

LEGISLATIVE BILL 1392

Approved by the Governor April 8, 1972

Introduced by George Syas, 13th District

AN ACT to amend sections 48-626, 48-644, and 48-649, Reissue Revised Statutes of Nebraska, 1943, and sections 48-617 and 48-630, Revised Statutes Supplement, 1969, and sections 48-602, 48-604, and 48-628.02, Revised Statutes Supplement, 1971, relating to the Employment Security Law; to amend the provisions of the Employment Security Law so as to assure approval by the United States Secretary of Labor of the Nebraska Employment Security Law for credit by employers against Federal Unemployment Tax; to define certain terms; to make corrections so as to conform to parallel provisions of the Federal Unemployment Tax Act; to correct internal reference within the Employment Security Law; to provide the method of financing benefits paid to employees of the State of Nebraska or its instrumentalities; and to repeal the original sections.

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

Section 1. That section 48-602, Revised Statutes Supplement, 1971, be amended to read as follows:

48-602. As used in sections 48-601 to 48-669, unless the context otherwise requires:

(1) Base period shall mean the last four completed calendar quarters immediately preceding the first day of an individual's benefit year;

(2) Benefits shall mean the money payments payable to an individual with respect to his unemployment;

(3) Benefit unit shall mean a sum equal to one half of an individual's weekly benefit amount;

(4) Benefit year, with respect to any individual, shall mean the one-year period beginning with the first day of the first week with respect to which the individual first files a valid claim for benefits, and thereafter the one-year period beginning with the first day of the first week with respect to which the

individual next files a valid claim for benefits after the termination of his last preceding benefit year. Any claim for benefits made in accordance with section 48-629 shall be deemed to be a valid claim for the purpose of this subdivision if the individual has been paid the wages for insured work required under section 48-627. For the purposes of this subdivision a week with respect to which an individual files a valid claim shall be deemed to be in, within, or during that benefit year which includes the greater part of such week;

(5) Calendar quarter shall mean the period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31, or the equivalent thereof as the Commissioner of Labor may by regulation prescribe;

(6) Commissioner shall mean the Commissioner of Labor;

(7) Contributions shall mean the money payments to the State Unemployment Compensation Fund as required by sections 48-648 and 48-649;

(8) Department shall mean the Department of Labor;

(9) Employment office shall mean a free public employment office or branch thereof, operated by this state or maintained as a part of a state-controlled system of public employment offices, including public employment offices operated by an agency of a foreign government;

(10) Fund shall mean the Unemployment Compensation Fund established by section 48-617, to which all contributions and payments in lieu of contributions required and from which all benefits provided by ~~sections 48-623-to-48-626~~ shall be paid;

(11) Hospital shall mean an institution which has been licensed, certified or approved by the Department of Health as a hospital;

(12) Institution of higher education shall mean an institution which: (a) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate; (b) is legally authorized in this state to provide a program of education beyond high school; (c) provides an educational program for which it awards a bachelor's degree or higher, or provides a program which is acceptable for full credit toward such a degree, a

program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and (d) is a public or other nonprofit institution; notwithstanding any of the foregoing provisions of this subsection, all colleges and universities in this state are institutions of higher education for purposes of this section;

(13) Insured work shall mean employment for employers;

(14) Payments in lieu of contributions shall mean the money payments to the Unemployment Compensation Fund required by sections 48-649, 48-652, 48-660.01, and 48-661;

~~(14)~~ (15) State includes, in addition to the states of the United States of America, any dependency of the United States, the Commonwealth of Puerto Rico, and the District of Columbia;

