

Sec. 4. EFFECTIVE DATE; APPLICABILITY.

Sections 1 to 3 are effective August 1, 1999. Section 2 applies to security agreements signed on or after August 1, 1999. Section 3 applies to original financing statements filed on or after August 1, 1999.

Presented to the governor April 23, 1999

Signed by the governor April 27, 1999, 11:23 a.m.

CHAPTER 106—S.F.No. 303

An act relating to civil actions; clarifying admissibility of evidence regarding seat belts and child passenger restraint systems in certain actions; amending Minnesota Statutes 1998, section 169.685, subdivision 4.

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

Section 1. Minnesota Statutes 1998, section 169.685, subdivision 4, is amended to read:

Subd. 4. **ADMISSIBILITY INTO EVIDENCE.** (a) Except as provided in paragraph (b), proof of the use or failure to use seat belts or a child passenger restraint system as described in subdivision 5, or proof of the installation or failure of installation of seat belts or a child passenger restraint system as described in subdivision 5 shall not be admissible in evidence in any litigation involving personal injuries or property damage resulting from the use or operation of any motor vehicle.

(b) Paragraph (a) does not affect the right of a person to bring an action for damages arising out of an incident that involves a defectively designed, manufactured, installed, or operating seat belt or child passenger restraint system. Paragraph (a) does not prohibit the introduction of evidence pertaining to the use of a seat belt or child passenger restraint system in an action described in this paragraph.

Sec. 2. EFFECTIVE DATE; APPLICATION.

Section 1 is effective the day following final enactment and applies to actions pending on or commenced on or after the effective date.

Presented to the governor April 23, 1999

Vetoed by the governor April 27, 1999, 5:15 p.m.

Reconsidered and approved by the legislature after the governor's veto May 17, 1999

CHAPTER 107—S.F.No. 1218

An act relating to reemployment insurance; making technical changes; modifying procedures; complying with federal requirements; modifying definitions; amending Minnesota Statutes 1998,

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sections 268.035, subdivisions 3, 4, 5, 6, 8, 12, 14, 15, 18, 20, 24, 30, 32, and by adding a subdivision; 268.042, subdivision 3; 268.045; 268.047, subdivisions 1, 2, 3, and 4; 268.048; 268.051, subdivisions 1, 2, 3, 4, 5, and 8; 268.052; 268.053; 268.057, subdivisions 4 and 10; 268.058; 268.0625; 268.064; 268.065; 268.067; 268.068; 268.069; 268.07; 268.085; 268.095; 268.101; 268.103, by adding a subdivision; 268.105; 268.115; 268.125, subdivisions 1, 4, and 5; 268.135; 268.145; 268.155; 268.18; 268.182; 268.186; 268.188; 268.192, subdivision 2; 268.194; 268.196; 268.198; 268.21; 268.23; and 268.30, subdivision 2; proposing coding for new law in Minnesota Statutes, chapter 268; repealing Minnesota Statutes 1998, sections 268.021; and 268.057, subdivisions 8 and 9; Minnesota Rules, parts 3305.0100; 3305.0200; 3305.0300; 3305.0400; 3305.0500; 3305.0600; 3305.0700; 3305.0800; 3305.0900; 3305.1100; 3310.1500; 3310.1600; 3310.1700; 3310.1800; 3310.1900; 3310.2000; 3310.2100; 3310.2200; 3310.5100; and 3310.5800.

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

Section 1. STATEMENT OF INTENT.

Regardless of Minnesota Statutes, section 268.194, subdivision 5, or any other provisions of law to the contrary, in order to meet the requirements of section 5403 of the Federal Balanced Budget Act of 1997, the distribution of excess Federal Unemployment Tax Act funds under United States Code, title 42, section 1103, also known as the Reed Act, with respect to federal fiscal years ending in 1999, 2000, and 2001 (Minnesota's portion being projected to be approximately \$2,000,000 per year) shall be used only for systems development for the reemployment insurance program.

Sec. 2. Minnesota Statutes 1998, section 268.035, subdivision 3, is amended to read:

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.

Sec. 3. Minnesota Statutes 1998, section 268.035, subdivision 4, is amended to read:

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 benefit 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 a 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 first four of the last six completed calendar quarter quarters prior to the original base period effective date of the benefit account;

(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 first four of the last seven completed calendar quarters prior to the original base period effective date of the benefit account;

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(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~~ first four of the last eight completed calendar quarters prior to the ~~original base period~~ effective date of the benefit account; 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 first four of the last nine completed~~ calendar quarters prior to the ~~original base period~~ effective date of the benefit account;

(3) if the claimant qualifies for an ~~extended~~ a base period under clause (2), but has insufficient wage credits to establish a ~~reemployment insurance benefit~~ account, the claimant may request an ~~alternate~~ alternate base period of the last four completed calendar quarters prior to the date the claimant's ~~reemployment insurance benefit~~ account is effective. This ~~alternate~~ 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 benefit~~ account was established.

Sec. 4. Minnesota Statutes 1998, section 268.035, subdivision 5, is amended to read:

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

Sec. 5. Minnesota Statutes 1998, section 268.035, subdivision 6, is amended to read:

Subd. 6. **BENEFIT YEAR.** "Benefit year" means the period of 52 calendar weeks beginning the date a ~~reemployment insurance benefit~~ account is effective. For a ~~reemployment insurance benefit~~ account established effective any January 1, April 1, July 1, or October 1, or January 2, 2000, or October 2, 2011, the benefit year will be a period of 53 calendar weeks.

Sec. 6. Minnesota Statutes 1998, section 268.035, subdivision 8, is amended to read:

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

Sec. 7. Minnesota Statutes 1998, section 268.035, subdivision 12, is amended to read:

Subd. 12. **COVERED EMPLOYMENT.** "Covered employment" means the following unless defined excluded 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

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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;

(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; and

(5) for the purposes of satisfying disqualifications under section 268.095, subdivision 10, "covered employment" shall include covered employment under a similar reemployment insurance law of any other state or employment covered under a reemployment insurance system program 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.~~

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Sec. 8. Minnesota Statutes 1998, section 268.035, subdivision 14, is amended to read:

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

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

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

(6) (5) 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 organization or 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; or

(7) (6) 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.

Sec. 9. Minnesota Statutes 1998, section 268.035, subdivision 15, is amended to read:

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; or

(4) an individual who performs services for a person 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

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(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 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.

Sec. 10. Minnesota Statutes 1998, section 268.035, subdivision 18, is amended to read:

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

Sec. 11. Minnesota Statutes 1998, section 268.035, subdivision 20, is amended to read:

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

(1) employment for the United States government or an instrumentality thereof, including military service;

(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 covered under United States Code, title 45, section 351, the Railroad Unemployment Insurance Act;

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

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~~(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)~~ (8) 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)~~ (9) 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)~~ (10) 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)~~ (11) 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)~~ (12) 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)~~ (13) employment as a member of the Minnesota national guard or air national guard;

~~(16)~~ (14) 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, tornado, or similar emergency;

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(17) (15) 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) (16) employment for Minnesota that is a major ~~nontenured~~ policy making or advisory position in the unclassified service, including those positions established pursuant to section 43A.08, subdivision 1a;

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

(21) (18) domestic service employment 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 employment totaled less than \$1,000.

"Domestic service employment" 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~~ or business;

(22) (19) 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) (20) employment of an inmate of a custodial or penal institution;

(24) (21) 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) (22) 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) (23) 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) (24) 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) (25) 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 an accredited nurses' training school ~~chartered and approved pursuant to state law;~~

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~~(29)~~ (26) employment as an intern for a hospital by an individual who has completed a four-year course in a an accredited medical school chartered and approved pursuant to state law;

~~(30)~~ (27) employment as an insurance agent or as an insurance solicitor salesperson, 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)~~ (28) employment as an officer of a township mutual insurance company or farmer's mutual insurance company operating pursuant to chapter 67A;

~~(32)~~ (29) 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)~~ (30) employment as a direct seller as defined in United States Code, title 26, section 3508;

~~(34)~~ (31) 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)~~ (32) casual labor employment performed for an individual, other than domestic employment under clause (18), that does not in the course of the promote or advance that employer's trade or business;

~~(36)~~ (33) employment in "agricultural employment" unless considered "covered agricultural employment" under subdivision 11; or

~~(37)~~ (34) if the employment during one-half or more of any pay period constitutes was covered employment, all the employment for the pay period shall be considered covered employment; but if the employment performed during more than one-half of any pay period does not constitute covered the employment was noncovered employment, then none all of the employment for the pay period shall be considered covered noncovered 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.

Sec. 12. Minnesota Statutes 1998, section 268.035, is amended by adding a subdivision to read:

Subd. 21a. REEMPLOYMENT ASSISTANCE TRAINING. (a) A claimant is in "reemployment assistance training" when:

(1) reasonable and suitable employment for the claimant does not exist in the labor market area and it is necessary that the claimant receive training in order to obtain suitable employment;

(2) the curriculum, facilities, staff, and other essentials are adequate to achieve the training objective;

(3) the training is vocational in nature or short term academic training vocationally directed to an occupation or skill for which there are reasonable employment opportunities available to the claimant;

(4) the training course is considered full time by the training provider; and

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(5) the claimant is making satisfactory progress in the training.

(b) Full-time training provided through the dislocated worker program, the Trade Act of 1974, as amended, or the North American Free Trade Agreement shall be considered "reemployment assistance training," if that training course is in accordance with the requirements of that program.

(c) A claimant will be considered in reemployment assistance training only if the training course has actually started or is scheduled to start within 30 calendar days.

Sec. 13. Minnesota Statutes 1998, section 268.035, subdivision 24, is amended to read:

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 \$1,000.

(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 when there has been an experience rating record transfer under section 268.051, subdivision 4.

Sec. 14. Minnesota Statutes 1998, section 268.035, subdivision 30, is amended to read:

Subd. 30. **WAGES PAID.** (a) "Wages paid" means the amount of wages which that have been actually paid or which that 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 wages paid" on the missed pay date. Back pay shall be considered "wages paid" on the date of actual payment. Any wages earned but not paid with no scheduled date of payment shall be considered "actually wages paid" on the last day services are performed in of employment before separation.

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

Sec. 15. Minnesota Statutes 1998, section 268.035, subdivision 32, is amended to read:

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 subdivision 2, paragraph (b).

Sec. 16. Minnesota Statutes 1998, section 268.042, subdivision 3, is amended to read:

Subd. 3. **ELECTION AGREEMENTS; TERMINATION POWERS OF COMMISSIONER.** (a) An organization or person, not defined as an employer, 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 organization or person shall cease to be an employer as of the first day of January of any calendar

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year, only, if at least 30 calendar days prior to the first day of January, the organization or person has filed with the commissioner a written notice to that effect.

(b) Any employer that has services employment performed for it that ~~do~~ does not constitute ~~employment and covered employment~~, may file with the commissioner a written election that all such service employment, in one or more distinct establishments or places of business, shall be considered covered employment for not less than two calendar years. Upon the written approval of the commissioner, the services employment shall constitute covered employment from and after the date stated in the approval. The services employment shall cease to be 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 employer has filed with the commissioner a written notice to that effect.

(e) ~~(b)~~ The commissioner must terminate any election agreement under this subdivision upon 30 calendar days' notice, if the employer fails to pay all taxes due or payments in lieu of taxes due the fund.

Sec. 17. Minnesota Statutes 1998, section 268.045, is amended to read:

268.045 EMPLOYER TAX OR REIMBURSABLE ACCOUNTS.

(a) The commissioner shall maintain a ~~separate tax account for each taxpaying employer and a reimbursable account for each employer that is liable for payments in lieu of taxes if that employer 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 tax account with all the taxes paid, or if the employer is liable for payments in lieu of taxes, shall credit the reimbursable account with the payments made.~~

(b) Two or more related corporations concurrently employing the same employees and compensating those employees through a common paymaster that is one of the corporations may apply to the commissioner to establish a common paymaster tax account that shall be the tax account of the common paymaster corporation. If approved, the separate tax 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 tax account shall be jointly and severally liable for any unpaid taxes, penalties, and interest owing from the common paymaster tax account.

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

If approved, the joint tax 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 unless written notice terminating the joint tax 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 employers in the joint tax account shall be jointly and severally liable for any unpaid taxes, penalties, and interest owing from the joint tax account.

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(d) Two or more employers that are liable for payments in lieu of taxes may apply to the commissioner for the establishment of a group reimbursable 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 reimbursable account. If approved, the commissioner shall establish a group reimbursable account for the employers effective as of the beginning of the calendar year that the application is received. The reimbursable 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. Each employer in the group shall be jointly and severally liable for payments in lieu of taxes for all benefits paid based upon wage credits from all employers in the group during the period the group reimbursable account was in effect.

Sec. 18. Minnesota Statutes 1998, section 268.047, subdivision 1, is amended to read:

Subdivision 1. **GENERAL RULE.** Benefits paid to a claimant pursuant to a ~~reemployment insurance account~~, including extended, additional, and shared work benefits, shall be charged to the tax or reimbursable account of the claimant's base period employer as and when paid ~~except as provided in subdivisions 2 and 3.~~ The amount of benefits ~~chargeable~~ charged to each base period employer's tax or reimbursable account shall bear be the same ratio to percentage of the total amount of benefits paid to a claimant as the percentage of wage credits the claimant was paid by from the employer bear to is of the total amount of wage credits the claimant was paid by from all the claimant's base period employers.

In making computations under this subdivision, the amount of wage credits, if not a ~~multiple of \$1 whole dollar~~, shall be computed to the nearest multiple of \$1 whole dollar.

Sec. 19. Minnesota Statutes 1998, 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 tax account of a taxpaying base period employer or to the reimbursable account of a base period employer that is liable for payments in lieu of taxes under the following conditions when:

(1) the claimant was discharged from the employment because of gross aggravated employment misconduct as determined under section 268.095. This clause exception shall apply only to benefits paid for weeks periods after the claimant's discharge from employment; or

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

(3) the employer:

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

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(ii) during the claimant's benefit year, and continues to provide the claimant with regularly scheduled part-time employment approximating during the benefit year of at least 90 percent of the part-time employment provided the claimant by that employer in the base period, or for and is an involved employer because of the claimant's loss of other employment. This exception shall terminate effective the first week that the employer fails to meet the benefit year employment requirements. This exception shall apply to educational institutions without consideration of the period between academic years or terms;

(4) the employer is a fire department or firefighting corporation or operator of a life-support transportation service, and continues to provide employment for the claimant as a volunteer firefighter or a volunteer ambulance service personnel during the benefit year on the same basis that employment was provided in the base period; and

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

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

(4) (5) the claimant's unemployment from this employer was directly caused by a major natural disaster declared by the president, 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

(5) the claimant's unemployment from this employer was directly caused by a direct result of the condemnation of property by a governmental agency, a fire, flood, or act of God nature, where 70 25 percent or more of the employees employed in at the affected location, including the claimant, became unemployed as a result and the employer substantially reopens its operations in that same area within 18 months. Benefits This exception shall be charged to the employer not apply where the unemployment is caused by was a direct result of the willful intentional act of the employer or a person acting on behalf of the employer; or

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

(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 prior base period and the claimant did not perform services for the employer during the second base period; or

(8) the claimant left or partially or totally lost employment stopped working 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 strike or labor dispute; or

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

New language is indicated by underline, deletions by strikeout.

Sec. 20. Minnesota Statutes 1998, section 268.047, subdivision 3, is amended to read:

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

- (1) the claimant's wage credits from that employer are less than \$500;
- (2) the claimant quit the employment, unless it was determined under section 268.095, to have been because of a good reason caused by the employer or because the employer notified the claimant of discharge within 30 calendar days. This clause exception shall apply only to benefits paid for periods after the claimant's quitting the employment; or
- (3) the employer discharged the claimant from employment because of employment misconduct as determined under section 268.095. This clause exception shall apply only to benefits paid for periods after the claimant's discharge from employment;
- (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
- (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 with substantially the same or better hourly wages and conditions of employment as were previously provided by that employer. This clause shall only apply to benefits paid for 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. 21. Minnesota Statutes 1998, section 268.047, subdivision 4, is amended to read:

Subd. 4. **FEDERAL REIMBURSED BENEFITS NOT CHARGED.** Notwithstanding Regardless of subdivision 1, no employer's account shall be charged for benefits for which the reemployment insurance fund is reimbursed by the federal government.

Sec. 22. Minnesota Statutes 1998, section 268.048, is amended to read:

268.048 BENEFITS NOT CHARGED IN WELFARE-TO-WORK.

(a) The commissioner shall, prior to computing a tax rate, remove benefit charges from the tax account of a taxpaying employer if the claimant to whom those benefits were paid was:

- (1) a primary wage earner who was a recipient of cash benefits under a Minnesota welfare program in the calendar quarter or immediately preceding calendar quarter that wages were first paid by that employer;
- (2) paid wages by that employer in no more than two calendar quarters; and
- (3) paid wages by that employer of less than \$3,000.

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(b) This section shall only apply to benefit charges accruing after July 1, 1997. Paragraph (a), clauses (2) and (3), shall apply to any calendar quarter and is not limited to quarters in the claimant's base period.

(c) If the commissioner finds that an employer discharged the claimant, or engaged in the employment practice of discharging workers, in order to meet the requirements of paragraph (a), clauses (2) and (3), this section shall not apply. In addition, the employer's action shall constitute employer misconduct and the penalties under section 268.184 shall be assessed.

Sec. 23. Minnesota Statutes 1998, section 268.051, subdivision 1, is amended to read:

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

(1) nonprofit corporations organizations that elect to make payments in lieu of taxes as provided in section 268.053; and

(2) the state of Minnesota and political subdivisions, unless they elect to pay taxes as provided in section 268.052.

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

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

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

Sec. 24. Minnesota Statutes 1998, section 268.051, subdivision 2, is amended to read:

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

(b) The minimum tax rate shall be six-tenths of one percent if the amount in the fund is less than \$200,000,000 on June 30 of the 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) For the purposes of this subdivision the fund shall not include any money advanced borrowed from the federal unemployment trust fund pursuant to section 268.194, subdivision 6.

Sec. 25. Minnesota Statutes 1998, section 268.051, subdivision 3, is amended to read:

Subd. 3. **COMPUTATION OF AN A TAXPAYING EMPLOYER'S EXPERIENCE RATING.** (a) For each calendar year, the commissioner shall compute an experi-

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ence rating for an each taxpaying employer who has been subject to this chapter for at least the 12 calendar months prior to July 1 of the prior calendar year. The experience rating shall be the ratio obtained by dividing ~~1-1/4 times~~ 125 percent of the total benefits charged to the employer's tax account during the period the employer has been subject to this chapter, but not less than ~~the 12 or more than the 60~~ calendar months ending on June 30 of the prior calendar year, by the employer's total taxable payroll for the same period.

(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.

Sec. 26. Minnesota Statutes 1998, section 268.051, subdivision 4, is amended to read:

Subd. 4. **EXPERIENCE RATING RECORD TRANSFER.** (a) When an employer acquires the organization, trade or business or substantially all the assets of another 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 computing a tax rate.

(b) When an 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 employer, and there is 25 percent or more common ownership, directly or indirectly, between the predecessor and successor, the successor employer shall acquire the experience rating record attributable to the portion it acquired, and the predecessor employer shall retain the experience rating record attributable to the portion that it has retained, if (1) the successor makes a written request to apply for the transfer of the experience rating record attributable to the severable portion acquired from the predecessor within 180 calendar days from the date of acquisition, and (2) files an application 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, niece, nephew, 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 computing a 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 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 employer shall determine if an employer is a successor within the meaning of this subdivision and shall send the determination to the employer by mail or electronic transmis-

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sion. The determination shall be final unless an appeal is filed by the employer within 30 calendar days after the sending of the determination. Proceedings on the appeal shall be conducted in accordance with section 268.105.

