

LEGISLATIVE BILL 192

Approved by the Governor March 1, 2001

Introduced by Business and Labor Committee: Connealy, 16, Chairperson;
Chambers, 11; Dierks, 40; Hartnett, 45; Preister, 5;
Schimek, 27; Vrtiska, 1

AN ACT relating to the Employment Security Law; to amend sections 48-601, 48-608, 48-612 to 48-614, 48-633, 48-634, 48-650, 48-656, and 48-663, Reissue Revised Statutes of Nebraska, and sections 48-602, 48-628, and 48-657, Revised Statutes Supplement, 2000; to define and redefine terms; to provide for coverage for Indian tribes and tribal businesses; to change provisions relating to print material, benefits, appeal tribunals, powers and duties, notices, assessments, appeals, enforcement, and venue; to harmonize provisions; to repeal the original sections; and to declare an emergency.

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

Section 1. Section 48-601, Reissue Revised Statutes of Nebraska, is amended to read:

48-601. Sections 48-601 to 48-671 and section 2 of this act shall be known and may be cited as the Employment Security Law.

Sec. 2. (1) For purposes of the Employment Security Law, unless the context otherwise requires, the term employer shall include any Indian tribe for which services in employment as provided in subdivision (4)(a) of section 48-604 are performed.

(2) The term employment shall include service performed in the employ of an Indian tribe, as defined in 26 U.S.C. 3306(u), as such section existed on the effective date of this act, if such service is excluded from employment as defined in the Federal Unemployment Tax Act solely by reason of 26 U.S.C. 3306(c)(7), as such section existed on the effective date of this act, and is not otherwise excluded from employment under the Employment Security Law. For purposes of this section, the exclusions from employment in subdivisions (6)(f) and (6)(g) of section 48-604 shall be applicable to services performed in the employment of an Indian tribe.

(3) Benefits based on service in employment defined in this section shall be payable in the same amount, on the same terms, and subject to the same conditions as benefits payable on the basis of other covered employment under the Employment Security Law. Subdivision (8) of section 48-628 shall apply to services performed in an educational institution or educational service agency owned or operated by an Indian tribe.

(4)(a) Indian tribes or tribal units, subdivisions, subsidiaries, or business enterprises wholly owned by such Indian tribes, subject to the Employment Security Law, shall pay combined tax under the same terms and conditions as all other subject employers, unless they elect to make payments in lieu of contributions equal to the amount of benefits attributable to service in the employ of the Indian tribe.

(b) Indian tribes electing to make payments in lieu of contributions shall make such election in the same manner and under the same conditions as provided in subdivision (6) of section 48-649 pertaining to state and local governments subject to the Employment Security Law. Indian tribes shall determine if reimbursement for benefits paid will be elected by the tribe as a whole, by individual tribal units, or by combinations of individual tribal units.

(c) Except as provided in subsection (7) of this section, Indian tribes or tribal units shall be billed for the full amount of benefits attributable to service in the employ of the Indian tribe or tribal unit on the same schedule as other employing units that have elected to make payments in lieu of contributions.

(d) At the discretion of the commissioner, any Indian tribe or tribal unit that elects to become liable for payments in lieu of contributions shall be required within thirty days after the effective date of its election to:

(i) Execute and file with the commissioner a surety bond approved by the commissioner; or

(ii) Deposit with the commissioner money or securities on the same basis as other employers with the same election option.

(5)(a)(i) Failure of the Indian tribe or tribal unit to make required payments, including assessments of interest and penalty, within ninety days of receipt of the bill will cause the Indian tribe to lose the

option to make payments in lieu of contributions, as described in subsection (4) of this section, for the following tax year unless payment in full is received before combined tax rates for the next tax year are computed.

(ii) Any Indian tribe that loses the option to make payments in lieu of contributions due to late payment or nonpayment, as described in subdivision (5)(a)(i) of this section, shall have such option reinstated if, after a period of one year, all combined taxes have been paid timely and no combined tax, payments in lieu of contributions for benefits paid, penalties, or interest remain outstanding.