~~(15)~~ (16) Wages shall mean all remuneration for personal services, including commissions and bonuses and the cash value of all remunerations in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the commissioner; Provided, as used in sections 48-648 and 48-649 only, subsequent to December 31, 1971, the term wages shall not include that part of the remuneration which, after remuneration equal to four thousand two hundred dollars has been paid to an individual by an employer or by the predecessor of such employer with respect to employment within this or any other state during any calendar year, is paid to such individual by such employer during such calendar year, unless that part of the remuneration is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund. The term wages shall not include (a) the amount of any payment, including any amount paid by an employer for insurance or annuities, or into a fund, to provide for such payment, made to, or on behalf of, an individual in employment, or any of his dependents, under a plan or system established by an employer which makes provision for such individuals generally, or for a class or classes of such individuals, including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment, on account of retirement, sickness or accident disability, or medical and hospitalization expenses in connection with sickness or accident disability, or death; (b) the payment by an employer, without deduction from the remuneration of the

employee, of the tax imposed upon an employee under section 3101 of the Internal Revenue Code of 1954 as amended; (c) any payment made to an individual, including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment, on account of retirement; (d) any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an individual after the expiration of six calendar months following the last calendar month in which such individual worked for such employer; (e) any payment made to, or on behalf of, an individual or his beneficiary (i) from or to a trust described in section 401 (a) of the Internal Revenue Code of 1954 which is exempt from tax under section 501 (a) of the Internal Revenue Code of 1954 at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust, or (ii) under or to an annuity plan which, at the time of such payment, meets the requirements of section 401 of the Internal Revenue Code of 1954; (f) remuneration paid in any medium other than cash to an individual for service not in the course of the employer's trade or business; and (g) any payment, other than vacation or sick pay, made to an individual after the month in which he attains the age of sixty-five, if he did not work for the employer in the period for which such payment is made;

~~(16)~~ (17) Week shall mean such period of seven consecutive days, as the commissioner may by regulation prescribe; and

~~(17)~~ (18) Week of unemployment with respect to any individual shall mean any week during which he performs less than full-time work and the wages payable to him with respect to such week are less than his weekly benefit amount.

Sec. 2. That section 48-604, Revised Statutes Supplement, 1971, be amended to read as follows:

48-604. As used in sections 48-601 to 48-669, unless the context otherwise requires, employment shall mean:

(1) Any service performed after June 30, 1941, including service in interstate commerce, for wages or under any contract of hire, written or oral, express or implied;

(2) The term employment shall include an individual's entire service, performed within or both within and without this state if (a) the service is localized in this state, (b) the service is not localized in any state but some of the service is performed in this state and the base of operations or, if there is no base of operations, then the place from which such service is directed or controlled is in this state or the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed but the individual's residence is in this state, (c) the service shall be deemed to be localized within a state if (1) the service is performed entirely within such state, or (2) the service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state; for example, is temporary or transitory in nature or consists of isolated transactions;

(3) Services performed outside the state and services performed outside the United States as follows:

(a) Services not covered under subdivision (2) of this section and performed entirely without this state, with respect to no part of which contributions are required under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to sections 48-601 to 48-669 if the Commissioner of Labor approves the election of the employer, for whom such services are performed, that the entire service of such individual shall be deemed to be employment subject to said sections;

(b) Services of an individual wherever performed within the United States, the Virgin Islands or Canada, if (1) such service is not covered under the employment compensation law of any other state, the Virgin Islands or Canada, and (2) the place from which the service is directed or controlled is in this state;

(c) Services of an individual who is a citizen of the United States, performed outside the United States except in Canada or the Virgin Islands, after December 31, 1971 in the employ of an American employer, other than service which is deemed employment under the provisions of subsections (2) and (3) (a) and (b) of this section or the parallel provisions of another state's law, if: (1) The employer's principal place of business in the United States is located in this state; or (2) the employer has no place of business in the United States, but the employer is an individual who is a resident of this state; or the employer is a corporation which is

organized under the laws of this state; or the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any other state; or (3) none of the criteria of subdivisions (1) and (2) of this subsection is met, but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service under the laws of this state; (4) an American employer, for the purposes of this subsection, shall mean: (i) an individual who is a resident of the United States; (ii) a partnership if two-thirds or more of the partners are residents of the United States; (iii) a trust if all the trustees are residents of the United States; or (iv) a corporation organized under the laws of the United States or of any state; (5) the term United States for the purpose of this section includes the states, the District of Columbia, and the Commonwealth of Puerto Rico;