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

(h) The experience rating record for purposes of this subdivision shall consist of those factors ~~which~~ that make up an experience rating, without the 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 all or part of the experience rating record to an employer notwithstanding regardless of the requirements or limitations of paragraph (a). This shall include the transferring of employees from the payroll of an employer with a higher experience rating record to the payroll of an employer with a lower experience rating record.

(j) Regardless of paragraph (a), if there is an acquisition or merger of a publicly held corporation by or with another publicly held corporation the experience rating records of the corporations shall be combined as of the date of acquisition or merger for the purpose of computing a tax rate.

Sec. 27. Minnesota Statutes 1998, section 268.051, subdivision 5, is amended to read:

Subd. 5. **TAX RATE FOR NEW EMPLOYERS.** (a) Each taxpaying employer that does not qualify for an experience rating under subdivision 3, paragraph (a), except employers in the construction a high experience rating industry, shall be assigned a tax rate the higher of (1) one percent, or (2) the state's average cost rate; to a maximum of 5-4/10 percent. For purposes of this paragraph, the state's average cost rate shall be computed annually and shall be derived by dividing the total amount of benefits paid all claimants during the 60 consecutive calendar months prior to July 1 of each year by the total taxable wages of all taxpaying employers during the same period. This rate for new employers shall be applicable for the calendar year following the computation date.

(b) Each taxpaying employer in the construction a high experience rating industry that does not qualify for an experience rating under subdivision 3, paragraph (a), shall be assigned a tax rate, the higher of (1) one percent, or (2) the state's average cost rate for construction employers to a maximum of 8-9 8.0 percent, plus the applicable minimum tax rate. For purposes of this paragraph, the state's average cost rate shall be computed annually and shall be derived by dividing the total amount of benefits paid to claimants of construction industry employers during the 60 consecutive calendar months 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 following the computation date.

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An employer is considered in the construction to be in a high experience rating industry if:

(1) 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, engaged in residential, commercial, or industrial construction, including general contractors;

(2) the employer is engaged in sand, gravel, or limestone mining;

(3) the employer is engaged in the manufacturing of concrete, concrete products, or asphalt; or

(4) the employer is engaged in road building, repair, or resurfacing, including bridge and tunnels and residential and commercial driveways and parking lots.

Sec. 28. Minnesota Statutes 1998, section 268.051, subdivision 8, is amended to read:

Subd. 8. **SOLVENCY ASSESSMENT.** (a) If the fund balance is 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. The taxpaying employer shall pay quarterly a solvency assessment of ten percent of the taxes due.

(b) The solvency assessment shall be placed into a special account from which the commissioner shall pay any interest accruing on any advance loan 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 the interest on any advance.

Sec. 29. Minnesota Statutes 1998, section 268.052, is amended to read:

268.052 PAYMENT TO FUND BY STATE AND POLITICAL SUBDIVISIONS.

Subdivision 1. **PAYMENTS TO FUND BY STATE AND POLITICAL SUBDIVISIONS.** In lieu of taxes payable on a quarterly basis, the state of Minnesota or its political subdivisions shall pay into the reemployment insurance fund the amount of benefits charged to its reimbursable account under section 268.047. Payments in the amount of benefits charged to the reimbursable account during a calendar quarter shall be made on or before the last day of the month next following the month in which that the notice of benefits charged is mailed to the employer sent pursuant to section 268.047, subdivision 5. Past due payments in lieu of taxes shall be subject to the same interest charges and collection procedures that apply to past due taxes.

Subd. 2. **ELECTION BY STATE OR POLITICAL SUBDIVISION TO BE A TAXPAYING EMPLOYER.** (a) The state or political subdivision may elect to be a taxpaying employer for any calendar year if a written notice of election is filed with the commissioner within 30 calendar days following January 1 of that calendar year. Upon election, the state or political subdivision shall be assigned the new employer tax rate under section 268.051, subdivision 5, for the calendar year of the election and until it qualifies for an experience rating under section 268.051, subdivision 3.

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(b) An election shall be for a minimum period of ~~two~~ three calendar years immediately following the effective date of the election and continue unless a ~~written~~ notice terminating the election is filed with the ~~commissioner~~ not later than 30 calendar days prior to before the beginning of the calendar year. The termination shall be effective at the beginning of the next calendar year. A termination of election shall be allowed only if the state or political subdivision has a zero experience rating and has no benefit charges to its tax account that have not yet been used in computing an experience rating under section 268.051, subdivision 3.

(b) ~~(c)~~ The method of payments to the ~~reemployment insurance fund~~ under subdivisions 3 and 4 shall apply to all ~~contributions taxes~~ paid by or due from the state or political subdivision that elects to be taxpaying employers under this subdivision.

(d) The commissioner may allow a notice of election or a notice terminating election to be filed by mail or electronic transmission.

Subd. 3. **METHOD OF PAYMENT BY STATE TO FUND.** To discharge its obligations liability, the state and its wholly owned instrumentalities shall pay the ~~reemployment insurance fund~~ as follows:

(a) (1) Every self-sustaining department, institution and wholly owned instrumentality of the state shall pay into the fund the amounts the commissioner shall certify has been paid from the fund that were charged to its account in accordance with subdivision 1. For the purposes of this clause a "self-sustaining department, institution or wholly owned instrumentality" is one in which where the dedicated income and revenue substantially offsets its cost of operation.

(b) (2) Every partially self-sustaining department, institution and wholly owned instrumentality of the state shall pay into the fund the that same proportion of the sum amount that the commissioner certifies has been paid from the fund has been charged to its employer account as the proportion of the total of its income and revenue bears is to its annual cost of operation.

(c) (3) Every department, institution or wholly owned instrumentality of the state which that is not self-sustaining shall pay to the fund the amount the commissioner certifies has been paid from the fund which were charged to their accounts to the extent funds are available from appropriated funds.

(d) (4) The departments, institutions and wholly owned instrumentalities of the state, including the University of Minnesota, which that have money available shall immediately pay the fund for benefits paid which were charged to their accounts upon receiving notification from the commissioner of the charges in accordance with subdivision 1. If a claimant was paid by a department, institution or wholly owned instrumentality during the claimant's base period from a special or administrative account or fund provided by law, the payment into to the fund shall be made from the special or administrative account or fund with the approval of the department of administration and the amounts are hereby appropriated.

(e) (5) For those departments, institutions and wholly owned instrumentalities of the state which that cannot immediately pay the fund for benefits that were charged to their accounts, the commissioner shall certify on November 1 of each calendar year to the department commissioner of finance the unpaid balances due and owing. Upon receipt of

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the certification, the commissioner of the department of finance shall include the unpaid balances in the biennial budget submitted to the legislature.

Subd. 4. **METHOD OF PAYMENT BY POLITICAL SUBDIVISION TO FUND.** A political subdivision or instrumentality thereof is authorized and directed to pay its obligations under this chapter liabilities by moneys money collected from taxes or other revenues. Every political subdivision authorized to levy taxes may include in its tax levy the amount necessary to pay its obligations liabilities. If the taxes authorized to be levied under this subdivision cause the total amount of taxes levied to exceed any limitation upon the power of a political subdivision to levy taxes, the political subdivision may levy taxes in excess of the limitations in the amounts necessary to meet its obligation under this chapter liability. The expenditures authorized shall not be included in computing the cost of government as defined in any home rule charter of any city. The governing body of a municipality, for the purpose of meeting its liabilities under this chapter, in the event of a deficit, may issue its obligations payable in not more than two years, in an amount that may cause its indebtedness to exceed any statutory or charter limitations, without an election, and may levy taxes in the manner provided in section 475.61.

Sec. 30. Minnesota Statutes 1998, section 268.053, is amended to read:

268.053 PAYMENT TO FUND BY NONPROFIT CORPORATIONS ORGANIZATIONS.

Subdivision 1. ELECTION. (a) Any nonprofit organization that is determined to be an employer has employees in covered employment shall pay taxes on a quarterly basis pursuant to section 268.051 unless it elects to make payments in lieu of taxes to the reemployment insurance fund the amount of benefits charged to the employer's its employer account under section 268.047.

(1) Any nonprofit The organization may elect to become liable for make payments in lieu of taxes for a period of not less than two three calendar years beginning with the date that the organization was determined to be an employer with covered employment by filing a written notice of election with the commissioner not later than 30 calendar days immediately following after the date of the determination.

(2) (b) Any nonprofit organization that makes an election will continue to be liable for payments in lieu of taxes until it files with the commissioner a written notice terminating its election not later than 30 calendar days prior to before the beginning of the calendar year for which the termination shall first is to be effective.

(c) A nonprofit organization that has been making payments in lieu of taxes that files a notice of termination of election shall be assigned the new employer tax rate under section 268.051, subdivision 5, for the calendar year of the termination of election and until it qualifies for an experience rating under section 268.051, subdivision 3.

(3) (d) Any nonprofit organization that has been paying taxes may change elect to making make payments in lieu of taxes by filing with the commissioner not later no less than 30 calendar days prior to before January 1 of any calendar year a written notice of election to become liable for payments in lieu of taxes. An election shall be allowed only if the nonprofit organization has a zero experience rating and has no benefit charges to its tax account that have not yet been used in computing an experience rating under section 268.051, subdivision 3. The election shall not be terminable by the organization for that and the next calendar year.

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(4) (e) The commissioner may for good cause extend the period that a notice of election, or a notice of termination, must be filed and may permit an election to be retroactive.

(f) The commissioner may allow a notice of election or notice terminating election to be filed by mail or electronic transmission.

(5) Subd. 2. DETERMINATION AND APPEAL. The commissioner shall notify each nonprofit organization by mail or electronic transmission of any determination of its status as an employer with covered employment and of the effective date of any election or termination of election. The determinations shall be final unless a written appeal is filed within 30 calendar days after mailing sending of the determination. Proceedings on the appeal shall be conducted in accordance with section 268.105.

(b) Subd. 3. PAYMENTS. (a) Payments in lieu of taxes, in the amount of benefits charged to the employer's reimbursable account, during a calendar quarter, shall be made on or before the last day of the month next following the month in which the notice of benefits charged is mailed to the employer sent pursuant to section 268.047, subdivision 5.

(e) (b) Past due payments in lieu of taxes shall be subject to the same interest charges and collection procedures that apply to past due taxes.

(d) (c) If any nonprofit organization is delinquent in making payments in lieu of taxes, the commissioner may terminate the organization's election to make payments in lieu of taxes as of the beginning of the next calendar year, and the termination shall be effective for that and the following calendar year. A nonprofit organization that has its election terminated under this paragraph shall be assigned the new employer tax rate under section 268.051, subdivision 5, until the organization qualifies for an experience rating under section 268.051, subdivision 3.

(e) Subd. 4. APPLICATION. For purposes of this subdivision section, a nonprofit organization is an organization, or group of organizations, described in United States Code, title 26, section 501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a) of the code.

Sec. 31. Minnesota Statutes 1998, section 268.057, subdivision 4, is amended to read:

Subd. 4. COSTS. Any employer which person that fails to make and submit reports or pay any taxes or, payment in lieu of taxes, or benefit overpayment, including interest and penalties, when due is liable to the department for any filing fees, recording fees, sheriff fees, costs incurred by referral to any public or private collection agency outside the department, or litigation costs incurred in the collection of the amounts due or obtaining the reports.

If any check or money order, in payment of any amount due under this chapter, is not honored when presented for payment, the employer will be assessed a fee of \$20 which is in addition to any other fees provided by this chapter. The fee \$25 shall be assessed regardless of the amount of the check or money order or the reason for nonpayment with the exception of processing errors made by a financial institution.

Costs due under this subdivision collected shall be paid to the department and credited to the administration fund account.

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

Sec. 32. Minnesota Statutes 1998, section 268.057, subdivision 10, is amended to read:

Subd. 10. **PRIORITIES UNDER LEGAL DISSOLUTIONS OR DISTRIBUTIONS.** In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this state, including any receivership, assignment for benefit of creditors, adjudicated insolvency, ~~composition~~, or similar proceeding, taxes then or thereafter due shall be paid in full prior to all other claims except claims for wages of not more than \$250 to each claimant \$1,000 per former employee, earned within six months of the commencement of the proceedings. In the event of an employer's adjudication in bankruptcy, ~~judicially confirmed extension proposal, or composition~~, under the federal Bankruptcy Act of 1898, as amended law, taxes then or thereafter due shall be entitled to such the priority as is provided in that act law for taxes due any state of the United States.

Sec. 33. Minnesota Statutes 1998, section 268.058, is amended to read:

268.058 TAX AND PAYMENT IN LIEU OF TAXES LIEN, LEVY, SETOFF, AND CIVIL ACTION.

Subdivision 1. **LIEN.** (a) Any taxes, benefit overpayments, or payments in lieu of taxes due ~~under this chapter and including interest and, penalties imposed with respect thereto, and costs~~ shall become a lien upon all the property, within this state, both real and personal, of the person liable therefor, from the date of assessment of the tax, ~~benefit overpayment, or payment in lieu of taxes.~~ The term "date of assessment" means the date a report was due or the payment the obligation was due date of the notice of benefits charged to a payment in lieu of taxes account.

(b)(1) The lien ~~imposed by this section~~ is not enforceable against any purchaser, mortgagee, pledgee, holder of a Uniform Commercial Code security interest, mechanic's lien, or judgment lien creditor, until a notice of lien has been filed by the ~~commissioner~~ in the office of with the county recorder of the county in which where the property is situated, or in the case of personal property belonging to an individual who is not a resident of the state, or which is a corporation, partnership, or other organization, a nonresident person in the office of the secretary of state. When the filing of the notice of lien is made in the ~~office of~~ filed with the county recorder, the fee for filing and indexing shall be as prescribed provided in sections 272.483 and 272.484.

(2)(c) Notices of liens, lien renewals, and lien releases, in a form prescribed by the commissioner of ~~economic security~~, may be filed with the county recorder or the secretary of state by mail, personal delivery, or by electronic transmission by the ~~commissioner or a delegate~~ into the computerized filing system of the secretary of state authorized under section 336.9-411. The secretary of state shall, on any notice filed with that office, transmit the notice electronically to the office of the appropriate county recorder, if that is the place of filing, in the county or counties shown on the computer entry. The filing officer, whether the county recorder or the secretary of state, shall endorse and index a print-out of the notice in the same manner as if the notice had been mailed or delivered.

(3)(d) County recorders and the secretary of state shall enter information relative to on lien notices, renewals, and releases filed in their offices into the central database of the secretary of state. For notices filed electronically with the county recorders, the date and time of receipt of the notice and county recorder's file number, and for notices filed electronically with the secretary of state, the secretary of state's recording information, must

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be entered by the filing officer into the central database before the close of the working day following the day of the original data entry by the department commissioner.

~~(e)~~ (c) The lien imposed on personal property by this section, even though properly filed, is not enforceable against a purchaser with respect to of tangible personal property purchased at retail or as against the personal property listed as exempt in sections 550.37, 550.38, and 550.39.

~~(d)~~ (f) A notice of tax lien filed pursuant to this section has priority over any security interest arising under chapter 336, article 9, which that is perfected prior in time to the lien imposed by this section subdivision, but only if:

(1) the perfected security interest secures property not in existence at the time the notice of tax lien is filed; and

(2) the property comes into existence after the 45th calendar day following the day on which the notice of tax lien is filed, or after the secured party has actual notice or knowledge of the tax lien filing, whichever is earlier.

~~(e)~~ (g) The lien imposed by this section shall be enforceable from the time the lien arises and for ten years from the date of filing the notice of lien. A notice of lien may be renewed by the commissioner before the expiration of the ten-year period for an additional ten years. The delinquent employer must receive notice of the renewal.

~~(f)~~ (h) The lien imposed by this section shall be enforceable by levy as authorized in under subdivision 2 or by judgment lien foreclosure as authorized in under chapter 550.

Subd. 2. LIMITATION FOR HOMESTEAD PROPERTY. (i) The lien may be imposed by this section is a lien upon property defined as homestead property in chapter 510. The lien but may be enforced only upon the sale, transfer, or conveyance of the homestead property.

(j) The commissioner may sell and assign to a third party the commissioner's right of redemption in specific real property for liens filed under this subdivision. The assignee shall be limited to the same rights of redemption as the commissioner, except that in a bankruptcy proceeding, the assignee does not obtain the commissioner's priority. Any proceeds from the sale of the right of redemption shall be credited to the contingent account. Any sale shall be by written agreement signed by an attorney who is a classified employee of the department designated by the commissioner for that purpose.

Subd. 3. 2. LEVY. (a) If any tax or payment in lieu of taxes payable to the department, or benefit overpayment, including interest, penalties, and costs, is not paid when due, the amount may be collected by the commissioner, a duly authorized representative, or by the sheriff of any county to whom the commissioner has issued a warrant, who may by direct levy upon all property and rights of property of the person liable for the tax or payment in lieu of taxes, (amount due except that which is exempt from execution pursuant to under section 550.37), or property on which there is a lien provided by subdivision 1. The terms "tax or payment in lieu of taxes" shall include any penalty, interest, and costs. The term "levy" includes the power of distraint and seizure by any means. Before a levy is made or warrant issued, notice and demand for payment of the amount due shall be given to the person liable for the tax or payment in lieu of taxes at least ten days prior to the levy or issuing of a warrant.

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(b) Upon In addition to a direct levy, the commissioner issuing may issue a warrant, to the sheriff of any county who shall proceed within 60 calendar days to levy upon the property or rights to property of the employer delinquent person within the employer's county, except the homestead and household goods of the employer and property of the employer not liable to attachment, garnishment, or sale on any final process issued from any court that exempt under the provisions of section 550.37, and. The sheriff shall sell so much thereof as is required that property necessary to satisfy the tax, payment in lieu of taxes, interest, and penalties total amount due, together with the commissioner's and sheriff's costs. The sales shall, as to their manner, be governed by the law applicable to sales of like property on execution issued against property upon of a judgment of a court of record. The proceeds of the sales, less the sheriff's costs, shall be turned over to the commissioner, who shall retain a part thereof as is required to satisfy the tax, payment in lieu of taxes, interest, penalties, and costs, and pay over any balance to the employer.

(c) Notice and demand for payment of the total amount due shall be mailed to the delinquent person at least ten calendar days prior to action being taken under paragraphs (a) and (b).

(e) (d) If the commissioner has reason to believe that collection of the tax or payment in lieu of taxes amount due is in jeopardy, notice and demand for immediate payment of the amount may be made by the commissioner. If the tax or payment in lieu of taxes total amount due is not paid, the commissioner may proceed to collect by direct levy or issue a warrant without regard to the ten-day ten calendar day period provided herein.

(d) (e) In making the execution of executing the levy and in collecting the tax or payment in lieu of taxes due, the commissioner shall have all of the powers provided in chapter 550 and in or any other law for purposes of effecting an that provides for execution against property in this state. The sale of property levied upon and the time and manner of redemption therefrom shall be as provided in chapter 550. The seal of the court, subscribed by the court administrator, as provided in section 550.04, shall not be required. The levy for collection of taxes or payments in lieu of taxes may be made whether or not the commissioner has commenced a legal action for collection of the amount.

