.

22 (7) Interest shall be paid at the rate specified in  
23 section 45-104.02, as such rate may from time to time be adjusted.

24 Sec. 34. Section 77-2701, Reissue Revised Statutes of  
25 Nebraska, is amended to read:

26 77-2701 Sections 77-2701 to 77-27,135.01 and 77-27,228 to  
27 77-27,236 and sections 36 and 37 of this act shall be known and may

1 be cited as the Nebraska Revenue Act of 1967.

2           Sec. 35. Section 77-2701.04, Reissue Revised Statutes of  
3 Nebraska, is amended to read:

4           77-2701.04 For purposes of sections 77-2701.04 to  
5 77-2713 and sections 36 and 37 of this act, unless the context  
6 otherwise requires, the definitions found in sections 77-2701.05 to  
7 77-2701.53 and section 36 of this act shall be used.

8           Sec. 36. (1) Admission means the right or privilege to  
9 have access to a place or location where amusement, entertainment,  
10 or recreation is provided to an audience, spectators, or the  
11 participants in the activity. Admission includes a membership  
12 that allows access to or use of a place or location, but which  
13 membership does not include the right to hold office, vote, or  
14 change the policies of the organization.

15           (2) For purposes of this section:

16           (a) Access to a place or location means the right to be  
17 in the place or location for purposes of amusement, entertainment,  
18 or recreation at a time when the general public is not allowed at  
19 that place or location absent the granting of the admission;

20           (b) Entertainment means the amusement or diversion  
21 provided to an audience or spectators by performers; and

22           (c) Recreation means a sport or activity engaged in by  
23 participants for purposes of refreshment, relaxation, or diversion  
24 of the participants. Recreation does not include practice or  
25 instruction.

26           (3) Admission does not include the lease or rental of a  
27 location, facility, or part of a location or facility if the lessor

1 cedes the right to determine who is granted access to the location  
2 or facility to the lessee for the period of the lease or rental.

3           Sec. 37. (1) Sales and use taxes shall not be imposed  
4 on the gross receipts from the sale, use, or other consumption  
5 of amounts charged to participate in a youth sports event,  
6 youth sports league, or youth competitive educational activity  
7 by political subdivisions or organizations that are exempt from  
8 income tax under section 501(c)(3) of the Internal Revenue Code.

9           (2) For purposes of this section:

10           (a) Competitive educational activity means a tournament  
11 or a single competition that occurs over a limited period of  
12 time annually or intermittently where the participants engage in a  
13 competitive educational activity;

14           (b) Sports event means a tournament or a single  
15 competition that occurs over a limited period of time annually or  
16 intermittently where the participants engage in a sport;

17           (c) Sports league means an organized series of sports  
18 competitions taking place over several weeks or months between  
19 teams or individuals that are members of the league; and

20           (d) Youth sports event, youth sports league, or youth  
21 competitive educational activity means an event, league, or  
22 activity that is restricted to participants who are less than  
23 nineteen years of age.

24           Sec. 38. Section 77-2701.16, Reissue Revised Statutes of  
25 Nebraska, is amended to read:

26           77-2701.16 (1) Gross receipts means the total amount of  
27 the sale or lease or rental price, as the case may be, of the

1 retail sales of retailers.

2 (2) Gross receipts of every person engaged as a public  
3 utility specified in this subsection, as a community antenna  
4 television service operator, or as a satellite service operator or  
5 any person involved in connecting and installing services defined  
6 in subdivision (2) (a), (b), or (d) of this section means:

7 (a) (i) In the furnishing of telephone communication  
8 service, other than mobile telecommunications service as described  
9 in section 77-2703.04, the gross income received from furnishing  
10 ancillary services, except for conference bridging services, and  
11 intrastate telecommunications services, except for value-added,  
12 nonvoice data service; and

13 (ii) In the furnishing of mobile telecommunications  
14 service as described in section 77-2703.04, the gross income  
15 received from furnishing mobile telecommunications service that  
16 originates and terminates in the same state to a customer with a  
17 place of primary use in Nebraska;

18 (b) In the furnishing of telegraph service, the gross  
19 income received from the furnishing of intrastate telegraph  
20 services;

21 (c) In the furnishing of gas, electricity, sewer, and  
22 water service, the gross income received from the furnishing of  
23 such services upon billings or statements rendered to consumers for  
24 such utility services;

25 (d) In the furnishing of community antenna television  
26 service or satellite service, the gross income received from  
27 the furnishing of such community antenna television service as

1 regulated under sections 18-2201 to 18-2205 or 23-383 to 23-388 or  
2 satellite service; and

3 (e) The gross income received from the provision,  
4 installation, construction, servicing, or removal of property used  
5 in conjunction with the furnishing, installing, or connecting of  
6 any public utility services specified in subdivision (2)(a) or  
7 (b) of this section or community antenna television service or  
8 satellite service specified in subdivision (2)(d) of this section,  
9 except when acting as a subcontractor for a public utility,  
10 this subdivision does not apply to the gross income received by  
11 a contractor electing to be treated as a consumer of building  
12 materials under subdivision (2) or (3) of section 77-2701.10 for  
13 any such services performed on the customer's side of the utility  
14 demarcation point.

