

CHAPTER 183—H.F.No. 2235

An act relating to unemployment insurance; modifying definitions; making technical, housekeeping, and policy changes; modifying penalty provisions; amending Minnesota Statutes 2002, sections 176.011, subdivision 20; 268.035, subdivisions 3, 8a, 12a, 17, 20, 23a, 28, by adding a subdivision; 268.043; 268.044, subdivisions 2, 3, 4; 268.051, subdivisions 4, 7; 268.0511; 268.053, subdivision 2; 268.057, as amended; 268.058, as amended; 268.059, subdivision 3; 268.0625, as amended; 268.064, subdivisions 1, 3; 268.065, subdivisions 1, 2; 268.07, subdivisions 1, 3; 268.085, subdivisions 2, 12, 13a, 14; 268.095, subdivisions 4, 6a; 268.101, subdivisions 2, 4; 268.103; 268.105, as amended; 268.115, subdivision 5; 268.125, subdivision 5; 268.135, subdivisions 1, 2, 4; 268.145, subdivision 1; 268.18, subdivisions 2b, 6; 268.182; 268.184; Minnesota Statutes 2003 Supplement, sections 268.035, subdivision 15; 268.042, subdivisions 1, 3; 268.044, subdivisions 1, 1a; 268.045; 268.047, subdivision 5; 268.051, subdivisions 1, 1a, 3, 5, 6; 268.052, subdivisions 1, 2; 268.053, subdivisions 1, 3; 268.059, subdivision 1; 268.063; 268.066; 268.067; 268.0675; 268.07, subdivision 2; 268.085, subdivisions 1, 3, 4, 5, 6; 268.095, subdivisions 1, 3; 268.101, subdivisions 3, 3a; 268.18, subdivisions 1, 2; 268.186; 268.19, subdivision 2; proposing coding for new law in Minnesota Statutes, chapter 268.

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

Section 1. Minnesota Statutes 2002, section 176.011, subdivision 20, is amended to read:

Subd. 20. **AVERAGE WEEKLY WAGE.** The statewide average weekly wage for any year means that wage determined by the commissioner in the following manner: On or before July 1 preceding the year in which the wage is to be applicable, the total wages reported on tax wage detail reports to the Department of Employment and Economic Security Development for the preceding 12 months ending on December 31 of that year shall be divided by the average monthly number of covered workers (determined by dividing the total covered workers reported for the year ending December 31 by 12). The average annual wage thus obtained shall be divided by 52 and the average weekly wage thus determined rounded to the next highest dollar.

Sec. 2. [268.032] ELECTRONIC TRANSMISSION; WHEN ALLOWED; SENDING TO LAST KNOWN ADDRESS REQUIRED.

(a) If any required notice, determination, or decision issued under this chapter provides that the commissioner may send the notice, determination, or decision by mail or electronic transmission, the commissioner may send the notice, determination, or decision to an applicant or employer by electronic transmission only if the applicant or employer has affirmatively indicated that the applicant or employer would prefer required notices, determinations, or decisions be sent by electronic transmission rather than by mail. An applicant or employer may withdraw an indicated preference for electronic transmission.

(b) If any required notice, determination, or decision issued under this chapter is sent by mail to an applicant or an employer, the notice, determination, or decision must be sent to the last known address. If any required notice, determination, or decision issued under this chapter is sent by electronic transmission, the notice, determination,

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or decision must be sent to the last known electronic address of the applicant or employer. If any required notice, determination, or decision issued under this chapter is sent by electronic transmission and the commissioner is notified that the electronic address of the applicant or employer is no longer in service, the commissioner must then send the required notice, determination, or decision by mail to the last known address.

EFFECTIVE DATE. This section is effective July 1, 2005.

Sec. 3. [268.033] COMPUTATION OF TIME.

The computation of time provisions of section 645.151 apply to this chapter.

Sec. 4. Minnesota Statutes 2002, 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 as determined by an arbitration award, administrative or judicial decision, or negotiated settlement.

Sec. 5. Minnesota Statutes 2002, section 268.035, subdivision 8a, is amended to read:

Subd. 8a. **COMMISSIONER.** "Commissioner" means the commissioner of employment and economic security development.

Sec. 6. Minnesota Statutes 2002, section 268.035, subdivision 12a, is amended to read:

Subd. 12a. **DEPARTMENT.** "Department" means the Department of Employment and Economic Security Development.

Sec. 7. Minnesota Statutes 2002, section 268.035, is amended by adding a subdivision to read:

Subd. 12b. **ELECTRONIC TRANSMISSION.** "Electronic transmission" means a communication sent by electronic, digital, magnetic, wireless, optical, electromagnetic or similar capabilities, and, when permitted by the commissioner, a telephone communication.

Sec. 8. Minnesota Statutes 2003 Supplement, 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 has less than a 25 percent ownership share and is considered an employee under the common law of employer-employee; or

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

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

(ii) a traveling or city salesperson, other than as an agent-driver or commission-driver, engaged full-time in the solicitation on behalf of the 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.

EFFECTIVE DATE. This section is effective January 1, 2005.

