

LEGISLATIVE BILL 746

Approved by the Governor March 12, 1984

Introduced by Business & Labor Committee, Barrett, 39,
Chairperson; R. Peterson, 21; Eret, 32;
Goll, 16; Wesely, 26

AN ACT relating to labor; to amend section 48-620, Reissue Revised Statutes of Nebraska, 1943, section 48-628.02, Revised Statutes Supplement, 1982, and section 48-628, Revised Statutes Supplement, 1983; to provide for interest payments on advances to the Unemployment Trust Fund; to change provisions relating to conditions which disqualify applicants for benefits; to define a term; to change a provision relating to extended benefits; to repeal the original sections; and to declare an emergency.

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

Section 1. That section 48-620, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-620. The provisions of sections 48-617 to 48-619, to the extent that they relate to the Unemployment Trust Fund, shall be operative only so long as such Unemployment Trust Fund continues to exist and so long as the Secretary of the Treasury of the United States of America continues to maintain for this state a separate book account of all funds deposited therein by this state for benefit purposes, together with this state's proportionate share of the earnings of such Unemployment Trust Fund, from which no other state is permitted to make withdrawals. If and when such Unemployment Trust Fund ceases to exist, or such separate book account is no longer maintained, all money, properties, or securities therein, belonging to the Unemployment Compensation Fund of this state shall be transferred to the treasurer of the Unemployment Compensation Fund.

Any money in the Unemployment Trust Fund available for investment shall be invested by the state investment officer pursuant to the provisions of sections 72-1237 to ~~72-1259~~ 72-1269. If advances to the Unemployment Trust Fund under Title XII of the Social Security Act are necessary, any interest required to be paid on such advances shall be paid in a timely manner and shall not be paid by this state, directly or indirectly, by an equivalent reduction in state unemployment taxes or otherwise, from amounts in the Unemployment Compensation Fund.

Sec. 2. That section 48-628, Revised Statutes Supplement, 1983, be amended to read as follows:

48-628. An individual shall be disqualified for benefits:

(a)(1) For the week in which he or she has left work voluntarily without good cause, if so found by the Commissioner of Labor, and for not less than seven weeks nor more than ten weeks which immediately follow such week, as determined by the commissioner according to the circumstances in each case, or (2) for the week in which he or she has left work voluntarily for the sole purpose of accepting previously secured, permanent, full-time, insured work, which he or she does accept, which offers a reasonable expectation of betterment of wages or working conditions, or both, and he or she earns wages payable to him or her for such work, if so found by the commissioner, and for not more than one week which immediately follows such week;

(b) For the week in which he or she has been discharged for misconduct connected with his or her work, if so found by the commissioner, and for not less than seven weeks nor more than ten weeks which immediately follow such week, as determined by the commissioner in each case according to the seriousness of the misconduct; PROVIDED, that if the commissioner finds that such individual's misconduct was gross, flagrant, and willful, or was unlawful, the commissioner shall totally disqualify such individual from receiving benefits with respect to wage credits earned prior to such misconduct;

(c) For any week of unemployment in which he or she has failed, without good cause, either to apply for available, suitable work when so directed by the employment office or the commissioner or to accept suitable work when offered him or her, or to return to his or her customary self-employment, if any, and the commissioner so finds, and for not less than seven weeks nor more than ten weeks which immediately follow such week, as determined by the commissioner, and his or her total benefit amount to which he or she is then entitled shall be reduced by an amount equal to the number of weeks for which he or she has been disqualified by the commissioner. (1) In determining whether or not any work is suitable for an individual, the commissioner shall consider the degree of risk involved to his or her health, safety, and morals, his or her physical fitness and prior training, his or her experience and prior earnings, his or her length of unemployment and prospects for securing local work in his or her customary occupation, and the distance of the available work from his or her residence. (2) Notwithstanding any other provisions of sections 48-601 to 48-669, 48-628.03, and 48-628.04, no work shall be deemed suitable and benefits shall not be denied under said such sections to any otherwise eligible individual for refusing

to accept new work under any of the following conditions: (i) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (ii) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; or (iii) if, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization. (3) Notwithstanding any other provisions in this subdivision, no otherwise eligible individual shall be denied benefits with respect to any week in which he or she is in training with the approval of the commissioner, by reason of the application of the provisions in this subdivision relating to failure to apply for or a refusal to accept suitable work;

(d) For any week with respect to which the commissioner finds that his or her total unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he or she is or was last employed; PROVIDED, that this subdivision shall not apply if it is shown to the satisfaction of the commissioner that (1) he or she is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and (2) he or she does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating, financing, or directly interested in the dispute; AND PROVIDED FURTHER, that if in any case separate branches of work, which are commonly conducted as separate businesses in separate premises, are conducted in separate departments of the same premises, each such department shall, for the purposes of this subdivision, be deemed to be a separate factory, establishment, or other premises;

