

LEGISLATIVE BILL 950

Approved by the Governor April 14, 1986

Introduced by Business & Labor Committee, Barrett, 39,
Chairperson; Eret, 32; Chronister, 18;
Hall, 7; Labedz, 5; Vickers, 38

AN ACT relating to the Employment Security Law; to amend sections 48-625, 48-638, and 48-665.01, Reissue Revised Statutes of Nebraska, 1943, and sections 48-602, 48-626, 48-646, 48-648.01, 48-663, and 48-665, Revised Statutes Supplement, 1985; to redefine terms; to provide for the adjustment of benefits as prescribed; to change provisions relating to entitlement to benefits, appeals, attorneys' fees, wage reports, and the recovery of erroneous or excessive payments; to provide a penalty; to eliminate a penalty; 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 48-602, Revised Statutes Supplement, 1985, be amended to read as follows:

48-602. As used in the Employment Security Law, 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, except that the commissioner may prescribe by rule and regulation that base period shall mean the first four of the last five 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 or her unemployment;

(3) 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 or her 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;

(4) 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 rule and regulation prescribe;

(5) Commissioner shall mean the Commissioner of Labor;

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

(7) Department shall mean the Department of Labor;

(8) 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;

(9) 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 shall be paid;

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

(11) 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 subdivision, all

colleges and universities in this state are institutions of higher education for purposes of this section;

(12) Insured work shall mean employment for employers;

(13) 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) State includes, in addition to the states of the United States of America, any dependency of the United States, the Commonwealth of Puerto Rico, the Virgin Islands, and the District of Columbia;

(15) Wages, except with respect to services performed in employment as provided in section 48-604, subdivisions (4)(c) and (d), 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 and regulations prescribed by the commissioner. After December 31, 1985, wages shall include tips which are received while performing services which constitute employment and which are included in a written statement furnished to the employer pursuant to section 6053(a) of the Internal Revenue Code of 1954, as amended. With respect to services performed in employment in agricultural labor as is provided in section 48-604, subdivision (4)(c), or in domestic service as is provided in section 48-604, subdivision (4)(d), wages shall mean cash remuneration for such services, except that as used in sections 48-648 and 48-649 only, prior to January 1, 1978, the term wages shall not include that part of the remuneration which, after remuneration equal to four thousand two hundred dollars, subsequent to December 31, 1977, after remuneration equal to six thousand dollars, and subsequent to December 31, 1982, after remuneration equal to seven thousand 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 or her 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; (i) sickness or accident disability, ~~or except, in the case of payments made to an employee or any of his or her dependents, subdivision (15)(a)(i) of this section shall exclude from wages only payments which are received under a workers' compensation law,~~ (ii) medical and hospitalization expenses in connection with sickness or accident disability, or (iii) 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) (d) any payment made to, or on behalf of, an individual or his or her 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) and (e) 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 or she attains the age of sixty-five, if he or she did not work for the employer in the period for which such payment is made;

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

(17) Week of unemployment with respect to any

individual shall mean any week during which he or she performs less than full-time work and the wages payable to him or her with respect to such week are less than his or her weekly benefit amount.

Sec. 2. That section 48-625, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-625. Each eligible individual who is unemployed in any week shall be paid with respect to such week a benefit in an amount equal to his or her full weekly benefit amount if he or she has wages payable to him or her with respect to such week equal to one half of such benefit amount or less. In the event he or she has wages payable to him or her with respect to such week greater than one half of such benefit amount but less than his or her full weekly benefit amount, he or she shall be paid an amount equal to one half of such benefit amount. In the event there is any deduction from such individual's weekly benefit amount because of earned wages in excess of an amount equal to one half of such benefit amount or as a result of the application of subdivision (e) of section 48-628 the resulting benefit payment, if not an exact dollar amount, shall be computed to the next lower dollar amount.

Any amount of unemployment compensation payable to any individual for any week, if not an even dollar amount, shall be rounded to the next lower full dollar amount.

No deduction shall be made for any supplemental payments received by a claimant under the provisions of subsection (b) of section 408 of Title IV of the Veterans Readjustment Assistance Act of 1952.

The percentage of benefits which is federally funded may be adjusted in accordance with the Balanced Budget and Deficit Control Act of 1985, P.L. 99-177.

