

SECOND REGULAR SESSION

# SENATE BILL NO. 1609

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR WASHINGTON.

6060S.011

KRISTINA MARTIN, Secretary

## AN ACT

To repeal section 288.040, RSMo, and to enact in lieu thereof one new section relating to eligibility for unemployment benefits.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Section 288.040, RSMo, is repealed and one new  
2 section enacted in lieu thereof, to be known as section 288.040,  
3 to read as follows:

288.040. 1. A claimant who is unemployed and has been  
2 determined to be an insured worker shall be eligible for  
3 benefits for any week only if the deputy finds that:

4 (1) The claimant has registered for work at and  
5 thereafter has continued to report at an employment office  
6 in accordance with such regulations as the division may  
7 prescribe;

8 (2) The claimant is able to work and is available for  
9 work. No person shall be deemed available for work unless  
10 such person has been and is actively and earnestly seeking  
11 work. Upon the filing of an initial or renewed claim, and  
12 prior to the filing of each weekly claim thereafter, the  
13 deputy shall notify each claimant of the number of work  
14 search contacts required to constitute an active search for  
15 work. Unless the deputy directs otherwise, a claimant shall  
16 make a minimum of three work search contacts during any week  
17 for which he or she claims benefits. No person shall be

**EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

18 considered not available for work, pursuant to this  
19 subdivision, solely because he or she is a substitute  
20 teacher or is on jury duty. A claimant shall not be  
21 determined to be ineligible pursuant to this subdivision  
22 because of not actively and earnestly seeking work if:

23 (a) The claimant is participating in training approved  
24 pursuant to Section 236 of the Trade Act of 1974, as  
25 amended, (19 U.S.C.A. Sec. 2296, as amended);

26 (b) The claimant is temporarily unemployed through no  
27 fault of his or her own and has a definite recall date  
28 within eight weeks of his or her first day of unemployment;  
29 however, upon application of the employer responsible for  
30 the claimant's unemployment, such eight-week period may be  
31 extended not to exceed a total of sixteen weeks at the  
32 discretion of the director;

33 (3) The claimant has reported to an office of the  
34 division as directed by the deputy, but at least once every  
35 four weeks, except that a claimant shall be exempted from  
36 the reporting requirement of this subdivision if:

37 (a) The claimant is claiming benefits in accordance  
38 with division regulations dealing with partial or temporary  
39 total unemployment; or

40 (b) The claimant is temporarily unemployed through no  
41 fault of his or her own and has a definite recall date  
42 within eight weeks of his or her first day of unemployment;  
43 or

44 (c) The director of the division of employment  
45 security has determined that the claimant belongs to a group  
46 or class of workers whose opportunities for reemployment  
47 will not be enhanced by reporting, or is prevented from  
48 reporting due to emergency conditions that limit access by  
49 the general public to an office that serves the area where

50 the claimant resides, but only during the time such  
51 circumstances exist.

52 Ineligibility pursuant to this subdivision shall begin on  
53 the first day of the week which the claimant was scheduled  
54 to claim and shall end on the last day of the week preceding  
55 the week during which the claimant does report to the  
56 division's office;

57 (4) Prior to the first week of a period of total or  
58 partial unemployment for which the claimant claims benefits  
59 he or she has been totally or partially unemployed for a  
60 waiting period of one week. No more than one waiting week  
61 will be required in any benefit year. During calendar year  
62 2008 and each calendar year thereafter, the one-week waiting  
63 period shall become compensable once his or her remaining  
64 balance on the claim is equal to or less than the  
65 compensable amount for the waiting period. No week shall be  
66 counted as a week of total or partial unemployment for the  
67 purposes of this subsection unless it occurs within the  
68 benefit year which includes the week with respect to which  
69 the claimant claims benefits;

70 (5) The claimant has made a claim for benefits within  
71 fourteen days from the last day of the week being claimed.  
72 The fourteen-day period may, for good cause, be extended to  
73 twenty-eight days;

74 (6) The claimant has reported to an employment office  
75 to participate in a reemployment assessment and reemployment  
76 services as directed by the deputy or designated staff of an  
77 employment office, unless the deputy determines that good  
78 cause exists for the claimant's failure to participate in  
79 such reemployment assessment and reemployment services. For

purposes of this section, "reemployment services" may include, but not be limited to, the following:

- (a) Providing an orientation to employment office services;
- (b) Providing job search assistance; and
- (c) Providing labor market statistics or analysis;

Ineligibility under this subdivision shall begin on the first day of the week which the claimant was scheduled to report for the reemployment assessment or reemployment services and shall end on the last day of the week preceding the week during which the claimant does report in person to the employment office for such reemployment assessment or reemployment services;

(7) The claimant is participating in reemployment services, such as job search assistance services, as directed by the deputy if the claimant has been determined to be likely to exhaust regular benefits and to need reemployment services pursuant to a profiling system established by the division, unless the deputy determines that:

(a) The individual has completed such reemployment services; or

(b) There is justifiable cause for the claimant's failure to participate in such reemployment services.

