

## LEGISLATIVE BILL 1

Approved by the Governor February 14, 1995

Introduced by Executive Board: Hall, 7, Chairperson

AN ACT relating to employment security; to amend sections 48-606.01, 48-617 to 48-619, 48-625 to 48-627, 48-628.03, 48-630, 48-661, 81-1201.21, and 85-1540, Reissue Revised Statutes of Nebraska, and sections 48-621, 48-628, 48-652, and 48-655, Revised Statutes Supplement, 1994; to standardize the numbering system of the sections; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 48-606.01, Reissue Revised Statutes of Nebraska, is amended to read:

48-606.01. The commissioner, with the written consent of the Department of Administrative Services, is authorized and empowered to use any funds available under either subdivision ~~(a)~~ or ~~(b)~~ (1) or (2) of section 48-621, for the purpose of acquiring suitable office space within the corporate limits of the state capital city for the administration of the Employment Security Law by purchase, contract, or in any other manner including the right to use such funds or any part thereof to assist in financing the construction of any building erected by the State of Nebraska or any of its agencies wherein available space will be provided for the department under lease or contract between the commissioner and the State of Nebraska or such other agency whereby the department will continue to occupy such space rent free after the cost of financing such building has been liquidated. The commissioner, upon approval by the Department of Administrative Services, is authorized and empowered to use any such funds to acquire suitable office space for local employment offices anywhere in the State of Nebraska.

Sec. 2. Section 48-617, Reissue Revised Statutes of Nebraska, is amended to read:

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 the Employment Security Law. This fund shall consist of (1) all contributions and payments in lieu of contributions collected under such law together with any interest thereon collected pursuant to sections 48-655 to 48-660.01, except as provided in ~~subsection (b)~~ subdivision (2) 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 ~~sections 72-1237 to 72-1269~~ the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 3. Section 48-618, Reissue Revised Statutes of Nebraska, is amended to read:

48-618. The Commissioner of Labor shall designate a treasurer and custodian of the fund, who shall be selected in accordance with section 48-609, and who shall administer such fund in accordance with the directions of the commissioner and shall issue his or her warrants upon it in accordance with such rules and regulations as the commissioner shall prescribe. He or she shall maintain within the fund three separate accounts: (1) A clearing account, (2) an Unemployment Trust Fund account, and (3) a benefit account. All money payable to the fund, upon receipt thereof by the commissioner, shall be forwarded to the treasurer who shall immediately deposit the same in the clearing account. Transfers of interest on delinquent contributions pursuant to ~~subsection (b) subdivision (2)~~ of section 48-621 and refunds payable pursuant to section 48-660 may be paid from the clearing account upon warrants issued by the treasurer of the Unemployment Compensation Fund under the direction of the commissioner. After clearance thereof, all other money in the clearing account shall be immediately deposited with the Secretary of the Treasury of the United States of America to the credit of the account of this state in the Unemployment Trust Fund, established and maintained pursuant to section 904 of the Social Security Act, any provisions of law in this state relating to the deposit, administration, release, or disbursement of money in

the possession or custody of this state to the contrary notwithstanding. The benefit account shall consist of all money requisitioned from this state's account in the Unemployment Trust Fund. Except as herein otherwise provided, money in the clearing and benefit accounts may be deposited by the treasurer under the direction of the commissioner in any bank or public depository in which general funds of the state may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. The treasurer shall be bonded under the blanket surety bond required by section 11-201.