15 (3) Gross receipts of every person engaged in selling,  
16 leasing, or otherwise providing intellectual or entertainment  
17 property means:

18 (a) In the furnishing of computer software, the gross  
19 income received, including the charges for coding, punching, or  
20 otherwise producing any computer software and the charges for the  
21 tapes, disks, punched cards, or other properties furnished by the  
22 seller; and

23 (b) In the furnishing of videotapes, movie film,  
24 satellite programming, satellite programming service, and satellite  
25 television signal descrambling or decoding devices, the gross  
26 income received from the license, franchise, or other method  
27 establishing the charge.

1 (4) Gross receipts for providing a service means:

2 (a) The gross income received for building cleaning and  
3 maintenance, pest control, and security;

4 (b) The gross income received for motor vehicle washing,  
5 waxing, towing, and painting;

6 (c) The gross income received for computer software  
7 training;

8 (d) The gross income received for installing and applying  
9 tangible personal property if the sale of the property is subject  
10 to tax. If any or all of the charge for installation is free to  
11 the customer and is paid by a third-party service provider to the  
12 installer, any tax due on that part of the activation commission,  
13 finder's fee, installation charge, or similar payment made by the  
14 third-party service provider shall be paid and remitted by the  
15 third-party service provider;

16 (e) The gross income received for services of  
17 recreational vehicle parks;

18 (f) The gross income received for labor for repair or  
19 maintenance services performed with regard to tangible personal  
20 property the sale of which would be subject to sales and use taxes,  
21 excluding motor vehicles, except as otherwise provided in section  
22 77-2704.26 or 77-2704.50;

23 (g) The gross income received for animal specialty  
24 services except (i) veterinary services, (ii) specialty services  
25 performed on livestock as defined in section 54-183, and (iii)  
26 animal grooming performed by a licensed veterinarian or a licensed  
27 veterinary technician in conjunction with medical treatment; and

1 (h) The gross income received for detective services.

2 (5) Gross receipts includes the sale of admissions, ~~which~~  
3 ~~means the right or privilege to have access to or to use a place~~  
4 ~~or location. An admission includes a membership that allows access~~  
5 ~~to or use of a place or location, but which membership does not~~  
6 ~~include the right to hold office, vote, or change the policies of~~  
7 ~~the organization.~~ When an admission to an activity or a membership  
8 constituting an admission pursuant to this subsection is combined  
9 with the solicitation of a contribution, the portion or the amount  
10 charged representing the fair market price of the admission shall  
11 be considered a retail sale subject to the tax imposed by section  
12 77-2703. The organization conducting the activity shall determine  
13 the amount properly attributable to the purchase of the privilege,  
14 benefit, or other consideration in advance, and such amount shall  
15 be clearly indicated on any ticket, receipt, or other evidence  
16 issued in connection with the payment.

17 (6) Gross receipts includes the sale of live plants  
18 incorporated into real estate except when such incorporation is  
19 incidental to the transfer of an improvement upon real estate or  
20 the real estate.

21 (7) Gross receipts includes the sale of any building  
22 materials annexed to real estate by a person electing to be taxed  
23 as a retailer pursuant to subdivision (1) of section 77-2701.10.

24 (8) Gross receipts includes the sale of and recharge of  
25 prepaid calling service and prepaid wireless calling service.

26 (9) Gross receipts includes the retail sale of digital  
27 audio works, digital audiovisual works, digital codes, and digital

1 books delivered electronically if the products are taxable when  
2 delivered on tangible storage media. A sale includes the transfer  
3 of a permanent right of use, the transfer of a right of use that  
4 terminates on some condition, and the transfer of a right of use  
5 conditioned upon the receipt of continued payments.

6 (10) Gross receipts does not include:

7 (a) The amount of any rebate granted by a motor vehicle  
8 or motorboat manufacturer or dealer at the time of sale of the  
9 motor vehicle or motorboat, which rebate functions as a discount  
10 from the sales price of the motor vehicle or motorboat; or

11 (b) The price of property or services returned or  
12 rejected by customers when the full sales price is refunded  
13 either in cash or credit.

