

## LEGISLATIVE BILL 240

Approved by the Governor April 24, 1995

Introduced by Abboud, 12; Dierks, 40; Preister, 5; Schimek, 27; Schmitt, 41; Vrtiska, 1

AN ACT relating to employment security; to amend sections 48-627 and 48-630, Reissue Revised Statutes of Nebraska, and sections 48-647 and 48-652, Revised Statutes Supplement, 1994; to provide an eligibility for benefits condition; to clarify authorized withholding from benefits; to harmonize provisions; and to repeal the original sections.

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

Section 1. 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;

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

(c) (3) 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;

(d) (4) 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) (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) of section 48-628; and

(e) (5) 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 (c) 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 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 federal Emergency Jobs and Unemployment

Assistance Act of 1974 was paid on the basis of such services; and

(6) He or she is participating in reemployment services at no cost to such individual as directed by the commissioner, such as job search assistance services, if the individual has been determined to be likely to exhaust regular benefits and to need reemployment services pursuant to a profiling system established by rule and regulation of the commissioner which is in compliance with section 303(j)(1) of the federal Social Security Act, unless the commissioner determines that: (a) The individual has completed such services; or (b) there is justifiable cause for the claimant's failure to participate in such services.

Sec. 2. 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 48-627, (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 section 48-628(d), 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. 3. Section 48-647, Revised Statutes Supplement, 1994, is amended to read:

48-647. (1) Any assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under sections 48-623 to 48-626 shall be void except as set forth in this section. Such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt. Benefits received by any individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts except debts incurred for necessities furnished to such individual or his or her spouse or dependents during the time when such individual was unemployed. Any waiver of any exemption provided for in this section shall be void. Any assignment, pledge, or encumbrance of any right or claim to contributions or to any money credited to any employer's reserve account in the Unemployment Compensation Fund shall be void, and the same shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt, and any waiver of any exemption provided for in this section shall be void.

(2)(a) An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, disclose whether or not he or she owes child support obligations as defined under subdivision (h) of this subsection. If such individual discloses that he or she owes child support obligations and is determined to be eligible for unemployment compensation, the commissioner shall notify the Director of Social Services that the individual has been determined to be eligible for unemployment compensation.

(b) The commissioner shall deduct and withhold from any unemployment compensation otherwise payable to an individual disclosing child support obligations:

(i) The amount specified by the individual to the commissioner to be

deducted under this subsection, if neither subdivision (ii) nor (iii) of this subdivision is applicable;

(ii) The amount, if any, determined pursuant to an agreement between the Director of Social Services and such individual owing the child support obligations to have a specified amount withheld and such agreement being submitted to the commissioner, unless subdivision (iii) of this subdivision is applicable; or

(iii) The amount otherwise required to be so deducted and withheld from such unemployment compensation pursuant to legal process, as that term is defined in subdivision (2)(i) of this section, properly served upon the commissioner.

(c) Any amount deducted and withheld under subdivision (b) of this subsection shall be paid by the commissioner to the Director of Social Services.

(d) Any amount deducted and withheld under subdivision (b) or (g) of this subsection shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by such individual to the Director of Social Services in satisfaction of his or her child support obligations.

(e) For purposes of subdivisions (a) through (d) and (g) of this subsection, the term unemployment compensation shall mean any compensation payable under the Employment Security Law and including amounts payable by the commissioner pursuant to an agreement by any federal law providing for compensation, assistance, or allowances with respect to unemployment.

(f) This subsection shall apply only if appropriate arrangements have been made for reimbursement by the Department of Social Services for the administrative costs incurred by the commissioner under this section which are attributable to child support obligations being enforced by the Department of Social Services.

(g) The Director of Social Services and the commissioner shall develop and implement a collection system to carry out the intent of this subdivision. The system shall, at a minimum, provide that:

(i) The commissioner shall periodically notify the director of the information listed in section 43-1719 with respect to individuals determined to be eligible for unemployment compensation during such period;

(ii) Unless the county attorney or authorized attorney has sent a notice on the same support order under section 43-1720, upon the notification required by subdivision (2)(g)(i) of this section, the director shall send notice to any such individual who owes child support obligations and who is subject to income withholding pursuant to subdivision (2)(a), (2)(b)(ii), or (2)(b)(iii) of section 43-1718.01. The notice shall be sent by certified mail to the last-known address of the individual and shall state the same information as required under section 43-1720;

(iii)(A) If the support obligation is not based on a foreign support order entered pursuant to section 43-1729 and the individual requests a hearing, the Department of Social Services shall hold a hearing within fifteen days of the date of receipt of the request. The hearing shall be in accordance with the Administrative Procedure Act. The assignment shall be held in abeyance pending the outcome of the hearing. The department shall notify the individual and the commissioner of its decision within fifteen days of the date the hearing is held; and

(B) If the support obligation is based on a foreign support order entered pursuant to section 43-1729 and the individual requests a hearing, the county attorney or authorized attorney shall apply the procedures described in sections 43-1732 to 43-1742;

(iv)(A) If no hearing is requested by the individual under this subsection or pursuant to a notice sent under section 43-1720, (B) if after a hearing under this subsection or section 43-1721 the department determines that the assignment should go into effect, (C) in cases in which the court has ordered income withholding for child support pursuant to subsection (1) of section 43-1718.01, or (D) in cases in which the court has ordered income withholding for child support pursuant to section 43-1718.02 and the case subsequently becomes one in which child support collection services are being provided under Title IV-D of the Social Security Act, as amended, the director shall certify to the commissioner the amount to be withheld for child support obligations from the individual's unemployment compensation. Such amount shall not in any case exceed the maximum amount permitted to be withheld under section 303(b) of the Consumer Credit Protection Act, 15 U.S.C. 1673(b)(2)(A) and (B), and the amount withheld to satisfy an arrearage of child support when added to the amount withheld to pay current support shall not exceed such maximum amount;

(v) The collection system shall comply with the requirements of

Title III and Title IV-D of the Social Security Act, as amended;

(vi) The collection system shall be in addition to and not in substitution for or derogation of any other available remedy; and

(vii) The director and the commissioner shall adopt and promulgate rules and regulations to carry out subdivision (2)(g) of this section.

(h) For purposes of this subsection, the term child support obligations shall include only obligations which are being enforced pursuant to a plan described in section 454 of the Social Security Act which has been approved by the Secretary of Health and Human Services under Part D of Title IV of the Social Security Act.

(i) For purposes of this subsection, the term legal process shall mean any writ, order, summons, or other similar process in the nature of garnishment, which:

(i) Is issued by a court of competent jurisdiction of any state, territory, or possession of the United States or an authorized official pursuant to order of such a court of competent jurisdiction or pursuant to state law. For purposes of this subdivision, the Director of Social Services shall be deemed an authorized official pursuant to order of a court of competent jurisdiction or pursuant to state law; and

(ii) Is directed to, and the purpose of which is to compel, the commissioner to make a payment for unemployment compensation otherwise payable to an individual in order to satisfy a legal obligation of such individual to provide child support.

(j) Nothing in this subsection shall be construed to authorize withholding from unemployment compensation of any support obligation other than child support obligations.

Sec. 4. 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)(1) (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. 5. Original sections 48-627 and 48-630, Reissue Revised Statutes of Nebraska, and sections 48-647 and 48-652, Revised Statutes Supplement, 1994, are repealed.