

LEGISLATIVE BILL 1337

Approved by the Governor April 15, 1994

Introduced by Hillman, 48; Abboud, 12; Ashford, 6; Avery, 3; Beutler, 28; Bohlke, 33; Bromm, 23; Byars, 30; Day, 19; Dierks, 40; Elmer, 38; Engel, 17; Haberman, 44; Hall, 7; Hartnett, 45; Hudkins, 21; Janssen, 15; Jones, 43; Landis, 46; Lindsay, 9; Lynch, 13; Matzke, 47; McKenzie, 34; Monen, 4; Pedersen, 39; Firsch, 10; Preister, 5; Rasmussen, 20; Robak, 22; Schimek, 27; Vrtiska, 1; Wehrbein, 2; Wesely, 26; Wickersham, 49; Will, 8; Witek, 31; Withem, 14

AN ACT relating to employment security; to amend sections 48-601, 48-649, 48-650, 48-651, 48-655.02, 48-659, 48-660, and 48-660.01, Reissue Revised Statutes of Nebraska, 1943, sections 48-648 and 48-656, Revised Statutes Supplement, 1992, and sections 48-602, 48-604, 48-652, 48-655, 48-657, and 48-658, Revised Statutes Supplement, 1993; to define and redefine terms; to provide for assessment, calculation, and collection of a state unemployment insurance tax; to create funds and a board; to provide funding for job training programs; to harmonize provisions; and to repeal the original sections.

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

Section 1. That section 48-601, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-601. Sections 48-601 to 48-671 and sections 4 to 6 of this act shall be known and may be cited as the Employment Security Law.

Sec. 2. That section 48-602, Revised Statutes Supplement, 1993, be amended to read as follows:

48-602. For purposes of the Employment Security Law, unless the context otherwise requires:

(1) Base period shall mean the last four completed calendar quarters immediately preceding the first day of an individual's benefit year, except that the commissioner may prescribe by rule and regulation that base period shall mean the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year;

(2) Benefits shall mean the money payments payable to an individual with respect to his or her unemployment;

(3) Benefit year, with respect to any individual, shall mean the one-year period beginning with the first day of the first week with respect to which the individual first files a valid claim for benefits, and thereafter the one-year period beginning with the first day of the first week with respect to which the individual next files a valid claim for benefits after the termination of his or her last preceding benefit year. Any claim for benefits made in accordance with section 48-629 shall be deemed to be a valid claim for the purpose of this subdivision if the individual has been paid the wages for insured work required under section 48-627. For the purposes of this subdivision a week with respect to which an individual files a valid claim shall be deemed to be in, within, or during that benefit year which includes the greater part of such week;

(4) Calendar quarter shall mean the period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31, or the equivalent thereof as the Commissioner of Labor may by rule and regulation prescribe;

(5) Combined tax shall mean the employer liability consisting of contributions and commencing January 1, 1996, the state unemployment insurance tax;

(6) Combined tax rate shall mean the rate which is applied to wages to determine the combined taxes due;

(7) Commissioner shall mean the Commissioner of Labor;

~~(6)~~ (8) Contribution rate shall mean the percentage of the combined tax rate used to determine the contribution portion of the combined tax;

(9) Contributions shall mean the money payments to that portion of the combined tax based upon the contribution rate portion of the combined tax rate which is deposited in the state Unemployment Compensation Fund as required by sections 48-648 and 48-649;

~~(7)~~ (10) Department shall mean the Department of Labor;

~~(8)~~ (11) Employee leasing company shall mean an independently established business entity which engages in the business of providing leased

employees to a client-lessee. Client-lessee shall mean any other employer, individual, organization, partnership, limited liability company, corporation, or other legal entity;

~~(9)~~ (12) Employment office shall mean a free public employment office or branch thereof, operated by this state or maintained as a part of a state-controlled system of public employment offices, including public employment offices operated by an agency of a foreign government;

~~(10)~~ (13) Fund shall mean the Unemployment Compensation Fund established by section 48-617 to which all contributions and payments in lieu of contributions required and from which all benefits provided shall be paid;

~~(11)~~ (14) Hospital shall mean an institution which has been licensed, certified, or approved by the Department of Health as a hospital;

~~(12)~~ (15) Institution of higher education shall mean an institution which: (a) Admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of such a certificate; (b) is legally authorized in this state to provide a program of education beyond high school; (c) provides an educational program for which it awards a bachelor's degree or higher or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and (d) is a public or other nonprofit institution; notwithstanding any of the foregoing provisions of this subdivision, all colleges and universities in this state are institutions of higher education for purposes of this section;

~~(13)~~ (16) Insured work shall mean employment for employers;

~~(14)~~ (17) Payments in lieu of contributions shall mean the money payments to the Unemployment Compensation Fund required by sections 48-649, 48-652, 48-660.01, and 48-661;

~~(15)~~ (18) State includes, in addition to the states of the United States of America, any dependency of the United States, the Commonwealth of Puerto Rico, the Virgin Islands, and the District of Columbia;

(19) State unemployment insurance tax shall mean that portion of the combined tax commencing January 1, 1996, which is based upon the state unemployment insurance tax rate portion of the combined tax rate and which is deposited in the State Unemployment Insurance Trust Fund as required by sections 48-648 and 48-649;

(20) State unemployment insurance tax rate shall mean the percentage of the combined tax rate used to determine the state unemployment insurance tax portion of the combined tax;

(21) Unemployment Trust Fund shall mean the trust fund in the Treasury of the United States of America established under section 904 of the Social Security Act which receives credit from the state Unemployment Compensation Fund;

~~(16)~~ (22) Wages, except with respect to services performed in employment as provided in subdivisions (4)(c) and (d) of section 48-604, shall mean all remuneration for personal services, including commissions and bonuses and the cash value of all remunerations in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rules and regulations prescribed by the commissioner. After December 31, 1985, wages shall include tips which are received while performing services which constitute employment and which are included in a written statement furnished to the employer pursuant to section 6053(a) of the Internal Revenue Code of 1954, as amended. With respect to services performed in employment in agricultural labor as is provided in subdivision (4)(c) of section 48-604 or in domestic service as is provided in subdivision (4)(d) of section 48-604, wages shall mean cash remuneration for such services, except that as used in sections 48-648 and 48-649 only, prior to January 1, 1978, the term wages shall not include that part of the remuneration which, after remuneration equal to four thousand two hundred dollars, subsequent to December 31, 1977, after remuneration equal to six thousand dollars, and subsequent to December 31, 1982, after remuneration equal to seven thousand dollars has been paid to an individual by an employer or by the predecessor of such employer with respect to employment within this or any other state during any calendar year, is paid to such individual by such employer during such calendar year, unless that part of the remuneration is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund.