Sec. 9. Minnesota Statutes 2002, section 268.035, subdivision 17, is amended to read:

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

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

Sec. 10. Minnesota Statutes 2002, 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 a state, other than Minnesota, or a political subdivision or instrumentality thereof;

(3) employment for a foreign government;

(4) 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;

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

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(6) employment covered by a reciprocal arrangement between the commissioner and another state or the federal government 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;

(7) 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);

(8) employment of a duly ordained 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);

(9) 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;

(10) 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 unemployment benefit coverage for the participants;

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

(12) employment as a member of the Minnesota National Guard or Air National Guard;

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

(14) 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;

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

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

(17) domestic 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 in domestic employment totaled less than \$1,000.

“Domestic employment” includes all service 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 or business;

(18) 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;

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

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

(21) employment of an individual who is enrolled as a student in a full-time program at a nonprofit or public educational institution that maintains a regular faculty and curriculum and 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;

(22) 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;

(23) employment for a hospital by a patient of the hospital. “Hospital” means an institution that has been licensed by the Department of Health as a hospital;

(24) 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 an accredited nurses’ training school;

(25) employment as an intern for a hospital by an individual who has completed a four-year course in an accredited medical school;

(26) employment as an insurance 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;

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

(28) employment of a corporate officer, if the officer owns 25 percent or more of the employer corporation, and employment of a member of a limited liability company, if the member owns 25 percent or more of the employer limited liability company;

(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;

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

~~(30)~~ (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;

~~(31)~~ (32) casual employment performed for an individual, other than domestic employment under clause (17), that does not promote or advance that employer's trade or business;

~~(32)~~ (33) employment in "agricultural employment" unless considered "covered agricultural employment" under subdivision 11; or

~~(33)~~ (34) if employment during one-half or more of any pay period was covered employment, all the employment for the pay period shall be considered covered employment; but if during more than one-half of any pay period the employment was noncovered employment, then all of the employment for the pay period shall be considered 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.

EFFECTIVE DATE. This section is effective January 1, 2005.

Sec. 11. Minnesota Statutes 2002, section 268.035, subdivision 23a, is amended to read:

Subd. 23a. **SUITABLE EMPLOYMENT.** (a) Suitable employment means employment in the applicant's labor market area that is reasonably related to the applicant's qualifications. In determining whether any employment is suitable for an applicant, the degree of risk involved to the health and safety, physical fitness, prior training, experience, length of unemployment, prospects for securing employment in the applicant's customary occupation, and the distance of the employment from the applicant's residence shall be considered.

(b) In determining what is suitable employment, primary consideration shall be given to the temporary or permanent nature of the applicant's separation from employment and whether the applicant has favorable prospects of finding employment in the applicant's usual or customary occupation at the applicant's past wage level within a reasonable period of time.

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If prospects are unfavorable, employment at lower skill or wage levels is suitable if the applicant is reasonably suited for the employment because of considering the applicant's education, training, work experience, or and current physical and mental 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 applicant's former rate, consideration must be given to the length of the applicant'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 applicant's unemployment may become suitable as the duration of unemployment lengthens.

(d) For an applicant 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 applicant's weekly unemployment benefit amount.

(e) If a majority of the applicant's wage credits were earned from part-time employment, part-time employment in a position with comparable skills and comparable hours that pays average gross weekly wages equal to or more than 150 percent of the applicant's weekly unemployment 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 because of a labor dispute;
- (2) the wages, hours, or other conditions of employment are substantially less favorable than those prevailing for similar employment in the labor market area; or
- (3) as a condition of becoming employed, the applicant would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

EFFECTIVE DATE. This section is effective August 1, 2004, and applies to all determinations and decisions issued by the department on or after August 1, 2004.

Sec. 12. Minnesota Statutes 2002, section 268.035, subdivision 28, is amended to read:

Subd. 28. **WAGE DETAIL REPORT.** "Wage detail report" means the report of wages paid and hours worked by on each employee in covered employment required from an employer on a calendar quarter basis under section 268.044. An auxiliary report broken down by business locations, when required by the commissioner, shall

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contain the number of employees in covered employment for each month, and the quarterly total wages for each location. The auxiliary report may be made part of the wage detail report, the tax report, or filed separately, as required by the commissioner.

EFFECTIVE DATE. This section is effective July 1, 2005.

Sec. 13. Minnesota Statutes 2003 Supplement, section 268.042, subdivision 1, is amended to read:

Subdivision 1. **EMPLOYER FOR PART OF YEAR REGISTRATION.** (a) Each employer shall, upon or before the submission of its first wage detail report under section 268.044, register with the commissioner for a tax account or a reimbursable account, by electronic transmission in a format prescribed by the commissioner. The employer must provide all required information for registration.

(b) Except as provided in subdivision 3, any organization or person that is or becomes an employer subject to the Minnesota Unemployment Insurance Law within any calendar year shall be considered to be subject to these sections this chapter the entire calendar year.

(c) Upon the termination of business, an employer that has been assigned a tax account or reimbursable account shall notify the commissioner by electronic transmission, in a format prescribed by the commissioner, that the employer no longer has employees and does not intend or expect to pay wages to any employees in the next calendar year and into the foreseeable future. Upon such notification, the commissioner shall not require the employer to file wage detail reports under section 268.044, subdivision 1, paragraph (d), commencing the calendar quarter after the notice of termination was received by the commissioner.

EFFECTIVE DATE. This section is effective July 1, 2005.