Sec. 4. Section 48-619, Reissue Revised Statutes of Nebraska, is amended to read:

48-619. Money shall be requisitioned from this state's account in the Unemployment Trust Fund solely for the payment of benefits in accordance with lawful rules and regulations prescribed by the Commissioner of Labor, except that subject to the limitations therein contained, money credited to this fund pursuant to section 903 of the federal Social Security Act, as amended, may upon an appropriation duly made by the Legislature, be used for the administration of the Employment Security Law and shall for such purposes and to the extent required be transferred to the Employment Security Administration Fund established in ~~subsection (\*)~~ subdivision (1) of section 48-621. The commissioner shall from time to time requisition from the Unemployment Trust Fund such amounts, not exceeding the amounts standing to this state's account therein, as he or she deems necessary for the payment of benefits for a reasonable future period. Upon receipt thereof the treasurer shall deposit such money in the benefit account and shall issue his or her warrants as aforesaid and as provided by law for the payment of benefits solely from such benefit account. Expenditures of such money in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations. Any balance of money requisitioned from the Unemployment Trust Fund, which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned, shall either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods or, in the discretion of the commissioner, shall be redeposited with the Secretary of the Treasury of the United States of America, to the credit of this state's account in the Unemployment Trust Fund, as provided in section 48-618.

Sec. 5. Section 48-621, Revised Statutes Supplement, 1994, is amended to read:

48-621. The administrative fund shall consist of the Employment Security Administration Fund and the Employment Security Special Contingent Fund. Each fund shall be maintained as a separate and distinct account in all respects, as follows:

(1) (\*) There is hereby created in the state treasury a special fund to be known as the Employment Security Administration Fund. All money deposited or paid into this fund is hereby appropriated and made available to the Commissioner of Labor. All money in this fund shall be expended solely for the purposes and in the amounts found necessary by the Secretary of Labor of the United States for the proper and efficient administration of the Employment Security Law and for no other purpose whatsoever. The fund shall consist of all money appropriated by this state and all money received from the United States of America or any agency thereof, including the Department of Labor and the Railroad Retirement Board, or from any other source for such purpose. Money received from any agency of the United States or any other state as compensation for services or facilities supplied to such agency, any amounts received pursuant to any surety bond or insurance policy for losses sustained by the Employment Security Administration Fund or by reason of damage to equipment or supplies purchased from money in such fund, and any proceeds realized from the sale or disposition of any equipment or supplies which may no longer be necessary for the proper administration of such law shall also be paid into this fund. All money in this fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other special funds in the state treasury. Any balances in this fund, except balances of money therein appropriated from the General Fund of this state, shall not lapse at any time but shall be continuously available to the commissioner for expenditure consistent with the Employment Security Law. Notwithstanding any other provisions of this section, all money requisitioned and deposited in this fund pursuant to section 903 of the Social Security Act, as amended, shall remain part of the Unemployment Compensation Fund and shall be used only in accordance with the conditions specified in section 903 of the Social Security Act. Any money in the Employment Security Administration Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

and -

(2) ~~(b)~~ There is hereby created in the state treasury a special fund to be known as the Employment Security Special Contingent Fund. Any money in the Employment Security Special Contingent Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. All money collected under section 48-655 as interest on delinquent contributions, less refunds, shall be paid into this fund from the clearing account of the Unemployment Compensation Fund at the end of each calendar quarter. Such money shall not be expended or available for expenditure in any manner which would permit its substitution for or a corresponding reduction in federal funds which would in the absence of such money be available to finance expenditures for the administration of the unemployment insurance law, but nothing in this section shall prevent the money from being used as a revolving fund to cover expenditures necessary and proper under the law for which federal funds have been duly requested but not yet received, subject to the charging of such expenditures against such federal funds when received. The money in this fund may be used by the Commissioner of Labor only as follows:

(a) ~~(1)~~ To replace within a reasonable time any money received by this state pursuant to section 302 of the federal Social Security Act, as amended, and required to be paid under section 48-622;

(b) ~~(2)~~ To meet special extraordinary and contingent expenses which are deemed essential for good administration but which are not provided in grants from the Secretary of Labor of the United States and, for this purpose, no expenditures shall be made from this fund except on written authorization by the Governor at the request of the Commissioner of Labor;

(c) ~~(3)~~ To be transferred to the Nebraska Community College Aid Cash Fund; and

(d) ~~(4)~~ To be transferred to the Job Training Cash Fund.

Sec. 6. Section 48-625, Reissue Revised Statutes of Nebraska, is amended to read:

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)~~ (5) 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 and the percentage of extended benefits which are federally funded may be adjusted in accordance with the Balanced Budget and Deficit Control Act of 1985, Public Law 99-177.