The term wages shall not include:

(a) The amount of any payment, including any amount paid by an employer for insurance or annuities or into a fund to provide for such payment, made to, or on behalf of, an individual in employment or any of his

or her dependents under a plan or system established by an employer which makes provision for such individuals generally or for a class or classes of such individuals, including any amount paid by an employer for insurance or annuities or into a fund to provide for any such payment, on account of (i) sickness or accident disability, except, in the case of payments made to an employee or any of his or her dependents, this subdivision (i) ~~(16)(a)(i) of this section~~ shall exclude from wages only payments which are received under a workers' compensation law, (ii) medical and hospitalization expenses in connection with sickness or accident disability, or (iii) death;

(b) ~~the~~ The payment by an employer, without deduction from the remuneration of the employee, of the tax imposed upon an employee under section 3101 of the Internal Revenue Code of 1954, as amended;

(c) ~~any~~ Any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an individual after the expiration of six calendar months following the last calendar month in which such individual worked for such employer;

(d) ~~any~~ Any payment made to, or on behalf of, an individual or his or her beneficiary (i) from or to a trust described in section 401(a) of the Internal Revenue Code of 1954 which is exempt from tax under section 501(a) of the Internal Revenue Code of 1954 at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust or (ii) under or to an annuity plan which, at the time of such payment, meets the requirements of section 401 of the Internal Revenue Code of 1954;

(e) ~~any~~ Any payment made to, or on behalf of, an employee or his or her beneficiary- (i) ~~Under~~ under a simplified employee pension as defined by the commissioner, ~~or~~ (ii) under or to an annuity contract as defined by the commissioner, other than a payment for the purchase of such contract which is made by reason of a salary reduction agreement, whether evidenced by a written instrument or otherwise, ~~or~~ (iii) under or to an exempt governmental deferred compensation plan as defined by the commissioner, ~~or~~ (iv) to supplement pension benefits under a plan or trust, as defined by the commissioner, to take into account some portion or all of the increase in the cost of living since retirement, but only if such supplemental payments are under a plan which is treated as a welfare plan, ~~or~~ (v) under a cafeteria benefits plan; and

(f) ~~remuneration~~ Remuneration paid in any medium other than cash to an individual for service not in the course of the employer's trade or business;

(17) (23) Week shall mean such period of seven consecutive days as the commissioner may by rule and regulation prescribe; and

(18) (24) Week of unemployment with respect to any individual shall mean any week during which he or she performs less than full-time work and the wages payable to him or her with respect to such week are less than his or her weekly benefit amount.

Sec. 3. That section 48-604, Revised Statutes Supplement, 1993, be amended to read as follows:

48-604. As used in the Employment Security Law, unless the context otherwise requires, employment shall mean:

(1) Any service performed after June 30, 1941, including service in interstate commerce, for wages or under any contract of hire, written or oral, express or implied;

(2) The term employment shall include an individual's entire service, performed within or both within and without this state if (a) the service is localized in this state, (b) the service is not localized in any state but some of the service is performed in this state and the base of operations or, if there is no base of operations, then the place from which such service is directed or controlled is in this state or the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed but the individual's residence is in this state, (c) the service shall be deemed to be localized within a state if ~~(1)~~ (i) the service is performed entirely within such state, or ~~(2)~~ (ii) the service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, ~~or~~ for example, is temporary or transitory in nature or consists of isolated transactions;

(3) Services performed outside the state and services performed outside the United States as follows:

(a) Services not covered under subdivision (2) of this section and performed entirely without this state, with respect to no part of which contributions are required under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject

to the Employment Security Law if the Commissioner of Labor Commissioner approves the election of the employer, for whom such services are performed, that the entire service of such individual shall be deemed to be employment subject to such law;

(b) Services of an individual wherever performed within the United States or Canada, if ~~(1)~~ (i) such service is not covered under the employment compensation law of any other state or Canada, and ~~(2)~~ (ii) the place from which the service is directed or controlled is in this state;

(c)(i) Services of an individual who is a citizen of the United States, performed outside the United States except in Canada in the employ of an American employer, other than service which is deemed employment under subsections subdivisions (2) and (3)(a) and (b) of this section or the parallel provisions of another state's law, if: ~~(1)~~

(A) The employer's principal place of business in the United States is located in this state; or ~~(2)~~ the

(B) The employer has no place of business in the United States, but the employer is an individual who is a resident of this state; or the employer is a corporation or limited liability company which is organized under the laws of this state; or the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any other state; or ~~(3)~~ none

(C) None of the criteria of subdivisions ~~(1)~~ and ~~(2)~~ (A) and (B) of this subdivision ~~is~~ are met, but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits based on such service under the laws of this state.

(ii) ~~(1)~~ ~~(2)~~ an American employer, for the purposes of this subsection subdivision, shall mean: ~~(1)~~ (A) An individual who is a resident of the United States; ~~(2)~~ (B) a partnership if two-thirds or more of the partners are residents of the United States; ~~(3)~~ (C) a trust if all the trustees are residents of the United States; or ~~(4)~~ (D) a corporation or limited liability company organized under the laws of the United States or of any state.

(iii) ~~The~~ ~~(5)~~ the term United States for the purpose of this section includes the states, the District of Columbia, the Virgin Islands, and the Commonwealth of Puerto Rico;

(4)(a) Service performed prior to January 1, 1978, which is or was service in employment for this state or any instrumentality thereof immediately prior to September 2, 1977, including service performed after December 31, 1971, in the employ of this state or any of its instrumentalities, or in the employ of this state and one or more other states or their instrumentalities, for a hospital or institution of higher education located in this state; and service performed after December 31, 1977, in the employ of this state or any political subdivision thereof or any instrumentality of any one or more of the foregoing or any instrumentality which is wholly owned by this state and one or more other states or political subdivisions, or any service performed in the employ of any instrumentality of this state or of any political subdivision thereof and one or more other states or political subdivisions if such service is excluded from employment as defined in the Federal Unemployment Tax Act solely by reason of section 3306(c)(7) of that act and is not otherwise excluded under this section;

(b) Service performed after December 31, 1971, by an individual in the employ of a religious, charitable, educational, or other organization, but only if the following conditions are met: ~~(1)~~ (i) The service is excluded from employment as defined in the Federal Unemployment Tax Act solely by reason of section 3306(c)(8) of that act and is not otherwise excluded under this section; and ~~(2)~~ (ii) the organization had four or more individuals in employment for some portion of a day in each of twenty different weeks, whether or not such weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time;

(c)(i) Service performed after December 31, 1977, by an individual in agricultural labor as defined in subdivision (6)(a) of this section when: ~~(1)~~

(A) Such service is performed for a person who during any calendar quarter in either the current or preceding calendar year paid remuneration in cash of twenty thousand dollars or more to individuals employed in agricultural labor, or for some portion of a day in each of twenty different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor ten or more individuals, regardless of whether they were employed at the same moment of time; and

(B) Such ~~(1)~~ such service is not performed in agricultural labor if

performed before January 1, 1984, by an individual who is an alien admitted to the United States to perform service in agricultural labor pursuant to sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act.

