

## LEGISLATIVE BILL 581

Approved by the Governor May 8, 1979

Introduced by Business and Labor Committee, R. Maresh, 32, Chmn.; Kahle, 37; Fitzgerald, 14; Landis, 46; Brennan, 9; DeCamp, 40

AN ACT to amend sections 48-602, 48-604, 48-628, and 48-628.02, Revised Statutes Supplement, 1978, relating to employment security; to redefine terms; to clarify benefit disqualification provisions; to provide that certain aliens are disqualified from receiving benefits as prescribed; and to repeal the original sections.

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

Section 1. That section 48-602, Revised Statutes Supplement, 1978, be amended to read as follows:

48-602. As used in sections 48-601 to 48-669, 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;

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

(3) Benefit unit shall mean a sum equal to one half of an individual's weekly benefit amount;

(4) 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;

(5) 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 regulation prescribe;

(6) Commissioner shall mean the Commissioner of Labor;

(7) Contributions shall mean the money payments to the State Unemployment Compensation Fund as required by sections 48-648 and 48-649;

(8) Department shall mean the Department of Labor;

(9) 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;

(10) 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;

(11) Hospital shall mean an institution which has been licensed, certified, or approved by the Department of Health as a hospital;

(12) 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 subsection, all colleges and universities in this state are institutions of higher education for purposes of this section;

(13) Insured work shall mean employment for employers;

(14) 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;

(15) 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;

(16) Wages, except with respect to services performed in employment as provided in section 48-604, subdivisions (4) (c) and (d), shall mean all remuneration for personal services, including commissions and bonuses 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 prescribed by the commissioner. With respect to services performed in employment in agricultural labor as is provided in section 48-604, subdivision (4) (c), or in domestic service as is provided in section 48-604, subdivision (4) (d), wages shall mean cash remuneration for such services; Provided, as used in sections 48-648 and 48-649 only, prior to January 1, 1978, the term wages shall not include that part of the remuneration which, after remuneration equal to four thousand two hundred dollars, and subsequent to December 31, 1977, after remuneration equal to six 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 retirement, sickness or accident disability, or medical and hospitalization expenses in connection with sickness or accident disability, or 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 of 1954 as amended; (c) any payment made to

an individual, including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment, on account of retirement; (d) 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; (e) 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 of 1954 which is exempt from tax under section 501 (a) of the Internal Revenue Code of 1954 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 of 1954; (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) any payment, other than vacation or sick pay, made to an individual after the month in which he or she attains the age of sixty-five, if he or she did not work for the employer in the period for which such payment is made;

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

(18) 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. 2. That section 48-604, Revised Statutes Supplement, 1978, be amended to read as follows:

48-604. As used in sections 48-601 to 48-669, unless the context otherwise requires, employment shall mean:

(1) Any service performed after June 30, 1941, including service in interstate commerce, for wages or under any contract of hire, written or oral, express or implied;

(2) The term employment shall include an individual's entire service, performed within or both within and without this state if (a) the service is localized in this state, (b) the service is not localized

in any state but some of the service is performed in this state and the base of operations or, if there is no base of operations, then the place from which such service is directed or controlled is in this state or the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed but the individual's residence is in this state, (c) the service shall be deemed to be localized within a state if (1) the service is performed entirely within such state, or (2) the service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state; for example, is temporary or transitory in nature or consists of isolated transactions;

(3) Services performed outside the state and services performed outside the United States as follows:

(a) Services not covered under subdivision (2) of this section and performed entirely without this state, with respect to no part of which contributions are required under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to sections 48-601 to 48-669 if the Commissioner of Labor approves the election of the employer, for whom such services are performed, that the entire service of such individual shall be deemed to be employment subject to said sections;

(b) Services of an individual wherever performed within the United States, ~~the Virgin Islands~~ or Canada, if (1) such service is not covered under the employment compensation law of any other state, ~~the Virgin Islands~~ or Canada, and (2) the place from which the service is directed or controlled is in this state;

