

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 819

FINAL READING

(SECOND)

Introduced by Business and Labor Committee: Cornett, 45,  
Chairperson; McGill, 26; Rogert, 16; Wallman,  
30.

Read first time January 10, 2008

Committee: Business and Labor

A BILL

1 FOR AN ACT relating to labor; to amend sections 48-151,  
2 48-668, and 48-668.02, Reissue Revised Statutes of  
3 Nebraska, sections 48-648, 48-648.01, and 48-654, Revised  
4 Statutes Cumulative Supplement, 2006, and sections  
5 48-1,110, 48-612.01, 48-649, and 48-652, Revised Statutes  
6 Supplement, 2007; to change provisions relating to  
7 information disclosure, electronic payment, employer  
8 accounts, and unemployment compensation of the Employment  
9 Security Law and provisions relating to certain mental  
10 injuries in the Nebraska Workers' Compensation Act;

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1           to harmonize provisions; to provide operative dates;  
2           to repeal the original sections; and to declare an  
3           emergency.  
4 Be it enacted by the people of the State of Nebraska,

1           Section 1. (1) Personal injury includes mental injuries  
 2 and mental illness unaccompanied by physical injury for an employee  
 3 who is a first responder if such first responder:

4           (a) Establishes, by a preponderance of the evidence, that  
 5 the employee's employment conditions causing the mental injury or  
 6 mental illness were extraordinary and unusual in comparison to the  
 7 normal conditions of the particular employment; and

8           (b) Establishes, by a preponderance of the evidence, the  
 9 medical causation between the mental injury or mental illness and  
 10 the employment conditions by medical evidence.

11           (2) For purposes of this section, mental injuries and  
 12 mental illness arising out of and in the course of employment  
 13 unaccompanied by physical injury are not considered compensable if  
 14 they result from any event or series of events which are incidental  
 15 to normal employer and employee relations, including, but not  
 16 limited to, personnel actions by the employer such as disciplinary  
 17 actions, work evaluations, transfers, promotions, demotions, salary  
 18 reviews, or terminations.

19           (3) For purposes of this section, first responder means a  
 20 firefighter, a law enforcement officer, a crime scene investigator,  
 21 or an out-of-hospital emergency care provider as defined in section  
 22 38-1208.

23           (4) This section terminates on January 1, 2014.

24           Sec. 2. Section 48-151, Reissue Revised Statutes of  
 25 Nebraska, is amended to read:

1                   48-151 Throughout the Nebraska Workers' Compensation Act,  
2 the following words and phrases shall be considered to have  
3 the following meaning, respectively, unless the context clearly  
4 indicates a different meaning in the construction used:

5                   (1) Physician means any person licensed to practice  
6 medicine and surgery, osteopathic medicine, chiropractic, podiatry,  
7 or dentistry in the State of Nebraska or in the state in which the  
8 physician is practicing;

9                   (2) Accident means an unexpected or unforeseen injury  
10 happening suddenly and violently, with or without human fault, and  
11 producing at the time objective symptoms of an injury. The claimant  
12 has the burden of proof to establish by a preponderance of the  
13 evidence that such unexpected or unforeseen injury was in fact  
14 caused by the employment. There is no presumption from the mere  
15 occurrence of such unexpected or unforeseen injury that the injury  
16 was in fact caused by the employment;

17                   (3) Occupational disease means only a disease which is  
18 due to causes and conditions which are characteristic of and  
19 peculiar to a particular trade, occupation, process, or employment  
20 and excludes all ordinary diseases of life to which the general  
21 public is exposed;

22                   (4) Injury and personal injuries mean only violence to  
23 the physical structure of the body and such disease or infection  
24 as naturally results therefrom and personal injuries described in  
25 section 1 of this act. The terms include disablement resulting

1 from occupational disease arising out of and in the course of  
2 the employment in which the employee was engaged and which was  
3 contracted in such employment. The terms include an aggravation  
4 of a preexisting occupational disease, the employer being liable  
5 only for the degree of aggravation of the preexisting occupational  
6 disease. The terms do not include disability or death due to  
7 natural causes but occurring while the employee is at work and do  
8 not include an injury, disability, or death that is the result of a  
9 natural progression of any preexisting condition;

10 (5) Death, when mentioned as a basis for the right to  
11 compensation, means only death resulting from such violence and its  
12 resultant effects or from occupational disease;

13 (6) Without otherwise affecting either the meaning or the  
14 interpretation of the abridged clause, personal injuries arising  
15 out of and in the course of employment, it is hereby declared  
16 not to cover workers except while engaged in, on, or about the  
17 premises where their duties are being performed or where their  
18 service requires their presence as a part of such service at the  
19 time of the injury and during the hours of service as such workers,  
20 and not to cover workers who on their own initiative leave their  
21 line of duty or hours of employment for purposes of their own.  
22 Property maintained by an employer is considered the premises of  
23 such employer for purposes of determining whether the injury arose  
24 out of employment;

25 (7) Willful negligence consists of (a) a deliberate act,

1 (b) such conduct as evidences reckless indifference to safety, or  
2 (c) intoxication at the time of the injury, such intoxication being  
3 without the consent, knowledge, or acquiescence of the employer or  
4 the employer's agent;

5 (8) Intoxication includes, but is not limited to, being  
6 under the influence of a controlled substance not prescribed by a  
7 physician;

8 (9) Prospective loss costs means prospective loss costs  
9 as defined in section 44-7504 and prepared, filed, or distributed  
10 by an advisory organization which has been issued a certificate of  
11 authority pursuant to section 44-7518; and

12 (10) Whenever in the Nebraska Workers' Compensation Act  
13 the singular is used, the plural is considered included; when the  
14 masculine gender is used, the feminine is considered included.