Sec. 14. Minnesota Statutes 2003 Supplement, section 268.042, subdivision 3, is amended to read:

Subd. 3. **ELECTION AGREEMENTS; TERMINATION TO HAVE NON-COVERED EMPLOYMENT CONSIDERED COVERED EMPLOYMENT.** (a) Any employer that has employment performed for it that does not constitute covered is noncovered employment under section 268.035, subdivision 20, may file with the commissioner a written, by electronic transmission in a format prescribed by the commissioner, an election that all such employment, in one or more distinct establishments or places of business, shall be considered covered employment for not less than two calendar years. The commissioner shall have discretion on the approval of any election. Upon the written approval of the commissioner, sent by mail or electronic transmission, the employment shall constitute covered employment from and beginning the calendar quarter after the date stated in the of approval or beginning a later calendar quarter if requested by the employer. The 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, by electronic transmission in a format prescribed by the commissioner, a written notice to that effect.

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(b) The commissioner must terminate any election agreement under this subdivision upon 30 calendar days' notice sent by mail or electronic transmission, if the employer fails to pay all is delinquent on any taxes due or reimbursements due the trust fund.

EFFECTIVE DATE. This section is effective July 1, 2005.

Sec. 15. [268.0425] **ELECTRONIC TRANSACTION PRESUMPTION.**

If any electronic transaction is done under this chapter using an identification number or code assigned an employer by the commissioner, the transaction is presumed as done by that employer unless a preponderance of the available evidence demonstrates that it was not done by that employer.

Sec. 16. Minnesota Statutes 2002, section 268.043, is amended to read:

268.043 **DETERMINATIONS OF COVERAGE.**

(a) The commissioner, upon the commissioner's own motion or upon application of an organization or person, shall determine if that organization or person is an employer or whether services performed for it constitute employment and covered employment, or whether the compensation for services constitutes wages, and shall notify the organization or person of the determination. The determination shall be final unless the organization or person, within 30 calendar days after sending of the determination by mail or electronic transmission, files an appeal. ~~Proceedings on the appeal shall be conducted in accordance with section 268.105.~~

(b) ~~The commissioner may at any time upon the commissioner's own motion correct any error of the department resulting in an erroneous determination under this section. A corrected determination a protest. Upon receipt of a protest, the commissioner shall review all available evidence and determine whether an error has been made. The commissioner shall send to the organization or person, by mail or electronic transmission, an affirmation or redetermination. The affirmation or redetermination shall be final unless, within 30 calendar days after sending of the corrected determination affirmation or redetermination to the organization or person by mail or electronic transmission, an appeal is filed. Proceedings on the appeal shall be conducted in accordance with section 268.105.~~

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

EFFECTIVE DATE. This section is effective July 1, 2005.

Sec. 17, Minnesota Statutes 2003 Supplement, section 268.044, subdivision 1, is amended to read:

Subdivision 1. **WAGE DETAIL REPORT.** (a) Each employer that has employees in covered employment shall file ~~submit~~ a quarterly wage detail report by

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electronic transmission, in a manner and format prescribed by the commissioner. The report shall include for each employee in covered employment, the employee's name, Social Security number, the total wages paid to the employee, and total number of paid hours worked. For employees exempt from the definition of employee in section 177.23, subdivision 7, clause (6), the employer shall report 40 hours worked for each week any duties were performed by a full-time employee and shall report a reasonable estimate of the hours worked for each week duties were performed by a part-time employee. In addition, the wage detail report shall include the number of employees employed on the 12th day of each calendar month and, if required by the commissioner, the report shall be broken down by business location and type of employment. If the information required is not filed submitted in a manner and format prescribed by the commissioner, it shall not be considered a wage detail report. The report is due and must be filed received by the commissioner on or before the last day of the month following the end of the calendar quarter. The commissioner may delay the due date on a specific calendar quarter in the event the department is unable to accept wage detail reports electronically.

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

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

(d) A wage detail report must be submitted for each calendar quarter even though no wages were paid, unless the employer has notified the commissioner, under section 268.042, subdivision 1, paragraph (c), of termination of business.

EFFECTIVE DATE. This section is effective July 1, 2005.

Sec. 18. Minnesota Statutes 2003 Supplement, section 268.044, subdivision 1a, is amended to read:

Subd. 1a. **ELECTRONIC TRANSMISSION OF REPORT REQUIRED.** Each employer that has 50 or more employees to report for a calendar quarter under subdivision 1 must file submit the quarterly wage detail report by electronic transmission in a format prescribed by the commissioner. The commissioner shall have the discretion to accept wage detail reports by magnetic media in a format prescribed by the commissioner. Wage detail reports from an employer with 50 or more employees to report for a calendar quarter that are filed submitted by any other means or the commissioner may be returned return the report submitted by other than electronic transmission to the employer, and reports returned shall be considered as not filed submitted and the penalties late fees under subdivision 2 may be imposed.

EFFECTIVE DATE. This section is effective July 1, 2005.

Sec. 19. Minnesota Statutes 2002, section 268.044, subdivision 2, is amended to read:

Subd. 2. **FAILURE TO TIMELY FILE REPORT; LATE FEES.** (a) Any employer who that fails to file submit the quarterly wage detail report when due shall

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pay to the department; for each month the report is delinquent, a penalty of one-half of one percent of total wages paid that quarter, a late fee of \$10 per employee, computed based upon the highest of:

- (1) the number of employees reported on the last wage detail report submitted;
- (2) the number of employees reported in the corresponding quarter of the prior calendar year; or
- (3) if no wage detail report has ever been submitted, the number of employees listed at the time of employer registration.