(b)(i) Failure of the Indian tribe or any tribal unit thereof to make required payments, including assessments of interest and penalty, after all collection activities deemed necessary by the commissioner have been exhausted will cause services performed for such tribe to not be treated as employment for purposes of subsection (2) of this section.

(ii) The commissioner may determine that any Indian tribe that loses coverage under subdivision (5)(b)(i) of this section may have services performed for such tribe again included as employment for purposes of subsection (2) of this section if all contributions, payments in lieu of contributions, penalties, and interest have been paid.

(iii) The commissioner shall notify the United States Internal Revenue Service and the United States Department of Labor of any termination or reinstatement of coverage made under subdivision (5)(b) of this section.

(6) Notices of payment and reporting delinquency to Indian tribes or their tribal units shall include information that failure to make full payment within the prescribed timeframe:

(a) Will cause the Indian tribe to be liable for taxes under the Federal Unemployment Tax Act, as the act existed on the effective date of this act;

(b) Will cause the Indian tribe to lose the option to make payments in lieu of contributions; and

(c) Could cause the Indian tribe to be excepted from the definition of employer, as provided in subsection (1) of this section, and services in the employ of the Indian tribe, as provided in subsection (2) of this section, to be excepted from employment.

(7) Extended benefits paid that are attributable to service in the employ of an Indian tribe and not reimbursed by the federal government shall be financed in their entirety by such Indian tribe.

Sec. 3. Section 48-602, Revised Statutes Supplement, 2000, is amended to read:

48-602. For purposes of the Employment Security Law, unless the context otherwise requires:

(1) Base period shall mean the last four completed calendar quarters immediately preceding the first day of an individual's benefit year, except that the commissioner may prescribe by rule and regulation that base period shall mean the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year;

(2) Benefits shall mean the money payments payable to an individual with respect to his or her unemployment;

(3) Benefit year, with respect to any individual, shall mean the one-year period beginning with the first day of the first week with respect to which the individual first files a valid claim for benefits, and thereafter the one-year period beginning with the first day of the first week with respect to which the individual next files a valid claim for benefits after the termination of his or her last preceding benefit year. Any claim for benefits made in accordance with section 48-629 shall be deemed to be a valid claim for the purpose of this subdivision if the individual has been paid the wages for insured work required under section 48-627. For the purposes of this subdivision a week with respect to which an individual files a valid claim shall be deemed to be in, within, or during that benefit year which includes the greater part of such week;

(4) Calendar quarter shall mean the period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31, or the equivalent thereof as the Commissioner of Labor may by rule and regulation prescribe;

(5) Combined tax shall mean the employer liability consisting of contributions and commencing January 1, 1996, the state unemployment insurance tax;

(6) Combined tax rate shall mean the rate which is applied to wages to determine the combined taxes due;

(7) Commissioner shall mean the Commissioner of Labor;

(8) Contribution rate shall mean the percentage of the combined tax rate used to determine the contribution portion of the combined tax;

(9) Contributions shall mean that portion of the combined tax based upon the contribution rate portion of the combined tax rate which is deposited in the state Unemployment Compensation Fund as required by sections 48-648 and 48-649;

(10) Department shall mean the Department of Labor;

(11) Employee leasing company shall mean an independently established business entity which engages in the business of providing leased employees to a client-lessee. Client-lessee shall mean any other employer, individual, organization, partnership, limited liability company, corporation, or other legal entity;

(12) Employment office shall mean a free public employment office or branch thereof, operated by this state or maintained as a part of a state-controlled system of public employment offices, including public employment offices operated by an agency of a foreign government;

(13) Fund shall mean the Unemployment Compensation Fund established by section 48-617 to which all contributions and payments in lieu of contributions required and from which all benefits provided shall be paid;

(14) Hospital shall mean an institution which has been licensed, certified, or approved by the Department of Health and Human Services Regulation and Licensure as a hospital;

(15) Institution of higher education shall mean an institution which: (a) Admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of such a certificate; (b) is legally authorized in this state to provide a program of education beyond high school; (c) provides an educational program for which it awards a bachelor's degree or higher or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and (d) is a public or other nonprofit institution; notwithstanding any of the foregoing provisions of this subdivision, all colleges and universities in this state are institutions of higher education for purposes of this section;

