

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 1058**

Final Reading

Introduced by Carlson, 38.

Read first time January 18, 2012

Committee: Business and Labor

A BILL

1 FOR AN ACT relating to labor; to amend sections 48-630, 48-632,  
2 48-634, 48-636, 48-637, 48-644, 48-652, 48-655,  
3 48-663.01, 48-665, 48-665.01, and 48-2302, Reissue  
4 Revised Statutes of Nebraska; to change provisions of the  
5 Employment Security Law and the New Hire Reporting Act to  
6 conform to federal law; to change and eliminate  
7 provisions relating to appeal tribunals; to harmonize  
8 provisions; to provide operative dates; to repeal the  
9 original sections; and to outright repeal section 48-633,  
10 Reissue Revised Statutes of Nebraska.  
11 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 48-630, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           48-630 A determination upon a claim filed pursuant to  
4 section 48-629 shall be made promptly by a representative designated  
5 by the commissioner, hereinafter referred to as a deputy, and shall  
6 include a statement as to whether and in what amount claimant is  
7 entitled to benefits for the week with respect to which the  
8 determination is made and, in the event of a denial, shall state the  
9 reasons therefor. A determination with respect to the first week of a  
10 benefit year shall also include a statement as to whether the  
11 claimant has been paid the wages required under subdivision (5) of  
12 section 48-627, and, if so, the first day of the benefit year, his or  
13 her weekly benefit amount, and the maximum total amount of benefits  
14 payable to him or her with respect to such benefit year. Any benefits  
15 to which a claimant has been found eligible shall not be withheld  
16 because of the filing of an appeal under section 48-634 and such  
17 benefits shall be paid until the appeal tribunal has rendered its  
18 decision modifying or reversing the determination allowing such  
19 benefits if the claimant is otherwise eligible. Any benefits received  
20 by any person to which, under a redetermination or decision pursuant  
21 to sections 48-630 to 48-640, he or she has been found not entitled  
22 shall be treated as ~~excessive~~erroneous payments in accordance with  
23 the provisions of section 48-665. Whenever any claim involves the  
24 application of the provisions of subdivision (4) of section 48-628,  
25 the deputy shall promptly transmit his or her full findings of fact,

1 with respect to that subdivision, to the commissioner, who, on the  
2 basis of the evidence submitted and such additional evidence as he or  
3 she may require, shall affirm, modify, or set aside such findings of  
4 fact and transmit to the deputy a decision upon the issue involved  
5 under the subdivision, which shall be deemed to be the decision of  
6 the deputy. All claims arising out of the same alleged labor dispute  
7 may be considered at the same time. The parties shall be promptly  
8 notified of the determination, together with the reasons therefor,  
9 and such determination shall be deemed to be the final decision on  
10 the claim, unless an appeal is filed with the appeal tribunal in the  
11 manner prescribed in section 48-634.

12           Sec. 2. Section 48-632, Reissue Revised Statutes of  
13 Nebraska, is amended to read:

14           48-632 (1) Notice of a determination upon a claim shall  
15 be promptly given to the claimant by delivery thereof or by mailing  
16 such notice to his or her last-known address. In addition, notice of  
17 any determination, together with the reasons therefor, shall be  
18 promptly given in the same manner to any employer ~~by~~from whom  
19 claimant ~~was employed~~received wages on or after the first day of his  
20 ~~or her~~the base period for his or her most recent claim, and who has  
21 indicated prior to the determination, in such manner as required by  
22 rule and regulation of the commissioner, that such individual may be  
23 ineligible or disqualified under any provision of the Employment  
24 Security Law. An employer shall provide information to the department  
25 in respect to the request for information within ten days after the

1 mailing or electronic transmission of a request.

2 (2) If the employer provided information pursuant to  
3 subsection (7) of section 48-652 on the claim establishing the  
4 previous benefit year but did not receive a determination because of  
5 no involvement of base period wages and there are wages from that  
6 employer in the base period for the most recent claim, the employer  
7 shall be provided the opportunity to provide new information that  
8 such individual may be ineligible or disqualified under any provision  
9 of the Employment Security Law on the current claim. This subsection  
10 shall not apply to employers who did not receive a determination  
11 because the separation was determined to result from a lack of work.

12 (3) On or after the operative date of this section, if an  
13 employer fails to provide information to the department within the  
14 time period specified in subsection (1) of this section, the employer  
15 shall forfeit any appeal rights otherwise available pursuant to  
16 section 48-634.