14 Sec. 39. Section 77-2704.10, Revised Statutes Supplement,  
15 2011, is amended to read:

16 77-2704.10 Sales and use taxes shall not be imposed on  
17 the gross receipts from the sale, lease, or rental of and the  
18 storage, use, or other consumption in this state of:

19 (1) Prepared food and food and food ingredients served by  
20 public or private schools, school districts, student organizations,  
21 or parent-teacher associations pursuant to an agreement with the  
22 proper school authorities, in an elementary or secondary school or  
23 at any institution of higher education, public or private, during  
24 the regular school day or at an approved function of any such  
25 school or institution. This exemption does not apply to sales by an  
26 institution of higher education at any facility or function which  
27 is open to the general public; ~~but such exemption shall not apply~~



1 to sales at any facility or function which is open to the general  
2 public, except that concession sales by elementary and secondary  
3 schools, public or private, shall be exempt.

4 (2) Prepared food and food and food ingredients sold by a  
5 church at a function of such church;

6 (3) Prepared food and food and food ingredients served to  
7 patients and inmates of hospitals and other institutions licensed  
8 by the state for the care of human beings;

9 (4) Prepared food and food and food ingredients sold  
10 at a political event by ballot question committees, candidate  
11 committees, independent committees, and political party committees  
12 as defined in the Nebraska Political Accountability and Disclosure  
13 Act or fees and admissions charged for such political event;

14 (5) Prepared food and food and food ingredients sold to  
15 the elderly, handicapped, or recipients of Supplemental Security  
16 Income by an organization that actually accepts electronic benefits  
17 transfer under regulations issued by the United States Department  
18 of Agriculture although it is not necessary for the purchaser to  
19 use electronic benefits transfer to pay for the prepared food and  
20 food and food ingredients; and

21 (6) Fees and admissions charged by a public or private  
22 elementary or secondary school and fees and admissions charged  
23 by a school district, student organization, or parent-teacher  
24 association, pursuant to an agreement with the proper school  
25 authorities, in a public or private elementary or secondary school  
26 during the regular school day or at an approved function of any  
27 such school;

1           (7) Fees and admissions charged for participants in any  
2 activity provided by a nonprofit organization that is exempt from  
3 income tax under section 501(c)(3) of the Internal Revenue Code  
4 of 1986, as amended, which organization conducts statewide sport  
5 events with multiple sports for both adults and youth; and

6           (8) Fees and admissions charged for participants in any  
7 activity provided by a nonprofit organization that is exempt from  
8 income tax under section 501(c)(3) of the Internal Revenue Code of  
9 1986, as amended, which organization is affiliated with a national  
10 organization, primarily dedicated to youth development and healthy  
11 living, and offers sports instruction and sports leagues or sports  
12 events in multiple sports.

13           Sec. 40. Section 77-2705.03, Reissue Revised Statutes of  
14 Nebraska, is amended to read:

15           77-2705.03 (1) The holder of a direct payment permit  
16 holds the permit as a revocable privilege. The Tax Commissioner may  
17 revoke a direct payment permit. The Tax Commissioner shall send  
18 mail notice of revocation to the permitholder. ~~by registered or~~  
19 ~~certified mail.~~ The decision of the Tax Commissioner to revoke a  
20 direct payment permit is not appealable.

21           (2) A permitholder may voluntarily relinquish a direct  
22 payment permit.

23           (3) Upon revocation or relinquishment of a direct payment  
24 permit, the permitholder shall notify all retailers given copies  
25 of the permit that it has been revoked or relinquished. Failure to  
26 give the notice shall be treated as a failure to pay sales and use  
27 taxes.

1           Sec. 41. Section 77-2776, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           77-2776 (1) As soon as practical after an income tax  
4 return is filed, the Tax Commissioner shall examine it to determine  
5 the correct amount of tax. If the Tax Commissioner finds that the  
6 amount of tax shown on the return is less than the correct amount,  
7 he or she shall notify the taxpayer of the amount of the deficiency  
8 proposed to be assessed. If the Tax Commissioner finds that the tax  
9 paid is more than the correct amount, he or she shall credit the  
10 overpayment against any taxes due by the taxpayer and refund the  
11 difference. The Tax Commissioner shall, upon request, make prompt  
12 assessment of taxes due as provided by the laws of the United  
13 States for federal income tax purposes.

14           (2) If the taxpayer fails to file an income tax return,  
15 the Tax Commissioner shall estimate the taxpayer's tax liability  
16 from any available information and notify the taxpayer of the  
17 amount proposed to be assessed as in the case of a deficiency.

18           (3) A notice of deficiency shall set forth the reason  
19 for the proposed assessment or for the change in the amount of  
20 credit or loss to be carried over to another year. The notice  
21 may be mailed by ~~certified or registered mail~~ to the taxpayer at  
22 his or her last-known address. In the case of a joint return, the  
23 notice of deficiency may be a single joint notice, except that if  
24 the Tax Commissioner is notified by either spouse that separate  
25 residences have been established, the Tax Commissioner shall mail  
26 joint notices to each spouse. If the taxpayer is deceased or under  
27 a legal disability, a notice of deficiency may be mailed to his

1 or her last-known address unless the Tax Commissioner has received  
2 notice of the existence of a fiduciary relationship with respect to  
3 such taxpayer.

