

## LEGISLATIVE BILL 727

Approved by the Governor April 11, 2012

Introduced by Cornett, 45.

FOR AN ACT relating to revenue and taxation; to amend sections 9-226, 9-226.01, 9-228, 9-322, 9-322.02, 9-324, 9-418, 9-418.01, 9-420, 9-620, 9-622, 9-623, 9-820, 57-706, 57-1206, 66-486, 66-488, 66-489.02, 66-525, 66-6,110, 66-6,113, 66-721, 66-722, 76-908, 77-377.01, 77-3,116, 77-612, 77-802, 77-1375, 77-1780, 77-2701, 77-2701.04, 77-2701.16, 77-2705.03, 77-2776, 77-2779, 77-27,130, 77-27,135, 77-27,150, 77-27,152, 77-3311, 77-3906, 77-4015, 77-4016, 77-4020, and 77-4312, Reissue Revised Statutes of Nebraska, section 66-1521, Revised Statutes Cumulative Supplement, 2010, and sections 66-712, 66-738, and 77-2704.10, Revised Statutes Supplement, 2011; to change provisions relating to tax filings and notices, motor fuel taxation, sales and use taxes, and a tax study; to define terms; to provide sales tax exemptions relating to youth sports and educational activities and certain fees and admissions; to eliminate a committee; to harmonize provisions; to provide operative dates; to repeal the original sections; to outright repeal section 66-737, Reissue Revised Statutes of Nebraska; and to declare an emergency.

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

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

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

- (1) To issue licenses, temporary licenses, and permits;
- (2) To deny any license or permit application or renewal license application for cause. Cause for denial of an application or renewal of a license shall include instances in which the applicant individually or, in the case of a business entity or a nonprofit organization, any officer, director, employee, or limited liability company member of the applicant, licensee, or permittee, other than an employee whose duties are purely ministerial in nature, any other person or entity directly or indirectly associated with such applicant, licensee, or permittee which directly or indirectly receives compensation other than distributions from a bona fide retirement or pension plan established pursuant to Chapter 1, subchapter D of the Internal Revenue Code from such applicant for past or present services in a consulting capacity or otherwise, the licensee, or any person with a substantial interest in the applicant, licensee, or permittee:
  - (a) Violated the provisions, requirements, conditions, limitations, or duties imposed by the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, or the State Lottery Act or any rules or regulations adopted and promulgated pursuant to the acts;
  - (b) Knowingly caused, aided, abetted, or conspired with another to cause any person to violate any of the provisions of such acts or any rules or regulations adopted and promulgated pursuant to such acts;
  - (c) Obtained a license or permit pursuant to such acts by fraud, misrepresentation, or concealment;
  - (d) Was convicted of, forfeited bond upon a charge of, or pleaded guilty or nolo contendere to any offense or crime, whether a felony or misdemeanor, involving any gambling activity or fraud, theft, willful failure to make required payments or reports, or filing false reports with a governmental agency at any level;
  - (e) Was convicted of, forfeited bond upon a charge of, or pleaded guilty or nolo contendere to any felony other than those described in subdivision (d) of this subdivision within the ten years preceding the filing of the application;
  - (f) Denied the department or its authorized representatives, including authorized law enforcement agencies, access to any place where bingo activity required to be licensed or for which a permit is required under the Nebraska Bingo Act is being conducted or failed to produce for inspection or audit any book, record, document, or item required by law, rule, or regulation;
  - (g) Made a misrepresentation of or failed to disclose a material fact to the department;
  - (h) Failed to prove by clear and convincing evidence his, her, or its qualifications to be licensed or granted a permit in accordance with the

Nebraska Bingo Act;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(k) Failed to demonstrate, either individually or, in the case of a business entity or a nonprofit organization, through its managers, employees,

or agents, the ability, experience, or financial responsibility necessary to maintain the activity for which the license was issued; or

