

cordance with any process within chapter 414 that results in the elimination of at least one local government unit and a copy of the municipal board's order or orders combining the units of government is forwarded to the board. If the municipal board issues an order, or two or more orders within 30 days, for the annexation of the area of an entire township by two or more cities contiguous to the township, the cities subject to the board's order are eligible to receive pro rata shares, on the basis of their populations the population of the area of the township that was annexed by each contiguous city, of the total amount of cooperation and combination aid all participating units of government would be eligible to receive under subdivision 2. If two units of government cooperate in the orderly annexation of the entire area of a third unit of government which has a population of at least 8,000 people, the two units of government are each eligible for the amount of aid specified in subdivision 2.

Sec. 2. EFFECTIVE DATE.

Section 1 is effective the day following final enactment.

Presented to the governor March 2, 1998

Signed by the governor March 4, 1998, 10:15 a.m.

CHAPTER 265—S.F.No. 2621

An act relating to economic security; making technical changes in the department of economic security; amending Minnesota Statutes 1996, sections 248.07, subdivision 15; 268.0122, subdivision 2; 268.08, as amended; 268.101, as amended; 268.13, subdivision 4; and 268.18, as amended; Minnesota Statutes 1997 Supplement, sections 268.03; 268.042, subdivisions 1 and 3; 268.043; 268.044, subdivision 1; 268.045; 268.047, subdivisions 2, 3, and 5; 268.051; 268.057, subdivisions 1, 5, 6, and 7; 268.059; 268.063; 268.064, subdivision 2; 268.066; 268.067; 268.07; 268.09, subdivisions 1a, 10, 13, 16, and 17; 268.105, subdivision 3a; 268.125; 268.13, subdivisions 1 and 2; 268.182; 268.184; 268.192, subdivision 1; 268.194, subdivisions 2, 3, and 6; and 268.196, subdivision 2; proposing coding for new law in Minnesota Statutes, chapter 268; repealing Minnesota Statutes 1996, sections 268.04, as amended; 268.08, subdivision 5a; 268.13, subdivisions 3 and 5; and 268.25; Minnesota Statutes 1997 Supplement, sections 268.042, subdivision 2; and 268.054.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1996, section 248.07, subdivision 15, is amended to read:

Subd. 15. **APPEALS FROM AGENCY ACTION.** An applicant for or recipient of rehabilitation service who is dissatisfied with an agency's action with regard to the furnishing or denial of services may file a request for administrative review and fair hearing in accordance with the Code of Federal Regulations, title 34, section 361.48, and rules adopted under subdivision 14a.

Sec. 2. Minnesota Statutes 1996, section 268.0122, subdivision 2, is amended to read:

Subd. 2. **SPECIFIC POWERS.** The commissioner of economic security shall:

New language is indicated by underline, deletions by strikeout.

(1) administer and supervise all forms of ~~unemployment~~ reemployment insurance provided for under federal and state laws that are vested in the commissioner, including make investigations and audits, secure and transmit information, and make available services and facilities as the commissioner considers necessary or appropriate to facilitate the administration of any other states, or the federal economic security law, and accept and use information, services, and facilities made available by other states or the federal government;

(2) administer and supervise all employment and training services assigned to the department of ~~economic security~~ under federal or state law;

(3) review and comment on local service unit plans and community investment program plans and approve or disapprove the plans;

(4) establish and maintain administrative units necessary to perform administrative functions common to all divisions of the department;

(5) supervise the county boards of commissioners, local service units, and any other units of government designated in federal or state law as responsible for employment and training programs;

(6) establish administrative standards and payment conditions for providers of employment and training services;

(7) act as the agent of, and cooperate with, the federal government in matters of mutual concern, including the administration of any federal funds granted to the state to aid in the performance of functions of the commissioner;

(8) obtain reports from local service units and service providers for the purpose of evaluating the performance of employment and training services; and

(9) review and comment on plans for Indian tribe employment and training services and approve or disapprove the plans.

Sec. 3. Minnesota Statutes 1997 Supplement, section 268.03, is amended to read:

268.03 DECLARATION OF PUBLIC POLICY.

Subdivision 1. **STATEMENT.** As a guide to the interpretation and application of sections 268.03 to 268.30, The public policy of this state underlying sections 268.03 to 268.23 is declared to be as follows: Economic insecurity due to involuntary unemployment is a serious menace threat to the health, morals, and welfare well-being of the people of this state Minnesota. Involuntary unemployment is therefore a subject of general interest and concern which that requires appropriate action by the legislature to prevent its spread and to lighten its burdens. This can be provided by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. The legislature, therefore, declares that in its considered judgment The public good and the general welfare well-being of the citizens of this state Minnesota will be promoted by providing, under the police taxing powers of the state for the compulsory setting aside of unemployment reserves to be used for the benefit of persons individuals unemployed through no fault of their own. In recognition of its focus on returning provid-

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ing a temporary partial wage replacement to assist the unemployed worker to gainful employment become reemployed, this program will be known in Minnesota as "reemployment insurance."

Subd. 2. **STANDARD OF PROOF.** All issues of fact under sections 268.03 to 268.23 shall be determined by a preponderance of the evidence. Preponderance of the evidence means evidence in substantiation of a fact that, when weighed against the evidence opposing the fact, is more convincing and has a greater probability of truth.

Sec. 4. [268.035] **DEFINITIONS.**

Subdivision 1. **SCOPE.** Unless the language or context clearly indicates that a different meaning is intended, the words, terms, and phrases in this section shall, for the purposes of sections 268.03 to 268.23, have the meaning stated.

Subd. 2. **AGRICULTURAL EMPLOYMENT.** "Agricultural employment" means services:

(1) on a farm, in the employ of any person or family farm corporation 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, fur-bearing animals, and wildlife;

(2) in the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of the farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a tornado-like storm, if the major part of the employment is performed on a farm;

(3) in connection with the production or harvesting of any commodity defined as an agricultural product in United States Code, title 7, section 1626 of the Agricultural Marketing Act, or in connection with cotton ginning, or 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) 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 the operator produced more than one-half of the commodity with respect to which the employment is performed, or in the employ of a group of operators of farms or a cooperative organization of which the operators are members, but only if the operators produced more than one-half of the commodity with respect to which the employment is performed; however, this clause shall not be applicable to employment 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 the employment is not in the course of the employer's trade or business.

For purposes of this subdivision, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animals, and truck farms, plantations, ranches, nurseries, orchards, ranges, greenhouses, or other similar structures used primarily for the raising of agricultural or horticultural commodities.

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Subd. 3. BACK PAY. "Back pay" means a retroactive payment of money by an employer to an employee or former employee for lost wages because of the employer's non-compliance with a state or federal law or a collective bargaining agreement as determined by an arbitration award, administrative or judicial decision, or negotiated settlement. The payment shall be applied to the period immediately following the last day of employment or as specified in the award, decision, or settlement.

Subd. 4. BASE PERIOD. "Base period" means:

(1) the first four of the last five completed calendar quarters immediately prior to the effective date of a claimant's reemployment insurance account;

(2) if during the base period under clause (1) a claimant received workers' compensation for temporary disability under chapter 176 or a similar law of the United States, or if a claimant whose own serious illness caused a loss of work for which the claimant received compensation for loss of wages from some other source, the claimant may request that the base period be extended as follows:

(i) if a claimant was compensated for a loss of work of seven to 13 weeks, the original base period shall be extended to include the one calendar quarter prior to the original base period;

(ii) if a claimant was compensated for a loss of work of 14 to 26 weeks, the original base period shall be extended to include the two calendar quarters prior to the original base period;

(iii) if a claimant was compensated for a loss of work of 27 to 39 weeks, the original base period shall be extended to include the three calendar quarters prior to the original base period; and

(iv) if a claimant was compensated for a loss of work of 40 to 52 weeks, the original base period shall be extended to include the four quarters prior to the original base period;

(3) if the claimant qualifies for an extended base period under clause (2), but has insufficient wage credits to establish a reemployment insurance account, the claimant may request an alternate base period of the last four completed calendar quarters prior to the date the claimant's reemployment insurance account is effective. This alternate base period may be used only once during any five-calendar-year period; and

(4) no base period under clause (1), extended base period under clause (2), or alternate base period under clause (3) shall include wage credits upon which a prior reemployment insurance account was established.

Subd. 5. BENEFITS. "Benefits" means the money payments payable to a claimant, as provided in sections 268.03 to 268.23, with respect to the claimant's unemployment.

Subd. 6. BENEFIT YEAR. "Benefit year" means the period of 52 calendar weeks beginning the date a reemployment insurance account is effective. For a reemployment insurance account established effective January 1, April 1, July 1, or October 1, the benefit year will be a period of 53 calendar weeks.

Subd. 7. CALENDAR QUARTER. "Calendar quarter" means the period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31.

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Subd. 8. CLAIMANT. "Claimant" means an individual who has made an application for a reemployment insurance account and has established or is actively pursuing the establishment of a reemployment insurance account.

Subd. 9. CONSTRUCTION/INDEPENDENT CONTRACTOR. A worker doing commercial or residential building construction or improvement, in the public or private sector, performing services in the course of the trade, business, profession, or occupation of the employer, shall be considered an employee and not an "independent contractor" unless the worker meets all the following conditions:

(1) maintains a separate business with the independent contractor's own office, equipment, materials, and other facilities;

(2) holds or has applied for a federal employer identification number;

(3) operates under contracts to perform specific services or work for specific amounts of money under which the independent contractor controls the means of performing the services or work;

(4) incurs the main expenses related to the service or work that the independent contractor performs under contract;

(5) is responsible for the satisfactory completion of work or services that the independent contractor contracts to perform and is liable for a failure to complete the work or service;

(6) receives compensation for work or service performed under a contract on a commission or per job or competitive bid basis and not on any other basis;

(7) may realize a profit or suffer a loss under contracts to perform work or service;

(8) has continuing or recurring business liabilities or obligations; and

(9) the success or failure of the independent contractor's business depends on the relationship of business receipts to expenditures.

Subd. 10. CORPORATION. "Corporation" includes associations, joint-stock companies, and insurance companies. This definition shall not be exclusive.

Subd. 11. COVERED AGRICULTURAL EMPLOYMENT. "Covered agricultural employment" means agricultural employment where:

(1) The employment is performed for a person who:

(i) during any calendar quarter in either the current or the prior calendar year paid wages of \$20,000 or more to employees in agricultural employment; or

(ii) for some portion of a day in each of 20 different calendar weeks, whether or not the weeks were consecutive, in either the current or prior calendar year employed in agricultural employment four or more employees, regardless of whether they were employed at the same time.

(2) Any employee who is a member of a crew furnished by a crew leader to be employed in agricultural employment for any other person shall be treated as an employee of the crew leader:

New language is indicated by underline, deletions by strikeout.

(i) if the crew leader holds a valid certificate of registration under United States Code, title 29, section 1802, the Migrant and Seasonal Agricultural Worker Protection Act; or substantially all of the members of the crew operate or maintain tractors, mechanized harvesting or crop dusting equipment, or any other mechanized equipment, that is provided by the crew leader; and

(ii) if the employee is not an employee of another person.

(3) Any employee who is furnished by a crew leader to be employed in agricultural employment for any other person and who is not treated as an employee of the crew leader under clause (2):

(i) the other person and not the crew leader shall be treated as the employer of the employee; and

(ii) the other person shall be treated as having paid wages to the employee in an amount equal to the amount of wages paid to the employee by the crew leader (either on the crew leader's behalf or on behalf of the other person) for the agricultural employment performed for the other person.

(4) The term "crew leader" means an individual who:

(i) furnishes employees to be employed in agricultural employment for any other person;

(ii) pays (either on the crew leader's own behalf or on behalf of the other person) the employees furnished by the crew leader for the agricultural employment performed by them; and

(iii) has not entered into a written agreement with the other person under which the furnished employee is designated as an employee of the other person.

(5) Employment of an officer or shareholder of a family farm corporation shall be excluded from covered agricultural employment unless the corporation is an employer under United States Code, title 26, section 3306(a)(2) of the Federal Unemployment Tax Act.

(6) Employment of an individual 16 years of age or under shall be excluded from covered agricultural employment unless the employer is an employer under United States Codes, title 26, section 3306(a)(2) of the Federal Unemployment Tax Act.

Subd. 12. COVERED EMPLOYMENT. "Covered employment" means the following unless defined as "noncovered employment" under subdivision 20:

(1) an employee's entire employment if:

(i) the employment is performed entirely in Minnesota;

(ii) the employment is performed primarily in Minnesota, and the employment performed outside Minnesota is incidental to the employment in Minnesota; or

(iii) the employment is not performed primarily in any one state but some of the employment is performed in Minnesota and the base of operations or the place from which the employment is directed or controlled is in Minnesota; or the base of operations or place from which the employment is directed or controlled is not in any state in which part of the employment is performed, but the employee's residence is in Minnesota;

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(2) an employee's employment wherever performed within the United States or Canada, if:

(i) the employment is not covered under the reemployment insurance law of any other state or Canada; and

(ii) the place from which the employment is directed or controlled is in Minnesota;

(3) the employment of an employee who is a citizen of the United States, performed outside the United States, except in Canada, in the employ of an American employer if:

(i) the employer's principal place of business in the United States is located in Minnesota;

(ii) the employer has no place of business in the United States, but the employer is an individual who is a resident of Minnesota, or the employer is a corporation that is organized under the laws of Minnesota, or the employer is a partnership or a trust and the number of partners or trustees who are residents of Minnesota is greater than the number who are residents of any one other state;

(iii) none of the criteria of subclauses (i) and (ii) is met but the employer has elected coverage in Minnesota, or the employer having failed to elect coverage in any state, a claimant has made an application for benefits under section 268.07, based on the employment;

(iv) an "American employer," for the purposes of this subdivision, means an individual who is a resident of the United States, or a partnership if two-thirds or more of the partners are residents of the United States, or a trust, if all of the trustees are residents of the United States, or a corporation organized under the laws of the United States, or of any state; or

(v) as used in this subdivision, the term "United States" includes the states, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands;

(4) all employment performed by an officer or member of the crew of an American vessel on or in connection with the vessel, if the operating office, from which the operations of the vessel operating on navigable waters within, or within and without, the United States are ordinarily and regularly supervised, managed, directed, and controlled is in Minnesota;

(5) for the purposes of satisfying disqualifications under section 268.095, subdivision 10, "covered employment" shall include covered employment under a similar law of any other state or employment covered under a reemployment insurance system established by an act of Congress; and

(6) periods for which an individual receives back pay are periods of "covered employment," except for the satisfying of disqualifications under section 268.095, subdivision 10.

Subd. 13. EMPLOYEE. "Employee" means every individual, who is performing, or has performed services for an employer in employment.

Subd. 14. EMPLOYER. "Employer" means any of the following which has had one or more employees during the current or the prior calendar year:

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(1) any individual or type of organization, resident or nonresident, for profit or non-profit, religious, charitable, or educational, including any partnership, limited liability company, trust, estate, or corporation, domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor of any of the foregoing, or the legal representative of a deceased person;

(2) any government entity, state or federal, foreign or domestic, Indian tribe, including any subdivision thereof and any instrumentality thereof owned wholly or in part;

(3) any organization or person that is considered an employer under United States Code, title 26, section 3306(a) of the Federal Unemployment Tax Act;

(4) any organization or person that has elected, under section 268.042, to be subject to sections 268.03 to 268.23;

(5) a joint venture composed of one or more employers;

(6) any private or nonprofit organization or government agency providing or authorizing the hiring of homeworkers, personal care attendants, or other individuals performing similar services in a private home is the employer of the homemaker, attendant, or similar worker whether the agency pays the employee directly or provides funds to the recipient of the services to pay for the services. This clause does not apply to the state of Minnesota or any county that provides federal, state, or local funds to a child care provider either directly or indirectly through a parent who is a child care assistance recipient;

(7) each individual employed to perform or assist in performing the work of any agent or employee shall be considered to be employed by that employer whether the individual was hired or paid directly by that employer or by the agent or employee, provided the employer had actual or constructive knowledge of the work.

Subd. 15. EMPLOYMENT. "Employment" means service performed by:

(1) an individual who is considered an employee under the common law of employer-employee and not considered an independent contractor;

(2) an officer of a corporation;

(3) a member of a limited liability company who is considered an employee under the common law of employer-employee;

(4) an individual who performs services for compensation, as:

(i) an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, beverages, or laundry or dry cleaning services, for a principal; or

(ii) a traveling or city salesperson, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, a principal (except for sideline sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations.

This clause shall apply only if the contract of service provides that substantially all of the services are to be performed personally by the individual, and the services are part

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of a continuing relationship with the person for whom the services are performed, and the individual does not have a substantial investment in facilities used in connection with the performance of the services (other than facilities for transportation); or

(5) an individual whose service is considered employment under United States Code, title 26, section 3306(c), of the Federal Unemployment Tax Act.

Subd. 16. FAMILY FARM CORPORATION. "Family farm corporation" has the meaning given to it in section 500.24, subdivision 2.

Subd. 17. FILING; FILED. "Filing" or "filed" means the delivery of any document to the commissioner or any of the commissioner's agents, or the depositing of the document in the United States mail properly addressed to the department with postage prepaid, in which case the document shall be considered filed on the day indicated by the cancellation mark of the United States Postal Service.

If, where allowed, an application, protest, appeal, or other required action is made by telephone or electronic transmission, it shall be considered filed on the day received by the department.

Subd. 18. FUND. "Fund" means the Minnesota reemployment insurance fund established by section 268.194.

