

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1055

Introduced by Carlson, 38.

Read first time January 21, 2010

Committee: Business and Labor

A BILL

1 FOR AN ACT relating to Employment Security Law; to amend
2 sections 48-628.02 and 48-628.03, Reissue Revised
3 Statutes of Nebraska; to change provisions relating to
4 extended benefits; to eliminate obsolete provisions and
5 restructure provisions; to alphabetize defined terms;
6 to harmonize provisions; and to repeal the original
7 sections.

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

1 Section 1. Section 48-628.02, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 48-628.02 (1) As used in the Employment Security Law,
4 unless the context otherwise requires:

5 ~~(1)~~ (a) Extended benefit period ~~shall mean~~ means a period
6 ~~subsequent to December 31, 1971,~~ which ~~(a)~~ begins with the third
7 week after a week for which there is a state ~~on~~ "on" indicator
8 and ~~(b)~~ ends with either of the following weeks, whichever occurs
9 later: ~~(1)~~ (i) The third week after the first week for which
10 there is a state ~~off~~ "off" indicator or ~~(2)~~ (ii) the thirteenth
11 consecutive week of such period, except that no extended benefit
12 period may begin by reason of a state ~~on~~ "on" indicator before
13 the fourteenth week following the end of a prior extended benefit
14 period which was in effect with respect to this state;

15 ~~(2)~~ There is a state ~~on~~ indicator for this state for a
16 week if the commissioner determines that for the period consisting
17 of such week and the immediately preceding twelve weeks, the
18 rate of insured unemployment, not seasonally adjusted, under the
19 Employment Security Law: ~~(a)~~ Equaled or exceeded one hundred
20 twenty percent of the average of such rates for the corresponding
21 thirteen-week period ending in each of the preceding two calendar
22 years and ~~(b)~~ equaled or exceeded four percent for weeks beginning
23 prior to or on September 25, 1982, or five percent for weeks
24 beginning after September 25, 1982, except that with respect to
25 benefits for weeks of unemployment beginning after March 30, 1977,

1 the determination of whether there has been a state on or off
2 indicator beginning or ending any extended benefit period shall be
3 made under this section as if (i) this subdivision did not contain
4 subdivision (a) thereof and (ii) the four percent contained in
5 subdivision (b) thereof were five percent for weeks beginning prior
6 to or on September 25, 1982, or six percent for weeks beginning
7 after September 25, 1982, except that, notwithstanding any such
8 provision of this subdivision, any week for which there would
9 otherwise be a state on indicator shall continue to be such a week
10 and shall not be determined to be a week for which there is a state
11 off indicator,

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

16 (4) Rate of insured unemployment, for purposes of
17 subdivisions (2) and (3) of this section, shall mean the
18 percentage derived by dividing (a) the average weekly number
19 of individuals filing claims for regular compensation in this
20 state for weeks of unemployment with respect to the most recent
21 thirteen-consecutive-week period, as determined by the commissioner
22 on the basis of his or her reports to the United States Secretary
23 of Labor, by (b) the average monthly employment covered under the
24 Employment Security Law for the first four of the most recent
25 six completed calendar quarters ending before the end of such

1 ~~thirteen-week period;~~

2 ~~(5) Regular benefits shall mean benefits payable to an~~
3 ~~individual under the Employment Security Law of this state or under~~
4 ~~any other state law, including benefits payable to federal civilian~~
5 ~~employees and to ex-servicemen or ex-servicewomen pursuant to 5~~
6 ~~U.S.C. chapter 85, other than extended benefits;~~

7 ~~(6) (b) Extended benefits shall mean means benefits,~~
8 ~~including benefits payable to federal civilian employees and to~~
9 ~~ex-servicemen or ex-servicewomen pursuant to 5 U.S.C. chapter~~
10 ~~85, payable to an individual under this section for weeks of~~
11 ~~unemployment in his or her eligibility period;~~