(c) Services of an individual who is a citizen of the United States, performed outside the United States except in Canada ~~or the Virgin Islands, after December 31, 1974~~ in the employ of an American employer, other than service which is deemed employment under the provisions of subsections (2) and (3) (a) and (b) of this section or the parallel provisions of another state's law, if: (1) The employer's principal place of business in the United States is located in this state; or (2) the employer has no place of business in the United States, but the employer is an individual who is a resident of this state; or the employer is a corporation which is organized under the laws of this state; or the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any other

state; or (3) none of the criteria of subdivisions (1) and (2) of this subsection is met, but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service under the laws of this state; (4) an American employer, for the purposes of this subsection, shall mean: (i) an individual who is a resident of the United States; (ii) a partnership if two-thirds or more of the partners are residents of the United States; (iii) a trust if all the trustees are residents of the United States; or (iv) a corporation organized under the laws of the United States or of any state; (5) the term United States for the purpose of this section includes the states, the District of Columbia, the Virgin Islands, and the Commonwealth of Puerto Rico;

(4) (a) Service performed prior to January 1, 1978 which is or was service in employment for this state or any instrumentality thereof immediately prior to September 2, 1977, including service performed after December 31, 1971 in the employ of this state or any of its instrumentalities, or in the employ of this state and one or more other states or their instrumentalities, for a hospital or institution of higher education located in this state; and service performed after December 31, 1977 in the employ of this state or any political subdivision thereof or any instrumentality of any one or more of the foregoing or any instrumentality which is wholly owned by this state and one or more other states or political subdivisions, or any service performed in the employ of any instrumentality of this state or of any political subdivision thereof and one or more other states or political subdivisions; Provided, such service is excluded from employment as defined in the Federal Unemployment Tax Act solely by reason of section 3306 (c) (7) of that act and is not otherwise excluded under the provisions of this section;

(b) Service performed after December 31, 1971 by an individual in the employ of a religious, charitable, educational, or other organization, but only if the following conditions are met: (1) The service is excluded from employment as defined in the Federal Unemployment Tax Act solely by reason of section 3306 (c) (8) of that act and is not otherwise excluded under the provisions of this section; and (2) the organization had four or more individuals in employment for some portion of a day in each of twenty different weeks, whether or not such weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time;

(c) Service performed after December 31, 1977, by an individual in agricultural labor as defined in subdivision (6) (a) of this section when: (i) Such service is performed for a person who during any calendar quarter in either the current or preceding calendar year paid remuneration in cash of twenty thousand dollars or more to individuals employed in agricultural labor, or for some portion of a day in each of twenty different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor ten or more individuals, regardless of whether they were employed at the same moment of time; (ii) such service is not performed in agricultural labor if performed before January 1, 1980, by an individual who is an alien admitted to the United States to perform service in agricultural labor pursuant to sections 214 (c) and 101 (a) (15) (H) of the Immigration and Nationality Act; (iii) for the purposes of this subdivision, any individual who is a member of a crew furnished by a crew leader to perform services in agricultural labor for any other person shall be treated as an employee of such crew leader if such crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963; or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or cropdusting equipment, or any other mechanized equipment, which is provided by such crew leader; and if such individual is not an employee of such other person within the meaning of any other provisions of this section; (iv) for the purposes of subdivision (c) of this subdivision, in case any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of such crew leader under (iii); such other person and not the crew leader shall be treated as the employer of such individual; and such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader, either on his or her own behalf or on behalf of such other person, for the service in agricultural labor performed for such other person; and (v) for the purposes of subdivision (c) of this subdivision, the term crew leader means an individual who furnishes individuals to perform service in agricultural labor for any other person, pays, either on his or her own behalf or on behalf of such other person, the individuals so furnished by him or her for the service in agricultural labor performed by them, and has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person; and

(d) Service performed after December 31, 1977, by an individual in domestic service in a private home, local college club or local chapter of a college fraternity or sorority if performed for a person who paid cash remuneration of one thousand dollars or more after December 31, 1977, in the current calendar year or the preceding calendar year to individuals employed in such domestic service in any calendar quarter;

(5) Services performed by an individual for wages shall be deemed to be employment, unless it be shown to the satisfaction of the commissioner that (a) such individual has been and will continue to be free from control or direction over the performance of such services, both under his or her contract of service and in fact, (b) such service is either outside the usual course of the business for which such service is performed or such service is performed outside of all the places of business of the enterprise for which such service is performed, and (c) such individual is customarily engaged in an independently established trade, occupation, profession, or business;

