

SECOND REGULAR SESSION

[P E R F E C T E D]

SENATE BILL NO. 1026

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR RUPP.

Read 1st time March 1, 2010, and ordered printed.

Read 2nd time March 4, 2010, and referred to the Committee on Small Business, Insurance and Industry.

Reported from the Committee March 25, 2010, with recommendation that the bill do pass.

Taken up for Perfection March 30, 2010. Bill declared Perfected and Ordered Printed.

TERRY L. SPIELER, Secretary.

5285S.01P

AN ACT

To repeal section 288.040, RSMo, and to enact in lieu thereof one new section relating to the denial of 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Section A. Section 288.040, RSMo, is repealed and one new section
2 enacted in lieu thereof, to be known as section 288.040, to read as follows:

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

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

7 (2) The claimant is able to work and is available for work. No person
8 shall be deemed available for work unless such person has been and is actively
9 and earnestly seeking work. Upon the filing of an initial or renewed claim, and
10 prior to the filing of each weekly claim thereafter, the deputy shall notify each
11 claimant of the number of work search contacts required to constitute an active
12 search for work. No person shall be considered not available for work, pursuant
13 to this subdivision, solely because he or she is a substitute teacher or is on jury
14 duty. A claimant shall not be determined to be ineligible pursuant to this
15 subdivision because of not actively and earnestly seeking work if:

16 (a) The claimant is participating in training approved pursuant to Section

17 236 of the Trade Act of 1974, as amended, (19 U.S.C.A. Sec. 2296, as amended);

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

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

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

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

31 (c) The claimant resides in a county with an unemployment rate, as
32 published by the division, of ten percent or more and in which the county seat is
33 more than forty miles from the nearest division office;

34 (d) The director of the division of employment security has determined
35 that the claimant belongs to a group or class of workers whose opportunities for
36 reemployment will not be enhanced by reporting in person, or is prevented from
37 reporting due to emergency conditions that limit access by the general public to
38 an office that serves the area where the claimant resides, but only during the
39 time such circumstances exist. Ineligibility pursuant to this subdivision shall
40 begin on the first day of the week which the claimant was scheduled to claim and
41 shall end on the last day of the week preceding the week during which the
42 claimant does report in person to the division's office;

43 (4) Prior to the first week of a period of total or partial unemployment for
44 which the claimant claims benefits he or she has been totally or partially
45 unemployed for a waiting period of one week. No more than one waiting week
46 will be required in any benefit year. During calendar year 2008 and each
47 calendar year thereafter, the one-week waiting period shall become compensable
48 once his or her remaining balance on the claim is equal to or less than the
49 compensable amount for the waiting period. No week shall be counted as a week
50 of total or partial unemployment for the purposes of this subsection unless it
51 occurs within the benefit year which includes the week with respect to which the
52 claimant claims benefits;

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

56 (6) The claimant has reported to an employment office to participate in
57 a reemployment assessment and reemployment services as directed by the deputy
58 or designated staff of an employment office, unless the deputy determines that
59 good cause exists for the claimant's failure to participate in such reemployment
60 assessment and reemployment services. For purposes of this section,
61 "reemployment services" may include, but not be limited to, the following:

62 (a) Providing an orientation to employment office services;

63 (b) Providing job search assistance; and

64 (c) Providing labor market statistics or analysis; Ineligibility under this
65 subdivision shall begin on the first day of the week which the claimant was
66 scheduled to report for the reemployment assessment or reemployment services
67 and shall end on the last day of the week preceding the week during which the
68 claimant does report in person to the employment office for such reemployment
69 assessment or reemployment services;

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

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

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

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

82 3. (1) Benefits based on "service in employment", defined in subsections
83 7 and 8 of section 288.034, shall be payable in the same amount, on the same
84 terms and subject to the same conditions as compensation payable on the basis
85 of other service subject to this law; except that:

86 (a) With respect to service performed in an instructional, research, or
87 principal administrative capacity for an educational institution, benefits shall not
88 be paid based on such services for any week of unemployment commencing during

89 the period between two successive academic years or terms, or during a similar
90 period between two regular but not successive terms, or during a period of paid
91 sabbatical leave provided for in the individual's contract, to any individual if such
92 individual performs such services in the first of such academic years (or terms)
93 and if there is a contract or a reasonable assurance that such individual will
94 perform services in any such capacity for any educational institution in the
95 second of such academic years or terms;

96 (b) With respect to services performed in any capacity (other than
97 instructional, research, or principal administrative capacity) for an educational
98 institution, benefits shall not be paid on the basis of such services to any
99 individual for any week which commences during a period between two successive
100 academic years or terms if such individual performs such services in the first of
101 such academic years or terms and there is a contract or a reasonable assurance
102 that such individual will perform such services in the second of such academic
103 years or terms;

104 (c) With respect to services described in paragraphs (a) and (b) of this
105 subdivision, benefits shall not be paid on the basis of such services to any
106 individual for any week which commences during an established and customary
107 vacation period or holiday recess if such individual performed such services in the
108 period immediately before such vacation period or holiday recess, and there is
109 reasonable assurance that such individual will perform such services immediately
110 following such vacation period or holiday recess;

111 (d) With respect to services described in paragraphs (a) and (b) of this
112 subdivision, benefits payable on the basis of services in any such capacity shall
113 be denied as specified in paragraphs (a), (b), and (c) of this subdivision to any
114 individual who performed such services at an educational institution while in the
115 employ of an educational service agency, and for this purpose the term
116 "educational service agency" means a governmental agency or governmental
117 entity which is established and operated exclusively for the purpose of providing
118 such services to one or more educational institutions.