15 Sec. 3. Section 48-1,110, Revised Statutes Supplement,  
16 2007, is amended to read:

17 48-1,110 Sections 48-101 to 48-1,117 and sections 1 and  
18 4 of this act shall be known and may be cited as the Nebraska  
19 Workers' Compensation Act.

20 Sec. 4. The changes made by this legislative bill to the  
21 Nebraska Workers' Compensation Act apply only to personal injuries  
22 that occurred on or after the operative date of this section.

23 Sec. 5. Section 48-612.01, Revised Statutes Supplement,  
24 2007, is amended to read:

25 48-612.01 (1) Information obtained pursuant to subsection

1 (1) of section 48-612 may be disclosed under the following  
2 circumstances:

3 (a) ~~To the extent necessary for the proper presentation~~  
4 ~~of the contest of an unemployment benefit claim or tax appeal.~~  
5 Any claimant or employer or representative of a claimant or  
6 employer, as a party before an appeal tribunal or court regarding  
7 an unemployment claim or tax appeal, shall be supplied with  
8 information obtained in the administration of the Employment  
9 Security Law, to the extent necessary for the proper presentation  
10 of his, her, or its the claim or appeal;

11 (b) The ~~Nebraska Workers' Compensation Court~~ may use the  
12 names, addresses, and identification numbers of employers may be  
13 disclosed to the Nebraska Workers' Compensation Court which may  
14 use such information for purposes of enforcement of the Nebraska  
15 Workers' Compensation Act;

16 (c) ~~Appeals records and~~ Appeal tribunal decisions  
17 rendered ~~under~~ pursuant to the Employment Security Law and  
18 designated as precedential ~~determinations~~ decisions by the  
19 commissioner on the coverage of employers, employment, wages, and  
20 benefit eligibility, may be published in printed or electronic  
21 format if all social security numbers have been removed and such  
22 disclosure is otherwise consistent with federal and state law;

23 (d) To a public official for use in the performance of  
24 his or her official duties. For purposes of this subdivision,  
25 performance of official duties means the administration

1 or enforcement of law or the execution of the official  
2 responsibilities of a federal, state, or local elected official.  
3 Administration of law includes research related to the law  
4 administered by the public official. Execution of official  
5 responsibilities does not include solicitation of contributions or  
6 expenditures to or on behalf of a candidate for public office or  
7 to a political party;

8 (e) To an agent or contractor of a public official  
9 to whom disclosure is permissible under subdivision (d) of this  
10 subsection;

11 (f) ~~Information~~ For use in reports and publications  
12 containing information collected exclusively for statistical  
13 purposes under a cooperative agreement with the federal Bureau of  
14 Labor Statistics. This subdivision does not restrict or impose any  
15 condition on the transfer of any other information to the federal  
16 Bureau of Labor Statistics under an agreement or the federal Bureau  
17 of Labor Statistics' disclosure or use of such information; and

18 (g) In response to a court order.

19 (2) Information about an individual or employer obtained  
20 pursuant to subsection (1) of section 48-612 may be disclosed to:

21 (a) One who acts as an agent for the individual or  
22 employer when the agent presents a written release from the  
23 individual or employer, where practicable, or other evidence of  
24 authority to act on behalf of the individual or employer;

25 (b) An elected official who is performing constituent



1 services if the official presents reasonable evidence that the  
2 individual or employer has authorized such disclosure;

3 (c) An attorney who presents written evidence that he or  
4 she is representing the individual or employer in a matter arising  
5 under the Employment Security Law; or

6 (d) A third party or its agent carrying out the  
7 administration or evaluation of a public program, if that third  
8 party or agent obtains a written release from the individual or  
9 employer to whom the information pertains. To constitute informed  
10 consent, the release shall be signed and shall include a statement:

11 (i) Specifically identifying the information that is to  
12 be disclosed;

13 (ii) That state government files will be accessed to  
14 obtain that information;

15 (iii) Identifying the specific purpose or purposes for  
16 which the information is sought and that information obtained under  
17 the release will only be used for that purpose or purposes; and

18 (iv) Identifying and describing all the parties who may  
19 receive the information disclosed.

20 (3) Information obtained pursuant to subsection (1) of  
21 section 48-612 may be disclosed under the following circumstances:

22 (a) ~~Information about an individual or employer shall~~  
23 ~~only be disclosed to the respective individual or employer; To an~~  
24 individual or employer if the information requested pertains only  
25 to the individual or employer making the request;

1           (b) To a local, state, or federal governmental official,  
2 other than a clerk of court, attorney, or notary public acting on  
3 behalf of a litigant, with authority to obtain such information by  
4 subpoena under state or federal law; and

5           (c) ~~Disclosures to~~ To a federal official for purposes of  
6 unemployment compensation program oversight and audits, including  
7 disclosures under 20 C.F.R. part 601 and 29 C.F.R. parts 96 and 97  
8 as they existed on January 1, 2007.

9           (4) If the purpose for which information is provided  
10 under subsection (1), (2), or (3) of this section is not  
11 related to the administration of the Employment Security Law  
12 or the unemployment insurance compensation program of another  
13 jurisdiction, the commissioner shall recover the costs of providing  
14 such information from the requesting individual or entity prior to  
15 providing the information to such individual or entity unless the  
16 costs are nominal or the entity is a governmental agency which the  
17 commissioner has determined provides reciprocal services.