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

(4) To issue an order requiring a licensee, permittee, or other person to cease and desist from violations of the Nebraska Bingo Act or any rules and regulations adopted and promulgated pursuant to such act. The order shall give reasonable notice of the rights of the licensee, permittee, or other person to request a hearing and shall state the reason for the entry of the order. The notice of order to cease and desist shall be mailed ~~by certified mail~~ to or personally served upon the licensee, permittee, or other person. If the notice of order is mailed ~~by certified mail~~, the date the notice is mailed shall be deemed to be the date of service of notice to the licensee, permittee, or other person. A request for a hearing by the licensee, permittee, or other person shall be in writing and shall be filed with the department within thirty days after the service of the cease and desist order. If a request for hearing is not filed within the thirty-day period, the cease and desist order shall become permanent at the expiration of such period. A hearing shall be held not later than thirty days after the request for the hearing is received by the Tax Commissioner, and within twenty days after the date of the hearing, the Tax Commissioner shall issue an order vacating the cease and desist order or making it permanent as the facts require. All hearings shall be held in accordance with the rules and regulations adopted and promulgated by the department. If the licensee, permittee, or other person to whom a cease and desist order is issued fails to appear at the hearing after being duly notified, the licensee, permittee, or other person shall be deemed in default and the proceeding may be determined against the licensee, permittee, or other person upon consideration of the cease and desist order, the allegations of which may be deemed to be true;

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

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

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

(8) To examine or to cause to have examined, by any agent or representative designated by the department for such purpose, any books, papers, records, or memoranda relating to bingo activities of any licensee or permittee, to require by administrative order or summons the production of such documents or the attendance of any person having knowledge in the premises, to take testimony under oath, and to acquire proof material for its information. If any such person willfully refuses to make documents available for examination by the department or its agent or representative or willfully fails to attend and testify, the department may apply to a judge of the district court of the county in which such person resides for an order directing such person to comply with the department's request. If any documents requested by the department are in the custody of a corporation,

the court order may be directed to any principal officer of the corporation. If the documents requested by the department are in the custody of a limited liability company, the court order may be directed to any member when management is reserved to the members or otherwise to any manager. Any person who fails or refuses to obey such a court order shall be guilty of contempt of court;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) To issue licenses and temporary licenses;

(2) To deny any license application or renewal application for cause. Cause for denial of an application for or renewal of a license shall include instances in which the applicant individually or, in the case of a business entity or a nonprofit organization, any officer, director, employee, or limited liability company member of the applicant or licensee, other than an employee whose duties are purely ministerial in nature, any other person or entity directly or indirectly associated with such applicant or licensee which directly or indirectly receives compensation other than distributions from a bona fide retirement or pension plan established pursuant to Chapter 1,

subchapter D of the Internal Revenue Code, from such applicant or licensee for past or present services in a consulting capacity or otherwise, the licensee, or any person with a substantial interest in the applicant or licensee:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

the act;

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

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

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

(f) Denied the department or its authorized representatives, including authorized law enforcement agencies, access to any place where pickle card activity required to be licensed under the act is being conducted or failed to produce for inspection or audit any book, record, document, or item required by law, rule, or regulation;

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

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

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

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

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

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

(4) To issue an order requiring a licensee or other person to cease and desist from violations of the Nebraska Pickle Card Lottery Act or any rules or regulations adopted and promulgated pursuant to such act. The order shall give reasonable notice of the rights of the licensee or other person to request a hearing and shall state the reason for the entry of the order. The notice of order shall be mailed by certified mail to or personally served upon the licensee or other person. If the notice of order is mailed, by certified mail, the date the notice is mailed shall be deemed to be the date of service of notice to the licensee or other person. A request for a hearing by the licensee or other person shall be in writing and shall be filed with the department within thirty days after the service of the cease and desist order. If a request for hearing is not filed within the thirty-day period, the cease and desist order shall become permanent at the expiration of such period. A hearing shall be held not later than thirty days after the request for the hearing is received by the Tax Commissioner, and within twenty days after the date of the hearing, the Tax Commissioner shall issue an order vacating the cease and desist order or making it permanent as the facts require. All hearings shall be held in accordance with the rules and regulations adopted and promulgated by the department. If the licensee or other person to whom a cease and desist order is issued fails to appear at the hearing after being duly notified, the licensee or other person shall be deemed in default and the proceeding may be determined against the licensee or other person upon consideration of the cease and desist order, the allegations of which may be deemed to be true;