Subd. 19. HIGH QUARTER. "High quarter" means the calendar quarter in a claimant's base period with the highest amount of wage credits.

Subd. 20. NONCOVERED EMPLOYMENT. "Noncovered employment" means:

(1) employment for the United States government or an instrumentality thereof;

(2) employment for an Indian, an Indian-controlled employer, and Indian tribe, or any wholly controlled subsidiaries or subdivisions, if the employment is performed on an Indian reservation or Indian Trust Land;

(3) employment for a state, other than Minnesota, or a political subdivision or instrumentality thereof;

(4) employment for a foreign government;

(5) employment for an instrumentality wholly owned by a foreign government, if the employment is of a character similar to that performed in foreign countries by employees of the United States government or an instrumentality thereof and the United States Secretary of State has certified that the foreign government grants an equivalent exemption to similar employment performed in the foreign country by employees of the United States government and instrumentalities thereof;

(6) employment with respect to which reemployment insurance benefits are payable under a system established by an act of Congress;

(7) employment covered by a reciprocal arrangement between the commissioner and another state or the federal government pursuant to which all employment performed by an individual for an employer during the period covered by the reciprocal arrangement is considered performed entirely within another state;

New language is indicated by underline, deletions by strikeout.

(8) employment for a religious, charitable, education, or other organization described in United States Code, title 26, section 501(c)(3) of the federal Internal Revenue Code and exempt from income tax under section 501(a), but only if the organization did not have one or more individuals in employment for some portion of a day in each of 20 different weeks, whether or not such weeks were consecutive, within either the current or the prior calendar year, regardless of whether they were employed at the same time;

(9) employment for a church or convention or association of churches, or an organization operated primarily for religious purposes that is operated, supervised, controlled, or principally supported by a church or convention or association of churches described in United States Code, title 26, section 501(c)(3) of the federal Internal Revenue Code and exempt from income tax under section 501(a);

(10) employment of a duly ordained, commissioned, or licensed minister of a church in the exercise of a ministry or by a member of a religious order in the exercise of duties required by the order, for Minnesota or a political subdivision or an organization described in United States code, title 26, section 501(c)(3) of the federal Internal Revenue Code and exempt from income tax under section 501(a);

(11) employment of an individual receiving rehabilitation of "sheltered" work in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or a program providing "sheltered" work for individuals who because of an impaired physical or mental capacity cannot be readily absorbed in the competitive labor market. This clause applies only to services performed for Minnesota or a political subdivision or an organization described in United States Code, title 26, section 501 (c)(3) of the federal Internal Revenue Code and exempt from income tax under section 501(a) in a facility certified by the rehabilitation services branch of the department or in a day training or habilitation program licensed by the department of human services;

(12) employment of an individual receiving work relief or work training 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. This clause applies only to employment for Minnesota or a political subdivision or an organization described in United States Code, title 26, section 501(c)(3) of the federal Internal Revenue Code and exempt from income tax under section 501(a). This clause shall not apply to programs that require reemployment insurance coverage for the participants;

(13) employment in any calendar quarter for any organization exempt from income tax under United States Code, title 26, section 501(a) or 521 of the federal Internal Revenue Code except a trust described in section 401(a), if the compensation for the employment is less than \$50;

(14) employment for Minnesota or a political subdivision if the service is as an elected official, a member of a legislative body, or a member of the judiciary;

(15) employment as a member of the Minnesota national guard or air national guard;

(16) employment for Minnesota, a political subdivision, or instrumentality thereof, as an employee serving only on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency;

New language is indicated by underline, deletions by strikeout.

(17) employment as an election official or election worker for Minnesota or a political subdivision, but only if the compensation for that employment was less than \$1,000 in a calendar year;

(18) employment for Minnesota that is a major nontenured policy making or advisory position in the unclassified service;

(19) employment in a policy making position for Minnesota or a political subdivision, the performance of the duties that ordinarily does not require more than eight hours per week;

(20) employment for a political subdivision of Minnesota that is a major nontenured policy making or advisory position;

(21) domestic service in a private household, local college club, or local chapter of a college fraternity or sorority performed for a person, only if the wages paid in any calendar quarter in either the current or preceding calendar year to all individuals employed in domestic service totaled less than \$1,000.

"Domestic service" includes all service for an individual in the operation and maintenance of a private household, for a local college club, or local chapter of a college fraternity or sorority as distinguished from service as an employee in the pursuit of an employer's trade, occupation, profession, enterprise, or vocation;

(22) employment of an individual by a son, daughter, or spouse, and employment of a child under the age of 18 by the child's father or mother;

(23) employment of an inmate of a custodial or penal institution;

(24) employment for a school, college, or university by a student who is enrolled and is regularly attending classes at the school, college, or university;

(25) employment of an individual who is enrolled as a student in a full-time program at a nonprofit or public educational institution that 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, taken for credit at the institution, that combines academic instruction with work experience, if the employment is an integral part of the program, and the institution has so certified to the employer, except that this clause shall not apply to employment in a program established for or on behalf of an employer or group of employers;

(26) employment of university, college, or professional school students in an internship or other training program with the city of St. Paul or the city of Minneapolis pursuant to Laws 1990, chapter 570, article 6, section 3;

(27) employment for a hospital by a patient of the hospital. "Hospital" means an institution that has been licensed, certified, or approved by the department of health as a hospital;

(28) employment as a student nurse for a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered and approved pursuant to state law;

(29) employment as an intern for a hospital by an individual who has completed a four-year course in a medical school chartered and approved pursuant to state law;

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(30) employment as an insurance agent or as an insurance solicitor, by other than a corporate officer, if all the compensation for the employment is solely by way of commission. The word "insurance" shall include an annuity and an optional annuity;

(31) employment as an officer of a township mutual insurance company or farmer's mutual insurance company operating pursuant to chapter 67A;

(32) employment as a real estate salesperson, by other than a corporate officer, if all the compensation for the employment is solely by way of commission;

(33) employment as a direct seller as defined in United States Code, title 26, section 3508;

(34) employment of an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(35) casual labor not in the course of the employer's trade or business;

(36) employment in "agricultural employment" unless considered "covered agricultural employment" under subdivision 11; or

(37) if the employment during one-half or more of any pay period constitutes covered employment, all the employment for the period shall be considered covered employment; but if the employment performed during more than one-half of any pay period does not constitute covered employment, then none of the employment for the period shall be considered covered employment. "Pay period" means a period of not more than a calendar month for which a payment or compensation is ordinarily made to the employee by the employer.

Subd. 21. PERSON. "Person" means an individual, trust or estate, a partnership or a corporation.

Subd. 22. STATE. "State" includes, in addition to the states of the United States, the Commonwealth of Puerto Rico, the District of Columbia, and the Virgin Islands.

Subd. 23. STATE'S AVERAGE ANNUAL AND AVERAGE WEEKLY WAGE. (a) On or before June 30 of each year, the commissioner shall calculate the state's average annual wage and the state's average weekly wage in the following manner:

(1) The sum of the total monthly covered employment reported by all employers for the prior calendar year shall be divided by 12 to calculate the average monthly covered employment.

(2) The sum of the total wages paid for all covered employment reported by all employers for the prior calendar year shall be divided by the average monthly covered employment to calculate the state's average annual wage.

(3) The state's average annual wage shall be divided by 52 to calculate the state's average weekly wage.

(b) For purposes of calculating the amount of taxable wages, the state's average annual wage shall apply to the calendar year following the calculation.

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(c) For purposes of calculating the state's maximum weekly benefit amount payable on any reemployment insurance account, the state's average weekly wage shall apply to the 12-month period beginning August 1 of the calendar year of the calculation.

Subd. 24. TAXABLE WAGES. (a) "Taxable wages" means those wages paid to an employee in covered employment each calendar year up to an amount equal to 60 percent of the state's average annual wage, rounded to the nearest \$100.

(b) Taxable wages includes the amount of wages paid for covered employment by the employer's predecessor in this state or under the reemployment insurance law of any other state. Any credit given for amounts reported under the reemployment insurance law of another state shall be limited to that state's taxable wage base.

Subd. 25. TAXES. "Taxes" means the money payments required by sections 268.03 to 268.23 to be paid into the fund by an employer on account of paying wages to employees in covered employment.

Subd. 26. UNEMPLOYED. A claimant shall be considered "unemployed," (1) in any week that the claimant performs no service in employment, covered employment, noncovered employment, self-employment, or volunteer work, and with respect to which the claimant has no earnings; or (2) in any week of less than 32 hours of service in employment, covered employment, noncovered employment, self-employment, or volunteer work if the earnings with respect to that week are less than the claimant's weekly benefit amount.

Subd. 27. WAGE CREDITS. "Wage credits" mean the amount of wages paid within a claimant's base period for covered employment.

Subd. 28. WAGE DETAIL REPORT. "Wage detail report" means the report of wages paid and hours worked by each employee in covered employment on a calendar quarter basis. An auxiliary report broken down by business locations, when required by the commissioner, shall contain the number of employees in covered employment for each month, and the quarterly total wages for each location. The auxiliary report may be made part of the wage detail report, the tax report, or filed separately, as required by the commissioner.

Subd. 29. WAGES. "Wages" means all compensation for services, including commissions; bonuses; severance payments; vacation and holiday pay; back pay as of the date of payment; tips and gratuities paid to an employee by a customer of an employer and accounted for by the employee to the employer; sickness and accident disability payments, except as otherwise provided in this subdivision; and the cash value of all compensation in any medium other than cash, except:

(1) the amount of any payment made to, or on behalf of, an employee under a plan established by an employer that makes provision for employees generally or for a class or classes of employees, including any amount paid by an employer for insurance or annuities, or into a plan, to provide for a payment, on account of (i) retirement or (ii) medical and hospitalization expenses in connection with sickness or accident disability, or (iii) death;

(2) the payment by an employer of the tax imposed upon an employee under United States Code, title 26, section 3101 of the Federal Insurance Contribution Act, with respect to compensation paid to an employee for domestic service in a private household of the employer or for agricultural employment;

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(3) any payment made to, or on behalf of, an employee or beneficiary (i) from or to a trust described in United States Code, title 26, section 401(a) of the federal Internal Revenue Code that is exempt from tax under section 501(a) at the time of the payment unless the payment is made to an employee of the trust as compensation for services as an employee and not as a beneficiary of the trust, or (ii) under or to an annuity plan that, at the time of the payment, is a plan described in section 403(a);

(4) sickness or accident disability payments made by the employer after the expiration of six calendar months following the last calendar month that the individual worked for the employer;

(5) disability payments made under the provisions of any workers' compensation law;

(6) sickness or accident disability payments made by a third party payer such as an insurance company;

(7) payments made into a fund, or for the purchase of insurance or an annuity, to provide for sickness or accident disability payments to employees pursuant to a plan or system established by the employer that provides for the employer's employees generally or for a class or classes of employees; or

(8) nothing in this subdivision shall exclude from the term "wages" any payment made under any type of salary reduction agreement, including payments made under a cash or deferred arrangement and cafeteria plan, as defined in United States Code, title 26, sections 401(k) and 125, of the federal Internal Revenue Code, to the extent that the employee has the option to receive the payment in cash.

Subd. 30. **WAGES PAID.** "Wages paid" means the amount of wages which have been actually paid or which have been credited to or set apart for the employee so that payment and disposition is under the control of the employee. Wage payments delayed beyond their regularly scheduled pay date are considered "actually paid" on the missed pay date. Any wages earned but not paid with no scheduled date of payment shall be considered "actually paid" on the last day services are performed in employment before separation.

Wages paid shall not include wages earned but not paid except as provided for in this subdivision.

Subd. 31. **WEEK.** "Week" means calendar week, ending at midnight Saturday.

Subd. 32. **WEEKLY BENEFIT AMOUNT.** "Weekly benefit amount" means the amount of benefits computed under section 268.07, that a claimant would be entitled to receive for a week, if totally unemployed and eligible.

Sec. 5. Minnesota Statutes 1997 Supplement, section 268.042, subdivision 1, is amended to read:

Subdivision 1. **EMPLOYER FOR PART OF YEAR.** Except as provided in subdivisions 2 and subdivision 3, any employing unit which organization or person that is or becomes an employer subject to sections 268.03 to 268.23 within any calendar year shall be deemed considered to be an employer during the whole of such entire calendar year.

Sec. 6. Minnesota Statutes 1997 Supplement, section 268.042, subdivision 3, is amended to read:

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Subd. 3. **ELECTION AGREEMENTS; TERMINATION POWERS OF COMMISSIONER.** ~~(1)~~ (a) An employing unit organization or person, not defined as an employer under this chapter, that files with the commissioner a written election to become an employer, shall, with the written approval of the commissioner, become an employer for not less than two calendar years to the same extent as all other employers, as of the date stated in the approval. The employing unit organization or person shall cease to be an employer as of the first day of January of any calendar year, only, if at least 30 calendar days prior to the first day of January, the employing unit organization or person has filed with the commissioner a written notice to that effect.

(2) (b) Any employing unit employer that has services performed for it that do not constitute employment and covered employment, may file with the commissioner a written election that all such service, in one or more distinct establishments or places of business, shall be deemed to constitute considered covered employment for purposes of this chapter for not less than two calendar years. Upon the written approval of the commissioner, the services shall be deemed to constitute covered employment from and after the date stated in the approval. The services shall cease to be deemed considered covered employment as of the first day of January of any calendar year only if at least 30 calendar days prior to the first day of January the employing unit employer has filed with the commissioner a written notice to that effect.

(3) (c) The commissioner must terminate any election agreement under this subdivision upon 30 calendar days notice to the employing unit, if the employing unit employer fails to pay all contributions taxes due or payments in lieu of contributions taxes due the reemployment insurance fund.

Sec. 7. Minnesota Statutes 1997 Supplement, section 268.043, is amended to read:
268.043 **DETERMINATIONS OF COVERAGE.**

An official, designated by (a) The commissioner, upon the commissioner's own motion or upon application of an employing unit organization or person, shall determine if an employing unit that organization or person is an employer within the meaning of this chapter or as to whether services performed for it constitute employment within the meaning of this chapter and covered employment, or whether the remuneration compensation for services constitutes wages as defined in section 268.04, subdivision 25, and shall notify the employing unit organization or person of the determination. The determination shall be final unless the employing unit organization or person, within 30 calendar days after the mailing sending of notice of the determination to the employing unit's last known address by mail or electronic transmission, files a written appeal from it. Proceedings on the appeal shall be conducted in accordance with section 268.105.

(b) The commissioner may at any time upon the commissioner's own motion correct any error of the department resulting in an erroneous determination under this section, except for those matters that have been appealed to the court of appeals and heard on the merits. The commissioner shall issue a redetermination which a corrected determination shall be final unless the employing unit, within 30 calendar days after the mailing sending of notice of the redetermination corrected determination to the employing unit's last known address organization or person by mail or electronic transmission, files a written appeal from it is filed. Proceedings on the appeal shall be conducted in accordance with section 268.105.

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(c) No organization or person shall be initially determined an employer, or that services performed for it were in employment or covered employment, for periods more than four years prior to the year in which the determination is made, unless the commissioner finds that there was fraudulent action to avoid liability under this chapter.

Sec. 8. Minnesota Statutes 1997 Supplement, section 268.044, subdivision 1, is amended to read:

Subdivision 1. **WAGE DETAIL REPORT.** (a) Each employer that has employees in covered employment shall provide the commissioner with a quarterly wage detail report ~~that~~. The report shall include for each employee in covered employment, the employee's name, social security number, the total wages paid to the employee, and total number of paid hours worked. For employees exempt from the definition of employee in section 177.23, subdivision 7, clause (6), the employer shall report 40 hours worked for each week any duties were performed by a full-time employee and shall report a reasonable estimate of the hours worked for each week duties were performed by a part-time employee. The report is due and must be filed on or before the last day of the month following the end of the calendar quarter.

(b) The employer may report the wages paid to the nearest whole dollar amount.

(c) An employer need not include the name of the employee or other required information on the wage detail report if disclosure is specifically exempted by federal law.

Sec. 9. Minnesota Statutes 1997 Supplement, section 268.045, is amended to read:

268.045 EMPLOYER ACCOUNTS.

(a) The commissioner shall maintain a separate account for each employer that has employees in covered employment in the current or the prior calendar year, except as provided in this section, and shall charge the account for any benefits determined chargeable to the employer under section 268.047 and shall credit the account with all the contributions taxes paid, or if the employer is liable for payments in lieu of contributions taxes, the payments made.

(b) Two or more related corporations concurrently employing the same employees and compensating those employees through a common paymaster which that is one of the corporations may apply to the commissioner to establish a common paymaster account that shall be the account of the common paymaster corporation. If approved, the separate accounts shall be maintained, but the employees compensated through the common paymaster shall be reported as employees of the common paymaster corporation. The corporations using the common paymaster account shall be jointly and severally liable for any unpaid contributions taxes, penalties, and interest owing from the common paymaster account. ~~The commissioner may prescribe rules for the establishment, maintenance and termination of common paymaster accounts.~~

(c) Two or more employing units employers having 50 percent or more common ownership and compensating employees through a single payee payer that is one of the employing units employers may apply to the commissioner for a merging of the experience rating records of the employing units employers into a single joint account.

If approved, the joint account shall be effective on that date assigned by the commissioner and shall remain in effect for not less than two calendar years, and continuing un-

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less written notice terminating the joint account is filed with the commissioner. The termination shall be effective on January 1 next following the filing of the written notice of termination.

The employing units employers in the joint account shall be jointly and severally liable for any unpaid contributions taxes, penalties, and interest owing from the joint account.