2. A claimant shall be ineligible for waiting week credit or benefits for any week for which the deputy finds he or she is or has been suspended by his or her most recent employer for misconduct connected with his or her work. Suspensions of four weeks or more shall be treated as discharges.

110           3. (1) Benefits based on "service in employment",  
111 described in subsections 7 and 8 of section 288.034, shall  
112 be payable in the same amount, on the same terms and subject  
113 to the same conditions as compensation payable on the basis  
114 of other service subject to this law; except that:

115           (a) With respect to service performed in an  
116 instructional, research, or principal administrative  
117 capacity for an educational institution, benefits shall not  
118 be paid based on such services for any week of unemployment  
119 commencing during the period between two successive academic  
120 years or terms, or during a similar period between two  
121 regular but not successive terms, or during a period of paid  
122 sabbatical leave provided for in the individual's contract,  
123 to any individual if such individual performs such services  
124 in the first of such academic years (or terms) and if there  
125 is a contract or a reasonable assurance that such individual  
126 will perform services in any such capacity for any  
127 educational institution in the second of such academic years  
128 or terms;

129           (b) With respect to services performed in any capacity  
130 (other than instructional, research, or principal  
131 administrative capacity) for an educational institution,  
132 benefits shall not be paid on the basis of such services to  
133 any individual for any week which commences during a period  
134 between two successive academic years or terms if such  
135 individual performs such services in the first of such  
136 academic years or terms and there is a contract or a  
137 reasonable assurance that such individual will perform such  
138 services in the second of such academic years or terms;

139           (c) With respect to services described in paragraphs  
140 (a) and (b) of this subdivision, benefits shall not be paid  
141 on the basis of such services to any individual for any week

142 which commences during an established and customary vacation  
143 period or holiday recess if such individual performed such  
144 services in the period immediately before such vacation  
145 period or holiday recess, and there is reasonable assurance  
146 that such individual will perform such services immediately  
147 following such vacation period or holiday recess;

148 (d) With respect to services described in paragraphs  
149 (a) and (b) of this subdivision, benefits payable on the  
150 basis of services in any such capacity shall be denied as  
151 specified in paragraphs (a), (b), and (c) of this  
152 subdivision to any individual who performed such services at  
153 an educational institution while in the employ of an  
154 educational service agency, and for this purpose the term  
155 "educational service agency" means a governmental agency or  
156 governmental entity which is established and operated  
157 exclusively for the purpose of providing such services to  
158 one or more educational institutions.

159 (2) If compensation is denied for any week pursuant to  
160 paragraph (b) or (d) of subdivision (1) of this subsection  
161 to any individual performing services at an educational  
162 institution in any capacity (other than instructional,  
163 research or principal administrative capacity), and such  
164 individual was not offered an opportunity to perform such  
165 services for the second of such academic years or terms,  
166 such individual shall be entitled to a retroactive payment  
167 of the compensation for each week for which the individual  
168 filed a timely claim for compensation and for which  
169 compensation was denied solely by reason of paragraph (b) or  
170 (d) of subdivision (1) of this subsection.

171 4. (1) A claimant shall be ineligible for waiting  
172 week credit, benefits or shared work benefits for any week  
173 for which he or she is receiving or has received

174 remuneration exceeding his or her weekly benefit amount or  
175 shared work benefit amount in the form of:

176 (a) Compensation for temporary partial disability  
177 pursuant to the workers' compensation law of any state or  
178 pursuant to a similar law of the United States;

179 (b) A governmental or other pension, retirement or  
180 retired pay, annuity, or other similar periodic payment  
181 which is based on the previous work of such claimant to the  
182 extent that such payment is provided from funds provided by  
183 a base period or chargeable employer pursuant to a plan  
184 maintained or contributed to by such employer; but, except  
185 for such payments made pursuant to the Social Security Act  
186 or the Railroad Retirement Act of 1974 (or the corresponding  
187 provisions of prior law), the provisions of this paragraph  
188 shall not apply if the services performed for such employer  
189 by the claimant after the beginning of the base period (or  
190 remuneration for such services) do not affect eligibility  
191 for or increase the amount of such pension, retirement or  
192 retired pay, annuity or similar payment.

193 (2) If the remuneration referred to in this subsection  
194 is less than the benefits which would otherwise be due, the  
195 claimant shall be entitled to receive for such week, if  
196 otherwise eligible, benefits reduced by the amount of such  
197 remuneration, and, if such benefit is not a multiple of one  
198 dollar, such amount shall be lowered to the next multiple of  
199 one dollar.