12 ~~(7) (c) Eligibility period of an individual shall mean~~
13 ~~means the period consisting of the weeks in his or her benefit~~
14 ~~year which begin in an extended benefit period and, if his or~~
15 ~~her benefit year ends within such extended benefit period, any~~
16 ~~weeks thereafter which begin in such period. Notwithstanding any~~
17 ~~other provision of the Employment Security Law, if the benefit~~
18 ~~year of any individual ends within an extended benefit period, the~~
19 ~~remaining balance of extended benefits that such individual would,~~
20 ~~but for this section, be entitled to receive in that extended~~
21 ~~benefit period, with respect to weeks of unemployment beginning~~
22 ~~after the end of the benefit year, shall be reduced, but not~~
23 ~~below zero, by the product of the number of weeks for which the~~
24 ~~individual received any amounts as trade readjustment allowances~~
25 ~~within that benefit year multiplied by the individual's weekly~~

1 benefit amount for extended benefits;

2 ~~(8)~~ (d) Exhaustee ~~shall mean~~ means an individual who,
3 with respect to any week of unemployment in his or her eligibility
4 period: ~~(a)~~

5 (i) (A) Has received, prior to such week, all of the
6 regular benefits that were available to him or her under the
7 Employment Security Law of this state or under the unemployment
8 insurance law of any other state, law, including dependents'
9 allowances and benefits payable to federal civilian employees and
10 ex-servicemen or ex-servicewomen under 5 U.S.C. chapter 85, in his
11 or her current benefit year that includes such week, except for the
12 purposes of this subdivision, an individual shall be deemed to have
13 received all of the regular benefits that were available to him or
14 her although as a result of a pending appeal with respect to wages
15 or employment or both wages and employment that were not considered
16 in the original monetary determination in his or her benefit year,
17 he or she may subsequently be determined to be entitled to added
18 regular benefits; or ~~(b)~~ (B) his or her benefit year having expired
19 prior to such week, has no, or insufficient, wages or employment
20 or both wages and employment on the basis of which he or she could
21 establish a new benefit year that would include such week; ~~and~~
22 ~~(e)-(1)~~ has

23 (ii) Has no right to unemployment benefits or allowances,
24 as the case may be, under the Railroad Unemployment Insurance Act,
25 the Trade Expansion Act of 1962, the Automotive Products Trade

1 Act of 1965, and such other federal laws as are specified in
2 regulations issued by the United States Secretary of Labor; and ~~(2)~~
3 has

4 (iii) Has not received and is not seeking unemployment
5 benefits under the unemployment compensation law of Canada, but
6 if he or she is seeking such benefits and the appropriate agency
7 finally determines that he or she is not entitled to benefits under
8 such law he or she is considered an exhaustee;

9 (e) Rate of insured unemployment means the percentage,
10 used by the commissioner in determining whether there is a state
11 "on" or state "off" indicator, derived by dividing (i) the average
12 weekly number of individuals filing claims for regular compensation
13 under the Employment Security Law for weeks of unemployment with
14 respect to the most recent thirteen-consecutive-week period, as
15 determined by the commissioner on the basis of his or her reports
16 to the United States Secretary of Labor, by (ii) the average
17 monthly employment covered under the Employment Security Law for
18 the first four of the most recent six completed calendar quarters
19 ending before the end of such thirteen-week period;

20 (f) Regular benefits means benefits payable to an
21 individual under the Employment Security Law of this state or
22 under the unemployment insurance law of any other state, including
23 benefits payable to federal civilian employees and to ex-servicemen
24 or ex-servicewomen pursuant to 5 U.S.C. chapter 85, other than
25 extended benefits;

1 (g) State "off" indicator means a week that the
2 commissioner determines that, for the period consisting of
3 such week and the immediately preceding twelve weeks, neither
4 subdivision (1) (h) (i) or (1) (h) (ii) of this section was satisfied;
5 and

6 (h) State "on" indicator means a week that the
7 commissioner determines that for the period consisting of such
8 week and the immediately preceding twelve weeks, the rate of
9 insured unemployment, not seasonally adjusted, under the Employment
10 Security Law: (i) Equaled or exceeded one hundred twenty percent
11 of the average of such rates for the corresponding thirteen-week
12 period ending in each of the preceding two calendar years and
13 equaled or exceeded five percent or (ii) equaled or exceeded six
14 percent.