Sec. 7. Section 48-626, Reissue Revised Statutes of Nebraska, is amended to read:

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)~~ (1) or (2) 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 the individual was or could have been determined disqualified under subdivision ~~(a)~~ (1) of section 48-628. 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 (e) (3) 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. 8. Section 48-627, Reissue Revised Statutes of Nebraska, is amended to read:

48-627. An unemployed individual shall be eligible to receive benefits with respect to any week, only if the Commissioner of Labor finds:

(1) ~~(\*)~~ He or she has registered for work at, and thereafter continued to report at, an employment office in accordance with such rules and regulations as the commissioner may prescribe, except that the commissioner may, by rule and regulation, waive or alter either or both of the requirements of this subdivision as to individuals attached to regular jobs and as to such other types of cases or situations, with respect to which he or she finds that compliance with such requirements, would be oppressive, or would be inconsistent with the purposes of the Employment Security Law, except that no such rule or regulation shall conflict with section 48-623;

(2) ~~(b)~~ He or she has made a claim for benefits, in accordance with section 48-629;

(3) ~~(e)~~ He or she is able to work and is available for work. No individual, who is otherwise eligible, shall be deemed ineligible, or unavailable for work, because he or she is on vacation without pay during such week, if such vacation is not the result of his or her own action as distinguished from any collective action by a collective-bargaining agent or other action beyond his or her individual control, and regardless of whether he or she has not been notified of the vacation at the time of his or her hiring. Receipt of a non-service-connected total disability pension by a veteran at the age of sixty-five or more shall not of itself bar the veteran from benefits as not able to work. An otherwise eligible individual while engaged in a training course approved for him or her by the commissioner shall be considered available for work for the purposes of this section;

(4) ~~(d)~~ He or she has been unemployed for a waiting period of one week. No week shall be counted as a week of unemployment for the purpose of this subdivision ~~(1)~~ (a) unless it occurs within the benefit year, which includes the week with respect to which he or she claims payment of benefits, ~~(2)~~ (b) if benefits have been paid with respect thereto, or ~~(3)~~ (c) unless the individual was eligible for benefits with respect thereto, as provided in sections 48-627 and 48-628, except for the requirements of this subdivision and of subdivision ~~(f)~~ (6) of section 48-628; and

(5) ~~(e)~~ For any benefit year he or she has, within his or her base period, been paid a total sum of wages for employment by employers equal to not less than one thousand two hundred dollars, of which sum at least four hundred dollars has been paid in each of two quarters in his or her base period, and subsequent to filing the claim which establishes the previous benefit year, the individual has insured work in at least four weeks. For the purposes of this subdivision, ~~(1)~~ (a) 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 (e) (3) of section 48-661, with respect to becoming an employer, and ~~(2)~~ (b) with respect to weeks of unemployment beginning on or after January 1, 1978, wages for insured work for benefit purposes with respect to any benefit year shall include wages paid for services as defined by subdivision (4)(a), (b), (c), or (d) of section 48-604; subdivision (4)(a) (b), (c), or (d), to the extent that such services were not services in employment under subdivision (4)(a) of section 48-604; subdivision (4)(a) or section 48-661 immediately prior to September 2, 1977, even though the employer by whom such wages were paid had not satisfied the conditions of subdivision (8), (9), (10), or (11) of section 48-603; subdivision (8), (9), (10) or (11) with respect to becoming an employer at the time such wages were paid except to the extent that assistance under Title II of the Emergency Jobs and Unemployment Assistance Act of 1974 was paid on the basis of such services.