The penalty late fee shall not be assessed waived if the wage detail report is properly made and filed received within 30 calendar days after a demand for the report is mailed sent to the employer's address of record employer by mail or electronic transmission. A late fee assessed an employer may not be waived more than once each 12 months. In no case shall The amount of the penalty, if late fee assessed, shall not be less than \$25 \$50. Penalties

(b) If the wage detail report is not received in a manner and format prescribed by the commissioner within 30 calendar days after demand is sent under paragraph (a), the late fee assessed under paragraph (a) shall double and a renewed demand notice and notice of the increased late fee shall be sent to the employer by mail or electronic transmission.

(c) Late fees due under this subdivision may be waived compromised under section 268.067 where good cause for late filing submission is found by the commissioner.

EFFECTIVE DATE. This section is effective July 1, 2005.

Sec. 20. Minnesota Statutes 2002, section 268.044, subdivision 3, is amended to read:

Subd. 3. **MISSING OR ERRONEOUS INFORMATION.** Any employer who files submits the wage detail report, but knowingly fails to include any of the required employee information or knowingly enters erroneous information, shall be subject to a penalty an administrative service fee of \$25 for each employee for whom the information is missing or erroneous. An administrative service fee may be compromised under section 268.067 if the commissioner determines that the failure or error by the employer was inadvertent.

EFFECTIVE DATE. This section is effective July 1, 2005.

Sec. 21. Minnesota Statutes 2002, section 268.044, subdivision 4, is amended to read:

Subd. 4. **PENALTIES FEES.** The penalties fees provided for in subdivisions 2 and 3 are in addition to interest and other penalties imposed by this chapter and shall be collected in the same manner as delinquent taxes and shall be credited to the contingent account.

EFFECTIVE DATE. This section is effective July 1, 2005.

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Sec. 22. Minnesota Statutes 2003 Supplement, section 268.045, is amended to read:

268.045 EMPLOYER TAX OR REIMBURSABLE ACCOUNTS.

(a) Subdivision 1. ACCOUNT FOR EACH EMPLOYER. The commissioner shall maintain a tax account for each taxpaying employer and a reimbursable account for each nonprofit or government employer that has elected to be liable for reimbursements if that employer has employees in covered employment in the current or the prior calendar year, except as provided in this section. The commissioner shall assess the tax account of a taxpaying employer for all the taxes due under section 268.051 and credit the tax account with all taxes paid. The commissioner shall charge the reimbursable account of a nonprofit or government employer that elects to make reimbursements for any unemployment benefits determined chargeable to the employer under section 268.047 and shall credit the reimbursable account with the payments made.

(b) Subd. 2. COMMON PAYMASTER TAX ACCOUNT. Two or more related taxpaying corporations concurrently employing the same employees and compensating those employees through a common paymaster that is one of the corporations may apply to, by electronic transmission, in a format prescribed by the commissioner, to establish a common paymaster tax account that shall be the tax account of the common paymaster corporation. The commissioner shall have discretion on approval of a common paymaster tax account. If approved, the separate tax accounts shall be maintained, but the employees compensated through the common paymaster shall be reported under section 268.044 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 amounts due under this chapter and section 116L.20 from the common paymaster tax account.

(c) Subd. 3. JOINT TAX ACCOUNT. Two or more taxpaying employers having 50 percent or more common ownership and compensating employees through a single payer that is one of the employers may apply to by electronic transmission in a format prescribed by the commissioner for a merging combining of the experience ratings of the employers into a single experience rating and joint tax account. The commissioner shall have discretion on approval of a 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 by electronic transmission, in a format prescribed by 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 amounts due under this chapter and section 116L.20 from the joint tax account.

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(d) **Subd. 4. GROUP REIMBURSABLE ACCOUNT.** Two or more nonprofit or government employers that have elected to be liable for reimbursements may apply to the commissioner for the establishment of a group reimbursable account for the purpose of sharing the cost of unemployment benefits charged based upon wage credits from all employers in the group. The application, filed by electronic transmission in a format prescribed by the commissioner, shall identify and authorize a group representative to act as the group's agent for the purposes of the reimbursable account. The commissioner shall have discretion on approval of a group 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, filed by electronic transmission in a format prescribed by the commissioner, 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 nonprofit or government employer in the group shall be jointly and severally liable for reimbursements for all unemployment benefits paid based upon wage credits from all employers in the group during the period the group reimbursable account was in effect.

EFFECTIVE DATE. This section is effective July 1, 2005.

Sec. 23. Minnesota Statutes 2003 Supplement, section 268.047, subdivision 5, is amended to read:

Subd. 5. NOTICE OF UNEMPLOYMENT BENEFITS PAID. (a) The commissioner shall notify each employer at least quarterly by mail or electronic transmission of the unemployment benefits paid each applicant that will be used in computing the future tax rate of a taxpaying employer, or that have been charged to the reimbursable account of a nonprofit or government employer that has elected to be liable for reimbursements. Unless a protest is filed within 30 calendar days from the date of sending of the notice, the notice shall be final and shall not be subject to collateral attack by way of review of a tax rate notice or application for a credit adjustment or refund.

