

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 727

Introduced by Cornett, 45.

Read first time January 04, 2012

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections 9-226,
2 9-226.01, 9-228, 9-322, 9-322.02, 9-324, 9-418, 9-418.01,
3 9-420, 9-620, 9-622, 9-623, 9-820, 57-706, 57-1206,
4 66-486, 66-488, 66-489.02, 66-525, 66-6,110, 66-6,113,
5 66-721, 66-722, 76-908, 77-377.01, 77-3,116, 77-612,
6 77-802, 77-1375, 77-1780, 77-2705.03, 77-2776, 77-2779,
7 77-27,130, 77-27,135, 77-27,150, 77-27,152, 77-3311,
8 77-3906, 77-4015, 77-4016, 77-4020, and 77-4312, Reissue
9 Revised Statutes of Nebraska, section 66-1521, Revised
10 Statutes Cumulative Supplement, 2010, and sections
11 66-712, 66-738, and 77-2704.10, Revised Statutes
12 Supplement, 2011; to change provisions relating to tax
13 filings and notices, motor fuel taxation, sales and use
14 taxes, and a tax study; to eliminate a committee; to
15 harmonize provisions; to provide operative dates; to
16 repeal the original sections; to outright repeal section
17 66-737, Reissue Revised Statutes of Nebraska; and to

1 declare an emergency.

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

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

3 9-226 The department shall have the following powers,
4 functions, and duties:

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

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

21 (a) Violated the provisions, requirements, conditions,
22 limitations, or duties imposed by the Nebraska Bingo Act, the
23 Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle
24 Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery
25 and Raffle Act, or the State Lottery Act or any rules or regulations

1 adopted and promulgated pursuant to the acts;

2 (b) Knowingly caused, aided, abetted, or conspired with
3 another to cause any person to violate any of the provisions of such
4 acts or any rules or regulations adopted and promulgated pursuant to
5 such acts;

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

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

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

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

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

25 (h) Failed to prove by clear and convincing evidence his,

1 her, or its qualifications to be licensed or granted a permit in
2 accordance with the Nebraska Bingo Act;

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

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

12 (k) Failed to demonstrate good character, honesty, and
13 integrity;

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

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

25 No renewal of a license under the Nebraska Bingo Act

1 shall be issued when the applicant for renewal would not be eligible
2 for a license upon a first application;

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

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 Raffle
20 Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery
21 and Raffle Act, the State Lottery Act, or any rules or regulations
22 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 the
25 Nebraska Bingo Act or any rules or regulations adopted and

1 promulgated pursuant to the act;

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

4 (d) Was convicted of, forfeited bond upon the charge of,
5 or pleaded guilty or nolo contendere to any offense or crime, whether
6 a felony or a misdemeanor, involving any gambling activity or fraud,
7 theft, willful failure to make required payments or reports, or
8 filing false reports with a governmental agency at any 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 years
12 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 or
16 for which a permit is required under the Nebraska Bingo Act is being
17 conducted or failed to produce for inspection or audit any book,
18 record, document, or item required by law, rule, or regulation;

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

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

1 (i) Failed to pay an administrative fine levied pursuant
2 to the Nebraska Bingo Act, the Nebraska County and City Lottery Act,
3 the Nebraska Lottery and Raffle Act, or the Nebraska Pickle Card
4 Lottery Act;

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

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

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

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

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

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

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

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

25 (7) To require periodic reports of bingo activity from

1 licensees under the act as the department deems necessary to carry
2 out the act;

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

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

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

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

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

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

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

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

1 become final at the expiration of such period.

2 (3) If a request for hearing is filed within the thirty-
3 day period, the Tax Commissioner shall grant the applicant a hearing
4 and shall, at least ten days before the hearing, serve notice upon
5 the applicant by ~~certified or registered mail, return receipt~~
6 ~~requested, mail~~ of the time, date, and place of the hearing. Such
7 proceedings shall be considered contested cases pursuant to the
8 Administrative Procedure Act.

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

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

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

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

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

5 9-322 The department shall have the following powers,
6 functions, and duties:

7 (1) To issue licenses and temporary licenses;

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

22 (a) Violated the provisions, requirements, conditions,
23 limitations, or duties imposed by the Nebraska Bingo Act, the
24 Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle
25 Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery

1 and Raffle Act, or the State Lottery Act or any rules or regulations
2 adopted and promulgated pursuant to such acts;

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

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

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

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

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

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

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

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

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

13 (k) Failed to demonstrate good character, honesty, and
14 integrity;

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

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

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

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

1 and promulgated pursuant to the act;

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

4 (d) Was convicted of, forfeited bond upon a charge of, or
5 pleaded guilty or nolo contendere to any offense or crime, whether a
6 felony or misdemeanor, involving any gambling activity or fraud,
7 theft, willful failure to make required payments or reports, or
8 filing false reports with a governmental agency at any 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 years
12 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 pickle card activity required to be
16 licensed under the act is being conducted or failed to produce for
17 inspection or audit any book, record, document, or item required by
18 law, rule, or regulation;

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

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

1 (i) Failed to pay an administrative fine levied pursuant
2 to the Nebraska Bingo Act, the Nebraska County and City Lottery Act,
3 the Nebraska Lottery and Raffle Act, or the Nebraska Pickle Card
4 Lottery Act;

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

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

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

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

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

20 (5) To levy an administrative fine on an individual,
21 partnership, limited liability company, corporation, or organization
22 for cause. For purposes of this subdivision, cause shall include
23 instances in which the individual, partnership, limited liability
24 company, corporation, or organization violated the provisions,
25 requirements, conditions, limitations, or duties imposed by the act

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

17 (6) To enter or to authorize any law enforcement officer
18 to enter at any time upon any premises where lottery by the sale of
19 pickle cards activity required to be licensed under the act is being
20 conducted to determine whether any of the provisions of such act or
21 any rules or regulations adopted and promulgated under such act have
22 been or are being violated and at such time to examine such premises;

23 (7) To require periodic reports of lottery by the sale of
24 pickle cards activity from licensed manufacturers, distributors,
25 nonprofit organizations, sales agents, pickle card operators, and any

1 other persons, organizations, limited liability companies, or
2 corporations as the department deems necessary to carry out the act;

3 (8) To require annual registration of coin-operated and
4 currency-operated devices used for the dispensing of pickle cards, to
5 issue registration decals for such devices, to prescribe all forms
6 necessary for the registration of such devices, and to impose
7 administrative penalties for failure to properly register such
8 devices;

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

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

4 (10) 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 and
7 use taxes in the Nebraska Revenue Act of 1967;

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

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

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

18 (14) To adopt and promulgate such rules and regulations
19 and prescribe all forms as are necessary to carry out the Nebraska
20 Pickle Card Lottery Act; and

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

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

25 9-322.02 (1) Before any application is denied pursuant to

1 section 9-322, the department shall notify the applicant in writing
2 by ~~certified~~ mail of the department's intention to deny the
3 application and the reasons for the denial. Such notice shall inform
4 the applicant of his or her right to request an administrative
5 hearing for the purpose of reconsideration of the intended denial of
6 the application. The date the notice is mailed shall be deemed to be
7 the date of service of notice to the applicant.

