

## LEGISLATIVE BILL 469

Approved by the Governor March 16, 1987

Introduced by Business & Labor Committee, Hall, 7,  
Chairperson; Landis, 46; Labeledz, 5;  
Korshoj, 16

AN ACT relating to the Employment Security Law; to amend section 48-627, Revised Statutes Supplement, 1986, and section 48-628, Revised Statutes Supplement, 1986, as amended by section 1, Legislative Bill 276, Ninetieth Legislature, First Session, 1987; to change provisions relating to eligibility for unemployment benefits; to change provisions relating to disqualification for 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 48-627, Revised Statutes Supplement, 1986, be amended to read as follows:

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

(a) 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;

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

(c) 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 nonservice-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;

(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) unless it occurs within the benefit year, which includes the week with respect to which he or she claims payment of benefits, (2) if benefits have been paid with respect thereto, or (3) 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) of section 48-628; and

(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 six hundred dollars, of which sum at least two hundred dollars shall have been paid in each of two quarters in his or her base period, except that if he or she has wages earned during the period beginning with the end of the immediately preceding base period and ending on the date on which the individual filed a claim, the individual shall have earned wages for insured work in an amount equal to at least four times his or her prior weekly benefit amount. For the purposes of this subdivision, (1) 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 and (2) 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 section 48-604, subdivision (4)(a), (b), (c), or (d), to the extent that such services were not services in employment under 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 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. 2. That section 48-628, Revised Statutes Supplement, 1986, as amended by section 1, Legislative Bill 276, Ninetieth Legislature, First Session, 1987, 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, except 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 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. (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, except 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. 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 worker'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 worker'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. The prorated remuneration shall be considered wages for the quarter to which it is attributable.

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, 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;

(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, 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;

(h) For any week of unemployment if benefits claimed are based on services performed (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, (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 subdivision (h)(2) 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 subdivision (h)(2) of this section, (3) in any capacity described in subdivision (h)(1) or (h)(2) of this 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, and (4) in any capacity described in subdivision (h)(1) or (h)(2) of this section in an educational institution while in the employ of an educational service agency, and such individual shall be disqualified as specified in subdivisions (h)(1), (h)(2), and (h)(3) of this section. As used in subdivision (h)(4) 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 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 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 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 original section 48-627, Revised Statutes Supplement, 1986, and section 48-628, Revised Statutes Supplement, 1986, as amended by section 1, Legislative Bill 276, Ninetieth Legislature, First Session, 1987, are repealed.

Sec. 4. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.