17 Sec. 3. Section 48-634, Reissue Revised Statutes of  
18 Nebraska, is amended to read:

19 48-634 (1) The claimant or any other party entitled to  
20 notice of a determination as provided in section 48-632, may file an  
21 appeal from such determination with ~~an appeal tribunal. the~~  
22 department. Notice of appeal must be in writing or in accordance with  
23 rules and regulations adopted and promulgated by the commissioner and  
24 must be delivered and received within twenty days after the date of  
25 mailing of the notice of determination to his or her last-known

1 address or, if such notice is not mailed, after the date of delivery  
2 of such notice of determination, except that for good cause shown an  
3 appeal filed outside the prescribed time period may be heard. In  
4 accordance with section 303 of the federal Social Security Act, 42  
5 U.S.C. 503, the commissioner shall provide the opportunity for a fair  
6 hearing before an impartial appeal tribunal on each appeal. For good  
7 cause shown, the tribunal may also take jurisdiction over appeals  
8 filed outside the prescribed appeal period.

9 (2) Unless the appeal is withdrawn, the appeal tribunal,  
10 after affording the parties reasonable opportunities for a fair  
11 hearing, shall make findings and conclusions and on the basis thereof  
12 affirm, modify, or reverse such determination. If an appeal involves  
13 a question as to whether services were performed by the claimant in  
14 employment or for an employer, the tribunal shall give special notice  
15 of such issue and of the pendency of the appeal to the employer and  
16 to the commissioner, both of whom shall be parties to the proceeding  
17 and be afforded a reasonable opportunity to adduce evidence bearing  
18 on such question. The parties shall be promptly notified of the  
19 tribunal's decision and shall be furnished with a copy of the  
20 decision and the findings and conclusions in support of the decision.

21 Sec. 4. Section 48-636, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23 48-636 Except insofar as reconsideration of any  
24 determination is had under sections 48-630 to 48-632, any right,  
25 fact, or matter in issue, directly passed upon or necessarily

1 involved in a determination or redetermination which has become  
2 final, or in a decision on appeal which has become final, shall be  
3 conclusive for all the purposes of the Employment Security Law as  
4 between the Commissioner of Labor, the claimant, and all employers  
5 who had notice of such determination, redetermination, or decision.  
6 Subject to appeal proceedings and judicial review as provided in  
7 sections ~~48-633~~ 48-634 to 48-644, any determination, redetermination,  
8 or decision as to rights to benefits shall be conclusive for all the  
9 purposes of such law and shall not be subject to collateral attack by  
10 any employer.

11           Sec. 5. Section 48-637, Reissue Revised Statutes of  
12 Nebraska, is amended to read:

13           48-637 The final decisions of an appeal tribunal, and the  
14 principles of law declared by it in arriving at such decisions,  
15 unless expressly or impliedly overruled by a later decision of the  
16 tribunal or by a court of competent jurisdiction, shall be binding  
17 upon the commissioner and any deputy in subsequent proceedings which  
18 involve similar questions of law; ~~Provided,~~ except that if in  
19 connection with any subsequent proceeding the commissioner or a  
20 deputy has serious doubt as to the correctness of any principle so  
21 declared he or she may certify his or her findings of fact in such  
22 case, together with the question of law involved to the appeal  
23 tribunal, which, after giving notice and reasonable opportunity for  
24 hearing upon the law to all parties to such proceedings, shall  
25 thereupon certify to the commissioner, such deputy and such parties

1 its answer to the question submitted. If the question thus certified  
2 to the appeal tribunal arises in connection with a claim for  
3 benefits, the tribunal in its discretion may remove to itself the  
4 entire proceedings on such claim, and, after proceeding in accordance  
5 with the requirements of sections ~~48-633~~48-634 to 48-643 with  
6 respect to proceedings before an appeal tribunal, shall render its  
7 decision upon the entire claim.

8           Sec. 6. Section 48-644, Reissue Revised Statutes of  
9 Nebraska, is amended to read:

10           48-644 Benefits shall be promptly paid in accordance with  
11 a determination or redetermination. If pursuant to a determination or  
12 redetermination benefits are payable in any amount as to which there  
13 is no dispute, such amount of benefits shall be promptly paid  
14 regardless of any appeal. The commencement of a proceeding for  
15 judicial review pursuant to section 48-638 shall not operate as a  
16 supersedeas or stay. If an employer is otherwise entitled to  
17 noncharging of benefits pursuant to sections 48-630 and 48-652, and a  
18 decision allowing benefits is finally reversed, no employer's account  
19 shall be charged with benefits paid pursuant to the erroneous  
20 determination, and benefits shall not be paid for any subsequent  
21 weeks of unemployment involved in such reversal.