(i) ~~For~~ ~~(iii)~~ for the purposes of this subdivision;

(A) ~~Any~~ ~~any~~ individual who is a member of a crew furnished by a crew leader to perform services in agricultural labor for any other person shall be treated as an employee of such crew leader if such crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963; or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or cropdusting equipment, or any other mechanized equipment, which is provided by such crew leader; and if such individual is not an employee of such other person within the meaning of any other provisions of this section; ~~(iv)~~ for the purposes of subdivision ~~(e)~~ of this subdivision, in

(B) In case any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of such crew leader under subdivision ~~(e)~~~~(iii)~~, (A) of this subdivision, such other person and not the crew leader shall be treated as the employer of such individual, and such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader, either on his or her own behalf or on behalf of such other person, for the service in agricultural labor performed for such other person; and ~~(v)~~ for the purposes of subdivision ~~(e)~~ of this subdivision, the

(C) The term crew leader means shall mean an individual who furnishes individuals to perform service in agricultural labor for any other person, pays, either on his or her own behalf or on behalf of such other person, the individuals so furnished by him or her for the service in agricultural labor performed by them, and has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person; and

(d) Service performed after December 31, 1977, by an individual in domestic service in a private home, local college club, or local chapter of a college fraternity or sorority if performed for a person who paid cash remuneration of one thousand dollars or more after December 31, 1977, in the current calendar year or the preceding calendar year to individuals employed in such domestic service in any calendar quarter;

(5) Services performed by an individual for wages shall be deemed to be employment, unless it be is shown to the satisfaction of the commissioner that (a) such individual has been and will continue to be free from control or direction over the performance of such services, both under his or her contract of service and in fact, (b) such service is either outside the usual course of the business for which such service is performed or such service is performed outside of all the places of business of the enterprise for which such service is performed, and (c) such individual is customarily engaged in an independently established trade, occupation, profession, or business. The provisions of this subdivision are not intended to be a codification of the common law and shall be considered complete as written;

(6) The term employment shall not include:

(a) Agricultural labor, except as provided in subdivision (4)(c) of this section, including all services performed;

(i) ~~On~~ ~~(1)~~ on a farm, in the employ of any employer, in connection with cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, fur-bearing animals, and wildlife; ~~(2)~~ ~~in~~

(ii) In the employ of the owner, tenant, or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment or in salvaging timber or clearing land of brush and other debris left by a windstorm, if the major part of such service is performed on a farm; ~~(3)~~ ~~in~~

(iii) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15(g) of the Federal Agricultural Marketing Act, as amended; in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes; ~~(4)~~~~(i)~~ ~~in~~

(iv)(A) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity, ~~but only if such operator produced more than one-half of the~~

commodity with respect to which such service is performed, or (B) ~~(ii)~~ in the employ of a group of operators of farms, or a cooperative organization of which such operators are members, in the performance of service described in subdivision ~~(i)~~ (A) of this subdivision, but only if such operators produced more than one-half of the commodity with respect to which such service is performed. Subdivisions (A) and (B) ~~(iii)~~ subdivisions ~~(i)~~ and ~~(ii)~~ of this subdivision shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or

(V) ~~On~~ ~~(5)~~ on a farm operated for profit if such service is not in the course of the employer's trade or business.

As used in this section, the term farm includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses, or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards;

(b) ~~domestic~~ Domestic service, except as provided in subdivision (4)(d) of this section, in a private home, local college club, or local chapter of a college fraternity or sorority;

(c) ~~service~~ Service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is fifty dollars or more and such service is performed by an individual who is regularly employed by such employer to perform such service and, for the purposes of this subdivision, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if (i) on each of some twenty-four days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business, or (ii) such individual was regularly employed, as determined under subdivision (i) of this subdivision, by such employer in the performance of such service during the preceding calendar quarter;

(d) ~~service~~ Service performed by an individual in the employ of his or her son, daughter, or spouse and service performed by a child under the age of twenty-one in the employ of his or her father or mother;

(e) ~~service~~ Service performed in the employ of the United States Government or an instrumentality of the United States immune under the Constitution of the United States from the contributions imposed by sections 48-648 and 48-649, except that, to the extent that the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation act, all of the Employment Security Law shall be applicable to such instrumentalities and to services performed for such instrumentalities in the same manner, to the same extent, and on the same terms as to all other employers, individuals, and services, except that if this state ~~shall not be~~ is not certified for any year by the Secretary of Labor of the United States under section 3304 of the Internal Revenue Code of 1954, the payments required of such instrumentalities with respect to such year shall be refunded by the commissioner from the fund in the same manner and within the same period as is provided in section 48-660, with respect to contributions erroneously collected;

(f) ~~service~~ Service performed in the employ of this state, or any political subdivision thereof or any instrumentality of any one or more of the foregoing if such services are performed by an individual in the exercise of his or her duties: (i) As an elected official; (ii) as a member of the legislative body or a member of the judiciary of a state or political subdivision thereof; (iii) as a member of the Army National Guard or Air National Guard; (iv) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency; or (v) in a position which, under or pursuant to the state law, is designated a major nontenured policymaking or advisory position, or a policymaking or advisory position, the performance of the duties of which ordinarily does not require more than eight hours per week;

(g) ~~for~~ For the purposes of subdivisions (4)(a) and (4)(b) of this section, service performed:

(i) ~~In~~ ~~(i)~~ in the employ of ~~(i)~~ (A) a church or convention or association of churches or ~~(ii)~~ (B) an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches; ~~(2)~~ by

(ii) By a duly ordained, commissioned, or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the exercise of the duties required by such order; ~~(3)~~ prior

(iii) Prior to January 1, 1978, in the employ of a school which is not an institution of higher education; ~~(4)~~ in

(iv) In a facility conducted for the purpose of carrying out a program of rehabilitation for an individual whose earning capacity is impaired by age or physical or mental deficiency or injury providing remunerative work for the individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market or by an individual receiving such rehabilitation or remunerative work; ~~(5)~~ as

(v) As part of an unemployment work relief or work-training program assisted or provided in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training; or ~~(6)~~ prior

(vi) Prior to January 1, 1978, for a hospital in a state prison or other state correctional institution by an inmate of the prison or correctional institution and after December 31, 1977, by an inmate of a custodial or penal institution;

(h) service Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of Congress;

(i) service Service performed in any calendar quarter in the employ of any organization exempt from income tax under section 501(a) of the Internal Revenue Code of 1954, other than an organization described in section 401(a) of the Internal Revenue Code of 1954, or under section 521 thereof, if the remuneration for such service is less than fifty dollars;

(j) service Service performed in the employ of a school, college, or university, if such service is performed ~~(1)~~ (i) by a student who is enrolled and is regularly attending classes at such school, college, or university or ~~(2)~~ (ii) by the spouse of such student, if such spouse is advised, at the time such spouse commences to perform such service, that ~~(1)~~ (A) the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university and ~~(1)~~ (B) such employment will not be covered by any program of unemployment insurance;

(k) service Service performed as a student nurse in the employ of a hospital or nurses training school by an individual who is enrolled and is regularly attending classes in a nurses training school chartered or approved pursuant to state law; and service performed as an intern in the employ of a hospital by an individual who has completed a four-year course in a medical school chartered or approved pursuant to state law;

