

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FIFTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 165**

Introduced by Brewer, 43; Kintner, 2.

Read first time January 10, 2017

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to revenue and taxation; to amend section
- 2 77-2753, Reissue Revised Statutes of Nebraska; to require employer
- 3 identification numbers and use of the federal immigration
- 4 verification system as prescribed; to harmonize provisions; and to
- 5 repeal the original section.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-2753, Reissue Revised Statutes of Nebraska, is  
2 amended to read:

3 77-2753 (1)(a) Every employer and payor maintaining an office or  
4 transacting business within this state and making payment of any wages or  
5 other payments as defined in subsection (7) ~~(6)~~ of this section which are  
6 taxable under the Nebraska Revenue Act of 1967 to any individual shall  
7 deduct and withhold from such wages for each payroll period and from such  
8 payments a tax computed in such manner as to result, so far as  
9 practicable, in withholding from the employee's wages and payments to the  
10 payee during each calendar year an amount substantially equivalent to the  
11 tax reasonably estimated to be due from the employee or payee under such  
12 act with respect to the amount of such wages and payments included in his  
13 or her taxable income during the calendar year. The method of determining  
14 the amount to be withheld shall be prescribed by rules and regulations of  
15 the Tax Commissioner. Such rules and regulations may allow withholding to  
16 be computed at a percentage of the federal withholding or at a comparable  
17 flat percentage for gambling winnings or supplemental payments, including  
18 bonuses, commissions, overtime pay, and sales awards which are not paid  
19 at the same time as other wages, or payments to independent contractors.  
20 Any withholding tables prescribed by the Tax Commissioner shall be  
21 provided to the budget division of the Department of Administrative  
22 Services and the Legislative Fiscal Analyst for review at least sixty  
23 days before the tables become effective.

24 (b) Notwithstanding the amount of federal withholding or the rules  
25 and regulations of the Department of Revenue determining the amount of  
26 withholding, every employer and payor employing twenty-five or more  
27 employees shall withhold at least one and one-half percent of the gross  
28 wages minus tax qualified deductions of each employee unless the employee  
29 provides satisfactory evidence that a lesser amount of withholding is  
30 justified in the employee's particular circumstances. Such satisfactory  
31 evidence may include birth certificates or social security information

1 for dependents or other evidence that reasonably assures the employer  
2 that the employee is not improperly or fraudulently evading or defeating  
3 the income tax by reducing or eliminating withholding.

4 (2)(a) Every employer making payment of any wages subject to  
5 withholding pursuant to this section shall register with the Tax  
6 Commissioner, on a form prescribed by the Tax Commissioner, and shall be  
7 assigned a state employer identification number. Such registration shall  
8 be renewed annually. The Tax Commissioner may prescribe a separate  
9 registration form for renewal purposes.

10 (b) It shall be unlawful for any employer making payment of any  
11 wages subject to withholding to maintain an office or transact business  
12 within this state after January 1, 2018, unless such employer has  
13 registered with the Tax Commissioner and been assigned a state employer  
14 identification number as prescribed in this subsection.

15 (c) Beginning January 1, 2018, every employer required to register  
16 with the Tax Commissioner as provided in this subsection shall register  
17 with and use the federal immigration verification system to determine the  
18 work eligibility status of new employees subject to withholding under  
19 this section and physically performing services within the State of  
20 Nebraska. Such employers shall, after making an offer of employment which  
21 has been accepted by an employee, determine such employee's work  
22 eligibility status pursuant to federal law or regulations. Such employers  
23 shall not knowingly employ an unauthorized alien. Each such employer  
24 shall file a signed sworn affidavit with the Tax Commissioner stating  
25 that the employer is in compliance with the requirements of this  
26 subdivision. An employee hired prior to the date of the employer's  
27 registration with the federal immigration verification system is exempt  
28 from the requirements of this subdivision.

29 (d) Whenever an employer required to register with the Tax  
30 Commissioner as provided in this subsection fails to comply with any  
31 requirement of this subsection, the Tax Commissioner upon hearing, after

1 giving the employer twenty days' notice in writing specifying the time  
2 and place of hearing and requiring such employer to show cause why the  
3 employer's state employer identification number should not be revoked or  
4 suspended, may revoke or suspend such number. The Tax Commissioner shall  
5 give to the employer written notice of the suspension or revocation of  
6 the state employer identification number. The notice may be served  
7 personally or by mail, and if by mail the notice shall be addressed to  
8 the employer at the employer's address as it appears in the records of  
9 the Tax Commissioner. In case of service by mail of any notice required  
10 by this subsection, the service is complete at the time of deposit in the  
11 United States mail.