8 (2) A request for a hearing by the applicant shall be in
9 writing and shall be filed with the department within thirty days
10 after the service of notice to the applicant of the department's
11 intended denial of the application. If a request for hearing is not
12 filed within the thirty-day period, the application denial shall
13 become final at the expiration of such period.

14 (3) If a request for hearing is filed within the thirty-
15 day period, the Tax Commissioner shall grant the applicant a hearing
16 and shall, at least ten days before the hearing, serve notice upon
17 the applicant by ~~certified mail, return receipt requested, mail~~ of
18 the time, date, and place of the hearing. Such proceedings shall be
19 considered contested cases pursuant to the Administrative Procedure
20 Act.

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

23 9-324 Before the adoption, amendment, or repeal of any
24 rule or regulation, the suspension, revocation, or cancellation of
25 any license pursuant to section 9-322, or the levying of an

1 administrative fine pursuant to section 9-322, the department shall
2 set the matter for hearing. Such suspension, revocation, or
3 cancellation proceedings or proceedings to levy an administrative
4 fine shall be contested cases pursuant to the Administrative
5 Procedure Act.

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

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

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

18 9-418 The department shall have the following powers,
19 functions, and duties:

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

21 (2) To deny any license or permit application or renewal
22 application for cause. Cause for denial of an application or renewal
23 of a license or permit shall include instances in which the applicant
24 individually or, in the case of a nonprofit organization, any
25 officer, director, or employee of the applicant, licensee, or

1 permittee, other than an employee whose duties are purely ministerial
2 in nature, any other person or entity directly or indirectly
3 associated with such applicant, licensee, or permittee which directly
4 or indirectly receives compensation other than distributions from a
5 bona fide retirement plan established pursuant to Chapter 1,
6 subchapter D of the Internal Revenue Code from such applicant,
7 licensee, or permittee for past or present services in a consulting
8 capacity or otherwise, the licensee, the permittee, or any person
9 with a substantial interest in the applicant, licensee, or permittee:

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

16 (b) Knowingly caused, aided, abetted, or conspired with
17 another to cause any person to violate any of the provisions of such
18 acts or any rules or regulations adopted and promulgated pursuant to
19 such acts;

20 (c) Obtained a license or permit pursuant to the Nebraska
21 Bingo Act, the Nebraska County and City Lottery Act, the Nebraska
22 Lottery and Raffle Act, or the Nebraska Pickle Card Lottery Act by
23 fraud, misrepresentation, or concealment;

24 (d) Was convicted of, forfeited bond upon a charge of, or
25 pleaded guilty or nolo contendere to any offense or crime, whether a

1 felony or misdemeanor, involving any gambling activity or fraud,
2 theft, willful failure to make required payments or reports, or
3 filing false reports with a governmental agency at any level;

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

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

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

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

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

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

1 the Nebraska Lottery and Raffle Act, or the Nebraska Pickle Card
2 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 nonprofit organization, through its managers or employees,
7 the ability, experience, or financial responsibility necessary to
8 establish or maintain the activity for which the application is made;

9 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, 2002,
13 on or about a premises licensed by the commission pursuant to the
14 Nebraska Liquor Control Act or the rules and regulations adopted and
15 promulgated pursuant to such act.

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

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

1 such licensee or permittee which directly or indirectly receives
2 compensation other than distributions from a bona fide retirement
3 plan established pursuant to Chapter 1, subchapter D of the Internal
4 Revenue Code from such licensee or permittee for past or present
5 services in a consulting capacity or otherwise, or any person with a
6 substantial interest in the 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 Raffle
10 Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery
11 and Raffle Act, the State Lottery Act, or any rules or regulations
12 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 a
21 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

1 described in subdivision (d) of this subdivision within the ten years
2 preceding filing of the application;

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

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

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

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

20 (j) Failed to demonstrate good character, honesty, and
21 integrity;

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

1 (1) Was cited and whose liquor license was suspended,
2 canceled, or revoked by the Nebraska Liquor Control Commission for
3 illegal gambling activities that occurred on or after July 20, 2002,
4 on or about a premises licensed by the commission pursuant to the
5 Nebraska Liquor Control Act or the rules and regulations adopted and
6 promulgated pursuant to such act;

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

1 vacating the cease and desist order or making it permanent as the
2 facts require. All hearings shall be held in accordance with the
3 rules and regulations adopted and promulgated by the department. If
4 the licensee, permittee, or other person to whom a cease and desist
5 order is issued fails to appear at the hearing after being duly
6 notified, the licensee, permittee, or other person shall be deemed in
7 default and the proceeding may be determined against the licensee,
8 permittee, or other person upon consideration of the cease and desist
9 order, the allegations of which may be deemed to be true;

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

1 guilty of contempt of court;

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

24 (7) Unless specifically provided otherwise, to compute,
25 determine, assess, and collect the amounts required to be paid to the

1 state as taxes imposed by the act in the same manner as provided for
2 sales and use taxes in the Nebraska Revenue Act of 1967;

3 (8) To collect license application, license renewal
4 application, and permit fees imposed by the Nebraska Lottery and
5 Raffle Act and to prorate license fees on an annual basis. The
6 department shall establish, by rule and regulation, the conditions
7 and circumstances under which such fees may be prorated;

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

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

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

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

23 (2) A request for a hearing by the applicant shall be in
24 writing and shall be filed with the department within thirty days
25 after the service of notice to the applicant of the department's

1 intended denial of the application. If a request for hearing is not
2 filed within the thirty-day period, the denial shall become final at
3 the expiration of such period.

4 (3) If a request for hearing is filed within the thirty-
5 day period, the Tax Commissioner shall grant the applicant a hearing
6 and shall, at least ten days before the hearing, serve notice upon
7 the applicant by ~~certified mail, return receipt requested, mail of~~
8 the time, date, and place of the hearing. Such proceedings shall be
9 considered contested cases pursuant to the Administrative Procedure
10 Act.

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

13 9-420 Before the adoption, amendment, or repeal of any
14 rule or regulation, the suspension, revocation, or cancellation of
15 any license or permit, or the levying of an administrative fine
16 pursuant to section 9-418, the department shall set the matter for
17 hearing. Such suspension, revocation, or cancellation proceedings or
18 proceedings to levy an administrative fine shall be considered
19 contested cases pursuant to the Administrative Procedure Act.

20 At least ten days before the hearing, the department
21 shall (1) in the case of suspension, revocation, or cancellation
22 proceedings or proceedings to levy an administrative fine, serve
23 notice by personal service or ~~certified mail, return receipt~~
24 ~~requested, mail~~ upon the licensee, permittee, or violator of the
25 time, date, and place of any hearing or (2) in the case of adoption,

1 amendment, or repeal of any rule or regulation, issue a public notice
2 of the time, date, and place of such hearing.