Sec. 9. Section 48-628, Revised Statutes Supplement, 1994, is amended to read:

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

(a)(1) (1)(a) For the week in which he or she has left work voluntarily without good cause, 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 according to the circumstances in each case, or (2) (b) 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 for which he or she earns wages payable to him or her, if so found by the commissioner, and for not more than one week which immediately follows such week;

(2) (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. 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. In addition to the seven-week to ten-week benefit disqualification assessed under this subdivision, the commissioner shall cancel all wage credits earned as a result of employment with the discharging employer if the commissioner finds that the individual was discharged for misconduct in connection with the work which was not gross, flagrant, and willful or unlawful but which included being under the influence of any intoxicating beverage or being under the influence of any controlled substance listed in section 28-405 not prescribed by a physician licensed to practice medicine or surgery when the individual is so under the influence on the worksite or while engaged in work for the employer;

(3)(a) (c) For any week of unemployment in which he or she has failed, without good cause, to apply for available, suitable work when so directed by the employment office or the commissioner, to accept suitable work 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.

(b) (d) In determining whether or not any work is suitable for an individual, the commissioner shall consider the degree of risk involved to the individual's 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.

(c) (2) Notwithstanding any other provisions of the Employment Security Law, no work shall be deemed suitable and benefits shall not be denied under such law 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.

(d) (3) Notwithstanding any other provisions in ~~this~~ subdivision (3) of this section, 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 (3) of this section relating to failure to apply for or a refusal to accept suitable work;

(4) (4) 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, except that this subdivision shall not apply if it is shown to the satisfaction of the commissioner that (1) (a) the individual is not participating in, financing, or directly interested in the labor dispute which caused the stoppage of work and (2) (b) 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. 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;

(5) ~~(\*)~~ For any week with respect to which he or she is receiving or has received remuneration in the form of ~~(a)~~ ~~(1)~~ wages in lieu of notice, or a dismissal or separation allowance, ~~(2)~~ ~~(b)~~ compensation for temporary partial disability under the workers' compensation law of any state or under a similar law of the United States, ~~(3)~~ ~~(c)~~ primary insurance benefits under Title II of the Social Security Act, as amended, or similar payments under any act of Congress, ~~(4)~~ ~~(d)~~ 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)~~ ~~(e)~~ 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 workers' 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. The prorated remuneration shall be considered wages for the quarter to which it is attributable. Military service-connected disability compensation payable under 38 U.S.C. chapter 11 shall not be deemed to be disqualifying or deductible from the benefit amount. No deduction shall be made for the part of any retirement pension which represents return of payments made by the individual. In the case of a transfer by an individual or his or her employer of an amount from one retirement plan to a second qualified retirement plan under the Internal Revenue Code, the amount transferred shall not be deemed to be received by the claimant until actually paid from the second retirement plan to the claimant;

(6) ~~(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, except 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;

(7) ~~(g)~~ For any week of unemployment if such individual is a student. For the purpose of this subdivision, student shall mean an individual registered for full attendance at and regularly attending an established school, college, or university, 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, except that attendance for training purposes under a plan approved by the commissioner for such individual before attendance shall not be disqualifying;

(8) ~~(h)~~ For any week of unemployment if benefits claimed are based on services performed:

(a) ~~(1)~~ In an instructional, research, or principal administrative capacity for an educational institution, if such week commences during the period between two successive academic years or terms, or when an agreement provides instead for a similar period between two regular, but not successive, terms during such period, if such individual performs such services in the first of such academic years or terms and if there is a contract or reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms;

(b) ~~(2)~~ In any other capacity for an educational institution, if such week commences during a period between two successive academic years or terms, if such individual performs such services in the first of such academic years or terms, and if there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms, except that if benefits are denied to any individual for any week under ~~this~~ subdivision ~~(2)~~ ~~(8)(b) of this section~~ and such individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of the benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of ~~this~~ subdivision ~~(2)~~ ~~(8)(b) of this section~~;

(c) ~~(3)~~ In any capacity described in subdivision ~~(1)~~ ~~or~~ ~~(2)~~ ~~(8)(a)~~ ~~or~~ ~~(b)~~ of this ~~subdivision~~ ~~section~~ if such week commences during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess;