(6) The term employment shall not include: (a) Agricultural labor, except as provided in subdivision (4) (c) of this section, including all services performed (1) on a farm, in the employ of any employer, in connection with cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals, and wildlife; (2) in the employ of the owner, tenant, or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment or in salvaging timber or clearing land of brush and other debris left by a windstorm, if the major part of such service is performed on a farm; (3) in connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15 (g) of the Federal Agricultural Marketing Act, as amended; in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes; (4) (i) in the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one half of the commodity with respect to which such service is performed; (ii) in the employ of



a group of operators of farms, or a cooperative organization of which such operators are members, in the performance of service described in subdivision (i), but only if such operators produced more than one half of the commodity with respect to which such service is performed; (iii) the provisions in subdivisions (i) and (ii) of this subdivision shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption or (5) on a farm operated for profit if such service is not in the course of the employer's trade or business. As used in this section, the term farm includes stock, dairy, poultry, fruit, fur-bearing animal and truck farms, plantations, ranches, nurseries, ranges, greenhouses, or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards; (b) domestic service, except as provided in subdivision (4) (d) of this section, in a private home, local college club, or local chapter of a college fraternity or sorority; (c) service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is fifty dollars or more and such service is performed by an individual who is regularly employed by such employer to perform such service and, for the purposes of this subdivision, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if (i) on each of some twenty-four days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business, or (ii) such individual was regularly employed, as determined under subdivision (i) of this subdivision, by such employer in the performance of such service during the preceding calendar quarter; (d) service performed by an individual in the employ of his or her son, daughter, or spouse and service performed by a child under the age of twenty-one in the employ of his or her father or mother; (e) service performed in the employ of the United States government or an instrumentality of the United States immune under the Constitution of the United States from the contributions imposed by sections 48-648 and 48-649, except that, to the extent that the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation act, all of the provisions of sections 48-601 to 48-669 shall be applicable to such instrumentalities and to services performed for such instrumentalities in the same manner, to the same extent

and on the same terms as to all other employers, individuals, and services; Provided, that if this state shall not be certified for any year by the Secretary of Labor of the United States under section 3304 of the Internal Revenue Code of 1954, the payments required of such instrumentalities with respect to such year shall be refunded by the commissioner from the fund in the same manner and within the same period as is provided in section 48-660, with respect to contributions erroneously collected; (f) service performed in the employ of this state, or any political subdivision thereof or any instrumentality of any one or more of the foregoing if such services are performed by an individual in the exercise of his or her duties: (i) As an elected official; (ii) as a member of the legislative body ~~or--a member of the judiciary of a state~~ or a member of the judiciary of a state or political subdivision thereof; (iii) as a member of the Army National Guard or Air National Guard; (iv) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency; or (v) in a position which, under or pursuant to the state law, is designated a major nontenured policy-making or advisory position, or a policy-making or advisory position, the performance of the duties of which ordinarily does not require more than eight hours per week; (g) for the purposes of subdivisions (4) (a) and (4) (b) of this section, service performed (1) in the employ of (i) a church or convention or association of churches; or (ii) an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches; (2) by a duly ordained, commissioned, or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the exercise of the duties required by such order; (3) prior to January 1, 1978, in the employ of a school which is not an institution of higher education; (4) in a facility conducted for the purpose of carrying out a program of rehabilitation for an individual whose earning capacity is impaired by age or physical or mental deficiency or injury providing remunerative work for the individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market or by an individual receiving such rehabilitation or remunerative work; (5) as part of an unemployment work relief or work training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training; or (6) prior to January 1, 1978, for a hospital in a state prison or other state correctional institution by an inmate of the prison or correctional institution and after December 31,

1977, by an inmate of a custodial or penal institution; (h) service with respect to which unemployment compensation is payable under an unemployment compensation system established by an Act of Congress; (i) service performed in any calendar quarter in the employ of any organization exempt from income tax under section 501 (a) of the Internal Revenue Code of 1954, other than an organization described in section 401 (a) of the Internal Revenue Code of 1954, or under section 521 thereof, if the remuneration for such service is less than fifty dollars; (j) service performed in the employ of a school, college, or university, if such service is performed (1) by a student who is enrolled and is regularly attending classes at such school, college, or university or (2) by the spouse of such student, if such spouse is advised, at the time such spouse commences to perform such service, that (i) the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university, and (ii) such employment will not be covered by any program of unemployment insurance; (k) service performed as a student nurse in the employ of a hospital or nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to state law; and service performed as an intern in the employ of a hospital by an individual who has completed a four-year course in a medical school chartered or approved pursuant to state law; (l) service performed by an individual as a real estate salesman, as an insurance agent, or as an insurance solicitor, if all such service performed by such individual is performed for remuneration solely by way of commission; (m) service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution; (n) service performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers and magazines are to be sold by him or her at a fixed price, his or her compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him or her, whether or not he or she is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back; (o) service performed by an individual under the age of twenty-two who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as

a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subdivision shall not apply to service performed in a program established for or on behalf of an employer or a group of employers; and (p) service performed in the employ of a hospital, if such service is performed by a patient of the hospital;