(4) (a) Service performed after December 31, 1971 in the employ of this state or any of its instrumentalities, or in the employ of this state and one or more other states or their instrumentalities, for a hospital or institution of higher education located in this state; Provided, such service is excluded from employment as defined in the Federal Unemployment Tax Act solely by reason of section 3306 (c) (7) of that act and is not otherwise excluded under the provisions of this section;

(b) Service performed after December 31, 1971 by an individual in the employ of a religious, charitable, educational or other organization, but only if the following conditions are met: (1) The service is excluded from employment as defined in the Federal Unemployment Tax Act solely by reason of section 3306 (c) (8) of that act and is not otherwise excluded under the provisions of this section; and (2) the organization had four or more individuals in employment for some portion of a day in each of twenty different weeks, whether or not such weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time;

(5) Services performed by an individual for wages shall be deemed to be employment, unless it be shown to the satisfaction of the commissioner that (a) such individual has been and will continue to be free from control or direction over the performance of such services, both under his contract of service and in fact, (b) such service is either outside the usual course of the business for which such service is performed or such

service is performed outside of all the places of business of the enterprise for which such service is performed, and (c) such individual is customarily engaged in an independently established trade, occupation, profession, or business;

(6) The term employment shall not include: (a) Agricultural labor, including all services performed (1) on a farm, in the employ of any employer, in connection with cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals, and wildlife; (2) in the employ of the owner, tenant, or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment or in salvaging timber or clearing land of brush and other debris left by a windstorm, if the major part of such service is performed on a farm; (3) in connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15 (g) of the Federal Agricultural Marketing Act, as amended; in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes; (4) (i) in the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one half of the commodity with respect to which such service is performed; (ii) in the employ of a group of operators of farms, or a cooperative organization of which such operators are members, in the performance of service described in subdivision (i), but only if such operators produced more than one half of the commodity with respect to which such service is performed; (iii) the provisions in subdivisions (i) and (ii) of this subdivision shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption or (5) on a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer. As used in this section, the term farm includes stock, dairy, poultry, fruit, fur-bearing animal and truck farms, plantations, ranches, nurseries, ranges, greenhouses, or other similar

structures used primarily for the raising of agricultural or horticultural commodities, and orchards; (b) domestic service in a private home, local college club, or local chapter of a college fraternity or sorority; (c) service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is fifty dollars or more and such service is performed by an individual who is regularly employed by such employer to perform such service and, for the purposes of this subdivision, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if (i) on each of some twenty-four days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business, or (ii) such individual was regularly employed, as determined under subdivision (i) of this subdivision, by such employer in the performance of such service during the preceding calendar quarter; (d) service performed by an individual in the employ of his son, daughter, or spouse and service performed by a child under the age of twenty-one in the employ of his father or mother; (e) service performed in the employ of the United States government or an instrumentality of the United States immune under the Constitution of the United States from the contributions imposed by sections 48-648 and 48-649, except that, to the extent that the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation act, all of the provisions of sections 48-601 to 48-669 shall be applicable to such instrumentalities and to services performed for such instrumentalities in the same manner, to the same extent and on the same terms as to all other employers, individuals, and services; Provided, that if this state shall not be certified for any year by the Secretary of Labor of the United States under section 3304 of the Internal Revenue Code of 1954, the payments required of such instrumentalities with respect to such year shall be refunded by the commissioner from the fund in the same manner and within the same period as is provided in section 48-660, with respect to contributions erroneously collected; (f) service performed in the employ of a state, or any political subdivision thereof or any instrumentality of any one or more of the foregoing which is wholly owned by one or more states or political subdivisions; and any service performed in the employ of any instrumentality of one or more states or political subdivisions to the extent that the instrumentality is with respect to such service, immune under the Constitution of the United States from the tax imposed by section 3301 of the Internal Revenue Code of

