

LEGISLATIVE BILL 162

Approved by the Governor May 13, 2009

Introduced by Cornett, 45.

FOR AN ACT relating to contractors; to amend sections 48-2101, 48-2105, and 77-373.01, Reissue Revised Statutes of Nebraska, and sections 48-2103, 48-2104, 48-2107, 48-2115, and 77-2753, Revised Statutes Cumulative Supplement, 2008; to change and eliminate provisions relating to the Contractor Registration Act, registration by nonresident contractors, and income tax withholding by contractors; to provide an operative date; to repeal the original sections; and to outright repeal sections 77-3103, 77-3107, 77-3108, 77-3109, 77-3110, 77-3111, and 77-3112, Reissue Revised Statutes of Nebraska, and sections 77-3101, 77-3102, 77-3104, 77-3105, and 77-3106, Revised Statutes Cumulative Supplement, 2008.

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

Section 1. Section 48-2101, Reissue Revised Statutes of Nebraska, is amended to read:

48-2101 Sections 48-2101 to 48-2116 and section 6 of this act shall be known and may be cited as the Contractor Registration Act.

Sec. 2. Section 48-2103, Revised Statutes Cumulative Supplement, 2008, is amended to read:

48-2103 For purposes of the Contractor Registration Act:

(1) Commissioner means the Commissioner of Labor;

(2) Construction means work on real property and annexations, including new work, additions, alterations, reconstruction, installations, and repairs performed at one or more different sites which may be dispersed geographically; ~~but does not include the construction of water wells or installation of septic systems;~~

~~(3) Contractor means a person who engages in the business of construction and includes a subcontractor, a general contractor, and any other person arranging for the performance of construction. A person who earns less than five thousand dollars annually or who performs work or has work performed on his or her own property is not a contractor;~~

(3) Contractor means an individual, firm, partnership, limited liability company, corporation, or other association of persons engaged in the business of the construction, alteration, repairing, dismantling, or demolition of buildings, roads, bridges, viaducts, sewers, water and gas mains, streets, disposal plants, water filters, tanks and towers, airports, dams, levees and canals, water wells, pipelines, transmission and power lines, and every other type of structure, project, development, or improvement within the definition of real property and personal property, including such construction, repairing, or alteration of such property to be held either for sale or rental. Contractor also includes any subcontractor engaged in the business of such activities and any person who is providing or arranging for labor for such activities, either as an employee or as an independent contractor, for any contractor or person;

(4) Department means the Department of Labor; and

(5) Nonresident contractor means a contractor who neither is domiciled in nor maintains a permanent place of business in this state or who, being so domiciled or maintaining such permanent place of residence, spends in the aggregate less than six months of the year in this state; and

~~(6) Working days means Mondays through Fridays but does not include Saturdays, Sundays, or federal or state holidays. In computing fifteen working days, the day of receipt of any notice is not included and the last day of the fifteen working days is included.~~

Sec. 3. Section 48-2104, Revised Statutes Cumulative Supplement, 2008, is amended to read:

48-2104 (1) Before performing any construction work in Nebraska, a contractor shall be registered with the department. If a contractor does business under more than one name, the contractor shall obtain a registration number for each name under which the contractor is doing business. Any person who performs work or has work performed on his or her own property or any person who earns less than five thousand dollars annually for construction services is not a contractor for purposes of the Contractor Registration Act.

(2) An exemption from the requirements under subsection (1) of this section does not exempt a contractor from withholding requirements under the Nebraska Revenue Act of 1967.

Sec. 4. Section 48-2105, Reissue Revised Statutes of Nebraska, is

amended to read:

48-2105 Each contractor shall apply to the department for a registration number on an application form provided by the department. The application shall contain the following information:

(1) The name and federal employer identification number or, if the applicant is an individual, the social security number of the contractor;

(2) The principal place of business of the contractor in Nebraska. If the contractor's principal place of business is outside Nebraska, the application shall state the address of the contractor's principal place of business and the name and address of the contractor's registered agent in Nebraska;

(3) The telephone number of the contractor in the State of Nebraska. If the contractor's principal place of business is outside Nebraska, the application shall state the telephone number of the contractor's principal place of business and the telephone number of the contractor's registered agent in Nebraska;

(4) The type of business entity of the contractor such as corporation, partnership, limited liability company, sole proprietorship, or trust;

(5) The contractor option election to collect and remit sales and use tax on purchases of building materials and fixtures annexed to real property;