(e) (f) Where a jeopardy assessment or any other assessment has been made by the commissioner, the property seized for collection of the tax or payment in lieu of taxes total amount due shall not be sold until any determination of liability, rate, or benefit charges has become final. No sale shall be made unless the tax or payment in lieu of taxes remain a portion of the amount due remains unpaid for a period of more than 30 calendar days after the determination of liability becomes final. Seized property may be sold at any time if:

- (1) the employer delinquent person consents in writing to the sale; or
- (2) the commissioner determines that the property is perishable or may become greatly reduced in price or value by keeping, or that the property cannot be kept without great expense.

(f) (g) Where a levy has been made to collect taxes or payments in lieu of taxes pursuant to this subdivision the amount due and the property seized is properly included in a formal proceeding commenced under sections 524.3-401 to 524.3-505 and maintained under full supervision of the court, the property shall not be sold until the probate proceedings are completed or until the court so orders.

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~~(g)~~ (h) The property seized shall be returned by the commissioner if the owner:

(1) gives a surety bond equal to the appraised value of the owner's interest in the property, as determined by the commissioner, or

(2) deposits with the commissioner security in a form and amount as the commissioner ~~deems~~ considers necessary to insure payment of the liability, ~~but not more than twice the liability.~~

~~(h)~~ (i) ~~Notwithstanding any other law to the contrary,~~ (i) If a levy or sale pursuant to this section would irreparably injure rights in property which the court determines to be superior to rights of the state in the property, the district court may grant an injunction to prohibit the enforcement of the levy or to prohibit the sale.

~~(i)~~ (j) Any person who fails or refuses to surrender without reasonable cause any property or rights to property subject to levy upon demand by the commissioner shall be personally liable to the department in an amount equal to the value of the property or rights not so surrendered, but not exceeding the amount of tax or payment in lieu of taxes for the collection of which the levy has been made. Any amount recovered under this subdivision shall be credited against the tax or payment in lieu of taxes liability for the collection of which the levy was made. The term "person" includes an officer or employee of a corporation or a member or employee of a partnership who, as an officer, employee, or member is under a duty to surrender the property or rights to property or to discharge the obligation due.

~~(j)~~ (k) Any action taken by the commissioner pursuant to this subdivision shall not constitute an election by the department to pursue a remedy to the exclusion of any other remedy.

~~(k)~~ (l) ~~After~~ If the commissioner has seized the property of any person individual, that person individual may, upon giving 48 hours notice to the commissioner and to the court, bring a claim for equitable relief before the district court for the release of the property to the employer upon terms and conditions as the court ~~may deem~~ considers equitable.

(l) Any person in control or possession of ~~(or obligated with respect to)~~ property or rights to property subject to levy upon which a levy has been made who, upon demand by the commissioner, surrenders the property or rights to property, or who pays a liability under this subdivision the amount due shall be discharged from any obligation or liability to the person liable for the payment of the delinquent tax or payment in lieu of taxes amount due with respect to the property or rights to property so surrendered or paid.

(m) ~~Notwithstanding any other provisions of law to the contrary,~~ The notice of any levy authorized by this section may be served personally or by mail or by delivery by an employee or agent of the department.

(n) ~~It shall be lawful for~~ The commissioner to may release the levy upon all or part of the property or rights to property levied upon if the commissioner determines that the release will facilitate the collection of the liability, but the release shall not operate to prevent any subsequent levy. If the commissioner determines that property has been wrongfully levied upon, ~~it shall be lawful for the commissioner to~~ shall return:

(1) the specific property levied upon, at any time; or

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(2) an amount of money equal to the amount of money levied upon, at any time before the expiration of nine months from the date of levy.

(o) Notwithstanding section 52.12, a levy by the commissioner made pursuant to the provisions of this section upon an employer's a person's funds on deposit in a financial institution located in this state, shall have priority over any unexercised right of setoff of the financial institution to apply the levied funds toward the balance of an outstanding loan or loans owed by the employer person to the financial institution. A claim by the financial institution that it exercised its right to setoff prior to the levy by the commissioner must be substantiated by evidence of the date of the setoff, and shall be verified by the sworn statement of a responsible affidavit from a corporate officer of the financial institution. Furthermore, For purposes of determining the priority of any levy made under this section subdivision, the levy shall be treated as if it were an execution made pursuant to under chapter 550.

Subd. 4. 3. **RIGHT OF SETOFF.** (a) Upon certification by the commissioner to the commissioner of finance, or to any state agency which that disburses its own funds, that an employer a person has an uncontested delinquent tax or payment in lieu of taxes a liability owed to the department under this chapter, including interest, penalties, and costs, and that the state has purchased personal services, supplies, contract services, or property from said employer that person, the commissioner of finance or the state agency shall apply to the delinquent tax or payment in lieu of taxes liability funds set off and pay to the commissioner an amount sufficient to satisfy the unpaid liability from funds appropriated for payment of said the obligation of the state or any of its agencies that are due and owing the employer otherwise due the person. The credit shall not be made against No amount shall be set off from any funds exempt under section 550.37 or those funds owed due an individual employer who receives assistance under chapter 256.

(b) All funds, whether general or dedicated, shall be subject to setoff in the manner provided in this subdivision. Transfer of funds in payment of the obligations of the state or any of its agencies to an employer and any actions for the funds shall be had against the commissioner on the issue of the tax or payment in lieu of taxes liability. Nothing in this section shall be construed to limit the previously existing right of the state or any of its agencies to setoff.

Notwithstanding Regardless of any law to the contrary, the commissioner shall have first priority to setoff from any funds owed by otherwise due from the department to a delinquent employer person.

Subd. 5. 4. **COLLECTION BY CIVIL ACTION.** (a) In addition to all other collection methods authorized, if Any employer is delinquent on any payment of taxes or, payment in lieu of taxes, or benefit overpayment, including interest due thereon or, penalties for failure to file a tax report and other reports as required by this chapter or by any rule of the commissioner, the amount due, or costs, may be collected by civil action in the name of the state of Minnesota, and any money recovered shall be credited to the funds provided for under these sections. Any employer adjudged delinquent shall pay the costs of the action. Civil actions brought under this subdivision shall be heard as provided under section 16D.14. No action for the collection of taxes, interest thereon, or penalties shall be commenced more than six years after the taxes have been reported by the employer or determined by the commissioner to be due and payable. In any action, judgment shall be entered against any employer in default for the relief demanded in the com-

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plaint without proof, together with costs and disbursements, upon the filing of an affidavit of default.

(b) ~~Any employer person that is not a resident of this state and any resident employer person removed from this state, shall be considered to appoint the secretary of state as its agent and attorney for the acceptance of process in any civil action under this subdivision. In instituting an action against any employer, The commissioner shall file process with the secretary of state, together with a payment of a fee of \$15 and that service shall be considered sufficient service upon the employer, and shall have the same force and validity as if served upon the employer personally within this state. The commissioner shall send Notice of the service of process, together with a copy of the process, shall be sent by certified mail, to the employer at its person's last known address. The commissioner's An affidavit of compliance with the provisions of this section subdivision, and a copy of the notice of service shall be appended to the original of the process and filed in the court.~~

(c) No court filing fees, docketing fees, or release of judgment fees may be assessed against the state for actions pursuant to this subdivision.

Subd. 6. 5. **INJUNCTION FORBIDDEN.** ~~No suit shall lie injunction or other legal action to enjoin prevent the assessment or collection of any tax or payment in lieu of taxes imposed by this chapter, or the, or benefit overpayment, including interest and penalties imposed thereby, and costs shall be allowed.~~

Sec. 34. Minnesota Statutes 1998, section 268.0625, is amended to read:

268.0625 REEMPLOYMENT INSURANCE TAX CLEARANCES; ISSUANCES REVOCATIONS OF BUSINESS LICENSES.

Subdivision 1. **REEMPLOYMENT INSURANCE CLEARANCE REQUIRED NOTICE OF DEBT TO LICENSING AUTHORITY.** ~~The state of Minnesota or a political subdivision of the state may not issue, transfer, or renew, and must revoke a license for the conduct of any profession, trade, or business, if the commissioner notifies the licensing authority that the applicant licensee owes the state delinquent taxes, payments in lieu of taxes, or benefit overpayments. The commissioner may not notify the licensing authority unless the applicant owes, including interest, penalties, and costs, of \$500 or more to the reemployment insurance fund. A licensing authority that has received such a notice from the commissioner may issue, transfer, renew, or not revoke the applicant's license only if (a) the commissioner issues a reemployment insurance tax clearance certificate; and (b) the commissioner or the applicant forwards a copy of the clearance to the licensing authority has received a copy of the debt clearance certificate issued by the commissioner.~~

Subd. 2. **ISSUANCE OF DEBT CLEARANCE CERTIFICATE.** ~~The commissioner may issue a reemployment insurance tax a debt clearance certificate only if:~~

(a) ~~(1) the applicant does not owe the state licensee has fully paid any delinquent taxes, payments in lieu of taxes, or benefit overpayments, including interest, penalties, and costs; or~~

(b) ~~(2) the applicant licensee has entered into a payment an agreement to liquidate the delinquent taxes, payments in lieu of taxes, or benefit overpayments pay the total amount due and is current with all the terms of that payment agreement.~~

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Subd. 3. DEFINITION. For the purposes of this section, "applicant" "licensee" means:

(a) (1) an individual if the license is issued to or in the name of an individual, or the corporation, limited liability company, or partnership if the license is issued to or in the name of a corporation, limited liability company, or partnership; or

(b) (2) an officer of a corporation, manager of a limited liability company, or a member of a partnership, or an individual who is liable for the delinquent taxes, payments in lieu of taxes, or benefit overpayments, either for the entity for which that the license is at issue or for another entity for which that the liability was incurred, or personally as a licensee. In the case of a license transfer, "applicant" means "Licensee" includes both the transferor and the transferee of the license. "Applicant" also means and any holder of a license.

Subd. 3, 4. NOTICE AND RIGHT TO HEARING. At least 30 calendar days before the commissioner notifies a licensing authority pursuant to subdivision 1, a notice and demand for payment of the amount due of action under this section shall be given mailed to the applicant licensee. If the applicant licensee disputes the amount due action, the applicant licensee must request a hearing in writing appeal within 30 calendar days after the mailing of the notice and demand for payment to the applicant's licensee's last known address. The only issue on any appeal is whether the commissioner has complied with the requirements of this section. Proceedings on the appeal of the amount due shall be conducted in accordance with section 268.105.

Subd. 4, 5. LICENSING AUTHORITY; DUTIES. Upon request of the commissioner, the licensing authority must shall provide the commissioner with a list of all applicants licensees, including the name, address, business name and address, social security number, and business identification number of each applicant. The commissioner may request from a licensing authority a list of the applicants licensees no more than once each calendar year. Notwithstanding Regardless of section 268.19, the commissioner may release information necessary to accomplish the purpose of this section.

Subd. 5. OTHER REMEDIES. Any action taken by the commissioner pursuant to this section is not an election by the commissioner to pursue a remedy to the exclusion of any other remedy.

Sec. 35. Minnesota Statutes 1998, section 268.064, is amended to read:

268.064 LIABILITY OF SUCCESSOR FOR DEBTS UPON ACQUISITION.

Subdivision 1. ACQUISITION OF ORGANIZATION, TRADE, OR BUSINESS, OR ASSETS. Any individual or organization, whether or not an employer, which person who acquires all or part of the organization, trade, or business or all or part of the assets thereof from an employer, is jointly and severally liable, in an amount not to exceed the reasonable value of that part of the organization, trade, or business or assets acquired, for the taxes due and unpaid by the employer, and. The amount of liability shall, in addition, be a lien against the property or assets so acquired which and shall be prior to all other unrecorded liens. This subdivision section does not apply to sales in the normal course of the employer's business.

Subd. 2. REASONABLE VALUE. The commissioner, upon the commissioner's own motion or upon application of the potential successor acquiring person, shall deter-

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mine 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 acquiring person, within 30 calendar days after the sending of being sent the determination to the successor by mail or electronic transmission, files an appeal. Proceedings on the appeal shall be conducted in accordance with section 268.105.

Subd. 3. **STATEMENT OF AMOUNT DUE.** Prior to the date of acquisition, the commissioner shall furnish the potential successor acquiring person with a written statement of the predecessor's taxes due and unpaid, on record as of the date of issuance, only upon the written request of the potential successor acquiring person and the written release of the predecessor obligor. No release is required after the date of acquisition.

Subd. 4. **ADDITIONAL REMEDY.** The remedy provided by this section is in addition to all other existing remedies against the employer or a successor and is not an election by the department to pursue this remedy to the exclusion of any other remedy.

Sec. 36. Minnesota Statutes 1998, section 268.065, is amended to read:

268.065 LIABILITY OF THIRD PARTIES TO ASSURE PAYMENT OF AMOUNTS DUE FROM CONTRACTORS, SUBCONTRACTORS, AND EMPLOYEE LEASING FIRMS.

Subdivision 1. **CONTRACTORS SUBCONTRACTORS.** A contractor, ~~who is or becomes an employer under this chapter, who contracts with any subcontractor, who is or becomes an employer under this chapter,~~ shall guarantee the payment of all the taxes, interest, penalties, and collection costs ~~which that~~ are due or become due from the subcontractor with respect to taxable wages paid for employment on the contract by:

- (a) (1) withholding sufficient money on the contract; or
- (b) (2) requiring the subcontractor to provide a good and sufficient bond guaranteeing the payment of all taxes, interest, penalties, and collection costs which that may become due.

The contractor may make a written request for verification that the subcontractor has paid the taxes due 60 calendar days after the due date for filing the tax report that includes the final wages paid for services employment performed under the contract. If department records show that the subcontractor has paid the taxes for the period covered by the contract, the department commissioner may release the contractor from its liability under this subdivision.

The words "contractor" and "subcontractor" include individuals, partnerships, firms, or corporations, or other association of persons engaged in the construction industry.

Subd. 2. **EMPLOYEE LEASING FIRMS.** A person whose work force consists of 50 percent or more of workers provided by employee leasing firms, is directly jointly and severally liable for the payment of all the unpaid taxes, penalties, interest, and collection costs which that are due or become due from on the wages paid for employment on the contract, unless the contract requires with the employee leasing firm to provide a good and sufficient bond guaranteeing the payment of all taxes, penalties, interest, and collection costs which may become due. "Employee leasing firm" means an employer that provides its employees to other firms, persons, and employers without severing its employer-employee relationship with the worker for the services performed for the lessee.

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Subd. 3. **DETERMINATION OF LIABILITY.** ~~An official designated by the commissioner shall make an initial determination as to the liability under this section. The determination shall be final unless the contractor or person found to be liable files a written appeal within 30 calendar days after mailing of notice of being sent the determination to the person's last known address by mail or electronic transmission. Proceedings on the appeal shall be conducted in accordance with section 268.105.~~

Sec. 37. Minnesota Statutes 1998, section 268.067, is amended to read:

268.067 COMPROMISE AGREEMENTS.

(a) The commissioner may compromise in whole or in part any action, determination, or decision that affects only an employer and not a claimant, and that has become final occurred during the prior 24 months.

(b) The commissioner may at any time compromise delinquent employer taxes, payments in lieu of taxes, interest, penalties, and costs.

(c) Any compromise under paragraphs (a) and (b) shall be by written agreement or order signed by the employer and the commissioner.

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

(d) Any compromise order must set out all the terms and the reason for the order and must be in the best interest of the state of Minnesota.

Sec. 38. [268.0675] NO ELECTION OF REMEDY.

Use of any remedy under this chapter for the collection of any delinquent taxes, payments in lieu of taxes, or benefit overpayment, including penalties, interest, and costs, shall not constitute an election of remedy to the exclusion of any other available remedy.

Sec. 39. Minnesota Statutes 1998, section 268.068, is amended to read:

268.068 NOTICE TO WORKERS.

Each employer shall post and maintain printed statements of an individual's right to apply for ~~reemployment insurance~~ benefits in places readily accessible to individuals ~~workers in the employer's service. Such~~ The printed statements must shall be supplied by the commissioner at no cost to an employer.

Sec. 40. Minnesota Statutes 1998, section 268.069, is amended to read:

268.069 PAYMENT OF BENEFITS.

Subdivision 1. REQUIREMENTS. (a) The commissioner shall pay ~~reemployment insurance~~ benefits from the Minnesota ~~reemployment insurance~~ fund to a claimant who has met each of the following requirements:

(1) the claimant has filed an application for benefits and established a reemployment insurance benefit account in accordance with section 268.07;

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(2) the claimant is not subject to a disqualification from benefits under section 268.095;

(3) the claimant has met all of the ongoing weekly eligibility requirements under section ~~268.08~~ sections 268.085 and 268.086; and

(4) the claimant does not have an outstanding overpayment of benefits, including any penalties or interest, under section 268.18; and

(5) the claimant is not subject to a denial of benefits under section 268.182.

Subd. 2. **BENEFITS PAID FROM STATE FUNDS.** ~~(b)~~ Benefits are paid from state funds and shall not be considered paid from any special insurance plan, nor as paid by an employer. An application for benefits shall not be considered a claim against an employer but shall be considered a request for benefits from the fund. The commissioner shall determine has the responsibility for the proper payment of benefits regardless of the level of interest or participation by a claimant or an employer in any determination or appeal. A claimant's entitlement to benefits shall be determined based upon that information available without regard to any common law burden of proof, and any agreement between a claimant and an employer shall not be binding on the commissioner in determining a claimant's entitlement. Any obligation on an employer as a result of benefits charged to the employer is to the fund only. There shall be no presumption of entitlement or nonentitlement to benefits.

Subd. 3. **COMMON LAW.** There shall be no equitable or common law denial or allowance of benefits.

Sec. 41. Minnesota Statutes 1998, section 268.07, is amended to read:

268.07 **REEMPLOYMENT INSURANCE BENEFIT ACCOUNT.**

Subdivision 1. **APPLICATION FOR BENEFITS; DETERMINATION OF BENEFIT ACCOUNT.** (a) An application for reemployment insurance benefits may be made filed in person, by mail, by telephone, or by electronic transmission as the commissioner shall require. The commissioner may by rule adopt other requirements for an application. The claimant must provide all requested information in the manner required. If the claimant fails to provide all requested information, the communication shall not be considered an application for benefits.

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

(c) If a base period employer failed to did not provide wage information for the claimant as required provided for 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 benefit account.

(d)~~(1)~~ The commissioner may, at any time within 24 months from the establishment of a reemployment insurance benefit account, reconsider any determination of reem-

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employment insurance benefit account and make a redetermination if the commissioner finds that the determination was incorrect for any reason. A redetermination of reemployment insurance account shall be promptly sent to the claimant and all base period employers, by mail or electronic transmission.

(2) If a redetermination of reemployment insurance benefit account reduces the weekly benefit amount or maximum amount of benefits payable available, any benefits that have been paid greater than the claimant was redetermined entitled is considered an overpayment subject to of benefits under section 268.18, subdivision 1.

Subd. 2. **BENEFIT ACCOUNT REQUIREMENTS AND WEEKLY BENEFIT AMOUNT AND MAXIMUM AMOUNT OF BENEFITS.** (a) To establish a reemployment insurance benefit 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 at least \$1,000; and

(2) wage credits, in other than the high quarter, of at least \$250.

(b) If the commissioner finds that a claimant has established a reemployment insurance benefit account, the weekly benefit amount payable available during the claimant's benefit year shall be 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 the higher of \$331 or 50 percent of the state's average weekly wage.