1954, except service performed after December 31, 1971 for a hospital or institution of higher education as provided by section 48-604 (4) (a); (g) for the purposes of subdivisions (4) (a) and (4) (b) of this section, service performed (1) in the employ of (i) a church or convention or association of churches; or (ii) an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches; (2) by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of the duties required by such order; (3) in the employ of a school which is not an institution of higher education; (4) in a facility conducted for the purpose of carrying out a program of rehabilitation for an individual whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for the individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market or by an individual receiving such rehabilitation or remunerative work; (5) as part of an unemployment work relief or work training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training; or (6) for a hospital in a state prison or other state correctional institution by an inmate of the prison or correctional institution; (h) service with respect to which unemployment compensation is payable under an unemployment compensation system established by an Act of Congress; (i) service performed in any calendar quarter in the employ of any organization exempt from income tax under section 501 (a) of the Internal Revenue Code of 1954, other than an organization described in section 401 (a) of the Internal Revenue Code of 1954, or under section 521 thereof, if the remuneration for such service is less than fifty dollars; (j) service performed in the employ of a school, college, or university, if such service is performed (1) by a student who is enrolled and is regularly attending classes at such school, college, or university or (2) by the spouse of such student, if such spouse is advised, at the time such spouse commences to perform such service, that (i) the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university, and (ii) such employment will not be covered by any program of unemployment insurance; (k) service performed as a student nurse in the employ of a hospital or nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school

chartered or approved pursuant to state law; and service performed as an intern in the employ of a hospital by an individual who has completed a four-year course in a medical school chartered or approved pursuant to state law; (l) service performed by an individual as a real estate salesman, as an insurance agent, or as an insurance solicitor, if all such service performed by such individual is performed for remuneration solely by way of commission; (m) service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution; (n) service performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers and magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back; (o) service performed by an individual under the age of twenty-two who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subdivision shall not apply to service performed in a program established for or on behalf of an employer or a group of employers; and (p) service performed in the employ of a hospital, if such service is performed by a patient of the hospital;

(7) If the services performed during one half or more of any pay period by an individual for the person employing him constitute employment, all the services of such individual for such period shall be deemed to be employment, but if the services performed during more than one half of any such pay period by an individual for the person employing him do not constitute employment, then none of the services of such individual for such period shall be deemed to be employment. As used in this subdivision the term pay period means a period, of not more than thirty-one consecutive days, for which a payment of remuneration is ordinarily made to such individual by the person employing him. This subdivision shall not be applicable with respect to services performed in a pay period by an individual for the person

employing him where any of such service is excepted by subdivision (h) of subdivision (6) of this section;

(8) Notwithstanding the foregoing exclusions from the definition of employment, services shall be deemed to be in employment if with respect to such services a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act is required to be covered under this act; and

(9) Any extension of the definition of employment by this section to include services heretofore excluded shall not be effective until after December 31, 1971, and section 48-604 as it existed prior to its amendments by this act shall be applicable to services performed prior to January 1, 1972.

Sec. 3. That section 48-617, Revised Statutes Supplement, 1969, be amended to read as follows:

48-617. There is hereby established as a special fund, separate and apart from all public money or funds of this state, an Unemployment Compensation Fund, which shall be administered by the Commissioner of Labor exclusively for the purposes of sections 48-601 to 48-669. This fund shall consist of (1) all contributions and payments in lieu of contributions collected under said sections together with any interest thereon collected pursuant to sections 48-655 to 48-660 48-660.01, except as provided in subsection (b) of section 48-621, (2) interest earned upon any money in the fund, (3) any property or securities acquired through the use of money belonging to the fund, (4) all earnings of such property or securities, (5) all money credited to this state's account in the Unemployment Trust Fund pursuant to section 903 of the Social Security Act, as amended, and (6) all other money received for the fund from any other source. Any money in the Unemployment Compensation Fund available for investment shall be invested by the state investment officer pursuant to the provisions of sections 72-1237 to 72-1259.