(16) Insured work shall mean employment for employers;

(17) Leave of absence shall mean any absence from work: (a) Mutually and voluntarily agreed to by the employer and the employee; (b) mutually and voluntarily agreed to between the employer and the employee's bargaining agent; or (c) to which the employee is entitled to as a matter of state or federal law;

(18) Paid vacation leave shall mean a period of time while employed or following separation from employment in which the individual renders no services to the employer but is entitled to receive vacation pay equal to or exceeding his or her base weekly wage;

(19) Payments in lieu of contributions shall mean the money payments to the Unemployment Compensation Fund required by sections 48-649, 48-652, 48-660.01, and 48-661;

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

(21) State unemployment insurance tax shall mean that portion of the combined tax commencing January 1, 1996, which is based upon the state unemployment insurance tax rate portion of the combined tax rate and which is deposited in the State Unemployment Insurance Trust Fund as required by sections 48-648 and 48-649;

(22) State unemployment insurance tax rate shall mean the percentage of the combined tax rate used to determine the state unemployment insurance tax portion of the combined tax;

(23) Temporary employee shall mean an employee of a temporary help firm assigned to work for the clients of such temporary help firm;

(24) Temporary help firm shall mean a firm that hires its own employees and assigns them to clients to support or supplement the client's work force in work situations such as employee absences, temporary skill shortages, seasonal workloads, and special assignments and projects;

(25) Unemployed shall mean an individual during any week in which the individual performs no service and with respect to which no wages are payable to the individual or any week of less than full-time work if the wages payable with respect to such week are less than the individual's weekly benefit amount, but shall not include any individual on a leave of absence or on paid vacation leave. When an agreement between the employer and a bargaining unit representative does not allocate vacation pay allowance or pay in lieu of vacation to a specified period of time during a period of temporary layoff or plant shutdown, the payment by the employer or his or her designated representative will be deemed to be wages as defined in this section in the

week or weeks the vacation is actually taken;

(26) Unemployment Trust Fund shall mean the trust fund in the Treasury of the United States of America established under section 904 of the federal Social Security Act, 42 U.S.C. 1104, as such section existed on the effective date of this act, which receives credit from the state Unemployment Compensation Fund;

(27) Wages, except with respect to services performed in employment as provided in subdivisions (4)(c) and (d) of section 48-604, shall mean all remuneration for personal services, including commissions and bonuses, remuneration for personal services paid under a contract of hire, and the cash value of all remunerations in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rules and regulations prescribed by the commissioner. After December 31, 1985, wages shall include tips which are received while performing services which constitute employment and which are included in a written statement furnished to the employer pursuant to section 6053(a) of the Internal Revenue Code as defined in section 49-801.01.

With respect to services performed in employment in agricultural labor as is provided in subdivision (4)(c) of section 48-604 or in domestic service as is provided in subdivision (4)(d) of section 48-604, wages shall mean cash remuneration for such services, except that as used in sections 48-648 and 48-649 only, the term wages shall not include that part of the remuneration which, after remuneration equal to seven thousand dollars has been paid to an individual by an employer or by the predecessor of such employer with respect to employment within this or any other state during any calendar year, is paid to such individual by such employer during such calendar year, unless that part of the remuneration is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund.

The term wages shall not include:

(a) The amount of any payment, including any amount paid by an employer for insurance or annuities or into a fund to provide for such payment, made to, or on behalf of, an individual in employment or any of his or her dependents under a plan or system established by an employer which makes provision for such individuals generally or for a class or classes of such individuals, including any amount paid by an employer for insurance or annuities or into a fund to provide for any such payment, on account of (i) sickness or accident disability, except, in the case of payments made to an employee or any of his or her dependents, this subdivision (i) shall exclude from wages only payments which are received under a workers' compensation law, (ii) medical and hospitalization expenses in connection with sickness or accident disability, or (iii) death;

(b) The payment by an employer, without deduction from the remuneration of the employee, of the tax imposed upon an employee under section 3101 of the Internal Revenue Code as defined in section 49-801.01;