12 (e) In determining whether an employee is an unauthorized alien, the  
13 Tax Commissioner shall consider only the federal government's  
14 determination pursuant to 8 U.S.C. 1373(c). The federal government's  
15 determination creates a rebuttable presumption of the employee's lawful  
16 status. The Tax Commissioner may take judicial notice of the federal  
17 government's determination and may request the federal government to  
18 provide automated or testimonial verification pursuant to 8 U.S.C.  
19 1373(c).

20 (f) For purposes of this subsection, proof of verifying the  
21 employment authorization of an employee through the federal immigration  
22 verification system creates a rebuttable presumption that an employer did  
23 not knowingly employ an unauthorized alien.

24 (g) For purposes of this subsection, an employer who establishes  
25 that it has complied in good faith with the requirements of 8 U.S.C.  
26 1324a(b) establishes an affirmative defense that the employer did not  
27 knowingly employ an unauthorized alien.

28 (h) The Tax Commissioner shall have the power to reinstate state  
29 employer identification numbers which have been suspended or revoked  
30 under this subsection but shall not do so unless the employer has  
31 complied with the provisions of this subsection relating to verifying the

1 work eligibility status of new employees and has filed a signed sworn  
2 affidavit with the Tax Commissioner stating that the employer has so  
3 complied. Except as otherwise provided in subdivision (i) of this  
4 subsection, an employer whose state employer identification number has  
5 been suspended or revoked shall pay the Tax Commissioner a fee of fifty  
6 dollars for reinstatement of the number in the event of any suspension or  
7 revocation.

8 (i) Actions of the Tax Commissioner under this subsection may be  
9 appealed by the employer. The appeal shall be in accordance with the  
10 Administrative Procedure Act. If it is found pursuant to such appeal that  
11 a state employer identification number has been suspended or revoked in  
12 error, the fee of fifty dollars for reinstatement shall be refunded to  
13 the employer or waived if such fee has not been paid.

14 (j) Any report, name, or information which is supplied to the Tax  
15 Commissioner regarding a violation of this subsection, including the  
16 identity of the informer, shall be subject to the pertinent provisions  
17 regarding wrongful disclosure in section 77-27,119.

18 (k) For purposes of this subsection:

19 (i) Federal immigration verification system means the electronic  
20 verification of the work authorization program of the Illegal Immigration  
21 Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as  
22 the E-Verify Program, or an equivalent federal program designated by the  
23 United States Department of Homeland Security or other federal agency  
24 authorized to verify the work eligibility status of a newly hired  
25 employee pursuant to the Immigration Reform and Control Act of 1986;

26 (ii) Knowingly employ an unauthorized alien means the actions  
27 described in 8 U.S.C. 1324a. This term shall be interpreted consistently  
28 with 8 U.S.C. 1324a and any applicable federal rules and regulations; and

29 (iii) Unauthorized alien means an alien who does not have the legal  
30 right or authorization under federal law to work in the United States as  
31 described in 8 U.S.C. 1324a(h)(3).

1           ~~(3)(a) (2)(a)~~ Every payor who is either (i) making a payment or  
2 payments in excess of five thousand dollars or (ii) maintaining an office  
3 or transacting business within this state and making a payment or  
4 payments related to such business in excess of six hundred dollars, and  
5 such payment or payments are for personal services performed or to be  
6 performed substantially within this state, to a nonresident individual,  
7 other than an employee, who is not subject to withholding on such payment  
8 under the Internal Revenue Code or a corporation, partnership, or limited  
9 liability company described in subdivision (c) of this subsection, shall  
10 be deemed an employer, and the individual performing the personal  
11 services shall be deemed an employee for the purposes of this section.  
12 The payor shall deduct and withhold from such payments the percentage of  
13 such payments prescribed in subdivision (b) of this subsection. If the  
14 individual performing the personal services provides the payor with a  
15 statement of the expenses reasonably related to the personal services,  
16 the total payment or payments may be reduced by the total expenses before  
17 computing the amount to deduct and withhold, except that such reduction  
18 shall not be more than fifty percent of such payment or payments.