22           Sec. 7. Section 48-652, Reissue Revised Statutes of  
23 Nebraska, is amended to read:

24           48-652 (1)(a) A separate experience account shall be  
25 established for each employer who is liable for payment of

1 contributions. Whenever and wherever in the Employment Security Law  
2 the terms reserve account or experience account are used, unless the  
3 context clearly indicates otherwise, such terms shall be deemed  
4 interchangeable and synonymous and reference to either of such  
5 accounts shall refer to and also include the other.

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

22 (2) All contributions paid by an employer shall be  
23 credited to the experience account of such employer. State  
24 unemployment insurance tax payments shall not be credited to the  
25 experience account of each employer. Partial payments of combined tax



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

20 (3)(a) Each experience account shall be charged only for  
21 benefits based upon wages paid by such employer. No benefits shall be  
22 charged to the experience account of any employer if (i) such  
23 benefits were paid on the basis of a period of employment from which  
24 the claimant (A) left work voluntarily without good cause, (B) left  
25 work voluntarily due to a nonwork-connected illness or injury, (C)

1 left work voluntarily with good cause to escape abuse as defined in  
2 section 42-903 between household members as provided in subdivision  
3 (1) of section 48-628.01, (D) left work from which he or she was  
4 discharged for misconduct connected with his or her work, (E) left  
5 work voluntarily and is entitled to unemployment benefits without  
6 disqualification in accordance with subdivision (3) or (5) of section  
7 48-628.01, or (F) was involuntarily separated from employment and  
8 such benefits were paid pursuant to section 48-628.05, and (ii) the  
9 employer has filed timely notice of the facts on which such exemption  
10 is claimed in accordance with rules and regulations prescribed by the  
11 commissioner. No benefits shall be charged to the experience account  
12 of any employer if such benefits were paid on the basis of wages paid  
13 in the base period that are wages for insured work solely by reason  
14 of subdivision (5)(c)(iii) of section 48-627. No benefits shall be  
15 charged to the experience account of any employer if such benefits  
16 were paid during a week when the individual was participating in  
17 training approved under section 236(a)(1) of the federal Trade Act of  
18 1974, 19 U.S.C. 2296(a)(1).

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

23 (c) Benefits paid to an eligible individual shall be  
24 charged against the account of his or her most recent employers  
25 within his or her base period against whose accounts the maximum

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

22 (4)(a) An employer's experience account shall be deemed  
23 to be terminated one calendar year after such employer has ceased to  
24 be subject to the Employment Security Law, except that if the  
25 commissioner finds that an employer's business is closed solely

1 because of the entrance of one or more of the owners, officers,  
2 partners, or limited liability company members or the majority  
3 stockholder into the armed forces of the United States, or of any of  
4 its allies, after July 1, 1950, such employer's account shall not be  
5 terminated and, if the business is resumed within two years after the  
6 discharge or release from active duty in the armed forces of such  
7 person or persons, the employer's experience account shall be deemed  
8 to have been continuous throughout such period.

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

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

24 (6) A contributory or reimbursable employer shall be  
25 relieved of charges if the employer was previously charged for wages

1 and the same wages are being used a second time to establish a new  
2 claim as a result of the October 1, 1988, change in the base period.

3 (7) If an individual's base period wage credits represent  
4 part-time employment for a contributory employer and the contributory  
5 employer continues to employ the individual to the same extent as  
6 during the base period, then the contributory employer's experience  
7 account shall not be charged if the contributory employer has filed  
8 timely notice of the facts on which such exemption is claimed in  
9 accordance with rules and regulations prescribed by the commissioner.

10 (8) If a contributory employer responds to the  
11 department's request for information within the time period set forth  
12 in subsection (1) of section 48-632 and provides accurate information  
13 as known to the employer at the time of the response, the employer's  
14 experience account shall not be charged if the individual's  
15 separation from employment is voluntary and without good cause as  
16 determined under subdivision (1) of section 48-628.