(d) Two or more employers that are liable for payments in lieu of contributions taxes may apply to the commissioner for the establishment of a group account for the purpose of sharing the cost of benefits charged based upon wage credits from all employers in the group. The application shall identify and authorize a group representative to act as the group's agent for the purposes of the account. If approved, the commissioner shall establish a group account for the employers effective as of the beginning of the calendar year that the application is received. The account shall remain in effect for not less than two calendar years and thereafter until terminated at the discretion of the commissioner or upon application by the group at least 30 calendar days prior to the end of the two year period or 30 calendar days prior to January 1 of any following calendar year subsequent. Each employer in the group shall be jointly and severally liable for payments in lieu of contributions taxes for all benefits paid based upon wage credits from all employers in the group during the period the group account was in effect. ~~The commissioner may prescribe rules for the establishment, maintenance and termination of group accounts.~~

Sec. 10. Minnesota Statutes 1997 Supplement, section 268.047, subdivision 2, is amended to read:

Subd. 2. **EXCEPTIONS TO CHARGES FOR ALL EMPLOYERS.** Benefits paid to a claimant shall not be charged to the account of a contributing taxpaying base period employer or to the account of a base period employer that is liable for payments in lieu of contributions taxes under the following conditions:

(a) (1) the claimant was discharged from the employment because of gross misconduct as determined under section 268.09, subdivision 10, clause (2) 268.095. This paragraph clause shall apply only to benefits paid for weeks occurring subsequent to after the claimant's discharge from employment; or

(b) (2) a claimant's discharge from that employment was required by a law mandating a background check, or the claimant's discharge from that employment was required by law because of a criminal conviction; or

(c) (3) the employer:

(1) (i) provided regularly scheduled part-time employment to the claimant during the claimant's base period;

(2) (ii) during the claimant's benefit year, continues to provide the claimant with regularly scheduled employment approximating 90 percent of the employment provided the claimant by that employer in the base period, or, for a fire department or firefighting corporation or operator of a life-support transportation service, continues to provide employment for a volunteer firefighter or a volunteer ambulance service personnel on the same basis that employment was provided in the base period; and

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(3) (iii) is an involved employer because of the claimant's loss of other employment. The exception to charges shall terminate effective the first week in the claimant's benefit year that the employer fails to meet the provisions of clause (2) subclause (ii);

This clause shall apply to educational institution employers without consideration of the period between academic years or terms; or

(d) (4) the claimant's unemployment:

(1) from this employer was directly caused by a major natural disaster declared by the president pursuant to Section 102(2) of the Disaster Relief Act of 1974, United States Code, title 42, section 5122(2), if the claimant would have been eligible for federal disaster unemployment assistance with respect to that unemployment but for the claimant's receipt of reemployment insurance benefits; or

(2) (5) the claimant's unemployment from this employer was directly caused by the condemnation of property by a governmental agency, a fire, flood, or act of God where 70 percent or more of the employees employed in the affected location became unemployed as a result and the employer substantially reopens its operations in that same area within 18 months. Benefits shall be charged to the employer where the unemployment is caused by the willful act of the employer or a person acting on behalf of the employer; or

(e) (6) the benefits were paid by another state as a result of the transferring of wage credits under a federally combined wage agreement arrangement provided for in section ~~268.13~~ 268.131; or

(f) (7) on a second reemployment insurance account established pursuant to section 268.07, subdivision 3, where the employer provided 90 percent or more of the wage credits in the claimant's preceding prior base period and the claimant did not perform services for the employer during the subsequent second base period; or

(g) (8) the claimant left or partially or totally lost employment because of a strike or other labor dispute at the claimant's primary place of employment if the employer was not a party to the particular strike or labor dispute; or

(h) (9) the benefits were determined overpaid benefits under section 268.18.

Sec. 11. Minnesota Statutes 1997 Supplement, section 268.047, subdivision 3, is amended to read:

Subd. 3. **EXCEPTIONS TO CHARGES FOR CONTRIBUTING TAXPAYING EMPLOYERS.** Benefits paid to a claimant shall not be charged to the account of a contributing taxpaying base period employer under the following conditions:

(a) (1) the claimant's wage credits from that employer are less than \$500;

(b) (2) the claimant quit the employment, unless it was determined under section ~~268.09~~, subdivisions ~~1a~~ and ~~9~~ 268.095, to have been because of a good reason caused by the employer. This paragraph clause shall apply only to benefits paid for periods occurring subsequent to after the claimant's quitting the employment;

(c) (3) the employer discharged the claimant from employment because of misconduct as determined pursuant to under section ~~268.09~~, subdivisions ~~10~~ and ~~12~~ 268.095. This paragraph clause shall apply only to benefits paid for periods occurring subsequent to after the claimant's discharge from employment;

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~~(d)~~ (4) the employer discharged the claimant from employment because of reasons resulting directly from the claimant's serious illness, that was determined not misconduct under section 268.095, provided the employer made a reasonable effort to retain the claimant in employment in spite of the claimant's serious illness; or

~~(e)~~ (5) the claimant avoided or failed to accept an offer from the employer of suitable reemployment, as determined under section 268.095, or avoided or failed to accept an offer of reemployment that offered with substantially the same or better hourly wages or and conditions of employment, or both, as were previously provided by that employer. This paragraph clause shall only apply to benefits paid for weeks occurring periods after the claimant's refusal or avoidance.

(6) the claimant was held not disqualified from benefits under section 268.095 solely because of the application of section 268.105, subdivision 3a, paragraph (d).

Sec. 12. Minnesota Statutes 1997 Supplement, section 268.047, subdivision 5, is amended to read:

Subd. 5. **NOTICE OF BENEFITS CHARGED.** (a) The commissioner shall ~~mail to the last known address of~~ notify each employer a quarterly notice by mail or electronic transmission of the benefits that have been charged to the employer's account. Unless a written protest is filed in a manner prescribed by the commissioner within 30 calendar days from the date of ~~mailing~~ sending of the notice, the charges set forth in the notice shall be final and shall not be subject to collateral attack by way of review of a contribution tax rate notice, application for a credit adjustment or refund, or otherwise.

(b) Upon receipt of a protest, the commissioner shall review the charges on the notice and determine whether there has been an error in the charging of the employer's account. The commissioner shall either affirm or make a redetermination of the charges, and a notice of affirmation or redetermination shall be ~~mailed~~ sent to the employer by mail or electronic transmission.

(c) The affirmation or redetermination shall be final unless the employer files a ~~written~~ appeal within 30 calendar days after the date of ~~mailing~~ the affirmation or redetermination was sent. Proceedings on the appeal shall be conducted in accordance with section 268.105.

(d) An employer may not collaterally attack, by way of a protest to a notice of benefits charged, any prior determination or decision holding that benefits shall be charged to the employer's account, that has become final.

(e) The commissioner may at any time upon the commissioner's own motion correct a clerical error that resulted in charges to an employer's account.

Sec. 13. Minnesota Statutes 1997 Supplement, section 268.051, is amended to read:

268.051 EMPLOYERS CONTRIBUTIONS TAXES.

Subdivision 1. **PAYMENTS.** (a) ~~Contributions Taxes~~ shall accrue and become payable by each employer for each calendar year that the employer is ~~subject to this chapter~~ paid wages to employees in covered employment, except for:

(1) nonprofit corporations as provided in section 268.053; and

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(2) the state of Minnesota and political subdivisions as provided in section 268.052.

Each employer shall pay contributions taxes quarterly, at the employer's assigned contribution tax rate, on the taxable wages paid to each employee. The contributions taxes shall be paid to the Minnesota reemployment insurance fund on or before the last day of the month following the end of the calendar quarter.

(b) The contribution tax may be paid in an amount to the nearest whole dollar.

(c) When the contribution tax for any calendar quarter is less than \$1, the contribution tax shall be disregarded.

Subd. 1a. TAX REPORTS. (a) Every employer, except those making payments in lieu of taxes, shall submit a tax report on a form, or in a manner, prescribed by the commissioner on or before the last day of the month following the end of the calendar quarter, unless the employer meets the requirements for submitting tax reports annually under section 268.0511. An employer that fails to submit a tax report when due, or submits an incorrect tax report, shall be subject to section 268.057, subdivision 1.

(b) Each tax report shall include the total wages paid and the taxable wages paid that quarter, the amount of tax due, and any other information required by the commissioner.

(c) A tax report must be submitted for each calendar quarter even though no wages were paid or no tax is due.

Subd. 2. COMPUTATION OF CONTRIBUTION TAX RATES. (a) For each calendar year the commissioner shall compute the contribution tax rate of each employer that qualifies for an experience rating by adding the minimum contribution tax rate to the employer's experience rating.

(b) The minimum contribution tax rate shall be six-tenths of one percent if the amount in the reemployment insurance fund is less than \$200,000,000 on June 30 of the preceding prior calendar year; or five-tenths of one percent if the fund is more than \$200,000,000 but less than \$225,000,000; or four-tenths of one percent if the fund is more than \$225,000,000 but less than \$250,000,000; or three-tenths of one percent if the fund is more than \$250,000,000 but less than \$275,000,000; or two-tenths of one percent if the fund is \$275,000,000 but less than \$300,000,000; or one-tenth of one percent if the fund is \$300,000,000 or more.

(c) The maximum contribution rate shall be 9.0 percent.

(d) For the purposes of this subdivision the reemployment insurance fund shall not include any money advanced from the federal unemployment trust fund.

Subd. 3. COMPUTATION OF EACH AN EMPLOYER'S EXPERIENCE RATING. (a) For each calendar year, the commissioner shall compute an experience rating for each an employer who has been subject to this chapter for at least the 15 consecutive 12 calendar months immediately preceding prior to July 1 of the preceding prior calendar year. The experience rating shall be the ratio obtained by dividing 1-1/4 times the total benefits charged to the employer's account during the period the employer has been subject to this chapter but not less than the 15 12 or more than the 60 consecutive calendar months ending on June 30 of the preceding prior calendar year by the employer's total taxable payroll for the same period on which all contributions due have been paid on or before October 31 of the preceding calendar year.

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(b) For purposes of paragraph (a), only that taxable payroll upon which taxes have been paid on or before September 30 of the prior calendar year may be used in computing an employer's experience rating.

(c) The experience rating shall be computed to the nearest one-tenth of a percent, to a maximum of 8.9 percent.

Subd. 4. **EXPERIENCE RATING RECORD TRANSFER.** (a) When an employing unit succeeds to or employer acquires the organization, trade or business or substantially all the assets of another employing unit that at the time of the acquisition was an employer subject to this law, and continues the organization, trade or business employer, and there is 25 percent or more common ownership, directly or indirectly, between the predecessor and successor, the experience rating record of the predecessor employer shall be transferred as of the date of acquisition to the successor employer for the purpose of computation of computing a contribution tax rate.

(b) When an employing unit succeeds to or employer acquires a distinct severable portion of the organization, trade, business, or assets that is less than substantially all of the employing enterprises of another employing unit employer, and there is 25 percent or more common ownership, directly or indirectly, between the predecessor and successor, the successor employing unit employer shall acquire the experience rating record attributable to the portion to which it has succeeded acquired, and the predecessor employing unit employer shall retain the experience rating record attributable to the portion that it has retained, if (1) the successor continues the organization, trade, or business of the portion acquired, (2) the successor makes a written request to file an application apply for the transfer of the experience rating record for attributable to the severable portion acquired from the predecessor (3) and within 90 180 calendar days from the date of mailing the application to the successor the successor and predecessor jointly sign and file acquisition and (2) files an application as within the time and in the manner prescribed by the commissioner that furnishes sufficient information to substantiate the severable portion and to assign the appropriate total and taxable wages and benefit charges to the successor for experience rating purposes.

(c) The term "common ownership" for purposes of this subdivision includes ownership by a spouse, parent, child, brother, sister, aunt, uncle, or first cousin, by birth or by marriage.

(d) If the successor employer under paragraphs (a) and (b) had an experience rating record at the time of the acquisition, the transferred record of the predecessor shall be combined with the successor's record for purposes of computation of computing a contribution tax rate.

(e) If there has been a transfer of an experience rating record under paragraph (a) or (b), employment with a predecessor employer shall not be deemed considered to have been terminated if similar employment is offered by the successor employer and accepted by the employee.

(f) The commissioner, upon the commissioner's own motion or upon application of an employing unit employer shall determine if an employing unit employer is a successor within the meaning of this subdivision and shall ~~mail~~ send the determination to the last known address of the employing unit employer by mail or electronic transmission. The determination shall be final unless a written appeal is filed by the employing unit

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employer within 30 calendar days after mailing of the sending of the determination. Proceedings on the appeal shall be conducted in accordance with section 268.105.

~~(f)~~ (g) The commissioner shall may, as the result of any determination or decision regarding succession or nonsuccession, recompute the ~~contribution~~ tax rate of all employers affected by the determination or decision for any year, including the year of the acquisition or ~~suecession~~ and subsequent years, that is affected by the transfer or nontransfer of part or all of the experience rating record ~~under this subdivision~~. This paragraph does not apply to rates that have become final ~~prior to~~ before the filing of a written request to file an application apply for the transfer of a severable portion of the experience rating record as provided in under paragraph (b).

~~(g)~~ (h) The experience rating record for purposes of this subdivision shall consist of those factors which make up an experience rating, without the ~~15-month~~ 12-month minimum required under subdivision 3.

(i) If the commissioner finds that a transaction was done, in whole or in part, to avoid an experience rating record or the transfer of an experience rating record, the commissioner may transfer the experience rating record to an employer notwithstanding the requirements of paragraph (a).

Subd. 5. TAX RATE FOR NEW EMPLOYERS. (a) Each employer that does not qualify for an experience rating, except employers in the construction industry, shall be assigned a ~~contribution~~ tax rate the higher of (1) one percent, or (2) the state's ~~benefit~~ average cost rate; to a maximum of 5-4/10 percent. For purposes of this paragraph, the state's ~~benefit~~ average cost rate shall be computed annually and shall be derived by dividing the total dollar amount of benefits paid during the 60 consecutive calendar months immediately ~~preceeding~~ prior to July 1 of each year by the total taxable wages of all ~~con-~~tributing taxpaying employers during the same period. This rate shall be applicable for the calendar year ~~next sueceeding~~ following the computation date.

(b) Each employer in the construction industry that does not qualify for an experience rating shall be assigned a ~~contribution~~ tax rate, the higher of (1) one percent, or (2) the state's ~~benefit~~ average cost rate for construction employers to a maximum of ~~9.0~~ 8.9 percent, plus the applicable minimum tax rate. For purposes of this paragraph, the state's ~~benefit~~ average cost rate shall be computed annually and shall be derived by dividing the total dollar amount of benefits paid to claimants of construction industry employers during the 60 consecutive calendar months immediately ~~preceeding~~ prior to July 1 of each year by the total taxable wages of construction industry employers during the same period. This rate shall be applicable for the calendar year ~~next sueceeding~~ following the computation date.

For purposes of this subdivision An employer is considered in the construction industry if the employer is within division C of the Standard Industrial Classification Manual issued by the United States Office of Management and Budget, except as excluded by rules adopted by the commissioner.

Subd. 6. NOTICE OF CONTRIBUTION TAX RATE. (a) The commissioner shall mail to the last known address of ~~notify~~ each employer ~~noties~~ by mail or electronic transmission of the employer's ~~contribution~~ tax rate as determined for any calendar year. The notice shall contain the contribution tax rate and the factors used in determining the employer's experience rating. Unless a protest of the rate is made, the assigned rate shall

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be final except for fraud and shall be the rate upon at which contributions taxes shall be paid for the calendar year for which the rate was assigned. The contribution tax rate shall not be subject to collateral attack by way of claim for a credit adjustment or refund, or otherwise.

(b) If the legislature, subsequent to the mailing sending of the contribution tax rate, changes any of the factors used to determine the rate, the earlier notice shall be void. A new contribution tax rate based on the new factors shall be computed and mailed sent to the employer.

(c) A review of an employer's contribution tax rate may be obtained by the employer filing with, in a manner prescribed by the commissioner, a written protest within 30 calendar days from the date of the mailing of the contribution tax rate notice was sent to the employer. Upon receipt of the protest, the commissioner shall review the contribution tax rate to determine whether or not there has been any clerical error or error in computation. The commissioner shall either affirm or make a redetermination of the rate and a notice of the affirmation or redetermination shall be mailed sent to the employer by mail or electronic transmission. The affirmation or redetermination shall be final unless the employer files a written appeal within 30 calendar days after the date of mailing the affirmation or redetermination was sent. Proceedings on the appeal shall be conducted in accordance with section 268.105.

(d) The commissioner may at any time upon the commissioner's own motion correct any error in the computation or the assignment of an employer's contribution tax rate.

Subd. 7. CONTRIBUTION TAX RATE BUYDOWN. (a) Any employer who has been assigned a contribution tax rate based upon an experience rating may, upon the voluntary payment of an amount equivalent to any portion or all of the benefits charged to the employer's account, plus a surcharge of 25 percent, obtain a cancellation of benefits charged to the account equal to the payment made, less the surcharge. Upon the payment, the commissioner shall compute a new experience rating for the employer, and determine a new contribution tax rate.

(b) Voluntary payments may be made only during the 30 calendar day period immediately following the date of mailing sending of the notice of contribution tax rate. This period may be extended, upon a showing of good cause, but in no event shall a voluntary payment be allowed after 120 calendar days immediately following from the beginning of the calendar year for which the contribution tax rate is effective.

(c) Voluntary payments made within the time required will not be refunded unless a request is made in writing within 30 calendar days after mailing sending of the notice of the new contribution tax rate.