(5) To levy an administrative fine on an individual, partnership, limited liability company, corporation, or organization for cause. For purposes of this subdivision, cause shall include instances in which the individual, partnership, limited liability company, corporation, or organization violated the provisions, requirements, conditions, limitations, or duties imposed by the act or any rule or regulation adopted and promulgated pursuant to the act. In determining whether to levy an administrative fine and the amount of the fine if any fine is levied, the department shall take into consideration the seriousness of the violation, the intent of the violator, whether the violator voluntarily reported the violation, whether the violator derived financial gain as a result of the violation and the extent thereof,

and whether the violator has had previous violations of the act, rules, or regulations. A fine levied on a violator under this section shall not exceed one thousand dollars for each violation of the act or any rule or regulation adopted and promulgated pursuant to the act plus the financial benefit derived by the violator as a result of each violation. If an administrative fine is levied, the fine shall not be paid from pickle card lottery gross proceeds of an organization and shall be remitted by the violator to the department within thirty days after the date of the order issued by the department levying such fine;

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

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

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

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

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

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

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

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

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

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

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

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

(2) A request for a hearing by the applicant shall be in writing and shall be filed with the department within thirty days after the service

of notice to the applicant of the department's intended denial of the application. If a request for hearing is not filed within the thirty-day period, the application denial shall become final at the expiration of such period.

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

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

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

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

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

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

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

- (1) To issue licenses, temporary licenses, and permits;
- (2) To deny any license or permit application or renewal application for cause. Cause for denial of an application or renewal of a license or permit shall include instances in which the applicant individually or, in the case of a nonprofit organization, any officer, director, or employee of the applicant, licensee, or permittee, other than an employee whose duties are purely ministerial in nature, any other person or entity directly or indirectly associated with such applicant, licensee, or permittee which directly or indirectly receives compensation other than distributions from a bona fide retirement plan established pursuant to Chapter 1, subchapter D of the Internal Revenue Code from such applicant, licensee, or permittee for past or present services in a consulting capacity or otherwise, the licensee, the permittee, or any person with a substantial interest in the applicant, licensee, or permittee:
  - (a) Violated the provisions, requirements, conditions, limitations, or duties imposed by the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, or the State Lottery Act or any rules or regulations adopted and promulgated pursuant to such acts;
  - (b) Knowingly caused, aided, abetted, or conspired with another to cause any person to violate any of the provisions of such acts or any rules or regulations adopted and promulgated pursuant to such acts;
  - (c) Obtained a license or permit pursuant to the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, or the Nebraska Pickle Card Lottery Act by fraud, misrepresentation, or concealment;
  - (d) Was convicted of, forfeited bond upon a charge of, or pleaded guilty or nolo contendere to any offense or crime, whether a felony or misdemeanor, involving any gambling activity or fraud, theft, willful failure to make required payments or reports, or filing false reports with a governmental agency at any level;
  - (e) Was convicted of, forfeited bond upon a charge of, or pleaded guilty or nolo contendere to any felony other than those described in subdivision (d) of this subdivision within the ten years preceding the filing of the application;
  - (f) Denied the department or its authorized representatives, including authorized law enforcement agencies, access to any place where lottery or raffle activity required to be licensed under the Nebraska Lottery and Raffle Act is being conducted or failed to produce for inspection or audit any book, record, document, or item required by law, rule, or regulation;



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) To issue an order requiring a licensee, permittee, or other person to cease and desist from violations of the Nebraska Lottery and Raffle Act or any rules or regulations adopted and promulgated pursuant to such act. The order shall give reasonable notice of the rights of the licensee, permittee, or other person to request a hearing and shall state the reason for the entry of the order. The notice of order shall be mailed ~~by certified mail~~ to or personally served upon the licensee, permittee, or other person. If the notice of order is mailed ~~by certified mail~~, the date the notice is mailed shall be deemed to be the date of service of notice to the licensee, permittee, or other person. A request for a hearing by the licensee, permittee, or other person shall be in writing and shall be filed with the department within thirty days after the service of the cease and desist order. If a request for hearing is not filed within the thirty-day period, the cease and desist order shall become permanent at the expiration of such period. A hearing shall be held not later than thirty days after the request for the hearing is received by the Tax Commissioner, and within twenty days after the date of the hearing, the Tax Commissioner shall issue an order vacating the cease and desist order or making it permanent as the facts require. All hearings shall be held in accordance with the rules and regulations adopted and promulgated by the department. If the licensee, permittee, or other person to whom a cease and desist order is issued fails to appear at the hearing after being duly notified, the licensee, permittee, or other person shall be deemed in default and the proceeding may be determined against the licensee, permittee, or other person upon consideration of the cease and desist order, the allegations of which may be deemed to be true;