(d) ~~(4)~~ In any capacity described in subdivision ~~(1)~~ ~~or~~ ~~(2)~~ ~~(8)(a)~~

or (b) of this subdivision section in an educational institution while in the employ of an educational service agency, and such individual shall be disqualified as specified in subdivisions (1), (2), and (3) (8)(a), (b), and (c) of this subdivision section. As used in this subdivision, (4) 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; and

(e) (5) In any capacity described in subdivision (h)(1) or (h)(2) (8)(a) or (b) of this section in an educational institution while in the employ of a religious, charitable, educational, or other organization described in section 3306(c)(8) of the Federal Unemployment Tax Act, and such individual shall be disqualified as specified in subdivisions (h)(1), (h)(2), and (h)(3) (8)(a), (b), and (c) of this section;

(9) (4) 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;

(10) (3) 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 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;

(11) (4) Notwithstanding any other provisions of the Employment Security Law, 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 of the Employment Security 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, 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 percent of the individual's average weekly wage as determined for purposes of the Trade Act of 1974; and

(12) (3) For any week during which the individual is on a leave of absence.

Sec. 10. Section 48-628.03, Reissue Revised Statutes of Nebraska, is amended to read:

48-628.03. (1) An individual shall be ineligible for payment of extended benefits for any week of unemployment in his or her eligibility period if the commissioner finds that during such period (a) he or she failed to accept any offer of suitable work or failed to apply for any suitable work to which he or she was referred by the commissioner or (b) he or she failed to actively engage in seeking work as prescribed under subsection (5) of this section.

(2) Any individual who has been found ineligible for extended benefits by reason of subsection (1) of this section shall also be denied benefits beginning with the first day of the week following the week in which such failure occurred and until (a) he or she has been employed in each of four subsequent weeks, whether or not consecutive, and (b) has earned remuneration equal to not less than four times the extended weekly benefit amount.

(3) For purposes of this section, the term suitable work shall mean, with respect to any individual, any work which is within such individual's capabilities and for which the gross average weekly remuneration payable for the work exceeds the sum of the individual's average weekly benefit amount as determined under subdivision (9)(c) of section 48-628.02, plus the amount, if

any, of supplemental unemployment benefits as defined in section 501(c)(17)(d) of the Internal Revenue Code of 1986, payable to such individual for such week. Such work must also pay wages equal to the higher of the federal minimum wage or the applicable state or local minimum wage. No individual shall be denied extended benefits for failure to accept an offer or referral to any job which meets the definition of suitability contained in this subsection if (a) the position was not offered to such individual in writing or was not listed with the employment service, (b) such failure could not result in a denial of benefits under the definition of suitable work for regular benefit claimants in subdivision ~~(e)~~ (3) of section 48-628, to the extent that the criteria of suitability in that section are not inconsistent with the provisions of this subsection, or (c) the individual furnishes satisfactory evidence to the commissioner that his or her prospects for obtaining work in his or her customary occupation within a reasonably short period are good. If such evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to such individual shall be made in accordance with the definition of suitable work in subdivision ~~(e)~~ (3) of section 48-628 without regard to the definition specified by this subsection.

(4) Notwithstanding the provisions of subsection (3) of this section to the contrary, no work shall be deemed to be suitable work for an individual which does not accord with the labor standard provisions set forth under subdivision ~~(e)(2)~~ (3)(c) of section 48-628, nor shall an individual be denied benefits if such benefits would be deniable by reason of the provision set forth in subdivision ~~(e)(3)~~ (3)(d) of section 48-628.

(5) For the purposes of subsection (1) of this section, an individual shall be treated as actively engaged in seeking work during any week if the individual has engaged in a systematic and sustained effort to obtain work during such week and the individual furnishes tangible evidence that he or she has engaged in such effort during such week.

(6) The state employment service shall refer any claimant entitled to extended benefits under this section to any suitable work which meets the criteria prescribed in subsection (3) of this section.

(7) An individual shall not be eligible to receive extended benefits with respect to any week of unemployment in his or her eligibility period if such individual has been disqualified for benefits under subdivision ~~(e)~~ ~~(b)~~ or ~~(e)~~ (1), (2), or (3) of section 48-628 unless such individual has earned wages for services performed in subsequent employment in an amount not less than four hundred dollars.

