

SECOND REGULAR SESSION

SENATE BILL NO. 1609

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR WASHINGTON.

6060S.01I

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Section A. Section 288.040, RSMo, is repealed and one new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

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

82 (a) Providing an orientation to employment office
83 services;

84 (b) Providing job search assistance; and

85 (c) Providing labor market statistics or analysis;

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

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

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

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

104 2. A claimant shall be ineligible for waiting week
105 credit or benefits for any week for which the deputy finds
106 he or she is or has been suspended by his or her most recent
107 employer for misconduct connected with his or her work.
108 Suspensions of four weeks or more shall be treated as
109 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

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

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

258 7. On or after January 1, 1978, benefits shall not be
259 paid to any individual on the basis of any services,
260 substantially all of which consist of participating in
261 sports or athletic events or training or preparing to so
262 participate, for any week which commences during the period
263 between two successive sport seasons (or similar periods) if
264 such individual performed such services in the first of such
265 seasons (or similar periods) and there is a reasonable
266 assurance that such individual will perform such services in
267 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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