18           (5) Any person who receives information under subsection  
19 (1) or (2) of this section and rediscloses such information for any  
20 purpose other than the purpose for which it was originally obtained  
21 shall be guilty of a Class III misdemeanor.

22           Sec. 6. Section 48-648, Revised Statutes Cumulative  
23 Supplement, 2006, is amended to read:

24           48-648 (1) Combined tax shall accrue and become payable  
25 by each employer not otherwise entitled to make payments in lieu

1 of contributions for each calendar year in which he or she is  
2 subject to the Employment Security Law, with respect to wages for  
3 employment. Such combined tax shall become due and be paid by each  
4 employer to the commissioner for the State Unemployment Insurance  
5 Trust Fund and the Unemployment Trust Fund in such manner and  
6 at such times as the commissioner may, by rule and regulation,  
7 prescribe and shall not be deducted, in whole or in part, from  
8 the wages of individuals in such employer's employ. The For all  
9 tax years beginning before January 1, 2010, the commissioner may  
10 require that any employer whose annual payroll for either of the  
11 two preceding calendar years has equaled or exceeded five hundred  
12 thousand dollars to file combined tax returns and pay combined  
13 taxes owed by an electronic method approved by the commissioner,  
14 except when the employer establishes to the satisfaction of the  
15 commissioner that filing the combined tax return or payment of  
16 the tax by an electronic method would work a hardship on the  
17 employer. For all tax years beginning on or after January 1, 2010,  
18 the commissioner may require any employer whose annual payroll  
19 for either of the two preceding calendar years has equaled or  
20 exceeded one hundred thousand dollars to file combined tax returns  
21 and pay combined taxes owed by an electronic method approved by  
22 the commissioner, except when the employer establishes to the  
23 satisfaction of the commissioner that filing the combined tax  
24 return or payment of the tax by an electronic method would work a  
25 hardship on the employer. In the payment of any combined tax, a

1 fractional part of a cent shall be disregarded unless it amounts to  
2 one-half cent or more, in which case it shall be increased to one  
3 cent. If the combined tax due for any reporting period is less than  
4 five dollars, the employer need not remit the combined tax.

5 (2) If two or more related corporations or limited  
6 liability companies concurrently employ the same individual and  
7 compensate such individual through a common paymaster which is  
8 one of such corporations or limited liability companies, each such  
9 corporation or limited liability company shall be considered to  
10 have paid as remuneration to such individual only the amounts  
11 actually disbursed by it to such individual and shall not  
12 be considered to have paid as remuneration to such individual  
13 amounts actually disbursed to such individual by another of such  
14 corporations or limited liability companies. An employee of a  
15 wholly owned subsidiary shall be considered to be concurrently  
16 employed by the parent corporation, company, or other entity  
17 and the wholly owned subsidiary whether or not both companies  
18 separately provide remuneration.

19 (3) The professional employer organization shall report  
20 and pay combined tax, penalties, and interest owed upon wages  
21 earned by worksite employees under the client's employer account  
22 number using the client's combined tax rate. The client is liable  
23 for the payment of unpaid combined tax, penalties, and interest  
24 owed upon wages paid to worksite employees, and the worksite  
25 employees shall be considered employees of the client for purposes

1 of the Employment Security Law.

2           Sec. 7. Section 48-648.01, Revised Statutes Cumulative  
3 Supplement, 2006, is amended to read:

4           48-648.01 The Commissioner of Labor may require by rule  
5 and regulation that each employer subject to the Employment  
6 Security Law shall submit to the commissioner quarterly wage  
7 reports on such forms and in such manner as the commissioner  
8 may prescribe. The For all tax years beginning before January 1,  
9 2010, the commissioner may require that any employer whose annual  
10 payroll for either of the two preceding calendar years has equaled  
11 or exceeded five hundred thousand dollars to file wage reports  
12 by an electronic method approved by the commissioner, except when  
13 the employer establishes to the satisfaction of the commissioner  
14 that filing by an electronic method would work a hardship on the  
15 employer. For all tax years beginning on or after January 1, 2010,  
16 the commissioner may require any employer whose annual payroll for  
17 either of the two preceding calendar years has equaled or exceeded  
18 one hundred thousand dollars to file wage reports by an electronic  
19 method approved by the commissioner, except when the employer  
20 establishes to the satisfaction of the commissioner that filing by  
21 an electronic method would work a hardship on the employer. The  
22 quarterly wage reports shall be used by the commissioner to make  
23 monetary determinations of claims for benefits.

24           Sec. 8. Section 48-649, Revised Statutes Supplement,  
25 2007, is amended to read:

1           48-649 The commissioner shall, for each calendar year,  
2 determine the combined tax rate applicable to each employer on  
3 the basis of his or her actual experience in the payment of  
4 contributions and with respect to benefits charged against his or  
5 her separate experience account, in accordance with the following  
6 requirements:

7           (1) The commissioner shall, by December 1 of each  
8 calendar year, and based upon information available through the  
9 department, determine the state unemployment insurance tax rate for  
10 the following year. The state unemployment insurance tax rate shall  
11 be zero percent if:

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

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

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

24           (2) (a) If the state unemployment insurance tax rate is  
25 not zero percent as determined in this section, the combined

1 tax rate shall be divided so that not less than eighty percent  
2 of the combined tax rate equals the contribution rate and not  
3 more than twenty percent of the combined tax rate equals the  
4 state unemployment insurance tax rate except for employers who are  
5 assigned a combined tax rate of five and four-tenths percent or  
6 more. For those employers, the state unemployment insurance tax  
7 rate shall equal zero and their combined tax rate shall equal their  
8 contribution rate.