(8) Subsections (1) through (7) of this section shall be suspended for weeks of unemployment beginning after March 6, 1993, and before January 1, 1995.

Sec. 11. Section 48-630, Reissue Revised Statutes of Nebraska, is amended to read:

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 subdivision (5) of section 48-628, ~~(e)~~; and, if so, the first day of the benefit year, his or her weekly benefit amount, and the maximum total amount of benefits payable to him or her with respect to such benefit year. Any benefits to which a claimant has been found eligible shall not be withheld because of the filing of an appeal under 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 or she 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 subdivision (4) of section 48-628, ~~(e)~~, the deputy shall promptly transmit his or her 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 or she 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 an appeal is filed with the appeal tribunal in the manner prescribed in section 48-634.

Sec. 12. Section 48-652, Revised Statutes Supplement, 1994, is amended to read:

48-652. (1)(a) A separate experience account shall be established for each employer who is liable for payment of contributions. Whenever and wherever in the Employment Security Law the terms reserve account or experience account are used, unless the context clearly indicates otherwise, such terms shall be deemed interchangeable and synonymous and reference to either of such accounts shall refer to and also include the other.

(b) A separate reimbursement account shall be established for each employer who is liable for payments in lieu of contributions. All benefits paid with respect to service in employment for such employer shall be charged to his or her reimbursement account and such employer shall be billed for and shall be liable for the payment of the amount charged when billed by the commissioner. Payments in lieu of contributions received by the commissioner on behalf of each such employer shall be credited to such employer's reimbursement account, and two or more employers who are liable for payments in lieu of contributions may jointly apply to the commissioner for establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of such employers. The commissioner shall prescribe such rules and regulations as he or she deems necessary with respect to applications for establishment, maintenance, and termination of group accounts authorized by this subdivision.

(2) All contributions paid by an employer shall be credited to the experience account of such employer. State unemployment insurance tax payments shall not be credited to the experience account of each employer. Partial payments of combined tax shall be credited so that at least eighty percent of the combined tax payment excluding interest and penalty is credited first to contributions due. In addition to contributions credited to the experience account, each employer's account shall be credited as of June 30 of each calendar year with interest at a rate determined by the commissioner based on the average annual interest rate paid by the Secretary of the Treasury of the United States of America upon the state's account in the Unemployment Trust Fund for the preceding calendar year multiplied by the balance in his or her experience account at the beginning of such calendar year. If the total credits as of such date to all employers' experience accounts are equal to or greater than ninety percent of the total amount in the Unemployment Compensation Fund, no interest shall be credited for that year to any employer's account. Contributions with respect to prior years which are received on or before January 31 of any year shall be considered as having been paid at the beginning of the calendar year. All voluntary contributions which are received on or before March 10 of any year shall be considered as having been paid at the beginning of the calendar year.

(3)(a) Each experience account shall be charged only for benefits based upon wages paid by such employer. No benefits shall be charged to the experience account of any employer if such benefits were paid on the basis of a period of employment from which the claimant has left work voluntarily without good cause or employment from which he or she has been discharged for misconduct connected with his or her work and concerning which separation the employer has filed timely notice of the facts on which such exemption is claimed in accordance with rules and regulations prescribed by the commissioner, and no benefits shall be charged to the experience account of any employer if such benefits were paid on the basis of wages paid in the base period that are wages for insured work solely by reason of subdivision (e)(2) (5)(b) of section 48-627.

(b) Each reimbursement account shall be charged only for benefits paid that were based upon wages paid by such employer in the base period that were wages for insured work solely by reason of subdivision (e)(2) (5)(a) of section 48-627.