19           (b) For any payment or payments for the same service, award, or  
20 purse that totals less than twenty-eight thousand dollars, the percentage  
21 deducted from such payment or payments pursuant to this subsection shall  
22 be four percent, and for all other payments, the percentage shall be six  
23 percent.

24           (c) For any corporation, partnership, or limited liability company  
25 that receives compensation for personal services in this state and of  
26 which all or substantially all of the shareholders, partners, or members  
27 are the individuals performing the personal services, including, but not  
28 limited to, individual athletes, entertainers, performers, or public  
29 speakers performing such personal services, such compensation shall be  
30 deemed wages of the individuals performing the personal services and  
31 subject to the income tax imposed on individuals by the Nebraska Revenue

1 Act of 1967.

2 (d) The withholding required by this subsection shall not apply to  
3 any payment to a nonresident alien, corporation, partnership, or limited  
4 liability company if such individual, shareholder, partner, or member  
5 provides the payor with a statement that the income earned is not subject  
6 to tax because of a treaty obligation of the United States or if such  
7 payment is subject to withholding under subsection (4) ~~(3)~~ of this  
8 section.

9 (4)(a) ~~(3)(a)~~ Every contractor who is maintaining an office or  
10 transacting business within this state and making a payment or payments  
11 to any contractor or any person that is not an employee for construction  
12 services performed within this state shall deduct and withhold five  
13 percent of such payments.

14 (b) The withholding required by this subsection shall not apply to  
15 any payment made to (i) a person that provides the payor with a statement  
16 that the income earned is not subject to tax because of a treaty  
17 obligation of the United States, (ii) a contractor if such a payment or  
18 payments does not exceed six hundred dollars, or (iii) a contractor when  
19 the payor contractor determines that the payee contractor is in the data  
20 base required by section 48-2117.

21 (c) Any contractor who determines that a contractor is in the data  
22 base is relieved from liability for withholding under this subsection for  
23 any future payments on a contract in existence at the time the  
24 determination is made or made during the same calendar year as such  
25 determination is made.

26 (d) Withholding required by this subsection shall be considered to  
27 be withholding of income tax for purposes of the Nebraska Revenue Act of  
28 1967.

29 (e) For purposes of this subsection:

30 (i) Construction services means services that are provided as a  
31 contractor; and

1 (ii) Contractor has the same meaning as in section 48-2103.

2 ~~(5) (4)~~ The Tax Commissioner may enter into agreements with the tax  
3 departments of other states, which require income tax to be withheld from  
4 the payment of wages, salaries, and such other payments, so as to govern  
5 the amounts to be withheld from the wages and salaries of and other  
6 payments to residents of such states. Such agreements may provide for  
7 recognition of anticipated tax credits in determining the amounts to be  
8 withheld and, under rules and regulations adopted and promulgated by the  
9 Tax Commissioner, may relieve employers and payors in this state from  
10 withholding income tax on wages, salaries, and such other payments paid  
11 to nonresident employees and payees. The agreements authorized by this  
12 subsection shall be subject to the condition that the tax department of  
13 such other states grant similar treatment to residents of this state.

14 ~~(6) (5)~~ The Tax Commissioner shall enter into an agreement with the  
15 United States Office of Personnel Management for the withholding of  
16 income tax imposed on individuals by the Nebraska Revenue Act of 1967 on  
17 civil service annuity payments for those recipients who voluntarily  
18 request withholding. The agreement shall be pursuant to 5 U.S.C. 8345 and  
19 the rules and regulations adopted and promulgated by the Tax  
20 Commissioner.

21 ~~(7) (6)~~ Wages and other payments subject to withholding shall mean  
22 payments that are subject to withholding under the Internal Revenue Code  
23 of 1986 and are (a) payments made by employers to employees, except such  
24 payments subject to 26 U.S.C. 3406, (b) payments of gambling winnings,  
25 (c) pension or annuity payments when the recipient has requested the  
26 payor to withhold from such payments, or (d) payments to independent  
27 contractors.

28 Sec. 2. Original section 77-2753, Reissue Revised Statutes of  
29 Nebraska, is repealed.