~~(5) (6) The following information about the business entity:~~

(a) If the contractor is a corporation, the name, address, telephone number, and position of each officer of the corporation; and

(b) If the contractor is other than a corporation, the name, address, and telephone number of each owner;

~~(6) (7) Proof of (a) a certificate or policy of insurance written by an insurance carrier duly authorized to do business in this state which gives the effective dates of workers' compensation insurance coverage indicating that it is in force, (b) a certificate evidencing approval of self-insurance privileges as provided by the Nebraska Workers' Compensation Court pursuant to section 48-145, or (c) a signed statement indicating that the contractor is not required to carry workers' compensation insurance pursuant to the Nebraska Workers' Compensation Act; and~~

~~(7) (8) A description of the business which includes the employer's standard industrial classification code or the principal products and services provided.~~

Each application shall be renewed annually upon payment of the fee prescribed in section 48-2107.

Sec. 5. Section 48-2107, Revised Statutes Cumulative Supplement, 2008, is amended to read:

48-2107 (1) Each application or renewal under section 48-2105 shall be signed by the applicant and accompanied by a fee of forty dollars. The commissioner may adopt and promulgate rules and regulations to establish the criteria for acceptability of filing documents and making payments electronically. The criteria may include requirements for electronic signatures. The commissioner may refuse to accept any electronic filings or payments that do not meet the criteria established. The fee shall not be required when an amendment to an application is submitted. The commissioner shall remit the fees collected under this subsection to the State Treasurer for credit to the Contractor Registration Cash Fund.

~~(2) A contractor shall not be required to pay the fee if the application contains an affidavit which shows the contractor is self-employed and does not pay more than three thousand dollars annually to employ other persons in the business. The affidavit shall contain (a) a statement that the contractor is self-employed and (b) a list of all employees employed on the date of the application and in the twelve-month period prior to such date and the dates of employment for each employee. At any time that a contractor no longer qualifies for exemption from the fee, the fee shall be paid to the department.~~

(2) A contractor shall not be required to pay the fee under subsection (1) of this section if (a) the contractor is self-employed and does not pay more than three thousand dollars annually to employ other persons in the business and the application contains a statement made under oath or equivalent affirmation setting forth such information or (b) the contractor only engages in the construction of water wells or installation of septic systems. At any time that a contractor no longer qualifies for exemption from the fee, the fee shall be paid to the department. Any false statement made under subdivision (2)(a) of this section shall be a violation of section 28-915.01.

(3) The commissioner shall charge an additional fee of twenty-five

dollars for the registration of each nonresident contractor and a fee of twenty-five dollars for the registration of each contract to which a nonresident contractor is a party if the total contract price or compensation to be received is more than ten thousand dollars. The commissioner shall remit the fees collected under this subsection to the State Treasurer for credit to the General Fund.

Sec. 6. (1) The Department of Labor, in conjunction with the Department of Revenue, shall create a data base of contractors who are registered under the Contractor Registration Act and the Nebraska Revenue Act of 1967. The data base shall be accessible on the web site of the Department of Labor.

(2) Any contractor that fails to comply with the requirements of the Contractor Registration Act or Nebraska Revenue Act of 1967 shall be removed from the data base.

Sec. 7. Section 48-2115, Revised Statutes Cumulative Supplement, 2008, is amended to read:

48-2115 There is hereby created the Contractor Registration Cash Fund to be administered by the department and used to enforce the Contractor Registration Act. The fund shall consist of such sums as are appropriated to it by the Legislature and any fees collected in the administration of the act that are to be credited to the fund. All funds collected shall be remitted to the State Treasurer for credit to the fund. Any money in the 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.

Sec. 8. Section 77-373.01, Reissue Revised Statutes of Nebraska, is amended to read:

77-373.01 (1) The By January 1, 1999, the Department of Labor and the Department of Revenue shall use the codes under the North American Industrial Industry Classification System for the compilation and publication of statistics rather than codes under the Standard Industrial Classification System.

For the sole purpose of determining or updating the proper code under the appropriate industrial classification system, the Department of Labor and the Department of Revenue may disclose to the other department identification information about taxpayers conducting a business in this state. The information disclosed shall be strictly limited to the name, address, and federal employer identification number or numbers of the taxpayer and the code under the industrial classification system.

(2) Notwithstanding sections 77-2711 and 77-27,119 and for the sole purpose of administration of the Contractor Registration Act and the contractor data base provisions of section 6 of this act, the Department of Labor and the Department of Revenue may disclose to the other department identification information about taxpayers conducting a business in this state. The information disclosed shall be limited to the name, address, and federal employer identification number or numbers of the taxpayer.