(l) service Service performed by an individual as a real estate salesperson, as an insurance agent, or as an insurance solicitor, if all such service performed by such individual is performed for remuneration solely by way of commission;

(m) service Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(n) service Service performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers and magazines are to be sold by him or her at a fixed price, his or her compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him or her, whether or not he or she is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back;

(o) service Service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subdivision shall not apply to service performed in a program established for or on behalf of an employer or a group of employers;

(p) service Service performed in the employ of a hospital, if such service is performed by a patient of the hospital;

(q) service Service performed for a motor carrier, as defined in 49 U.S.C. 10102~~(1)~~ 10102(13) as amended or subdivision subsection (8) of section 75-302 as amended, by a lessor leasing one or more motor vehicles driven by the lessor or one or more drivers provided by the lessor under a lease executed pursuant to 49 C.F.R. 1057 as amended or Article 7 of section 333 Title 291, Chapter 3, as amended, of the rules and regulations of the

Nebraska Public Service Commission with the motor carrier as lessee. This shall not preclude the determination of an employment relationship between the lessor and any personnel provided by the lessor in the conduct of the service performed for the lessee. The existence of such a lease either prior to, on the date of, or after August 26, 1983, shall not preclude a determination of liability as defined by the Employment Security Law after September 1, 1982;

(r) service performed by an individual for a business engaged in compilation of marketing data bases if such service consists only of the processing of data and is performed in the residence of the individual. The performance of such service prior to, on, or after August 26, 1983, shall preclude a determination of liability as defined by the Employment Security Law after January 1, 1983; and

(s) service performed by an individual as a volunteer research subject who is paid on a per study basis for scientific, medical, or drug-related testing for any organization other than one described in section 501(c)(3) of the Internal Revenue Code of 1954, as amended, or any governmental entity;

(7) If the services performed during one-half or more of any pay period by an individual for the person employing him or her constitute employment, all the services of such individual for such period shall be deemed to be employment, but if the services performed during more than one-half of any such pay period by an individual for the person employing him or her do not constitute employment, then none of the services of such individual for such period shall be deemed to be employment. As used in this subdivision, the term pay period means a period, of not more than thirty-one consecutive days, for which a payment of remuneration is ordinarily made to such individual by the person employing him or her. This subdivision shall not be applicable with respect to services performed in a pay period by an individual for the person employing him or her where when any of such service is excepted by subdivision (6)(h) of this section;

(8) Notwithstanding the foregoing exclusions from the definition of employment, services shall be deemed to be in employment if with respect to such services a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act is required to be covered under the Employment Security Law; and

(9) Any extension of the definition of employment by this section to include services heretofore excluded shall not be effective until after December 31, 1977, and section 48-604 as it existed prior to its amendments by Laws 1977, LB 509, shall be applicable to services performed prior to January 1, 1978.

Sec. 4. (1) There is hereby created in the state treasury a special fund to be known as the State Unemployment Insurance Trust Fund. All state unemployment insurance tax collected under sections 48-648 to 48-661, less refunds, shall be paid into the fund. Such money shall be held in trust for the sole and exclusive use of payment of unemployment insurance benefits. Any money in the fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1276, except that interest earned on money in the fund shall be credited to the Nebraska Training and Support Trust Fund at the end of each calendar quarter.

(2) The commissioner shall have authority to determine when and in what amounts withdrawals from the State Unemployment Insurance Trust Fund for payment of benefits are necessary. Amounts withdrawn for payment of benefits shall be immediately forwarded to the Secretary of the Treasury of the United States of America to the credit of the state's account in the Unemployment Trust Fund, provisions of law in this state relating to the deposit, administration, release, or disbursement of money in the possession or custody of this state to the contrary notwithstanding.

(3) If and when the state unemployment insurance tax ceases to exist as determined by the Governor in consultation with the state advisory council, all money then in the State Unemployment Insurance Trust Fund less accrued interest shall be immediately transferred to the credit of the state's account in the Unemployment Trust Fund, provisions of law in this state relating to the deposit, administration, release, or disbursement of money in the possession or custody of this state to the contrary notwithstanding. The determination to eliminate the state unemployment insurance tax shall be based on the solvency of the state's account in the Unemployment Trust Fund and the need for training of Nebraska workers. Accrued interest in the State Unemployment Insurance Trust Fund shall be credited to the Nebraska Training and Support Trust Fund.

Sec. 5. (1) There is hereby created in the state treasury a special

fund to be known as the Nebraska Training and Support Trust Fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1276. All money deposited or paid into the fund is hereby appropriated and made available to the commissioner. No expenditures shall be made from the fund without the written authorization of the Governor upon the recommendation of the commissioner. Any interest earned on money in the State Unemployment Insurance Trust Fund shall be deposited in the Nebraska Training and Support Trust Fund.

(2) Money in the Nebraska Training and Support Trust Fund shall be used for (a) administrative costs of establishing, assessing, collecting, and maintaining state unemployment insurance tax liability and payments, (b) administrative costs of creating, maintaining, and dissolving the State Unemployment Insurance Trust Fund and the Nebraska Training and Support Trust Fund, (c) support of public and private job training programs designed to train, retrain, or upgrade work skills of existing Nebraska workers, and (d) payment of unemployment insurance benefits if solvency of the state's account in the Unemployment Trust Fund and of the State Unemployment Insurance Trust Fund so require.

(3) There is hereby created within the Nebraska Training and Support Trust Fund a separate account to be known as the Administrative Costs Reserve Account. Money shall be allocated from the Nebraska Training and Support Trust Fund to the Administrative Costs Reserve Account in amounts sufficient to pay the anticipated administrative costs identified in subdivisions (2)(a) and (b) of this section. The administrative costs determined to be applicable to creation and operation of the State Unemployment Insurance Trust Fund and the Nebraska Training and Support Trust Fund shall be paid out of the Administrative Costs Reserve Account.

Sec. 6. (1) There is hereby created as of January 1, 1996, the Nebraska Worker Training Board consisting of seven members appointed and serving for terms determined by the Governor as follows:

(a) A member of the state advisory council created in section 48-610 who is a representative of employers in Nebraska;

(b) A member of the council who is a representative of employees in Nebraska;

(c) A member of the council who is a representative of the public;

(d) The Commissioner of Labor or a designee;

(e) The Director of Economic Development or a designee;

(f) The Commissioner of Education or a designee; and

(g) The chairperson of the governing board of the Nebraska Community College Association or a designee.

(2) Beginning July 1, 1996, and annually thereafter, the Governor shall appoint a chairperson for the board. The chairperson shall be either the representative of the employers, the representative of the employees, or the representative of the public.

(3) Beginning July 1, 1996, and annually thereafter the board shall prepare an annual program plan for the upcoming fiscal year containing guidelines for the program financed by the Nebraska Training and Support Trust Fund. The guidelines shall include, but not be limited to, guidelines for certifying training providers, criteria for evaluating requests for the use of money under section 5 of this act, and guidelines for requiring employers to provide matching funds.