4 (4) A notice of deficiency regarding an item of entity  
5 income may be mailed ~~by certified or registered mail~~ to the entity  
6 at its last-known address or to the address of the entity's tax  
7 matters person for federal income tax purposes. Such notice shall  
8 be deemed to have been received by each partner, shareholder, or  
9 member of such entity, but only for items of entity income reported  
10 by the partner, shareholder, or member.

11 Sec. 42. Section 77-2779, Reissue Revised Statutes of  
12 Nebraska, is amended to read:

13 77-2779 Notice of the Tax Commissioner's determination  
14 shall be mailed to the taxpayer ~~by certified or registered mail~~ and  
15 such notice shall set forth briefly the Tax Commissioner's findings  
16 of fact and the basis of decision in each case decided in whole or  
17 in part adversely to the taxpayer.

18 Sec. 43. Section 77-27,130, Reissue Revised Statutes of  
19 Nebraska, is amended to read:

20 77-27,130 (1) If the amount of a deficiency determined by  
21 the Tax Commissioner is disallowed in whole or in part by the court  
22 of review, the amount so disallowed shall be credited or refunded  
23 to the taxpayer without the making of a claim therefor or, if  
24 payment has not been made, shall be abated.

25 (2) If the deficiency determined by the Tax Commissioner  
26 is disallowed by the court of review, the taxpayer shall have his  
27 or her costs as they would be allowable under the provisions of

1 section 77-27,129. If the deficiency is disallowed in part, the  
2 court in its discretion may award the taxpayer a proportionate part  
3 of his or her costs.

4 (3) An assessment of a proposed income deficiency by the  
5 Tax Commissioner shall become final upon the expiration of the  
6 period specified in section 77-2777 for filing a written protest  
7 against the proposed assessment if no such protest has been filed  
8 within the time provided or, if the protest provided in section  
9 77-2778 has been filed, upon the expiration of time provided for  
10 filing a petition for judicial review, upon the final judgment of  
11 the reviewing court, or upon the rendering by the Tax Commissioner  
12 of a decision pursuant to the mandate of the reviewing court.  
13 Notwithstanding the foregoing, for the purpose of making a petition  
14 for the review of a determination of the Tax Commissioner, the  
15 determination shall be deemed final on the date the notice of  
16 decision is sent by certified mail or registered mail mailed to the  
17 taxpayer as provided in section 77-2779.

18 (4) If any person institutes proceedings merely for delay  
19 or raises frivolous objections to compliance with the Nebraska  
20 Revenue Act of 1967, the Tax Commissioner may apply to a judge of  
21 the district court for the county where such person resides for  
22 damages in an amount not in excess of five thousand dollars for  
23 each tax year to be awarded to the State of Nebraska for expenses  
24 incurred by the Tax Commissioner in securing compliance. Damages so  
25 awarded by the court shall be payable upon notice and demand by  
26 the Tax Commissioner and shall be collected in the same manner as  
27 delinquent taxes under such act.

1           Sec. 44. Section 77-27,135, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           77-27,135 Whenever any notice required to be given  
4 by the Tax Commissioner under the provisions of the Nebraska  
5 Revenue Act of 1967 may be given by mail, it shall be given by  
6 ~~either~~ first-class, registered, or certified mail, return receipt  
7 requested. ~~7 and not otherwise.~~

8           Sec. 45. Section 77-27,150, Reissue Revised Statutes of  
9 Nebraska, is amended to read:

10           77-27,150 (1) An application for a refund of Nebraska  
11 sales and use taxes paid for any air or water pollution control  
12 facility may be filed with the Tax Commissioner by the owner  
13 of such facility in such manner and in such form as may be  
14 prescribed by the commissioner. The application for a refund shall  
15 contain: (a) Plans and specifications of such facility including  
16 all materials incorporated therein; (b) a descriptive list of all  
17 equipment acquired by the applicant for the purpose of industrial  
18 or agricultural waste pollution control; (c) the proposed operating  
19 procedure for the facility; (d) the acquisition cost of the  
20 facility for which a refund is claimed; and (e) a copy of the final  
21 findings of the Department of Environmental Quality issued pursuant  
22 to section 77-27,151.

23           (2) The Tax Commissioner shall offer an applicant a  
24 hearing upon request of such applicant. The hearing shall not  
25 affect the authority of the Department of Environmental Quality to  
26 determine whether or not industrial or agricultural waste pollution  
27 control exists within the meaning of the Air and Water Pollution

1 Control Tax Refund Act.

2 (3) A claim for refund received without a copy of the  
3 final findings of the Department of Environmental Quality issued  
4 pursuant to section 77-27,151 shall not be considered a valid claim  
5 and shall be returned to the applicant.