(7) If the services performed during one half or more of any pay period by an individual for the person employing him or her constitute employment, all the services of such individual for such period shall be deemed to be employment, but if the services performed during more than one half of any such pay period by an individual for the person employing him or her do not constitute employment, then none of the services of such individual for such period shall be deemed to be employment. As used in this subdivision the term pay period means a period, of not more than thirty-one consecutive days, for which a payment of remuneration is ordinarily made to such individual by the person employing him or her. This subdivision shall not be applicable with respect to services performed in a pay period by an individual for the person employing him or her where any of such service is excepted by subdivision (h) of subdivision (6) of this section;

(8) Notwithstanding the foregoing exclusions from the definition of employment, services shall be deemed to be in employment if with respect to such services a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act is required to be covered under this act; and

(9) Any extension of the definition of employment by this section to include services heretofore excluded shall not be effective until after December 31, 1977, and section 48-604 as it existed prior to its amendments by this act shall be applicable to services performed prior to January 1, 1978.

Sec. 3. That section 48-628, Revised Statutes Supplement, 1978, be amended to read as follows:

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

(a) For the week in which he or she has left work voluntarily without good cause, if so found by the Commissioner of Labor, and for not less than seven weeks nor more than ten weeks which immediately follow such week, as determined by the commissioner according to the circumstances in each case;

(b) For the week in which he or she has been discharged for misconduct connected with his or her work, if so found by the commissioner, and for not less than seven weeks nor more than ten weeks which immediately follow such week, as determined by the commissioner in each case according to the seriousness of the misconduct; Provided, that if the commissioner finds that such individual's misconduct was gross, flagrant, and willful, or was unlawful, the commissioner shall totally disqualify such individual from receiving benefits with respect to wage credits earned prior to such misconduct;

(c) For any week of unemployment in which he or she has failed, without good cause, either to apply for available, suitable work when so directed by the employment office or the commissioner or to accept suitable work when offered him or her, or to return to his or her customary self-employment, if any, and the commissioner so finds, and for not less than seven weeks nor more than ten weeks which immediately follow such week, as determined by the commissioner, and his or her total benefit amount to which he or she is then entitled shall be reduced by an amount equal to the number of weeks for which he or she has been disqualified by the commissioner. (1) In determining whether or not any work is suitable for an individual, the commissioner shall consider the degree of risk involved to his or her health, safety, and morals, his or her physical fitness and prior training, his or her experience and prior earnings, his or her length of unemployment and prospects for securing local work in his or her customary occupation, and the distance of the available work from his or her residence. (2) Notwithstanding any other provisions of sections 48-601 to 48-669, no work shall be deemed suitable and benefits shall not be denied under said sections to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (i) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (ii) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; or (iii) if, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization. (3) Notwithstanding any other

provisions in this subdivision, no otherwise eligible individual shall be denied benefits with respect to any week in which he or she is in training with the approval of the commissioner, by reason of the application of the provisions in this subdivision relating to failure to apply for or a refusal to accept suitable work;

(d) For any week with respect to which the commissioner finds that his or her total unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he or she is or was last employed; Provided, that this subdivision shall not apply if it is shown to the satisfaction of the commissioner that (1) he or she is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work, and (2) he or she does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating, financing, or directly interested in the dispute; and provided further, that if in any case separate branches of work which are commonly conducted as separate businesses in separate premises, are conducted in separate departments of the same premises, each such department shall, for the purposes of this subdivision, be deemed to be a separate factory, establishment, or other premises;

(e) For any week with respect to which he or she is receiving or has received remuneration in the form of (1) wages in lieu of notice, or a dismissal or separation allowance, (2) compensation for temporary partial disability under the workmen's compensation law of any state or under a similar law of the United States, (3) primary insurance benefits under Title II of the Social Security Act, as amended, or similar payments under any Act of Congress, or for which he or she has applied to receive such benefits or payments, or (4) retirement pension or other gratuity or bonus from an employer, paid after termination of employment, on account of prior length of service, or disability not compensated under the workmen's compensation law. If such 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. In the case of lump sum payments as to items (1) and (4) of this subdivision, such payments shall be prorated by weeks on the basis of the most recent weekly wage of the individual; Provided, no payment by the United States to veterans (i) for service or nonservice connected disabilities, (ii) for retirement in lieu of service connected disability compensation, or