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.

(c) The state's maximum weekly benefit amount and the claimant's weekly benefit amount and maximum amount of benefits shall be computed to rounded down to the nearest next lowest whole dollar.

(d) The maximum amount of benefits payable available on any reemployment insurance benefit account shall equal ~~one-third~~ be 33-1/3 percent of the claimant's total wage credits ~~rounded to the next lower dollar, not to exceed to a maximum of 26 times the claimant's weekly benefit amount.~~

Subd. 3. **SECOND BENEFIT ACCOUNT REQUIREMENTS.** To establish a second reemployment insurance benefit account following the expiration of a benefit year on a prior reemployment insurance benefit account, a claimant must have sufficient wage credits to establish a reemployment insurance benefit account under subdivision 2 and must have performed services in covered employment after the effective date of the prior reemployment insurance benefit account. The wages paid for that employment must equal not less than eight times the weekly benefit amount of the prior reemployment insurance benefit account. A reemployment insurance benefit account established suffi-

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ciently in advance of anticipated ~~unemployment~~ loss of employment to make the limitations of this subdivision ineffective shall not be allowed. The purpose of this subdivision is to prevent a claimant from establishing more than one ~~reemployment insurance benefit~~ account as a result of one separation from loss of employment.

Subd. 3a. **RIGHT OF APPEAL.** (a) A determination or redetermination of a ~~reemployment insurance benefit~~ account shall be final unless a claimant or base period employer within 30 calendar days after the sending of the determination or redetermination files an appeal. Every determination or redetermination of a ~~reemployment insurance benefit~~ 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 benefit~~ account on the issue of whether services performed constitute employment and covered employment. Proceedings on the appeal shall be conducted in accordance with section 268.105.

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

(b) A ~~reemployment insurance benefit~~ account, once established, may ~~later~~ be withdrawn and only if:

(1) a new application for benefits is filed and a new benefit account is established only if at the time of the withdrawal; and

(2) the claimant has not been credited with served a waiting week under section 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 benefit~~ account, shall remain in effect and shall not be voided by the withdrawal of the ~~reemployment insurance benefit~~ account. A determination of disqualification requiring subsequent earnings to satisfy the disqualification under section 268.095, subdivision 10, shall apply to the weekly benefit amount on the new benefit account.

(c) A ~~reemployment insurance account shall not be established~~ An application for benefits shall not be allowed prior to the Sunday following the expiration of the benefit year on a prior reemployment insurance benefit account. Except as allowed under paragraph (b), a claimant may establish only one benefit account each 52 calendar weeks.

(d) All benefits shall be payable available from the fund only for weeks occurring during the claimant's benefit year.

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Sec. 42. Minnesota Statutes 1998, section 268.085, is amended to read:

268.085 ELIGIBILITY REQUIREMENTS.

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 an active benefit account and has filed a continued claim request 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 for that week pursuant to section 268.086;~~

(2) the claimant was able to work and was available for employment, and was actively seeking suitable 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 shall not apply to a claimant who is in reemployment assistance training with the approval of the commissioner.~~

~~A~~ The requirement that the claimant serving as a juror shall be considered as available for employment and actively seeking suitable employment on shall not apply each day the claimant is on jury duty;

(3) the claimant has served a waiting period of one week that the claimant is otherwise entitled to some amount of 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 benefit account under section 268.07; and

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

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

(1) that occurs before the establishment effective date of a reemployment insurance benefit account;

(2) that occurs in a period when the claimant is a student in attendance at, or on vacation from a secondary school including the period between academic years or terms;

(3) that the claimant is incarcerated or performing court ordered community service. The claimant's weekly benefit amount shall be reduced by one-fifth for each day the claimant is incarcerated or performing court ordered community service;

(4) that the claimant is on a voluntary leave of absence, including a requested period of paid or unpaid vacation. A leave of absence is voluntary when work, that the claimant can perform, is available with the claimant's employer, but the claimant chooses not to work. A claimant unemployed who is not working as a result of a vacation period assigned by an employer under: (i) a uniform vacation shutdown, (ii) a collective bargain-

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ing agreement, or (iii) an established employer policy, shall not be considered on a voluntary leave of absence ineligible under this clause;

(5) that the claimant is performing services 32 hours or more, in employment, covered employment, noncovered employment, or 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 an application for reemployment insurance benefits under any federal law or the 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. 3. **DEDUCTIBLE PAYMENTS.** (a) 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, a 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 pay, paid directly by the an employer for a period of requested vacation, including vacation periods assigned by the employer under:~~ (i) a collective bargaining agreement, (ii) established employer policy, or (iii) 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 compensation for loss of wages under any other insurance or fund established and paid for in whole or in part by the an employer; or

(4) pension, retirement, or annuity payments from any plan contributed to by a base period employer including the United States government, except social security benefits as which are 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.

If the claimant receives a lump sum pension payment, that sum shall be divided by the claimant's last level of regular weekly pay to determine the number of weeks of payment. The number of weeks of payment shall be applied to the period immediately following the last day of employment. A claimant shall not be considered to have received the lump sum payment if the claimant immediately deposits that payment in a qualified pension plan or account; or

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(5) holiday pay or sick pay, paid directly by an employer.

(b) If the deductible 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 shall be reduced by the amount of the payment; provided, further, that, if the computation of reduced benefits is not a whole dollar, it shall be rounded down to the next lowest dollar.

(c) 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.

Subd. 4. SOCIAL SECURITY BENEFITS. (a) Any claimant aged 62 or over shall be required to state at the time of making when filing an application for a reemployment insurance account benefits and when making filing continued claims requests for benefits whether the claimant is receiving, has filed for, or intends to file for, primary social security old age or disability benefits for any week during the benefit year, and if so.

(b) There shall be deducted from the a claimant's weekly benefit amount otherwise payable for that week, 50 percent of the weekly equivalent of the primary social security old age benefit the claimant has received, has filed for, or intends to file for, with respect to that week.

(b) In addition to paragraph (a), (c) 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.

(d) Information from the Social Security Administration shall be considered conclusive, absent specific evidence showing that the information was erroneous.

(e) (e) Any claimant who receives primary social security old age or disability benefits, that would cause the claimant to be ineligible under this subdivision, for weeks periods that the claimant received has been paid reemployment insurance benefits shall be considered overpaid those reemployment insurance benefits under section 268.18, subdivision 1.

Subd. 5. 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, that is less than the claimant's weekly benefit amount, from employment, covered employment, noncovered employment, self-employment, or volunteer work, that is less than the claimant's weekly benefit amount, that amount over 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 or \$50, whichever is higher; and

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(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~~ requests for benefits at the nearest whole dollar amount.

(e) Earnings shall not include any money considered a deductible payment under subdivision 3, but shall include all other money considered wages and any other money considered earned income under state and federal law for income tax purposes.

Subd. 6. **RECEIPT OF BACK PAY.** (a) Back pay received by a claimant with respect to any ~~weeks~~ week occurring in the 104 weeks prior to the payment of the back pay shall be deducted from benefits paid for those ~~weeks that~~ week.

~~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 an arbitration award, administrative or judicial decision, or negotiated settlement that provides for back pay does not specify the period with respect to which it is paid, the back pay shall be applied to the period immediately following the last day of employment.

(b) If the back pay awarded the claimant is reduced by the amount of benefits that have been paid, the amounts amount of back pay withheld shall be:

(a) (1) paid by the employer into to the fund within 30 calendar days of the award and are subject to the same collection procedures that apply to past due taxes under this chapter;

(b) (2) applied to benefit overpayments resulting from the payment of the back pay; and

(c) (3) credited to the claimant's maximum amount of benefits payable available to the claimant in a benefit year that includes the weeks for which back pay was deducted.

Benefit (c) Charges for those weeks to the employer's tax or reimbursable account under section 268.047 for benefits paid the claimant shall be removed from the employer's account as of in the calendar quarter that the fund receives payment.

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

Subd. 7. **SCHOOL EMPLOYEES.** (a) No wage credits in any amount from any employment with any educational institution or institutions earned ~~while in an instructional, research, or principal administrative~~ any capacity may be used for benefit purposes for any week beginning during a the period between two successive academic years or terms, ~~or during a period between two regular but not successive terms, if:~~

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

(2) there is a ~~contract~~ or a reasonable assurance that the claimant will have employment in any instructional, research, or principal administrative capacity for any educational institution or institutions in the second of the following academic years year or terms term, that is not substantially similar to less favorable than the employment of the first prior academic years year or terms; term.

(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 from any educational institution or institutions for any week 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.~~

(b) Paragraph (a) shall not apply to a claimant who has, at the end of the prior academic year or term, had an agreement for a definite period of employment between academic years or terms shall be eligible for any weeks within that period in other than an instructional, research, or principal administrative capacity and the educational institution or institutions fail failed to provide that employment.

(c) If benefits are denied to any claimant under ~~this~~ paragraph (a) who was employed in the prior academic year or term in other than an instructional, research, or principal administrative capacity and the claimant who was not offered an opportunity to perform the employment in the second of the following academic years year or term, the claimant shall be entitled to retroactive benefits for each week during the period between academic years or terms that the claimant filed a timely continued claim request for benefits, but benefits were denied solely because of ~~this~~ paragraph; (a).

(e) ~~With respect to employment described in~~

(d) An educational assistant shall not be considered to be in an instructional, research, or principal administrative capacity.

(e) Paragraph (a) or (b), benefits based upon wage credits from any educational institution or institutions shall not be paid for any week beginning during an established and customary apply to any vacation period or holiday recess if the claimant was employed in the period immediately before the vacation period or holiday recess, and there is a reasonable assurance that the claimant will be employed in the period immediately following the vacation period or holiday recess;

(d) Paragraphs (a), (b), and (e) (f) This subdivision 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 entity established and operated exclusively for the purpose of providing services to one or more educational institutions;

(e) Paragraphs (a) to (d). This subdivision shall also apply to employment with Minnesota or a political subdivision, or a nonprofit organization, if the services are provided to or on behalf of an educational institution or institutions.

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

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

~~(h)~~ (i) If all of the claimant's employment with any educational institution or institutions during the prior academic year or term consisted of on-call employment, and the claimant has a reasonable assurance of any on-call employment with any educational institution or institutions for the following academic year or term, it shall not be considered substantially less favorable employment.

(j) Paragraph (a) shall also apply to the period between two regular but not successive terms.

(k) A "reasonable assurance" may be written, oral, implied, or established by custom or practice.

(l) 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. 8. **SERVICES FOR SCHOOL CONTRACTORS.** Wage credits from an employer are subject to subdivision 7, paragraphs (b) and (c), if:

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

(2) the contract was for services that the educational institution elementary or secondary school could have had performed by its employees; and

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

Subd. 9. **BUSINESS OWNERS.** Wage credits from an 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 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 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.

Subd. 10. **SEASONAL RECREATIONAL OR TOURIST INDUSTRY EMPLOYMENT.** (a) If a claimant has wage credits from seasonal recreational or tourist industry employment, benefits shall be payable available only if the claimant can establish a reemployment insurance benefit account under section 268.07, subdivision 2, excluding the wage credits from seasonal recreational or tourist industry employment. For purposes of This subdivision, "seasonal employment" means applies only to 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.

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

Subd. 11. **PROFESSIONAL ATHLETES AND COACHES.** Benefits shall not be paid to a claimant on the basis of any wage credits from employment that substantially consists of coaching or participating in sports or athletic events or training or preparing to participate for any week that begins during the period between two successive sport seasons, (or similar periods), if:

(1) the claimant was so employed in the first prior season (or similar period), and

(2) there is a reasonable assurance that the claimant will be so employed in the following season (or similar periods) period.

Subd. 12. **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. Information from the Immigration and Naturalization Service shall be considered conclusive, absent specific evidence that the information was erroneous.

(b) Benefits shall not be paid on the basis of wage credits earned by an alien unless the alien (1) was lawfully admitted for permanent residence at the time of the employment, (2) was lawfully present for the purposes of the employment, or (3) was permanently residing in the United States under color of law at the time of the employment ~~including section 212(d)(5) of the Immigration and Nationality Act.~~

(c) Any data or information required of claimants applying for benefits to determine eligibility because of their alien status shall be uniformly required from all claimants.

Subd. 13. **SUSPENSION FROM EMPLOYMENT.** (a) A claimant who has been suspended from employment without pay for 30 calendar days or less, as a result of employment misconduct as defined under section 268.095, subdivision 6, shall be ineligible for benefits beginning the Sunday of the week that the claimant was suspended and continuing for the duration of the suspension.

(b) A suspension from employment without pay for more than 30 calendar days shall be considered a discharge from employment under section 268.095, subdivision 5.

(c) A suspension from employment with pay, regardless of duration, shall not be considered a separation from employment and the claimant shall be ineligible for benefits for the duration of the suspension with pay.

Subd. 14. **ABLE TO WORK DEFINED.** "Able to work" means a claimant has the physical and mental ability to perform the usual duties of the claimant's customary occupation or the usual duties of other suitable employment.

Subd. 15. **AVAILABLE FOR EMPLOYMENT DEFINED.** (a) "Available for employment" means a claimant is ready and willing to accept employment in the labor market area. The attachment to the work force must be genuine. There must be no restrictions, either self-imposed or created by circumstances, temporary or permanent, that prevent accepting employment.

(b) To be considered "available for employment," a student must be willing to quit school to accept employment that would conflict with school attendance.

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(c) A claimant who is absent from the labor market area for personal reasons, other than to search for work, is not "available for employment."

(d) A claimant who has restrictions on the hours of the day or days of the week that the claimant can or will work, that are not normal for the claimant's usual occupation or other employment, is not "available for employment." A claimant whose usual occupation is normally performed during the daytime must be available for daytime work even though the claimant customarily worked the night shift.

(e) A claimant must have transportation throughout the labor market area to be considered "available for employment."

Subd. 16. ACTIVELY SEEKING SUITABLE EMPLOYMENT DEFINED.

(a) "Actively seeking suitable employment" means those reasonable, diligent efforts an individual in similar circumstances would make if genuinely interested in obtaining suitable employment under the existing conditions in the labor market area. Limiting the search to positions that are not available or are above the claimant's training, experience, and qualifications is not "actively seeking suitable employment."

(b) To be considered "actively seeking suitable employment" a claimant shall, when reasonable, contact those employers from whom the claimant was laid off due to lack of work and request suitable employment.

(c) If reasonable prospects of suitable employment in the claimant's usual or customary occupation do not exist, the claimant must actively seek other suitable employment to be considered "actively seeking suitable employment." This applies to a claimant who is seasonally unemployed.

(d) A claimant who is seeking employment only through a union is not actively seeking suitable employment unless the claimant is in an occupation where it is required by union rule that all the hiring in that locality is done through the union. The claimant must be a union member in good standing, registered with the union for employment, and in compliance with other union rules to be considered "actively seeking suitable employment."

Sec. 43. [268.086] CONTINUED REQUEST FOR BENEFITS ON AN ACTIVE BENEFIT ACCOUNT.

Subdivision 1. ACTIVE BENEFIT ACCOUNT. (a) A benefit account shall be considered active only when a claimant files continued requests for benefits in the manner and within the time periods prescribed. A benefit account shall be considered inactive if a claimant stops filing a continued request or fails to file a continued request within the time period required. The benefit account shall be considered inactive as of the Sunday following the last week or biweekly period for which a continued request has been timely filed.

(b) A benefit account that is inactive shall be reactivated the Sunday of the week that the claimant makes a contact with the department to do so, in the manner prescribed by the commissioner for reactivating that claimant's benefit account.

Subd. 2. CONTINUED REQUEST FOR BENEFITS DEFINED. A continued request for benefits is a certification by a claimant, done on a weekly or biweekly basis as prescribed by the commissioner, on the claimant's eligibility for benefits under section

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268.085 for a specific week or two-week period. A continued request shall include information on possible issues of disqualification in accordance with section 268.101, subdivision 1, paragraph (c).

Subd. 3. METHODS FOR FILING CONTINUED REQUESTS FOR BENEFITS. (a) The commissioner shall designate to each claimant one of the following methods for filing a continued request:

- (1) by telephone under subdivision 4;
- (2) by electronic transmission under subdivision 5;
- (3) by mail under subdivision 6; or
- (4) by in-person interview under subdivision 7.

(b) The method designated by the commissioner shall be the only method allowed for filing a continued request by that claimant. A claimant may ask that one of the other allowed methods be designated and the commissioner shall consider inconvenience to the claimant as well as administrative capacity in determining whether to allow a claimant to change the designated method for filing a continued request for benefits.

Subd. 4. CONTINUED REQUEST FOR BENEFITS BY TELEPHONE. (a) A continued request by telephone shall be made to a telephone number required by the commissioner for that claimant. In order to constitute a continued request, all information asked for, including information authenticating that the caller is the claimant, must be provided. If all of the information asked for is not provided, the communication shall not constitute a continued request for benefits.

The telephone communication must be made on the date required for the claimant for filing a continued request for benefits by telephone.

(b) If the telephone continued request for benefits is not filed on the date required, a continued request by telephone shall be accepted if the claimant files the continued request by telephone within 14 days following the week in which the date required occurred. If the continued request by telephone is not filed within 14 days following the week in which the date required occurred, the telephone continued request shall not be accepted and the claimant shall be ineligible for benefits for the period covered by the continued request and the benefit account shall be considered inactive, unless the claimant shows good cause for failing to file the continued request by telephone within the time period requested.

Subd. 5. CONTINUED REQUEST FOR BENEFITS BY ELECTRONIC TRANSMISSION. (a) A continued request for benefits by electronic transmission shall be filed to that electronic mail address or Internet address prescribed by the commissioner for that claimant. In order to constitute a continued request, all information asked for, including information authenticating that the claimant is sending the transmission, must be provided in the format required. If all of the information asked for is not provided, the communication shall not constitute a continued request for benefits.

The electronic transmission communication must be filed on the date required for the claimant for filing a continued request by electronic transmission.

(b) If the electronic transmission continued request is not filed on the date required, a continued request by electronic transmission shall be accepted if the claimant files the

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continued request by electronic transmission within 14 days following the week in which the date required occurred. If the continued request by electronic transmission is not filed within 14 days following the week in which the date required occurred, the electronic continued request shall not be accepted and the claimant shall be ineligible for benefits for the period covered by the continued request and the benefit account shall be considered inactive, unless the claimant shows good cause for failing to file the continued request by electronic transmission within the time period required.

Subd. 6. CONTINUED REQUEST FOR BENEFITS BY MAIL. (a) A continued request for benefits by mail shall be on a form prescribed by the commissioner. The form, in order to constitute a continued request, must be totally completed and signed by the claimant.

The form must be filed on the date required for the claimant for filing a continued request by mail, in an envelope with postage prepaid thereon, and sent to the address required by the commissioner for that claimant.

(b) If the mail continued request for benefits is not filed on the date required, a continued request shall be accepted if the form is filed by mail within 14 days following the week in which the date required occurred. If the form is not filed within 14 days following the week in which the date required occurred, the form shall not be accepted and the claimant shall be ineligible for benefits for the period covered by the continued request for benefits and the benefit account shall be considered inactive, unless the claimant shows good cause for failing to file the form by mail within the time period required.

(c) If the claimant has been designated to file a continued request for benefits by mail, a claimant may submit the form by facsimile transmission on the day otherwise required for mailing, or within 14 days following the week in which the date required occurred. A form submitted by facsimile transmission shall be sent only to the telephone number assigned for that purpose.