Subd. 8. SOLVENCY ASSESSMENT. (a) If the fund balance is greater than \$75,000,000 but less than \$150,000,000 on June 30 of any year, a solvency assessment on taxpaying employers will be in effect for the following calendar year. Each The employer, except those making payments in lieu of contributions shall pay a quarterly solvency assessment of ten percent multiplied by of the contributions paid or taxes due and payable for each calendar quarter in that year. Quarterly contributions and the solvency assessment payments shall be combined and will be computed notwithstanding the maximum contribution rate, by multiplying the quarterly taxable payroll by the assigned contribution rate multiplied by 1.10.

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(b) If the fund balance is less than \$75,000,000 on June 30 of any year, a solvency assessment will be in effect for the following calendar year. Each employer, except those making payments in lieu of contributions, shall pay a quarterly solvency assessment of 1.5 percent multiplied by the contributions paid or due and payable for each calendar quarter in that year. Quarterly contributions and the solvency assessment payments shall be combined and will be computed notwithstanding the maximum contribution rate, by multiplying the quarterly taxable payroll by the assigned contribution rate multiplied by 1.15 rounded to the nearest one-hundredth of a percent.

(b) The solvency assessment shall be placed into a special account from which the commissioner shall pay any interest accruing on any advance from the federal unemployment trust fund provided for under section 268.194, subdivision 6. If the commissioner determines that the balance in this special account is more than is necessary to pay the interest on any advance, the commissioner shall pay to the fund the amount in excess of that necessary to pay interest on any advance.

Sec. 14. Minnesota Statutes 1997 Supplement, section 268.057, subdivision 1, is amended to read:

Subdivision 1. **REPORTS; DELINQUENCIES; PENALTIES.** (a) Any employer who knowingly fails to make and submit to the commissioner any contribution tax report at the time the report is required under section 268.051, subdivision 1a, or 268.0511 shall pay to the department a penalty of up to \$25 or an amount of 1-1/2 percent of contributions taxes accrued for each month from and after the due date until the tax report is properly made and submitted, whichever is greater.

(b) If any employer required to make and submit contribution tax reports fails to do so within the time required, or makes submits, willfully or otherwise, an incorrect, or false, or fraudulent contribution tax report, the employer shall, on the written demand of the commissioner sent by mail or electronic transmission, make submit the contribution tax report, or corrected report, within ten days after the mailing of the written demand and at the same time pay the whole contribution, or any additional contribution, tax due. If the employer fails within that time to make submit the tax report, or corrected report and pay any tax due, the commissioner shall make a report, or corrected report, an estimated tax report from the commissioner's own knowledge and from information the commissioner may obtain and assess a contribution tax on that basis, which contribution. That assessed tax, plus any penalties and interest shall be paid within ten days after the commissioner has mailed to the employer a written notice of the amount due and demand for payment has been sent by mail or electronic transmission. Any contribution report or assessment made by the commissioner on account assessed tax because of the failure of the employer to make submit a tax report or corrected tax report shall be prima facie correct and valid, and the employer shall have the burden of establishing its incorrectness or invalidity in any subsequent action or proceeding. Whenever the delinquent employer files a tax report or corrected tax report, the commissioner may, on finding it substantially correct, substitute it for the commissioner's accept that report.

(c) If the commissioner finds that any part of any employer's contribution tax deficiency is due to fraud with intent to avoid payment of contributions taxes to the fund, 50 percent of the total amount of the deficiency or \$500, whichever is greater, shall be assessed as a penalty against the employer and collected in addition to the deficiency.

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(d) ~~Any employing unit that fails to make and submit to the commissioner any report, other than a contribution report or wage detail report, as and when required by rule, shall be subject to a penalty of \$50.~~

(e) The penalties provided for in paragraphs (a), (c), and (d) (c) are in addition to interest and any other penalties and shall be paid to the department and credited to the contingent account.

(f) (e) An employer or officer or agent of an employer is guilty of a gross misdemeanor, unless the ~~contribution tax~~ or other payment involved exceeds \$500, in which case the person is guilty of a felony, if the individual:

(1) in order to avoid becoming or remaining a subject employer or to avoid or reduce any ~~contribution tax~~ or other payment required under this chapter:

(i) makes a false statement or representation knowing it to be false; or

(ii) knowingly fails to disclose a material fact; or

(2) willfully fails or refuses to make pay any contributions taxes or other payment at the time required.

Sec. 15. Minnesota Statutes 1997 Supplement, section 268.057, subdivision 5, is amended to read:

Subd. 5. **INTEREST ON PAST DUE CONTRIBUTIONS TAXES.** ~~If contributions taxes or reimbursements payments in lieu of taxes to the unemployment fund are not paid on the date on which they are due the unpaid balance thereof shall bear interest at the rate of one and one-half percent per month or any part thereof. Contributions Taxes or reimbursements payments in lieu of taxes received by mail postmarked on a day following the date on which the law requires contributions to be paid due shall be deemed considered to have been paid on the due date if there is substantial evidence tending to prove that the contribution payment was actually deposited in the United States mails properly addressed to the department with postage prepaid thereon on or before the due date. Interest collected pursuant to this subdivision shall be paid into credited to the contingent account. Interest on contributions due under this subdivision may be waived in accordance with by rules as adopted by the commissioner may adopt.~~

Sec. 16. Minnesota Statutes 1997 Supplement, section 268.057, subdivision 6, is amended to read:

Subd. 6. **INTEREST ON JUDGMENTS.** Notwithstanding section 549.09, if judgment is or has been entered upon any past due ~~contribution tax~~ or reimbursement which has not been paid within the time specified by law for payment in lieu of taxes, the unpaid judgment shall bear interest at the rate specified in subdivision 5 until the date of payment. ~~The rate will be effective after July 1, 1987, on any unpaid judgment balances and all new judgments docketed after that date.~~

Sec. 17. Minnesota Statutes 1997 Supplement, section 268.057, subdivision 7, is amended to read:

Subd. 7. **CREDIT ADJUSTMENTS, REFUNDS.** (a) If an employer makes an application for ~~an~~ a credit adjustment of any amount paid as contributions taxes or interest thereon, ~~to be applied against subsequent contribution payments, or for a refund thereof~~

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because such adjustment cannot be made, and the payment was made within four years prior to of the year in which that the application is payment was made, and if the commissioner shall determine determines that the payment of such contributions or interest or any portion thereof was erroneous, the commissioner shall allow such employer to make an adjustment thereof, and issue a credit without interest, in connection with subsequent contribution payments by the employer, or. If such adjustment a credit cannot be made used, the commissioner shall refund from the fund to which such payment has been credited, without interest, the amount erroneously paid. For like cause and within the same period, The commissioner, on the commissioner's own motion, may make a credit adjustment or refund may be so made on the commissioner's own initiative under this subdivision.

In the event that any application for (b) If a credit adjustment or refund is denied in whole or in part, a written notice of such denial shall be mailed sent to the applicant employer by mail or electronic transmission. Within 30 calendar days after the mailing sending of such the notice of denial to the applicant's last known address, the applicant employer may request, in writing, that the commissioner grant a hearing for the purpose of reconsidering the facts submitted and to consider any additional information appeal. Proceedings on the appeal shall be conducted in accordance with section 268.105.

Sec. 18. Minnesota Statutes 1997 Supplement, section 268.059, is amended to read:

268.059 GARNISHMENT FOR DELINQUENT TAXES AND BENEFIT OVERPAYMENTS.

(a) The commissioner or a delegated representative may, within six years after the date of assessment of the tax, or payment in lieu of contribution, or determination of benefit overpayment, or if a lien has been filed, within the statutory period for enforcement of the lien, give notice to any employer that an employee of that employer owes delinquent reemployment insurance taxes or, payments in lieu of contributions taxes, or overpaid benefits, including penalties, interest, and costs, or has an unpaid benefit overpayment and that the obligation to the department should be withheld from the employee's wages. The commissioner can may proceed under this section only if the tax, payment in lieu of contributions taxes, or benefit overpayment is uncontested or if the time for any appeal has expired. The commissioner shall not proceed under this section until the expiration of 30 calendar days after mailing to the debtor employee, at the debtor's last known address, a written notice of garnishment intent to garnish wages and exemption notice. The That notice shall list:

- (1) the amount of taxes, payments in lieu of contributions taxes, overpaid benefits, interest, penalties, or costs, or benefit overpayment due from the debtor;
- (2) demand for immediate payment; and
- (3) the commissioner's intention to serve a garnishment notice on the debtor's employer pursuant to this section.

The effect of the notice shall expire 180 calendar days after it has been mailed to the debtor provided that the notice may be renewed by mailing a new notice which that is in accordance with this section. The renewed notice shall have the effect of reinstating the priority of the original claim notice. The exemption notice to the debtor shall be in substantially the same form as that provided in section 571.72. The notice shall further in-

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form the debtor of the wage right to claim exemptions contained in section 550.37, subdivision 14. If no statement written claim of exemption is received by the commissioner within 30 calendar days ~~from the~~ after mailing of the notice, the commissioner may proceed ~~under this section with the garnishment.~~ The notice to the debtor's employer may be served by mail ~~or by delivery by an employee of the commissioner~~ and shall be in substantially the same form as provided in section 571.75. Upon receipt of the garnishment notice, the employer shall retain withhold from the earnings due or to become due to the employee, the total amount shown by on the notice plus accrued interest, subject to the provisions of section 571.922. The employer shall continue to retain withhold each pay period the amount shown on the notice plus accrued interest until the garnishment notice is released by the commissioner. Upon receipt of notice by the employer, the claim of the commissioner shall have priority over any subsequent garnishments or wage assignments. The commissioner may arrange between the employer and employee for retaining withholding a portion of the total amount due the employee each pay period, until the total amount shown by on the notice plus accrued interest has been retained withheld.

The "earnings due" any employee is as defined in accordance with section 571.921. The maximum garnishment allowed ~~under this section~~ for any one pay period shall be decreased by any amounts payable pursuant to a any other garnishment action with respect to which the employer was served prior to being served with the garnishment notice of delinquency, and any amounts covered by any irrevocable and previously effective assignment of wages; the employer shall give notice to the commissioner of the amounts and the facts relating to the assignment within ten days after the service of the garnishment notice of delinquency on the form provided by the commissioner as noted in this section.

(b) If the employee ceases to be employed by the employer before the full amount set forth in a on the garnishment notice of garnishment plus accrued interest has been retained withheld, the employer shall immediately notify the commissioner in writing of the termination date of the employee and the total amount retained withheld. No employer may discharge or otherwise discipline any employee by the reason of the fact that because the commissioner has proceeded under this section. If an employer discharges an employee in violation of this provision section, the employee shall have the same remedy as provided in section 571.927, subdivision 2.

(c) Within ten calendar days after the expiration of the pay period, the employer shall remit to the commissioner, on a form and in the manner prescribed by the commissioner, the amount retained withheld during each pay period under this section.

(d) Paragraphs (a) to (c), except provisions imposing a liability on the employer for failure to retain or remit, shall apply to cases in which if the employer is the United States or any instrumentality thereof or this state of Minnesota or any political subdivision thereof.

(e) The commissioner shall refund to the employee any excess amounts retained withheld from the employee under this section. If any excess results from payments by the employer because of willful failure to retain or remit as prescribed in paragraph (c), the excess attributable to the employer's payment shall be refunded to the employer.

(f) Employers required to retain delinquent amounts under this section shall not be required to compute any additional interest, costs, or other charges to be retained.

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~~(e)~~ (f) An employer that fails or refuses to comply with the requirements of this section shall be liable as provided in section 268.058, subdivision 3, paragraph (i).

Sec. 19. Minnesota Statutes 1997 Supplement, section 268.063, is amended to read:

268.063 PERSONAL LIABILITY.

(a) Any officer, director, or employee of a corporation or any manager, governor, member, or employee of a limited liability company ~~which is an employer under sections 268.03 to 268.23~~, who

(1) either individually or jointly with others, have or should have had control of, supervision over, or responsibility for the filing of the tax reports or ~~the making of payments paying the amounts due under this chapter~~, and

(2) ~~willfully fails to file the tax reports or to make payments as required pay the amounts due, shall be personally liable for contributions taxes or reimbursement payments in lieu of taxes, including interest, penalties, and costs in the event the employer does not pay to the department those amounts for which the employer is liable.~~

For purposes of this subdivision section, "willfulness" means that the facts demonstrate that the responsible party used or allowed the use of corporate or company assets to pay other creditors knowing that the payments required amounts due under this chapter were unpaid. An evil motive or intent to defraud is not necessary to satisfy the willfulness requirement.

(b) Any partner of a limited liability partnership, or professional limited liability partnership, shall be jointly and severally liable for contributions taxes or reimbursement payments in lieu of taxes, including interest, penalties, and costs in the event the employer does not pay to the department those amounts for which the employer is liable.

(c) Any personal representative of the estate of a decedent or fiduciary who voluntarily distributes the assets ~~filed therein~~ without reserving a sufficient amount to pay the contributions taxes, payments in lieu of taxes, interest, and penalties due pursuant to this chapter shall be personally liable for the deficiency.

(d) The personal liability of any ~~person as provided herein~~ individual shall survive dissolution, reorganization, receivership, or assignment for the benefit of creditors. For the purposes of this subdivision section, all wages paid by the employer shall be considered earned from the person individual determined to be personally liable.

An official designated by ~~(e)~~ The commissioner shall make an initial determination as to the personal liability ~~under this section~~. The determination shall be final unless the person individual found to be personally liable ~~shall~~ within 30 calendar days after mailing of notice of determination to the person's individual's last known address ~~file files~~ a written protest. Upon receipt of the protest, the official commissioner shall reexamine the personal liability determination and either affirm or redetermine the assessment of personal liability and a notice of the affirmation or redetermination shall be mailed to the person's individual's last known address. The affirmation or redetermination shall become final unless a written appeal is filed within 30 calendar days ~~of after~~ the date of mailing. Proceedings on the appeal shall be conducted in accordance with section 268.105.

New language is indicated by underline, deletions by ~~strikeout~~.

Sec. 20. Minnesota Statutes 1997 Supplement, section 268.064, subdivision 2, is amended to read:

Subd. 2. **REASONABLE VALUE.** ~~An official, designated by~~ The commissioner, upon the ~~official's~~ commissioner's own motion or upon application of the potential successor, shall determine the reasonable value of the organization, trade, or business or assets acquired by the successor based on available information. The determination shall be final unless the successor, within 30 calendar days after the mailing sending of notice of the determination to the ~~successor's last known address~~ successor by mail or electronic transmission, files a written appeal from it. Proceedings on the appeal shall be conducted in accordance with section 268.105.

Sec. 21. Minnesota Statutes 1997 Supplement, section 268.066, is amended to read:

268.066 CANCELLATION OF DELINQUENT CONTRIBUTIONS TAXES.

(a) ~~The commissioner may~~ shall cancel as uncollectible any ~~contributions taxes, reimbursements payments in lieu of taxes,~~ penalties, or the interest or costs thereon, which remain unpaid six years after the amounts have been first determined by the commissioner to be due and payable. ~~This section does not prohibit the commissioner from collecting any, except where the delinquent amounts are secured by a notice of lien or, a judgment which are older than six years, are in the process of garnishment, or are under a payment plan.~~

(b) ~~The commissioner may cancel at any time as uncollectible any taxes, payments in lieu of taxes, penalties, or the interest or costs thereon, that the commissioner determines are uncollectible due to death or bankruptcy.~~

Sec. 22. Minnesota Statutes 1997 Supplement, section 268.067, is amended to read:

268.067 COMPROMISE AGREEMENTS.

(a) The commissioner, ~~or an authorized representative,~~ may compromise in whole or in part any action, determination, or decision ~~which that~~ affects an employer and ~~which that~~ has become final during the ~~preceding~~ prior 24 months.

(b) The commissioner, ~~or an authorized representative,~~ may at any time compromise delinquent employer ~~contributions taxes, reimbursements payments in lieu of taxes,~~ interest, penalties, and costs ~~under this section.~~

(c) Any compromise under paragraphs (a) and (b) shall be by written agreement signed by the ~~employing unit~~ employer and the commissioner or authorized representative.

The department commissioner shall enter into a compromise agreement only if it is in the best interest of the state of Minnesota. The written agreement must set forth the reason and all the terms of the agreement. ~~Any agreements under this section~~ The agreement must be approved by an attorney who is a regularly salaried employee of the department and who has been designated by the commissioner for that purpose.

Sec. 23. Minnesota Statutes 1997 Supplement, section 268.07, is amended to read:

268.07 REEMPLOYMENT INSURANCE ACCOUNT.

Subdivision 1. **APPLICATION; DETERMINATION.** (a) An application for re-employment insurance benefits may be made in person, by mail, by telephone, or by elec-

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tronic transmission as the commissioner shall require. The commissioner may by rule adopt other requirements for an application.

(b) ~~An official, designated by The commissioner,~~ shall promptly examine each application for benefits to determine the base period, the benefit year, the weekly benefit amount payable, if any, and the maximum benefit amount of benefits payable, if any. The determination shall be known as the determination of reemployment insurance account. A ~~written~~ determination of reemployment insurance account must be promptly mailed sent to the claimant and all base period employers, by mail or electronic transmission.

(c) If a base period employer failed to provide wage information for the claimant as required in section 268.044, the commissioner shall accept a claimant certification as to wage credits, based upon the claimant's records, and issue a determination of reemployment insurance account.