15 (2) Except when the result would be inconsistent with
16 the other provisions of this section, as provided in the rules
17 and regulations of the commissioner, the provisions of the
18 Employment Security Law which apply to claims for or payment
19 of regular benefits shall apply to claims for and payment of
20 extended benefits. An individual shall be eligible to receive
21 extended benefits with respect to any week of unemployment in
22 his or her eligibility period only if the commissioner finds
23 that with respect to such week: (a) Such individual is an
24 exhaustee; (b) such individual has satisfied the requirements
25 of the Employment Security Law for the receipt of regular benefits

1 that are applicable to individuals claiming extended benefits,
2 including not being subject to a disqualification for the receipt
3 of benefits; (c) sections 48-628.03 and 48-628.04 do not apply; and
4 (d) such individual has been paid wages for insured work during the
5 individual's base period equal to at least one and one-half times
6 the wages paid in that calendar quarter of the individual's base
7 period in which such wages were highest.

8 (3) The weekly extended benefit amount payable to an
9 individual for a week of total unemployment in his or her
10 eligibility period shall be an amount equal to the weekly benefit
11 amount payable to him or her during his or her applicable benefit
12 year. The total extended benefit amount payable to any eligible
13 individual with respect to his or her applicable benefit year
14 shall be the least of the following amounts: Fifty percent of the
15 total amount of regular benefits which were payable to him or her
16 under the Employment Security Law in his or her applicable benefit
17 year; or thirteen times his or her weekly benefit amount which was
18 payable to him or her under the Employment Security Law for a week
19 of total unemployment in the applicable benefit year.

20 (4) Whenever an extended benefit period is to become
21 effective in this state as a result of a state "on" indicator or
22 an extended benefit period is to be terminated in this state as a
23 result of a state "off" indicator, the commissioner shall make an
24 appropriate public announcement. Computations required to determine
25 the rate of insured unemployment shall be made by the commissioner

1 in accordance with regulations prescribed by the United States
2 Secretary of Labor. Any amount of extended benefits payable to any
3 individual for any week, if not an even dollar amount, shall be
4 rounded to the next lower full dollar amount.

5 (5) Notwithstanding any other provision of the Employment
6 Security Law, during an extended benefit period, the Governor may
7 provide for the payment of emergency unemployment compensation
8 pursuant to Public Law 110-252, as amended, or any substantially
9 similar federal unemployment compensation paid entirely from
10 federal funds to individuals prior to the payment of extended
11 benefits pursuant to sections 48-628.02 to 48-628.04.

12 ~~(9) State law shall mean the unemployment insurance law~~
13 ~~of any state, approved by the United States Secretary of Labor~~
14 ~~under section 3304 of the Internal Revenue Code of 1954; (a) except~~
15 ~~when the result would be inconsistent with the other provisions~~
16 ~~of this section, as provided in the rules and regulations of~~
17 ~~the commissioner, the provisions of the Employment Security Law~~
18 ~~which apply to claims for, or payment of, regular benefits shall~~
19 ~~apply to claims for, and the payment of, extended benefits; (b)~~
20 ~~an individual shall be eligible to receive extended benefits with~~
21 ~~respect to any week of unemployment in his or her eligibility~~
22 ~~period only if the commissioner finds that with respect to such~~
23 ~~week: (1) He or she is an exhaustee as defined in subdivision (8)~~
24 ~~of this section, (2) he or she has satisfied the requirements of~~
25 ~~the Employment Security Law for the receipt of regular benefits~~