6 (4) Notice of the Tax Commissioner's refusal to issue a  
7 refund shall be ~~sent by certified mail~~ mailed to the applicant.

8 Sec. 46. Section 77-27,152, Reissue Revised Statutes of  
9 Nebraska, is amended to read:

10 77-27,152 (1) The Tax Commissioner, after giving notice  
11 by ~~certified~~ mail to the applicant and giving an opportunity for a  
12 hearing, shall modify or revoke the refund whenever the following  
13 appears: (a) The refund was obtained by fraud or misrepresentation  
14 regarding the payment of tax on materials incorporated into the  
15 facility or facilities; or (b) the Department of Environmental  
16 Quality has modified its findings regarding the facility covered by  
17 the refund.

18 (2) The Department of Environmental Quality may modify  
19 its findings when it determines any of the following: (a) The  
20 refund was obtained by fraud or misrepresentation regarding the  
21 facility or planned operation of the facility; (b) the applicant  
22 has failed substantially to operate the facility for the purpose  
23 and degree of control specified in the application or an amended  
24 application; or (c) the facility covered by the refund is no longer  
25 used for the primary purpose of pollution control.

26 (3) On the mailing ~~by certified mail~~ to the refund  
27 applicant of notice of the action of the Tax Commissioner modifying

1 or revoking the refund, the refund shall cease to be in force or  
2 shall remain in force only as modified. When a refund is revoked  
3 because a refund was obtained by fraud or misrepresentation, all  
4 taxes which would have been payable if no certificate had been  
5 issued shall be immediately due and payable with the maximum  
6 interest and penalties prescribed by the Nebraska Revenue Act of  
7 1967. No statute of limitations shall operate in the event of fraud  
8 or misrepresentation.

9           Sec. 47. Section 77-3311, Reissue Revised Statutes of  
10 Nebraska, is amended to read:

11           77-3311 In any case in which this state and one or more  
12 other states each claims that it was a domicile of a decedent  
13 at the time of his or her death and no judicial determination  
14 of domicile for death tax purposes has been made in any of such  
15 states, any executor or administrator or the taxing official of  
16 any such state may elect to invoke the provisions of the Uniform  
17 Act on Interstate Arbitration and Compromise of Death Taxes. Such  
18 election shall be evidenced by ~~the sending of a notice by certified~~  
19 ~~or registered mail, return receipt requested, mailing notice~~ to the  
20 taxing officials of any such state and to each executor, ancillary  
21 administrator, and interested person. Any executor or administrator  
22 may reject such election by ~~sending a notice by certified or~~  
23 ~~registered mail, return receipt requested, mailing notice~~ to the  
24 taxing officials involved and to all other executors within forty  
25 days after the receipt of such notice of election. If such election  
26 is rejected, no further proceedings shall be had under the act.  
27 If such election is not rejected, the dispute as to the death



1 taxes shall be determined solely as provided in the act, and no  
2 other proceedings to determine or assess such death taxes shall  
3 thereafter be instituted in the courts of this state or otherwise.

4 Sec. 48. Section 77-3906, Reissue Revised Statutes of  
5 Nebraska, is amended to read:

6 77-3906 (1) In addition to all other remedies or actions  
7 provided by law under any tax program administered by the Tax  
8 Commissioner or Commissioner of Labor, it shall be lawful for the  
9 Tax Commissioner or Commissioner of Labor, after making demand  
10 for payment, to collect any delinquent taxes, together with any  
11 interest, penalties, and additions to such tax by distraint and  
12 sale of the real and personal property of the taxpayer. If the Tax  
13 Commissioner finds that the collection of any tax is in jeopardy  
14 pursuant to section 77-2710, 77-27,111, or 77-4311, notice and  
15 demand for immediate payment of such tax may be made by the  
16 Tax Commissioner and, upon failure or refusal to pay such tax,  
17 collection by levy shall be lawful.

18 (2) (a) In case of failure to pay taxes or deficiencies,  
19 the Tax Commissioner, or his or her authorized employee, may levy  
20 or, by warrant issued under his or her own hand, authorize a  
21 sheriff or duly authorized employee of the Tax Commissioner to levy  
22 upon, seize, and sell such real and personal property belonging to  
23 the taxpayer, except exempt property, as is necessary to satisfy  
24 the liability for the payment of the amount due.

25 (b) In case of failure to pay taxes or deficiencies,  
26 the Commissioner of Labor, or his or her authorized employee, may  
27 levy or, by warrant issued under his or her own hand, authorize

1 a sheriff or duly authorized employee of the Department of Labor  
2 to levy upon, seize, and sell such real and personal property  
3 belonging to the taxpayer, except exempt property, as is necessary  
4 to satisfy the liability for the payment of the amount due.