(iii) for retirement or retainer benefits, shall be deemed to be disqualifying or deductible from the benefit amount; and provided further, no deduction shall be made for the part of any retirement pension which represents return of payments made by the individual;

(f) For any week with respect to which or a part of which he or she has received or is seeking unemployment benefits under an unemployment compensation law of any other state or of the United States; Provided, that if the appropriate agency of such other state or of the United States finally determines that he or she is not entitled to such unemployment benefits, this disqualification shall not apply;

(g) For any week of unemployment if such individual is a student. For the purpose of this subdivision, the term student shall mean an individual registered for full attendance at and regularly attending an established school, college, or university or who has so attended during the most recent school term, 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; Provided, attendance for training purposes under a plan approved by the commissioner for such individual before attendance shall not be disqualifying;

(h) For any week of unemployment if benefits claimed are based on services performed (1) prior to December 31, 1977, in an instructional, research, or principal administrative capacity in an institution of higher education if such week of unemployment begins during the period between two successive academic years or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or contracts to perform services in any such capacity for any institution of higher education for both such academic years or both such terms; (2) after December 31, 1977, in an instructional, research, or principal administrative capacity for an educational institution if such week of unemployment begins during the period between two successive years, or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, to any individual if such individual performs such services in the first of such academic years or terms and if there is a contract or a 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; or (3) after December 31, 1977, in any other capacity for an educational institution, other than an institution of higher education, if such week of unemployment begins during a period between two successive academic years or terms, or which consists of authorized school vacation if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms or after such authorized school vacation;

(i) For any week of unemployment benefits if substantially all the services upon which such benefits are based consist substantially 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 there is a reasonable assurance that such individual will perform such services in the later of such seasons or similar periods; and

(j) If the individual has been discharged from military service or released from active duty after twenty years or more of service and has not been employed since such discharge or release; and -

(k) 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 the provisions of section 203 (a) (7) or section 212 (d) (5) of the Immigration and Nationality Act. Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits. In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of his or her alien status shall be made except upon a preponderance of the evidence.

Sec. 4. That section 48-628.02, Revised Statutes Supplement, 1978, be amended to read as follows:



48-628.02. As used in this act, unless the context otherwise requires:

(1) Extended benefit period shall mean a period, subsequent to December 31, 1971, which (a) begins with the third week after whichever of the following weeks occurs first: (1) A week for which there is a national on indicator, or (2) a week for which there is a state on indicator; and (b) ends with either of the following weeks, whichever occurs later: (1) The third week after the first week for which there is both a national off indicator and a state off indicator, or (2) the thirteenth consecutive week of such period; Provided, that no extended benefit period may begin by reason of a state on indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this state;

(2) There is a national on indicator for a week if, for the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployment, seasonally adjusted, for all states equaled or exceeded four and one half per cent. The rate of insured unemployment for the purpose of this subdivision shall be determined by the Secretary of Labor by reference to the average monthly covered employment for the first four of the most recent six calendar quarters ending before the close of such period;

(3) There is a national off indicator for a week if, for the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployment, seasonally adjusted, for all states was less than four and one half per cent. The rate of insured unemployment, for the purpose of this subdivision, shall be determined by the Secretary of Labor by reference to the average monthly covered employment for the first four of the most recent six calendar quarters ending before the close of such period;

(4) There is a state on indicator for this state for a week if the commissioner determines that for the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployment, not seasonally adjusted, under the provisions of this act: (a) Equaled or exceeded one hundred twenty per cent of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years, and (b) equaled or exceeded four per cent; Provided, that with respect to benefits for weeks of unemployment, beginning after March 30, 1977 the determination of whether there has been a state on or off indicator beginning or ending any extended benefit period

shall be made under this section as if (i) this subdivision did not contain subdivision (a) thereof, and (ii) the four per cent contained in subdivision (b) thereof were five per cent; except that, notwithstanding any such provision of this subdivision, any week for which there would otherwise be a state on indicator shall continue to be such a week and shall not be determined to be a week for which there is a state off indicator;