(b) Upon receipt of a protest, the commissioner shall review unemployment benefits to be used in computing the future tax rate of a taxpaying employer or charged to the reimbursable account of a nonprofit or government employer that has elected to be liable for reimbursements and determine whether there has been an error made. The commissioner shall either affirm or make a redetermination of the unemployment benefits paid to be used in computing the future tax rate of a taxpaying employer or charged to the reimbursable account of a nonprofit or government employer that has elected to be liable for reimbursements, and a notice of affirmation or redetermination shall be sent to the employer by mail or electronic transmission.

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

(d) An employer may not collaterally attack, by way of a protest to a notice of unemployment benefits paid, any prior determination or decision holding that

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unemployment benefits paid shall be used in computing the future tax rate of a taxpaying employer or charged to the reimbursable account of a nonprofit or government employer that has elected to be liable for reimbursements which determination or decision has become final.

(e) A notice under this subdivision shall not be subject to protest or appeal. The commissioner may at any time upon the commissioner's own motion correct a clerical error that resulted in an incorrect notice under paragraph (a) and issue a corrected notice.

EFFECTIVE DATE. This section is effective July 1, 2005.

Sec. 24. Minnesota Statutes 2003 Supplement, section 268.051, subdivision 1, is amended to read:

Subdivision 1. **PAYMENTS.** (a) Unemployment insurance taxes and any additional assessments, fees, or surcharges shall accrue and become payable by each employer for each calendar year on the taxable wages that the employer paid wages to employees in covered employment, except for:

(1) nonprofit organizations that elect to make reimbursements as provided in section 268.053; and

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

Except as allowed under section 268.0511, each employer shall pay taxes quarterly, at the employer's assigned tax rate, on the taxable wages paid to each employee. The commissioner shall compute the tax due from the wage detail report required under section 268.044 and notify the employer of the tax due. The taxes and any additional assessments, fees, or surcharges shall be paid to the trust fund and must be received by the department on or before the last day of the month following the end of the calendar quarter.

(b) The total payment due may be paid in an tax amount computed, if not a whole dollar, shall be rounded down to the nearest next lower whole dollar.

(c) When the total payment due for any calendar quarter is less than \$1, it shall be disregarded. If for any reason the wages on the wage detail report under section 268.044 are adjusted for any quarter, the commissioner shall recompute the taxes due for that quarter and assess the employer for any amount due or credit the employer as appropriate.

EFFECTIVE DATE. This section is effective July 1, 2005.

Sec. 25. Minnesota Statutes 2003 Supplement, section 268.051, subdivision 1a, is amended to read:

Subd. 1a. **TAX REPORTS PAYMENTS BY ELECTRONIC PAYMENT REQUIRED.** (a) Every employer, except those nonprofit and government employers that have elected to make reimbursements, shall submit a tax report on a form, or in a manner, prescribed by the commissioner on or before the last day of the month

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following the end of the calendar quarter, unless the employer meets the requirements for submitting tax reports annually under section 268.0511. An employer that fails to submit a tax report when due, or submits an incorrect tax report, shall be subject to section 268.057, subdivision 4 that reports 500 or more employees in any calendar quarter on the wage detail report required under section 268.044 shall make any payments due under this chapter and section 116L.20 by electronic payment.

(b) Each tax report shall include the total wages paid and the taxable wages paid that quarter, the amount of tax due, and any other information required by the commissioner. All third-party processors, paying quarterly taxes on behalf of a client company, shall make any payments due under this chapter and section 116L.20 by electronic payment.

(c) A tax report must be submitted for each calendar quarter even though no wages were paid or no tax is due. Regardless of paragraph (a) or (b), the commissioner shall have discretion to accept payment by other means.

EFFECTIVE DATE. This section is effective July 1, 2005.

Sec. 26. Minnesota Statutes 2003 Supplement, section 268.051, subdivision 3, is amended to read:

Subd. 3. **COMPUTATION OF A TAXPAYING EMPLOYER'S EXPERIENCE RATING.** (a) For each calendar year On or before each December 15, the commissioner shall compute an experience rating for each taxpaying employer who has been subject to paying unemployment taxes for at least the 12 calendar months ending on the prior to July 1 of the prior June 30. The experience rating computed shall be applicable for the following calendar year.

(b) The experience rating shall be the ratio obtained by dividing 125 percent of the total unemployment benefits required under section 268.047 to be used in computing the employer's tax rate during the 48 calendar months ending on the prior June 30 of the prior calendar year, by the employer's total taxable payroll for that same period.

(c) For purposes of paragraph (b), 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.

(d) (b) The experience rating shall be computed to the nearest one-tenth one-hundredth of a percent, to a maximum of 8.9 8.90 percent.

EFFECTIVE DATE. This section is effective July 1, 2005.

Sec. 27. Minnesota Statutes 2002, section 268.051, subdivision 4, is amended to read:

Subd. 4. **EXPERIENCE RATING TRANSFER.** (a) When a taxpaying 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 of the predecessor employer shall be transferred as of the date of acquisition to the successor

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employer for the purpose of computing a tax rate.