5 (c) As used in this section, exempt property shall mean  
6 such property as is exempt from execution under the laws of this  
7 state.

8 (3) When a warrant is issued or a levy is made by  
9 the Tax Commissioner or Commissioner of Labor, or his or her  
10 duly authorized employee, for the collection of any tax and any  
11 interest, penalty, or addition to such tax imposed by law under any  
12 tax program administered by the Tax Commissioner or Commissioner  
13 of Labor or for the enforcement of any tax lien authorized by  
14 the Uniform State Tax Lien Registration and Enforcement Act, such  
15 warrant or levy shall have the same force and effect of a levy  
16 and sale pursuant to a writ of execution. Such warrant or levy  
17 may be issued and sale made pursuant to it in the same manner  
18 and with the same force and effect of a levy and sale pursuant  
19 to a writ of execution. The Tax Commissioner or Commissioner of  
20 Labor shall pay the levying sheriff the same fees, commissions,  
21 and expenses pursuant to such warrant as are provided by law for  
22 similar services pursuant to a writ of execution, except that  
23 fees for publications in a newspaper shall be subject to approval  
24 by the Tax Commissioner or Commissioner of Labor. Such fees,  
25 commissions, and expenses shall be an obligation of the taxpayer  
26 and may be collected from the taxpayer by virtue of the warrant.  
27 Any such warrant shall show the name and last-known address of

1 the taxpayer, the identity of the tax program, the year for which  
2 such tax and any interest, penalty, or addition to such tax is  
3 due and the amount thereof, the fact that the Tax Commissioner  
4 or Commissioner of Labor has complied with all provisions of the  
5 law for the applicable tax program which he or she administers in  
6 the determination of the amount required to be paid, and that the  
7 tax and any interest, penalty, or addition to such tax is due and  
8 payable according to law.

9 (4) (a) Any person upon whom a levy is served who fails  
10 or refuses to honor the levy without cause may be held liable  
11 for the amount of the levy up to the value of the assets of the  
12 taxpayer under his or her control at the time the levy was served  
13 or thereafter. Such person may be subject to collection provisions  
14 as set forth in the act.

15 (b) The effect of a levy on salary, wages, or other  
16 regular payments due to or received by a taxpayer shall be  
17 continuous from the date the levy is served until the amount of the  
18 levy, with accrued interest, is satisfied.

19 (5) Notice of the sale and the time and place of the  
20 sale shall be given, to the delinquent taxpayer and to any other  
21 person with an interest in the property who has filed for record  
22 with the appropriate filing officer on such property, in writing at  
23 least twenty days prior to the date of such sale in the following  
24 manner: The notice shall be ~~sent by certified mail, return receipt~~  
25 ~~requested,~~ mailed to the taxpayer and to any other person with such  
26 interest at his or her last-known residence or place of business  
27 in this state. The notice shall also be given by publication at

1 least once each week for four weeks prior to the date of the sale  
2 in the newspaper of general circulation published in the county in  
3 which the property seized is to be sold. If there is no newspaper  
4 of general circulation in the county, notice shall be posted in  
5 three public places in the county twenty days prior to the date of  
6 the sale. The notice shall contain a description of the property  
7 to be sold, a statement of the type of tax due and of the amount  
8 due, including interest, penalties, additions to tax, and costs,  
9 the name of the delinquent taxpayer, and the further statement that  
10 unless the amount due, including interest, penalties, additions  
11 to tax, and costs, is paid on or before the time fixed in the  
12 notice for the sale or such security as may be determined by  
13 the Tax Commissioner or Commissioner of Labor is placed with the  
14 Tax Commissioner or Commissioner of Labor, or his or her duly  
15 authorized representative, on or before such time, the property, or  
16 so much of it as may be necessary, will be sold in accordance with  
17 law and the notice.

18 (6) At the sale the Tax Commissioner or Commissioner of  
19 Labor, or his or her duly authorized representative, shall sell  
20 the property in accordance with law and the notice and shall  
21 deliver to the purchaser a bill of sale for the property. The  
22 bill of sale shall vest the interest or title of the person  
23 liable for the amount in the purchaser. The unsold portion of  
24 any property seized shall remain in the custody and control of  
25 the Tax Commissioner or Commissioner of Labor, or his or her  
26 duly authorized representative, until offered for sale again in  
27 accordance with this section or redeemed by the taxpayer.

1           (7) Whenever any property which is seized and sold under  
2 this section is not sufficient to satisfy the claim of the state  
3 for which distraint or seizure is made, the sheriff or duly  
4 authorized employee of the Tax Commissioner or Department of Labor  
5 may thereafter, and as often as the same may be necessary, proceed  
6 to seize and sell in like manner any other property liable to  
7 seizure of the taxpayer against whom such claim exists until the  
8 amount due from such taxpayer, together with all expenses, is fully  
9 paid.