(4) Beginning September 1, 1997, and annually thereafter, the board shall provide a report to the Governor covering the activities of the program financed by the Nebraska Training and Support Trust Fund for the previous fiscal year. The report shall contain an assessment of the effectiveness of the program and its administration.

Sec. 7. That section 48-648, Revised Statutes Supplement, 1992, be amended to read as follows:

48-648. (1) Contributions Combined tax shall accrue and become payable by each employer not otherwise entitled to make payments in lieu of contributions for each calendar year in which he or she is subject to the Employment Security Law, with respect to wages for employment. Such contributions combined tax shall become due and be paid by each employer to the commissioner for the fund State Unemployment Insurance Trust Fund and the Unemployment Trust Fund in such manner and at such times as the commissioner may, by rule and regulation, prescribe, and shall not be deducted, in whole or in part, from the wages of individuals in such employer's employ. In the payment of any contributions combined tax, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

(2) If two or more related corporations concurrently employ the same individual and compensate such individual through a common paymaster which is

one of such corporations, each such corporation shall be considered to have paid as remuneration to such individual only the amounts actually disbursed by it to such individual and shall not be considered to have paid as remuneration to such individual amounts actually disbursed to such individual by another of such corporations.

(3) An employee leasing company which places employees of a client-lessee on its payroll and leases such employees to the client-lessee on an ongoing basis for a fee shall be liable for contributions the combined tax on wages paid by the employee leasing company to employees performing services for client-lessees at the contribution combined tax rate for the employee leasing company. An employee leasing company shall comply with this section and section 48-649 and shall maintain separate records and submit separate quarterly contribution combined tax and quarterly wage reports for each client-lessee. The contributions combined tax and reports shall be made under the tax identification number of the employee leasing company. If any agreement between an employee leasing company and a client-lessee is terminated or if an employee leasing company fails to pay a contribution combined tax or submit a report, the client-lessee shall be liable for all contributions combined tax on the leased employees and shall be treated as a new employer without a previous employment record unless the client-lessee is eligible for a rate computation. Each employee leasing company shall maintain a list of its client-lessees and employees who have been assigned to work for each client-lessee. The list shall include the social security number of each employee. A copy of the list shall be provided to the department by June 30 and December 31. The provisions of this section shall not apply to any employment agency which only provides employees on a temporary basis if the employment agency is liable for the payment of contributions on wages paid to such employees.

Sec. 8. That section 48-649, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-649. The commissioner shall, for each calendar year, determine the contribution combined tax rate applicable to each employer on the basis of his or her actual experience in the payment of contributions and with respect to benefits charged against his or her separate experience account, in accordance with the following requirements:

(1) Commencing January 1, 1996, the commissioner shall, in April or May, for each calendar year, and based upon information available through the department, determine the state unemployment insurance tax rate for the following year. The state unemployment insurance tax rate shall be zero percent if:

(a) The minimum reserve ratio for the lowest combined tax rate exceeds ten and five-tenths percent for the current year;

(b) The average balance in the State Unemployment Insurance Trust Fund at the end of any three months in the preceding calendar year is greater than one percent of state taxable wages for the same preceding year;

(c) The balance in the State Unemployment Insurance Trust Fund equals or exceeds thirty percent of the average month end balance of the state's account in the Unemployment Trust Fund for the three lowest calendar months in the preceding year; or

(d) The state advisory council determines that a zero percent state unemployment insurance tax rate is in the best interests of preserving the integrity of the state's account in the Unemployment Trust Fund;

(2) If the state unemployment insurance tax rate is not zero percent as determined in this section, the combined tax rate shall be divided so that eighty percent of the combined tax rate equals the contribution rate and twenty percent of the combined tax rate equals the state unemployment insurance tax rate except for employers who are assigned the five and four-tenths percent combined tax rate. For those employers, the state unemployment insurance tax rate shall equal zero and their combined tax rate shall equal their contribution rate. When the state unemployment insurance tax rate is determined to be zero percent pursuant to subdivision (1) of this section, the contribution rate for all employers shall equal one hundred percent of the combined tax rate;

(3) An employer's contribution rate for calendar years prior to 1985 shall be two and seven-tenths percent of his or her annual payroll and for calendar years beginning 1985 shall be three and five-tenths percent of his or her annual payroll and for calendar years beginning 1996 an employer's combined tax rate shall be three and five-tenths percent of his or her annual payroll unless and until (a) benefits have been payable from and chargeable to his or her experience account throughout the preceding one calendar year, and (b) contributions have been payable to the fund and credited to his or her experience account with respect to the two preceding calendar years. Subject

to fair and reasonable rules and regulations of the commissioner issued with due regard for the solvency of the fund, the ~~contribution combined tax~~ rate required of each employer who meets the requirements of subdivisions (a) and (b) of this subdivision shall be based directly on his or her contributions to and benefit experience of his or her experience account and shall be determined by the commissioner for each calendar year at its beginning. Such rate for calendar years prior to 1985 shall not be greater than two and seven-tenths percent of his or her annual payroll and for calendar years beginning 1985 shall not be greater than three and five-tenths percent of his or her annual payroll if his or her experience account exhibits a positive balance as of the beginning of such calendar year, but for any employer who has been subject to the payment of contributions for the two preceding calendar years and whose experience account exhibits a negative balance as of the beginning of such calendar year, the rate for calendar years prior to 1985 shall be three and seven-tenths percent of his or her annual payroll and for calendar years beginning 1985 shall be greater than three and five-tenths percent of his or her annual payroll but not greater than five and four-tenths percent of his or her annual payroll until such time as the experience account exhibits a positive balance, and thereafter the rate for calendar years prior to 1985 shall not be greater than two and seven-tenths percent of his or her annual payroll and for calendar years beginning 1985 shall not be greater than three and five-tenths percent of his or her annual payroll. For calendar years beginning 1985, the standard rate shall be five and four-tenths percent of the employer's annual payroll. As used in this subdivision, standard rate shall mean the rate from which all reduced rates are calculated;

~~(2) (4) Any employer may at any time make voluntary contributions, additional to the required contributions, to the fund to be credited to his or her account. Voluntary contributions received after March 10 of any year shall not be used in rate calculations for the same calendar year;~~

~~(3) (5) As used in sections 48-648 to 48-654, the term payroll shall mean the total amount of wages during a calendar year, except as otherwise provided in section 48-654, by which contributions were the combined tax was measured; and~~