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

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

(7) Unless specifically provided otherwise, to compute, determine,

assess, and collect the amounts required to be paid to the state as taxes imposed by the act in the same manner as provided for sales and use taxes in the Nebraska Revenue Act of 1967;

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) To issue licenses and temporary licenses;

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

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

or any rules or regulations adopted and promulgated pursuant to such acts;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Was convicted of, forfeited bond upon a charge of, or pleaded guilty or nolo contendere to any offense or crime, whether a felony or a misdemeanor, involving any gambling activity or fraud, theft, willful failure to make required payments or reports, or filing false reports with a

governmental agency at any level;

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

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

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

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

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

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

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

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

(4) To issue an order requiring a licensee or other person to cease and desist from violations of the Nebraska County and City Lottery Act or any rules or regulations adopted and promulgated pursuant to the act. The order shall give reasonable notice of the rights of the licensee or other person to request a hearing and shall state the reason for the entry of the order. The notice of order shall be mailed by ~~certified mail~~ to or personally served upon the licensee or other person. If the notice of order is mailed, ~~by certified mail~~, the date the notice is mailed shall be deemed to be the date of service of notice to the licensee or other person. A request for a hearing by the licensee or other person shall be in writing and shall be filed with the department within thirty days after the service of the cease and desist order. If a request for hearing is not filed within the thirty-day period, the cease and desist order shall become permanent at the expiration of such period. A hearing shall be held not later than thirty days after the request for the hearing is received by the Tax Commissioner, and within twenty days after the date of the hearing, the Tax Commissioner shall issue an order vacating the cease and desist order or making it permanent as the facts require. All hearings shall be held in accordance with the rules and regulations adopted and promulgated by the department. If the licensee or other person to whom a cease and desist order is issued fails to appear at the hearing after being duly notified, the licensee or other person shall be deemed in default and the proceeding may be determined against the licensee or other person upon consideration of the cease and desist order, the allegations of which may be deemed to be true;

(5) To levy an administrative fine on an individual, partnership, limited liability company, corporation, or organization for cause. For purposes of this subdivision, cause shall include instances in which the individual, partnership, limited liability company, corporation, or organization violated the provisions, requirements, conditions, limitations, or duties imposed by the act or any rule or regulation adopted and promulgated pursuant to the act. In determining whether to levy an administrative fine and the amount of the fine if any fine is levied, the department shall take into consideration the seriousness of the violation, the intent of the violator, whether the violator voluntarily reported the violation, whether the violator derived financial gain as a result of the violation and the extent thereof, and whether the violator has had previous violations of the act and regulations. A fine levied on a violator under this section shall not exceed twenty-five thousand dollars for each violation of the act or any rules and regulations adopted and promulgated pursuant to the act plus the financial benefit derived by the violator as a result of each violation. If an administrative fine is levied, the fine shall not be paid from lottery gross proceeds of the county, city, or village and shall be remitted by the violator

to the department within thirty days from the date of the order issued by the department levying such fine;

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

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

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

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

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

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

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

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

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

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

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

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

(3) If a request for hearing is filed within the thirty-day period, the Tax Commissioner shall grant the applicant a hearing and shall, at least

ten days before the hearing, serve notice upon the applicant by ~~certified mail, return receipt requested,~~ mail of the time, date, and place of the hearing. Such proceedings shall be considered contested cases pursuant to the Administrative Procedure Act.

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

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

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

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

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

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

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

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

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

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

66-486 (1) In lieu of the expense of collecting and remitting the motor vehicle fuel tax and furnishing the security pursuant to Chapter 66, article 4, and complying with the statutes and rules and regulations related thereto, the producer, supplier, distributor, wholesaler, or importer shall be entitled to deduct and withhold a commission of five percent on the first five thousand dollars and two and one-half percent upon all amounts above five thousand dollars remitted each reporting period.

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

(3) Except as otherwise provided in Chapter 66, article 4, the per-gallon amount of the tax shall be added to the selling price of every gallon of such motor fuels sold in this state and shall be collected from the purchaser so that the ultimate consumer bears the burden of the tax. The tax shall be a direct tax on the retail or ultimate consumer precollected for the purpose of convenience and facility to the consumer. The levy and assessment on the producer, supplier, distributor, wholesaler, or importer as specified in Chapter 66, article 4, shall be as agents of the state for the precollection of the tax. The provisions of this section shall in no way affect the method of collecting the tax as provided in Chapter 66, article 4.