Sec. 4. That section 48-626, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-626. Any otherwise eligible individual shall be entitled during any benefit year to a total amount of benefits equal to whichever is the lesser of (1)

twenty-six times his benefit amount or fifty-two benefit units, and (2) the number of benefit units equal to two-thirds of his wages in the employment of each employer per calendar quarter of his base period divided by his weekly benefit amount; Provided, when any individual has been separated from his employment with a base period employer under the circumstances under which he was or could have been determined disqualified under the provisions of subdivision (a) or (b) of section 48-628, the total benefit amount based on the employment from which he was so separated shall be reduced by an amount equal to the number of weeks for which he is or would have been disqualified had he filed a claim immediately after the separation, multiplied by his weekly benefit amount, but not more than one reduction may be made for each separation; and provided further, in no event shall the benefit amount based on employment for any employer be reduced to less than one benefit unit where the individual was or could have been determined disqualified under the provisions of subdivision (a) of section 48-628. Fractions of a unit less than one half shall be disregarded. Fractions of one half or more shall be considered a whole unit. Earnings of less than three-fourths of his weekly benefit amount during any calendar quarter in the employment of a base period employer shall not be included in computing such entitlement. For purposes of sections 48-623 to 48-626, wages shall be counted as wages for insured work for benefit purposes with respect to any benefit year only if such benefit year begins subsequent to the date on which the employer by whom such wages were paid has satisfied the conditions of section 48-603 or section 48-661 (c) with respect to becoming an employer. In order to determine the benefits due under this section and sections 48-624 and 48-625, each employer shall make reports in conformity with reasonable regulations adopted by the commissioner, of the wages of any claimant. If any such employer shall fail to make such report within the time prescribed, the commissioner may accept the statement of such claimant as to his wages, and any benefit payments based on such statement of earnings, in the absence of fraud or collusion, will be final as to amount.

Sec. 5. That section 48-628.02, Revised Statutes Supplement, 1971, be amended to read as follows:

48-628.02. As used in this act, unless the context otherwise requires:

(1) Extended benefit period shall mean a period, subsequent to December 31, 1971, which (a) begins with the third week after whichever of the following weeks

occurs first: (1) A week for which there is a national on indicator, or (2) a week for which there is a state on indicator; and (b) ends with either of the following weeks, whichever occurs later: (1) The third week after the first week for which there is both a national off indicator and a state off indicator, or (2) the thirteenth consecutive week of such period; Provided, that no extended benefit period may begin by reason of a state on indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this state;

(2) There is a national on indicator for a week if the United States Secretary of Labor determines that for each of the three most recent completed calendar months ending before such week, the rate of insured unemployment, seasonally adjusted, for all states equaled or exceeded four and one half per cent;

(3) There is a national off indicator for a week if the United States Secretary of Labor determines that for each of the three most recent completed calendar months ending before such week, the rate of insured unemployment, seasonally adjusted, for all states was less than four and one half per cent;

(4) There is a state on indicator for this state for a week if the commissioner determines, in accordance with the regulations of the United States Secretary of Labor, that for the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployment, not seasonally adjusted, under the provisions of this act: (a) Equaled or exceeded one hundred twenty per cent of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years, and (b) equaled or exceeded four per cent;

(5) There is a state off indicator for this state for a week if the commissioner determines, in accordance with the regulations of the United States Secretary of Labor, that for the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployment, not seasonally adjusted, under this act: (a) Was less than one hundred twenty per cent of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years, or (b) was less than four per cent;

(6) Rate of insured unemployment, for purposes of subdivisions (4) and (5) of this section, shall mean the percentage derived by dividing (a) the average weekly number of individuals filing claims in this state for

weeks of unemployment with respect to the most recent thirteen consecutive week period, as determined by the commissioner on the basis of his reports to the United States Secretary of Labor, by (b) the average monthly employment covered under the provisions of this act for the first four of the most recent six completed calendar quarters ending before the end of such thirteen-week period;

(7) Regular benefits shall mean benefits payable to an individual under the Employment Security Law of this state or under any other state law, including benefits payable to federal civilian employees and to exservicemen pursuant to 5 U.S.C. Chapter 85, other than extended benefits;