17 Sec. 8. Section 48-655, Reissue Revised Statutes of  
18 Nebraska, is amended to read:

19 48-655 (1) Combined taxes or payments in lieu of  
20 contributions unpaid on the date on which they are due and payable,  
21 as prescribed by the commissioner, shall bear interest at the rate of  
22 one and one-half percent per month from such date until payment, plus  
23 accrued interest, is received by the commissioner, except that no  
24 interest shall be charged subsequent to the date of the erroneous  
25 payment of an amount equal to the amount of the delayed payment into

1 the unemployment trust fund of another state or to the federal  
2 government. Interest collected pursuant to this section shall be paid  
3 in accordance with subdivision (1)(b) of section 48-621. If, after  
4 due notice, any employer defaults in any payment of combined taxes or  
5 payments in lieu of contributions or interest thereon, the amount due  
6 may be collected (a) by civil action in the name of the commissioner  
7 and the employer adjudged in default shall pay the costs of such  
8 action, ~~or~~ (b) by setoff against any state income tax refund due the  
9 employer pursuant to sections 77-27,197 to 77-27,209, or (c) as  
10 provided in subsection (2) of this section. Civil actions brought  
11 under this section to collect combined taxes or interest thereon or  
12 payments in lieu of contributions or interest thereon from an  
13 employer shall be heard by the court at the earliest possible date  
14 and shall be entitled to preference upon the calendar of the court  
15 over all other civil actions except petitions for judicial review  
16 under section 48-638.

17 ~~(2) The commissioner may by rule and regulation provide~~  
18 ~~for the offset from a person's personal federal income tax refund of~~  
19 ~~contributions, penalties, and interest due and payable for which the~~  
20 ~~commissioner has determined the person to be liable due to fraud and~~  
21 ~~which remain uncollected for not more than ten years. Such rules and~~  
22 ~~regulations shall comply with Public Law 110-328 (2008) and United~~  
23 ~~States Treasury regulations and guidelines adopted pursuant thereto.~~  
24 ~~The commissioner shall notify the debtor, by certified mail return~~  
25 ~~receipt requested, that the commissioner plans to recover the debt~~

1 ~~through offset against any federal income tax refund, and the debtor~~  
2 ~~shall be given sixty days to present evidence that all or part of the~~  
3 ~~liability is either not legally enforceable or not due to fraud. The~~  
4 ~~commissioner shall review any evidence presented and determine that~~  
5 ~~the debt is legally enforceable and due to fraud before proceeding~~  
6 ~~further with the offset. The amount recovered, less any~~  
7 ~~administrative fees charged by the United States Treasury, shall be~~  
8 ~~credited to the debt owed. Any determination rendered under this~~  
9 ~~subsection that the person's federal income tax refund is not subject~~  
10 ~~to offset does not require the commissioner to amend the~~  
11 ~~commissioner's initial determination that formed the basis for the~~  
12 ~~proposed offset.~~

13 (2) The commissioner may recover a covered unemployment  
14 compensation debt, as defined in 26 U.S.C. 6402, by setoff against a  
15 person's federal income tax refund. Such setoff shall be made in  
16 accordance with such section and United States Treasury regulations  
17 and guidelines adopted pursuant thereto. The commissioner shall  
18 notify the debtor that the commissioner plans to recover the debt  
19 through setoff against any federal income tax refund, and the debtor  
20 shall be given sixty days to present evidence that all or part of the  
21 liability is either not legally enforceable or is not a covered  
22 unemployment compensation debt. The commissioner shall review any  
23 evidence presented and determine that the debt is legally enforceable  
24 and is a covered unemployment compensation debt before proceeding  
25 further with the offset. The amount recovered, less any

1 administrative fees charged by the United States Treasury, shall be  
2 credited to the debt owed. Any determination rendered under this  
3 subsection that the person's federal income tax refund is not subject  
4 to setoff does not require the commissioner to amend the  
5 commissioner's initial determination that formed the basis for the  
6 proposed setoff.

7           Sec. 9. Section 48-663.01, Reissue Revised Statutes of  
8 Nebraska, is amended to read:

9           48-663.01 (1)(a) Notwithstanding any other provision of  
10 this section, or of section 48-627 or 48-663, an individual who  
11 willfully fails to disclose amounts earned during any week with  
12 respect to which benefits are claimed by him or her or who willfully  
13 fails to disclose or has falsified as to any fact which would have  
14 disqualified him or her or rendered him or her ineligible for  
15 benefits during such week, shall forfeit all or part of his or her  
16 benefit rights, as determined by a deputy, with respect to uncharged  
17 wage credits accrued prior to the date of such failure or to the date  
18 of such falsifications.