9 (b) When the state unemployment insurance tax rate is  
10 determined to be zero percent pursuant to subdivision (1) of this  
11 section, the contribution rate for all employers shall equal one  
12 hundred percent of the combined tax rate;

13 (3) In calendar year 2005, an employer's combined tax  
14 rate shall be three and five-tenths percent of his or her annual  
15 payroll unless and until (a) benefits have been payable from  
16 and chargeable to his or her experience account throughout the  
17 preceding one calendar year and (b) contributions have been payable  
18 to the fund and credited to his or her experience account with  
19 respect to the two preceding calendar years. Subject to fair and  
20 reasonable rules and regulations of the commissioner issued with  
21 due regard for the solvency of the fund, in calendar year 2005  
22 the combined tax rate required of each employer who meets the  
23 requirements of subdivisions (a) and (b) of this subdivision shall  
24 be based directly on his or her contributions to and benefit  
25 experience of his or her experience account and shall be determined

1 by the commissioner for each calendar year at its beginning. Such  
2 rate shall not be greater than three and five-tenths percent of his  
3 or her annual payroll if his or her experience account exhibits a  
4 positive balance as of the beginning of such calendar year, but for  
5 any employer who has been subject to the payment of contributions  
6 for any two preceding calendar years, regardless of whether such  
7 years are consecutive, and whose experience account exhibits a  
8 negative balance as of the beginning of such calendar year, the  
9 rate shall be greater than three and five-tenths percent of his  
10 or her annual payroll but not greater than five and four-tenths  
11 percent of his or her annual payroll until such time as the  
12 experience account exhibits a positive balance, and thereafter the  
13 rate shall not be greater than three and five-tenths percent of  
14 his or her annual payroll. For calendar year 2005, the standard  
15 rate shall be five and four-tenths percent of the employer's annual  
16 payroll. As used in this subdivision, standard rate shall mean the  
17 rate from which all reduced rates are calculated;

18 (4) (a) Effective January 1, 2006, an employer's combined  
19 tax rate (i) for employers other than employers engaged in the  
20 construction industry shall be the lesser of the state's average  
21 combined tax rate as determined pursuant to subdivisions (4) (e),  
22 (4) (f), and (4) (g) of this section or two and five-tenths percent  
23 and (ii) for employers in the construction industry shall be the  
24 category twenty rate determined pursuant to subdivisions (4) (e) and  
25 (4) (f) of this section, unless and until:



1           (A) Benefits have been payable from and chargeable to his  
2 or her experience account throughout the preceding four calendar  
3 quarters; and

4           (B) Contributions have been payable to the fund and  
5 credited to his or her experience account with respect to each of  
6 the two preceding four-calendar-quarter periods.

7           For purposes of this subdivision (4)(a), employers  
8 engaged in the construction industry means all employers primarily  
9 engaged in business activities classified as sector 23 business  
10 activities under the North American Industrial Classification  
11 System.

12           (b) In no event shall the combined tax rate for employers  
13 who fail to meet the requirements of subdivision (4)(a) of this  
14 section be less than one and twenty-five hundredths percent.

15           (c) For any employer who has not been subject  
16 to the payment of contributions during each of the two  
17 four-calendar-quarter periods ending on September 30 of any year,  
18 but has been subject to the payment of contributions in any  
19 two four-calendar-quarter periods, regardless of whether such  
20 four-calendar-quarter periods are consecutive, such employer's  
21 combined tax rate for the following tax year shall be:

22           (i) The highest combined tax rate for employers with a  
23 positive experience account balance if the employer's experience  
24 account balance exhibits a positive balance as of September 30 of  
25 the year of rate computation; or

1           (ii) The standard rate if the employer's experience  
2 account exhibits a negative balance as of September 30 of the year  
3 of rate computation.

4           (d) Beginning with rate calculations for calendar year  
5 2006 and each year thereafter, the combined tax rate for employers  
6 who meet the requirements of subdivision (4)(a) of this section  
7 shall be calculated according to subdivisions (4)(e), (4)(f), and  
8 (4)(g) of this section and shall be based upon the employer's  
9 experience rating record and determined from the employer's reserve  
10 ratio, which is the percent obtained by dividing the amount by  
11 which, if any, the employer's contributions credited from the time  
12 the employer first or most recently became an employer, whichever  
13 date is later, and up to and including September 30 of the year  
14 the rate computation is made, plus any part of the employer's  
15 contributions due for that year paid on or before October 31  
16 of such year, exceed the employer's benefits charged during the  
17 same period, by the employer's average annual taxable payroll for  
18 the sixteen-consecutive-calendar-quarter period ending September  
19 30 of the year in which the rate computation is made. For an  
20 employer with less than sixteen consecutive calendar quarters of  
21 contribution experience, the employer's average taxable payroll  
22 shall be determined based upon the four-calendar-quarter periods  
23 for which contributions are payable.