(c) Any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an individual after the expiration of six calendar months following the last calendar month in which such individual worked for such employer;

(d) Any payment made to, or on behalf of, an individual or his or her beneficiary (i) from or to a trust described in section 401(a) of the Internal Revenue Code as defined in section 49-801.01 which is exempt from tax under section 501(a) of the Internal Revenue Code as defined in section 49-801.01 at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust or (ii) under or to an annuity plan which, at the time of such payment, meets the requirements of section 401 of the Internal Revenue Code as defined in section 49-801.01;

(e) Any payment made to, or on behalf of, an employee or his or her beneficiary (i) under a simplified employee pension as defined by the commissioner, (ii) under or to an annuity contract as defined by the commissioner, other than a payment for the purchase of such contract which is made by reason of a salary reduction agreement, whether evidenced by a written instrument or otherwise, (iii) under or to an exempt governmental deferred compensation plan as defined by the commissioner, (iv) to supplement pension benefits under a plan or trust, as defined by the commissioner, to take into account some portion or all of the increase in the cost of living since retirement, but only if such supplemental payments are under a plan which is treated as a welfare plan, or (v) under a cafeteria benefits plan; ~~and~~

(f) Remuneration paid in any medium other than cash to an individual for service not in the course of the employer's trade or business; and

(g) Benefits paid under a supplemental unemployment benefit plan which satisfies the eight points set forth in Internal Revenue Service Revenue Ruling 56-249 as the ruling existed on the effective date of this act and is in compliance with the standards set forth in Internal Revenue Service Revenue Rulings 58-128 and 60-330 as the rulings existed on the effective date of this act;

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

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

Sec. 4. Section 48-608, Reissue Revised Statutes of Nebraska, is amended to read:

48-608. ~~The Commissioner of Labor shall cause to be printed for distribution to the public the text of the Employment Security Law, his or her rules and regulations, and any other material he or she deems relevant and suitable, and shall furnish eight copies of the same text of the Employment Security Law and his or her rules and regulations to the Nebraska Publications Clearinghouse. and one copy to any person upon application therefor.~~

Sec. 5. Section 48-612, Reissue Revised Statutes of Nebraska, is amended to read:

48-612. Each employer, whether or not subject to the Employment Security Law, shall keep true and accurate work records containing such information as the Commissioner of Labor may prescribe. Such records shall be open to inspection and be subject to being copied by the commissioner or his or her authorized representatives at any reasonable time and as often as may be necessary. The commissioner and the ~~chairperson of any~~ appeal tribunal may require from any such employer any sworn or unsworn reports, with respect to persons employed by it, which he, she, or it deems necessary for the effective administration of such law. Information thus obtained or obtained from any individual pursuant to the administration of such law, shall be held confidential, except to the extent necessary for the proper presentation of the contest of a claim, and shall not be published or be open to public inspection, other than to public employees in the performance of their public duties, in any manner revealing the individual's or employing unit's identity, except that (a) any claimant, or his or her legal representative, at a hearing before an appeal tribunal or court shall be supplied with information from such records to the extent necessary for the proper presentation of his or her claim and (b) the Nebraska Workers' Compensation Court may use the names, addresses, and identification numbers of employers for purposes of enforcement of the Nebraska Workers' Compensation Act. Any employee of the commissioner who violates any provision of sections 48-606 to 48-616 shall be guilty of a Class III misdemeanor. All letters, reports, communications, or any other matters, either oral or written, from an employer or his or her workers to each other or to the commissioner or any of his or her agents, representatives, or employees which shall have been written or made in connection with the requirements and administration of the Employment Security Law, or the rules and regulations thereunder, shall be absolutely privileged and shall not be made the subject matter or basis for any suit for slander or libel in any court of this state, unless the same be false in fact and malicious in intent.

Sec. 6. Section 48-613, Reissue Revised Statutes of Nebraska, is amended to read:

48-613. In the discharge of the duties imposed by the Employment Security Law, the Commissioner of Labor, ~~the chairperson of~~ an appeal tribunal, and any duly authorized representative of any of them shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim or the administration of such law.