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

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

7 9-620 The department shall have the following powers,
8 functions, and duties:

9 (1) To issue licenses and temporary licenses;

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

24 (a) Violated the provisions, requirements, conditions,
25 limitations, or duties imposed by the Nebraska Bingo Act, the

1 Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle
2 Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery
3 and Raffle Act, the State Lottery Act, or any rules or regulations
4 adopted and promulgated pursuant to such acts;

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

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

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

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

20 (f) Denied the department or its authorized
21 representatives, including authorized law enforcement agencies,
22 access to any place where activity required to be licensed under the
23 Nebraska County and City Lottery Act is being conducted or failed to
24 produce for inspection or audit any book, record, document, or item
25 required by law, rule, or 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 in accordance with the
5 Nebraska County and City Lottery Act;

6 (i) Failed to pay any taxes and additions to taxes,
7 including penalties and interest, required by the Nebraska Bingo Act,
8 the Nebraska County and City Lottery Act, the Nebraska Lottery and
9 Raffle Act, or the Nebraska Pickle Card Lottery Act or any other
10 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 Act,
13 the Nebraska Lottery and Raffle Act, or the Nebraska Pickle Card
14 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 through its managers, employees, or agents,
19 the ability, experience, or financial responsibility necessary to
20 establish or maintain the activity for which the application is made;
21 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, 2002,
25 on or about a premises licensed by the commission pursuant to the

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

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

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

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 Raffle
21 Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery
22 and Raffle Act, the State Lottery Act, or any rules or regulations
23 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 the

1 Nebraska County and City Lottery Act or any rules or regulations
2 adopted and promulgated pursuant to the act;

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

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

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

14 (f) Denied the department or its authorized
15 representatives, including authorized law enforcement agencies,
16 access to any place where activity required to be licensed under the
17 Nebraska County and City Lottery Act is being conducted or failed to
18 produce for inspection or audit any book, record, document, or item
19 required by law, rule, or 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 Act,
24 the Nebraska County and City Lottery Act, the Nebraska Lottery and
25 Raffle Act, or the Nebraska Pickle Card Lottery Act or any other

1 taxes imposed pursuant to the Nebraska Revenue Act of 1967;

2 (i) Failed to pay an administrative fine levied pursuant
3 to the Nebraska Bingo Act, the Nebraska County and City Lottery Act,
4 the Nebraska Lottery and Raffle Act, or the Nebraska Pickle Card
5 Lottery Act;

6 (j) Failed to demonstrate good character, honesty, and
7 integrity;

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

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

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

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

20 (5) To levy an administrative fine on an individual,
21 partnership, limited liability company, corporation, or organization
22 for cause. For purposes of this subdivision, cause shall include
23 instances in which the individual, partnership, limited liability
24 company, corporation, or organization violated the provisions,
25 requirements, conditions, limitations, or duties imposed by the act

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

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

23 (7) To require periodic reports of lottery activity from
24 licensed counties, cities, villages, manufacturer-distributors, and
25 lottery operators and any other persons, organizations, limited

1 liability companies, or corporations as the department deems
2 necessary to carry out the act;

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

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

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

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

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

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

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

25 Sec. 11. Section 9-622, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 9-622 (1) Before any application is denied pursuant to
3 section 9-620, the department shall notify the applicant in writing
4 by ~~certified~~ mail of the department's intention to deny the
5 application and the reasons for the denial. Such notice shall inform
6 the applicant of his or her right to request an administrative
7 hearing for the purpose of reconsideration of the intended denial of
8 the application. The date the notice is mailed shall be deemed to be
9 the date of service of notice to the applicant.

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

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

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

25 9-623 Before the adoption, amendment, or repeal of any

1 rule or regulation, the suspension, revocation, or cancellation of
2 any license pursuant to section 9-620, or the levying of an
3 administrative fine pursuant to such section, the department shall
4 set the matter for hearing. Such suspension, revocation, or
5 cancellation proceedings or proceedings to levy an administrative
6 fine shall be contested cases pursuant to the Administrative
7 Procedure Act.

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

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

18 9-820 Notices of hearings related to contracts awarded by
19 the Tax Commissioner and copies of all orders and decisions of the
20 Tax Commissioner concerning such contracts shall be ~~sent by certified~~
21 ~~or registered mail, return receipt requested, mailed~~ to the address
22 of record of the appropriate party or parties.

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

25 57-706 The Tax Commissioner, whenever he or she deems it

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

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

11 57-1206 The Tax Commissioner, whenever he or she deems it
12 necessary to insure compliance with sections 57-1201 to 57-1214, may
13 require any person subject to the tax imposed by section 57-1202 to
14 deposit with the Tax Commissioner a suitable indemnity bond to insure
15 payment of the tax as the Tax Commissioner may determine. Such
16 security may be used if it becomes necessary to collect any tax,
17 interest, or penalty due. Notice of the use of the bond shall be
18 given to such person by ~~either registered or certified mail.~~

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

21 66-486 (1) In lieu of the expense of collecting and
22 remitting the motor vehicle fuel tax and furnishing the security
23 pursuant to Chapter 66, article 4, and complying with the statutes
24 and rules and regulations related thereto, the producer, supplier,
25 distributor, wholesaler, or importer shall be entitled to deduct and

1 withhold a commission of five percent on the first five thousand
2 dollars and two and one-half percent upon all amounts above five
3 thousand dollars remitted each reporting period.

4 (2) In lieu of the expense of collecting and remitting
5 the diesel fuel tax and furnishing the security pursuant to Chapter
6 66, article 4, and complying with the statutes and rules and
7 regulations related thereto, the producer, supplier, distributor,
8 wholesaler, or importer shall be entitled to deduct and withhold a
9 commission of two percent upon the first five thousand dollars and
10 one-half of one percent upon all amounts in excess of five thousand
11 dollars remitted each reporting period.

12 (3) Except as otherwise provided in Chapter 66, article
13 4, the per-gallon amount of the tax shall be added to the selling
14 price of every gallon of such motor fuels sold in this state and
15 shall be collected from the purchaser so that the ultimate consumer
16 bears the burden of the tax. The tax shall be a direct tax on the
17 retail or ultimate consumer precollected for the purpose of
18 convenience and facility to the consumer. The levy and assessment on
19 the producer, supplier, distributor, wholesaler, or importer as
20 specified in Chapter 66, article 4, shall be as agents of the state
21 for the precollection of the tax. The provisions of this section
22 shall in no way affect the method of collecting the tax as provided
23 in Chapter 66, article 4. The tax imposed by this section shall be
24 collected and paid at the time, in the manner, and by those persons
25 specified in Chapter 66, article 4.