(d) A claimant who has been designated to file a continued request by mail may personally deliver a continued request form only to the location to which the form was otherwise required to be mailed.

Subd. 7. IN-PERSON CONTINUED REQUEST FOR BENEFITS. The commissioner may require any claimant who has been designated to make a continued request for benefits by mail, by telephone, by electronic transmission, or by mail to appear for a personal interview at a place, time, and date designated, during which a written continued request for benefits form shall be completed and submitted by the claimant.

A claimant shall be ineligible for benefits for the week or biweekly period covered by a continued request and the benefit account shall be considered inactive if the claimant fails, without good cause, to comply with the requirement that the claimant appear for a personal interview and at that time complete and submit a written continued request form.

Subd. 8. GOOD CAUSE. A continued request for benefits that is not filed within the time periods required by this section shall be accepted only for those weeks that the claimant has "good cause" for not filing within the time periods required.

Subd. 9. GOOD CAUSE DEFINED. "Good cause" for purposes of this section is a compelling substantial reason that would have prevented a reasonable person acting with

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due diligence from filing a continued request for benefits within the time periods required.

“Good cause” shall not include forgetfulness, loss of the continued request form, having returned to work, or inability to file a continued request for benefits by the method designated if the claimant was aware of the inability and did not make diligent effort to have the method of filing a continued request changed by the commissioner. “Good cause” shall not include having previously made an attempt to file a continued request for benefits but where the communication was not considered a continued request because the claimant failed to submit all required information.

Sec. 44. Minnesota Statutes 1998, section 268.095, is amended to read:

268.095 DISQUALIFICATION PROVISIONS.

Subdivision 1. **QUIT.** A claimant who quits quit employment shall be disqualified from all benefits except when:

(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 terms and 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 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 reemployment assistance 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 benefit account under section 268.07; or

(6) unless the claimant quit because the employer notified the claimant that the claimant was going to be laid off due to lack of work within 30 calendar days. A claimant who quit employment within 30 calendar days of a notified date of layoff due to lack of work shall be disqualified from benefits through the end of the week that includes the scheduled date of layoff; or

(7) the claimant quit the employment because the claimant’s serious illness or injury made it medically necessary that the claimant quit, provided that the claimant made reasonable efforts to remain in that employment in spite of the serious illness or injury.

Reasonable efforts to remain in that employment are those a reasonable individual would make if interested in remaining with the employer and require that the claimant inform the employer of the serious illness or injury and request accommodation.

A claimant who quit employment because of If the claimant’s serious illness of is chemical dependency, the claimant has not made reasonable efforts to remain in that em-

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ployment if the claimant has previously been professionally diagnosed as chemically dependent, or has previously voluntarily submitted to had treatment for chemical dependency, and has failed to make consistent efforts to control the chemical dependency.

Subd. 2. **QUIT DEFINED.** (a) A quit from employment occurs when the decision to end the employment was, at the time the employment ended, the employee's.

(b) An employee who has been notified that the employee will be discharged in the future, who chooses to end the employment while employment in any capacity is still available, shall be considered to have quit the employment.

(c) An employee who seeks to withdraw a previously submitted notice of quitting shall be considered to have quit the employment if the employer does not agree that the notice may be withdrawn.

Subd. 3. **GOOD REASON CAUSED BY THE EMPLOYER DEFINED.** (a) A good reason caused by the employer for quitting is a reason:

(1) that is directly related to the employment and for which the employer is responsible; and

(2) that is significant and would compel an average, reasonable worker to quit and become unemployed rather than remaining in the employment.

(b) If a claimant was subjected to adverse working conditions by the employer, the claimant must complain to the employer and give the employer a reasonable opportunity to correct the adverse working conditions before that may be considered a good reason caused by the employer for quitting.

(c) A substantial adverse change in the wages, hours, or other terms of employment by the employer shall be considered a good reason caused by the employer for quitting unless the change occurred because of the claimant's employment misconduct.

(d) Notification of discharge in the future, including a layoff due to lack of work, shall not be considered a good reason caused by the employer for quitting.

(e) A claimant has a good reason caused by the employer for quitting if it results from sexual harassment of which the employer was aware, or should have been aware, and the employer failed to take timely and appropriate action. Sexual harassment means unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact or other conduct or communication of a sexual nature when:

(1) the claimant's submission to the conduct or communication is made a term or condition of the employment;

(2) the claimant's submission to or rejection of the conduct or communication is the basis for decisions affecting employment; or

(3) the conduct or communication has the purpose or effect of substantially interfering with a claimant's work performance or creating an intimidating, hostile, or offensive working environment and the employer knows or should know of the existence of the harassment and fails to take timely and appropriate action.

(f) The definition of a good reason caused by the employer for quitting employment provided by this subdivision shall be exclusive.

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Subd. 4. **DISCHARGE.** A claimant who is discharged from employment by an employer shall not be disqualified from any benefits except when:

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

(i) ~~the misconduct was a direct result of the claimant's serious illness provided that the claimant made reasonable efforts to 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 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 control the chemical dependency.

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;~~

(2) ~~unless the claimant was discharged because of gross aggravated employment misconduct that interfered with and adversely affected that employment.~~

Subd. 4a. **AGGRAVATED EMPLOYMENT MISCONDUCT DEFINED.** For the purpose of this clause section, "gross aggravated employment misconduct" means:

(i) (1) the commission of any act, on the job or off the job, that amounts would amount to a gross misdemeanor or felony if the act interfered with or adversely affected the employment; or

(ii) (2) for an employee of a facility as defined in section 626.5572, gross aggravated employment 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 gross aggravated employment 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 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 begin with the Sunday of the week following the week that includes the intended date of quitting.~~

Subd. 5. **DISCHARGE DEFINED.** (a) A discharge from employment occurs when any words or actions by an employer would lead a reasonable employee to believe

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that the employee's services are no longer desired by the employer will no longer allow the employee to work for the employer in any capacity. A layoff due to lack of work shall be considered a discharge. A suspension from employment without pay of more than 30 calendar days shall be considered a discharge.

(b) An employee who gives notice of intention to quit the employment and is not allowed by the employer to work the entire notice period shall be considered discharged from the employment as of the date the employer will no longer allow the employee to work. If the discharge occurs within 30 calendar days prior to the intended date of quitting, then, as of the intended date of quitting, the separation from employment shall be considered a quit from employment subject to subdivision 1.

Subd. 6. **EMPLOYMENT MISCONDUCT DEFINED.** (a) Employment misconduct is means:

- (1) any intentional conduct showing a disregard of, on the job or off the job, that
- (1) the employer's interest;
- (2) disregards the standards of behavior that an employer has the right to expect of the employee; or
- (3) disregards the employee's duties and obligations to the employer; or

Misconduct also includes (2) negligent or indifferent conduct by an employee demonstrating, on the job or off the job, that demonstrates a substantial lack of concern for the employment.

(b) Inefficiency, inadvertence, simple unsatisfactory conduct, or poor performance as a result because of inability or incapacity, or absence because of illness or injury with proper notice to the employer, are not employment misconduct.

(c) Any conduct in violation of paragraph (a), clause (1) or (2), that was a result of the claimant's chemical dependency is employment misconduct if the claimant has previously been diagnosed chemically dependent or had treatment for chemical dependency, and has failed to make consistent efforts to control the chemical dependency.

(d) A driving offense in violation of section 169.121, 169.1211, or 169.123 that interferes with or adversely affects the employment is employment misconduct.

(e) The definition of employment misconduct provided by this subdivision shall be exclusive.

Subd. 7. **ACT OR OMISSIONS AFTER SEPARATION.** Except as provided for under subdivision 8, a claimant shall not be disqualified from benefits under this section for any acts or omissions occurring after the claimant's separation from employment with the employer. A layoff due to lack of work is considered a separation from employment.

Subd. 8. **OFFERS OF EMPLOYMENT.** (a) A claimant shall be disqualified from all benefits if the claimant, without good cause:

- (1) failed to apply for available, suitable employment of which the claimant was advised by the commissioner or an employer;
- (2) failed to accept suitable employment when offered; or

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(3) avoided an offer of suitable employment.

(b) The claimant shall not be disqualified from benefits under paragraph (a) if the claimant "Good cause" is a reason that would cause a reasonable individual who wants suitable employment to fail to apply for, accept, or avoid suitable employment. Good cause includes:

(1) was the claimant is employed in other suitable employment;

(2) the claimant is in approved reemployment assistance training; or

(2) (3) the claimant formerly worked for the employer and the claimant's last separation from loss of employment with the employer occurred prior to the commencement of a strike or other labor dispute, was permanent or for an indefinite period, and the claimant failed to apply for or accept reemployment the employment because a strike or other labor dispute was in progress at the establishment where the claimant was previously employed by that employer; or

(4) the claimant formerly worked for the employer and quit that employment because of a good reason caused by the employer.

Subd. 9. SUITABLE EMPLOYMENT DEFINED. (a) Suitable employment is means employment in the claimant's labor market area that is reasonably related to the claimant's qualifications. In determining whether any employment is suitable for a claimant, the degree of risk involved to the health and safety, physical fitness, prior training, experience, length of unemployment, prospects for securing local employment in the claimant's customary occupation, and the distance of the employment from the claimant's residence shall be considered.

(b) No In determining what is suitable employment, primary consideration shall be given to the temporary or permanent nature of the claimant's separation from employment and whether the claimant has favorable prospects of finding employment in the claimant's usual or customary occupation at the claimant's past wage level within a reasonable period of time.

If prospects are unfavorable, employment at lower skill or wage levels is suitable if the claimant is reasonably suited for the employment because of education, training, work experience, or ability.

The total compensation must be considered, including the wage rate, hours of employment, method of payment, overtime practices, bonuses, incentive payments, and fringe benefits.

(c) When potential employment is at a rate of pay lower than the claimant's former rate, consideration must be given to the length of the claimant's unemployment and the proportion of difference in the rates. Employment that may not be suitable because of lower wages during the early weeks of the claimant's unemployment may become suitable as the duration of unemployment lengthens.

(d) For a claimant seasonally unemployed, suitable employment includes temporary work in a lower skilled occupation that pays average gross weekly wages equal to or more than 150 percent of the claimant's weekly benefit amount.

(e) If a majority of the claimant's wage credits were earned from part-time employment, part-time employment in a position with comparable skills and comparable hours

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that pays average gross weekly wages equal to or more than 150 percent of the claimant's weekly benefit amount shall be considered suitable employment.

(f) To determine suitability of employment in terms of shifts, the arrangement of hours in addition to the total number of hours is to be considered. Employment on a second, third, rotating, or split shift is suitable employment if it is customary in the occupation in the labor market area.

(g) Employment shall not be considered suitable if:

(1) the position offered is vacant due directly to because of a strike, lockout, or other labor dispute;

(2) the wages, hours, or other conditions of employment are substantially less favorable than those prevailing for similar employment in the locality labor market area; or

(3) as a condition of becoming employed, the claimant would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

Subd. 10. **DISQUALIFICATION DURATION.** (a) A disqualification from the payment of all benefits under subdivisions 1, 4, and 8 shall be for the duration of the claimant's unemployment and until the end of the calendar week 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 1 and 4 shall begin on the Sunday of the week that the claimant became separated from employment. Any disqualification imposed under subdivision 8 shall begin on the Sunday of the week the claimant failed to apply for, accept, or avoided employment.

(c) Notwithstanding In addition to paragraph (a), if the claimant was discharged from employment because of gross aggravated employment misconduct, the disqualification shall be for the duration of the claimant's unemployment and until the end of the calendar week 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.

Subd. 11. **APPLICATION.** This section shall apply to:

(1) all covered employment, full time or part time, temporary or of limited duration, permanent or of 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 benefit account, or the benefit year, except as provided for in subdivisions subdivision 1, clause (5); and 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 or (ii) established by an act of Congress.

Subd. 12. **LABOR DISPUTE.** (a) A claimant who has left or partially or totally lost employment with an employer stopped working because of a strike or other labor dispute at the establishment where the claimant is or was employed shall be disqualified from benefits:

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(1) until the end of the calendar week that the ~~strike or~~ labor dispute was in active progress if the claimant is participating in or directly interested in the ~~strike or~~ labor dispute; or

(2) until the end of the calendar week that the ~~strike or~~ labor dispute ~~commenced~~ began if the claimant is not participating in or directly interested in the ~~strike or~~ labor dispute.

Participation includes ~~the any~~ failure or refusal by a claimant, voluntarily or involuntarily, to accept and perform available and customary work at the establishment.

(b) A claimant who has ~~left or partially or totally~~ lost employment with an employer stopped working because of a jurisdictional controversy between two or more labor organizations at the establishment where the claimant is ~~or was~~ employed shall be disqualified for benefits until the end of the calendar week that the jurisdictional controversy was in progress.

(c) A claimant shall not be disqualified from benefits under this subdivision if:

(1) the claimant ~~becomes unemployed~~ stops working because of a ~~strike~~ caused by an employer's ~~willful intentional~~ failure to observe the terms of the safety and health section of a union contract or failure to comply with an official citation for a violation of federal ~~and~~ or state laws involving occupational safety and health;

(2) the claimant ~~becomes unemployed~~ stops working because of a lockout; or

(3) the claimant is discharged during the period of negotiation and prior to the ~~commencement~~ beginning of a ~~strike or~~ other labor dispute.

(d) A quit from employment by the claimant during the time that the ~~strike or~~ other labor dispute is in active progress at the establishment shall not be considered to terminate the claimant's participation in or direct interest in the ~~strike or~~ other labor dispute for purposes of this subdivision.

(e) For the purpose of this subdivision, the term "labor dispute" shall have the same definition as provided in section 179.01, subdivision 7.

Sec. 45. Minnesota Statutes 1998, section 268.101, is amended to read:

268.101 DETERMINATIONS ON DISQUALIFICATION AND ELIGIBILITY.

Subdivision 1. **NOTIFICATION.** (a) Upon In an application for a reemployment insurance account benefits, 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. If the reason reported for no longer working for any of those employers is other than a layoff due to lack of work, that shall raise an issue of disqualification that the department shall determine. A claimant's failure to report the name of an employer, or giving an incorrect reason for no longer working for an employer, shall be considered a violation of section 268.182, paragraph (b).

In an application, the claimant shall provide all information necessary to determine the claimant's eligibility for benefits under section 268.085.

(b) Upon establishment of a ~~reemployment insurance~~ benefit account, the commissioner shall notify, by mail or electronic transmission, all employers the claimant was

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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 shall have ten calendar days after the sending of the notice to ~~make a protest raise~~, in a manner prescribed by the commissioner raising, any issue of disqualification or any issue of eligibility. An employer shall be informed of the effect that failure to ~~timely protest raise~~ an issue may have on the employer charges under section 268.047. A protest made An issue raised more than ten calendar days after sending of the notice shall be considered untimely.

(c) Each claimant shall report any employment, loss of employment, and offers of employment received, during those weeks the claimant made filed continued claims requests for benefits pursuant to section 268.086. Each claimant who stops ~~making filing~~ continued claims requests during the benefit year and later begins making filing continued claims requests during that same benefit year shall report the name of any employer the claimant worked for during the period between the making filing of continued claims requests, 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 filing of continued claims requests for benefits. 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 shall have ten calendar days after the sending of the notice to ~~make a protest raise~~, in a manner prescribed by the commissioner raising, any issue of disqualification or any issue of eligibility. An employer shall be informed of the effect that failure to ~~timely protest raise~~ an issue may have on the employer charges under section 268.047. A protest made An issue raised more than ten calendar days after 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" under paragraphs (a) and (c) is for the commissioner to obtain information from a claimant ~~on raising~~ all issues that may 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~~ for no longer working for the employer, if known.

Subd. 2. **DISQUALIFICATION DETERMINATION.** (a) The commissioner shall ~~promptly~~ determine any issue of disqualification timely 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~~ state the effect on employer charges under section 268.047.

(b) The commissioner shall ~~promptly~~ determine any issue of disqualification raised by information ~~obtained~~ required from a claimant ~~pursuant to~~ under 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~~ state the effect on employer charges under section 268.047. A determination shall be made pursuant to this paragraph only on those issues

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involving the claimant's last 30 days of employment and shall be made even if a notified employer has not raised the issue of disqualification.

(c) ~~The commissioner shall promptly determine any untimely 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 state the effect on employer charges under section 268.047. Notwithstanding section 268.095, any disqualification imposed as a result of determination issued pursuant to this paragraph shall begin the Sunday two weeks following the week that the untimely protest was made. Notwithstanding any provisions to the contrary. If the employer did not employ the claimant during the claimant's last 30 days of employment prior to the claimant's application for benefits, but only employed the claimant for periods prior to that, any relief of exception to employer charges as a result of a determination issued pursuant to this paragraph under section 268.047, subdivisions 2 and 3, shall begin the Sunday two weeks following the week that the untimely protest issue was made raised.~~

(d) ~~If any time within 24 months from the establishment of a reemployment insurance benefit 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 state the effect on employer charges under section 268.047.~~

~~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).~~

~~This paragraph shall not prevent the imposition of any penalty under section 268.18, subdivision 2, or 268.182.~~

(e) An issue of disqualification shall be determined based upon that information required of a claimant, any information that may be obtained from a claimant or employer, and information from any other source, without regard to any common law burden of proof.

(f) ~~A determination of disqualification or a determination of nondisqualification shall be final unless an appeal is filed by the claimant or notified employer within 30 calendar days after mailing. 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~~) (g) 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 a disqualification from benefits under section 268.095, any question of an exception to disqualification under section 268.095, any question of benefit charge to an employer under section 268.047, and any question of an otherwise imposed disqualification that a claimant has had subsequent earnings sufficient to satisfy the disqualification satisfied under section 268.095, subdivision 10.

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~~(g) Notwithstanding (h) Regardless of 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 satisfied any other-wise potential disqualification under section 268.095, subdivision 10.~~

Subd. 3. **ELIGIBILITY DETERMINATION.** (a) The commissioner shall promptly determine any issue of eligibility raised by a timely protest made by an employer, whether timely or untimely, 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. A determination shall be made pursuant to this paragraph even if a notified employer has not raised the issue of eligibility.

~~(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 begin the Sunday two weeks following the week that the untimely protest was made.~~

(d) If any time within 24 months from the establishment of a reemployment insurance benefit account the commissioner finds the claimant failed to provide, on an application for benefits or on a continued request for benefits, requested information regarding the claimant's on an issue of 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).~~

This paragraph shall not prevent the imposition of a penalty under section 268.18, subdivision 2, or 268.182.

~~(d) A determination of eligibility or determination of ineligibility shall be final unless an appeal is filed by the claimant or notified employer within 30 calendar days after mailing. 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.~~

~~(e) An issue of eligibility for purposes of this section shall include any question of regarding the denial or allowing of benefits under sections 268.085, 268.086, 268.115, 268.125, 268.135, and 268.155.~~

(f) Only if an employer raised the issue of eligibility shall the employer be: (1) mailed the determination of eligibility or a determination of ineligibility, or (2) considered an involved employer for purposes of an appeal under section 268.105.

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Subd. 3a. **DIRECT HEARING.** ~~Notwithstanding~~ Regardless of any provision of sections 268.03 to 268.23, the commissioner or a reemployment insurance judge may refer any issue of disqualification, any issue of eligibility, or any other issue under sections 268.035 to 268.23, 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, may reconsider a determination of disqualification or nondisqualification or a determination of eligibility or ineligibility 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 30 calendar days after mailing. Proceedings on the appeal shall be conducted in accordance with section 268.105.