~~(4)(a) The state or any of its instrumentalities shall not be required to pay contributions on wages paid for services rendered in employment for the state or its instrumentalities prior to January 1, 1978, but the (6)(a) The state or any of its instrumentalities shall make payments in lieu of contributions in an amount equal to the full amount of regular benefits plus one-half of the amount of extended benefits paid during each calendar quarter that is attributable to service in employment of the state or any of its instrumentalities. The commissioner after the end of each calendar quarter shall notify any state instrumentality or other public employer of the amount of regular benefits and one-half the amount of extended benefits paid that are attributable to service in its employment and the instrumentality or public employer so notified shall reimburse the fund within thirty days after receipt of such notice; (b) after December 31, 1977, the state or any of its political subdivisions and any instrumentality of one or more of the foregoing or any other governmental entity for which services in employment as is provided by subdivision (4)(a) of section 48-604, subdivision (4)(a), are performed, shall be required to pay contributions and after December 31, 1996, combined tax on wages paid for services rendered in its or their employment on the same basis as any other employer who is liable for the payment of contributions combined tax under the Employment Security Law, unless the state or any political subdivision thereof and any instrumentality of one or more of the foregoing or any other governmental entity for which such services are performed files with the commissioner its written election not later than January 31, 1978, or if such employer becomes subject to this section after January 1, 1978, not later than thirty days after such subjectivity begins, to become liable to make payments in lieu of contributions in an amount equal to the full amount of regular benefits plus one-half of the amount of extended benefits paid during each calendar quarter that is attributable to service in employment of such electing employer prior to December 31, 1978, and in an amount equal to the full amount of regular benefits plus the full amount of extended benefits paid during each calendar quarter that is attributable to service in employment of such electing employer after January 1, 1979. Eligible employers electing to make payments in lieu of contributions shall not be liable for state unemployment insurance tax payments. The commissioner, after the end of each calendar quarter, shall notify any such employer that has so elected of the amount of benefits for which it is liable to pay pursuant to its election that have been paid that are attributable to service in its employment and the employer so notified shall reimburse the fund within thirty days after receipt of such notice; and (c) any employer~~

which makes an election in accordance with subdivision (b) of this subdivision to become liable for payments in lieu of contributions shall continue to be liable for payments in lieu of contributions for all benefits paid based upon wages paid for service in employment of such employer while such election is effective and such election shall continue until such employer files with the commissioner, not later than December 1 of any calendar year, a written notice terminating its election as of December 31 of that year and thereafter such employer shall again be liable for the payment of contributions and for the reimbursement of such benefits as may be paid based upon wages paid for services in employment of such employer while such election was effective.

Sec. 9. That section 48-650, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-650. The commissioner shall determine the rate of contributions combined tax applicable to each employer pursuant to section 48-649 and may determine, at any time during the year, whether services performed by an individual were employment or for an employer. Any such determination shall become conclusive and binding upon the employer unless, within thirty days after the prompt mailing of notice thereof to his or her last-known address or in the absence of mailing within thirty days after the delivery of such notice, the employer files an application for review and redetermination, setting forth the reasons therefor. If the commissioner grants such review, the employer shall be promptly notified thereof and shall be granted an opportunity for a fair hearing conducted by the commissioner or his or her designee, but no employer shall have standing, in any proceeding involving his or her rate of contributions or contribution combined tax rate or combined tax liability, to contest the chargeability to his or her account of any benefits paid in accordance with a determination, redetermination, or decision pursuant to sections 48-629 to 48-644 except upon the ground that the services on the basis of which such benefits were found to be chargeable did not constitute services performed in employment for him or her and only in the event that he or she was not a party to such determination, redetermination, or decision or to any other proceedings under the Employment Security Law in which the character of such services was determined. A full and complete record shall be kept of all proceedings in connection with such hearing. All testimony at any such hearing shall be recorded but need not be transcribed unless there is a further appeal. The employer shall be promptly notified of the commissioner's denial of his or her application or the commissioner's redetermination, either of which shall become final unless the employer appeals. The appeal shall be in accordance with the Administrative Procedure Act.

Sec. 10. That section 48-651, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-651. The commissioner may provide by rule and regulation for periodic notification to employers of benefits paid and chargeable to their accounts or of the status of such accounts, and for notification to all base period employers of any individual of the establishment of such individual's benefit year, and any such notification, in the absence of an application for redetermination filed in such manner and with such period as the commissioner may prescribe, shall become conclusive and binding upon the employer for all purposes. Such redeterminations, made after notice and opportunity for hearing, and the commissioner's findings of fact in connection therewith, may be introduced in any subsequent administrative or judicial proceedings involving the determination of the rate of contributions combined tax rate of any employer for any calendar year.

Sec. 11. That section 48-652, Revised Statutes Supplement, 1993, be amended to read as follows:

48-652. (1)(a) A separate experience account shall be established for each employer who is liable for payment of contributions. Whenever and wherever in the Employment Security Law the terms reserve account or experience account are used, unless the context clearly indicates otherwise, such terms shall be deemed interchangeable and synonymous and reference to either of such accounts shall refer to and also include the other.

(b) A separate reimbursement account shall be established for each employer who is liable for payments in lieu of contributions. All benefits paid with respect to service in employment for such employer shall be charged to his or her reimbursement account and such employer shall be billed for and shall be liable for the payment of the amount charged when billed by the commissioner. Payments in lieu of contributions received by the commissioner on behalf of each such employer shall be credited to such employer's reimbursement account, and two or more employers who are liable for payments in lieu of contributions may jointly apply to the commissioner for establishment of a group account for the purpose of sharing the cost of

benefits paid that are attributable to service in the employ of such employers. The commissioner shall prescribe such rules and regulations as he or she deems necessary with respect to applications for establishment, maintenance, and termination of group accounts authorized by this subdivision.

(2) All contributions paid by an employer shall be credited to the experience account of such employer. State unemployment insurance tax payments shall not be credited to the experience account of each employer. Partial payments of combined tax shall be credited so that at least eighty percent of the combined tax payment excluding interest and penalty is credited first to contributions due. In addition to such credits contributions credited to the experience account, each employer's account shall be credited as of June 30 of each calendar year with interest at a rate determined by the commissioner based on the average annual interest rate paid by the Secretary of the Treasury of the United States of America upon the account of the Nebraska state's account in the Unemployment Trust Fund for the preceding calendar year multiplied by the balance in his or her experience account at the beginning of such calendar year. ~~Should~~ If the total credits as of such date to all employers' experience accounts be are equal to or greater than ninety percent of the total amount in the Unemployment Compensation Fund, no interest shall be credited for that year to any employer's account. Contributions with respect to prior years which are received on or before January 31 of any year shall be considered as having been paid at the beginning of the calendar year. All voluntary contributions which are received on or before March 10 of any year shall be considered as having been paid at the beginning of the calendar year.

(3)(a) Each experience account shall be charged only for benefits based upon wages paid by such employer. No benefits shall be charged to the experience account of any employer if such benefits were paid on the basis of a period of employment from which the claimant has left work voluntarily without good cause or employment from which he or she has been discharged for misconduct connected with his or her work and concerning which separation the employer has filed timely notice of the facts on which such exemption is claimed in accordance with rules and regulations prescribed by the commissioner, and no benefits shall be charged to the experience account of any employer if such benefits were paid on the basis of wages paid in the base period that are wages for insured work solely by reason of subdivision (e)(2) of section 48-627.

(b) Each reimbursement account shall be charged only for benefits paid that were based upon wages paid by such employer in the base period that were wages for insured work solely by reason of subdivision (e)(1) of section 48-627.