(d)(1) The commissioner may, at any time within 24 months from the establishment of a reemployment insurance account, reconsider any determination of reemployment insurance account and make a redetermination if the commissioner finds that the determination was incorrect for any reason. A ~~written~~ redetermination of reemployment insurance account shall be promptly mailed sent to the claimant and all base period employers, by mail or electronic transmission.

(2) If a redetermination of reemployment insurance account reduces the weekly benefit amount or maximum benefit amount of benefits payable, any benefits paid greater than the claimant was entitled is an overpayment of these benefits subject to section 268.18, ~~except when, in the absence of fraud, a redetermination is due to an error or omission by an employer in providing wage information as required in section 268.044.~~

Subd. 2. **WEEKLY BENEFIT AMOUNT AND DURATION MAXIMUM AMOUNT OF BENEFITS.** (a) To establish a reemployment insurance account, a claimant must have:

(1) wage credits in two or more calendar quarters of the claimant's base period;

(2) minimum total wage credits equal to or greater than the high quarter wage credits multiplied by 1.25;

(3) high quarter wage credits of not less than \$1,000.

(b) If the commissioner finds that a claimant has established a reemployment insurance account, the weekly benefit amount payable to the claimant during the claimant's benefit year shall be equal to ~~1/26 of the claimant's high quarter wage credits, rounded to the next lower whole dollar.~~ the higher of:

(1) 50 percent of the claimant's average weekly wage during the claimant's base period, to a maximum of 66-2/3 percent of the state's average weekly wage; or

(2) 50 percent of the claimant's average weekly wage during the high quarter to a maximum of 50 percent of the state's average weekly wage, or \$331, whichever is higher.

The claimant's average weekly wage under clause (1) shall be computed by dividing the claimant's total wage credits by 52. The claimant's average weekly wage under clause (2) shall be computed by dividing the claimant's high quarter wage credits by 13.

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(c) Notwithstanding paragraph (b), the maximum weekly benefit amount for any reemployment insurance account established during the 12-month period subsequent to June 30 of any year shall be determined on the basis of the reemployment insurance fund balance on December 31 of the preceding year. If the fund balance is less than \$70,000,000 on that date, the maximum weekly benefit amount shall be $66\frac{2}{3}$ percent of the state's average weekly wage; if the fund balance is more than \$70,000,000 but less than \$100,000,000, the maximum weekly benefit amount is 66 percent of the state's average weekly wage; if the fund balance is more than \$100,000,000 but less than \$150,000,000, the maximum weekly benefit amount is 65 percent of the state's average weekly wage; if the fund balance is more than \$150,000,000 but less than \$200,000,000, the maximum weekly benefit amount is 64 percent of the state's average weekly wage; if the fund balance is more than \$200,000,000 but less than \$250,000,000, the maximum weekly benefit amount is 63 percent of the state's average weekly wage; if the fund balance is more than \$250,000,000 but less than \$300,000,000, the maximum weekly benefit amount is 62 percent of the state's average weekly wage; if the fund balance is more than \$300,000,000 but less than \$350,000,000, the maximum weekly benefit amount is 61 percent of the state's average weekly wage; if the fund balance is more than \$350,000,000, the maximum weekly benefit amount is 60 percent.

(c) The state's maximum weekly benefit amount and the claimant's weekly benefit amount shall be computed to the nearest whole dollar.

(d) The maximum benefit amount of benefits payable on any reemployment insurance account shall equal one-third of the claimant's total wage credits rounded to the next lower dollar, not to exceed 26 times the claimant's weekly benefit amount.

Subd. 3. **SECOND ACCOUNT REQUIREMENTS.** To establish a second reemployment insurance account following the expiration of a benefit year on a preceding prior reemployment insurance account, a claimant must have sufficient wage credits to establish a reemployment insurance account under the provisions of subdivision 2 and must have performed services in covered employment after the establishment effective date of the preceding prior reemployment insurance account. The wages paid for these services that employment must equal not less than eight times the weekly benefit amount of the preceding prior reemployment insurance account. A reemployment insurance account established sufficiently in advance of anticipated unemployment to make the limitations of this paragraph subdivision ineffective shall not be allowed. It is the purpose of this provision subdivision is to prevent a claimant from establishing more than one reemployment insurance account as a result of one separation from employment.

Subd. 3a. **RIGHT OF APPEAL.** (a) A determination or redetermination of a reemployment insurance account shall be final unless a claimant or base period employer within 15 30 calendar days after the mailing sending of the determination or redetermination to the last known address files a written an appeal. Every determination or redetermination of a reemployment insurance account shall contain a prominent statement indicating in clear language the method of appealing, the time within which the appeal must be made, and the consequences of not appealing. Proceedings on the appeal shall be conducted in accordance with section 268.105.

(b) Any claimant or base period employer may appeal from a determination or redetermination of a reemployment insurance account on the issue of whether an employing unit is an employer within the meaning of this chapter or whether services performed

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constitute employment ~~within the meaning of this chapter~~ and covered employment. Proceedings on the appeal shall be conducted in accordance with section 268.105.

Subd. 3b. **LIMITATIONS.** (a) A reemployment insurance account shall be established the Sunday of the calendar week in which ~~that~~ the application for reemployment insurance benefits was made. If an individual attempted to make an application for a reemployment insurance account, but was prevented from making an application by the department, the reemployment insurance account shall be established the Sunday of the calendar week the individual first attempted to make an application.

(b) A reemployment insurance account, once established, may be withdrawn and a new account established only if the claimant has not been credited with a waiting week under section 268.08 268.085, subdivision 1, clause (3). A determination or amended determination pursuant to section 268.101, that was issued before the withdrawal of the reemployment insurance account, shall remain in effect and shall not be voided by the withdrawal of the reemployment insurance account. A determination of disqualification requiring subsequent earnings to satisfy the disqualification shall apply to the weekly benefit amount on the new account.

(c) A reemployment insurance account shall not be established prior to the Sunday following the expiration of the benefit year on a preceeding prior reemployment insurance account.

(d) All benefits shall be payable from the Minnesota reemployment insurance fund only for weeks occurring during the benefit year.

Sec. 24. Minnesota Statutes 1996, section 268.08, as amended by Laws 1997, chapter 66, sections 36, 37, 38, 39, 40, 41, and 42, is amended to read:

268.08 PERSONS ELIGIBLE TO RECEIVE BENEFITS.

Subdivision 1. **ELIGIBILITY CONDITIONS.** A claimant shall be eligible to receive benefits for any week in the claimant's benefit year only if:

(1) the claimant has made a continued claim for benefits in person, by mail, by telephone, or by electronic transmission as the commissioner shall require. The commissioner may by rule adopt other requirements for a continued claim;

(2) the claimant was able to work and was available for employment, and was actively seeking employment. The claimant's weekly benefit amount shall be reduced one-fifth for each day the claimant is unable to work or is unavailable for employment.

Benefits shall not be denied by application of this clause to a claimant who is in training with the approval of the commissioner, ~~is a dislocated worker as defined in section 268.975, subdivision 3, in training approved by the commissioner, or in training approved pursuant to section 236 of the Trade Act of 1974, as amended.~~

A claimant serving as a juror shall be considered as available for employment and actively seeking employment on each day the claimant is on jury duty;

(3) the claimant has been unemployed for ~~served~~ a waiting period of one week during which ~~that~~ the claimant is otherwise entitled to benefits. This clause shall not apply if the claimant would have been entitled to federal disaster unemployment assistance because of a disaster in Minnesota, but for the claimant's establishment of a reemployment insurance account under section 268.07; and

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(4) the claimant has been participating in reemployment services, such as job search assistance services, if the claimant has been determined likely to exhaust benefits and in need of reemployment services pursuant to a profiling system established by the commissioner, unless there is justifiable cause for the claimant's failure to participate.

Subd. 1a. **BENEFITS DUE DECEASED PERSONS.** Upon the death of any claimant for benefits, and in the event it is found by the commissioner that ~~if benefits have accrued and are due and payable to that claimant and remain wholly or partially unpaid at the time of the a claimant's death, or in the event there have been issued and unpaid one or more benefit checks,~~ those ~~checks~~ benefits may, upon application therefor, be paid to the ~~duly qualified administrator or executor~~ personal representative of the estate of the deceased claimant. In the event that no ~~administrator or executor~~ personal representative is appointed to administer the estate of the deceased, if any, the benefits may, upon the order and direction of the commissioner application be paid to any person designated by the commissioner in the following order: (1) the surviving spouse, (2) the surviving child or children, or (3) the surviving parent or parents.

A person ~~An individual seeking payment under this subdivision shall complete an affidavit on a form application prescribed by the department commissioner and the payment of benefits to a person pursuant to an affidavit under this subdivision shall discharge the obligations of the department to the claimant to the extent of the payment, and no other person individual shall claim or assert any right with respect thereto to those benefits.~~

Subd. 2. **NOT ELIGIBLE.** A claimant shall not be eligible to receive benefits for any week:

(1) ~~unless it that occurs subsequent to before~~ the establishment of a reemployment insurance account;

(2) ~~which that occurs in a period when the claimant is a full-time student in attendance at, or on vacation from an established a secondary school, college, or university unless a majority of the claimant's wages paid during the 52 weeks preceding the establishment of a reemployment insurance account were for services performed during weeks that the claimant was attending school as a full-time student;~~

(3) ~~in which that~~ the claimant is incarcerated. The claimant's weekly benefit amount shall be reduced by one-fifth for each day the claimant is incarcerated;

(4) ~~in which that~~ the claimant is on a voluntary leave of absence. A claimant unemployed as a result of a uniform vacation shutdown shall not be considered on a voluntary leave of absence;

(5) ~~in which that~~ the claimant is performing services on a full-time basis 32 hours or more, in employment, covered employment, noncovered employment, self-employment, or volunteer work regardless of the amount of any earnings; or

(6) with respect to which the claimant is receiving, has received, or has filed a claim for reemployment insurance benefits under any law of any other state, or the federal government, but not including any federal or state benefits that are merely supplementary to those provided for under this chapter; provided that if the appropriate agency finally determines that the claimant is not entitled to the benefits, this clause shall not apply.

Subd. 2a. **SUSPENSION FROM EMPLOYMENT.** (a) A claimant who has been suspended from employment for 30 calendar days or less, as a result of misconduct as

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defined under section ~~268.09~~ 268.095, subdivision ~~4~~ 6, shall be ineligible for benefits ~~commencing beginning~~ the Sunday of the week ~~in which~~ that the claimant was suspended and continuing for the duration of the suspension.

(b) A suspension from employment for more than 30 calendar days shall be considered a discharge from employment under section ~~268.09~~ 268.095, subdivision ~~4~~ 5.

Subd. 3. **DEDUCTIBLE PAYMENTS.** A claimant shall not be eligible to receive benefits for any week with respect to which the claimant is receiving, has received, or has filed a claim for payment in an amount equal to or in excess of the claimant's weekly benefit amount in the form of:

(1) termination, severance, or dismissal payment or wages in lieu of notice whether legally required or not. This clause shall apply to the first four weeks of payment and to one-half of the total number of any additional weeks of payment. This clause shall be applied to the period immediately following the last day of employment. The number of weeks of payment shall be determined as follows:

(i) if the payments are made periodically, the total of the payments to be received shall be divided by the claimant's last level of regular weekly pay from the employer; or

(ii) if the payment is made in a lump sum, that sum shall be divided by the claimant's last level of regular weekly pay from the employer;

(2) vacation allowance paid directly by the employer for a period of requested vacation, including vacation periods assigned by the employer under a collective bargaining agreement, or uniform vacation shutdown; or

(3) compensation for loss of wages under the workers' compensation law of this state or any other state or under a similar law of the United States, or under other insurance or fund established and paid for by the employer; or

(4) ~~50 percent of the pension, retirement, or annuity payments from any fund, annuity or insurance maintained or plan contributed to by a base period employer including the armed forces of the United States if the claimant contributed to the fund, annuity or insurance and all of the pension payments if the claimant did not contribute to the fund, annuity or insurance; or~~

~~(5) 50 percent of a primary insurance benefit under title II of the Social Security Act, as amended, or similar benefits under any act of Congress or this state or any other state government, except social security benefits as provided for in subdivision 4. The base period employer contributed to the plan if the contribution is excluded from the definition of wages under section 268.035, subdivision 29, clause (1), or United States Code, title 26, section 3121, clause (2), of the Federal Insurance Contribution Act.~~

~~Provided, that~~ If the payment under this subdivision is less than the claimant's weekly benefit amount, the claimant shall be entitled to receive for that week, if otherwise eligible, benefits reduced by the amount of the payment; provided, further, that if the appropriate agency of this state or any other state or the federal government finally determines that the claimant is not entitled to payments, this subdivision shall not apply. If the computation of reduced benefits is not a whole dollar, it shall be rounded down to the next lower dollar.

New language is indicated by underline, deletions by ~~strikeout~~.

Subd. 3a. **DEDUCTIBLE EARNINGS.** (a) If the claimant has earnings, including holiday pay, with respect to any week, from employment, covered employment, noncovered employment, self-employment, or volunteer work, equal to or in excess of the claimant's weekly benefit amount, the claimant shall be ineligible for benefits for that week.

(b) If the claimant has earnings, including holiday pay, with respect to any week, from employment, covered employment, noncovered employment, self-employment, or volunteer work, that is less than the claimant's weekly benefit amount, the following shall be deducted from the claimant's weekly benefit amount:

(1) that amount in excess of \$50 if the claimant's earnings were \$200 or less, and that amount in excess of 25 percent of the claimant's earnings if those earnings were more than \$200; and

(2) that amount in excess of \$200 for earnings from service in the National Guard or a United States military reserve unit.

The resulting benefit, if not a whole dollar, shall be rounded to the next lower dollar.

(c) No deduction shall be made from a claimant's weekly benefit amount for earnings from service as a volunteer firefighter or volunteer ambulance service personnel. No deduction shall be made for jury duty pay.

(d) The claimant may report deductible earnings on continued claims for benefits at the nearest whole dollar amount.

Subd. 3b. **RECEIPT OF BACK PAY.** Back pay received by a claimant with respect to any weeks occurring in the 104 weeks immediately preceding prior to the payment of the back pay shall be deducted from benefits paid for those weeks.

The amount deducted shall not reduce the benefits that the claimant is otherwise eligible for that week below zero. If the amount of benefits after the deduction of back pay is not a whole dollar amount, it shall be rounded to the next lower dollar.

If the back pay awarded the claimant is reduced by benefits paid, the amounts withheld shall be: (a) paid by the employer into the fund within 30 days of the award and are subject to the same collection procedures that apply to past due contributions taxes under this chapter; (b) applied to benefit overpayments resulting from the payment of the back pay; (c) credited to the claimant's maximum amount of benefits payable in a benefit year that includes the weeks for which back pay was deducted. Benefit charges for those weeks shall be removed from the employer's account as of the calendar quarter in which that the fund receives payment.

Payments to the fund under this subdivision shall be considered as made by the claimant.

Subd. 4. SOCIAL SECURITY AMOUNT DEDUCTED FROM BENEFITS.

(a) Any claimant aged 62 or over who has not established a reemployment insurance account based on employment subsequent to the first receipt of primary insurance benefits under Title II of the federal social security act, as amended, or similar old age benefits under any act of Congress or this state or any other state shall be required to state in writing at the time of establishing making an application for a reemployment insurance ac-

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count and when making continued claims whether the claimant is receiving, has filed for, or intends to seek Title II file for, primary social security old age or disability benefits for any week during which the claimant will receive unemployment benefits the benefit year, and if the claimant so intends there shall be withheld deducted from the claimant's weekly unemployment benefits an benefit amount sufficient to cover the otherwise payable for that week, 50 percent of the weekly equivalent of the social security benefit.

(b) In addition to paragraph (a), a claimant shall be ineligible for benefits for any week with respect to which the claimant is receiving, has received, or has filed a claim for primary social security disability benefits, unless the social security administration has approved the payment of disability benefits while the claimant was employed.

(c) Any claimant disclaiming such intention but who nevertheless receives such social security benefits, that would cause the claimant to be ineligible under this subdivision, for weeks for which that the claimant previously received unemployment reemployment insurance benefits shall be liable for repayment of such unemployment considered overpaid reemployment insurance benefits and otherwise subject to the provisions of under section 268.18.

Subd. 5a. **SELF-EMPLOYMENT.** (a) A claimant who is determined to be likely to exhaust regular reemployment insurance benefits and is enrolled in a dislocated worker program shall be considered in approved training for purposes of this chapter for each week the claimant is engaged on a full-time basis in activities, including training, relating to the establishment of a business and becoming self-employed. A claimant who meets the requirements of this subdivision shall be considered unemployed for purposes of this chapter. Income earned from the self-employment activity shall not be considered for purposes of subdivision 3a 5. Under no circumstances shall more than five percent of the number of claimants receiving regular reemployment insurance benefits be actively enrolled in this program at any time. This subdivision shall not apply to claimants claiming state or federal extended or additional benefits.

(b) This subdivision shall apply to weeks beginning after April 18, 1995, or weeks beginning after approval of this subdivision by the United States Department of Labor whichever date is later. This subdivision shall have no force or effect for any purpose as of the end of the week preceding the date when federal law no longer authorizes the provisions of this subdivision, unless such date is a Saturday in which case this subdivision shall have no force and effect for any purpose as of that date.