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

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

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

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

19 66-488 (1) Every producer, supplier, distributor,
20 wholesaler, importer, and exporter who engages in the sale,
21 distribution, delivery, and use of motor fuels shall render and have
22 on file with the department a return reporting the number of gallons
23 of motor fuels, based on gross gallons, received, imported, or
24 exported and unloaded and emptied or caused to be received, imported,
25 or exported and unloaded and emptied by such producer, supplier,

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

1 filing date. The return shall be considered filed on time if
2 transmitted or postmarked before midnight of the final filing date.

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

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

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

17 (2) The department shall calculate the average wholesale
18 price of gasoline on April 1, 2009, and on each April 1 and October 1
19 thereafter. The average wholesale price on April 1 shall apply to
20 returns for the tax periods beginning on and after July 1, and the
21 average wholesale price on October 1 shall apply to returns for the
22 tax periods beginning on and after January 1. The average wholesale
23 price shall be determined using data available from the ~~Energy~~
24 ~~Information Administration of the United States Department of Energy~~
25 State Energy Office and shall be a ~~single, statewide~~ an average

1 wholesale price per gallon of gasoline sold in the state over the
2 previous six-month period, excluding any state or federal excise tax
3 or environmental fees. The change in the average wholesale price
4 between two six-month periods shall be adjusted so that the increase
5 or decrease in the tax provided for in this section or section
6 66-6,109.02 does not exceed one cent per gallon.

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

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

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

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

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

21 66-525 The department may require every railroad or
22 railroad company, motor truck or motor truck transportation company,
23 water transportation company, pipeline company, and other person
24 transporting or bringing into the State of Nebraska or transporting
25 from a refinery, ethanol or biodiesel facility, pipeline, pipeline

1 terminal, or barge terminal within the State of Nebraska for the
2 purpose of delivery within or export from this state any motor
3 vehicle fuel or diesel fuel which is or may be produced and
4 compounded for the purpose of operating or propelling any motor
5 vehicle, to furnish a return on forms prescribed by the department to
6 be delivered and on file in the office of the department by the
7 ~~twenty-fifth~~ twentieth day of each calendar month, showing all
8 quantities of such motor vehicle fuel or diesel fuel transported
9 during the preceding calendar month for which the report is made,
10 giving the name of the consignee, the point at which delivery was
11 made, the date of delivery, the method of delivery, the quantity of
12 each such shipment, and such other information as the department
13 requires.

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

16 66-6,110 Each retailer shall file a tax return with the
17 department on forms prescribed by the department. Annual returns are
18 required if the retailer's yearly tax liability is less than two
19 hundred fifty dollars. Quarterly returns are required if the
20 retailer's yearly tax liability is at least two hundred fifty dollars
21 but less than six thousand dollars. Monthly returns are required if
22 the retailer's yearly tax liability is at least six thousand dollars.
23 The return shall contain a declaration by the person making the
24 return to the effect that the statements contained in the return are
25 true and are made under penalties of law, which declaration has the

1 same force and effect as a verification of the return and is in lieu
2 of such verification. The return shall show such information as the
3 department reasonably requires for the proper administration and
4 enforcement of the Compressed Fuel Tax Act. The retailer shall file
5 the return in such format as prescribed by the department on or
6 before the ~~twenty-fifth~~ twentieth day of the next succeeding calendar
7 month following the reporting period to which it relates. If the
8 final filing date falls on a Saturday, Sunday, or legal holiday, the
9 next secular or business day is the final filing date. The return is
10 filed on time if transmitted or postmarked before midnight of the
11 final filing date.

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

14 66-6,113 (1) In lieu of the expense of remitting the
15 compressed fuel tax and complying with the statutes and rules and
16 regulations related thereto, every retailer shall be entitled to
17 deduct and withhold a commission of two percent upon the first five
18 thousand dollars and one-half of one percent upon all amounts in
19 excess of five thousand dollars remitted each tax period.

20 (2) Except as otherwise provided in the Compressed Fuel
21 Tax Act, the per-gallon amount of the tax shall be added to the
22 selling price of every gallon of such compressed fuel sold in this
23 state and shall be collected from the purchaser so that the ultimate
24 consumer bears the burden of the tax. The tax shall be a direct tax
25 on the retail or ultimate consumer precollected for the purpose of

1 convenience and facility to the consumer. The levy and assessment on
2 the retailer as specified in the act shall be as an agent of the
3 state for the precollection of the tax. The provisions of this
4 section shall in no way affect the method of collecting the tax as
5 provided in the act. The tax imposed by this section shall be
6 collected and paid at the time, in the manner, and by those persons
7 specified in the act.

8 (3) In consideration of receiving the commission provided
9 under subsection (1) of this section, the retailer shall not be
10 entitled to any deductions, credits, or refunds arising out of such
11 retailer's failure or inability to collect any such taxes from any
12 subsequent purchaser of compressed fuel.

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

18 Sec. 22. Section 66-712, Revised Statutes Supplement,
19 2011, is amended to read:

20 66-712 For purposes of the Compressed Fuel Tax Act, the
21 International Fuel Tax Agreement Act, and sections 66-482 to
22 66-4,149, 66-501 to 66-531, and 66-712 to ~~66-737~~: 66-736:

23 (1) Department means the Motor Fuel Tax Enforcement and
24 Collection Division of the Department of Revenue, except that for
25 purposes of enforcement of the International Fuel Tax Agreement Act,

1 department means the Division of Motor Carrier Services of the
2 Department of Motor Vehicles;

3 (2) Motor fuel means any fuel defined as motor vehicle
4 fuel in section 66-482, any fuel defined as diesel fuel in section
5 66-482, and any fuel defined as compressed fuel in section 66-6,100;

6 (3) Motor fuel laws means the Compressed Fuel Tax Act and
7 sections 66-482 to 66-4,149, 66-501 to 66-531, and 66-712 to ~~66-737,~~
8 66-736, except that for purposes of enforcement of the International
9 Fuel Tax Agreement Act, motor fuel laws means the provisions of the
10 International Fuel Tax Agreement Act and sections 66-712 to ~~66-737;~~
11 66-736; and

12 (4) Person means any individual, firm, partnership,
13 limited liability company, company, agency, association, corporation,
14 state, county, municipality, or other political subdivision. Whenever
15 a fine, imprisonment, or both are prescribed or imposed in sections
16 66-712 to ~~66-737,~~66-736, the word person as applied to a
17 partnership, a limited liability company, or an association means the
18 partners or members thereof.

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

21 66-721 All notices by the department required by the
22 motor fuel laws shall be mailed ~~by registered or certified mail,~~
23 ~~return receipt requested,~~ to the address of the licensee or
24 permitholder as shown on the records of the department.

25 Sec. 24. Section 66-722, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 66-722 (1) As soon as practical after a return is filed,
3 the department shall examine it to determine the correct amount of
4 tax. If the department finds that the amount of tax shown on the
5 return is less than the correct amount, it shall notify the taxpayer
6 of the amount of the deficiency determined.

7 (2) If any person fails to file a return or has
8 improperly purchased motor fuel without the payment of tax, the
9 department shall estimate the person's liability from any available
10 information and notify the person of the amount of the deficiency
11 determined.