(c) Benefits paid to an eligible individual shall be charged against the account of his or her most recent employers within his or her base period against whose accounts the maximum charges hereunder have not previously been made in the inverse chronological order in which the employment of such individual occurred. The maximum amount so charged against the account of any employer, other than an employer for which services in employment as provided in subdivision (4)(a) of section 48-604 are performed, shall not exceed the total benefit amount to which such individual was entitled as set out in section 48-626 with respect to base period wages of such individual paid by such employer plus one-half the amount of extended benefits paid to such eligible individual with respect to base period wages of such individual paid by such employer. The commissioner shall by rules and regulations prescribe the manner in which benefits shall be charged against the account of several employers for whom an individual performed employment during the same quarter or during the same base period. Any benefit check duly issued and delivered or mailed to a claimant and not presented for payment within one year from the date of its issue may be invalidated and the amount thereof credited to the Unemployment Compensation Fund, except that a substitute check may be issued and charged to the fund on proper showing at any time within the year next following. Any charge made to an employer's account for any such invalidated check shall stand as originally made.

(4)(a) An employer's experience account shall be deemed to be terminated one calendar year after such employer has ceased to be subject to the Employment Security Law, except that if the commissioner finds that an employer's business is closed solely because of the entrance of one or more of the owners, officers, partners, or members or the majority stockholder into the armed forces of the United States, or of any of its allies, after July 1, 1950, such employer's account shall not be terminated and, if the business is resumed within two years after the discharge or release from active duty in the armed forces of such person or persons, the employer's experience account shall be deemed to have been continuous throughout such period.

(b) An experience account terminated pursuant to this subsection shall be reinstated if (i) the employer becomes subject again to the Employment Security Law within one calendar year after termination of such experience account and the employer makes a written application for reinstatement of such experience account to the commissioner within two calendar years after termination of such experience account and (ii) the commissioner finds that the employer is operating substantially the same business as prior to the termination of such experience account.

(5) All money in the Unemployment Compensation Fund shall be kept mingled and undivided. The payment of benefits to an individual shall in no case be denied or withheld because the experience account of any employer does not have a total of contributions paid in excess of benefits charged to such experience account.

(6) A contributory or reimbursable employer shall be relieved of charges if the employer was previously charged for wages and the same wages are being used a second time to establish a new claim as a result of the October 1, 1988, change in the base period.

Sec. 12. That section 48-655, Revised Statutes Supplement, 1993, be amended to read as follows:

48-655. Contributions Combined taxes or payments in lieu of contributions unpaid on the date on which they are due and payable, as prescribed by the commissioner, shall bear interest at the rate of one and one-half percent per month from such date until payment, plus accrued interest, is received by the commissioner, except that no interest shall be charged subsequent to the date of the erroneous payment of an amount equal to the amount of the delayed payment into the Unemployment Trust Fund unemployment trust fund of another state or to the federal government. Interest collected pursuant to this section shall be paid in accordance with subdivision (b) of section 48-621. If, after due notice, any employer defaults in any payment of contributions combined taxes or payments in lieu of contributions or interest thereon, the amount due may be collected (1) by civil action in the name of the commissioner and the employer adjudged in default shall pay the costs of such action or (2) by setoff against any state income tax refund due the employer pursuant to sections 77-27,197 to 77-27,209. Civil actions brought under this section to collect contributions combined taxes or interest thereon or payments in lieu of contributions or interest thereon from an employer shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under section 48-638.

Sec. 13. That section 48-655.02, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-655.02. The courts of this state shall in the manner provided in sections 48-655 to 48-655.02 entertain actions to collect contributions combined taxes or interest thereon for which liability has accrued under the employment security law of any other state or of the federal government.

Sec. 14. That section 48-656, Revised Statutes Supplement, 1992, be amended to read as follows:

48-656. (1) If any employer fails to file a report or return required by the commissioner for the determination of contributions combined taxes, the commissioner may make such reports or returns or cause them to be made and determine the contributions combined taxes payable, on the basis of such information as he or she may be able to obtain, and shall collect the contributions combined taxes as determined together with any interest thereon due under section 48-655. The commissioner shall immediately notify the employer of the assessment, in writing, by registered or certified mail, in the usual course, and such assessment shall be final unless the employer protests such assessment within fifteen days after the mailing of the notice. If the employer protests such assessment, the employer shall have an opportunity to be heard by the commissioner upon written request therefor. After the hearing the commissioner shall immediately notify the employer in writing of his or her finding, and the assessment, if any, shall be final upon issuance of such notice.

(2) Beginning with the first calendar quarter of 1990, any employer or any officer or agent of an employer who fails to file a required quarterly contribution combined tax report and wage schedule by the tenth day of the second month following the end of the calendar quarter shall pay a penalty to the commissioner of one-tenth of one percent of the total wages paid during the quarter, except that the penalty shall not be less than twenty-five nor more than two hundred dollars. For good cause shown, the commissioner may waive the penalty in accordance with rules and regulations adopted and promulgated by the commissioner. The commissioner shall remit any penalty

collected to the State Treasurer who shall credit it to the pool account of the Employment Security Special Contingent Fund.

Sec. 15. That section 48-657, Revised Statutes Supplement, 1993, be amended to read as follows:

48-657. (1) If any employer defaults in any payment of contributions combined tax or interest, the commissioner may make in any manner feasible and cause to be recorded as a secured transaction as provided in article 9, Uniform Commercial Code, and in the real estate mortgage records of any county in which such employer is engaged in business or owns real or personal property, a statement, under oath, showing the amount of contributions combined tax and interest in default, which statement, when filed for record, shall operate as a lien and mortgage on all of the real and personal property of the employer, subject only to the liens of prior record, and the property of such employer shall be subject to seizure and sale for the payment of such contributions combined taxes and interest. Such lien on personal property may be enforced or dissolved in the manner provided by article 9, Uniform Commercial Code, and such liens on real estate may be enforced or dissolved in the manner provided by Chapter 25, article 21, in the enforcing and dissolving of real estate mortgages.

(2) It shall be the duty of the State of Nebraska, or any department or agency thereof, county boards, the contracting board of all cities, villages, and school districts, all public boards empowered by law to enter into a contract by public bidding for the erecting and finishing or the repairing of any public building, bridge, highway, or other public structure or improvement, and any officer or officers so empowered by law to enter into such contract to provide in such contract that the person, persons, firm, or corporation to whom the contract is awarded will pay to the Unemployment Compensation Fund of the State of Nebraska and the State Unemployment Insurance Trust Fund unemployment contributions combined tax and interest due under the Employment Security Law on wages paid to individuals employed in the performance of such contract.

(3) No contract, referred to in subsection (2) of this section, shall be entered into by the State of Nebraska, a department or agency thereof, an officer or officers, or a board referred to in such subsection (2) of this section unless the contract contains the proviso mentioned in such subsection, (2) of this section.

(4) Before final payment may be made on the final three percent of any such contract awarded on or after June 1, 1957, the State of Nebraska, department or agency thereof, officer or officers, or board awarding the contract must have received from the contractor a written clearance from the commissioner certifying that all payments then due of contributions combined tax or interest which may have arisen under such contract have been made by the contractor or his or her subcontractor to the Unemployment Compensation Fund.