24           (e) Each eligible experience rated employer shall be  
25 assigned to one of twenty rate categories with a corresponding

1 experience factor as follows:

2	Category	Experience Factor
3	1	0.00
4	2	0.25
5	3	0.40
6	4	0.45
7	5	0.50
8	6	0.60
9	7	0.65
10	8	0.70
11	9	0.80
12	10	0.90
13	11	0.95
14	12	1.00
15	13	1.05
16	14	1.10
17	15	1.20
18	16	1.35
19	17	1.55
20	18	1.80
21	19	2.15
22	20	2.60

23 Eligible experience rated employers shall be assigned  
 24 to rate categories from highest to lowest according to their  
 25 experience reserve ratio with category one being assigned to

1 accounts with the highest reserve ratios and category twenty being  
2 assigned to accounts with the lowest reserve ratios. Each category  
3 shall be limited to no more than five percent of the state's total  
4 taxable payroll, except that:

5 (i) Any employer which has a portion of its taxable wages  
6 fall into one category and a portion into the next higher category  
7 shall be assigned to the lower category; and

8 (ii) No employer with a reserve ratio calculated to five  
9 decimal places equal to another employer similarly calculated shall  
10 be assigned to a higher rate than the employer to which it has the  
11 equal reserve ratio; and-

12 (iii) No employer with a positive experience account  
13 balance shall be assigned to category 20.

14 (f) The state's reserve ratio shall be calculated by  
15 dividing the amount available to pay benefits in the Unemployment  
16 Trust Fund and the State Unemployment Insurance Trust Fund as of  
17 September 30, 2005, and each September 30 thereafter, less any  
18 outstanding obligations and amounts appropriated therefrom by the  
19 state's total wages from the four calendar quarters ending on  
20 such September 30. For purposes of this section, total wages means  
21 all remuneration paid by an employer in employment. The state's  
22 reserve ratio shall be applied to the table in this subdivision to  
23 determine the yield factor for the upcoming rate year.

24	State's Reserve Ratio	Yield Factor
25	1.45 percent and above	= 0.70

1	1.30 percent up to but not including 1.45	=	0.75
2	1.15 percent up to but not including 1.30	=	0.80
3	1.00 percent up to but not including 1.15	=	0.90
4	0.85 percent up to but not including 1.00	=	1.00
5	0.70 percent up to but not including 0.85	=	1.10
6	0.60 percent up to but not including 0.70	=	1.20
7	0.50 percent up to but not including 0.60	=	1.25
8	0.45 percent up to but not including 0.50	=	1.30
9	0.40 percent up to but not including 0.45	=	1.35
10	0.35 percent up to but not including 0.40	=	1.40
11	0.30 percent up to but not including 0.35	=	1.45
12	Below 0.30 percent	=	1.50

13           Once the yield factor for the upcoming rate year has  
14 been determined, it is multiplied by the amount of unemployment  
15 benefits paid from combined tax during the four calendar quarters  
16 ending September 30 of the preceding year. The resulting figure is  
17 the planned yield for the rate year. The planned yield is divided  
18 by the total taxable wages for the four calendar quarters ending  
19 September 30 of the previous year and carried to four decimal  
20 places to create the average combined tax rate for the rate year.

21           (g) The average combined tax rate is assigned to rate  
22 category twelve as established in subdivision (4)(e) of this  
23 section. Rates for each of the remaining nineteen categories are  
24 determined by multiplying the average combined tax rate by the  
25 experience factor associated with each category and carried to

1 four decimal places. Employers who are delinquent in filing their  
2 combined tax reports as of October 31 of any year shall be assigned  
3 to category twenty for the following calendar year unless the  
4 delinquency is corrected prior to December 31 of the year of rate  
5 calculation.

6 (h) As used in this subdivision (4) of this section,  
7 standard rate means the rate assigned to category twenty for  
8 that year. For calendar years 2006 and thereafter, the standard  
9 rate shall be not less than five and four-tenths percent of the  
10 employer's annual taxable payroll;

11 (5) Any employer may at any time make voluntary  
12 contributions up to the amount necessary to qualify for one rate  
13 category reduction, additional to the required contributions,  
14 to the fund to be credited to his or her account. Voluntary  
15 contributions received after March 10, 2005, for rate year 2005 or  
16 January 10 for rate year 2006 and thereafter shall not be used in  
17 rate calculations for the same calendar year;

18 (6) As used in sections 48-648 to 48-654, the term  
19 payroll means the total amount of wages during a calendar year,  
20 except as otherwise provided in section 48-654, by which the  
21 combined tax was measured; and

22 (7)(a) The state or any of its instrumentalities shall  
23 make payments in lieu of contributions in an amount equal to  
24 the full amount of regular benefits plus one-half of the amount  
25 of extended benefits paid during each calendar quarter that is

1 attributable to service in employment of the state or any of its  
2 instrumentalities. The commissioner after the end of each calendar  
3 quarter shall notify any state instrumentality or other public  
4 employer of the amount of regular benefits and one-half the amount  
5 of extended benefits paid that are attributable to service in its  
6 employment and the instrumentality or public employer so notified  
7 shall reimburse the fund within thirty days after receipt of such  
8 notice. The For all tax years beginning before January 1, 2010,  
9 the commissioner may require that any employer whose annual payroll  
10 for either of the two preceding calendar years has equaled or  
11 exceeded five hundred thousand dollars to pay the reimbursement  
12 by an electronic method approved by the commissioner, except when  
13 the employer establishes to the satisfaction of the commissioner  
14 that payment of the reimbursement by an electronic method would  
15 work a hardship on the employer. For all tax years beginning on or  
16 after January 1, 2010, the commissioner may require any employer  
17 whose annual payroll for either of the two preceding calendar years  
18 has equaled or exceeded one hundred thousand dollars to pay the  
19 reimbursement by an electronic method approved by the commissioner,  
20 except when the employer establishes to the satisfaction of the  
21 commissioner that payment of the reimbursement by an electronic  
22 method would work a hardship on the employer.