10           (8) If after the sale the money received exceeds the  
11 total of all amounts due the state, including any interest,  
12 penalties, additions to tax, and costs, and if there is no other  
13 interest in or lien upon such money received, the Tax Commissioner  
14 or Commissioner of Labor shall return the excess to the person  
15 liable for the amounts and obtain a receipt. If any person  
16 having an interest or lien upon the property files with the Tax  
17 Commissioner or Commissioner of Labor prior to the sale notice of  
18 his or her interest or lien, the Tax Commissioner or Commissioner  
19 of Labor shall withhold any excess pending a determination of  
20 the rights of the respective parties thereto by a court of  
21 competent jurisdiction. If for any reason the receipt of the person  
22 liable for the amount is not available, the Tax Commissioner or  
23 Commissioner of Labor shall deposit the excess money with the State  
24 Treasurer, as trustee for the owner, subject to the order of the  
25 person liable for the amount or his or her heirs, successors, or  
26 assigns. No interest earned, if any, shall become the property of  
27 the person liable for the amount.

1                   (9) All persons and officers of companies or corporations  
2 shall, on demand of a sheriff or duly authorized employee of  
3 the Tax Commissioner or Department of Labor about to distrain or  
4 having distrained any property or right to property, exhibit all  
5 books containing evidence or statements relating to the property or  
6 rights of property liable to distraint for the tax due.

7                   Sec. 49. Section 77-4015, Reissue Revised Statutes of  
8 Nebraska, is amended to read:

9                   77-4015 As soon as practicable after any return is  
10 filed, the Tax Commissioner shall examine the return. If the Tax  
11 Commissioner, in his or her judgment, finds that the return is  
12 incorrect and any amount of tax due from the licensee is unpaid,  
13 he or she shall notify the licensee of the deficiency. Such notice  
14 shall be ~~sent~~ mailed to the licensee. ~~by registered or certified~~  
15 ~~mail.~~

16                   Sec. 50. Section 77-4016, Reissue Revised Statutes of  
17 Nebraska, is amended to read:

18                   77-4016 (1) If any licensee fails to file a return within  
19 the time prescribed, the Tax Commissioner may make a return for the  
20 licensee from his or her own knowledge and from such information  
21 as he or she can obtain through investigation and inspection or  
22 otherwise and shall assess a tax on such basis.

23                   (2) Such tax shall be paid within ten days after the  
24 Tax Commissioner ~~sends~~ mails a written notice of the amount ~~by~~  
25 ~~registered or certified mail~~ to the licensee. Any such return  
26 and assessment made by the Tax Commissioner on account of the  
27 failure of the licensee to make a return shall be deemed prima

1 facie correct and valid, and the licensee shall have the burden  
2 of establishing that such return and assessment is incorrect or  
3 invalid in any action or proceeding based on such return and  
4 assessment.

5 Sec. 51. Section 77-4020, Reissue Revised Statutes of  
6 Nebraska, is amended to read:

7 77-4020 Within a reasonable time after the hearing  
8 pursuant to section 77-4019, the Tax Commissioner shall make a  
9 final decision or final determination and notify the licensee by  
10 ~~registered or certified~~ mail of such decision or determination.  
11 If any tax or additional tax becomes due, such notice shall be  
12 accompanied by a demand for payment of any tax due. A licensee may  
13 appeal the decision of the Tax Commissioner, and the appeal shall  
14 be in accordance with the Administrative Procedure Act.

15 Sec. 52. Section 77-4312, Reissue Revised Statutes of  
16 Nebraska, is amended to read:

17 77-4312 (1) Any person who receives a notice of jeopardy  
18 determination of the tax imposed by section 77-4303 may petition  
19 the Tax Commissioner for a redetermination of the amount of the  
20 assessed deficiency.

21 (2) The petition for redetermination shall be filed  
22 within ten days of the receipt of the notice of jeopardy  
23 determination whenever service is in person or within ten days  
24 of the mailing of such notice ~~by certified or registered~~ mail to  
25 the last-known address of the person.

26 (3) The petition for redetermination shall be in writing  
27 and shall state the specific grounds upon which the claim is

1 founded.

2 (4) The petition for redetermination shall be accompanied  
3 by the payment of the tax or suitable security for the payment of  
4 the tax.

5 (5) The consideration of the petition for redetermination  
6 shall be made pursuant to the Administrative Procedure Act to the  
7 extent the act is not in conflict with sections 77-4301 to 77-4316.

8 (6) The determination of the amount of the deficiency  
9 shall become final and the amount shall be deemed to be assessed  
10 on the date provided in subsection (2) of this section if the  
11 person fails to file the petition for the redetermination and the  
12 appropriate security within the ten-day time period.