19           (b) In addition to any benefits which he or she may be  
20 required to repay pursuant to subdivision (1)(a) of this section, if  
21 an overpayment is established pursuant to this section on or after  
22 the operative date of this section, an individual shall be required  
23 to pay to the department a penalty equal to fifteen percent of the  
24 amount of benefits received as a result of such willful failure to  
25 disclose or falsification. All amounts collected pursuant to this



1 subdivision shall be remitted to the State Treasurer for credit to  
2 the Unemployment Compensation Fund.

3 (c) An appeal may be taken from any ~~such~~ determination  
4 made pursuant to subdivision (1)(a) of this section in the manner  
5 provided in section 48-634.

6 (2)(a) If any person liable to repay an overpayment of  
7 unemployment benefits resulting from a determination under ~~subsection~~  
8 ~~(1)~~ subdivision (1)(a) of this section and the penalty required under  
9 subdivision (1)(b) of this section fails or refuses to repay such  
10 overpayment and any penalty assessed within twelve months after the  
11 date the overpayment determination becomes final, the commissioner  
12 may issue a levy on salary, wages, or other regular payments due to  
13 or received by such person and such levy shall be continuous from the  
14 date the levy is served until the amount of the levy is satisfied.  
15 Notice of the levy shall be mailed to the person whose salary, wages,  
16 or other regular payment is levied upon at his or her last-known  
17 address not later than the date that the levy is served. Exemptions  
18 or limitations on the amount of salary, wages, or other regular  
19 payment that can be garnished or levied upon by a judgment creditor  
20 shall apply to levies made pursuant to this section. Appeal of a levy  
21 may be made in the manner provided in section 48-634, but such appeal  
22 shall not act as a stay of the levy.

23 (b) Any person upon whom a levy is served who fails or  
24 refuses to honor the levy without cause may be held liable for the  
25 amount of the levy up to the value of the assets of the person liable

1 to repay the overpayment that are under the control of the person  
2 upon whom the levy is served at the time of service and thereafter.

3 Sec. 10. Section 48-665, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5 48-665 (1) Any person who has received any sum as  
6 benefits under the Employment Security Law to which he or she was not  
7 entitled shall be liable to repay such sum to the commissioner for  
8 the fund. Any such erroneous benefit payments shall be collectible  
9 (a) without interest by civil action in the name of the commissioner,  
10 (b) by offset against any future benefits payable to the claimant  
11 with respect to the benefit year current at the time of such receipt  
12 or any benefit year which may commence within three years after the  
13 end of such current benefit year, except that no such recoupment by  
14 the withholding of future benefits shall be had if such sum was  
15 received by such person without fault on his or her part and such  
16 recoupment would defeat the purpose of the Employment Security Law or  
17 would be against equity and good conscience, ~~or~~ (c) by setoff against  
18 any state income tax refund due the claimant pursuant to sections  
19 77-27,197 to 77-27,209, or (d) as provided in subsection (2) of this  
20 section.

21 ~~(2) The commissioner may by rule and regulation provide~~  
22 ~~for the offset from a person's personal federal income tax refund of~~  
23 ~~any person who has received any sum as benefits under the Employment~~  
24 ~~Security Law to which he or she was not entitled as a result of fraud~~  
25 ~~and which remain uncollected for not more than ten years. Such rules~~

1 ~~and regulations shall comply with Public Law 110-328 (2008) and~~  
2 ~~United States Treasury regulations and guidelines adopted pursuant~~  
3 ~~thereto. The commissioner shall notify the debtor that the~~  
4 ~~commissioner plans to recover the debt through offset against any~~  
5 ~~federal income tax refund, and the debtor shall be given sixty days~~  
6 ~~to present evidence that all or part of the liability is either not~~  
7 ~~legally enforceable or not due to fraud. The commissioner shall~~  
8 ~~review any evidence presented and determine that the debt is legally~~  
9 ~~enforceable and due to fraud before proceeding further with the~~  
10 ~~offset. The amount recovered, less any administrative fees charged by~~  
11 ~~the United States Treasury, shall be credited to the debt owed. Any~~  
12 ~~determination rendered under this subsection that the person's~~  
13 ~~federal income tax refund is not subject to offset does not require~~  
14 ~~the commissioner to amend the commissioner's initial determination~~  
15 ~~that formed the basis for the proposed offset.~~