(8) Extended benefits shall mean benefits, including benefits payable to federal civilian employees and to exservicemen pursuant to 5 U.S.C. Chapter 85, payable to an individual under the provisions of this section for weeks of unemployment in his eligibility period;

(9) Eligibility period of an individual shall mean the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period;

(10) Exhaustee shall mean an individual who, with respect to any week of unemployment in his eligibility period: (a) Has received, prior to such week, all of the regular benefits that were available to him under the Employment Security Law of this state or any other state law, including dependents' allowances and benefits payable to federal civilian employees and exservicemen under 5 U.S.C. Chapter 85, in his current benefit year that includes such week; Provided, for the purposes of this subdivision, an individual shall be deemed to have received all of the regular benefits that were available to him although as a result of a pending appeal with respect to wages or employment or both wages and employment that were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits; or (b) his benefit year having expired prior to such week, has no, or insufficient, wages or employment or both wages and employment on the basis of which he could establish a new benefit year that would include such week; and (c) (1) has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Automotive Products Trade Act

of 1965 and such other federal laws as are specified in regulations issued by the United States Secretary of Labor; and (2) has not received and is not seeking unemployment benefits under the unemployment compensation law of the Virgin Islands or of Canada, but if he is seeking such benefits and the appropriate agency finally determines that he is not entitled to benefits under such law he is considered an exhaustee;

(11) State law shall mean the unemployment insurance law of any state, approved by the United States Secretary of Labor under section 3304 of the Internal Revenue Code of 1954; (a) except when the result would be inconsistent with the other provisions of this section, as provided in the regulations of the commissioner, the provisions of this act which apply to claims for, or payment of, regular benefits shall apply to claims for, and the payment of, extended benefits; (b) an individual shall be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period only if the commissioner finds that with respect to such week: (1) He is an exhaustee as defined in subdivision (10) of this section, and (2) he has satisfied the requirements of this act for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits; (c) the weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be an amount equal to the weekly benefit amount payable to him during his applicable benefit year; and (d) the total extended benefit amount payable to any eligible individual with respect to his applicable benefit year shall be the least of the following amounts: (1) Fifty per cent of the total amount of regular benefits which were payable to him under the Employment Security Law of this state in his applicable benefit year; or (2) thirteen times his weekly benefit amount which was payable to him under the Employment Security Law of this state for a week of total unemployment in the applicable benefit year; (e) (1) Whenever an extended benefit period is to become effective in this state or in all states as a result of a state or a national on indicator, or an extended benefit period is to be terminated in this state as a result of state and national off indicator indicators, the commissioner shall make an appropriate public announcement; and (2) computations required by the provisions of subdivision ~~(a)~~ (6) of this section shall be made by the commissioner, in accordance with regulations prescribed by the United States Secretary of Labor.

Sec. 6. That section 48-630, Revised Statutes Supplement, 1969, be amended to read as follows:

48-630. A determination upon a claim filed pursuant to section 48-629 shall be made promptly by a representative designated by the commissioner, hereinafter referred to as a deputy, and shall include a statement as to whether and in what amount claimant is entitled to benefits for the week with respect to which the determination is made and, in the event of a denial, shall state the reasons therefor. A determination with respect to the first week of a benefit year shall also include a statement as to whether the claimant has been paid the wages required under section 48-627 (e), and, if so, the first day of the benefit year, his weekly benefit amount, and the maximum total amount of benefits payable to him with respect to such benefit year. ~~If an appeal is duly filed, any benefits involved in such appeal shall not be paid until after the decision of the appeal tribunal allowing such benefits, but if the appeal involves a disqualification under subdivision (a) or (b) of section 48-628, benefits may be paid prior to the decision of the appeal tribunal for unemployment occurring subsequent to the period of maximum possible disqualification, if the claimant is otherwise eligible.~~ Any benefits to which a claimant has been found eligible shall not be withheld because of the filing of an appeal under the provisions of section 48-634 and such benefits shall be paid until the appeal tribunal has rendered its decision modifying or reversing the determination allowing such benefits if the claimant is otherwise eligible. Any benefits received by any person to which under a redetermination or decision pursuant to sections 48-630 to 48-640 he has been found not entitled shall be treated as excessive payments in accordance with the provisions of section 48-665. Whenever any claim involves the application of the provisions of section 48-628 (d), the deputy shall promptly transmit his full findings of fact, with respect to that subdivision, to the commissioner, who, on the basis of the evidence submitted and such additional evidence as he may require, shall affirm, modify, or set aside such findings of fact and transmit to the deputy a decision upon the issue involved under the subdivision, which shall be deemed to be the decision of the deputy. All claims arising out of the same alleged labor dispute may be considered at the same time. The parties shall be promptly notified of the determination, together with the reasons therefor, and such determination shall be deemed to be the final decision on the claim, unless within ten days after the mailing of notice to a party's last-known address, or, in the absence of such mailing, within seven days after the delivery of such notice, an appeal is filed with the