Sec. 7. Section 48-614, Reissue Revised Statutes of Nebraska, is amended to read:

48-614. The Commissioner of Labor, an appeal tribunal, or a duly authorized representative of the commissioner or an appeal tribunal may petition a court to enforce a subpoena issued by the commissioner or an appeal tribunal in ~~the~~ case of contumacy by any person, or refusal of any person to obey such a subpoena. issued to any person, any Any court of this state which has subject matter jurisdiction and has venue jurisdiction of the place where within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said the person guilty of contumacy or refusal to obey

is found, ~~or~~ resides, or transacts business, upon application by the Commissioner of Labor, the chairman of an appeal tribunal or any duly authorized representative of any of them shall have jurisdiction to issue to such person an order requiring such person him or her to appear before the commissioner, the chairman of an appeal tribunal, or a ~~any~~ duly authorized representative of any of them, ~~there~~ and to produce evidence ~~if so ordered or there to~~ or give testimony if so ordered touching the matter under investigation or in question. Any failure to obey such order of the court may be punished by the said court as a contempt. ~~thereof~~. Any person who shall without just cause ~~fail or refuse~~ fails or refuses to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if it is in his or her power so to do, in obedience to a subpoena of the commissioner, the chairman of an appeal tribunal, or ~~any~~ a duly authorized representative of any of them, shall be guilty of a Class III misdemeanor. Each day such violation continues shall be a separate offense.

Sec. 8. Section 48-628, Revised Statutes Supplement, 2000, is amended to read:

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

(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. A temporary employee of a temporary help firm has left work voluntarily without good cause if the temporary employee does not contact the temporary help firm for reassignment upon completion of an assignment and the temporary employee has been advised by the temporary help firm of his or her obligation to contact the temporary help firm upon completion of assignments and has been advised by the temporary help firm that the temporary employee may be denied benefits for failure to do so. If an individual who has made all reasonable efforts to preserve the employment voluntarily leaves his or her work for the necessary purpose of escaping abuse, as defined in section 42-903, such individual shall be deemed to have left his or her employment for good cause and is not disqualified for benefits; or

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

(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 (a) the individual is not participating in, financing, or directly interested in the labor dispute which caused the stoppage of work and (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) wages in lieu of notice, or a dismissal or separation allowance, (b) compensation for temporary disability under the workers' compensation law of any state or under a similar law of the United States, (c) primary insurance benefits under Title II of the Social Security Act, as amended, or similar payments under any act of Congress, (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 (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. No deduction shall be made for any benefit received under a supplemental unemployment benefit plan described in subdivision (27)(g) of section 48-602;

(6) 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) 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 shall not be disqualifying;

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

(a) 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) 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 (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 subdivision (8)(b) of this section;

(c) In any capacity described in subdivision (8)(a) or (b) 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;

(d) In any capacity described in subdivision (8)(a) or (b) 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 (8)(a), (b), and (c) of this section. As used in this subdivision, 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) In any capacity described in subdivision (8)(a) or (b) of this section in an educational institution if such services are provided to or on behalf of the educational institution while in the employ of an organization or entity described in section 3306(c)(7) or 3306(c)(8) of the Federal Unemployment Tax Act, and such individual shall be disqualified as specified in subdivisions (8)(a), (b), and (c) of this section;

(9) 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) 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, 8 U.S.C. 1182(d)(5), as the section existed on the effective date of this 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) 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 federal Trade Act of 1974, 19 U.S.C. 2296(a)(1), as the section existed on the effective date of this act, 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 federal Trade Act of 1974, as the act existed on the effective date of this act, and wages for such work at not less than eighty percent of the individual's average weekly wage as determined for purposes of the federal Trade Act of 1974 such act; and

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

Sec. 9. Section 48-633, Reissue Revised Statutes of Nebraska, is amended to read:

48-633. (1) To hear and decide disputed claims, the commissioner shall appoint one or more impartial appeal tribunals consisting in each case of an administrative law judge, either a salaried examiner, who shall be an attorney, selected in accordance with section 48-609. , or a body consisting of three members, one of whom shall be a salaried examiner, who shall serve as chairperson, one of whom shall be a representative of employers, and the other one of whom shall be a representative of employees. Each of the latter two members may be selected without regard to section 48-609, and shall serve at the pleasure of the commissioner and be paid a fee, as determined by the commissioner, for each day of active service on such tribunal plus necessary expenses. No person shall participate on behalf of the commissioner in any case in which he or she is an interested party. The commissioner may designate alternates to serve in the absence or disqualification of any member of an appeal tribunal. The chairperson shall act alone in the absence or disqualification of any other member and his or her alternates. In no case shall the hearings proceed unless the chairperson of the appeal tribunal is present except as is provided in subsection (2) of this section.

(2) Whenever the commissioner finds that the hearing of an appeal will be unreasonably delayed by the unavailability of an administrative law judge appointed in accordance with subsection (1) of this section, a qualified salaried examiner as chairperson, he or she may appoint a special administrative law judge examiner to serve as chairperson to conduct the hearing. Such special administrative law judge examiner may be appointed without regard to the qualifications hereinbefore set forth in subsection (1) of this section and shall have all the powers and perform all the duties of a salaried examiner an administrative law judge appointed in accordance with subsection (1) of this section. After the hearing the special examiner shall make a report of the tribunal's findings with recommendations in writing to the commissioner, which recommendations when approved by the commissioner shall become binding as to the disputed claim only. If the commissioner does not approve the recommendations of the special examiner, the commissioner shall order the disputed claim to be heard by a regular appeal tribunal.

(3) Recognizing that a clear separation of functions and the protection of fair and impartial hearings are fundamental to the integrity of the adjudicative process, administrative oversight of the appeal tribunal and its administrative law judges shall be the nondelegable function responsibility of the commissioner. The commissioner shall provide the appeal tribunals with proper facilities and assistants for the execution of their functions. Notwithstanding any delegation of administrative oversight, the commissioner shall maintain the appeal tribunal and its staff as an identifiable unit within the division or office to which it is assigned, under the supervision of a chief administrative law judge. In determining eligibility of a claimant for unemployment benefits, an appeal tribunal shall not be bound by department policy or interpretations that are not part of a duly adopted regulation or that have not been approved by a court of competent jurisdiction. No administrative law judge shall be subject to discipline, poor evaluation, or loss of pay or pay increase for failure to follow a department policy or interpretation on unemployment benefit eligibility that has not been adopted as a regulation or approved by a court of competent jurisdiction. An attorney employed by the commissioner shall not appear before an appeal tribunal in any appeal hearing presided over by an administrative law judge for whom he or she is the immediate supervisor.

Sec. 10. Section 48-634, Reissue Revised Statutes of Nebraska, is amended to read:

48-634. The claimant or any other party entitled to notice of a determination as provided in section 48-632, may file an appeal from such determination with an appeal tribunal. Notice of appeal must be in writing or

in accordance with rules and regulations adopted and promulgated by the commissioner and must be delivered and received within twenty days after the date of mailing of the notice of determination to his or her last-known address, or, if such notice is not mailed, after the date of personal delivery of such notice of determination. For good cause shown, the tribunal may also take jurisdiction over appeals filed outside the prescribed appeal period. Unless the appeal is withdrawn, the appeal tribunal, after affording the parties reasonable opportunities for a fair hearing, shall make findings and conclusions and on the basis thereof affirm, modify, or reverse such determination. If an appeal involves a question as to whether services were performed by the claimant in employment or for an employer, the tribunal shall give special notice of such issue and of the pendency of the appeal to the employer and to the commissioner, both of whom shall be parties to the proceeding and be afforded a reasonable opportunity to adduce evidence bearing on such question. The parties shall be promptly notified of the tribunal's decision and shall be furnished with a copy of the decision and the findings and conclusions in support of the decision.