Sec. 3. That section 48-626, Revised Statutes Supplement, 1985, 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 or her benefit amount or (2) one-third of his or her wages in the employment of each employer per calendar quarter of his or her base period; except that when any individual has been separated from his or her employment with a base period employer under the circumstances under which he or she was or could have been determined disqualified under subdivision (a) or (b) of section 48-628, the total benefit amount

based on the employment from which he or she was so separated shall be reduced by an amount equal to the number of weeks for which he or she is or would have been disqualified had he or she filed a claim immediately after the separation, multiplied by his or her weekly benefit amount, but not more than one reduction may be made for each separation. In no event shall the benefit amount based on employment for any employer be reduced to less than one benefit week when where the individual was or could have been determined disqualified under subdivision (a) of section 48-628. ~~Earnings of less than three-fourths of his or her 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 subsection (c) of section 48-661 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 rules and 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 or her 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. 4. That section 48-638, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-638. Within thirty days after a decision of an appeal tribunal has become final, the commissioner, or any party to the proceedings before the appeal tribunal, may obtain judicial review thereof by filing (1) in the district court of the county in which the individual claiming benefits claims to have been last employed or in which such claimant resides or (2) in any district court of this state upon which the parties may agree, a petition for review of such decision. In such review proceedings, any other party to the proceedings before the tribunal shall be made a party defendant. The petition for review need not be verified but shall state the grounds upon which such review is sought. The commissioner shall be deemed to

be a party to any such review proceedings. If the commissioner is a party defendant, the petition shall be served upon him or her by leaving with him or her, or such representative as he or she may designate for that purpose, as many copies of the petition as there are defendants. ~~With his answer or petition, the~~ The commissioner shall certify and file with the court a certified copy of the records of the case, including all documents and papers and a transcript of all testimony taken in the matter, together with the appeal tribunal's findings, conclusions, and decisions therein. Upon the filing of a petition for review by the commissioner or upon the service of the petition on him or her, the commissioner shall ~~forthwith~~ immediately send by registered or certified mail to each other party to the proceeding a copy of such petition. Such mailing shall be deemed to be completed service upon all such parties. Each party defendant shall file his or her answer within ten days from the date of such mailing.

Sec. 5. That section 48-646, Revised Statutes Supplement, 1985, be amended to read as follows:

48-646. No individual claiming benefits shall be charged fees of any kind in any proceeding under the Employment Security Law except as provided herein. Any individual claiming benefits in any proceeding before the commissioner or an appeal tribunal or his, her, or its representative may be represented by counsel, any other duly authorized agent, or a person of his or her choice. Any individual claiming benefits in any proceeding before a court may be represented by counsel. Such counsel may ~~either charge or receive for such services~~ a reasonable fee for such services, to be approved by the commissioner. ~~The commissioner may, in special cases, pay such fee from the Employment Security Administration Fund. Any person who violates any provision of this section shall be guilty of a Class II misdemeanor.~~

Sec. 6. That section 48-648.01, Revised Statutes Supplement, 1985, be amended to read as follows:

48-648.01. The Commissioner of Labor may require by rule and regulation that not later than October 1, 1988, each employer subject to the Employment Security Law shall submit to the commissioner quarterly wage reports on such forms as the commissioner may prescribe. Such quarterly wage reports shall be used by the commissioner to make monetary determinations of claims for benefits.

Sec. 7. That section 48-663, Revised Statutes

Supplement, 1985, be amended to read as follows:

48-663. Whoever makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, to obtain or increase any benefit or other payment under sections 48-623 to ~~48-626~~ 48-629 or under an employment security law of any other state, of the federal government, or of a foreign government, either for himself or herself or for any other person, shall be guilty of a Class III misdemeanor. Each such false statement or representation or failure to disclose a material fact shall constitute a separate offense. Prosecution under this section may be instituted within three years from the time the offense was committed.

Sec. 8. That section 48-665, Revised Statutes Supplement, 1985, be amended to read as follows:

48-665. Any person who has received any sum as benefits under the Employment Security Law to which he or she was not entitled shall be liable to repay such sum to the commissioner for the fund. Any such erroneous benefit payments shall be collectible- (1) without ~~Without~~ interest by civil action in the name of the commissioner; or (2) by offset against any future benefits payable to the claimant with respect to the benefit year current at the time of such receipt, or any benefit year which may commence within one year ~~three~~ years after the end of such current benefit year, except that no such recoupment by the withholding of future benefits shall be had if such sum was received by such person without fault on his or her part and such recoupment would defeat the purpose of the Employment Security Law or would be against equity and good conscience.

Sec. 9. That section 48-665.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-665.01. Any person who, by reason of having knowingly made a false statement or misrepresentation of a material fact with respect to a claim for benefits taken by this state as an agent for has received any sum as benefits to which he or she was not entitled from any agency which administers an employment security law of another state or foreign government, and who has been found liable to repay benefits received under such law, may be required to repay to the commissioner, for such state or foreign government, the amount ~~so~~ found due. Such and such amount, without interest, may be collected (1) by civil action in the name of the commissioner acting as agent

for such agency or (2) by offset against any future benefits payable to the claimant under the Employment Security Law for any benefit year which may commence within three years after the claimant was notified such amount was due, except that no such recoupment by the withholding of future benefits shall be had if such sum was received by such person without fault on his or her part and such recoupment would defeat the purpose of the Employment Security Law or would be against equity and good conscience.

Sec. 10. That original sections 48-625, 48-638, and 48-665.01, Reissue Revised Statutes of Nebraska, 1943, and sections 48-602, 48-626, 48-646, 48-648.01, 48-663, and 48-665, Revised Statutes Supplement, 1985, are repealed.

Sec. 11. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.