Subd. 6. **SERVICES PERFORMED FOR STATE, MUNICIPALITIES, OR CHARITABLE CORPORATION SCHOOL EMPLOYEES.** Benefits based on service in employment defined in section 268.04, subdivision 12, clauses (7), (8) and (9), are payable in the same amount, on the same terms and subject to the same conditions as benefits payable on the basis of other service subject to this chapter; except that:

(a) Benefits based upon service performed No wage credits in any amount from any employment with any educational institution or institutions earned while in an instructional, research, or principal administrative capacity for an educational institution, shall not be paid may be used for benefit purposes for any week of unemployment commencing beginning during the a period between two successive academic years or terms, or during a similar period between two regular but not successive terms, or during a period of paid sabbatical leave provided for in the claimant's contract, to any claimant if:

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(1) the claimant performs the services had employment in any instructional, research, or principal administrative capacity for any educational institution or institutions in the first of the academic years or terms; and

if (2) there is a contract or a reasonable assurance that the claimant will perform services in any such capacity have employment in any instructional, research, or principal administrative capacity for an any educational institution or institutions in the second of the academic years or terms, that is substantially similar to the employment of the first academic years or terms;

(b) With respect to employment in any capacity other than those described in paragraph (a), including educational assistants, benefits shall not be paid based upon wage credits earned with from any educational institution or institutions for any week which commences beginning during a period between two successive academic years or terms if the claimant was employed in the first academic year or term by any educational institution or institutions and there is reasonable assurance that the claimant will be employed under similar terms and conditions by any educational institution or institutions in the second academic year or term. A claimant who has an agreement for a definite period of employment between academic years or terms shall be eligible for any weeks within that period the educational institution or institutions fails to provide employment. If benefits are denied to any claimant under this paragraph and the claimant was not offered an opportunity to perform the employment in the second of the academic years or term, the claimant shall be entitled to a retroactive payment of benefits for each week in which that the claimant filed a timely continued claim for benefits, but the continued claim was benefits were denied solely because of this paragraph;

(c) With respect to services employment described in paragraph (a) or (b), benefits payable on the basis of the services based upon wage credits from any educational institution or institutions shall not be paid to any claimant for any week which commences beginning during an established and customary vacation period or holiday recess if the claimant performs the services was employed in the period immediately before the vacation period or holiday recess, and there is a reasonable assurance that the claimant will perform the services be employed in the period immediately following the vacation period or holiday recess;

(d) With respect to services described in paragraph (a) or (b), benefits shall not be payable on the basis of services in any capacity specified in Paragraphs (a), (b), and (c) to any claimant who performed those services in an educational institution while in the employ of shall apply to employment with an educational service agency if the claimant performed the services at an educational institution or institutions. For purposes of this paragraph, "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing services to one or more educational institutions; and

(e) With respect to services to state and local government Paragraphs (a) to (d) shall apply to employment with Minnesota or a political subdivision, or a nonprofit organizations covered by section 501(c)(3) of the Internal Revenue Code of 1986, as amended through December 31, 1992 organization, if the services are provided to or on behalf of an educational institution, benefits must be denied under the same circumstances as described in paragraphs (a) to (d) or institutions.

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(f) Paragraphs (a), (b), and (c) shall apply beginning the Sunday of the week that there is a contract or reasonable assurance of employment.

(g) Employment with multiple education institutions shall be aggregated for purposes of application of this subdivision.

(h) An "educational institution" is an educational entity operated by Minnesota or a political subdivision or an instrumentality thereof, or an educational organization described in United States Code, title 26, section 501(c)(3), of the federal Internal Revenue Code and exempt from income tax under section 501(a).

Subd. 7. **PROFESSIONAL ATHLETES.** Benefits shall not be paid to a claimant on the basis of any service wage credits from employment that substantially ~~all of which~~ consist consists of participating in sports or athletic events or training or preparing to so participate for any week ~~which commences that begins~~ during during the period between two successive sport seasons (or similar periods) if the claimant performed such service was so employed in the first of such seasons season (or similar period) and there is a reasonable assurance that the claimant will perform such service be so employed in the later of such seasons following season (or similar periods).

Subd. 8. **ILLEGAL ALIENS.** (a) An alien shall be ineligible for benefits for any week the alien is not authorized to work in the United States under federal law.

(b) Benefits shall not be paid on the basis of services performed wage credits earned by an alien unless such the alien is a claimant who (1) was lawfully admitted for permanent residence at the time such services were performed of the employment, (2) was lawfully present for the purposes of performing such services the employment, or (3) was permanently residing in the United States under color of law at the time such services were performed (of the employment including an alien who was lawfully present in the United States as a result of the application of the provision of section 203(a)(7) or section 212(d)(5) of the Immigration and Nationality Act).

(b) (c) Any data or information required of claimants applying for benefits to determine whether benefits are not payable to them eligibility because of their alien status shall be uniformly required from all applicants for benefits claimants.

(e) In the case of a claimant whose application for benefits would otherwise be approved, no determination that benefits to such claimant are not payable because of alien status shall be made except upon a preponderance of the evidence.

Subd. 9. **SERVICES FOR CERTAIN SCHOOL CONTRACTORS.** Benefits based upon services performed for Wage credits from an employer are subject to subdivision 6 7, paragraphs (b) and (c) if:

(a) (1) the employment was provided pursuant to a contract between the employer and a public or private school an educational institution;

(b) (2) the contract was for services which that the public or private school educational institution could have had performed by its employees; and

(c) the employment was not as defined in section 268.04, subdivision 12, clauses (7), (8), and (9); and

(d) (3) the claimant was notified in writing of the provisions of this subdivision while employed in 1983 or prior to or at the time of commencing beginning the employment.

New language is indicated by underline, deletions by strikeout.

Subd. 10. **SEASONAL EMPLOYMENT.** (a) If a claimant has wage credits from seasonal employment, benefits shall be payable only if the claimant can establish a reemployment insurance account under section 268.07, subdivision 2, excluding the wage credits from seasonal employment. For purposes of this subdivision, "seasonal employment" means employment with a single employer in the recreation or tourist industry that is available with the employer for 15 consecutive weeks or less each calendar year.

(b) Wage credits from seasonal employment may not be used for benefit purposes during weeks outside the normal season.

Subd. 11. **BUSINESS OWNERS.** Wages paid by Wage credits from an employing unit employer may not be used for benefit purposes by any claimant who:

(1) individually, jointly, or in combination with the claimant's spouse, parent, or child owns or controls directly or indirectly 25 percent or more interest in the employing unit employer, or is the spouse, parent, or minor child of any individual who owns or controls directly or indirectly 25 percent or more interest in the employing unit employer; and

(2) is not permanently separated from employment.

This subdivision is effective when the claimant has been paid four times the claimant's weekly benefit amount in the current benefit year.

Sec. 25. Minnesota Statutes 1997 Supplement, section 268.09, subdivision 1a, is amended to read:

Subd. 1a. **QUIT.** A claimant who quits employment shall be disqualified from benefits:

(1) unless the claimant quit the employment because of a good reason caused by the employer;

(2) unless the claimant quit the employment to accept other covered employment that provided substantially higher wages or substantially better conditions of employment or both, but the claimant did not work long enough at the other employment to have sufficient subsequent earnings to satisfy the disqualification that would otherwise be imposed;

(3) unless the claimant quit the employment within 30 calendar days of commencing beginning the employment because the employment was unsuitable for the claimant;

(4) unless the employment was unsuitable for the claimant and the claimant quit to enter approved training;

(5) unless the employment was part time and the claimant had full-time employment in the base period, that the claimant separated from because of nondisqualifying reasons, sufficient to meet the minimum requirements to establish a reemployment insurance account under section 268.07, subdivision 2; or

(6) unless the claimant quit the employment because of the claimant's serious illness made it medically necessary that the claimant quit, provided that the claimant made reasonable efforts to ~~retain~~ remain in that employment in spite of the serious illness.

Reasonable efforts to remain in that employment require that the claimant inform the employer of the serious illness and request accommodation.

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A claimant who quit employment because of the claimant's serious illness of chemical dependency, has not made reasonable efforts to ~~retain the~~ remain in that employment if the claimant has previously been professionally diagnosed as chemically dependent, or has previously voluntarily submitted to treatment for chemical dependency, and has failed to make consistent efforts to ~~maintain the treatment the claimant knows or has been professionally advised is necessary to~~ control the chemical dependency.

Sec. 26. Minnesota Statutes 1997 Supplement, section 268.09, subdivision 10, is amended to read:

Subd. 10. **DISCHARGE.** A claimant who is discharged from employment by an employer shall not be disqualified from benefits:

(1) unless the claimant was discharged because of misconduct that interfered with and adversely affected that employment. This clause shall not apply if:

(i) the misconduct was a direct result of the claimant's serious illness provided that the claimant made reasonable efforts to ~~retain the~~ remain in that employment in spite of the serious illness.

Reasonable efforts to remain in that employment require that the claimant inform the employer of the serious illness and request accommodation.

If the misconduct was a direct result of the claimant's serious illness of chemical dependency, the claimant has not made reasonable efforts to ~~retain remain in that employment~~ if the claimant has previously been professionally diagnosed chemically dependent or the claimant has previously voluntarily submitted to treatment for chemical dependency and has failed to make consistent efforts to ~~maintain the treatment the claimant knows or has been professionally advised is necessary to~~ control the chemical dependency; ~~or~~.

This subclause shall not apply if the misconduct was a violation of section 169.121, 169.1211, or 169.123; or

(ii) the employment was part time and the claimant had full-time employment in the base period, that the claimant separated from because of nondisqualifying reasons, sufficient to meet the minimum requirements to establish a reemployment insurance account under section 268.07, ~~subdivision 2;~~

(2) unless the claimant was discharged because of gross misconduct that interfered with and adversely affected that employment. For the purpose of this clause, "gross misconduct" means:

(i) the commission of any act that amounts to a gross misdemeanor or felony; or

(ii) for an employee of a facility as defined in section 626.5572, gross misconduct includes an act of patient or resident abuse, financial exploitation, or recurring or serious neglect, as defined in section 626.5572 and applicable rules.

If a claimant is convicted of a gross misdemeanor or felony for the same act or acts for which the claimant was discharged, it is ~~conclusively presumed to be~~ gross misconduct; or

(3) if the claimant was discharged because the claimant gave notice of intention to quit the employment within 30 calendar days. This clause shall be effective only through

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the end of the calendar week that includes the intended date of quitting. Thereafter the separation from employment shall be considered a quit of employment by the claimant, and a disqualification, if any, shall ~~commence~~ begin with the Sunday of the week following the week that includes the intended date of quitting.

Sec. 27. Minnesota Statutes 1997 Supplement, section 268.09, subdivision 13, is amended to read:

Subd. 13. **ACT OR OMISSIONS AFTER SEPARATION.** Except as provided for under subdivision 14 8, a claimant shall not be disqualified from benefits for any acts or omissions occurring after the claimant's separation from employment with the employer.

Sec. 28. Minnesota Statutes 1997 Supplement, section 268.09, subdivision 16, is amended to read:

Subd. 16. **DISQUALIFICATION DURATION.** (a) A disqualification from the payment of benefits under subdivisions ~~1a 1, 10 4, and 14 8~~ shall be for the duration of the claimant's unemployment and until the end of the calendar week ~~in which that the claimant had total earnings in subsequent covered employment of eight times the claimant's weekly benefit amount.~~

(b) Any disqualification imposed under subdivisions ~~1a 1 and 10 4~~ shall ~~commence~~ begin on the Sunday of the week ~~in which that the claimant became separated from employment.~~ Any disqualification imposed under subdivision ~~14 8~~ shall ~~commence~~ begin on the Sunday of the week the claimant failed to apply for, accept, or avoided employment.

(c) Notwithstanding paragraph (a), if the claimant was discharged from employment because of gross misconduct that ~~interfered with and adversely affected that employment,~~ the disqualification shall be for the duration of the claimant's unemployment and until the end of the calendar week ~~in which that the claimant had total earnings in subsequent covered employment of 12 times the claimant's weekly benefit amount.~~ In addition, wage credits from that employment shall be canceled and the claimant's ~~reemployment insurance account redetermined pursuant to section 268.07, subdivision 1, paragraph (d).~~

Sec. 29. Minnesota Statutes 1997 Supplement, section 268.09, subdivision 17, is amended to read:

Subd. 17. **APPLICATION.** This section shall apply to:

(1) all covered employment, full time or part time, temporary or limited duration, permanent or indefinite duration, that occurred during the base period, the period between the end of the base period and the effective date of the reemployment insurance account, or the benefit year, except as provided for in subdivisions ~~1a 1, clause (5); and 10 4, clause (1)(ii); or~~

(2) all covered employment occurring in this state, and employment covered under a reemployment insurance program, (i) of any other state, federal employment, or employment covered under the Railroad Unemployment Compensation Act or (ii) established by an act of Congress.

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Sec. 30. Minnesota Statutes 1996, section 268.101, as amended by Laws 1997, chapter 66, sections 55, 56, 57, and 58, is amended to read:

268.101 DETERMINATIONS ON DISQUALIFICATION AND ELIGIBILITY.

Subdivision 1. **NOTIFICATION.** (a) Upon application for a reemployment insurance account, each claimant shall report the names of all employers and the reasons for no longer working for all employers during the claimant's last 30 days of employment.

(b) Upon establishment of a reemployment insurance account, the commissioner shall notify, by mail or electronic transmission, all employers the claimant was employed by during the claimant's last 30 days of employment prior to making an application and all base period employers and determined successors to those employers under section 268.051, subdivision 4. An employer so notified shall have ten calendar days after the mailing sending of the notice to make a protest in a manner prescribed by the commissioner raising any issue of disqualification or any issue of eligibility. An employer so notified shall be informed of the effect that failure to timely protest may have on the employer charges. A protest made more than ten calendar days after mailing sending of the notice shall be considered untimely.

(c) Each claimant shall report any employment, loss of employment, and offers of employment received, for during those weeks the claimant made continued claims for benefits. Each claimant who stops making continued claims during the benefit year and later commences begins making continued claims during that same benefit year shall report the name of any employer the claimant worked for during the period between the making of continued claims, up to a period of the last 30 days of employment, and the reason the claimant stopped working for the employer. The claimant shall report any offers of employment during the period between the making of continued claims. Those employers from which the claimant has reported a loss of employment or an offer of employment pursuant to this paragraph shall be notified by mail or electronic transmission. An employer so notified shall have ten calendar days after the mailing sending of the notice to make a protest in a manner prescribed by the commissioner raising any issue of disqualification or any issue of eligibility. An employer so notified shall be informed of the effect that failure to timely protest may have on the employer charges. A protest made more than ten calendar days after mailing sending of the notice shall be considered untimely.

(d) The purpose for requiring the claimant to report the name of all employers and the reason for no longer working for all employers during the claimant's "last 30 days of employment" is for the commissioner to obtain information from a claimant on all issues that have the potential of disqualifying the claimant from benefits under section 268.095. If the reason given by the claimant for no longer working for an employer is a discharge, other than a layoff due to lack of work, the claimant shall be required to state all the facts about the cause of the discharge, if known.

Subd. 2. **DISQUALIFICATION DETERMINATION.** (a) The commissioner shall promptly determine any issue of disqualification raised by a timely protest made by an employer, and mail to the claimant and that employer at the last known address a determination of disqualification or a determination of nondisqualification, as is appropriate. The determination shall set forth the effect on employer charges.

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(b) The commissioner shall promptly determine any issue of disqualification raised by information obtained from a claimant pursuant to subdivision 1, paragraph (a) or (c), and mail to the claimant and employer at the last known address a determination of disqualification or a determination of nondisqualification, as is appropriate. The determination shall set forth the effect on employer charges.

(c) The commissioner shall promptly determine any issue of disqualification raised by an untimely protest made by an employer and mail to the claimant and that employer at the last known address a determination of disqualification or a determination of nondisqualification as is appropriate. The determination shall set forth the effect on employer charges. Notwithstanding section ~~268.09~~ 268.095, any disqualification imposed as a result of determination issued pursuant to this paragraph shall ~~commence~~ begin the Sunday two weeks following the week in which ~~that~~ the untimely protest was made. Notwithstanding any provisions to the contrary, any relief of employer charges as a result of a determination issued pursuant to this paragraph shall ~~commence~~ begin the Sunday two weeks following the week in which ~~that~~ the untimely protest was made.

(d) If any time within 24 months from the establishment of a reemployment insurance account the commissioner finds that a claimant failed to report any employment, loss of employment, or offers of employment that were required to be provided by the claimant under this section, the commissioner shall promptly determine any issue of disqualification on that loss of employment or offer of employment and mail to the claimant and involved employer at the last known address a determination of disqualification or a determination of nondisqualification, as is appropriate. The determination shall set forth the effect on employer charges.

This paragraph shall not apply if the involved employer was notified and given the opportunity to protest pursuant to subdivision 1, paragraph (b) or (c).

(e) A determination of disqualification or a determination of nondisqualification shall be final unless an appeal is filed by the claimant or notified employer within 15 30 calendar days after mailing of the ~~determination to the last known address~~. The determination shall contain a prominent statement indicating in clear language the method of appealing, the time within which an appeal must be made, and the consequences of not appealing. Proceedings on the appeal shall be conducted in accordance with section 268.105.

(f) An issue of disqualification for purposes of this section shall include any reason for no longer working for an employer other than a layoff due to lack of work, any question of denial of a disqualification from benefits under section ~~268.09~~ 268.095, any question of an exception to disqualification under section ~~268.09~~ 268.095, any question of benefit charge to an employer under section 268.047, and any question of an otherwise imposed disqualification for which ~~that~~ a claimant has had subsequent earnings sufficient to satisfy the disqualification.

(g) Notwithstanding the requirements of this subdivision, the commissioner is not required to mail to a claimant a determination of nondisqualification where the claimant has had subsequent earnings sufficient to satisfy any otherwise potential disqualification.