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

17 (4) The final assessment provisions of this section shall
18 constitute a final decision of the agency for purposes of the
19 Administrative Procedure Act.

20 (5) An assessment made by the department shall be
21 presumed to be correct. In any case when the validity of the
22 assessment is questioned, the burden shall be on the person who
23 challenges the assessment to establish by a preponderance of the
24 evidence that the assessment is erroneous or excessive.

25 (6)(a) Except in the case of a fraudulent return or of

1 neglect or refusal to make a return, the notice of a proposed
2 deficiency determination shall be mailed within three years after the
3 ~~twenty-fifth~~twentieth day of the month following the end of the
4 period for which the amount proposed is to be determined or within
5 three years after the return is filed, whichever period expires
6 later.

7 (b) The taxpayer and the department may agree, prior to
8 the expiration of the period in subdivision (a) of this subsection,
9 to extend the period during which the notice of a deficiency
10 determination can be mailed. The extension of the period for the
11 mailing of a deficiency determination shall also extend the period
12 during which a refund can be claimed.

13 Sec. 25. Section 66-738, Revised Statutes Supplement,
14 2011, is amended to read:

15 66-738 The Motor Fuel Tax Enforcement and Collection
16 Division is hereby created within the Department of Revenue. The
17 division shall be funded by a separate appropriation program within
18 the department. All provisions of the Compressed Fuel Tax Act, the
19 Petroleum Release Remedial Action Act, the State Aeronautics
20 Department Act, and sections 66-482 to 66-4,149, 66-501 to 66-531,
21 and 66-712 to ~~66-737, 66-736,~~ pertaining to the Department of
22 Revenue, the Tax Commissioner, or the division, shall be entirely and
23 separately undertaken and enforced by the division, except that the
24 division may utilize services provided by other programs of the
25 Department of Revenue in functional areas known on July 1, 1991, as

1 the budget subprograms designated revenue operations and
2 administration. Appropriations for the division that are used to fund
3 costs allocated for such functional operations shall be expended by
4 the division in an appropriate pro rata share and shall be subject to
5 audit by the Auditor of Public Accounts, at such time as he or she
6 determines necessary, which audit shall be provided to the budget
7 division of the Department of Administrative Services and the
8 Legislative Fiscal Analyst by October 1 of the year under audit.
9 Audit information useful to other divisions of the Department of
10 Revenue may be shared by the Motor Fuel Tax Enforcement and
11 Collection Division with the other divisions of the department and
12 the Division of Motor Carrier Services of the Department of Motor
13 Vehicles, but audits shall not be considered as a functional
14 operation for purposes of this section. Except for staff performing
15 in functional areas, staff funded from the separate appropriation
16 program shall only be utilized to carry out the provisions of such
17 acts and sections. The auditors and field investigators in the Motor
18 Fuel Tax Enforcement and Collection Division shall be adequately
19 trained for the purposes of motor fuel tax enforcement and
20 collection. The Tax Commissioner shall hire for or assign to the
21 division sufficient staff to carry out the responsibility of the
22 division for the enforcement of the motor fuel laws.

23 Funds appropriated to the division may also be used to
24 contract with other public agencies or private entities to aid in the
25 issuance of motor fuel delivery permit numbers as provided in

1 subsection (2) of section 66-503, and such contracted funds shall
2 only be used for such purpose. The amount of any contracts entered
3 into pursuant to this section shall be appropriated and accounted for
4 in a separate budget subprogram of the division.

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

7 66-1521 (1) A petroleum release remedial action fee is
8 hereby imposed upon the producer, refiner, importer, distributor,
9 wholesaler, or supplier who engages in the sale, distribution,
10 delivery, and use of petroleum within this state, except that the fee
11 shall not be imposed on petroleum that is exported. The fee shall
12 also be imposed on diesel fuel which is indelibly dyed. The amount of
13 the fee shall be nine-tenths of one cent per gallon on motor vehicle
14 fuel as defined in section 66-482 and three-tenths of one cent per
15 gallon on diesel fuel as defined in section 66-482. The amount of the
16 fee shall be used first for payment of claims approved by the State
17 Claims Board pursuant to section 66-1531; second, up to three million
18 dollars of the fee per year shall be used for reimbursement of owners
19 and operators under the Petroleum Release Remedial Action Act for
20 investigations of releases ordered pursuant to section 81-15,124; and
21 third, the remainder of the fee shall be used for any other purpose
22 authorized by section 66-1519. The fee shall be paid by all
23 producers, refiners, importers, distributors, wholesalers, and
24 suppliers subject to the fee by filing a monthly return on or before
25 the ~~twenty-fifth~~ twentieth day of the calendar month following the

1 monthly period to which it relates. The pertinent provisions,
2 specifically including penalty provisions, of the motor fuel laws as
3 defined in section 66-712 shall apply to the administration and
4 collection of the fee except for the treatment given refunds. There
5 shall be a refund allowed on any fee paid on petroleum which was
6 taxed and then exported, destroyed, or purchased for use by the
7 United States Government or its agencies. The department may also
8 adjust for all errors in the payment of the fee. In each calendar
9 year, no claim for refund related to the fee can be for an amount
10 less than ten dollars.

11 (2) No producer, refiner, importer, distributor,
12 wholesaler, or supplier shall engage in the sale, distribution,
13 delivery, or use of petroleum in this state without having first
14 obtained a petroleum release remedial action license. Application for
15 a license shall be made to the Motor Fuel Tax Enforcement and
16 Collection Division of the Department of Revenue upon a form prepared
17 and furnished by the division. If the applicant is an individual, the
18 application shall include the applicant's social security number.
19 Failure to obtain a license prior to engaging in the sale,
20 distribution, delivery, or use of petroleum shall be a Class IV
21 misdemeanor. The division may suspend or cancel the license of any
22 producer, refiner, importer, distributor, wholesaler, or supplier who
23 fails to pay the fee imposed by subsection (1) of this section in the
24 same manner as licenses are suspended or canceled pursuant to section
25 66-720.

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

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

20 (5) The division shall collect the fee imposed by
21 subsection (1) of this section.

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

24 76-908 Any person paying the documentary stamp tax
25 imposed by section 76-901 may claim a refund if the payment of such

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

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

3 77-377.01 The Tax Commissioner may, for the purposes of
4 collecting delinquent taxes due from a taxpayer and in addition to
5 exercising those powers in section 77-27,107, contract with any
6 collection agency licensed pursuant to the Collection Agency Act,
7 within or without the state, for the collection of such delinquent
8 taxes, including penalties and interest thereon. Such delinquent tax
9 claims may be assigned to the collection agency, for the purpose of
10 litigation in the agency's name and at the agency's expense, as a
11 means of facilitating and expediting the collection process.