Subd. 5. **PROMPT BENEFIT PAYMENT.** If a determination or amended determination ~~awards~~ allows 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 that holds a claimant disqualified or ineligible for benefits for periods a claimant has been paid benefits is considered an overpayment of those benefits subject to under section 268.18, subdivision 1.

Subd. 7. **EMPLOYER INFORMATION; ABSOLUTE PRIVILEGE.** (a) Regardless of any provision of law to the contrary, an employer may provide the commissioner with information on a claimant so that the commissioner can determine a claimant's entitlement to benefits under sections 268.03 to 268.23.

(b) Information obtained pursuant to sections 268.03 to 268.23, in order to determine a claimant's entitlement to benefits, shall be absolutely privileged and shall not be made the subject matter or the basis for any civil proceeding, administrative, or judicial.

Sec. 46. Minnesota Statutes 1998, section 268.103, is amended by adding a subdivision to read:

Subd. 4. **PROTESTS BY TELEPHONE AND ELECTRONIC TRANSMISSION.** This section shall apply to the filing of protests to those determinations and notices that require a protest and affirmation procedure prior to an appeal.

Sec. 47. Minnesota Statutes 1998, section 268.105, is amended to read:

268.105 **REEMPLOYMENT INSURANCE HEARINGS; APPEALS.**

Subdivision 1. **HEARING.** (a) Upon appeal the department shall set a time and place for a de novo evidentiary hearing and give mail notice to any involved claimant and any involved employer ~~written notice, by mail,~~ not less than ten calendar days prior to the date of the hearing.

(b) The evidentiary hearing shall be conducted by a reemployment insurance judge without regard to any common law burden of proof as an evidence gathering inquiry and

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not an adversarial proceeding. The commissioner shall by rule adopt a procedure by which reemployment insurance judges hear and decide appeals, subject to further appeal to the commissioner rules on evidentiary hearings. The rules need not conform to common law or statutory rules of evidence and other technical rules of procedure. The written report of any employee of the department, except a determination, made in the regular course of the performance of the employee's duties, shall be competent evidence of the facts contained in it.

(c) After the conclusion of the hearing, upon the evidence presented obtained, the reemployment insurance judge shall ~~mail~~ make written findings of fact and decision and mail those to all involved parties. The reemployment insurance judge's decision is the final department decision unless a further appeal is filed pursuant to subdivision 3 2.

Subd. 2. **REEMPLOYMENT INSURANCE JUDGES.** (d) The commissioner shall designate regular salaried classified employees of the department as ~~impartial~~ reemployment insurance judges to conduct evidentiary hearings on appeals. The commissioner or authorized representative may personally hear or transfer to another reemployment insurance judge any proceedings pending before a reemployment insurance judge. Any proceedings removed to the commissioner or authorized representative shall be heard in accordance with this subdivision 1.

Subd. 3. 2. **COMMISSIONER REVIEW.** (a) Within 30 calendar days after mailing of the reemployment insurance judge's decision, any involved party claimant or involved employer may appeal and obtain a de novo review by the commissioner or an authorized representative. The commissioner within the same period of time may on the commissioner's own motion order a de novo review of a decision.

(b) The authorized representative of the commissioner shall be an attorney who is a classified employee of the department. The authority to act on behalf of the commissioner under this section shall be by specific written delegation filed with the secretary of state.

(c) Upon de novo review, the commissioner shall, on the basis of ~~the~~ that evidence submitted at the hearing before the reemployment insurance judge under subdivision 1, make findings of fact and decision, or remand the matter back to a reemployment insurance judge for the taking of additional evidence and the making of new findings and decision based on all the evidence. The commissioner ~~may disregard~~ shall, independent of the findings of fact and decision of the reemployment insurance judge and, examine the evidence and make any those findings of fact as the evidence may, in the judgment of the commissioner require, and make any that decision as the facts found by the commissioner require.

(d) The commissioner may conduct a de novo review without argument by any involved party, or the commissioner may allow written argument. The commissioner shall not, except for purposes of deciding whether to remand a matter to a reemployment insurance judge for a further evidentiary hearing, consider any evidence that was not submitted at the hearing before the reemployment insurance judge.

(e) (e) The commissioner shall mail to any involved party the commissioner's findings of fact and decision. The decision of the commissioner is the final department decision. Unless judicial review is sought as provided by under subdivision 7, the decision of the commissioner shall become final 30 calendar days after mailing.

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Subd. 3. WITHDRAWAL OF APPEAL. (a) Any appeal that is pending a decision before a reemployment insurance judge or the commissioner may be withdrawn by the appealing person, or an authorized representative of that person, upon filing of a notice of withdrawal.

(b) The appeal shall, by written order, be dismissed if a notice of withdrawal is filed, unless the commissioner, by written order, directs that further adjudication is required for a proper result.

(c) A notice of withdrawal may be filed by mail, by telephone, or if the commissioner allows, by electronic transmission.

Subd. 3a. DECISIONS. (a) If a reemployment insurance judge's decision or the commissioner's decision awards allows 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 allowing benefits to a claimant, any benefits paid pursuant to the determination is considered an overpayment of those benefits subject to under section 268.18, subdivision 1.

(c) If a commissioner's decision modifies or reverses a reemployment insurance judge's decision awarding allowing benefits to a claimant, any benefits paid pursuant to the reemployment insurance judge's decision is considered an overpayment of those benefits subject to under section 268.18, subdivision 1.

(d) If the commissioner affirms a reemployment insurance judge's decision on an issue of disqualification that awards allows 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 under section 268.095.

(e) If the commissioner, pursuant to subdivision 3 2, 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.

Subd. 4. TESTIMONIAL POWERS. ~~In the discharge of the duties imposed by this section, The reemployment insurance judge, the commissioner, or authorized representative, may administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, documents and other records personal property considered necessary as evidence in connection with the subject matter of the an evidentiary hearing. The subpoenas shall be enforceable through the district court in the district in which that the subpoena is issued. Witnesses subpoenaed, other than an involved claimant or involved employer or officers and employees of an involved employer, subpoenaed pursuant to this section shall be allowed fees paid by the commissioner the same as witness fees as in a civil action in district court. These fees shall be considered a part of the expense of administering this chapter.~~

Subd. 5. USE OF INFORMATION. (a) All testimony at any evidentiary hearing conducted pursuant to subdivision 1 shall be recorded. A copy of any recorded testimony and exhibits received into evidence at the hearing shall, upon request, or upon directive of

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the commissioner, be furnished to a party at no cost during the time period for filing an appeal to the commissioner or while such an appeal is pending. If requested, the representative of a commissioner shall make available a device for listening to the recording if an appeal is pending before the commissioner under subdivision 2.

(b) Regardless of any provision of law to the contrary, if recorded testimony and exhibits received into evidence at the evidentiary hearing are not requested during the time period for filing an appeal to the commissioner, or while such an appeal is pending, that testimony and other evidence shall later be made available to an involved party only pursuant to a court order. A subpoena shall not be considered a court order.

(c) Testimony obtained under subdivision 1, may not be used or considered for any purpose, including impeachment, in any civil, administrative, or contractual proceeding, except by a local, state, or federal human rights agency with enforcement powers, unless the proceeding is initiated by the department.

(~~e~~) (d) No findings of fact or decision issued by a reemployment insurance judge or the commissioner may be held conclusive or binding or used as evidence in any separate or subsequent action in any other forum, except proceedings provided for under this chapter, regardless of whether the action involves the same or related parties or involves the same facts.

Subd. 6. REPRESENTATION; FEES. (a) In any proceeding under these sections, a party under subdivision 1 or 2, a claimant or involved employer may be represented by any agent.

(b) Except for services provided by an attorney-at-law, a claimant shall not be charged fees or, costs, or disbursements of any kind in a proceeding before a reemployment insurance judge, the commissioner, or by any court or any of its officers the Minnesota court of appeals, or supreme court of Minnesota.

Subd. 7. COURT OF APPEALS; ATTORNEY FOR COMMISSIONER JUDICIAL REVIEW. (a) The Minnesota court of appeals may shall, by writ of certiorari to the commissioner, review any the decision of the commissioner provided a petition for the writ is filed with the court and a copy is served upon the commissioner and any other involved party within 30 calendar days of the mailing of the commissioner's decision.

(b) Any involved employer, petitioning for a writ of certiorari shall pay to the court the required filing fee and upon the service of the writ shall furnish a cost bond to the commissioner in accordance with the rules of civil appellate procedure. If the employer requests a written transcript of the testimony received at the evidentiary hearing conducted pursuant to subdivision 1, the employer shall pay to the commissioner the cost of preparing the transcript.

(c) Upon review before issuance by the Minnesota court of appeals of a writ of certiorari as a result of a claimant's petition, the commissioner shall, if requested, furnish to the claimant at no cost a written transcript of the testimony received at the evidentiary hearing conducted pursuant to subdivision 1, and, if requested, a copy of all exhibits entered into evidence. No filing fee or cost bond shall be required of a claimant petitioning the Minnesota court of appeals for a writ of certiorari.

(~~e~~) (d) The commissioner shall be considered to be a the primary responding party to any judicial action involving any the commissioner's decision and the case title shall be,

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"In Re the matter of: (named petitioner) and the commissioner of economic security."
~~The commissioner may be represented by any qualified attorney who is a regular salaried classified employee of the department and has been designated by the commissioner for that purpose or, at the commissioner's request, by the attorney general.~~

Sec. 48. Minnesota Statutes 1998, section 268.115, is amended to read:

268.115 **EXTENDED BENEFITS.**

Subdivision 1. **DEFINITIONS.** ~~As The terms used in this section, unless the context clearly requires otherwise shall have the following meaning:~~

(1) **EXTENDED BENEFIT PERIOD.** "Extended benefit period" means a period which that lasts for a minimum of 13 weeks and that:

(a) (i) Begins with the third week after a week for which there is a state "on" indicator; and

(b) (ii) Ends with either of the following weeks, whichever occurs later: the third week after the first week for which there is a state "off" indicator; or the 13th consecutive week of the period;

Provided, that No extended benefit period may begin before the 14th week following the end of a prior extended benefit period which was in effect with respect to this state.

(2) **STATE "ON" INDICATOR.** There is a "state 'on' indicator" for this state for a week if the commissioner determines, in accordance with the regulations of the United States Secretary of Labor, that:

(i) for the period consisting of such that week and the immediately preceding prior 12 weeks, the rate of insured unemployment (not seasonally adjusted) under this law:

(a) equaled or exceeded 120 percent of the average of such the rates for the corresponding 13-week period ending in each of the preceding prior two calendar years, and

(b) equaled or exceeded was five percent or more; or

The determination of whether there has been a state "on" indicator beginning any extended benefit period may be made as provided in clauses (a) and (b) above or a "state 'on" indicator" shall exist if the rate described in clause (b)

(b) equaled or exceeded six percent irrespective of whether the percentage requirement provided by clause (a) is met or exceeded; or

(ii) The United States Secretary of Labor determines that the average rate of seasonally adjusted total unemployment in Minnesota for the most recent three months for which data is published equals or exceeds 6.5 percent and this rate equals or exceeds 110 percent of the rate of the corresponding three-month period in either of the prior two calendar years.

(3) **STATE "OFF" INDICATOR.** There is a "state 'off' indicator" for this state for a week if:

(i) under clause (2)(i), for the period consisting of such that week and the immediately preceding prior 12 weeks, the rate of insured unemployment is less than six percent and the requirements for a "state 'on' indicator" under clause (2) are not satisfied; or

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(ii) under clause (2)(ii) the requirements for a "state 'on' indicator" are not satisfied.

(4) **RATE OF INSURED UNEMPLOYMENT.** "Rate of insured unemployment," for purposes of clauses (2) and (3), means the percentage derived by dividing the average weekly number of individuals claimants filing claims continued requests for regular benefits in this state for weeks of unemployment with respect to the most recent 13 consecutive week 13-week period, as determined by the commissioner on the basis of the commissioner's reports to the United States Secretary of Labor, by the average monthly covered employment covered under this law for the first four of the most recent last six completed calendar quarters ending before the end of such that 13-week period.

(5) **REGULAR BENEFITS.** "Regular benefits" means benefits payable available to an individual under this law or under any other state law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to United States Code, title 5, chapter 85) a claimant other than extended benefits and additional benefits.

(6) **EXTENDED BENEFITS.** "Extended benefits" means benefits (including benefits payable to federal civilian employees and to ex-servicemen pursuant to United States Code, title 5, chapter 85) payable to an individual under the provisions of this section for weeks of unemployment in the individual's eligibility period.

(7) **ADDITIONAL BENEFITS.** "Additional benefits" means benefits payable to exhaustees by reason of conditions of high unemployment or by reason of other special factors under the provisions of any state law.

(8) **ELIGIBILITY PERIOD.** "Eligibility period" of an individual for a claimant means the period consisting of the weeks remaining in the individual's claimant's benefit year which begin in an within the extended benefit period and, if the benefit year ends within such the extended benefit period, any weeks thereafter which begin in such the extended benefit period.

(9) (7) **EXHAUSTEE.** "Exhaustee" means an individual a claimant who, with respect to any week of unemployment in the individual's eligibility period:

(a) the benefit year having not expired has received, prior to such week, all of the maximum amount of regular benefits that were available under this law or any other state law (including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under United States Code, title 5, chapter 85) in the individual's current benefit year that includes such week;

Provided, that, for the purposes of this paragraph, an individual shall be considered to have received all of the regular benefits that were available to the individual although as a result of a pending appeal with respect to wage credits that were not considered in the original monetary determination in the individual's benefit year, the individual may subsequently be determined to be entitled to added regular benefits section 268.07; or

(b) the individual's benefit year having expired prior to such week, has no, or insufficient, wages and/or employment on the basis of which the individual could wage credits to establish a new benefit year that would include such week or having established a benefit year that includes such week, the individual is precluded from receiving regular compensation by reason of: (i) a state law provision which meets the requirements of section 3304 (a) (7) of the Internal Revenue Code of 1954, or (ii) a disqualification determination which canceled wage credits or totally reduced benefit rights, or (iii) benefits

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are not payable by reason of a seasonal limitation in a state reemployment insurance benefits law account; and

(c) has no right to any type of reemployment insurance benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Automotive Products Act of 1965 and such law of any other state or under federal laws as are specified in regulations issued by the United States Secretary of Labor; and has not received and is not seeking receiving reemployment insurance benefits under the unemployment compensation law of Canada; but if the individual is seeking such benefits and the appropriate agency finally determines that the individual is not entitled to benefits under such law the individual is considered an exhaustee.

(10) **STATE LAW.** "State law" means the reemployment insurance benefits law of any state, approved by the United States Secretary of Labor under section 3304 of the Internal Revenue Code of 1954.

Subd. 2. EFFECT OF STATE LAW PROVISIONS RELATING TO REGULAR BENEFITS ON CLAIMS FOR, AND THE PAYMENT OF, EXTENDED BENEFITS. Except when the result would be inconsistent with the other provisions of this section, as provided in the rules of the commissioner, the provisions of this chapter which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits.

Subd. 3. ELIGIBILITY REQUIREMENTS FOR EXTENDED BENEFITS. If an extended benefit period is in effect, a claimant shall be eligible to receive paid extended benefits with respect to from the fund for any week in the claimant's eligibility period only if with respect to that week the claimant:

(1) is an "exhaustee" as defined in subdivision 1, paragraph (9);

(2) has satisfied the same requirements of this law as those for the receipt of regular benefits that are applicable to claimants claiming extended benefits, including not being subject to a disqualification for the receipt of benefits under section 268.069; and

(3) has, during the claimant's base period earned wage credits available for benefit purposes of not less than 40 times the claimant's weekly benefit amount as determined pursuant to section 268.07, subdivision 2; and

(4) is not subject to a denial of extended benefits under subdivision 9.

Subd. 4. WEEKLY EXTENDED BENEFIT AMOUNT. The weekly extended benefit amount payable to an individual for a week of total unemployment in the individual's eligibility period shall be an amount equal to the same as the weekly benefit amount payable during the individual's applicable benefit year of regular benefits.

Subd. 5. TOTAL EXTENDED BENEFIT MAXIMUM AMOUNT OF EXTENDED BENEFITS. The total extended benefit maximum amount payable to any eligible individual with respect to the individual's applicable benefit year of extended benefits available to a claimant shall be 50 percent of the total maximum amount of regular benefits which were payable under this law available in the applicable benefit year, provided that at the expiration of the benefit year, the individual's remaining balance of extended benefits shall be reduced, but not below zero, by the product arrived at by multiplying the individual's weekly extended benefit amount by the number of weeks in the

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individual's expired benefit year for which any trade readjustment allowance was paid pursuant to sections 231 to 234 of the Trade Act of 1974, as amended. If the total rate of unemployment computed under subdivision 1, clause (2)(ii), equaled or exceeded eight percent, the maximum amount of extended benefits available shall be 80 percent of the maximum amount of regular benefits available in the benefit year.

Subd. 6. **BEGINNING AND TERMINATION OF EXTENDED BENEFIT PERIOD PUBLIC ANNOUNCEMENT.** ~~(a)~~ Whenever an extended benefit period is to become effective in this state begin as a result of a state "on" indicator, or an extended benefit period is to be terminated in this state end as a result of a state "off" indicator the commissioner shall make an appropriate public announcement.

~~(b)~~ Computations required by the provisions of subdivision 1, paragraph (4), shall be made by the commissioner, in accordance with regulations prescribed by the United States Secretary of Labor.

Subd. 7. **EFFECT OF FEDERAL LAW.** If This section is enacted to conform to the requirements of United States Code, title 26, section 3304, the Federal-State Extended Unemployment Compensation Act of 1970 is as amended so as to authorize this state to pay benefits for an extended benefit period in a manner other than that currently provided by this section, then, and in such case, all the terms and conditions contained in the amended provisions of such federal law shall become a part of this section to the extent necessary to authorize the payment of benefits to eligible individuals as permitted under such amended provision, provided that the federal share continues to be at least 50 percent of the extended benefits paid to individuals under the extended benefit program. The commissioner shall also pay benefits at the earliest possible date in the manner allowed by the Federal-State Unemployment Compensation Act of 1970, as amended through January 1, 1975, the provisions of which shall become a part of this section to the extent necessary to authorize the payment of benefits to eligible individuals and the applicable federal regulations.

Subd. 8. **INTERSTATE CLAIMS CLAIMANTS.** An individual A claimant residing in a state other than Minnesota shall not be eligible for only the first two weeks of extended benefits for any week if:

~~(a)~~ Extended benefits are payable for that week pursuant to an interstate claim filed in any state under the claimant's benefit account was established pursuant to the interstate benefit payment plan; and

~~(b)~~ no extended benefit period is in effect for the week in that state. This subdivision shall not apply to the first two weeks for which extended benefits are payable pursuant to an interstate claim filed under the interstate benefit payment plan to the individual from the extended benefit account established for the individual with respect to the benefit year.

Subd. 9. **ELIGIBILITY REQUIREMENTS DENIAL PROVISIONS.** Notwithstanding the provisions of subdivision 2, (a) A claimant shall be ineligible for the payment of denied extended benefits for any week in the claimant's eligibility period if during that week the claimant failed to accept any offer of suitable employment, failed to apply for any suitable employment to which that the claimant was referred to by the commissioner, or failed to actively seek suitable employment.