Subd. 3. **ELIGIBILITY DETERMINATION.** (a) The commissioner shall promptly determine any issue of eligibility raised by a timely protest made by an employ-

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er and mail to the claimant and that employer at the last known address a determination of eligibility or a determination of ineligibility, as is appropriate.

(b) The commissioner shall promptly determine any issue of eligibility raised by information obtained from a claimant and mail to the claimant and any involved employer at the last known address a determination of eligibility or a determination of ineligibility, as is appropriate.

(c) The commissioner shall promptly determine any issue of eligibility raised by an untimely protest made by an employer and mail to the claimant and that employer at the last known address a determination of eligibility or a determination of ineligibility, as is appropriate. Any denial of benefits imposed as a result of determination issued pursuant to this paragraph shall ~~commence~~ begin the Sunday two weeks following the week ~~in which that~~ the untimely protest was made.

(d) If any time within 24 months from the establishment of a reemployment insurance account the commissioner finds the claimant failed to provide requested information regarding the claimant's eligibility for benefits, the commissioner shall determine the issue of eligibility and mail to the claimant and any involved employer at the last known address a determination of eligibility or a determination of ineligibility, as is appropriate.

This paragraph shall not apply if the involved employer was notified, was aware, or should have been aware of the issue of eligibility at the time of notification, and was given the opportunity to protest pursuant to subdivision 1, paragraph (b) or (c).

(e) A determination of eligibility or determination of ineligibility shall be final unless an appeal is filed by the claimant or notified employer within ~~15~~ 30 calendar days after mailing ~~of the determination to the last known address~~. The determination shall contain a prominent statement indicating in clear language the method of appealing, the time within which an appeal must be made, and the consequences of not appealing. Proceedings on the appeal shall be conducted in accordance with section 268.105.

(f) An issue of eligibility for purposes of this section shall include any question of denial of benefits under sections ~~268.08~~ 268.085, 268.115, 268.125, 268.135, and 268.155.

Subd. 3a. **DIRECT HEARING.** Notwithstanding ~~subdivision 2 or 3~~ any provision of sections 268.03 to 268.23, the commissioner may refer any issue of disqualification ~~or any issue of eligibility, or any other issue~~, directly for hearing in accordance with section 268.105, subdivision 1. The status of the issue shall be the same as if a determination had been made and an appeal filed.

Subd. 4. **AMENDED DETERMINATION.** Unless an appeal has been filed, the commissioner, on the commissioner's own motion, ~~upon finding that an error has occurred in the issuing of~~ may reconsider a determination of disqualification or nondisqualification or a determination of eligibility or ineligibility, ~~may that has not become final and issue an amended determination. An amended determination shall not be done at the request of a claimant or an employer. Any amended determination shall be mailed to the claimant and any involved employer at the last known address. Any amended determination shall be final unless an appeal is filed by the claimant or notified employer within 15 30 calendar days after mailing of the amended determination to the last known address. Proceedings on the appeal shall be conducted in accordance with section 268.105.~~

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Subd. 5. **PROMPT PAYMENT.** If a determination or amended determination awards benefits to a claimant, the benefits shall be promptly paid regardless of any appeal period or any appeal having been filed.

Subd. 6. **OVERPAYMENT.** A determination or amended determination which that holds a claimant disqualified or ineligible for benefits for periods a claimant has been paid benefits is an overpayment of those benefits subject to section 268.18.

Sec. 31. Minnesota Statutes 1997 Supplement, section 268.105, subdivision 3a, is amended to read:

Subd. 3a. **DECISIONS.** (a) If a reemployment insurance judge's decision or the commissioner's decision awards benefits to a claimant, the benefits shall be promptly paid regardless of any appeal period or any appeal having been filed.

(b) If a reemployment insurance judge's decision modifies or reverses a determination awarding benefits to a claimant, any benefits paid pursuant to the determination is an overpayment of those benefits subject to section 268.18.

(c) Except as provided in paragraph (d), If a commissioner's decision modifies or reverses a reemployment insurance judge's decision awarding benefits to a claimant, any benefits paid pursuant to the reemployment insurance judge's decision is an overpayment of those benefits subject to section 268.18.

(d) If a reemployment insurance judge's decision affirms a determination on an issue of disqualification awarding benefits or the commissioner affirms a reemployment insurance judge's decision on an issue of disqualification awarding that awards benefits to a claimant, the commissioner's decision, if finally reversed by the Minnesota Court of Appeals or the Supreme Court of Minnesota, shall not result in a disqualification of the claimant from benefits only for weeks following the week in which the decision reversing the award of benefits was issued and benefits paid for that week and previous weeks shall not be deemed overpaid and the benefits paid shall not be charged to a contributing employer's account under section 268.095.

(e) If the commissioner, pursuant to subdivision 3, remands a matter to a reemployment insurance judge for the taking of additional evidence, the prior reemployment insurance judge's decision shall continue to be enforced until new findings of fact and decision are made by a reemployment insurance judge.

Sec. 32. Minnesota Statutes 1997 Supplement, section 268.125, is amended to read:

268.125 ADDITIONAL REEMPLOYMENT INSURANCE BENEFITS.

Subdivision 1. **ADDITIONAL BENEFITS; WHEN AVAILABLE.** Additional reemployment insurance benefits are authorized under this section only if the commissioner determines that:

(1) an employer has reduced operations at a facility employing that had 100 or more individuals employees for at least six months during the preceding year prior 12 months, the employer reduced operations, resulting within a one-month period in the reduction layoff of at least 50 percent or more of the employer's facility's work force and the layoff of at least amounting to 50 or more employees at that facility, including reductions caused as a result of a major natural disaster declared by the President;

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(2) the employer has no expressed plan to resume operations ~~which that~~ would lead to the reemployment of those employees at any time in the immediate future; and

(3) the seasonally adjusted unemployment rate for in the county in which that the facility is located was ten percent or more during the month of the reduction or any of the three months preceding before or succeeding after the month of the reduction.

Subd. 2. **PAYMENT OF BENEFITS.** All Additional benefits payable under this section are payable from the fund.

Subd. 3. **ELIGIBILITY CONDITIONS.** A claimant is eligible to receive additional benefits under this section for any week during the claimant's benefit year if the commissioner finds that:

(1) the claimant's unemployment is the claimant was laid off from employment as a result of a reduction in operations as provided under subdivision 1 or was laid off due to lack of work from that employer during the three-month period before, or the three-month period after the month of the reduction under subdivision 1;

(2) the claimant is unemployed and meets the eligibility requirements for the receipt of unemployment benefits under section 268.08 268.085;

(3) the claimant is not subject to a disqualification for benefits under section 268.09 268.095; for the purpose of this subdivision, the disqualifying conditions set forth in section 268.09 268.095, and the requalifying requirements thereunder, apply to the receipt of additional benefits under this section;

(4) the claimant has exhausted all rights to regular benefits payable under section 268.07, is not entitled to receive extended benefits under section 268.115, and is not entitled to receive reemployment insurance benefits under any other state or federal law for the that week in which the claimant is claiming additional benefits;

(5) the claimant has made a claim for additional benefits with respect to any week the claimant is claiming benefits in accordance with the regulations as the commissioner may prescribe with respect to claims for regular benefits; and

(6) a majority of the claimant's wage credits were earned with an from the employer for whom the commissioner has determined there was that had a reduction in operations under subdivision 1.

Subd. 4. **WEEKLY BENEFIT AMOUNT.** A claimant's weekly benefit amount under this section shall be the same as the individual's claimant's weekly benefit amount payable during the individual's current benefit year under section 268.07.

Subd. 5. **MAXIMUM BENEFITS PAYABLE.** A claimant's The maximum amount of additional benefits payable in the individual's claimant's benefit year shall be 13 times the individual's claimant's weekly benefit amount. Reemployment insurance Benefits paid to an individual a claimant under any state or federal law other than regular benefits payable under section 268.07 shall be deducted from that individual's the maximum amount of additional benefits.

Sec. 33. Minnesota Statutes 1997 Supplement, section 268.13, subdivision 1, is amended to read:

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Subdivision 1. **AUTHORIZATION.** (a) The commissioner is hereby authorized to enter into reciprocal arrangements with the appropriate and duly authorized agencies of other states and of the federal government, or both, whereby:

(1) Service performed employment by an individual employee or individuals employees for a single employing unit for which service employer that is customarily performed in more than one state shall be deemed to be service considered performed entirely within any one of the states:

(a) in which (1) where any part of any such individual's service the employee's employment is performed, or

(b) in which any such individual (2) where the employee has a residence, or

(c) in which (3) where the employing unit employer maintains a place of business; provided, there is in effect, as to such service the employment, an election, approved by the agency charged with the administration of such state's employment security law state, pursuant to which all the service performed employment by such individual the employee or individuals employees for such employing unit the employer is deemed considered to be performed entirely within such that state;

(2) (b) The commissioner shall participate in any reciprocal arrangements with other states and the federal government, or both, for the payment of compensation benefits on the basis of combining an individual's a claimant's wages and employment covered under this law with wages and employment covered under the unemployment compensation reemployment insurance laws of other states which are approved by the United States Secretary of Labor in consultation with the state unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of compensation in such situations and which or the federal government that include provisions for applying the base period of a single state law to a claim an account involving the combining of an individual's a claimant's wages and employment covered under two or more state unemployment compensation laws, and avoiding the duplicate use of wages and employment by reason of such combining. No reciprocal arrangement shall be entered into unless it contains provisions for reimbursements to the fund, by the other state or the federal government, for benefits paid from the fund to claimants based upon wages and employment covered under the laws of the other state or the federal government.

(3) (c) On any reciprocal arrangement, the wages or services, upon the basis of which an individual may become entitled to benefits paid a claimant from employment covered under an employment security a reemployment insurance law of another state or of the federal government, shall be deemed to be considered wages for insured work from covered employment for the purpose of determining the individual's claimant's rights to benefits under sections 268.03 to 268.23, and wages for insured work, on the basis of which an individual may become entitled to benefits thereunder shall be deemed to be wages or services on the basis of which unemployment compensation under such law of another state or of the federal government is payable, but no such arrangement shall be entered into unless it contains provisions for reimbursements to the fund for such of the benefits paid thereunder upon the basis of such wages or service, and provisions for reimbursements from the fund for such of the compensation paid under such other law upon the basis of wages for insured work;

(4) Contributions due thereunder with respect to wages for insured work shall for the purpose of section 268.057 be deemed to have been paid to the fund as of the date pay-

New language is indicated by underline, deletions by strikeout.

ment was made as contributions therefor under another state or federal employment security law, but no such arrangement shall be entered into unless it contains provisions for such reimbursement to the fund of such contributions and the actual earnings thereon.

Sec. 34. Minnesota Statutes 1997 Supplement, section 268.13, subdivision 2, is amended to read:

Subd. 2. **REIMBURSEMENTS.** Reimbursements paid from the fund pursuant to subdivision 1 shall be deemed to be benefits for the purposes of sections 268.045 to 268.194. The commissioner is authorized to make to other state or federal agencies and to receive from such other state or federal agencies, reimbursements from or to the fund, in accordance with reciprocal arrangements entered into pursuant to subdivision 1 section 268.131.

Sec. 35. Minnesota Statutes 1996, section 268.13, subdivision 4, is amended to read:

Subd. 4. **UTILIZATION OF FEDERAL BENEFITS COOPERATION WITH FOREIGN GOVERNMENTS.** To the extent permissible under the laws and Constitution of the United States, The commissioner is authorized to enter into or cooperate in arrangements whereby facilities and services provided under sections 268.03 to 268.23 and facilities and services provided under the employment security reemployment insurance law of any foreign government, may be utilized used for the taking of applications for benefits and continued claims and the payment of benefits under the employment security this law of this state or under a similar law of such a foreign government.

Sec. 36. Minnesota Statutes 1996, section 268.18, as amended by Laws 1997, chapter 66, sections 71, 72, 73, 74, 75, 76, and 81, is amended to read:

268.18 RETURN OF BENEFITS; OFFENSES.

Subdivision 1. **ERRONEOUS PAYMENTS.** (a) Any claimant who, by reason of the claimant's own mistake or through the error of any individual engaged in the administration of this chapter or because of a determination, redetermination, or amended determination issued pursuant to section 268.07 or 268.101, has received any benefits that the claimant was not entitled to, shall promptly repay the benefits to the department. If the claimant fails to repay the benefits, the department commissioner shall, as soon as the erroneous payment is discovered, determine the amount due and notify the claimant in writing to repay the benefits.

(b) Unless the claimant files an appeal within ~~15~~ 30 calendar days after the mailing of the determination of overpayment to the claimant's last known address, the determination shall become final. Proceedings on the appeal shall be conducted in accordance with section 268.105. A claimant may not collaterally attack, by way of an appeal to an overpayment determination, any prior determination issued pursuant to section 268.07 or 268.101, or decision issued pursuant to section 268.105, that has become final.

(c) If the claimant fails to repay the benefits, the commissioner may deduct from any future benefits payable to the claimant in ~~either the current or any subsequent benefit year~~ an amount equivalent to of the overpayment determined, except that no single deduction under this subdivision shall exceed 50 percent of the amount of the payment from which the deduction is made, or the overpayment may be collected the same as delinquent ~~contributions taxes.~~ A determination of overpayment shall state the methods of collection the commissioner ~~will~~ may use to recover the overpayment.

New language is indicated by underline, deletions by ~~strikeout~~.

(d) If a claimant has been overpaid benefits under the law of another state because of an error and that state certifies to the department commissioner that the claimant is liable under its law to repay the benefits and requests the department commissioner to recover the overpayment, the commissioner may deduct from future benefits payable to the claimant in either the current or any subsequent benefit year an amount equivalent to the amount of overpayment determined by that state, except that no single deduction under this subdivision shall exceed 50 percent of the amount of the payment from which the deduction is made.

(d) (e) Benefits paid for weeks more than three years prior to the discovery of error are not erroneous payments.

(e) Notwithstanding paragraph (a), the commissioner shall waive recovery of an overpayment if the commissioner's authorized representative under section 268.105, subdivision 3, determines the overpayment resulted from an administrative failure to identify that a claimant's wage credits were not earned in covered employment. This paragraph shall not apply to misidentification of an employee-employer relationship.

Subd. 2. **FRAUD.** (a) Any claimant who receives benefits by knowingly and willfully misrepresenting, misstating, or failing to disclose any material fact that would have made the claimant not entitled to those benefits has committed fraud. After the discovery of facts indicating fraud, the commissioner shall make a written determination that the claimant was not entitled to benefits that were obtained by fraud and that the claimant must promptly repay the benefits to the department. In addition, the commissioner may deny benefits to a claimant for one to 52 weeks for which the claimant is otherwise entitled to benefits following the week in which the fraud was determined. A denial imposed for fraud shall not apply to any week more than 104 weeks after the week in which the fraud was determined shall assess a penalty equal to 25 percent of the amount fraudulently obtained. If the claimant had a prior overpayment due to fraud, the commissioner shall, on the present overpayment, assess a penalty equal to 50 percent of the amount fraudulently obtained.

(b) Unless the claimant files an appeal within 15 30 calendar days after the mailing of the determination of overpayment by fraud to the claimant's last known address, the determination shall become final. Proceedings on the appeal shall be conducted in accordance with section 268.105.

(c) If the claimant fails to repay the benefits, penalty, and any interest assessed under subdivision 2b, the commissioner may shall deduct from future benefits payable to the claimant in either the current or any subsequent benefit year an amount equivalent to the amount of overpayment determined or the overpayment total due may be collected the same as delinquent ~~contributions~~ taxes. A determination of overpayment by fraud shall state the methods of collection the commissioner may use to recover the overpayment. Money received in repayment of fraudulently obtained benefits, penalties, and interest shall first be applied to the benefits overpaid, then to the penalty amount due, then to any interest due. Payments made toward penalty and interest shall be credited to the contingent account.

(d) If a claimant has been overpaid benefits under the law of another state because of fraud and that state certifies to the department commissioner that the claimant is liable to repay the benefits and requests the department commissioner to recover the overpay-

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ment, the commissioner may deduct from future benefits payable to the claimant in either the current or any subsequent benefit year an amount equivalent to the amount of overpayment determined by that state.

(d) (e) A determination of overpayment by fraud may be made at any time.

Subd. 2a. **OFFSET OF STATE AND FEDERAL UNEMPLOYMENT BENEFITS.** ~~To the extent permissible under the laws and constitution of the United States, The commissioner is authorized to enter into or cooperate in arrangements or reciprocal agreements with the United States Secretary of Labor, whereby, overpayments of unemployment benefits as determined under applicable federal law, with respect to benefits or allowances for unemployment provided under a federal program administered by this state under an agreement with the United States Secretary of Labor Minnesota, may be recovered by offset from unemployment benefits otherwise payable under this chapter or any such federal program. As provided by reciprocal agreement, benefit overpayments as determined under subdivisions 1 and 2 may be recovered by offset from benefits or allowances for unemployment otherwise payable under a federal program administered by this state.~~

Subd. 2b. **INTEREST.** (a) On any benefits fraudulently obtained, as determined under subdivision 2, the commissioner shall have the discretion to assess interest at the rate of 1-1/2 percent per month on any overpaid amount ~~which that~~ remains unpaid 30 calendar days after the date of the determination of overpayment by fraud. A determination of overpayment by fraud shall state that interest may be assessed.