(b) When a taxpaying 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~~ that percentage of a predecessor's experience rating attributable to the portion it acquired equal to that percentage of the predecessor's employment positions it has obtained, and the predecessor employer shall retain that percentage of the experience rating attributable to the portion equal to that percentage of the employment positions that it has retained, if (1) the successor makes a written request to apply files an application by electronic transmission, in a format prescribed by the commissioner, for the transfer of a percentage of the experience rating attributable to the severable portion acquired from of 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 acquisition and to assign the appropriate portion percentage of the experience rating.

(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 at the time of the acquisition, the transferred experience rating of the predecessor shall be combined with the successor's experience rating for purposes of computing a tax rate.

(e) If there has been a transfer of an experience rating 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 transmission. The determination shall be final unless a protest is filed by the employer within 30 calendar days after sending the determination. Upon receipt of a protest, the commissioner shall review all available evidence and determine whether an error has been made. The commissioner shall either affirm or make a redetermination on whether the employer is a successor within the meaning of this subdivision and send the employer, by mail or electronic transmission, the affirmation or redetermination. The affirmation or redetermination shall be final unless an appeal is filed by the employer within 30 calendar days after the sending of the determination affirmation or redetermination. 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

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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. This paragraph does not apply to rates that have become final before the filing of a written request to apply an application for the transfer of a severable portion of the experience rating under paragraph (b).

(h) Should an employer not have been in operation long enough to qualify for an experience rating under subdivision 3, paragraph (a), the experience rating for purposes of this subdivision shall consist of those factors that normally make up an experience rating, without the 12-month minimum.

(i) If the commissioner finds that a transaction was done, in whole or in part, to avoid an experience rating or the transfer of an experience rating, the commissioner may transfer all or part of the experience rating regardless of the requirements or limitations of paragraph paragraphs (a) and (b). This shall include the transferring of employees from the payroll of an employer with a higher experience rating to the payroll of an employer with a lower experience rating.

(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 ratings of the corporations shall be combined as of the date of acquisition or merger for the purpose of computing a tax rate.

EFFECTIVE DATE. This section is effective July 1, 2005.

Sec. 28. Minnesota Statutes 2003 Supplement, section 268.051, subdivision 5, is amended to read:

Subd. 5. **TAX RATE FOR NEW EMPLOYERS.** (a) Each new taxpaying employer that does not qualify for an experience rating under subdivision 3, except new employers in a high experience rating industry, shall be assigned, for a calendar year, a tax rate the higher of (1) one percent, or (2) the tax rate computed, to the nearest one-hundredth of a percent, by dividing the total amount of unemployment benefits paid all applicants during the 48 calendar months ending on June 30 of the prior calendar year by the total taxable wages of all taxpaying employers during the same period, plus the applicable base tax rate and any additional assessments under subdivision 2, paragraph (d).

(b) Each new taxpaying employer in a high experience rating industry that does not qualify for an experience rating under subdivision 3, shall be assigned, for a calendar year, a tax rate of ~~8.0~~ 8.00 percent, plus the applicable base tax rate and any additional assessments under subdivision 2, paragraph (d).

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

- (1) the employer is 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

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

(c) The commissioner shall send to the new employer, by mail or electronic transmission, notice of the tax rate assigned. An employer may protest the assignment of a tax rate in accordance with the procedures in subdivision 6, paragraph (c).

EFFECTIVE DATE. This section is effective July 1, 2005.

Sec. 29. Minnesota Statutes 2003 Supplement, section 268.051, subdivision 6, is amended to read:

Subd. 6. **NOTICE OF TAX RATE.** (a) On or before each December 15, the commissioner shall notify each employer by mail or electronic transmission of the employer's tax rate, along with any additional assessments, fees, or surcharges, as determined for any the following calendar year. The notice shall contain the base tax rate and the factors used in determining the employer's experience rating. Unless a protest of the tax rate is made, the assigned computed tax rate shall be final except for fraud and shall be the rate at which taxes shall be paid. The tax rate shall not be subject to collateral attack by way of claim for a credit adjustment or refund, or otherwise.

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

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

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

Sec. 30. Minnesota Statutes 2002, section 268.051, subdivision 7, is amended to read:

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

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

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

EFFECTIVE DATE. This section is effective July 1, 2005.

Sec. 31. Minnesota Statutes 2002, section 268.0511, is amended to read:

268.0511 ANNUAL PAYMENT OF SMALL LIABILITIES.

(a) An employer may file tax reports and pay all taxes, surcharges, and assessments due under this chapter and section 116L.20, except late fees under section 268.044, for any calendar year on an annual basis if the employer:

- (1) has an experience rating of zero for that calendar year;
- (2) had total taxable wages paid in the 12-month period ending the prior June 30 of less than five times the state's taxable wage base; and
- (3) has no outstanding tax or assessment liability, including penalties and interest delinquent amounts due under this chapter or section 116L.20.

(b) ~~Tax reports and taxes and assessments~~ All amounts due under this section for any calendar year shall be paid on or before the following January 31.

EFFECTIVE DATE. This section is effective July 1, 2005.