The tax imposed by this section shall be collected and paid at the time, in the manner, and by those persons specified in Chapter 66, article 4.

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

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

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

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

66-488 (1) Every producer, supplier, distributor, wholesaler, importer, and exporter who engages in the sale, distribution, delivery, and use of motor fuels shall render and have on file with the department a return reporting the number of gallons of motor fuels, based on gross gallons, received, imported, or exported and unloaded and emptied or caused to be received, imported, or exported and unloaded and emptied by such producer, supplier, distributor, wholesaler, or importer in the State of Nebraska and the number of gallons of motor fuels produced, refined, manufactured, blended, or compounded by such producer, supplier, distributor, wholesaler, or importer within the State of Nebraska, during the preceding reporting period, and defining the nature of such motor fuels. The return shall also show such information as the department reasonably requires for the proper administration and enforcement of sections 66-482 to 66-4,149. The return shall contain a declaration, by the person making the same, to the effect that the statements contained therein are true and are made under penalties of perjury, which declaration shall have the same force and effect as a verification of the return and shall be in lieu of such verification. The return shall be signed by the producer, supplier, distributor, wholesaler, importer, or exporter or a principal officer, general agent, managing agent, attorney in fact, chief accountant, or other responsible representative of the producer, supplier, distributor, wholesaler, importer, or exporter, and such return shall be entitled to be received in evidence in all courts of this state and shall be prima facie evidence of the facts therein stated. The producer, supplier, distributor, wholesaler, importer, or exporter shall file the return in such format as prescribed by the department on or before the ~~twenty-fifth~~ twentieth day of the next succeeding calendar month following the reporting period to which it relates. If the final filing date for such return falls on a Saturday, Sunday, or legal holiday, the next secular or business day shall be the final filing date. The return shall be considered filed on time if transmitted or postmarked before midnight of the final filing date.

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

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

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

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



adjusted so that the increase or decrease in the tax provided for in this section or section 66-6,109.02 does not exceed one cent per gallon.

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

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

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

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

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

66-525 The department may require every railroad or railroad company, motor truck or motor truck transportation company, water transportation company, pipeline company, and other person transporting or bringing into the State of Nebraska or transporting from a refinery, ethanol or biodiesel facility, pipeline, pipeline terminal, or barge terminal within the State of Nebraska for the purpose of delivery within or export from this state any motor vehicle fuel or diesel fuel which is or may be produced and compounded for the purpose of operating or propelling any motor vehicle, to furnish a return on forms prescribed by the department to be delivered and on file in the office of the department by the ~~twenty-fifth~~ twentieth day of each calendar month, showing all quantities of such motor vehicle fuel or diesel fuel transported during the preceding calendar month for which the report is made, giving the name of the consignee, the point at which delivery was made, the date of delivery, the method of delivery, the quantity of each such shipment, and such other information as the department requires.

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

66-6,110 Each retailer shall file a tax return with the department on forms prescribed by the department. Annual returns are required if the retailer's yearly tax liability is less than two hundred fifty dollars. Quarterly returns are required if the retailer's yearly tax liability is at least two hundred fifty dollars but less than six thousand dollars. Monthly returns are required if the retailer's yearly tax liability is at least six thousand dollars. The return shall contain a declaration by the person making the return to the effect that the statements contained in the return are true and are made under penalties of law, which declaration has the same force and effect as a verification of the return and is in lieu of such verification. The return shall show such information as the department reasonably requires for the proper administration and enforcement of the Compressed Fuel Tax Act. The retailer shall file the return in such format as prescribed by the department on or before the ~~twenty-fifth~~ twentieth day of the next succeeding calendar month following the reporting period to which it relates. If the final filing date falls on a Saturday, Sunday, or legal holiday, the next secular or business day is the final filing date. The return is filed on time if transmitted or postmarked before midnight of the final filing date.