(5) The final three percent of any such contract referred to in subsection (4) of this section may be paid if the contractor has supplied a bond with a satisfactory surety company guaranteeing full payment to the Unemployment Compensation Fund and the State Unemployment Insurance Trust Fund of all contributions combined tax and interest due under the Employment Security Law.

Sec. 16. That section 48-658, Revised Statutes Supplement, 1993, be amended to read as follows:

48-658. Any person, group of individuals, partnership, limited liability company, corporation, or employer which acquires the organization, trade, or business or substantially all the assets thereof of an employer shall notify the commissioner thereof in writing by registered or certified mail not later than five days prior to the acquisition. Unless such notice is given such acquisition shall be void as against the commissioner if, at the time of the acquisition, any contributions are combined tax is due and unpaid by the previous employer. The commissioner shall have the right to proceed against such person, group of individuals, partnership, limited liability company, corporation, or employer and the assets so acquired.

Sec. 17. That section 48-659, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-659. In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this state, including dissolution, reorganization, administration of estates of decedents, receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceeding, any claims for contributions combined tax and interest thereon due or accrued under the Employment Security Law which have not been reduced to a lien in accordance with section 48-657 shall receive the priority of a tax.

Sec. 18. That section 48-660, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-660. If more than the correct amounts of contributions combined tax or interest are collected, then, under rules and regulations made under section 48-607, proper adjustments with respect thereto shall be made, without interest, in connection with subsequent contributions combined tax. If such adjustment cannot be made within a reasonable time, the commissioner shall refund the excess from the appropriate fund. Applications for adjustments or refunds shall be made within four years after the date of such overcollection.

Sec. 19. That section 48-660.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-660.01. (1) Benefits paid to employees of nonprofit organizations shall be financed in accordance with this section. For the purpose of this section, a nonprofit organization is an organization, or group of organizations, described in subsection subdivision (9) of section 48-603.

~~(1)~~ (2)(a) Any nonprofit organization which is, or becomes, subject to the Employment Security Law on or after January 1, 1972, shall pay contributions under sections 48-648 to 48-661 and after December 31, 1995, shall pay combined tax under such sections unless it elects, in accordance with this subdivision, to pay to the commissioner for the unemployment fund an amount, equal to the amount of regular benefits and of one-half of the extended benefits paid, that is attributable to service in the employ of such nonprofit organization, to individuals for weeks of unemployment which begin during the effective period of such election.

~~(a)~~ (b) Any nonprofit organization which is, or becomes, subject to the Employment Security Law on January 1, 1972, may elect to become liable for payments in lieu of contributions for a period of not less than one taxable year beginning with January 1, 1972, if it files with the commissioner a written notice of its election within the thirty-day period immediately following such date or within a like period immediately following the date of enactment of this subdivision, whichever occurs later. Any eligible employer electing to become liable for payments in lieu of contributions shall not be liable for state unemployment insurance tax.

~~(b)~~ (c) Any nonprofit organization which becomes subject to the Employment Security Law after January 1, 1972, may elect to become liable for payments in lieu of contributions for a period of not less than twelve months beginning with the date on which such subjectivity begins by filing a written notice of its election with the commissioner not later than thirty days immediately following the date of the determination of such subjectivity.

~~(c)~~ (d) Any nonprofit organization which makes an election in accordance with subdivision ~~(a)~~ or (b) or (c) of this subsection shall continue to be liable for payments in lieu of contributions until it files with the commissioner a written notice terminating its election not later than thirty days prior to the beginning of the taxable year for which such termination shall first be effective.

~~(d)~~ (e) Any nonprofit organization which has been paying contributions or combined tax under the Employment Security Law for a period subsequent to January 1, 1972, may change to a reimbursable basis by filing with the commissioner not later than thirty days prior to the beginning of any taxable year a written notice of election to become liable for payments in lieu of contributions. Such election shall not be terminable by the organization for that and the next year.

~~(e)~~ (f) The commissioner may for good cause extend the period within which a notice of election, or a notice of termination, must be filed and may permit an election to be retroactive but not any earlier than with respect to benefits paid after December 31, 1969.

~~(f)~~ (g) The commissioner, in accordance with such rules and regulations as he or she may adopt and promulgate, shall notify each nonprofit organization of any determination which he or she may make of its status as an employer and of the effective date of any election which it makes and of any termination of such election. Such determinations shall be subject to redetermination and appeal, and the appeal shall be in accordance with the Administrative Procedure Act.

~~(2)~~ (3) Payments in lieu of contributions shall be made in accordance with this subsection as follows:

(a) At the end of each calendar quarter, or at the end of any other period as determined by the commissioner, the commissioner shall bill each nonprofit organization, or group of such organizations, which has elected to make payment in lieu of contributions for an amount equal to the full amount of regular benefits plus one-half of the amount of extended benefits paid during such quarter or other prescribed period that is attributable to service in the employ of such organization;

(b) Payment of any bill rendered under subdivision (a) of this ~~subdivision subsection~~ shall be made not later than thirty days after such bill was mailed to the last-known address of the nonprofit organization or was otherwise delivered to it unless there has been an application for review and redetermination in accordance with subdivision (d) of this ~~subdivision subsection~~;

(c) Payments made by any nonprofit organization under this ~~subdivision subsection~~ shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the organization;

(d) The amount due specified in any bill from the commissioner shall be conclusive on the organization unless, not later than thirty days after the bill was mailed to its last-known address or otherwise delivered to it, the organization files an application for redetermination by the commissioner setting forth the grounds for such application. The commissioner shall promptly review and reconsider the amount due specified in the bill and shall thereafter issue a redetermination in any case in which such application for redetermination has been filed. Any such redetermination shall be conclusive on the organization unless the organization appeals the redetermination, and the appeal shall be in accordance with the Administrative Procedure Act; and

(e) Past-due payments of amounts in lieu of contributions shall be subject to the same interest that, pursuant to section 48-655, applies to past-due contributions.

~~(3)~~ (4) If any nonprofit organization is delinquent in making payments in lieu of contributions as required under ~~subdivision (2) subsection (3)~~ of this section, the commissioner may terminate such organization's election to make payments in lieu of contributions as of the beginning of the next taxable year, and such termination shall be effective for that and the next taxable year.

~~(4)~~ (5) Each employer that is liable for payments in lieu of contributions shall pay to the commissioner for the fund the amount of regular benefits plus the amount of one-half of extended benefits paid that are attributable to service in the employ of such employer. If benefits paid to an individual are based on wages paid by more than one employer and one or more of such employers are liable for payments in lieu of contributions, the amount payable to the fund by each employer that is liable for such payments shall be determined in accordance with section 48-652.

Sec. 20. That original sections 48-601, 48-649, 48-650, 48-651, 48-655.02, 48-659, 48-660, and 48-660.01, Reissue Revised Statutes of Nebraska, 1943, sections 48-648 and 48-656, Revised Statutes Supplement, 1992, and sections 48-602, 48-604, 48-652, 48-655, 48-657, and 48-658, Revised Statutes Supplement, 1993, are repealed.