(c) Benefits paid to an eligible individual shall be charged against the account of his or her most recent employers within his or her base period against whose accounts the maximum charges hereunder have not previously been made in the inverse chronological order in which the employment of such individual occurred. The maximum amount so charged against the account of any employer, other than an employer for which services in employment as provided in subdivision (4)(a) of section 48-604 are performed, shall not exceed the total benefit amount to which such individual was entitled as set out in section 48-626 with respect to base period wages of such individual paid by such employer plus one-half the amount of extended benefits paid to such eligible individual with respect to base period wages of such individual paid by such employer. The commissioner shall by rules and regulations prescribe

the manner in which benefits shall be charged against the account of several employers for whom an individual performed employment during the same quarter or during the same base period. Any benefit check duly issued and delivered or mailed to a claimant and not presented for payment within one year from the date of its issue may be invalidated and the amount thereof credited to the Unemployment Compensation Fund, except that a substitute check may be issued and charged to the fund on proper showing at any time within the year next following. Any charge made to an employer's account for any such invalidated check shall stand as originally made.

(4)(a) An employer's experience account shall be deemed to be terminated one calendar year after such employer has ceased to be subject to the Employment Security Law, except that if the commissioner finds that an employer's business is closed solely because of the entrance of one or more of the owners, officers, partners, or limited liability company members or the majority stockholder into the armed forces of the United States, or of any of its allies, after July 1, 1950, such employer's account shall not be terminated and, if the business is resumed within two years after the discharge or release from active duty in the armed forces of such person or persons, the employer's experience account shall be deemed to have been continuous throughout such period.

(b) An experience account terminated pursuant to this subsection shall be reinstated if (i) the employer becomes subject again to the Employment Security Law within one calendar year after termination of such experience account and the employer makes a written application for reinstatement of such experience account to the commissioner within two calendar years after termination of such experience account and (ii) the commissioner finds that the employer is operating substantially the same business as prior to the termination of such experience account.

(5) All money in the Unemployment Compensation Fund shall be kept mingled and undivided. The payment of benefits to an individual shall in no case be denied or withheld because the experience account of any employer does not have a total of contributions paid in excess of benefits charged to such experience account.

(6) A contributory or reimbursable employer shall be relieved of charges if the employer was previously charged for wages and the same wages are being used a second time to establish a new claim as a result of the October 1, 1988, change in the base period.

Sec. 13. Section 48-655, Revised Statutes Supplement, 1994, is amended to read:

48-655. Combined taxes or payments in lieu of contributions unpaid on the date on which they are due and payable, as prescribed by the commissioner, shall bear interest at the rate of one and one-half percent per month from such date until payment, plus accrued interest, is received by the commissioner, except that no interest shall be charged subsequent to the date of the erroneous payment of an amount equal to the amount of the delayed payment into the unemployment trust fund of another state or to the federal government. Interest collected pursuant to this section shall be paid in accordance with subdivision ~~(b)~~ (2) of section 48-621. If, after due notice, any employer defaults in any payment of combined taxes or payments in lieu of contributions or interest thereon, the amount due may be collected (1) by civil action in the name of the commissioner and the employer adjudged in default shall pay the costs of such action or (2) by setoff against any state income tax refund due the employer pursuant to sections 77-27,197 to 77-27,209. Civil actions brought under this section to collect combined taxes or interest thereon or payments in lieu of contributions or interest thereon from an employer shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under section 48-638.

Sec. 14. Section 48-661, Reissue Revised Statutes of Nebraska, is amended to read:

48-661. (1) ~~(a)~~ Except as otherwise provided in subsections ~~(b)~~ (2) and ~~(c)~~ (3) of this section, any employer not otherwise subject to the Employment Security Law, who is or becomes an employer subject to such law within any calendar year, shall be subject to such law during the whole of such calendar year.