Sec. 11. Section 48-650, Reissue Revised Statutes of Nebraska, is amended to read:

48-650. The commissioner shall determine the rate of combined tax applicable to each employer pursuant to section 48-649 and may determine, at any time during the year, whether services performed by an individual were employment or for an employer. Any such determination shall become conclusive and binding upon the employer unless, within thirty days after the prompt mailing of notice thereof to his or her last-known address or in the absence of mailing within thirty days after the delivery of such notice, the employer files an application for review and redetermination, setting forth the reasons therefor. If the commissioner grants such review, the employer shall be promptly notified thereof and shall be granted an opportunity for a fair hearing conducted by the commissioner or his or her designee, but no appeal with an appeal tribunal. No employer shall have standing, in any proceeding involving his or her combined tax rate or combined tax liability, to contest the chargeability to his or her account of any benefits paid in accordance with a determination, redetermination, or decision pursuant to sections 48-629 to 48-644 except upon the ground that the services on the basis of which such benefits were found to be chargeable did not constitute services performed in employment for him or her and only in the event that he or she was not a party to such determination, redetermination, or decision or to any other proceedings under the Employment Security Law in which the character of such services was determined. A full and complete record shall be kept of all proceedings in connection with such hearing. All testimony at any such hearing shall be recorded but need not be transcribed unless there is a further appeal. The employer shall be promptly notified of the appeal tribunal's decision commissioner's denial of his or her application or the commissioner's redetermination, either of which shall become final unless the employer or the commissioner appeals within thirty days after the date of service of the decision of the appeal tribunal. The appeal shall be ~~in~~ accordance with otherwise be governed by the Administrative Procedure Act.

Sec. 12. Section 48-656, Reissue Revised Statutes of Nebraska, is amended to read:

48-656. (1) If any employer fails to file a report or return required by the commissioner for the determination of combined taxes, the commissioner may make such reports or returns or cause them to be made and determine the combined taxes payable, on the basis of such information as he or she may be able to obtain, and shall collect the combined taxes as determined together with any interest thereon due under section 48-655. The commissioner shall immediately notify the employer of the assessment, in writing, by registered or certified mail, in the usual course, and such assessment shall be final unless the employer protests such assessment within fifteen days after the mailing of the notice. If the employer protests such assessment, the employer shall have an opportunity to be heard by ~~the commissioner~~ an appeal tribunal upon written request therefor. After the hearing the ~~commissioner~~ appeal tribunal shall immediately notify the employer in writing of ~~his or her finding~~ its decision, and the assessment, if any, shall be final upon issuance of such notice.

(2) If any employer files a report or return required by the commissioner for the determination of combined taxes but fails to pay all or some part of the combined taxes actually due for the reported period, the commissioner may determine the combined taxes actually payable on the basis of such information as he or she may be able to obtain and shall collect the combined taxes as determined together with any interest due under section 48-655. The commissioner shall immediately notify the employer of the

assessment, in writing by registered or certified mail in the usual course, and such assessment shall be final unless the employer protests such assessment within fifteen days after the mailing of the notice. If the employer protests such assessment, the employer shall have an opportunity to be heard by an appeal tribunal upon a written request therefor. After the hearing, the appeal tribunal shall immediately notify the employer in writing of its decision and the assessment, if any, shall be final upon issuance of such notice.

(3) Beginning with the first calendar quarter of 1990, any employer or any officer or agent of an employer who fails to file a required quarterly combined tax report and wage schedule by the tenth day of the second month following the end of the calendar quarter shall pay a penalty to the commissioner of one-tenth of one percent of the total wages paid during the quarter, except that the penalty shall not be less than twenty-five nor more than two hundred dollars. For good cause shown, the commissioner may waive the penalty in accordance with rules and regulations adopted and promulgated by the commissioner. The commissioner shall remit any penalty collected to the State Treasurer who shall credit it to the pool account of the Employment Security Special Contingent Fund.