Sec. 32. Minnesota Statutes 2003 Supplement, section 268.052, subdivision 1, is amended to read:

Subdivision 1. **PAYMENTS.** In lieu of taxes payable on a quarterly basis, the state of Minnesota or its political subdivisions shall reimburse the trust fund the amount of unemployment benefits charged to its reimbursable account under section 268.047. Reimbursements in the amount of unemployment benefits charged to the reimbursable account during a calendar quarter shall be made must be received by the department on or before the last day of the month following the month that the notice of unemployment benefits paid is sent pursuant to section 268.047, subdivision 5. Past due reimbursements shall be subject to the same interest charges and collection procedures that apply to past due taxes.

EFFECTIVE DATE. This section is effective July 1, 2005.

Sec. 33. Minnesota Statutes 2003 Supplement, section 268.052, subdivision 2, is amended to read:

Subd. 2. **ELECTION BY STATE OR POLITICAL SUBDIVISION TO BE A TAXPAYING EMPLOYER.** (a) The state or political subdivision excluding a school

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district may elect to be a taxpaying employer for any calendar year if a notice of election is filed 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.

(b) An election shall be for a minimum period of two calendar years following the effective date of the election and continue unless a notice terminating the election is filed not later than 30 calendar days before the beginning of the calendar year. The termination shall be effective at the beginning of the next calendar year. Upon election, the commissioner shall establish a reimbursable account for the state or political subdivision. A termination of election shall be allowed only if the state or political subdivision has, since the beginning of the experience rating period under section 268.051, subdivision 3, paid taxes and made voluntary payments under section 268.051, subdivision 7, equal to or more than 125 percent of the unemployment benefits used in computing the experience rating. In addition, any unemployment benefits paid after the experience rating period shall be transferred to the new reimbursable account of the state or political subdivision. If the amount of taxes and voluntary payments paid since the beginning of the experience rating period exceeds 125 percent of the amount of unemployment benefits paid during the experience rating period, that amount in excess shall be applied against any unemployment benefits paid after the experience rating period.

(c) The method of payments to the trust fund under subdivisions 3 and 4 shall apply to all 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 shall~~ be filed by ~~mail or~~ electronic transmission in a format prescribed by the commissioner.

EFFECTIVE DATE. This section is effective July 1, 2005.

Sec. 34. Minnesota Statutes 2003 Supplement, section 268.053, subdivision 1, is amended to read:

Subdivision 1. **ELECTION.** (a) Any nonprofit organization that has employees in covered employment shall pay taxes on a quarterly basis pursuant to section 268.051 unless it elects to make reimbursements to the trust fund the amount of unemployment benefits charged to its reimbursable account under section 268.047.

The organization may elect to make reimbursements for a period of not less than two calendar years beginning with the date that the organization was determined to be an employer with covered employment by filing a notice of election not later than 30 calendar days after the date of the determination.

(b) Any nonprofit organization that makes an election will continue to be liable for reimbursements until it files a notice terminating its election not later than 30 calendar days before the beginning of the calendar year the termination is to be effective.

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(c) A nonprofit organization that has been making reimbursements 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.

(d) Any nonprofit organization that has been paying taxes may elect to make reimbursements by filing no less than 30 calendar days before January 1 of any calendar year a notice of election. Upon election, the commissioner shall establish a reimbursable account for the nonprofit organization. An election shall be allowed only if the nonprofit organization has, since the beginning of the experience rating period under section 268.051, subdivision 3, paid taxes and made voluntary payments under section 268.051, subdivision 7, equal to or more than 125 percent of the unemployment benefits used in computing the experience rating. In addition, any unemployment benefits paid after the experience rating period shall be transferred to the new reimbursable account of the nonprofit organization. If the amount of taxes and voluntary payments paid since the beginning of the experience rating period exceeds 125 percent of the amount of unemployment benefits paid during the experience rating period, that amount in excess shall be applied against any unemployment benefits paid after the experience rating period. The election shall not be terminable by the organization for that and the next calendar year.

(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 shall be filed by mail or electronic transmission in a format prescribed by the commissioner.~~

EFFECTIVE DATE. This section is effective July 1, 2005.

Sec. 35. Minnesota Statutes 2002, section 268.053, subdivision 2, is amended to read:

Subd. 2. **DETERMINATION, PROTEST, 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 an appeal a protest is filed within 30 calendar days after sending of the determination. Upon receipt of a protest, the commissioner shall review all available evidence and determine whether an error has been made. The commissioner shall send to the nonprofit organization, by mail or electronic transmission, an affirmation or redetermination. The affirmation or redetermination shall be final unless an appeal is filed within 30 calendar days of sending the affirmation or redetermination. Proceedings on the appeal shall be conducted in accordance with section 268.105.

EFFECTIVE DATE. This section is effective July 1, 2005.

Sec. 36. Minnesota Statutes 2003 Supplement, section 268.053, subdivision 3, is amended to read:

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Subd. 3. **PAYMENTS.** (a) Reimbursements, in the amount of unemployment benefits charged to the reimbursable account, during a calendar quarter, shall be made must be received by the department on or before the last day of the month following the month that the notice of unemployment benefits paid is sent pursuant to section 268.047, subdivision 5.

(b) Past due reimbursements shall be subject to the same interest charges and collection procedures that apply to past due taxes.

(c) If any nonprofit organization is delinquent in making reimbursements, the commissioner may terminate the organization's election to make reimbursements 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.

EFFECTIVE DATE. This section is effective July 1, 2005.