13 (7) When a petition for redetermination and the  
14 appropriate security is filed within the ten-day period, the amount  
15 of the deficiency shall be deemed to be assessed upon the date the  
16 determination of the Tax Commissioner becomes final.

17 (8) If the amount of the deficiency determined under such  
18 sections is not paid upon the receipt of the notice, the deficiency  
19 shall accrue interest at the rate specified in section 45-104.02,  
20 as such rate may from time to time be adjusted, for the period from  
21 the date the tax was due until the date such deficiency is paid.

22 (9) (a) When a jeopardy determination or any other final  
23 determination has been made by the Tax Commissioner, the property  
24 seized for collection of the taxes and any penalty shall not be  
25 sold until the time has expired for filing an appeal. If an appeal  
26 has been filed, no sale shall be made unless the taxes and any  
27 penalty remain unpaid for a period of more than thirty days after



1 final determination of the appeal by the district court.

2 (b) Notwithstanding subdivision (a) of this subsection,  
3 seized property may be sold if the taxpayer consents in writing  
4 to the sale or the Tax Commissioner determines that the property  
5 is perishable or may become greatly reduced in price or value by  
6 keeping or that such property cannot be kept without great expense.

7 (c) The property seized shall be returned by the  
8 Tax Commissioner if the owner gives a surety bond equal to  
9 the appraised value of the owner's interest in the property,  
10 as determined by the Tax Commissioner, or deposits with the  
11 Tax Commissioner security in such form and amount as the Tax  
12 Commissioner deems necessary to insure payment of the liability but  
13 not more than twice the liability.

14 (d) Notwithstanding any other provision to the contrary,  
15 if a levy or sale pursuant to this section would irreparably  
16 injure rights in property which the court determines to be superior  
17 to rights of the state in such property, the district court may  
18 grant an injunction to prohibit the enforcement of such levy or to  
19 prohibit such sale.

20 (e) Any action taken by the Tax Commissioner pursuant  
21 to this section shall not constitute an election by the state to  
22 pursue a remedy to the exclusion of any other remedy.

23 (f) After the Tax Commissioner has seized the property  
24 of any person, that person may, upon giving forty-eight hours  
25 notice to the Tax Commissioner and to the court, bring a claim  
26 for equitable relief before the district court for the release of  
27 the property to the taxpayer upon such terms and conditions as the

1 court deems equitable.

2 (10) If the taxpayer ignores all demands for payment,  
3 the Tax Commissioner may employ the services of any qualified  
4 collection agency or attorney and pay fees for such services out of  
5 any money recovered.

6 Sec. 53. Sections 17, 19, 20, 22, 24, 25, 26, 34, 35, 36,  
7 37, 38, 55, and 58 of this act become operative on July 1, 2012.  
8 Sections 39 and 56 of this act become operative on October 1, 2012.  
9 Sections 29 and 57 of this act become operative three calendar  
10 months after the adjournment of this legislative session. The other  
11 sections of this act become operative on their effective date.

12 Sec. 54. Original sections 9-226, 9-226.01, 9-228,  
13 9-322, 9-322.02, 9-324, 9-418, 9-418.01, 9-420, 9-620, 9-622,  
14 9-623, 9-820, 57-706, 57-1206, 66-486, 66-489.02, 66-6,113, 66-721,  
15 76-908, 77-377.01, 77-612, 77-802, 77-1375, 77-1780, 77-2705.03,  
16 77-2776, 77-2779, 77-27,130, 77-27,135, 77-27,150, 77-27,152,  
17 77-3311, 77-3906, 77-4015, 77-4016, 77-4020, and 77-4312, Reissue  
18 Revised Statutes of Nebraska, are repealed.

19 Sec. 55. Original sections 66-488, 66-525, 66-6,110,  
20 66-722, 77-2701, 77-2701.04, and 77-2701.16, Reissue Revised  
21 Statutes of Nebraska, section 66-1521, Revised Statutes Cumulative  
22 Supplement, 2010, and sections 66-712 and 66-738, Revised Statutes  
23 Supplement, 2011, are repealed.

24 Sec. 56. Original section 77-2704.10, Revised Statutes  
25 Supplement, 2011, is repealed.

26 Sec. 57. Original section 77-3,116, Reissue Revised  
27 Statutes of Nebraska, is repealed.

1                   Sec. 58. The following section is outright repealed:  
2 Section 66-737, Reissue Revised Statutes of Nebraska.

3                   Sec. 59. Since an emergency exists, this act takes effect  
4 when passed and approved according to law.

5                   2. On page 1, line 6, after the third comma insert  
6 "77-2701, 77-2701.04, 77-2701.16,"; and in line 14 after the first  
7 semicolon insert "to define terms; to provide sales tax exemptions  
8 relating to youth sports and educational activities and certain  
9 fees and admissions;".