(2) ~~(b)~~ Except as otherwise provided in subsection ~~(c)~~ (3) of this section, an employer, other than an employer subject by reason of subdivision (4)(a) of section 48-604, shall cease to be an employer subject to the Employment Security Law only as of January 1 of any calendar year, if he or she files with the commissioner, on or before January 31 of such year, a written application for termination of coverage, and the commissioner finds: ~~(+)~~ (a) That there were no twenty different days, each day being in a

different calendar week, within the preceding calendar year within which such employer employed one or more individuals in employment subject to such law and there was no calendar quarter within the preceding calendar year in which such employer paid wages for employment in the total sum of fifteen hundred dollars or more; ~~(2)~~ (b) if the employer is subject by reason of subdivision (9) of section 48-603; subdivision (9); there were no twenty different days, each being in a different calendar week, within the preceding calendar year within which such employer employed four or more individuals in employment subject to that section; ~~(3)~~ (c) if the employer is subject by reason of subdivision (10) of section 48-603; subdivision (10); there were no twenty different days, each being in a different calendar week, within the preceding calendar year within which such employer employed ten or more individuals in employment subject to that section and there was no calendar quarter within the preceding calendar year in which such employer paid remuneration in cash for employment subject to that section in the total sum of twenty thousand dollars or more; or ~~(4)~~ (d) if the employer is subject by reason of subdivision (11) of section 48-603; subdivision (11); there was no calendar quarter within the preceding calendar year in which such employer paid cash remuneration in the total sum of one thousand dollars or more for services in employment subject to that section. The commissioner may on his or her motion terminate the coverage of any employer who has not made such written request, but is otherwise eligible to terminate. Any employer whose entire experience account has been transferred to another employer under section 48-654 may request termination as of the date of such transfer if such request is made within thirty days after the determination is made allowing the transfer.

(3) ~~(e)~~ An employer not otherwise subject to the Employment Security Law, who files with the commissioner his or her written election to become an employer subject thereto for not less than two calendar years, shall, with the written approval of such election by the commissioner, become an employer subject thereto to the same extent as all other employers, as of the date stated in such approval, and shall cease to be subject thereto as of January 1 of any calendar year subsequent to such two calendar years, only if on or before January 31 of such year, he or she has filed with the commissioner a written notice to that effect. Any employer of any person in this state for whom services that do not constitute employment as defined in section 48-604 are performed, may file with the commissioner a written election that all such services performed by individuals in his or her employ in one or more distinct establishments or places of business shall be deemed to constitute employment for all the purposes of the Employment Security Law for not less than two calendar years. Upon the written approval of such election by the commissioner, such services shall be deemed to constitute employment subject to such law from and after the date stated in such approval. Such services shall cease to be deemed employment subject hereto as of January 1 of any calendar year subsequent to such two calendar years, only if on or before January 31 of such year such employer has filed with the commissioner a written notice to that effect.

Sec. 15. Section 81-1201.21, Reissue Revised Statutes of Nebraska, is amended to read:

81-1201.21. There is hereby created the Job Training Cash Fund. The fund shall be under the direction of the Department of Economic Development. Money may be transferred to the fund pursuant to subdivision ~~(b)~~(4) (2)(d) of section 48-621. The department shall use the fund to provide reimbursements for job training activities, including employee assessment, preemployment training, on-the-job training, training equipment costs, and other reasonable costs related to helping industry and business locate or expand in Nebraska, or to provide upgrade skills training of the existing labor force necessary to adapt to new technology or the introduction of new product lines. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 16. Section 85-1540, Reissue Revised Statutes of Nebraska, is amended to read:

85-1540. There is hereby created the Nebraska Community College Aid Cash Fund. The fund shall be under the direction of the Nebraska Community College Aid, Grant, and Contract Review Committee. The Legislature may appropriate nongeneral funds and transfers pursuant to subdivision ~~(b)~~(3) (2)(c) of section 48-621 to the fund. The fund shall be used to provide aid, grants, or contracts to the community colleges for the purposes of funding grants for applied technology and occupational faculty training, instructional equipment upgrades, employee assessment, preemployment training, employment training, and dislocated worker programs benefiting the State of Nebraska. Any money in the fund available for investment shall be invested by the state

investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 17. Original sections 48-606.01, 48-617 to 48-619, 48-625 to 48-627, 48-628.03, 48-630, 48-661, 81-1201.21, and 85-1540, Reissue Revised Statutes of Nebraska, and sections 48-621, 48-628, 48-652, and 48-655, Revised Statutes Supplement, 1994, are repealed.