23 (b) After December 31, 1977, the state or any of its  
24 political subdivisions and any instrumentality of one or more of  
25 the foregoing or any other governmental entity for which services

1 in employment as is provided by subdivision (4)(a) of section  
2 48-604 are performed shall be required to pay contributions and  
3 after December 31, 1996, combined tax on wages paid for services  
4 rendered in its or their employment on the same basis as any  
5 other employer who is liable for the payment of combined tax under  
6 the Employment Security Law, unless the state or any political  
7 subdivision thereof and any instrumentality of one or more of the  
8 foregoing or any other governmental entity for which such services  
9 are performed files with the commissioner its written election not  
10 later than January 31, 1978, or if such employer becomes subject  
11 to this section after January 1, 1978, not later than thirty  
12 days after such subjectivity begins, to become liable to make  
13 payments in lieu of contributions in an amount equal to the full  
14 amount of regular benefits plus one-half of the amount of extended  
15 benefits paid during each calendar quarter that is attributable to  
16 service in employment of such electing employer prior to December  
17 31, 1978, and in an amount equal to the full amount of regular  
18 benefits plus the full amount of extended benefits paid during each  
19 calendar quarter that is attributable to service in employment of  
20 such electing employer after January 1, 1979. Eligible employers  
21 electing to make payments in lieu of contributions shall not  
22 be liable for state unemployment insurance tax payments. The  
23 commissioner, after the end of each calendar quarter, shall notify  
24 any such employer that has so elected of the amount of benefits for  
25 which it is liable to pay pursuant to its election that have been



1 paid that are attributable to service in its employment and the  
2 employer so notified shall reimburse the fund within thirty days  
3 after receipt of such notice.

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

17 Sec. 9. Section 48-652, Revised Statutes Supplement,  
18 2007, is amended to read:

19 48-652 (1)(a) A separate experience account shall be  
20 established for each employer who is liable for payment of  
21 contributions. Whenever and wherever in the Employment Security  
22 Law the terms reserve account or experience account are used,  
23 unless the context clearly indicates otherwise, such terms shall be  
24 deemed interchangeable and synonymous and reference to either of  
25 such accounts shall refer to and also include the other.

1           (b) A separate reimbursement account shall be established  
2 for each employer who is liable for payments in lieu of  
3 contributions. All benefits paid with respect to service in  
4 employment for such employer shall be charged to his or her  
5 reimbursement account and such employer shall be billed for and  
6 shall be liable for the payment of the amount charged when billed  
7 by the commissioner. Payments in lieu of contributions received  
8 by the commissioner on behalf of each such employer shall be  
9 credited to such employer's reimbursement account, and two or more  
10 employers who are liable for payments in lieu of contributions may  
11 jointly apply to the commissioner for establishment of a group  
12 account for the purpose of sharing the cost of benefits paid that  
13 are attributable to service in the employ of such employers. The  
14 commissioner shall prescribe such rules and regulations as he or  
15 she deems necessary with respect to applications for establishment,  
16 maintenance, and termination of group accounts authorized by this  
17 subdivision.

18           (2) All contributions paid by an employer shall be  
19 credited to the experience account of such employer. State  
20 unemployment insurance tax payments shall not be credited to  
21 the experience account of each employer. Partial payments of  
22 combined tax shall be credited so that at least eighty percent  
23 of the combined tax payment excluding interest and penalty is  
24 credited first to contributions due. In addition to contributions  
25 credited to the experience account, each employer's account shall

1 be credited as of June 30 of each calendar year with interest  
2 at a rate determined by the commissioner based on the average  
3 annual interest rate paid by the Secretary of the Treasury of  
4 the United States of America upon the state's account in the  
5 Unemployment Trust Fund for the preceding calendar year multiplied  
6 by the balance in his or her experience account at the beginning  
7 of such calendar year. If the total credits as of such date to  
8 all employers' experience accounts are equal to or greater than  
9 ninety percent of the total amount in the Unemployment Compensation  
10 Fund, no interest shall be credited for that year to any employer's  
11 account. Contributions with respect to prior years which are  
12 received on or before January 31 of any year shall be considered  
13 as having been paid at the beginning of the calendar year. All  
14 voluntary contributions which are received on or before January  
15 10 of any year shall be considered as having been paid at the  
16 beginning of the calendar year.

17 (3) (a) Each experience account shall be charged only  
18 for benefits based upon wages paid by such employer. No benefits  
19 shall be charged to the experience account of any employer if (i)  
20 such benefits were paid on the basis of a period of employment  
21 from which the claimant (A) left work voluntarily without good  
22 cause, (B) left work voluntarily due to a nonwork-connected illness  
23 or injury, (C) left work voluntarily with good cause to escape  
24 abuse as defined in section 42-903 between household members as  
25 provided in subdivision (1) of section 48-628.01, (D) left work

1 from which he or she was discharged for misconduct connected with  
2 his or her work, or (E) left work voluntarily and is entitled to  
3 unemployment benefits without disqualification in accordance with  
4 subdivision (3) or (5) of section 48-628.01 and (ii) the employer  
5 has filed timely notice of the facts on which such exemption is  
6 claimed in accordance with rules and regulations prescribed by  
7 the commissioner. No benefits shall be charged to the experience  
8 account of any employer if such benefits were paid on the basis  
9 of wages paid in the base period that are wages for insured work  
10 solely by reason of subdivision (5) (b) of section 48-627.