16 (2) The commissioner may recover a covered unemployment  
17 compensation debt, as defined in 26 U.S.C. 6402, by setoff against a  
18 person's federal income tax refund. Such setoff shall be made in  
19 accordance with such section and United States Treasury regulations  
20 and guidelines adopted pursuant thereto. The commissioner shall  
21 notify the debtor that the commissioner plans to recover the debt  
22 through setoff against any federal income tax refund, and the debtor  
23 shall be given sixty days to present evidence that all or part of the  
24 liability is either not legally enforceable or is not a covered  
25 unemployment compensation debt. The commissioner shall review any

1 evidence presented and determine that the debt is legally enforceable  
2 and is a covered unemployment compensation debt before proceeding  
3 further with the offset. The amount recovered, less any  
4 administrative fees charged by the United States Treasury, shall be  
5 credited to the debt owed. Any determination rendered under this  
6 subsection that the person's federal income tax refund is not subject  
7 to setoff does not require the commissioner to amend the  
8 commissioner's initial determination that formed the basis for the  
9 proposed setoff.

10           Sec. 11. Section 48-665.01, Reissue Revised Statutes of  
11 Nebraska, is amended to read:

12           48-665.01 Any person who has received any sum as benefits  
13 to which he or she was not entitled from any agency which administers  
14 an employment security law of another state or foreign government and  
15 who has been found liable to repay benefits received under such law  
16 may be required to repay to the commissioner for such state or  
17 foreign government the amount found due. Such amount, without  
18 interest, may be collected (1) by civil action in the name of the  
19 commissioner acting as agent for such agency, (2) by offset against  
20 any future benefits payable to the claimant under the Employment  
21 Security Law for any benefit year which may commence within three  
22 years after the claimant was notified such amount was due, except  
23 that no such recoupment by the withholding of future benefits shall  
24 be had if such sum was received by such person without fault on his  
25 or her part and such recoupment would defeat the purpose of the

1 Employment Security Law or would be against equity and good  
2 conscience, ~~or~~(3) by setoff against any state income tax refund due  
3 the claimant pursuant to sections 77-27,197 to 77-27,209, or (4) as  
4 provided in subsection (2) of section 48-665.

5 Sec. 12. Section 48-2302, Reissue Revised Statutes of  
6 Nebraska, is amended to read:

7 48-2302 For purposes of the New Hire Reporting Act:

8 (1) Date of hire means the day an employee begins  
9 employment with an employer;

10 (2) Department means the Department of Health and Human  
11 Services;

12 (3) Employee means an independent contractor or a person  
13 who is compensated by or receives income from an employer or other  
14 payor, regardless of how such income is denominated;

15 (4) Employer means any individual, partnership, limited  
16 liability company, firm, corporation, association, political  
17 subdivision, or department or agency of the state or federal  
18 government, labor organization, or any other entity with an employee;

19 (5) Income means compensation paid, payable, due, or to  
20 be due for labor or personal services, whether denominated as wages,  
21 salary, earnings, income, commission, bonus, or otherwise;

22 (6) Payor includes a person, partnership, limited  
23 partnership, limited liability partnership, limited liability  
24 company, corporation, or other entity doing business or authorized to  
25 do business in the State of Nebraska, including a financial

1 institution, or a department or an agency of state, county, or city  
2 government; and

3 (7) Rehire means the first day an employee begins  
4 employment with the employer following a termination of employment  
5 with such employer. Termination of employment does not include  
6 temporary separations from employment, such as an unpaid medical  
7 leave, an unpaid leave of absence, a temporary layoff of less than  
8 sixty days in length, or an absence for disability or maternity.

9 Sec. 13. Sections 1, 6, 7, 8, 10, 11, and 14 of this act  
10 become operative on January 1, 2013, sections 2, 3, 4, 5, 12, 13, 15,  
11 and 17 of this act become operative on October 1, 2012, and sections  
12 9 and 16 of this act become operative on October 1, 2013.

13 Sec. 14. Original sections 48-630, 48-644, 48-652,  
14 48-655, 48-665, and 48-665.01, Reissue Revised Statutes of Nebraska,  
15 are repealed.

16 Sec. 15. Original sections 48-632, 48-634, 48-636,  
17 48-637, and 48-2302, Reissue Revised Statutes of Nebraska, are  
18 repealed.

19 Sec. 16. Original section 48-663.01, Reissue Revised  
20 Statutes of Nebraska, is repealed.

21 Sec. 17. The following section is outright repealed:  
22 Section 48-633, Reissue Revised Statutes of Nebraska.