~~(b) Any money received in repayment of fraudulently obtained benefits and interest thereon shall be first applied to the overpayment balance.~~

~~(c) Unpaid interest may be collected the same as delinquent contributions.~~

(b) If this subdivision became effective after the date of the determination of overpayment by fraud, or the determination did not state that interest may be assessed, interest pursuant to this subdivision may be assessed beginning 30 calendar days after written notification to the claimant.

Subd. 4. **CANCELLATION OF BENEFITS PAID THROUGH ERROR OR FRAUD.** (a) If benefits paid through error are not repaid or deducted from subsequent benefit amounts benefits as provided for in subdivision 1 within six years after the date of the determination of overpayment, the commissioner shall cancel the overpayment balance, and no administrative or legal proceedings shall be used to enforce collection of those amounts.

(b) If benefits paid as a result of fraud including penalties and interest are not repaid or deducted from subsequent benefits as provided for in subdivision 2 within ten years after the date of the determination of overpayment by fraud, the commissioner shall cancel the overpayment balance and any penalties and interest due, and no administrative or legal proceeding shall be used to enforce collection of those amounts.

(c) The commissioner may cancel at any time benefits paid through error or fraud including penalties and interest that the commissioner determines are uncollectible due to death or bankruptcy.

New language is indicated by underline, deletions by strikeout.

Subd. 4a. COURT FEES. (a) If the commissioner is required to pay any court fees in an attempt to enforce collection of overpaid benefits, penalties, or interest, the commissioner may add the amount of the court fees to the total amount due.

(b) If a claimant who has been determined overpaid benefits because of fraud seeks to have any portion of the debt discharged under the federal bankruptcy code, and the commissioner files an objection in bankruptcy court to the discharge, the commissioner may add the commissioner's cost of any court fees to the debt if the bankruptcy court does not discharge the debt.

Sec. 37. Minnesota Statutes 1997 Supplement, section 268.182, is amended to read:

268.182 FALSE REPRESENTATIONS; CONCEALMENT OF FACTS; PENALTY.

(a) Whoever obtains, or attempts to obtain, or aids or abets any person individual to obtain by means of an intentional false statement or representation, by intentional concealment of a material fact, or by impersonation or other fraudulent means, benefits that the person individual is not entitled or benefits greater than the person individual is entitled under this chapter, or under the law of any state or of the federal government, either personally or for any other person individual, is guilty of theft and shall be sentenced pursuant to section 609.52. ~~The amount of the benefits incorrectly paid shall be the difference between the amount of benefits paid and the amount that the claimant would have been entitled under state and federal law had the department been informed of all material facts.~~

(b) Any individual who violates paragraph (a) may be assessed an administrative penalty of denial of benefits for one to 52 weeks that the individual would otherwise be entitled to benefits. A denial shall not apply to any week more than 2 years after the week that the violation of paragraph (a) was determined. A written determination of denial shall be mailed to the individual's last known address. Unless an appeal is filed within 30 calendar days of mailing, the determination shall be final. Proceeding on the appeal shall be conducted in accordance with section 268.105. This paragraph shall not apply if prosecution is commenced under paragraph (a) or a penalty is imposed under section 268.18, subdivision 2.

(c) Any employing unit employer or any officer or agent of an employing unit employer or any other person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any claimant, is guilty of a gross misdemeanor unless the benefit underpayment exceeds \$500, in that case the person is guilty of a felony.

Sec. 38. Minnesota Statutes 1997 Supplement, section 268.184, is amended to read:

268.184 EMPLOYER MISCONDUCT; PENALTY.

(a) If the commissioner finds that any employing unit employer or any employee, officer, or agent of any employing unit employer, is in collusion with any claimant for the purpose of assisting the claimant to receive benefits illegally, the employing unit employer shall be penalized \$500 or an amount equal to the amount of benefits determined to be overpaid, whichever is greater.

(b) If the commissioner finds that any employer or any employee, officer, or agent of an employer has made (1) a false statement or representation knowing it to be false, or (2)

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has made a false statement or representation without a good faith belief as to correctness of the statement or representation, or (3) who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any claimant or to reduce or prevent a charge of benefits to its account, the employer shall be penalized \$500.

(c) Penalties assessed under this section shall be in addition to any other penalties provided for and be subject to the same collection procedures that apply to past due contributions under this chapter taxes. Penalties under this section shall be paid to the department within 30 calendar days of assessment and credited to the contingent fund account.

(d) The assessment of the penalty shall be final unless the employing unit employer files a written appeal within 30 calendar days after the mailing sending of the notice of the penalty to the employer's last known address employer by mail or electronic transmission. Proceedings on the appeal shall be conducted in accordance with section 268.105.

Sec. 39. Minnesota Statutes 1997 Supplement, section 268.192, subdivision 1, is amended to read:

Subdivision 1. **WAIVER OF RIGHTS VOID.** Any agreement by an individual to waive, release, or commute rights to benefits or any other rights under sections 268.03 to 268.23 shall be void. Any agreement by any individual in the employ of any person or ~~employee~~ an employee to pay all or any portion of an employer's contributions, required under these sections from such employer taxes, shall be void. No employer shall directly or indirectly make or require or accept any deduction from wages to finance pay the employer's contributions taxes, require or accept any waiver of any right hereunder by any employed individual or in any manner obstruct or impede the filing of claims an application or continued claim for benefits. Any employer or officer or agent of any employer who violates any provision portion of this subdivision shall, for each offense, be guilty of a misdemeanor.

Sec. 40. Minnesota Statutes 1997 Supplement, section 268.194, subdivision 2, is amended to read:

Subd. 2. **COMMISSIONER OF FINANCE TO BE CUSTODIAN; SEPARATE ACCOUNTS; BONDS.** The commissioner of finance shall be *ex officio* the treasurer and custodian of the fund, administer the fund in accordance with the directions of the commissioner, and issue warrants upon it in accordance with such rules as the commissioner shall prescribe. The commissioner of finance shall maintain within the fund three separate accounts:

- (1) a clearing account;
- (2) an unemployment trust fund account; and
- (3) a benefit account.

All money payable to the fund, upon receipt thereof by the commissioner, shall be forwarded to the commissioner of finance who shall immediately deposit ~~them~~ the money in the clearing account. All money in the clearing account, after clearance thereof, shall, except as herein otherwise provided, be immediately deposited with the secretary of the treasury of the United States to the credit of the account of this state Minnesota in the federal unemployment trust fund established and maintained pursuant to section 904

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of the Social Security Act, as amended, any provisions of law in this state relating to the deposit, administration, release, or disbursement of money in the possession or custody of this state to the contrary notwithstanding. Refunds payable pursuant to sections section 268.04, subdivision 12, clause (8) (f), and 268.057, subdivision 7, may be paid from the clearing account or the benefit account. The benefit account shall consist of all money requisitioned from this state's Minnesota's account in the federal unemployment trust fund in the United States Treasury for the payment of benefits. Except as herein otherwise provided, Money in the clearing and benefit accounts may be deposited by the commissioner of finance, under the direction of the commissioner, in any depository bank in which that general funds of the state Minnesota may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. Money in the clearing and benefit accounts shall not be commingled with other state funds, but shall be maintained in separate accounts on the books of the depository bank. Such This money shall be secured by the depository bank to the same extent and in the same manner as required by the general depository law of this state Minnesota; and collateral pledged for this purpose shall be kept separate and distinct from any collateral pledged to secure other funds of the state Minnesota. All sums recovered for losses sustained by the fund shall be deposited therein in the fund.

Sec. 41. Minnesota Statutes 1997 Supplement, section 268.194, subdivision 3, is amended to read:

Subd. 3. **WITHDRAWALS.** (1) Moneys Money requisitioned from this state's Minnesota's account in the federal unemployment trust fund shall be used exclusively for the payment of benefits and for refunds pursuant to sections 268.04, subdivision 12, clause (8) (f), and section 268.057, subdivision 7, except that money credited to this state's Minnesota's account pursuant to United States Code, title 42, section 903 1103 of the Social Security Act, as amended, shall be used exclusively as provided in subdivision 5 of this section for the payment of expenses of administration. The commissioner or a duly authorized agent for that purpose, shall from time to time requisition from the federal unemployment trust fund such the amounts, not exceeding the amount standing to this state's in Minnesota's account therein, as the commissioner deems considers necessary for the payment of such benefits and refunds for a reasonable future period. Upon receipt thereof the treasurer commissioner of finance shall deposit such moneys the money in the benefit account and issue warrants for the payment of benefits solely from such the benefit account. Expenditures of such moneys money in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody. All warrants issued by the treasurer for the payment of benefits and refunds shall bear the signature of the treasurer commissioner of finance and the counter signature of the commissioner or a duly authorized agent for that purpose.

(2) Any balance of moneys money requisitioned from the unemployment trust fund which that remains unclaimed or unpaid in the benefit account after the expiration of the period for which such the sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits and refunds during succeeding following periods or, in the discretion of the commissioner, shall be redeposited with the secretary of the treasury of the United States, to the credit of this state's account in the federal unemployment trust fund, as provided in subdivision 2.

New language is indicated by underline, deletions by strikeout.

Sec. 42. Minnesota Statutes 1997 Supplement, section 268.194, subdivision 6, is amended to read:

Subd. 6. **ADVANCE ON FEDERAL FUNDS.** (1) (a) The governor is hereby authorized to make application as may be necessary to secure ~~any~~ an advance of funds by the secretary of the treasury of the United States in accordance with the authority extended under ~~section 1201 from the federal unemployment trust fund in accordance with United States Code, title 42, section 1321, of the Social Security Act, as amended.~~

(2) (b) Any amount transferred to the Minnesota reemployment insurance fund by the secretary of the treasury of the United States under the terms of any application made pursuant to this subdivision shall be repayable in the manner as provided in United States Code, title 42, sections 901(d) 1, 903(b) 2 and 1202 1101(d)(1), 1103(b)(2), and 1322, of the Social Security Act, as amended.

(c) Interest payable on any advance shall be paid in accordance with section 268.051, subdivision 8, paragraph (b).

Sec. 43. Minnesota Statutes 1997 Supplement, section 268.196, subdivision 2, is amended to read:

Subd. 2. **STATE TO REPLACE MONEYS MONEY WRONGFULLY USED.** If any moneys money received after June 30, 1941, under Title III United States Code, title 42, section 501, of the Federal Social Security Act, or any unenumerated balances in the economic security administration fund as of that date, or any moneys granted after that date to the state pursuant to the provisions of the Wagner-Peyser Act, are found by the United States Secretary of Labor, because of any action or contingency, to have been lost or been expended for purposes other than, or in amounts in excess of, those found necessary by the secretary of labor for the proper administration of these sections, the commissioner may, with the approval of the commissioner of administration, replace such moneys the money from the economic security contingent fund hereinafter established account. If such moneys are the money is not thus replaced from the contingent account, it is the policy of this state that such moneys shall the money be replaced by moneys money appropriated for such that purpose from the general funds of this state to the economic security administration fund for expenditure as provided in subdivision 1. Upon receipt of notice of such a finding by the secretary of labor, the commissioner shall promptly report the amount required for such replacement to the governor and the governor shall, at the earliest opportunity, submit to the legislature a request for the appropriation of such that amount. ~~This subdivision shall not be construed to relieve this state of its obligation with respect to funds received prior to July 1, 1941, pursuant to the provisions of Title III of the Social Security Act.~~

Sec. 44. **INSTRUCTION TO REVISOR.**

The revisor of statutes shall change the words "employing unit" to "employer" wherever it occurs in Minnesota Statutes, sections 268.03 to 268.23.

The revisor of statutes shall change the words "employing units" to "employers" wherever it occurs in Minnesota Statutes, sections 268.03 to 268.23.

The revisor of statutes shall change the words "agricultural labor" to "agricultural employment" wherever it occurs in Minnesota Statutes, sections 268.03 to 268.23.

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The revisor of statutes shall change the word "remuneration" to "compensation" wherever it occurs in Minnesota Statutes, sections 268.03 to 268.23.

The revisor of statutes shall change the words "department of economic security" to "department" wherever it occurs in Minnesota Statutes, sections 268.03 to 268.23.

The revisor of statutes shall change the word "deemed" to "considered" wherever it occurs in Minnesota Statutes, sections 268.03 to 268.23.

Sec. 45. INSTRUCTION TO REVISOR.

The revisor of statutes shall renumber each section of Minnesota Statutes specified in column A with the number set forth in column B. The revisor shall also make necessary cross-reference changes consistent with the renumbering.

<u>Column A</u>	<u>Column B</u>
<u>268.08</u>	<u>268.085</u>
<u>268.08, subd. 1</u>	<u>268.085, subd. 1</u>
<u>268.08, subd. 1a</u>	<u>268.087</u>
<u>268.08, subd. 2</u>	<u>268.085, subd. 2</u>
<u>268.08, subd. 2a</u>	<u>268.085, subd. 13</u>
<u>268.08, subd. 3</u>	<u>268.085, subd. 3</u>
<u>268.08, subd. 3a</u>	<u>268.085, subd. 5</u>
<u>268.08, subd. 3b</u>	<u>268.085, subd. 6</u>
<u>268.08, subd. 4</u>	<u>268.085, subd. 4</u>
<u>268.08, subd. 6</u>	<u>268.085, subd. 7</u>
<u>268.08, subd. 7</u>	<u>268.085, subd. 11</u>
<u>268.08, subd. 8</u>	<u>268.085, subd. 12</u>
<u>268.08, subd. 9</u>	<u>268.085, subd. 8</u>
<u>268.08, subd. 10</u>	<u>268.085, subd. 10</u>
<u>268.08, subd. 11</u>	<u>268.085, subd. 9</u>
<u>268.09</u>	<u>268.095</u>
<u>268.09, subd. 1a</u>	<u>268.095, subd. 1</u>
<u>268.09, subd. 2a</u>	<u>268.095, subd. 2</u>
<u>268.09, subd. 9</u>	<u>268.095, subd. 3</u>
<u>268.09, subd. 10</u>	<u>268.095, subd. 4</u>
<u>268.09, subd. 11</u>	<u>268.095, subd. 5</u>
<u>268.09, subd. 12</u>	<u>268.095, subd. 6</u>
<u>268.09, subd. 13</u>	<u>268.095, subd. 7</u>
<u>268.09, subd. 14</u>	<u>268.095, subd. 8</u>
<u>268.09, subd. 15</u>	<u>268.095, subd. 9</u>
<u>268.09, subd. 16</u>	<u>268.095, subd. 10</u>
<u>268.09, subd. 17</u>	<u>268.095, subd. 11</u>
<u>268.09, subd. 18</u>	<u>268.095, subd. 12</u>
<u>268.13</u>	<u>268.131</u>
<u>268.13, subd. 1, para. (a)</u>	<u>268.042, subd. 4</u>
<u>268.13, subd. 1, para. (b)</u>	<u>268.131, subd. 1, para. (a)</u>
<u>268.13, subd. 1, para. (c)</u>	<u>268.131, subd. 1, para. (b)</u>
<u>268.13, subd. 2</u>	<u>268.194, subd. 3a</u>
<u>268.13, subd. 4</u>	<u>268.131, subd. 2</u>
<u>268.18, subd. 2a</u>	<u>268.18, subd. 3a</u>

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Sec. 46. REPEALER.

Minnesota Statutes 1996, sections 268.04, as amended by Laws 1997, chapter 66, sections 3 to 9; 268.13, subdivisions 3 and 5; and 268.25; and Minnesota Statutes 1997 Supplement, sections 268.042, subdivision 2; and 268.054, are repealed. Minnesota Statutes 1996, Section 268.08, subdivision 5a, is repealed effective December 31, 1998.

Sec. 47. EFFECTIVE DATE.

Section 1 is effective the day following final enactment. Section 4, subdivision 23, is effective the day following final enactment. Section 24, subdivision 6, is effective the day following final enactment. Section 31 is effective the day following final enactment. Section 36, subdivision 2, paragraph (a), is effective for determinations issued on or after July 1, 1999.

Presented to the governor March 2, 1998

Signed by the governor March 4, 1998, 10:18 a.m.

CHAPTER 266—H.F.No. 2590

An act relating to landlords and tenants; correcting a reference relating to certain civil penalties; providing for interest rates on security deposits; amending Minnesota Statutes 1996, sections 504.183, subdivision 6; and 504.20, subdivision 2.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1996, section 504.183, subdivision 6, is amended to read:

Subd. 6. **PENALTY.** If a landlord substantially violates subdivision 2, the tenant is entitled to a penalty which may include a rent reduction up to full rescission of the lease, recovery of any damage deposit less any amount retained under section 504.20, and up to a \$100 civil penalty for each violation. If a landlord violates subdivision 5, the tenant is entitled to up to a \$100 civil penalty for each violation. A tenant shall follow the procedures in sections 566.18 to ~~566.33~~ 566.34 to enforce the provisions of this section.

Sec. 2. Minnesota Statutes 1996, section 504.20, subdivision 2, is amended to read:

Subd. 2. Any deposit of money shall not be considered received in a fiduciary capacity within the meaning of section 82.17, subdivision 7, but shall be held by the landlord for the tenant who is party to the agreement and shall bear simple noncompounded interest at the rate of three percent per annum until May 1, ~~1999~~ 2001, and four percent per annum thereafter, computed from the first day of the next month following the full payment of the deposit to the last day of the month in which the landlord, in good faith, complies with the requirements of subdivision 3 or to the date upon which judgment is entered in any civil action involving the landlord's liability for the deposit, whichever date is earlier. Any interest amount less than \$1 shall be excluded from the provisions of this section.

Presented to the governor March 2, 1998

Signed by the governor March 4, 1998, 10:08 a.m.

New language is indicated by underline, deletions by strikeout.