(3) The disclosure disclosures allowed under this section may be made notwithstanding any other provision of law of this state regarding disclosure of information by either department. Any information received by either department under this section shall be considered confidential by the receiving department, and any employee who discloses such information other than as specifically allowed by this section or other laws of this state shall be subject to the penalties normally imposed on employees who improperly disclose information.

Sec. 9. Section 77-2753, Revised Statutes Cumulative Supplement, 2008, is amended to read:

77-2753 (1) (a) Every employer and payor maintaining an office or transacting business within this state and making payment of any wages or other payments as defined in subsection (6) of this section which are taxable under the Nebraska Revenue Act of 1967 to any individual shall deduct and withhold from such wages for each payroll period and from such payments a tax computed in such manner as to result, so far as practicable, in withholding from the employee's wages and payments to the payee during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due from the employee or payee under such act with respect to the amount of such wages and payments included in his or her taxable income during the calendar year. The method of determining the amount to be withheld shall be prescribed by rules and regulations of the Tax Commissioner. Such rules and regulations may allow withholding to be computed at a percentage of the federal withholding or at a comparable flat percentage for gambling winnings or supplemental payments, including bonuses, commissions, overtime pay, and sales awards which are not paid at the same time as other wages, or payments

to independent contractors. Any withholding tables prescribed by the Tax Commissioner shall be provided to the budget division of the Department of Administrative Services and the Legislative Fiscal Analyst for review at least sixty days before the tables become effective.

(b) Notwithstanding the amount of federal withholding or the rules and regulations of the Department of Revenue determining the amount of withholding, every employer and payor employing twenty-five or more employees shall withhold at least one and one-half percent of the gross wages minus tax qualified deductions of each employee unless the employee provides satisfactory evidence that a lesser amount of withholding is justified in the employee's particular circumstances. Such satisfactory evidence may include birth certificates or social security information for dependents or other evidence that reasonably assures the employer that the employee is not improperly or fraudulently evading or defeating the income tax by reducing or eliminating withholding.

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

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

(c) For any corporation, partnership, or limited liability company that receives compensation for personal services in this state and of which all or substantially all of the shareholders, partners, or members are the individuals performing the personal services, including, but not limited to, individual athletes, entertainers, performers, or public speakers performing such personal services, such compensation shall be deemed wages of the individuals performing the personal services and subject to the income tax imposed on individuals by the Nebraska Revenue Act of 1967.

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

(3) (a) Every contractor who is maintaining an office or transacting business within this state and making a payment or payments ~~related to such business in excess of six hundred dollars,~~ and such payment or payments are for construction services performed within this state, to any contractor or any person that is not an employee for construction services performed within this state shall deduct and withhold five percent of such payments.

(b) The withholding required by this subsection shall not apply to any payment made to (i) a person that provides the payor with a statement that the income earned is not subject to tax because of a treaty obligation of the United States, (ii) a contractor if such a payment or payments does not exceed six hundred dollars, or (iii) ~~or~~ a contractor when the payor contractor determines that the payee contractor is in the data base required by this subsection. section 6 of this act.

~~(e) The Department of Revenue shall create a data base of contractors who are licensed, granted a permit, or registered under the Nebraska Revenue Act of 1967 or under section 77-3102. The data base shall be accessible on the web site of the department.~~

~~(d)~~ (c) Any contractor who determines that a contractor is in the data base is relieved from liability for withholding under ~~either~~ this subsection ~~or~~ section 77-3106 for any future payments on a contract in existence at the time the determination is made or made during the same calendar year as such determination is made.

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

~~(f)~~ (e) For purposes of this subsection:

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

(ii) Contractor has the same meaning as in section ~~77-3101~~, 48-2103.

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

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

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

Sec. 10. This act becomes operative on January 1, 2010.

Sec. 11. Original sections 48-2101, 48-2105, and 77-373.01, Reissue Revised Statutes of Nebraska, and sections 48-2103, 48-2104, 48-2107, 48-2115, and 77-2753, Revised Statutes Cumulative Supplement, 2008, are repealed.

Sec. 12. The following sections are outright repealed: Sections 77-3103, 77-3107, 77-3108, 77-3109, 77-3110, 77-3111, and 77-3112, Reissue Revised Statutes of Nebraska, and sections 77-3101, 77-3102, 77-3104, 77-3105, and 77-3106, Revised Statutes Cumulative Supplement, 2008.