11 (b) Each reimbursement account shall be charged only for  
12 benefits paid that were based upon wages paid by such employer in  
13 the base period that were wages for insured work solely by reason  
14 of subdivision (5) of section 48-627.

15 (c) Benefits paid to an eligible individual shall be  
16 charged against the account of his or her most recent employers  
17 within his or her base period against whose accounts the maximum  
18 charges hereunder have not previously been made in the inverse  
19 chronological order in which the employment of such individual  
20 occurred. The maximum amount so charged against the account of any  
21 employer, other than an employer for which services in employment  
22 as provided in subdivision (4) (a) of section 48-604 are performed,  
23 shall not exceed the total benefit amount to which such individual  
24 was entitled as set out in section 48-626 with respect to base  
25 period wages of such individual paid by such employer plus one-half

1 the amount of extended benefits paid to such eligible individual  
2 with respect to base period wages of such individual paid by  
3 such employer. The commissioner shall by rules and regulations  
4 prescribe the manner in which benefits shall be charged against  
5 the account of several employers for whom an individual performed  
6 employment during the same quarter or during the same base period.  
7 Any benefit check duly issued and delivered or mailed to a claimant  
8 and not presented for payment within one year from the date of its  
9 issue may be invalidated and the amount thereof credited to the  
10 Unemployment Compensation Fund, except that a substitute check may  
11 be issued and charged to the fund on proper showing at any time  
12 within the year next following. Any charge made to an employer's  
13 account for any such invalidated check shall stand as originally  
14 made.

15 (4) (a) An employer's experience account shall be deemed  
16 to be terminated one calendar year after such employer has ceased  
17 to be subject to the Employment Security Law, except that if the  
18 commissioner finds that an employer's business is closed solely  
19 because of the entrance of one or more of the owners, officers,  
20 partners, or limited liability company members or the majority  
21 stockholder into the armed forces of the United States, or of any  
22 of its allies, after July 1, 1950, such employer's account shall  
23 not be terminated and, if the business is resumed within two years  
24 after the discharge or release from active duty in the armed forces  
25 of such person or persons, the employer's experience account shall

1 be deemed to have been continuous throughout such period.

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

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

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

22 (7) If an individual's base period wage credits  
23 represent part-time employment for a contributory employer and  
24 the contributory employer continues to employ the individual to  
25 the same extent as during the base period, then the contributory

1 employer's experience account shall not be charged if the  
2 contributory employer has filed timely notice of the facts on which  
3 such exemption is claimed in accordance with rules and regulations  
4 prescribed by the commissioner.

5           Sec. 10. Section 48-654, Revised Statutes Cumulative  
6 Supplement, 2006, is amended to read:

7           48-654 Subject to section 48-654.01, any employer that  
8 acquires the organization, trade, or business, or substantially all  
9 the assets thereof, of another employer shall immediately notify  
10 the commissioner thereof, and prior to September 6, 1985, shall,  
11 and on and after September 6, 1985, may, pursuant to rules and  
12 regulations prescribed by the commissioner, assume the position of  
13 such employer with respect to the resources and liabilities of  
14 such employer's experience account as if no change with respect to  
15 such employer's experience account has occurred. The commissioner  
16 may provide by rule and regulation for partial transfers of  
17 experience accounts, except that such partial transfers of accounts  
18 shall be construed to allow computation and fixing of contribution  
19 rates only on and after January 1, 1953, where an employer has  
20 transferred at any time subsequent to or on January 1, 1950,  
21 a definable and segregable portion of his or her payroll and  
22 business to a transferee-employer. For an acquisition which occurs  
23 during ~~any of the first three~~ either of the first two calendar  
24 quarters of a calendar year or during the fourth quarter of the  
25 preceding calendar year, a new rate of contributions, payable

1 by the transferee-employer with respect to wages paid by him or  
 2 her after midnight of the last day of the calendar quarter in  
 3 which such acquisition occurs and prior to midnight of the ~~last~~  
 4 ~~day of the calendar year in which acquisition occurs,~~ following  
 5 September 30, shall be computed in accordance with this section.  
 6 For the purpose of computing such new rate of contributions,  
 7 the computation date with respect to any such acquisition shall  
 8 be ~~December 31~~ September 30 of the preceding calendar year and  
 9 the term payroll shall mean the total amount of wages by which  
 10 contributions to the transferee's account and to the transferor's  
 11 account were measured for the ~~calendar year~~ four calendar quarters  
 12 ending September 30 preceding the computation date.