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

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

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

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

compressed fuel.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

66-738 The Motor Fuel Tax Enforcement and Collection Division is hereby created within the Department of Revenue. The division shall be funded

by a separate appropriation program within the department. All provisions of the Compressed Fuel Tax Act, the Petroleum Release Remedial Action Act, the State Aeronautics Department Act, and sections 66-482 to 66-4,149, 66-501 to 66-531, and 66-712 to ~~66-737~~, 66-736, pertaining to the Department of Revenue, the Tax Commissioner, or the division, shall be entirely and separately undertaken and enforced by the division, except that the division may utilize services provided by other programs of the Department of Revenue in functional areas known on July 1, 1991, as the budget subprograms designated revenue operations and administration. Appropriations for the division that are used to fund costs allocated for such functional operations shall be expended by the division in an appropriate pro rata share and shall be subject to audit by the Auditor of Public Accounts, at such time as he or she determines necessary, which audit shall be provided to the budget division of the Department of Administrative Services and the Legislative Fiscal Analyst by October 1 of the year under audit. Audit information useful to other divisions of the Department of Revenue may be shared by the Motor Fuel Tax Enforcement and Collection Division with the other divisions of the department and the Division of Motor Carrier Services of the Department of Motor Vehicles, but audits shall not be considered as a functional operation for purposes of this section. Except for staff performing in functional areas, staff funded from the separate appropriation program shall only be utilized to carry out the provisions of such acts and sections. The auditors and field investigators in the Motor Fuel Tax Enforcement and Collection Division shall be adequately trained for the purposes of motor fuel tax enforcement and collection. The Tax Commissioner shall hire for or assign to the division sufficient staff to carry out the responsibility of the division for the enforcement of the motor fuel laws.

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

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

66-1521 (1) A petroleum release remedial action fee is hereby imposed upon the producer, refiner, importer, distributor, wholesaler, or supplier who engages in the sale, distribution, delivery, and use of petroleum within this state, except that the fee shall not be imposed on petroleum that is exported. The fee shall also be imposed on diesel fuel which is indelibly dyed. The amount of the fee shall be nine-tenths of one cent per gallon on motor vehicle fuel as defined in section 66-482 and three-tenths of one cent per gallon on diesel fuel as defined in section 66-482. The amount of the fee shall be used first for payment of claims approved by the State Claims Board pursuant to section 66-1531; second, up to three million dollars of the fee per year shall be used for reimbursement of owners and operators under the Petroleum Release Remedial Action Act for investigations of releases ordered pursuant to section 81-15,124; and third, the remainder of the fee shall be used for any other purpose authorized by section 66-1519. The fee shall be paid by all producers, refiners, importers, distributors, wholesalers, and suppliers subject to the fee by filing a monthly return on or before the ~~twenty-fifth~~ twentieth day of the calendar month following the monthly period to which it relates. The pertinent provisions, specifically including penalty provisions, of the motor fuel laws as defined in section 66-712 shall apply to the administration and collection of the fee except for the treatment given refunds. There shall be a refund allowed on any fee paid on petroleum which was taxed and then exported, destroyed, or purchased for use by the United States Government or its agencies. The department may also adjust for all errors in the payment of the fee. In each calendar year, no claim for refund related to the fee can be for an amount less than ten dollars.

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

to section 66-720.

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

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

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

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

76-908 Any person paying the documentary stamp tax imposed by section 76-901 may claim a refund if the payment of such tax was (1) the result of a misunderstanding or honest mistake of the taxpayer, (2) the result of a clerical error on the part of the register of deeds or the taxpayer, or (3) invalid for any reason. Within two years after payment of such tax, the taxpayer shall file in the office of the register of deeds of the county in which the tax was paid a written claim on a form prescribed by the Tax Commissioner and evidence in support thereof, stating the reason for the claim. The register of deeds shall, within thirty days after such filing, make a recommendation of approval or denial and forward the recommendation together with a copy of the claim and evidence filed to the Tax Commissioner. Within thirty days after the forwarding of such recommendation the Tax Commissioner shall, upon consideration of the recommendation of the register of deeds and the claim and evidence filed by the taxpayer, render his or her decision approving or rejecting the claim for a refund in whole or in part. A copy of the decision of the Tax Commissioner shall be ~~forwarded~~ mailed to the register of deeds and to the last-known address of the taxpayer by ~~certified mail~~ within ten days after the decision is rendered. Upon approval by the Tax Commissioner of a refund for all or a portion of the documentary stamp tax paid, the register of deeds is authorized to make such refund from the currently collected documentary stamp tax funds presently in the office of the register of deeds. A taxpayer denied a refund under this section, in whole or in part, may appeal the decision of the Tax Commissioner, and the appeal shall be in accordance with the Administrative Procedure Act.