(e) For any week with respect to which he or she is receiving or has received remuneration in the form of (1) wages in lieu of notice, or a dismissal or separation allowance, (2) compensation for temporary partial disability under the workmen's compensation law of any state or under a similar law of the United States, (3) primary insurance benefits under Title II of the Social Security Act, as amended, or similar payments under any Act of Congress, (4) retirement or retired pay, pension, annuity, or other similar periodic payment under a plan maintained or contributed to by a base period or chargeable employer, or (5) a gratuity or bonus from an employer, paid after termination of employment, on account of prior length of service, or disability not compensated under the workmen's compensation law. Such payments made in lump sums shall be prorated in an amount which is reasonably attributable to such week. If the prorated remuneration is

less than the benefits which would otherwise be due, he or she shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration. No payment by the United States to veterans for service-connected disabilities shall be deemed to be disqualifying or deductible from the benefit amount and no deduction shall be made for the part of any retirement pension which represents return of payments made by the individual;

(f) For any week with respect to which or a part of which he or she has received or is seeking unemployment benefits under an unemployment compensation law of any other state or of the United States; PROVIDED, that if the appropriate agency of such other state or of the United States finally determines that he or she is not entitled to such unemployment benefits, this disqualification shall not apply;

(g) For any week of unemployment if such individual is a student. For the purpose of this subdivision, the term student shall mean an individual registered for full attendance at and regularly attending an established school, college, or university or who has so attended during the most recent school term, unless the major portion of his or her wages for insured work during his or her base period was for services performed while attending school; PROVIDED, that attendance for training purposes under a plan approved by the commissioner for such individual before attendance shall not be disqualifying;

(h) For any week of unemployment if benefits claimed are based on services performed (1) prior to December 31, 1977, in an instructional, research, or principal administrative capacity in an institution of higher education if such week of unemployment begins during the period between two successive academic years or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or contracts to perform services in any such capacity for any institution of higher education for both such academic years or both such terms, 7 (2) after December 31, 1977, in an instructional, research, or principal administrative capacity for an educational institution or in an educational institution when employed by an educational service agency if such week of unemployment begins during the period between two successive academic years, or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, or during an established and customary vacation period or holiday recess, to any individual if such individual performs such services in the first of such academic years or terms or prior to such paid sabbatical leave or established and customary

vacation period or holiday recess, and if there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any educational institution or in an educational institution when employed by an educational service agency in the second of such academic years or terms or after such paid sabbatical leave or established and customary vacation period or holiday recess, or (3) in any other capacity for an educational institution or in an educational institution when employed by an educational service agency, other than an institution of higher education prior to September 3, 1982, if such week of unemployment begins during a period between two successive academic years or terms, or which consists of authorized school vacation during an established and customary vacation period or holiday recess, if such individual performs such services in the first of such academic years or terms or prior to such established and customary vacation period or holiday recess, and if there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms or after such authorized school vacation established and customary vacation period or holiday recess, except that after September 3, 1982, if compensation is denied to any individual under subdivision (h)(3) of this section for any week other than a week which begins during an established and customary vacation period or holiday recess, and such individual was not offered an opportunity to perform such services for the educational institution or in the educational institution when employed by the educational service agency for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of subdivision (h)(3) of this section. As used in subdivision (h) of this section, educational service agency shall mean a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing services to one or more educational institutions;

(i) For any week of unemployment benefits if substantially all the services upon which such benefits are based consist of participating in sports or athletic events or training or preparing to so participate, if such week of unemployment begins during the period between two successive sport seasons or similar periods, if such individual performed such services in the first of such seasons or similar periods, and if there is a reasonable assurance that such individual will perform such services in the later of such seasons or similar periods;

(j) For any week of unemployment benefits if the services upon which such benefits are based are performed by an alien unless such alien is an individual who was

lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed, including an alien who was lawfully present in the United States as a result of the application of the provisions of section 203 (a)(7) or section 212 (d)(5) of the Immigration and Nationality Act. Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits. In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of his or her alien status shall be made except upon a preponderance of the evidence; and

(k) Notwithstanding any other provisions of this article, no otherwise eligible individual shall be denied benefits for any week because he or she is in training approved under section 236 (a)(1) of the Trade Act of 1974, nor shall such individual be denied benefits by reason of leaving work to enter such training, if the work left is not suitable employment, or because of the application to any such week in training of provisions in this law, or any applicable federal unemployment compensation law, relating to availability for work, active search for work, or refusal to accept work. For purposes of this subdivision the term suitable employment shall mean, with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment, as defined for purposes of the Trade Act of 1974, and wages for such work at not less than eighty per cent of the individual's average weekly wage as determined for purposes of the Trade Act of 1974.

