LB933
2016

LEGISLATURE OF NEBRASKA

ONE HUNDRED FOURTH LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 933

Introduced by Coash, 27.

Read first time January 12, 2016

Committee: Business and Labor

A BILL FOR AN ACT relating to payroll processors; to adopt the Payroll Processor Regulation Act.

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

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Section 1. Sections 1 to 6 of this act shall be known and may be cited as the Payroll Processor Regulation Act.

Sec. 2. For purposes of the Payroll Processor Regulation Act:

(1) Employer means a person that maintains an office or otherwise transacts business in this state and makes payment of wages taxable under the Nebraska Revenue Act of 1967 to a resident or nonresident individual;

(2) Payroll processing services means preparing and issuing payroll checks; preparing and filing state or federal income withholding tax reports or unemployment insurance contribution reports; or collecting, holding, and turning over to the Tax Commissioner, the Commissioner of Labor, or federal tax authorities income withholding taxes pursuant to the Nebraska Revenue Act of 1967 or federal law or unemployment insurance contributions pursuant to the Employment Security Law or federal law;

(3) Payroll processor means a person as defined in section 77-113 that provides payroll processing services for one or more employers. Payroll processor does not include a certified public accountant; and

(4) Preparing and issuing payroll checks means providing redeemable payroll payment instruments and includes functions performed by a payroll processor that holds a signature stamp, electronic signature, or pre-signed check stock from the employer, but does not include functions performed by a payroll processor that provides unsigned checks to the employer for distribution by the employer.

Sec. 3. (1) A person desiring to engage or continue in business in this state as a payroll processor shall apply to the Tax Commissioner for a payroll processor license on or before January 31 of each year in a form approved by the Tax Commissioner. The application for issuance or renewal of a payroll processor license shall require the license applicant to provide to the Tax Commissioner evidence of a surety bond, in a form approved by the Tax Commissioner, in an amount equal to the total of all state and federal tax payments and unemployment insurance premiums processed by the payroll processor on behalf of employers in this state in the three-consecutive-month period of highest volume during the previous calendar year or fifty thousand dollars, whichever is greater, but not to exceed five hundred thousand dollars. The bond must designate the Tax Commissioner as payee. The bond paid to the Tax Commissioner may be used for the purposes of the Tax Commissioner and for the benefit of any employer who may have a cause of action against the payroll processor. The terms of the bond must run continuously until canceled, and the aggregate amount of the bond must be maintained at all times. The Tax Commissioner, within his or her discretion, may modify terms and conditions for bonds specified in this subsection or may permit submission of an irrevocable letter of credit or other alternative form of security so as to ensure the maximum practicable or appropriate protection for employers.

(2) A surety company issuing a bond pursuant to this section shall immediately notify the Tax Commissioner if such bond is cancelled or terminated or lapses. The notice must include the name and address of the payroll processor and the amount of the bond. The cancellation, termination, or lapse is not effective until at least thirty days after the Tax Commissioner receives notice.

(3) A payroll processor that does not have the authority to access, control, direct, transfer, or disburse a client's funds is not subject to this section. A payroll processor that arranges for the transfer of funds from an employer's account directly to taxing authorities for payment of the employer's taxes is not subject to this section as long as the payroll processor is not authorized to arrange for the transfer of funds for any other uses or to any other accounts.

Sec. 4. A payroll processor shall not designate itself as the sole recipient of notices from state or federal authorities for nonpayment of taxes or unemployment insurance contributions. A payroll processor shall ensure that such notices are provided directly to the affected employers.

Sec. 5. The failure of a payroll processor to maintain the bond or

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other security required under section 3 of this act shall subject the payroll processor to the revocation, suspension, or nonrenewal of the payroll processor's license.

Sec. 6. The Tax Commissioner may adopt and promulgate rules and regulations to carry out the Payroll Processor Regulation Act.