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

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

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

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

77-3,116 The Department of Revenue and the Department of Labor shall cooperate and participate in the collection of data for the study. Other state agencies, including the University of Nebraska, shall assist in the study or the update as requested by the Department of Revenue and as any necessary funds are available. Any agency may contract with the Department of Revenue to provide such assistance. The Department of Revenue may also contract with an independent entity for the entity to conduct or assist in conducting such

study or update. The department, other state agency, or independent entity preparing the material or study shall utilize and consider, along with other information, the results of any available study relating to the items listed in section 77-3,115 and conducted or contracted for by the Legislature in the year prior to April 16, 1992.

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

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

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

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

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

77-802 The Property Tax Administrator shall apportion the total taxable value including the franchise value to all taxing subdivisions in proportion to the ratio of the original cost of all operating real and tangible personal property of that public service entity having a situs in that taxing subdivision to the original cost of all operating real and tangible personal property of that public service entity having a situs in the state.

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

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

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

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

(2) If the owner of the improvements claims that the value of his or her interest in the real property is reduced by reason of uncertainty in the term of his or her tenancy or because of the prospective termination or expiration of the term, he or she shall serve notice of such claim in writing by ~~certified~~ mail on the owner of the land before January 1 and shall at the

same time serve similar notice on the county assessor, together with his or her affidavit that he or she has served notice on the owner of the land.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

77-2701 Sections 77-2701 to 77-27,135.01 and 77-27,228 to 77-27,236 and sections 36 and 37 of this act shall be known and may be cited as the Nebraska Revenue Act of 1967.

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

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

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

(2) For purposes of this section:

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

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

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

(3) Admission does not include the lease or rental of a location, facility, or part of a location or facility if the lessor cedes the right to determine who is granted access to the location or facility to the lessee for the period of the lease or rental.

Sec. 37. (1) Sales and use taxes shall not be imposed on the gross receipts from the sale, use, or other consumption of amounts charged to

participate in a youth sports event, youth sports league, or youth competitive educational activity by political subdivisions or organizations that are exempt from income tax under section 501(c) (3) of the Internal Revenue Code.

(2) For purposes of this section:

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

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

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

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

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

77-2701.16 (1) Gross receipts means the total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers.

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

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

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

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

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

(d) In the furnishing of community antenna television service or satellite service, the gross income received from the furnishing of such community antenna television service as regulated under sections 18-2201 to 18-2205 or 23-383 to 23-388 or satellite service; and

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

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

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

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

(4) Gross receipts for providing a service means:

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

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

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

(d) The gross income received for installing and applying tangible personal property if the sale of the property is subject to tax. If any or

all of the charge for installation is free to the customer and is paid by a third-party service provider to the installer, any tax due on that part of the activation commission, finder's fee, installation charge, or similar payment made by the third-party service provider shall be paid and remitted by the third-party service provider;

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

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

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

(h) The gross income received for detective services.

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

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

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

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

(9) Gross receipts includes the retail sale of digital audio works, digital audiovisual works, digital codes, and digital books delivered electronically if the products are taxable when delivered on tangible storage media. A sale includes the transfer of a permanent right of use, the transfer of a right of use that terminates on some condition, and the transfer of a right of use conditioned upon the receipt of continued payments.

(10) Gross receipts does not include:

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

(3) A notice of deficiency shall set forth the reason for the proposed assessment or for the change in the amount of credit or loss to be carried over to another year. The notice may be mailed ~~by certified or registered mail~~ to the taxpayer at his or her last-known address. In the case of a joint return, the notice of deficiency may be a single joint notice, except that if the Tax Commissioner is notified by either spouse that separate residences have been established, the Tax Commissioner shall mail joint notices to each spouse. If the taxpayer is deceased or under a legal disability, a notice of deficiency may be mailed to his or her last-known address unless the Tax Commissioner has received notice of the existence of a fiduciary relationship with respect to such taxpayer.

