

FIRST REGULAR SESSION

HOUSE BILL NO. 916

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES BIVINS (Sponsor), FUNDERBURK, LEARA,
FLANIGAN AND DIEHL (Co-sponsors).

2283L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

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

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Section A. Section 288.040, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 288.040, to read as follows: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 be an insured worker shall be eligible for benefits for any week only if the deputy finds that:

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

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

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

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

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 application of the employer responsible for the claimant's unemployment, such eight-week period
18 may be extended not to exceed a total of sixteen weeks at the discretion of the director;

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

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

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

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

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

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

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

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

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

54 (b) Providing job search assistance; and

55 (c) Providing labor market statistics or analysis; Ineligibility under this subdivision shall
56 begin on the first day of the week which the claimant was scheduled to report for the
57 reemployment assessment or reemployment services and shall end on the last day of the week
58 preceding the week during which the claimant does report in person to the employment office
59 for such reemployment assessment or reemployment services;

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

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

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

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

71 3. (1) Benefits based on "service in employment", defined in subsections 7 and 8 of
72 section 288.034, shall be payable in the same amount, on the same terms and subject to the same
73 conditions as compensation payable on the basis of other service subject to this law; except that:

74 (a) With respect to service performed in an instructional, research, or principal
75 administrative capacity for an educational institution, benefits shall not be paid based on such
76 services for any week of unemployment commencing during the period between two successive
77 academic years or terms, or during a similar period between two regular but not successive terms,
78 or during a period of paid sabbatical leave provided for in the individual's contract, to any
79 individual if such individual performs such services in the first of such academic years (or terms)
80 and if there is a contract or a reasonable assurance that such individual will perform services in
81 any such capacity for any educational institution in the second of such academic years or terms;

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

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

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

101 (2) If compensation is denied for any week pursuant to paragraph (b) or (d) of
102 subdivision (1) of this subsection to any individual performing services at an educational
103 institution in any capacity (other than instructional, research or principal administrative capacity),
104 and such individual was not offered an opportunity to perform such services for the second of
105 such academic years or terms, such individual shall be entitled to a retroactive payment of the
106 compensation for each week for which the individual filed a timely claim for compensation and
107 for which compensation was denied solely by reason of paragraph (b) or (d) of subdivision (1)
108 of this subsection.

109 4. (1) A claimant shall be ineligible for waiting week credit, benefits or shared work
110 benefits for any week for which he or she is receiving or has received remuneration exceeding
111 his or her weekly benefit amount or shared work benefit amount in the form of:

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

114 (b) A governmental or other pension, retirement or retired pay, annuity, or other similar
115 periodic payment which is based on the previous work of such claimant to the extent that such
116 payment is provided from funds provided by a base period or chargeable employer pursuant to
117 a plan maintained or contributed to by such employer; but, except for such payments made
118 pursuant to the Social Security Act or the Railroad Retirement Act of 1974 (or the corresponding
119 provisions of prior law), the provisions of this paragraph shall not apply if the services performed
120 for such employer by the claimant after the beginning of the base period (or remuneration for
121 such services) do not affect eligibility for or increase the amount of such pension, retirement or
122 retired pay, annuity or similar payment.

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

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

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

137 6. (1) A claimant shall be ineligible for waiting week credit or benefits for any week for
138 which the deputy finds that such claimant's total or partial unemployment is due to a stoppage
139 of work which exists because of a labor dispute in the factory, establishment or other premises
140 in which such claimant is or was last employed. In the event the claimant secures other
141 employment from which he or she is separated during the existence of the labor dispute, the
142 claimant must have obtained bona fide employment as a permanent employee for at least the
143 major part of each of two weeks in such subsequent employment to terminate his or her
144 ineligibility. If, in any case, separate branches of work which are commonly conducted as
145 separate businesses at separate premises are conducted in separate departments of the same
146 premises, each such department shall for the purposes of this subsection be deemed to be a
147 separate factory, establishment or other premises. This subsection shall not apply if it is shown
148 to the satisfaction of the deputy that:

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

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

155 (2) "Stoppage of work" as used in this subsection means a substantial diminution of the
156 activities, production or services at the establishment, plant, factory or premises of the employing
157 unit. This definition shall not apply to a strike where the employees in the bargaining unit who
158 initiated the strike are participating in the strike. Such employees shall not be eligible for waiting

159 week credit or benefits during the period when the strike is in effect, regardless of diminution,
160 unless the employer has been found guilty of an unfair labor practice by the National Labor
161 Relations Board or a federal court of law for an act or actions preceding or during the strike.

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

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

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

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

180 9. **A claimant shall be ineligible for waiting week credit or benefits for any week**
181 **such claimant has an outstanding penalty which was assessed based upon an overpayment**
182 **of benefits.**

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

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