appeal tribunal.

Sec. 7. That section 48-644, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-644. Benefits shall be promptly paid in accordance with a determination or redetermination. or redetermination-except-that,--if--such--determination--or redetermination-is-upon-the-first-claim-with-respect-to-a benefit-year,--or-if-the-record-of-the-proceeding--on--the claim-indicates-that-a-disqualification-has-been--alleged or--may-exist,--such-benefits-shall-not-be--paid--prior--to the-expiration-of-the-period-for-appeal. If pursuant to a determination or redetermination benefits are payable in any amount as to which there is no dispute, such amount of benefits shall be promptly paid regardless of any appeal. The commencement of a proceeding for judicial review pursuant to section 48-638 shall not operate as a supersedeas or stay, unless---the Commissioner-of-labor-shall--so--order. If a decision allowing benefits is finally reversed, no employer's account shall be charged with benefits paid pursuant to the erroneous determination, and benefits shall not be paid for any subsequent weeks of unemployment involved in such reversal.

Sec. 8. That section 48-649, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-649. The commissioner shall, for each calendar year, determine the contribution rate applicable to each employer on the basis of his actual experience in the payment of contributions and with respect to benefits charged against his separate experience account, in accordance with the following requirements:

(1) An employer's rate shall be two and seven-tenths per cent unless and until (a) benefits have been payable from and chargeable to his experience account throughout the preceding one calendar year, and (b) contributions have been payable to the fund and credited to his experience account with respect to the two preceding calendar years. Subject to fair and reasonable general rules of the commissioner issued with due regard for the solvency of the fund, the contribution rate required of each employer who meets the requirements of this subsection shall be based directly on his contributions to and benefit experience of his experience account and shall be determined by the commissioner for each calendar year at its beginning; Provided, that in no event shall such rate be increased beyond two and

seven-tenths per cent of his annual payroll;

(2) Any employer may at any time make voluntary contributions, additional to the required contributions, to the fund to be credited to his account; and

(3) As used in sections 48-648 to 48-654, the term payroll shall mean the total amount of wages during a calendar year, except as otherwise provided in section 48-654, by which contributions were measured; and :

(4) The state or any of its instrumentalities shall not be required to pay contributions on wages paid for services rendered in employment for the state or its instrumentalities but the state or any of its instrumentalities shall make payments in lieu of contributions in an amount equal to the full amount of regular benefits plus one half of the amount of extended benefits paid during each calendar quarter that is attributable to service in employment of the state or any of its instrumentalities. The commissioner after the end of each calendar quarter shall notify any state instrumentality or other public employer of the amount of regular benefits and one half the amount of extended benefits paid that are attributable to service in its employment and the instrumentality or public employer so notified shall reimburse the fund within thirty days after receipt of such notice.

Sec. 9. That original sections 48-626, 48-644, and 48-649, Reissue Revised Statutes of Nebraska, 1943, and sections 48-617, and 48-630, Revised Statutes Supplement, 1969, and sections 48-602, 48-604 and 48-628.02, Revised Statutes Supplement, 1971, are repealed.