200 (3) Notwithstanding the provisions of subdivisions (1)  
201 and (2) of this subsection, if a claimant has contributed in  
202 any way to the Social Security Act or the Railroad  
203 Retirement Act of 1974, or the corresponding provisions of  
204 prior law, no part of the payments received pursuant to such

205 federal law shall be deductible from the amount of benefits  
206 received pursuant to this chapter.

207 5. A claimant shall be ineligible for waiting week  
208 credit or benefits for any week for which or a part of which  
209 he or she has received or is seeking unemployment benefits  
210 pursuant to an unemployment insurance law of another state  
211 or the United States; provided, that if it be finally  
212 determined that the claimant is not entitled to such  
213 unemployment benefits, such ineligibility shall not apply.

214 6. (1) [A claimant shall be ineligible for waiting  
215 week credit or benefits for any week for which the deputy  
216 finds that such claimant's total or partial unemployment is  
217 due to a stoppage of work which exists because of a labor  
218 dispute in the factory, establishment or other premises in  
219 which such claimant is or was last employed. In the event  
220 the claimant secures other employment from which he or she  
221 is separated during the existence of the labor dispute, the  
222 claimant must have obtained bona fide employment as a  
223 permanent employee for at least the major part of each of  
224 two weeks in such subsequent employment to terminate his or  
225 her ineligibility. If, in any case, separate branches of  
226 work which are commonly conducted as separate businesses at  
227 separate premises are conducted in separate departments of  
228 the same premises, each such department shall for the  
229 purposes of this subsection be deemed to be a separate  
230 factory, establishment or other premises. This subsection  
231 shall not apply if it is shown to the satisfaction of the  
232 deputy that:

233 (a) The claimant is not participating in or financing  
234 or directly interested in the labor dispute which caused the  
235 stoppage of work; and



(b) The claimant does not belong to a grade or class of workers of which, immediately preceding the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute] **A claimant shall not be ineligible for benefits based on the fact that the individual is participating in a strike or other labor dispute resulting in a stoppage of work at the factory, establishment, or other premises at which the individual is or was last employed.**

(2) "Stoppage of work" as used in this subsection means a substantial diminution of the activities, production or services at the establishment, plant, factory or premises of the employing unit. This definition shall not apply to a strike where the employees in the bargaining unit who initiated the strike are participating in the strike. Such employees shall not be eligible for waiting week credit or benefits during the period when the strike is in effect, regardless of diminution, unless the employer has been found guilty of an unfair labor practice by the National Labor Relations Board or a federal court of law for an act or actions preceding or during the strike.

7. On or after January 1, 1978, benefits shall not be paid to any individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences 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).

268           8. Benefits shall not be payable on the basis of  
269 services performed by an alien, unless such alien is an  
270 individual who was lawfully admitted for permanent residence  
271 at the time such services were performed, was lawfully  
272 present for purposes of performing such services, or was  
273 permanently residing in the United States under color of law  
274 at the time such services were performed (including an alien  
275 who was lawfully present in the United States as a result of  
276 the application of the provisions of Section 212(d)(5) of  
277 the Immigration and Nationality Act).

278           (1) Any data or information required of individuals  
279 applying for benefits to determine whether benefits are not  
280 payable to them because of their alien status shall be  
281 uniformly required from all applicants for benefits.

282           (2) In the case of an individual whose application for  
283 benefits would otherwise be approved, no determination that  
284 benefits to such individual are not payable because of such  
285 individual's alien status shall be made except upon a  
286 preponderance of the evidence.

287           9. A claimant shall be ineligible for waiting week  
288 credit or benefits for any week such claimant has an  
289 outstanding penalty which was assessed based upon an  
290 overpayment of benefits, as provided for in subsection 9 of  
291 section 288.380.

292           10. The directors of the division of employment  
293 security and the division of workforce development shall  
294 submit to the governor, the speaker of the house of  
295 representatives, and the president pro tem of the senate no  
296 later than October 15, 2006, a report outlining their  
297 recommendations for how to improve work search verification  
298 and claimant reemployment activities. The recommendations  
299 shall include, but not limited to how to best utilize

300 "greathires.org", and how to reduce the average duration of  
301 unemployment insurance claims. Each calendar year  
302 thereafter, the directors shall submit a report containing  
303 their recommendations on these issues by December thirty-  
304 first of each year.

305       11. For purposes of this section, a claimant may  
306 satisfy reporting requirements provided under this section  
307 by reporting by internet communication or any other means  
308 deemed acceptable by the division of employment security.

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