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Any claimant who has been found ineligible for extended benefits for any week by reason of this subdivision The denial shall also be denied benefits continue until the claimant has been employed in covered employment in each of four subsequent weeks, whether or not consecutive, and has earned remuneration had earnings from that covered employment of not less than four times the claimant's extended weekly benefit amount.

(b) For the purpose of this subdivision "suitable employment" means any employment which that is within the claimant's capabilities and which that has a gross average weekly remuneration payable which wage that exceeds the sum of the claimant's weekly benefit amount as determined under subdivision 4 plus the amount, if any, of supplemental reemployment insurance benefits, as defined in section 501(e) (17) (D) of the Internal Revenue Code of 1954, as amended, payable to the claimant for that week. The employment must pay wages not less than the higher of the federal minimum wage without regard to any exemption, or the applicable state minimum wage.

(c) No claimant shall be denied extended benefits for failure to accept an offer of or apply for any suitable employment if:

(a) (1) the position was not offered to the claimant in writing or;

(2) the position was not listed with employment the job service;

(b) the failure could not result in a denial of benefits under the definition of suitable employment for regular benefit claimants in section 268.095 to the extent that the criteria of suitability is not inconsistent with this subdivision; or

(e) (3) the claimant furnishes satisfactory evidence to the commissioner that prospects for obtaining employment in the claimant's customary occupation within a reasonably short period are good. If the evidence furnished is found to be satisfactory for this purpose, the determination of whether any employment is suitable for the claimant shall be made in accordance with the definition of suitable employment in section 268.095, subdivision 9, paragraph (a), without regard to the definition or special disqualification specified in this subdivision 268.035, subdivision 23a.

No employment shall be found to be suitable employment for a claimant which would not be suitable employment under section 268.095, subdivision 9, paragraph (b).

(d) For the purpose of this subdivision a claimant is "actively seeking suitable employment" during any week only if the claimant has engaged in a systematic and sustained effort to obtain employment during the week, and the claimant furnishes tangible evidence of engaging in that effort during the week.

Subd. 10. **JOB SERVICE REFERRAL.** The employment job service shall refer any claimant entitled to who is filing continued requests for extended benefits under this section to any employment which that is suitable employment for that claimant under this subdivision 9.

Sec. 49. Minnesota Statutes 1998, section 268.125, subdivision 1, is amended to read:

Subdivision 1. **ADDITIONAL BENEFITS; WHEN AVAILABLE.** Additional reemployment insurance benefits are authorized available if:

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

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

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

Sec. 50. Minnesota Statutes 1998, section 268.125, subdivision 4, is amended to read:

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

Sec. 51. Minnesota Statutes 1998, section 268.125, subdivision 5, is amended to read:

Subd. 5. **MAXIMUM AMOUNT OF BENEFITS PAYABLE.** The maximum amount of additional benefits payable available in the claimant's benefit year shall be ~~13 times one half of the claimant's weekly benefit maximum amount of regular benefits available under section 268.07, subdivision 2. Extended benefits paid and benefits paid to a claimant under any state or federal law other than regular benefits under section 268.07 shall be deducted from the maximum amount of additional benefits available.~~

Sec. 52. Minnesota Statutes 1998, section 268.135, is amended to read:

268.135 SHARED WORK PLAN.

Subdivision 1. **SHARED WORK PLAN; DEFINITIONS.** For purposes of this section, the following terms have the meanings given:

(a) (1) "Affected employee" means an individual employee who was continuously employed as a member of the affected group, ~~by the shared work employer, for at least six months prior to application, on a full-time basis, prior to submission of the shared work plan.~~

(b) (2) "Affected group" means five or more employees designated by the employer to participate in a shared work plan.

(c) "Shared work employer" means an employer with a shared work plan in effect.

(d) (3) "Shared work plan" or "plan" means an employer's voluntary, written plan for reducing unemployment, under which a specified group of employees shares the work remaining after their whose normal weekly hours of work are reduced, in order to prevent employees from being laid off due to lack of work.

(e) "Approved shared work plan" or "approved plan" means an employer's shared work plan which meets the requirement of this section.

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(F) (4) "Normal weekly hours of work" means the number of hours in a week that the employee normally would work for the shared work employer or 40 hours, whichever is less.

Subd. 2. **PARTICIPATION.** (a) An employer wishing to participate in the shared work unemployment benefit program shall submit a ~~signed~~, written shared work plan to the commissioner for approval. The commissioner may ~~give written approval of~~ approve a shared work plan only if it:

(1) specifies the employees in the affected group;

(2) applies to only one affected group;

(3) includes a certified statement by the employer that each ~~individual~~ employee specified in the affected group is an affected employee;

(4) includes a certified statement by the employer that for the duration of the plan the reduction in normal weekly hours of work of the employees in the affected group is instead of layoffs ~~which that~~ otherwise would result in at least at as large a reduction in the total normal weekly hours of work;

(5) specifies an expiration date ~~which that~~ is no more than one year from the date the employer submits the plan for approval;

(6) specifies that fringe benefits, such as health and retirement, available to the employees in the affected group are not reduced beyond the percentage of reduction in hours of work; and

(7) is approved in writing by the collective bargaining agent for each collective bargaining agreement ~~which that~~ covers any employee in the affected group.

(b) The commissioner shall ~~establish~~ set the beginning and ending dates of an approved shared work plan.

(c) The commissioner shall ~~approve or disapprove~~ mail to the employer a written determination approving or disapproving the plan within 15 calendar days of its receipt. ~~The commissioner shall notify the employer of the reasons for disapproval of a shared work plan within ten days of the determination.~~ Determinations of the commissioner are final.

(d) Disapproval of a plan may be reconsidered ~~upon application of the employer or at the discretion of the commissioner.~~ Approval of a shared work plan may be revoked ~~by the commissioner when it is established that~~ if the approval was based, in whole or in part, upon information in the plan ~~which is either that was false or substantially misleading.~~

Subd. 3. **ELIGIBILITY.** (a) ~~Notwithstanding~~ Regardless of any other provision of this chapter, ~~an individual a claimant is unemployed and eligible to receive shared work benefits with respect to any week if the commissioner finds that:~~

(1) during the week the ~~individual~~ claimant is employed as a member of an affected group in an approved plan ~~which that~~ was approved prior to the week and is in effect for the week; and

(2) during the week the ~~individual's~~ individual's normal weekly hours of work were reduced, in accordance with an approved plan, at least 20 percent but not more than 40 percent, with a corresponding reduction in wages.

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(b) Shared work benefits shall not be paid to an eligible individual a claimant beyond one benefit year under an approved plan or modification of an approved plan.

(c) The total amount of regular benefits and shared work benefits paid to an individual a claimant in a benefit year shall not exceed the maximum benefit amount established of regular benefits available.

(d) An otherwise eligible individual claimant shall not be denied shared work benefits under this section because of the application of any provision of this chapter relating to availability for work employment, active search for work employment, or refusal to apply for or accept work suitable employment from other than the individual's claimant's shared work employer.

Subd. 4. **WEEKLY BENEFIT AMOUNT.** (a) An individual A claimant who is eligible for shared work benefits under this section shall be paid, with respect to any week of unemployment, a weekly shared work reemployment insurance benefits amount. The amount shall be equal to the individual's regular weekly benefit amount multiplied by the nearest full percentage of reduction of the individual's claimant's regular weekly hours of work as set forth in the employer's plan. The benefit payment, if not a multiple of \$1 whole dollar shall be rounded to the next lower dollar.

(b) The deductible earnings provisions of section 268.085, subdivision 5, shall not apply to earnings from the shared work employer of an individual a claimant eligible for payments under this section shared work benefits unless the resulting payment amount would be less than the regular weekly benefit payment for which amount the individual claimant would otherwise be eligible for without regard to shared work reemployment insurance benefits.

(c) An individual A claimant shall not be eligible for shared work benefits payable under this section for any week in which paid work that employment is performed for the shared work employer in excess of the reduced hours set forth in the approved plan.

Sec. 53. Minnesota Statutes 1998, section 268.145, is amended to read:

268.145 INCOME TAX WITHHOLDING.

Subdivision 1. **NOTIFICATION.** (a) Upon filing an application for a reemployment insurance account benefits, the claimant shall be informed that:

- (1) reemployment insurance benefits are subject to federal and state income tax;
- (2) there are requirements for filing estimated tax payments;
- (3) the claimant may elect to have federal income tax withheld from benefits;
- (4) if the claimant elects to have federal income tax withheld, the claimant may, in addition, elect to have Minnesota state income tax withheld; and
- (5) at any time during the benefit year the claimant may change a prior election.

(b) If a claimant elects to have federal income tax withheld, the commissioner shall deduct that percentage required by the Internal Revenue Code 15 percent for federal income tax, rounded to the nearest whole dollar. If a claimant, in addition to federal income tax withholding, also elects to have Minnesota state income tax withheld, the commissioner shall make an additional five percent deduction for Minnesota state income tax.

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Any amounts deducted or offset pursuant to sections 268.155, 268.156, 268.18, ~~268.182~~, and 268.184 have priority over any amounts deducted under this section. Federal income tax withholding has priority over Minnesota state income tax withholding.

(c) An election to have federal income tax, or federal and Minnesota state income tax, withheld shall not be retroactive and shall only apply to benefits paid after the election.

Subd. 2. **TRANSFER OF FUNDS.** The amount of any benefits deducted under this section shall remain in the Minnesota reemployment insurance fund until transferred to the federal Internal Revenue Service, or the Minnesota department of revenue, as an income tax payment on behalf of the claimant.

Subd. 3. **CORRECTION OF ERRORS.** Any error which that resulted in underwithholding or overwithholding under this section shall not be corrected retroactively.

Subd. 4. **FEDERAL REQUIREMENT.** The commissioner shall follow all federal requirements for the deduction and withholding of federal and Minnesota state income tax from reemployment insurance benefits.

Subd. 5. **APPLICATION EFFECT OF PAYMENTS.** This section applies to any payments under federal or state law as compensation, assistance, or allowance with respect to unemployment. Any amount deducted under this section shall be considered as benefits paid to the claimant.

Sec. 54. Minnesota Statutes 1998, section 268.155, is amended to read:

268.155 CHILD SUPPORT INTERCEPT OF UNEMPLOYMENT DEDUCTED FROM BENEFITS.

Subdivision 1. **DEFINITIONS.** As used in this section unless the context clearly requires otherwise:

(a) "Reemployment insurance" means any compensation payable under this chapter including amounts payable by the commissioner pursuant to an agreement under any federal law providing for compensation, assistance, or allowance with respect to unemployment;

(b) (1) "Child support obligations" means obligations which that are being enforced by the public agency responsible for a child support enforcement agency pursuant to a plan described in United States Code, title 42, section 454, of the Social Security Act which that has been approved by the secretary of health and human services under part D of title IV of the Social Security Act. This shall not include any type of spousal maintenance or foster care payments; and

(c) (2) "Child support agency" means the public agency responsible for child support enforcement pursuant to a plan described in section 454 of the Social Security Act.

Subd. 2. **NOTICE OF CLAIM UPON APPLICATION.** Upon In an application for a reemployment insurance account benefits, the claimant shall disclose whether or not the claimant owes if child support obligations are owed and, if so, in what state and county. If the claimant discloses that the claimant owes child support obligations are owed, and establishes a reemployment insurance account, the commissioner shall, if the claimant establishes a benefit account, notify the child support agency that the claimant has established a reemployment insurance account.

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Subd. 3. **WITHHOLDING OF BENEFITS.** The commissioner shall deduct and withhold from any reemployment insurance benefits payable to a claimant that who owes child support obligations:

(a) The amount specified by the claimant to the commissioner to be deducted and withheld under this section, if neither clause (b) or (c) is applicable; or

(b) (1) the amount required pursuant to a proper order of a court or administrative agency; or

(2) if clause (1) is not applicable, the amount determined pursuant to an agreement submitted to the commissioner under United States Code, title 42, section 454 (20) (B) (i), of the Social Security Act by the child support agency, unless (c) is applicable; or

(c) Any amount otherwise required to be so deducted and withheld from the unemployment compensation pursuant to "legal process" as defined in section 462(e) of the Social Security Act, properly served upon the commissioner. (3) if clause (1) or (2) is not applicable, the amount specified by the claimant.

Subd. 4. **PAYMENT BY THE COMMISSIONER.** Any amount deducted and withheld under subdivision 3 ~~shall be paid by the commissioner to the public agency responsible for child support enforcement agency,~~

Subd. 5. **EFFECT OF PAYMENTS.** Any amount deducted and withheld under subdivision 3 ~~but shall for all purposes be treated as if it were paid to the claimant as reemployment insurance benefits and paid by the claimant to the public agency responsible for child support enforcement agency in satisfaction of the claimant's child support obligations.~~

Subd. 6 ~~5.~~ **REIMBURSEMENT PAYMENT OF COSTS.** ~~Appropriate arrangements shall be made for reimbursement by The child support agency for shall pay the administrative costs incurred by the commissioner under in the implementation and administration of this subdivision section and sections 518.551 and 518.6111 which are attributable to child support obligations being enforced by the public agency responsible for child support enforcement.~~

Sec. 55. Minnesota Statutes 1998, section 268.18, is amended to read:

268.18 BENEFIT OVERPAYMENTS.

Subdivision 1. **ERRONEOUS PAYMENTS OVERPAYMENT DUE TO ERROR.** (a) Any claimant who, (1) by reason of the claimant's own mistake, or through the (2) because of an error of by any individual engaged in the administration of this chapter employee of the department, or (3) because of a determination, redetermination, or amended determination issued pursuant to section 268.07 or 268.101, or (4) because of an appeal decision under section 268.105, has received any benefits that the claimant was not entitled to, shall promptly repay the benefits to the department fund. If the claimant fails to repay the benefits, the 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 30 calendar days after the mailing of the determination of overpayment to the claimant's last known address, the determina-

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tion 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 offset~~ from any future benefits otherwise payable to the claimant in the current or any subsequent benefit year the amount of the overpayment. ~~Except that when the overpayment resulted because the claimant failed to report deductible earnings or deductible payments, no single deduction under this subdivision~~ offset shall exceed 50 percent of the amount of the payment from which the deduction offset is made, or. The overpayment may also be collected by the same methods as delinquent taxes. A determination of overpayment shall state the methods of collection the commissioner may use to recover the overpayment.

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

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

Subd. 2. OVERPAYMENT DUE TO FRAUD. (a) Any claimant who receives benefits by ~~knowingly and willfully~~ intentionally 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~~ benefits by fraud and that the claimant must promptly repay the benefits to the department fund. In addition, the commissioner 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 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 shall ~~deduct offset~~ from future benefits otherwise payable to the claimant in the current or any subsequent benefit year the amount of overpayment ~~or.~~ The total due may also be collected by the same methods as delinquent 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.

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(d) If a claimant has been overpaid benefits under the law of another state because of fraud and that state certifies to the commissioner that the claimant is liable to repay the benefits and requests the commissioner to recover the overpayment, the commissioner may deduct offset from future benefits otherwise payable to the claimant in the current or any subsequent benefit year the amount of overpayment.

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

Subd. 2b. **INTEREST.** (a) Beginning January 1, 2002, on any benefits fraudulently obtained, ~~as determined and any penalty amounts assessed 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 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 shall be assessed.

(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 shall be assessed, interest pursuant to this subdivision may shall be assessed beginning 30 calendar days after written notification to the claimant.

Subd. 3a. **OFFSET OF FEDERAL BENEFITS.** The commissioner is authorized to enter into reciprocal agreements with the United States Secretary of Labor, whereby, overpayments of benefits as determined under federal law, ~~with respect to benefits under a federal program administered by Minnesota~~, may be recovered by offset from benefits otherwise payable under this chapter or any federal program. ~~As provided by reciprocal agreement, and benefit overpayments under subdivisions 1 and 2 may be recovered by offset from benefits otherwise payable under a federal program.~~

Subd. 4. **CANCELLATION OF BENEFITS PAID THROUGH ERROR OR FRAUD OVERPAYMENTS.** (a) If benefits paid through because of an error are not repaid or ~~deducted~~ offset from subsequent 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~~ offset 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~~ any overpayment, including penalties and interest, that the commissioner determines are is uncollectible due to death or bankruptcy.

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.

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Subd. 5. REMEDIES. (a) Any method undertaken to recover an overpayment of benefits, including any penalties and interest, shall not be considered an election of a method of recovery.

(b) Intervention or lack thereof, in whole or in part, in a workers' compensation matter under section 176.361 shall not be considered an election of a remedy and shall not prevent the commissioner from determining any benefits overpaid under subdivision 1 or 2 or taking action under section 268.182.

Subd. 6. COLLECTION OF OVERPAYMENTS. (a) The commissioner may not compromise the amount that has been determined overpaid under this section including penalties and interest.

(b) The commissioner shall have discretion regarding the use of any method of recovery of any overpayment under subdivision 1. Regardless of any law to the contrary, the commissioner shall not be required to refer any amount determined overpaid under subdivision 1 to a public or private collection agency, including agencies of this state.

(c) Amounts determined overpaid under subdivision 1 shall not be considered a "debt" to the state of Minnesota for purposes of any reporting requirements to the commissioner of finance.

(d) A pending appeal under section 268.105 shall not toll the assessment of interest, penalties, or collection of an overpayment under this section.

Sec. 56. Minnesota Statutes 1998, 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 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 individual is not entitled to or benefits greater than the individual is entitled under this chapter, or under the law of any state or of the federal government, either personally or for any other individual, is guilty of theft and shall be sentenced pursuant to section 609.52.

(b) Any individual who ~~violates paragraph (a)~~ intentionally makes a false statement or representation, who intentionally fails to disclose a material fact, or who makes a false statement or representation without a good faith belief as to the correctness of the statement or representation, in order to obtain or in an attempt to obtain benefits 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 two years after the week that the ~~violation of paragraph (a)~~ penalty 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.

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(c) Any employer or any officer or agent of an employer or any other person individual 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 individual is guilty of a felony.

Sec. 57. Minnesota Statutes 1998, section 268.186, is amended to read:

268.186 RECORDS.

(a) Each employer shall keep true and accurate records for the periods of time and containing the information the commissioner may require. For the purpose of determining compliance with this chapter, or for the purpose of collection of any amounts due under administering this chapter, the commissioner or any delegated representative has the power to examine, or cause to be examined supplied or copied, any books, correspondence, papers, records, or memoranda which that are relevant to making these determinations, whether the books, correspondence, papers, records, or memoranda are the property of or in the possession of the employer or any other person or corporation at any reasonable time and as often as may be necessary.

(b) The commissioner or any delegated representative may make summaries, compilations, photographs, duplications, or reproductions of any records, or reports that the commissioner considers advisable for the effective and economical preservation of the information contained therein, and. Any summaries, compilations, photographs, duplications, or reproductions shall be admissible in any proceeding under this chapter, if the original record or records would have been admissible. Notwithstanding Regardless of any restrictions contained in section 16B.50, the commissioner is hereby authorized to may duplicate records, reports, summaries, compilations, instructions, determinations, or any other written or recorded matter pertaining to the administration of the Minnesota Economic Security Law this chapter.

(c) Notwithstanding Regardless of any inconsistent provisions elsewhere law to the contrary, the commissioner may provide for the destruction or disposition of any records, reports, or reproductions thereof, or other papers in the commissioner's custody, that are more than two years old, the preservation of which is and that are no longer necessary for determining employer liability or a claimant's benefit rights or for any purpose necessary to the proper administration of this chapter, including any required audit, provided that. The commissioner may provide for the destruction or disposition of any record, report, or other paper in the commissioner's custody which that has been photographed, duplicated, or reproduced.