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

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

22 77-3,116 The Department of Revenue and the Department of
23 Labor shall cooperate and participate in the collection of data for
24 the study. Other state agencies, including the University of
25 Nebraska, shall assist in the study or the update as requested by the

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

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

24 Any models developed for the initial study or update
25 shall be shared with the Legislative Fiscal Analyst. The Department

1 of Revenue shall include in its budget request for every other
2 biennium following the 1991-93 biennium sufficient appropriation
3 authority to conduct or contract for the required update.

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

6 77-612 On or before July 1, the Property Tax
7 Administrator shall mail a draft appraisal to each railroad company
8 required to file pursuant to section 77-603. The Property Tax
9 Administrator shall, on or before July 15 of each year, notify by
10 ~~certified~~ mail each railroad company of the total allocated value of
11 its operating property. If a railroad company feels aggrieved, such
12 railroad company may, on or before August 1, file with the Tax
13 Commissioner an administrative appeal in writing stating that it
14 claims the valuation is unjust or inequitable, the amount which it is
15 claimed the valuation should be, and the excess therein and asking
16 for an adjustment of the valuation by the Tax Commissioner. The Tax
17 Commissioner shall act upon the appeal and shall issue a written
18 order mailed to the company within seven days after the date of the
19 order. The order may be appealed within thirty days after the date of
20 the order to the Tax Equalization and Review Commission in accordance
21 with section 77-5013.

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

24 77-802 The Property Tax Administrator shall apportion the
25 total taxable value including the franchise value to all taxing

1 subdivisions in proportion to the ratio of the original cost of all
2 operating real and tangible personal property of that public service
3 entity having a situs in that taxing subdivision to the original cost
4 of all operating real and tangible personal property of that public
5 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 defined
14 in section 77-801.01. On or before August 10, the Property Tax
15 Administrator shall, by ~~certified~~ mail, notify each public service
16 entity of its taxable value and the distribution of that value to the
17 taxing subdivisions in which the entity has situs. On or before
18 August 10, the Property Tax Administrator shall also certify to the
19 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 the
25 fact that the owner of the improvements is not the owner of the land

1 upon which such improvements have been placed.

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

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

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

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

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

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

1 (2) The Tax Commissioner shall grant a hearing prior to
2 taking any action on a claim for a refund if requested in writing by
3 the taxpayer when the claim is filed or prior to any action being
4 taken on the claim.

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

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

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

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

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

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

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

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

25 Sec. 34. Section 77-2704.10, Revised Statutes Supplement,

1 2011, is amended to read:

2 77-2704.10 Sales and use taxes shall not be imposed on
3 the gross receipts from the sale, lease, or rental of and the
4 storage, use, or other consumption in this state of:

5 (1) Prepared food and food and food ingredients served by
6 public or private schools, school districts, student organizations,
7 or parent-teacher associations pursuant to an agreement with the
8 proper school authorities, in an elementary or secondary school or at
9 any institution of higher education, public or private, during the
10 regular school day or at an approved function of any such school or
11 institution. This exemption does not apply to sales by an institution
12 of higher education at any facility or function which is open to the
13 general public; , but such exemption shall not apply to sales at any
14 facility or function which is open to the general public, except that
15 concession sales by elementary and secondary schools, public or
16 private, shall be exempt;

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

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

22 (4) Prepared food and food and food ingredients sold at a
23 political event by ballot question committees, candidate committees,
24 independent committees, and political party committees as defined in
25 the Nebraska Political Accountability and Disclosure Act or fees and

1 admissions charged for such political event;

2 (5) Prepared food and food and food ingredients sold to
3 the elderly, handicapped, or recipients of Supplemental Security
4 Income by an organization that actually accepts electronic benefits
5 transfer under regulations issued by the United States Department of
6 Agriculture although it is not necessary for the purchaser to use
7 electronic benefits transfer to pay for the prepared food and food
8 and food ingredients; and

9 (6) Fees and admissions charged by a public or private
10 elementary or secondary school and fees and admissions charged by a
11 school district, student organization, or parent-teacher association,
12 pursuant to an agreement with the proper school authorities, in a
13 public or private elementary or secondary school during the regular
14 school day or at an approved function of any such school.

15 Sec. 35. Section 77-2705.03, Reissue Revised Statutes of
16 Nebraska, is amended to read:

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

23 (2) A permitholder may voluntarily relinquish a direct
24 payment permit.

25 (3) Upon revocation or relinquishment of a direct payment

1 permit, the permitholder shall notify all retailers given copies of
2 the permit that it has been revoked or relinquished. Failure to give
3 the notice shall be treated as a failure to pay sales and use taxes.

4 Sec. 36. Section 77-2776, Reissue Revised Statutes of
5 Nebraska, is amended to read:

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

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

21 (3) A notice of deficiency shall set forth the reason for
22 the proposed assessment or for the change in the amount of credit or
23 loss to be carried over to another year. The notice may be mailed ~~by~~
24 ~~certified or registered mail~~ to the taxpayer at his or her last-known
25 address. In the case of a joint return, the notice of deficiency may

1 be a single joint notice, except that if the Tax Commissioner is
2 notified by either spouse that separate residences have been
3 established, the Tax Commissioner shall mail joint notices to each
4 spouse. If the taxpayer is deceased or under a legal disability, a
5 notice of deficiency may be mailed to his or her last-known address
6 unless the Tax Commissioner has received notice of the existence of a
7 fiduciary relationship with respect to such taxpayer.

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

15 Sec. 37. Section 77-2779, Reissue Revised Statutes of
16 Nebraska, is amended to read:

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

22 Sec. 38. Section 77-27,130, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 77-27,130 (1) If the amount of a deficiency determined by
25 the Tax Commissioner is disallowed in whole or in part by the court

1 of review, the amount so disallowed shall be credited or refunded to
2 the taxpayer without the making of a claim therefor or, if payment
3 has not been made, shall be abated.

4 (2) If the deficiency determined by the Tax Commissioner
5 is disallowed by the court of review, the taxpayer shall have his or
6 her costs as they would be allowable under the provisions of section
7 77-27,129. If the deficiency is disallowed in part, the court in its
8 discretion may award the taxpayer a proportionate part of his or her
9 costs.

10 (3) An assessment of a proposed income deficiency by the
11 Tax Commissioner shall become final upon the expiration of the period
12 specified in section 77-2777 for filing a written protest against the
13 proposed assessment if no such protest has been filed within the time
14 provided or, if the protest provided in section 77-2778 has been
15 filed, upon the expiration of time provided for filing a petition for
16 judicial review, upon the final judgment of the reviewing court, or
17 upon the rendering by the Tax Commissioner of a decision pursuant to
18 the mandate of the reviewing court. Notwithstanding the foregoing,
19 for the purpose of making a petition for the review of a
20 determination of the Tax Commissioner, the determination shall be
21 deemed final on the date the notice of decision is ~~sent by certified~~
22 ~~mail or registered mail~~ mailed to the taxpayer as provided in section
23 77-2779.