119 (2) If compensation is denied for any week pursuant to paragraph (b) or
120 (d) of subdivision (1) of this subsection to any individual performing services at
121 an educational institution in any capacity (other than instructional, research or
122 principal administrative capacity), and such individual was not offered an
123 opportunity to perform such services for the second of such academic years or
124 terms, such individual shall be entitled to a retroactive payment of the

125 compensation for each week for which the individual filed a timely claim for
126 compensation and for which compensation was denied solely by reason of
127 paragraph (b) or (d) of subdivision (1) of this subsection.

128 4. (1) A claimant shall be ineligible for waiting week credit, benefits or
129 shared work benefits for any week for which he or she is receiving or has received
130 remuneration exceeding his or her weekly benefit amount or shared work benefit
131 amount in the form of:

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

134 (b) A governmental or other pension, retirement or retired pay, annuity,
135 or other similar periodic payment which is based on the previous work of such
136 claimant to the extent that such payment is provided from funds provided by a
137 base period or chargeable employer pursuant to a plan maintained or contributed
138 to by such employer; but, except for such payments made pursuant to the Social
139 Security Act or the Railroad Retirement Act of 1974 (or the corresponding
140 provisions of prior law), the provisions of this paragraph shall not apply if the
141 services performed for such employer by the claimant after the beginning of the
142 base period (or remuneration for such services) do not affect eligibility for or
143 increase the amount of such pension, retirement or retired pay, annuity or similar
144 payment.

145 (2) If the remuneration referred to in this subsection is less than the
146 benefits which would otherwise be due, the claimant shall be entitled to receive
147 for such week, if otherwise eligible, benefits reduced by the amount of such
148 remuneration, and, if such benefit is not a multiple of one dollar, such amount
149 shall be lowered to the next multiple of one dollar.

150 (3) Notwithstanding the provisions of subdivisions (1) and (2) of this
151 subsection, if a claimant has contributed in any way to the Social Security Act or
152 the Railroad Retirement Act of 1974, or the corresponding provisions of prior law,
153 no part of the payments received pursuant to such federal law shall be deductible
154 from the amount of benefits received pursuant to this chapter.

155 5. A claimant shall be ineligible for waiting week credit or benefits for any
156 week for which or a part of which he or she has received or is seeking
157 unemployment benefits pursuant to an unemployment insurance law of another
158 state or the United States; provided, that if it be finally determined that the
159 claimant is not entitled to such unemployment benefits, such ineligibility shall
160 not apply.

161 6. (1) A claimant shall be ineligible for waiting week credit or benefits for
162 any week for which the deputy finds that such claimant's total or partial
163 unemployment is due to a stoppage of work which exists because of a labor
164 dispute in the factory, establishment or other premises in which such claimant
165 is or was last employed. In the event the claimant secures other employment
166 from which he or she is separated during the existence of the labor dispute, the
167 claimant must have obtained bona fide employment as a permanent employee for
168 at least the major part of each of two weeks in such subsequent employment to
169 terminate his or her ineligibility. If, in any case, separate branches of work
170 which are commonly conducted as separate businesses at separate premises are
171 conducted in separate departments of the same premises, each such department
172 shall for the purposes of this subsection be deemed to be a separate factory,
173 establishment or other premises. This subsection shall not apply if it is shown
174 to the satisfaction of the deputy that:

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

177 (b) The claimant does not belong to a grade or class of workers of which,
178 immediately preceding the commencement of the stoppage, there were members
179 employed at the premises at which the stoppage occurs, any of whom are
180 participating in or financing or directly interested in the dispute.

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

190 7. On or after January 1, 1978, benefits shall not be paid to any
191 individual on the basis of any services, substantially all of which consist of
192 participating in sports or athletic events or training or preparing to so
193 participate, for any week which commences during the period between two
194 successive sport seasons (or similar periods) if such individual performed such
195 services in the first of such seasons (or similar periods) and there is a reasonable
196 assurance that such individual will perform such services in the later of such

197 seasons (or similar periods).

198 8. Benefits shall not be payable on the basis of services performed by an
199 alien, unless such alien is an individual who was lawfully admitted for permanent
200 residence at the time such services were performed, was lawfully present for
201 purposes of performing such services, or was permanently residing in the United
202 States under color of law at the time such services were performed (including an
203 alien who was lawfully present in the United States as a result of the application
204 of the provisions of Section 212(d)(5) of the Immigration and Nationality Act).

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

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

212 **9. A claimant shall be ineligible for waiting week credit or**
213 **benefits for any week such claimant has an outstanding penalty which**
214 **was assessed based upon an overpayment of benefits, as provided for**
215 **in subsection 9 of section 288.380.**

216 **10.** The directors of the division of employment security and the division
217 of workforce development shall submit to the governor, the speaker of the house
218 of representatives, and the president pro tem of the senate no later than October
219 15, 2006, a report outlining their recommendations for how to improve work
220 search verification and claimant reemployment activities. The recommendations
221 shall include, but not limited to how to best utilize "greathires.org", and how to
222 reduce the average duration of unemployment insurance claims. Each calendar
223 year thereafter, the directors shall submit a report containing their
224 recommendations on these issues by December thirty-first of each year.

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