Sec. 3. That section 48-628.02, Revised Statutes Supplement, 1982, 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 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 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 state on indicator for this state for a week if the commissioner determines 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 for weeks beginning prior to or on September 25, 1982, or five per cent for weeks beginning after September 25, 1982; PROVIDED, that with respect to benefits for weeks of unemployment, beginning after March 30, 1977, the determination of whether there has been a state on or off indicator beginning or ending any extended benefit period shall be made under this section as if (i) this subdivision did not contain subdivision (a) thereof, and (ii) the four per cent contained in subdivision (b) thereof were five per cent for weeks beginning prior to or on September 25, 1982, or six per cent for weeks beginning after September 25, 1982; except that, notwithstanding any such provision of this subdivision, any week for which there would otherwise be a state on indicator shall continue to be such a week and shall not be determined to be a week for which there is a state off indicator;

(3) There is a state off indicator for this state for a week if the commissioner determines that, for the period consisting of such week and the immediately preceding twelve weeks, either subdivision (2)(a) or (b) of this section was not satisfied;

(4) Rate of insured unemployment, for purposes of subdivisions (2) and (3) of this section, shall mean the percentage derived by dividing (a) the average weekly number of individuals filing claims for regular compensation 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 or her 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;

(5) 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 or exservicewomen~~ ex-servicemen or ex-servicewomen pursuant to 5 U.S.C. Chapter 85, other than extended benefits;

(6) Extended benefits shall mean benefits, including benefits payable to federal civilian employees and to ~~exservicemen or exservicewomen~~ ex-servicemen or ex-servicewomen pursuant to 5 U.S.C. Chapter 85, payable to an individual under the provisions of this section for weeks of unemployment in his or her eligibility period;

(7) Eligibility period of an individual shall

mean the period consisting of the weeks in his or her benefit year which begin in an extended benefit period and, if his or her benefit year ends within such extended benefit period, any weeks thereafter which begin in such period;

(8) Exhaustee shall mean an individual who, with respect to any week of unemployment in his or her eligibility period: (a) Has received, prior to such week, all of the regular benefits that were available to him or her 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 or exservicewomen~~ ex-servicemen or ex-servicewomen under 5 U.S.C. Chapter 85, in his or her 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 or her 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 or her benefit year, he or she may subsequently be determined to be entitled to added regular benefits; or (b) his or her 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 or she 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 Canada, but if he or she is seeking such benefits and the appropriate agency finally determines that he or she is not entitled to benefits under such law he or she is considered an exhaustee;

(9) 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 or her eligibility period only if the commissioner finds that with respect to such week: (1) He or she is an exhaustee as defined in subdivision (8) of this section, (2) he or she 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, (3) the provisions of sections 48-628.03 and 48-628.04 do not apply, and (4) he or she has been paid wages for insured work during the individual's base period equal to at least one and one half times the wages paid in that calendar quarter of the individual's base period in which such wages were highest; (c) the weekly extended benefit amount payable to an individual for a week of total unemployment in his or her eligibility period shall be an amount equal to the weekly benefit amount payable to him or her during his or her applicable benefit year; and (d) the total extended benefit amount payable to any eligible individual with respect to his or her 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 or her under the Employment Security Law of this state in his or her applicable benefit year; or (2) thirteen times his or her weekly benefit amount which was payable to him or her under the Employment Security Law of this state for a week of total unemployment in the applicable benefit year; (e)(1) ~~Whenever whenever~~ an extended benefit period is to become effective in this state as a result of a state on indicator, or an extended benefit period is to be terminated in this state as a result of a state off indicator, the commissioner shall make an appropriate public announcement; (2) computations required by the provisions of subdivision (4) of this section shall be made by the commissioner, in accordance with regulations prescribed by the United States Secretary of Labor; and (f) any amount of extended benefits payable to any individual for any week, if not an even dollar amount, shall be rounded to the next lower full dollar amount; and

(10) Notwithstanding any other provisions of this article, if the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that such individual would, but for this section, be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced, but not below zero, by the product of the number of weeks for which the individual received any amounts as trade readjustment allowances within that benefit year, multiplied by the individual's weekly benefit amount for extended benefits.

Sec. 4. That original section 48-620, Reissue Revised Statutes of Nebraska, 1943, section 48-628.02, Revised Statutes Supplement, 1982, and section 48-628, Revised Statutes Supplement, 1983, are repealed.

Sec. 5. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.