24 (4) If any person institutes proceedings merely for delay
25 or raises frivolous objections to compliance with the Nebraska

1 Revenue Act of 1967, the Tax Commissioner may apply to a judge of the
2 district court for the county where such person resides for damages
3 in an amount not in excess of five thousand dollars for each tax year
4 to be awarded to the State of Nebraska for expenses incurred by the
5 Tax Commissioner in securing compliance. Damages so awarded by the
6 court shall be payable upon notice and demand by the Tax Commissioner
7 and shall be collected in the same manner as delinquent taxes under
8 such act.

9 Sec. 39. Section 77-27,135, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 77-27,135 Whenever any notice required to be given by the
12 Tax Commissioner under the provisions of the Nebraska Revenue Act of
13 1967 may be given by mail, it shall be given by ~~either first-class,~~
14 ~~registered,~~ or certified mail, return receipt requested. ~~and not~~
15 ~~otherwise.~~

16 Sec. 40. Section 77-27,150, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 77-27,150 (1) An application for a refund of Nebraska
19 sales and use taxes paid for any air or water pollution control
20 facility may be filed with the Tax Commissioner by the owner of such
21 facility in such manner and in such form as may be prescribed by the
22 commissioner. The application for a refund shall contain: (a) Plans
23 and specifications of such facility including all materials
24 incorporated therein; (b) a descriptive list of all equipment
25 acquired by the applicant for the purpose of industrial or

1 agricultural waste pollution control; (c) the proposed operating
2 procedure for the facility; (d) the acquisition cost of the facility
3 for which a refund is claimed; and (e) a copy of the final findings
4 of the Department of Environmental Quality issued pursuant to section
5 77-27,151.

6 (2) The Tax Commissioner shall offer an applicant a
7 hearing upon request of such applicant. The hearing shall not affect
8 the authority of the Department of Environmental Quality to determine
9 whether or not industrial or agricultural waste pollution control
10 exists within the meaning of the Air and Water Pollution Control Tax
11 Refund Act.

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

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

18 Sec. 41. Section 77-27,152, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 77-27,152 (1) The Tax Commissioner, after giving notice
21 by ~~certified~~ mail to the applicant and giving an opportunity for a
22 hearing, shall modify or revoke the refund whenever the following
23 appears: (a) The refund was obtained by fraud or misrepresentation
24 regarding the payment of tax on materials incorporated into the
25 facility or facilities; or (b) the Department of Environmental

1 Quality has modified its findings regarding the facility covered by
2 the refund.

3 (2) The Department of Environmental Quality may modify
4 its findings when it determines any of the following: (a) The refund
5 was obtained by fraud or misrepresentation regarding the facility or
6 planned operation of the facility; (b) the applicant has failed
7 substantially to operate the facility for the purpose and degree of
8 control specified in the application or an amended application; or
9 (c) the facility covered by the refund is no longer used for the
10 primary purpose of pollution control.

11 (3) On the mailing ~~by certified mail~~ to the refund
12 applicant of notice of the action of the Tax Commissioner modifying
13 or revoking the refund, the refund shall cease to be in force or
14 shall remain in force only as modified. When a refund is revoked
15 because a refund was obtained by fraud or misrepresentation, all
16 taxes which would have been payable if no certificate had been issued
17 shall be immediately due and payable with the maximum interest and
18 penalties prescribed by the Nebraska Revenue Act of 1967. No statute
19 of limitations shall operate in the event of fraud or
20 misrepresentation.

21 Sec. 42. Section 77-3311, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 77-3311 In any case in which this state and one or more
24 other states each claims that it was a domicile of a decedent at the
25 time of his or her death and no judicial determination of domicile

1 for death tax purposes has been made in any of such states, any
2 executor or administrator or the taxing official of any such state
3 may elect to invoke the provisions of the Uniform Act on Interstate
4 Arbitration and Compromise of Death Taxes. Such election shall be
5 evidenced by ~~the sending of a notice by certified or registered mail,~~
6 ~~return receipt requested,~~ mailing notice to the taxing officials of
7 any such state and to each executor, ancillary administrator, and
8 interested person. Any executor or administrator may reject such
9 election by ~~sending a notice by certified or registered mail, return~~
10 ~~receipt requested,~~ mailing notice to the taxing officials involved
11 and to all other executors within forty days after the receipt of
12 such notice of election. If such election is rejected, no further
13 proceedings shall be had under the act. If such election is not
14 rejected, the dispute as to the death taxes shall be determined
15 solely as provided in the act, and no other proceedings to determine
16 or assess such death taxes shall thereafter be instituted in the
17 courts of this state or otherwise.

18 Sec. 43. Section 77-3906, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 77-3906 (1) In addition to all other remedies or actions
21 provided by law under any tax program administered by the Tax
22 Commissioner or Commissioner of Labor, it shall be lawful for the Tax
23 Commissioner or Commissioner of Labor, after making demand for
24 payment, to collect any delinquent taxes, together with any interest,
25 penalties, and additions to such tax by distraint and sale of the

1 real and personal property of the taxpayer. If the Tax Commissioner
2 finds that the collection of any tax is in jeopardy pursuant to
3 section 77-2710, 77-27,111, or 77-4311, notice and demand for
4 immediate payment of such tax may be made by the Tax Commissioner
5 and, upon failure or refusal to pay such tax, collection by levy
6 shall be lawful.

7 (2)(a) In case of failure to pay taxes or deficiencies,
8 the Tax Commissioner, or his or her authorized employee, may levy or,
9 by warrant issued under his or her own hand, authorize a sheriff or
10 duly authorized employee of the Tax Commissioner to levy upon, seize,
11 and sell such real and personal property belonging to the taxpayer,
12 except exempt property, as is necessary to satisfy the liability for
13 the payment of the amount due.

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

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

24 (3) When a warrant is issued or a levy is made by the Tax
25 Commissioner or Commissioner of Labor, or his or her duly authorized

1 employee, for the collection of any tax and any interest, penalty, or
2 addition to such tax imposed by law under any tax program
3 administered by the Tax Commissioner or Commissioner of Labor or for
4 the enforcement of any tax lien authorized by the Uniform State Tax
5 Lien Registration and Enforcement Act, such warrant or levy shall
6 have the same force and effect of a levy and sale pursuant to a writ
7 of execution. Such warrant or levy may be issued and sale made
8 pursuant to it in the same manner and with the same force and effect
9 of a levy and sale pursuant to a writ of execution. The Tax
10 Commissioner or Commissioner of Labor shall pay the levying sheriff
11 the same fees, commissions, and expenses pursuant to such warrant as
12 are provided by law for similar services pursuant to a writ of
13 execution, except that fees for publications in a newspaper shall be
14 subject to approval by the Tax Commissioner or Commissioner of Labor.
15 Such fees, commissions, and expenses shall be an obligation of the
16 taxpayer and may be collected from the taxpayer by virtue of the
17 warrant. Any such warrant shall show the name and last-known address
18 of the taxpayer, the identity of the tax program, the year for which
19 such tax and any interest, penalty, or addition to such tax is due
20 and the amount thereof, the fact that the Tax Commissioner or
21 Commissioner of Labor has complied with all provisions of the law for
22 the applicable tax program which he or she administers in the
23 determination of the amount required to be paid, and that the tax and
24 any interest, penalty, or addition to such tax is due and payable
25 according to law.