(5) There is a state off indicator for this state for a week if the commissioner determines that, for the period consisting of such week and the immediately preceding twelve weeks, either subdivision (4) (a) or (b) of this section was not satisfied;

(6) Rate of insured unemployment, for purposes of subdivisions (4) and (5) of this section, shall mean the percentage derived by dividing (a) the average weekly number of individuals filing claims in this state for weeks of unemployment with respect to the most recent thirteen consecutive week period, as determined by the commissioner on the basis of his or her reports to the United States Secretary of Labor, by (b) the average monthly employment covered under the provisions of this act for the first four of the most recent six completed calendar quarters ending before the end of such thirteen-week period;

(7) Regular benefits shall mean benefits payable to an individual under the Employment Security Law of this state or under any other state law, including benefits payable to federal civilian employees and to exservicemen or exservicewomen pursuant to 5 U.S.C. Chapter 85, other than extended benefits;

(8) Extended benefits shall mean benefits, including benefits payable to federal civilian employees and to exservicemen or exservicewomen pursuant to 5 U.S.C. Chapter 85, payable to an individual under the provisions of this section for weeks of unemployment in his or her eligibility period;

(9) Eligibility period of an individual shall mean the period consisting of the weeks in his or her benefit year which begin in an extended benefit period and, if his or her benefit year ends within such extended benefit period, any weeks thereafter which begin in such period;

(10) Exhaustee shall mean an individual who, with respect to any week of unemployment in his or her eligibility period: (a) Has received, prior to such week, all of the regular benefits that were available to

him or her under the Employment Security Law of this state or any other state law, including dependents' allowances and benefits payable to federal civilian employees and exservicemen or exservicewomen under 5 U.S.C. Chapter 85, in his or her current benefit year that includes such week; Provided, for the purposes of this subdivision, an individual shall be deemed to have received all of the regular benefits that were available to him or her although as a result of a pending appeal with respect to wages or employment or both wages and employment that were not considered in the original monetary determination in his or her benefit year, he or she may subsequently be determined to be entitled to added regular benefits; or (b) his or her benefit year having expired prior to such week, has no, or insufficient, wages or employment or both wages and employment on the basis of which he or she could establish a new benefit year that would include such week; and (c) (1) has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Automotive Products Trade Act of 1965 and such other federal laws as are specified in regulations issued by the United States Secretary of Labor; and (2) has not received and is not seeking unemployment benefits under the unemployment compensation law of the--~~Virgin--~~Islands ~~or of~~ Canada, but if he or she is seeking such benefits and the appropriate agency finally determines that he or she is not entitled to benefits under such law he or she is considered an exhaustee; and

(11) State law shall mean the unemployment insurance law of any state, approved by the United States Secretary of Labor under section 3304 of the Internal Revenue Code of 1954; (a) except when the result would be inconsistent with the other provisions of this section, as provided in the regulations of the commissioner, the provisions of this act which apply to claims for, or payment of, regular benefits shall apply to claims for, and the payment of, extended benefits; (b) an individual shall be eligible to receive extended benefits with respect to any week of unemployment in his or her eligibility period only if the commissioner finds that with respect to such week: (1) He or she is an exhaustee as defined in subdivision (10) of this section, and (2) he or she has satisfied the requirements of this act for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits; (c) the weekly extended benefit amount payable to an individual for a week of total unemployment in his or her eligibility period shall be an amount equal to the weekly benefit amount payable to him or her during his or

her applicable benefit year; and (d) the total extended benefit amount payable to any eligible individual with respect to his or her applicable benefit year shall be the least of the following amounts: (1) Fifty per cent of the total amount of regular benefits which were payable to him or her under the Employment Security Law of this state in his or her applicable benefit year; or (2) thirteen times his or her weekly benefit amount which was payable to him or her under the Employment Security Law of this state for a week of total unemployment in the applicable benefit year; (e) (1) Whenever an extended benefit period is to become effective in this state or in all states as a result of a state or a national on indicator, or an extended benefit period is to be terminated in this state as a result of state and national off indicators, the commissioner shall make an appropriate public announcement; (2) computations required by the provisions of subdivision (6) of this section shall be made by the commissioner, in accordance with regulations prescribed by the United States Secretary of Labor.

Sec. 5. That original sections 48-602, 48-604, 48-628, and 48-628.02, Revised Statutes Supplement, 1978, are repealed.