1 that are applicable to individuals claiming extended benefits,
2 including not being subject to a disqualification for the receipt
3 of benefits, ~~(3) sections 48-628.03 and 48-628.04 do not apply,~~
4 and ~~(4) he or she has been paid wages for insured work during~~
5 ~~the individual's base period equal to at least one and one-half~~
6 ~~times the wages paid in that calendar quarter of the individual's~~
7 ~~base period in which such wages were highest;~~ ~~(c) the weekly~~
8 ~~extended benefit amount payable to an individual for a week of~~
9 ~~total unemployment in his or her eligibility period shall be an~~
10 ~~amount equal to the weekly benefit amount payable to him or her~~
11 ~~during his or her applicable benefit year;~~ ~~(d) the total extended~~
12 ~~benefit amount payable to any eligible individual with respect to~~
13 ~~his or her applicable benefit year shall be the least of the~~
14 ~~following amounts:~~ ~~(1) Fifty percent of the total amount of regular~~
15 ~~benefits which were payable to him or her under the Employment~~
16 ~~Security Law in his or her applicable benefit year;~~ or ~~(2) thirteen~~
17 ~~times his or her weekly benefit amount which was payable to him~~
18 ~~or her under the Employment Security Law for a week of total~~
19 ~~unemployment in the applicable benefit year;~~ ~~(e)(1) whenever an~~
20 ~~extended benefit period is to become effective in this state as a~~
21 ~~result of a state on indicator,~~ or an extended benefit period is to
22 be terminated in this state as a result of a state off indicator,
23 the commissioner shall make an appropriate public announcement; ~~(2)~~
24 ~~computations required by subdivision (4) of this section shall be~~
25 ~~made by the commissioner, in accordance with regulations prescribed~~

1 by the United States Secretary of Labor, and ~~(f)~~ any amount of
2 extended benefits payable to any individual for any week, if not an
3 even dollar amount, shall be rounded to the next lower full dollar
4 amount, and

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

16 Sec. 2. Section 48-628.03, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 48-628.03 (1) An individual shall be ineligible for
19 payment of extended benefits for any week of unemployment in his or
20 her eligibility period if the commissioner finds that during such
21 period (a) he or she failed to accept any offer of suitable work
22 or failed to apply for any suitable work to which he or she was
23 referred by the commissioner or (b) he or she failed to actively
24 engage in seeking work as prescribed under subsection (5) of this
25 section.

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

8 (3) For purposes of this section, the term suitable
9 work shall mean, with respect to any individual, any work which
10 is within such individual's capabilities and for which the gross
11 average weekly remuneration payable for the work exceeds the sum
12 of the individual's average weekly benefit amount ~~as determined~~
13 ~~under subdivision (9)(c) of section 48-628.02,~~ payable to him
14 or her during his or her applicable benefit year, plus the
15 amount, if any, of supplemental unemployment benefits as defined in
16 section 501(c)(17)(D) of the Internal Revenue Code payable to such
17 individual for such week. Such work must also pay wages equal to
18 the higher of the federal minimum wage or the applicable state or
19 local minimum wage. No individual shall be denied extended benefits
20 for failure to accept an offer or referral to any job which
21 meets the definition of suitability contained in this subsection
22 if (a) the position was not offered to such individual in writing
23 or was not listed with the employment service, (b) such failure
24 could not result in a denial of benefits under the definition of
25 suitable work for regular benefit claimants in subdivision (3) of

1 section 48-628, to the extent that the criteria of suitability
2 in that section are not inconsistent with the provisions of this
3 subsection, or (c) the individual furnishes satisfactory evidence
4 to the commissioner that his or her prospects for obtaining work
5 in his or her customary occupation within a reasonably short period
6 are good. If such evidence is deemed satisfactory for this purpose,
7 the determination of whether any work is suitable with respect to
8 such individual shall be made in accordance with the definition of
9 suitable work in subdivision (3) of section 48-628 without regard
10 to the definition specified by this subsection.

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

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

24 (6) The state employment service shall refer any claimant
25 entitled to extended benefits under this section to any suitable

1 work which meets the criteria prescribed in subsection (3) of this
2 section.

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

10 Sec. 3. Original sections 48-628.02 and 48-628.03,
11 Reissue Revised Statutes of Nebraska, are repealed.