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

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

11 (5) Notice of the sale and the time and place of the sale
12 shall be given, to the delinquent taxpayer and to any other person
13 with an interest in the property who has filed for record with the
14 appropriate filing officer on such property, in writing at least
15 twenty days prior to the date of such sale in the following manner:
16 The notice shall be ~~sent by certified mail, return receipt requested,~~
17 mailed to the taxpayer and to any other person with such interest at
18 his or her last-known residence or place of business in this state.
19 The notice shall also be given by publication at least once each week
20 for four weeks prior to the date of the sale in the newspaper of
21 general circulation published in the county in which the property
22 seized is to be sold. If there is no newspaper of general circulation
23 in the county, notice shall be posted in three public places in the
24 county twenty days prior to the date of the sale. The notice shall
25 contain a description of the property to be sold, a statement of the

1 type of tax due and of the amount due, including interest, penalties,
2 additions to tax, and costs, the name of the delinquent taxpayer, and
3 the further statement that unless the amount due, including interest,
4 penalties, additions to tax, and costs, is paid on or before the time
5 fixed in the notice for the sale or such security as may be
6 determined by the Tax Commissioner or Commissioner of Labor is placed
7 with the Tax Commissioner or Commissioner of Labor, or his or her
8 duly authorized representative, on or before such time, the property,
9 or so much of it as may be necessary, will be sold in accordance with
10 law and the notice.

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

21 (7) Whenever any property which is seized and sold under
22 this section is not sufficient to satisfy the claim of the state for
23 which distraint or seizure is made, the sheriff or duly authorized
24 employee of the Tax Commissioner or Department of Labor may
25 thereafter, and as often as the same may be necessary, proceed to

1 seize and sell in like manner any other property liable to seizure of
2 the taxpayer against whom such claim exists until the amount due from
3 such taxpayer, together with all expenses, is fully paid.

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

21 (9) All persons and officers of companies or corporations
22 shall, on demand of a sheriff or duly authorized employee of the Tax
23 Commissioner or Department of Labor about to distraint or having
24 distrained any property or right to property, exhibit all books
25 containing evidence or statements relating to the property or rights

1 of property liable to distraint for the tax due.

2 Sec. 44. Section 77-4015, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 77-4015 As soon as practicable after any return is filed,
5 the Tax Commissioner shall examine the return. If the Tax
6 Commissioner, in his or her judgment, finds that the return is
7 incorrect and any amount of tax due from the licensee is unpaid, he
8 or she shall notify the licensee of the deficiency. Such notice shall
9 be ~~sent mailed~~ to the licensee. ~~by registered or certified mail.~~

10 Sec. 45. Section 77-4016, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 77-4016 (1) If any licensee fails to file a return within
13 the time prescribed, the Tax Commissioner may make a return for the
14 licensee from his or her own knowledge and from such information as
15 he or she can obtain through investigation and inspection or
16 otherwise and shall assess a tax on such basis.

17 (2) Such tax shall be paid within ten days after the Tax
18 Commissioner ~~sends mails~~ a written notice of the amount ~~by registered~~
19 ~~or certified mail~~ to the licensee. Any such return and assessment
20 made by the Tax Commissioner on account of the failure of the
21 licensee to make a return shall be deemed prima facie correct and
22 valid, and the licensee shall have the burden of establishing that
23 such return and assessment is incorrect or invalid in any action or
24 proceeding based on such return and assessment.

25 Sec. 46. Section 77-4020, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 77-4020 Within a reasonable time after the hearing
3 pursuant to section 77-4019, the Tax Commissioner shall make a final
4 decision or final determination and notify the licensee by ~~registered~~
5 ~~or certified~~ mail of such decision or determination. If any tax or
6 additional tax becomes due, such notice shall be accompanied by a
7 demand for payment of any tax due. A licensee may appeal the decision
8 of the Tax Commissioner, and the appeal shall be in accordance with
9 the Administrative Procedure Act.

10 Sec. 47. Section 77-4312, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 77-4312 (1) Any person who receives a notice of jeopardy
13 determination of the tax imposed by section 77-4303 may petition the
14 Tax Commissioner for a redetermination of the amount of the assessed
15 deficiency.

16 (2) The petition for redetermination shall be filed
17 within ten days of the receipt of the notice of jeopardy
18 determination whenever service is in person or within ten days of the
19 mailing of such notice ~~by certified or registered mail~~ to the last-
20 known address of the person.

21 (3) The petition for redetermination shall be in writing
22 and shall state the specific grounds upon which the claim is founded.

23 (4) The petition for redetermination shall be accompanied
24 by the payment of the tax or suitable security for the payment of the
25 tax.

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

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

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

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

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

25 (b) Notwithstanding subdivision (a) of this subsection,

1 seized property may be sold if the taxpayer consents in writing to
2 the sale or the Tax Commissioner determines that the property is
3 perishable or may become greatly reduced in price or value by keeping
4 or that such property cannot be kept without great expense.

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

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

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

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

1 equitable.

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

6 Sec. 48. Sections 17, 19, 20, 22, 24, 25, 26, 50, and 53
7 of this act shall become operative on July 1, 2012. Sections 34 and
8 51 of this act become operative on October 1, 2012. Sections 29 and
9 52 of this act become operative three calendar months after
10 adjournment of this legislative session. The other sections of this
11 act become operative on their effective date.

12 Sec. 49. Original sections 9-226, 9-226.01, 9-228, 9-322,
13 9-322.02, 9-324, 9-418, 9-418.01, 9-420, 9-620, 9-622, 9-623, 9-820,
14 57-706, 57-1206, 66-486, 66-489.02, 66-6,113, 66-721, 76-908,
15 77-377.01, 77-612, 77-802, 77-1375, 77-1780, 77-2705.03, 77-2776,
16 77-2779, 77-27,130, 77-27,135, 77-27,150, 77-27,152, 77-3311,
17 77-3906, 77-4015, 77-4016, 77-4020, and 77-4312, Reissue Revised
18 Statutes of Nebraska, are repealed.

19 Sec. 50. Original sections 66-488, 66-525, 66-6,110, and
20 66-722, Reissue Revised Statutes of Nebraska, section 66-1521,
21 Revised Statutes Cumulative Supplement, 2010, and sections 66-712 and
22 66-738, Revised Statutes Supplement, 2011, are repealed.

23 Sec. 51. Original section 77-2704.10, Revised Statutes
24 Supplement, 2011, is repealed.

25 Sec. 52. Original section 77-3,116, Reissue Revised

1 Statutes of Nebraska, is repealed.

2 Sec. 53. The following section is outright repealed:

3 Section 66-737, Reissue Revised Statutes of Nebraska.

4 Sec. 54. Since an emergency exists, this act takes effect

5 when passed and approved according to law.