

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 99

Introduced by Wayne, 13.

Read first time January 10, 2019

Committee:

- 1 A BILL FOR AN ACT relating to the Prompt Payment Act; to amend sections
- 2 81-2402, 81-2403, 81-2404, and 81-2405, Reissue Revised Statutes of
- 3 Nebraska; to define a term; to change requirements for bills
- 4 submitted by small businesses; to harmonize provisions; and to
- 5 repeal the original sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 81-2402, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 81-2402 As used in the Prompt Payment Act, unless the context
4 otherwise requires:

5 (1) Agency shall mean the state and any agency, department, office,
6 commission, board, panel, or division of the state. Agency shall include
7 the University of Nebraska and the Nebraska state colleges;

8 (2) Bill shall mean a proper billing or invoice which requests a
9 payment and which is supplemented by all necessary verification and forms
10 required by agency rules and regulations to process payments;

11 (3) Creditor shall mean any person, corporation, association, or
12 other business concern engaged in a trade or business, either on a for-
13 profit or not-for-profit basis, and providing any goods or services to an
14 agency;

15 (4) Good faith dispute shall mean:

16 (a) A contention by the agency that goods delivered or services
17 rendered were of less quantity or quality than ordered or specified by
18 contract, faulty, or installed improperly; or

19 (b) Any other reason giving cause for the withholding of payment by
20 the agency until the dispute is settled, except that failure to give
21 notice as prescribed in section 81-2405 shall preclude an agency from
22 claiming a good faith dispute in the case of a defective or improper
23 billing;

24 (5) Goods shall mean any goods, supplies, materials, equipment, or
25 other personal property but shall not mean any real property;~~and~~

26 (6) Services shall mean any contractual services, including, but not
27 limited to, architectural, engineering, medical, financial consulting, or
28 other professional services, any construction services, and any other
29 personal services but shall not mean any services performed as an officer
30 or employee of any agency; and -

31 (7) Small business shall mean a business which is classified as a

1 small business according to the Table of Small Business Size Standards
2 Matched to North American Industry Classification System Codes of the
3 United States Small Business Administration as the table existed on
4 October 1, 2018.

5 Sec. 2. Section 81-2403, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 81-2403 (1) Except as provided in subsection (2) of this section,
8 each agency shall make payment in full for all goods delivered or
9 services rendered by a creditor which is a small business on or before
10 the fifteenth calendar day, or by any other creditor on or before the
11 forty-fifth calendar day, after (a) the date of receipt by the agency of
12 the goods or services or (b) the date of receipt by the agency of the
13 bill for the goods or services, whichever is later, unless other
14 provisions for payment are agreed to in writing by the creditor and the
15 agency.

16 (2) Any agency making payment for goods or services provided for
17 third parties shall make payment in full for such goods or services on or
18 before the sixtieth calendar day after the date of receipt by the agency
19 of the bill.

20 (3) No goods or services shall be deemed to be received by an agency
21 until all such goods or services are completely delivered and finally
22 accepted by the agency. For purposes of determining whether payment was
23 made in accordance with this section, payment in full by an agency shall
24 be considered to be made on the date the warrant or check for such
25 payment was mailed or otherwise transmitted.

26 (4) In order to qualify as a small business for purposes of the
27 Prompt Payment Act, the creditor shall submit evidence of its
28 classification status according to the Table of Small Business Size
29 Standards Matched to North American Industry Classification System Codes
30 of the United States Small Business Administration as the table existed
31 on October 1, 2018, with the bill for the goods or services.

1 Sec. 3. Section 81-2404, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 81-2404 Any creditor of an agency not receiving payment in full for
4 goods delivered or services rendered within the applicable forty-five day
5 or sixty-day time period under section 81-2403 ~~, whichever is applicable,~~
6 may charge the agency interest on the unpaid principal balance at the
7 rate specified in section 45-104.02, as such rate may from time to time
8 be adjusted. Interest charges shall begin to accrue on the thirty-first
9 calendar day after (1) the date of receipt by the agency of the goods or
10 services or (2) the date of receipt by the agency of the bill for the
11 goods or services, whichever is later, and shall terminate on the date on
12 which payment in full of the amount due is made. Each agency shall pay
13 the interest charge upon request unless the bill is the subject of a good
14 faith dispute between the agency and the creditor. No claim by a creditor
15 for interest charges shall be allowed unless the agency is requested to
16 pay the interest charges within ninety calendar days from the date on
17 which payment in full is due.

18 Sec. 4. Section 81-2405, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 81-2405 (1) When a bill submitted to an agency is filled out
21 incorrectly or when there is any defect or impropriety in a bill
22 submitted, the agency shall notify the creditor in writing prior to the
23 date on which payment in full is due. The notice shall contain a
24 description of the defect or impropriety and any additional information
25 necessary to enable the creditor to correct the bill.

26 (2) Upon receiving a properly corrected bill, the agency shall make
27 payment in full of the bill (a) on or before the fifteenth calendar day
28 after the receipt of the corrected bill from a creditor which qualifies
29 as a small business for purposes of the Prompt Payment Act, (b) on or
30 before the forty-fifth calendar day after the receipt of the corrected
31 bill from a creditor which does not so qualify, or (c) ~~or~~ when the

1 agency is making payment for goods or services provided by a third party,
2 on or before the sixtieth calendar day after the receipt of the corrected
3 bill.

4 Sec. 5. Original sections 81-2402, 81-2403, 81-2404, and 81-2405,
5 Reissue Revised Statutes of Nebraska, are repealed.