Sec. 58. Minnesota Statutes 1998, section 268.188, is amended to read:

268.188 SUBPOENAS; OATHS.

(a) In the discharge of the duties imposed by sections 268.03 to 268.23, The commissioner or any delegated representative, shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of persons individuals and the production of books, papers, correspondence, memoranda, documents and other records personal property necessary in connection with the administration of these sections 268.03 to 268.23.

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(b) ~~Persons Individuals subpoenaed, other than claimants or officers and employees of an employer that is the subject of the inquiry, subpoenaed pursuant to this subdivision,~~ shall be allowed fees the same as witness fees in civil actions in district court. The fees need not be paid in advance.

(c) The subpoena shall be enforceable through the district court in the district in which that the subpoena is issued.

Sec. 59. Minnesota Statutes 1998, section 268.192, subdivision 2, is amended to read:

Subd. 2. **NO ASSIGNMENT OF BENEFITS; EXEMPTIONS.** Any assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under sections 268.03 to 268.23 shall be void; and such rights to. Benefits shall be exempt from levy, execution, attachment, or any other remedy provided for the collection of debt; and benefits received by any individual so long as they are not mingled with other funds of the recipient shall be exempt from any remedy for the collection of all debts, except debts incurred for necessities furnished to such individual or a spouse or dependents during the time when such individual was unemployed. Any waiver of any exemption provided for in this subdivision shall be void.

Sec. 60. Minnesota Statutes 1998, section 268.194, is amended to read:

268.194 **REEMPLOYMENT INSURANCE TRUST FUND.**

Subdivision 1. **ESTABLISHMENT; HOW CONSTITUTED.** There is hereby established as a special state fund, separate and apart from all other public money or funds of this state, a reemployment insurance trust fund, which that shall be administered by the commissioner exclusively for the purpose of sections 268.03 to 268.23 payment of benefits. This fund shall consist of:

- (1) all taxes collected under these sections;
- (2) interest earned upon any money in the fund;
- (3) Any property or securities acquired through the use of money belonging to the fund payments in lieu of taxes paid by nonprofit organizations and the state and political subdivisions;
- (4) All earnings of such property or securities voluntary payments under section 268.051, subdivision 7;
- (5) any money received from the Federal Unemployment Account in as a loan from the federal unemployment trust fund in accordance with Title XII United States Code, title 42, section 1321, of the Social Security Act, as amended, and;
- (6) any other money made available to the fund and received pursuant to an agreement, between this state and any agency of a reciprocal benefit arrangement with the federal government or any other state, for the payment of reemployment insurance benefits;
- (7) all money recovered on overpaid benefits;
- (6) (8) all money recovered on losses sustained by the fund;
- (9) all money received from the contingent account under section 268.196, subdivision 3;

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(7)-(10) all money credited to the account of this state Minnesota in the federal unemployment trust fund pursuant to United States Code, title 42, section 903 1103, of the Social Security Act, as amended also known as the Reed Act; and

(8) (11) all money received for the fund from any other source.

All money in the fund shall be mingled and undivided.

Subd. 2. **COMMISSIONER OF FINANCE TO BE CUSTODIAN; SEPARATE ACCOUNTS.** (a) The commissioner of finance shall be the treasurer and custodian of the fund, administer the fund in accordance with the directions of the commissioner, and issue warrants upon it. 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 payment account.

All money payable to the fund, upon receipt by the commissioner, shall be forwarded to the commissioner of finance who shall immediately deposit the money in the clearing account. All money in the clearing account, after clearance, shall, except as otherwise provided, be immediately deposited to the credit of the Minnesota's account of Minnesota in the federal unemployment trust fund. Tax refunds payable pursuant to section 268.057 may be paid from the clearing account or the benefit payment account.

(b) The benefit payment account shall consist of all money requisitioned from Minnesota's account in the federal unemployment trust fund for the payment of benefits. Money in the clearing and benefit payment accounts may be deposited by the commissioner of finance, under the direction of the commissioner, in any depository bank that general funds of 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 payment accounts shall ~~not be commingled with other state funds~~, but shall be maintained in separate accounts on the books of the depository bank. 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 Minnesota; and ~~collateral pledged for this purpose shall be kept separate and distinct from any collateral pledged to secure other funds of Minnesota~~. All sums recovered for losses sustained by the fund shall be deposited in the fund.

Subd. 3. **WITHDRAWALS EXCLUSIVE USE.** (1) (a) Money requisitioned from Minnesota's account in the federal unemployment trust fund shall be used exclusively for the payment of benefits and for tax refunds pursuant to section 268.057, except that money credited to Minnesota's account pursuant to United States Code, title 42, section 1103 of the Social Security Act, shall also known as the Reed Act, may be used exclusively for the payment of expenses of administration. The commissioner shall from time to time requisition from the federal unemployment trust fund the amounts, ~~not exceeding the amount in Minnesota's account~~, the commissioner considers necessary for the payment of benefits and tax refunds for a reasonable future period. Upon receipt the commissioner of finance shall deposit the money in the benefit payment account and issue warrants for the payment of benefits solely from the benefit payment account.

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(b) Expenditures of money in the benefit payment account and tax refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers.

(c) All warrants issued for the payment of benefits and tax refunds shall bear the signature of the commissioner of finance and the counter signature of the commissioner.

(2) Any balance of money requisitioned from the unemployment trust fund that remains unclaimed or unpaid in the benefit account after the expiration of the period for which the sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits and refunds during following periods or, in the discretion of the commissioner, shall be redeposited in the federal unemployment trust fund, as provided in subdivision 2.

Subd. 3a 4. **REIMBURSEMENTS.** The commissioner is authorized to make to other state or federal agencies and to receive from other state or federal agencies, reimbursements from or to the fund, in accordance with reciprocal arrangements entered into pursuant to section 268.131.

Subd. 4. **DISPOSAL OF CERTAIN MONEY.** Any Money made available to the reemployment insurance fund and received pursuant to an a reciprocal agreement between this state and any agency of the federal government or any other state for the payment of reemployment insurance benefits shall be placed directly in the benefit payment account of the unemployment trust fund.

Subd. 5. **PAYMENT OF EXPENSES OF ADMINISTRATION REED ACT MONEY.** ~~(1)~~ (a) Money credited to the account of this state Minnesota in the federal unemployment trust fund by the secretary of the treasury of the United States of America pursuant to United States Code, title 42, section 903 1103, of the Social Security Act, also known as amended the Reed Act, may be requisitioned and used for (1) the payment of benefits, or (2) expenses incurred for the administration of Laws 1957, chapter 383 sections 268.03 to 268.23 pursuant to a specific appropriation by the legislature. Any money used for the payment of benefits may be restored for appropriation and use for administrative expenses upon request of the governor to the United States Secretary of Labor.

(b) Reed Act money may be used for expenses in the administration of sections 268.03 to 268.23 provided that the expenses are incurred and the money is requisitioned after the enactment of an appropriation law which that:

(a) (1) specifies the amounts and the purposes for which such the money is appropriated and the amounts appropriated therefor;

(b) (2) Limits the period within which such the money may be obligated to a period ending not more than two years after the date of the enactment of the appropriation law; and

(c) (3) Limits the amount which that may be obligated during any 12-month period beginning on July 1 and ending on the next June 30 to an amount which that does not exceed the amount by which (i) the aggregate of the amounts credited transferred to the account of this state Minnesota pursuant to section 903 of the Social Security Reed Act, as amended, during the same 12-month period and the 34 preceding 12-month periods, exceeds (ii) the aggregate of the amounts used pursuant to this subdivision and charged

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against the amounts credited transferred to the account of this state during any of such 35 12-month periods Minnesota. For the purposes of this subdivision, amounts used during any such 12-month period shall be charged against equivalent amounts which were first credited and which are not already so charged; except that no amount obligated for administration during any such 12-month period may be charged against any amount credited during such a 12-month period earlier than the 24th preceding such period for administration shall be chargeable against the transferred amounts at the time of the obligation.

(2) Money credited to the account of this state pursuant to section 903 of the Social Security Act, as amended, may not be withdrawn or used except for the payment of benefits and for the payment of expenses for the administration of Laws 1957, chapter 883 and of public employment offices pursuant to this subdivision. Any moneys used for the payment of benefits may be restored for appropriation and use for administrative expenses upon request of the governor, under section 903(c) of the Social Security Act.

(3) (c) Reed Act money requisitioned for the payment of expenses of administration pursuant to this subdivision shall be deposited in the economic security administration fund, but, until expended, shall remain a part of the reemployment insurance trust fund. The commissioner shall maintain a separate record of the deposit, obligation, expenditure, and return of funds so deposited account for the use of this money in accordance with the standards established by the United States Secretary of Labor. If any money so deposited is, for any reason, not to be expended spent for the purpose for which it was appropriated, or, if it remains unexpended unspent at the end of the period specified by the law appropriating such the money, it shall be withdrawn and returned to the secretary of the treasury of the United States for credit to this state's Minnesota's account in the federal unemployment trust fund.

Subd. 6. **ADVANCE ON BORROWING FEDERAL FUNDS.** (a) The governor is hereby authorized, if necessary, to make application as may be necessary to secure an advance of borrow funds from the federal unemployment trust fund in accordance with United States Code, title 42, section 1321 of the Social Security Act in order to pay benefits.

(b) Any amount transferred to the fund under the terms of any application loan shall be repayable as provided in United States Code, title 42, sections 1101(d)(1), 1103(b)(2), and 1322 of the Social Security Act.

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

Sec. 61. Minnesota Statutes 1998, section 268.196, is amended to read:

268.196 ECONOMIC SECURITY ADMINISTRATION FUND ACCOUNT.

Subdivision 1. **ADMINISTRATION FUND ACCOUNT.** (a) There is hereby created in the state treasury a special fund account to be known as the economic security administration fund account. All moneys which are money that is deposited or paid into this fund account shall be continuously available to the commissioner for expenditure in accordance with the provisions of to administer sections 268.03 to 268.23, and shall not lapse at any time. The fund administration account shall consist of:

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(1) all moneys money received from the United States or any agency thereof, including the United States department of labor, and include federal government to administer sections 268.03 to 268.23;

(2) any moneys money received from any agency of the United States or any other state as compensation for services or facilities supplied to such agency, the federal government or any other state;

(3) any amounts received pursuant to any surety bond or insurance policy or from other sources for losses sustained by the economic security administration fund this account or by reason of damage to equipment or supplies purchased from moneys in such fund; and

(4) any proceeds realized from the sale or disposition of any such equipment or supplies which that may no longer be necessary for the proper administration of those sections. Notwithstanding any provision of this section, all money requisitioned and deposited in this fund pursuant to section 268.194, subdivision 5, shall remain part of the reemployment fund and shall be used only in accordance with the conditions specified in section 268.194, subdivision 5.

(b) All moneys money in this fund account shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as are provided by law for the other special funds accounts in the state treasury. The state commissioner of finance, as treasurer and custodian of this account, shall be liable on the treasurer's official bond for the faithful performance of duties in connection with the economic security administration fund provided for under these sections. Such liability on the official bond shall be effective immediately upon the enactment of this provision, and such liability shall exist in addition to any liability upon any separate bond existent on April 29, 1941, or which may be given in the future. All sums recovered on any surety bond for losses sustained by the economic security administration fund shall be deposited in this fund this account.

(c) All money in this fund, except money received pursuant to section 268.194, subdivision 5, clause (3), account shall be expended spent solely for the purposes and in the amounts found necessary by the United States Secretary of Labor for the proper and efficient administration of the economic security program sections 268.03 to 268.23.

Subd. 2. **STATE TO REPLACE MONEY WRONGFULLY USED.** If any money received under United States Code, title 42, section 501 of the Social Security Act or 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 spent 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 268.03 to 268.23, the commissioner may, with the approval of the commissioner of administration, replace the money from the contingent account. If the money is not replaced from the contingent account, it is the policy of this state that the money be replaced by money appropriated for that purpose from the general funds of this state. Upon receipt of a finding by the secretary of labor if not replaced from the contingent account, the commissioner shall promptly report the amount required for replacement to the governor and the governor shall, at the earliest opportunity, submit to the legislature a request for the appropriation of that amount.

Subd. 3. **CONTINGENT ACCOUNT.** (a) There is hereby created in the state treasury a special account, to be known as the economic security contingent account, which

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that shall not lapse nor revert to any other fund. ~~Such~~ This account shall consist of all money appropriated therefor by the legislature, all money in the form of interest and penalties collected pursuant to sections 268.057 and, 268.18, and 268.184, all money received in the form of voluntary contributions to this account, and any interest ~~thereon~~ earned on the account. All money in ~~such~~ this account shall be supplemental to all federal money ~~that would be available to the commissioner but for the existence of this account.~~ Moneys ~~Money~~ in this account are is hereby appropriated to the commissioner and shall be available to the commissioner for ~~such~~ those expenditures as the commissioner may ~~deem~~ considers necessary in connection with the administration of sections 268.04 268.03 to 268.23.

Whenever the commissioner ~~expends~~ spends money from ~~said~~ the contingent account for the ~~proper and efficient~~ administration of the Minnesota Economic Security Law sections 268.03 to 268.23 for which ~~funds have not yet been~~ money will later be made available by the federal government, ~~such money so withdrawn from the contingent account shall, when money is available, be replaced as hereinafter provided.~~ Upon the deposit in reimbursed from the economic security administration fund of moneys which are received in reimbursement of payments made as above provided for said contingent accounts. The commissioner shall certify to the ~~state treasurer~~ commissioner of finance the amount of ~~such~~ the reimbursement and thereupon the ~~state treasurer~~ commissioner of finance shall transfer ~~such~~ that amount from the ~~economic security administration fund account~~ to said the contingent account.

(c) All money in this account shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for the other special accounts in the state treasury. The state treasurer shall be liable on the treasurer's official bond for the faithful performance of duties in connection with the economic security contingent account provided for herein. Notwithstanding anything to the contrary contained herein, On June 30 of each year, ~~except 1982,~~ all amounts in excess of \$300,000 in this account shall be paid over to the reemployment insurance trust fund established under section 268.194 and administered in accordance with the provisions set forth therein.

Sec. 62. Minnesota Statutes 1998, section 268.198, is amended to read:

268.198 **FREE EMPLOYMENT JOB SERVICE OFFICES.**

Subdivision 1. **ACCEPTANCE OF FEDERAL ACT ESTABLISHMENT.** A state employment service is hereby established in the department. The commissioner shall establish and maintain free public employment job service offices, in that number and in those places as may be necessary for the purpose of providing reemployment assistance services to claimants, as well as performing the functions within the purview of under the Wagner-Peyser Act, United States Code, title 29, chapter 4B section 49.

Subd. 2. **FINANCING.** All moneys ~~money~~ received by this state under ~~such~~ the Wagner-Peyser Act of Congress ~~referred to in subdivision 1~~ shall be paid into the economic security administration fund, account and expended solely for the maintenance of state public employment job service offices. For the purpose of establishing and maintaining free public employment job service offices and promoting the use of their facilities, the commissioner is authorized to enter into agreements with the railroad retirement board or any other public agency of the United States or of this or any other state charged

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with the administration of any law whose purposes are reasonably related to the purposes of sections 268.03 to 268.23 the job service.

Subd. 3. **VETERANS REPRESENTATIVES.** ~~As may be determined by the commissioner, based on a demonstrated need for the service, There shall be assigned by the commissioner to the staff of each full functioning employment the job service office a veterans employment representative whose activities one or more employees of the department who shall be devoted to discharging perform the duties prescribed of a veterans employment representative. The position of veterans employment representative shall be filled by one or more employees of the department who are veterans as defined in section 197.447.~~

Sec. 63. Minnesota Statutes 1998, section 268.21, is amended to read:

268.21 NONLIABILITY OF STATE.

(a) ~~Benefits shall be considered to be due and payable only to the extent provided in this chapter and to the extent that money is available in the reemployment insurance fund and neither the state nor the commissioner shall be liable for any amount in excess of such sums the money available in the fund.~~

(b) ~~No person shall make any demand, bring any suit, or other proceeding to recover from the state or the commissioner any sum alleged to be due on a reemployment insurance benefit account after the expiration of two years from the effective date of the reemployment insurance benefit account.~~

Sec. 64. Minnesota Statutes 1998, section 268.23, is amended to read:

268.23 SEVERABLE.

~~In the event that the United States Department of Labor shall determine determines that any provision of sections 268.03 to 268.23, or any other provision of Minnesota Statutes relating to the reemployment insurance program, is not in conformity with various provisions of the Federal Internal Revenue Code or the Social Security Act then such requirements of federal law, the provision shall have no force or effect for any purpose; but if any such only a portion of the provision, or the application thereof to any person or circumstances, is held invalid not in conformity, the remainder of said sections the provision and the application of such the provision to other persons or circumstances shall not be affected thereby.~~

Sec. 65. Minnesota Statutes 1998, section 268.30, subdivision 2, is amended to read:

Subd. 2. **APPLICATIONS.** Applications for a grant-in-aid shall be made by the administering agency to the commissioner. The grant-in-aid is contingent upon the agency having obtained from the community in which the youth intervention program is established local matching money two times the amount of the grant that is sought.

The commissioner shall provide by rule the application form, procedures for making application form, criteria for review of the application, and kinds of contributions in addition to cash that qualify as local matching money. No grant to any agency may exceed \$50,000.

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Sec. 66. REVISOR'S INSTRUCTIONS.

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

Column A	Column B
<u>268.182, paragraph (c)</u>	<u>268.184, paragraph (e)</u>
<u>268.095, subd. 9</u>	<u>268.035, subd. 23a</u>

The term "reemployment insurance account" shall be changed to "benefit account" in Minnesota Statutes, sections 268.03 to 268.23.

The term "reemployment insurance fund" shall be changed to "reemployment compensation trust fund" wherever it appears in Minnesota Statutes.

The term "notwithstanding" shall be changed to "regardless of" in Minnesota Statutes, sections 268.03 to 268.23.

The term "reemployment insurance" shall be changed to "reemployment compensation" wherever it appears in Minnesota Statutes.

The term "claimant" shall be changed to "applicant" in Minnesota Statutes, sections 268.03 to 268.23.

The term "claimants" shall be changed to "applicants" in Minnesota Statutes, sections 268.03 to 268.23.

The term "a claimant's" shall be changed to "an applicant's" in Minnesota Statutes, sections 268.03 to 268.23.

Sec. 67. REPEALER.

Minnesota Statutes 1998, sections 268.021; and 268.057, subdivisions 8 and 9; and Minnesota Rules, parts 3305.0100; 3305.0200; 3305.0300; 3305.0400; 3305.0500; 3305.0600; 3305.0700; 3305.0800; 3305.0900; 3305.1100; 3310.1500; 3310.1600; 3310.1700; 3310.1800; 3310.1900; 3310.2000; 3310.2100; 3310.2200; 3310.5100; and 3310.5800, are repealed.

Sec. 68. EFFECTIVE DATE.

Section 3 is effective with applications for benefits filed on and after July 1, 2000.

Section 13 is effective January 1, 2000.

Section 27 is effective January 1, 2001.

Section 41, subdivision 2, is effective July 1, 2000.

Section 42, subdivisions 7 and 8, are effective the day following final enactment.

Sec. 69. SUNSET.

Section 22 expires July 1, 2002.

Presented to the governor April 23, 1999

Signed by the governor April 27, 1999, 11:18 a.m.

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