(4) A notice of deficiency regarding an item of entity income may be mailed ~~by certified or registered mail~~ to the entity at its last-known address or to the address of the entity's tax matters person for federal income tax purposes. Such notice shall be deemed to have been received by each partner,

shareholder, or member of such entity, but only for items of entity income reported by the partner, shareholder, or member.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

77-3311 In any case in which this state and one or more other states each claims that it was a domicile of a decedent at the time of his or her death and no judicial determination of domicile for death tax purposes has been made in any of such states, any executor or administrator or the taxing official of any such state may elect to invoke the provisions of the Uniform Act on Interstate Arbitration and Compromise of Death Taxes. Such election shall be evidenced by ~~the sending of a notice by certified or registered mail, return receipt requested,~~ mailing notice to the taxing officials of any such state and to each executor, ancillary administrator, and interested person. Any executor or administrator may reject such election by ~~sending a notice by certified or registered mail, return receipt requested,~~ mailing notice to the taxing officials involved and to all other executors within forty days after the receipt of such notice of election. If such election is rejected, no further proceedings shall be had under the act. If such election is not rejected, the dispute as to the death taxes shall be determined solely as provided in the act, and no other proceedings to determine or assess such death taxes shall thereafter be instituted in the courts of this state or otherwise.

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

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

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

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

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

(3) When a warrant is issued or a levy is made by the Tax Commissioner or Commissioner of Labor, or his or her duly authorized employee, for the collection of any tax and any interest, penalty, or addition to such

tax imposed by law under any tax program administered by the Tax Commissioner or Commissioner of Labor or for the enforcement of any tax lien authorized by the Uniform State Tax Lien Registration and Enforcement Act, such warrant or levy shall have the same force and effect of a levy and sale pursuant to a writ of execution. Such warrant or levy may be issued and sale made pursuant to it in the same manner and with the same force and effect of a levy and sale pursuant to a writ of execution. The Tax Commissioner or Commissioner of Labor shall pay the levying sheriff the same fees, commissions, and expenses pursuant to such warrant as are provided by law for similar services pursuant to a writ of execution, except that fees for publications in a newspaper shall be subject to approval by the Tax Commissioner or Commissioner of Labor. Such fees, commissions, and expenses shall be an obligation of the taxpayer and may be collected from the taxpayer by virtue of the warrant. Any such warrant shall show the name and last-known address of the taxpayer, the identity of the tax program, the year for which such tax and any interest, penalty, or addition to such tax is due and the amount thereof, the fact that the Tax Commissioner or Commissioner of Labor has complied with all provisions of the law for the applicable tax program which he or she administers in the determination of the amount required to be paid, and that the tax and any interest, penalty, or addition to such tax is due and payable according to law.

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

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

(5) Notice of the sale and the time and place of the sale shall be given, to the delinquent taxpayer and to any other person with an interest in the property who has filed for record with the appropriate filing officer on such property, in writing at least twenty days prior to the date of such sale in the following manner: The notice shall be ~~sent by certified mail, return receipt requested,~~ mailed to the taxpayer and to any other person with such interest at his or her last-known residence or place of business in this state. The notice shall also be given by publication at least once each week for four weeks prior to the date of the sale in the newspaper of general circulation published in the county in which the property seized is to be sold. If there is no newspaper of general circulation in the county, notice shall be posted in three public places in the county twenty days prior to the date of the sale. The notice shall contain a description of the property to be sold, a statement of the type of tax due and of the amount due, including interest, penalties, additions to tax, and costs, the name of the delinquent taxpayer, and the further statement that unless the amount due, including interest, penalties, additions to tax, and costs, is paid on or before the time fixed in the notice for the sale or such security as may be determined by the Tax Commissioner or Commissioner of Labor is placed with the Tax Commissioner or Commissioner of Labor, or his or her duly authorized representative, on or before such time, the property, or so much of it as may be necessary, will be sold in accordance with law and the notice.

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

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

(8) If after the sale the money received exceeds the total of all amounts due the state, including any interest, penalties, additions to tax, and costs, and if there is no other interest in or lien upon such money received, the Tax Commissioner or Commissioner of Labor shall return

the excess to the person liable for the amounts and obtain a receipt. If any person having an interest or lien upon the property files with the Tax Commissioner or Commissioner of Labor prior to the sale notice of his or her interest or lien, the Tax Commissioner or Commissioner of Labor shall withhold any excess pending a determination of the rights of the respective parties thereto by a court of competent jurisdiction. If for any reason the receipt of the person liable for the amount is not available, the Tax Commissioner or Commissioner of Labor shall deposit the excess money with the State Treasurer, as trustee for the owner, subject to the order of the person liable for the amount or his or her heirs, successors, or assigns. No interest earned, if any, shall become the property of the person liable for the amount.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

becomes final.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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