Sec. 13. Section 48-657, Revised Statutes Supplement, 2000, is amended to read:

48-657. (1)(a) If any employer defaults in any payment of combined tax or interest, the commissioner may make in any manner feasible and cause to be filed as a secured transaction as provided in article 9, Uniform Commercial Code, and in the real estate mortgage records of any county in which such employer is engaged in business or owns real or personal property, a statement, under oath, showing the amount of combined tax and interest in default, which statement, when filed for record, shall operate as a lien and mortgage on all of the real and personal property of the employer, subject only to the liens of prior record, and the property of such employer shall be subject to seizure and sale for the payment of such combined taxes and interest. Such lien on personal property may be enforced or dissolved in the manner provided by article 9, Uniform Commercial Code, and such liens on real estate may be enforced or dissolved in the manner provided by Chapter 25, article 21, in the enforcing and dissolving of real estate mortgages. This subdivision shall only apply to liens filed prior to May 1, 1999.

(b) A lien for unpaid combined taxes filed or recorded pursuant to subdivision (a) of this subsection shall lapse at the earlier of its expiration date or the fifth anniversary of the filing or recording date, unless the commissioner files a notice of continuation in the place of the original filing or recording and with the appropriate filing officer in the manner provided for in the Uniform State Tax Lien Registration and Enforcement Act before such lien lapses. A notice of continuation shall include all of the information required by the act, the date of the filing or recording of the original lien, and a statement that the original lien is to be continued for ten years. Thereafter, such lien shall be enforced and notices of continuation filed in accordance with the act.

(c) On and after May 1, 1999, if any employer defaults in any payment of combined tax or interest, the commissioner may file a lien against such employer in accordance with the Uniform State Tax Lien Registration and Enforcement Act. Such liens shall set forth the amount of combined tax and interest in default and shall be continued and enforced as provided in the ~~act~~ Uniform State Tax Lien Registration and Enforcement Act.

(2) It shall be the duty of the State of Nebraska, or any department or agency thereof, county boards, the contracting board of all cities, villages, and school districts, all public boards empowered by law to enter into a contract by public bidding for the erecting and finishing or the repairing of any public building, bridge, highway, or other public structure or improvement, and any officer or officers so empowered by law to enter into such contract to provide in such contract that the person, persons, firm, or corporation to whom the contract is awarded will pay to the Unemployment Compensation Fund of the State of Nebraska and the State Unemployment Insurance Trust Fund unemployment combined tax and interest due under the Employment Security Law on wages paid to individuals employed in the performance of such contract.

(3) No contract referred to in subsection (2) of this section shall be entered into by the State of Nebraska, a department or agency thereof, an officer or officers, or a board referred to in such subsection unless the contract contains the proviso mentioned in such subsection.

(4) Before final payment may be made on the final three percent of any such contract awarded on or after June 1, 1957, the State of Nebraska, department or agency thereof, officer or officers, or board awarding the

contract must have received from the contractor a written clearance from the commissioner certifying that all payments then due of combined tax or interest which may have arisen under such contract have been made by the contractor or his or her subcontractor to the Unemployment Compensation Fund.

(5) The final three percent of any such contract referred to in subsection (4) of this section may be paid if the contractor has supplied a bond with a satisfactory surety company guaranteeing full payment to the Unemployment Compensation Fund and the State Unemployment Insurance Trust Fund of all combined tax and interest due under the Employment Security Law.

Sec. 14. Section 48-663, Reissue Revised Statutes of Nebraska, is amended to read:

48-663. ~~Whoever makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, to obtain or increase obtains or increases any benefit or other payment under sections 48-623 to 48-629 or under an employment security law of any other state, of the federal government, or of a foreign government, either for himself or herself or for any other person, (1) by making a false statement or representation knowing it to be false by oral, written, or electronic communication that can be attributed to such person by use of a personal identification number or other identification process or (2) by knowingly failing to disclose a material fact shall be guilty of a Class III misdemeanor. Each such false statement or representation or failure to disclose a material fact shall constitute a separate offense. Prosecution under this section may be instituted within three years ~~from~~ after the time the offense was committed in any county where any part of the crime was committed, including the county in which the person received the benefits.~~

Sec. 15. Original sections 48-601, 48-608, 48-612 to 48-614, 48-633, 48-634, 48-650, 48-656, and 48-663, Reissue Revised Statutes of Nebraska, and sections 48-602, 48-628, and 48-657, Revised Statutes Supplement, 2000, are repealed.

Sec. 16. Since an emergency exists, this act takes effect when passed and approved according to law.