13           Sec. 11. Section 48-668, Reissue Revised Statutes of  
 14 Nebraska, is amended to read:

15           48-668 (1) The commissioner is hereby authorized to enter  
 16 into arrangements with the appropriate and duly authorized agencies  
 17 of other states or the federal government, or both, whereby:

18           ~~(1)~~ (a) Services performed by an individual for a single  
 19 employer for which services are customarily performed by such  
 20 individual in more than one state shall be deemed to be services  
 21 performed entirely within any one of the states in which ~~(a)~~ (i)  
 22 any part of such individual's service is performed, ~~(b)~~ (ii) such  
 23 individual has his or her residence, or ~~(c)~~ (iii) the employer  
 24 maintains a place of business, if there is in effect, as to such  
 25 services, an election by an employer with the acquiescence of such



1 individual, approved by the agency charged with the administration  
2 of such state's unemployment compensation law, pursuant to which  
3 services performed by such individual for such employer are deemed  
4 to be performed entirely within such state;

5 ~~(2)~~ (b) Service performed by not more than three  
6 individuals, on any portion of a day but not necessarily  
7 simultaneously, for a single employer which customarily operates  
8 in more than one state shall be deemed to be service performed  
9 entirely within the state in which such employer maintains the  
10 headquarters of his or her business if there is in effect, as  
11 to such service, an approved election by an employer with the  
12 affirmative consent of each such individual, pursuant to which  
13 service performed by such individual for such employer is deemed to  
14 be performed entirely within such state;

15 ~~(3)~~ (c) Potential rights to benefits under the Employment  
16 Security Law may constitute the basis for payment of benefits  
17 by another state or the federal government and potential rights  
18 to benefits accumulated under the law of another state or the  
19 federal government may constitute the basis for the payment of  
20 benefits by this state. Such benefits shall be paid under the  
21 Employment Security Law or under the law of such state or the  
22 federal government or under such combination of the provisions of  
23 both laws, as may be agreed upon as being fair and reasonable  
24 to all affected interests. No such arrangement shall be entered  
25 into unless it contains provisions for reimbursement to the fund

1 for such benefits as are paid on the basis of wages and service  
2 subject to the law of another state or the federal government,  
3 and provision for reimbursement from the fund for such benefits  
4 as are paid by another state or the federal government on the  
5 basis of wages and service subject to the Employment Security Law.  
6 Reimbursements paid from the fund pursuant to this section shall be  
7 deemed to be benefits for the purposes of the Employment Security  
8 Law; and

9 ~~(4)~~ (d) Wages, upon the basis of which an individual may  
10 become entitled to benefits under an employment security law of  
11 another state or of the federal government, shall be deemed to be  
12 wages for insured work for the purpose of determining his or her  
13 benefits under the Employment Security Law; and wages for insured  
14 work, on the basis of which an individual may become entitled to  
15 benefits under the Employment Security Law, shall be deemed to be  
16 wages on the basis of which unemployment insurance is payable under  
17 such law of another state or of the federal government. No such  
18 arrangement shall be entered into unless it contains provisions  
19 for reimbursement to the fund for such of the benefits paid under  
20 the Employment Security Law upon the basis of such wages and  
21 provision for reimbursement from the fund for such benefits paid  
22 under such other law upon the basis of wages for insured work,  
23 as the commissioner finds will be fair and reasonable to all  
24 affected interests. Reimbursement paid from the fund pursuant to  
25 this section shall be deemed to be benefits for the purposes of the

1 Employment Security Law.

2           (2) Notwithstanding any other provisions of this section,  
3 the commissioner shall participate in any arrangements for the  
4 payment of benefits on the basis of combining an individual's  
5 wages and employment covered under the Employment Security Law with  
6 his or her wages and employment covered under the unemployment  
7 compensation laws of other states which are approved by the  
8 United States Secretary of Labor in consultation with the state  
9 unemployment compensation agencies as reasonably calculated to  
10 assure the prompt and full payment of benefits in such situations  
11 and which include provisions for (a) applying the base period  
12 of a single state law to a claim involving the combining of an  
13 individual's wages and employment covered under two or more state  
14 unemployment compensation laws, and (b) avoiding the duplicate use  
15 of wages and employment by reason of such combining. However, no  
16 benefits paid pursuant to an agreement to combine wages entered  
17 into under this subsection shall be charged against any employer's  
18 experience account if the employer's experience account, under the  
19 same or similar circumstances, would not be charged under the  
20 Employment Security Law. Benefits received by a claimant pursuant  
21 to an agreement entered into under this subsection to which he or  
22 she is not entitled shall be credited to an employer's experience  
23 account or reimbursement account in the same manner as claims paid  
24 based solely upon the laws of this state.

25           Sec. 12. Section 48-668.02, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2           48-668.02 Reimbursements paid from the fund pursuant to  
3 ~~subsections (3) and (4)~~ subdivisions (1)(c) and (1)(d) of section  
4 48-668 shall be deemed to be benefits for the purposes of the  
5 Employment Security Law. The commissioner is authorized to make to  
6 other state or federal agencies and to receive from such other  
7 state or federal agencies reimbursements from or to the fund  
8 in accordance with arrangements entered into pursuant to section  
9 48-668.

10           Sec. 13. Sections 1, 2, 3, 4, and 14 of this act become  
11 operative on January 1, 2009. The other sections of this act become  
12 operative on their effective date.

13           Sec. 14. Original section 48-151, Reissue Revised  
14 Statutes of Nebraska, and section 48-1,110, Revised Statutes  
15 Supplement, 2007, are repealed.

16           Sec. 15. Original sections 48-668 and 48-668.02, Reissue  
17 Revised Statutes of Nebraska, sections 48-648, 48-648.01, and  
18 48-654, Revised Statutes Cumulative Supplement, 2006, and sections  
19 48-612.01, 48-649, and 48-652, Revised Statutes Supplement, 2007,  
20 are repealed.

21           Sec. 16. Since an emergency exists, this act takes effect  
22 when passed and approved according to law.