Sec. 37. Minnesota Statutes 2002, section 268.057, as amended by Laws 2003, First Special Session chapter 3, article 2, sections 6 and 20, is amended to read:

268.057 COLLECTION OF TAXES.

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

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

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

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

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

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

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

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

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

Subd. 2. TAX OR PAYMENT IN LIEU OF TAX PRESUMED VALID. The tax and payment in lieu of tax Any amount due from an employer, as assessed computed by the commissioner, including any penalties, shall be presumed to be valid and correctly determined and assessed, and the burden shall be upon the employer to show its incorrectness or invalidity. A statement by the commissioner of the amount of the tax, payment in lieu of tax, interest and penalties as determined or assessed by the commissioner, due shall be admissible in evidence in any court or administrative proceeding and shall be prima facie evidence of the facts in the statement.

Subd. 2. PRIORITY OF PAYMENTS. (a) Any payment received from a taxpaying employer shall be applied in the following order:

(1) unemployment insurance taxes; then

(2) special assessment for interest on any federal loan; then

(3) workforce development fee; then

(4) interest on past due taxes; then

(5) penalties, late fees, administrative service fees, and costs.

(b) Paragraph (a) shall be the priority used for all payments received from a taxpaying employer, regardless of how the employer may designate the payment to be applied, except when:

(1) there is an outstanding lien and the employer designates that the payment made should be applied to satisfy the lien;

(2) the payment is for back pay withheld from an applicant pursuant to section 268.085, subdivision 6, paragraph (b);

(3) the payment is specifically designated by the employer to be applied to an outstanding overpayment of unemployment benefits of an applicant;

(4) a court or administrative order directs that the payment be applied to a specific obligation;

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(5) a preexisting payment plan provides for the application of payment; or

(6) the commissioner, under the compromise authority of section 268.067, agrees to apply the payment to a different priority.

Subd. 3. CONFESSION OF JUDGMENT ESTIMATING THE TAX DUE. (a)

Any tax report or other form that is required to be filed with the commissioner concerning taxes or reimbursements due, shall contain a written declaration that it is made under the penalties for willfully making a false report and shall contain a confession of judgment for the amount of the tax or reimbursements shown due thereon to the extent not timely paid together with any interest and penalty due under this chapter.

(b) The commissioner may, within six years after the report or other form is filed, regardless of section 541.09, enter judgment on any confession of judgment after 20 calendar days' notice served upon the employer by mail. The judgment shall be entered by the court administrator of any county upon the filing of a photocopy of the confession of judgment along with a statement of the commissioner that the tax or payment in lieu of tax has not been paid. Only if an employer fails to make all necessary records available for an audit pursuant to section 268.186, paragraph (b), and the commissioner has reason to believe the employer has not reported all the required wages on the quarterly wage detail reports under section 268.044, may the commissioner then estimate the amount of tax due and assess the employer the estimated amount due.

Subd. 4. COSTS. Any person that fails to pay any taxes, reimbursements, or unemployment benefit overpayment, including interest and penalties, amount when due under this chapter is liable for any filing fees, recording fees, sheriff fees, costs incurred by referral to any public or private collection agency, or litigation costs, including attorney fees, incurred in the collection of the amounts due.

If any check or money order, in tendered payment of any amount due, is not honored when presented to a financial institution for payment, a fee of \$25 shall be assessed.

Costs and fees collected under this subdivision shall be credited to the administration account to be used by the commissioner to ensure integrity in the administration of the unemployment insurance program.

Subd. 5. INTEREST ON AMOUNTS PAST DUE TAXES. If any taxes, reimbursements, fees, assessments, surcharges, or any penalties amounts due from an employer under this chapter or section 268.184 116L.20, except late fees under section 268.044, are not paid received on the date due the unpaid balance shall bear interest at the rate of one and one-half percent per month or any part thereof. Any payments received by mail postmarked on a day following the date due shall be considered to have been paid on the due date if there is substantial evidence that the payment was actually deposited in the United States mail properly addressed to the department with postage prepaid thereon on or before the due date. Interest assessed, if not a whole dollar amount, shall be rounded down to the next lower whole dollar. Interest collected

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shall be credited to the contingent account. Interest may be ~~waived~~ compromised under section 268.067.

Subd. 6. **INTEREST ON JUDGMENTS.** Regardless of section 549.09, if judgment is entered upon any past due ~~tax or reimbursements~~ amounts from an employer under this chapter or section 116L.20, the unpaid judgment shall bear interest at the rate specified in subdivision 5 until the date of payment.

Subd. 7. **CREDIT ADJUSTMENTS, REFUNDS.** (a) If an employer makes an application for a credit adjustment of any amount paid as ~~taxes or interest thereon~~ under this chapter or section 116L.20 within four years of the year that the payment was made, in a manner and format prescribed by the commissioner, and the commissioner determines that the payment or any portion was erroneous, the commissioner shall make an adjustment and issue a credit without interest. If a credit cannot be used, the commissioner shall refund, without interest, the amount erroneously paid. The commissioner, on the commissioner's own motion, may make a credit adjustment or refund under this subdivision.

Any refund returned to the commissioner shall be considered unclaimed property under chapter 345.

(b) If a credit adjustment or refund is denied in whole or in part, a notice of denial shall be sent to the employer by mail or electronic transmission. Within 30 calendar days after sending of the notice of denial, the employer may appeal protest.

Upon receipt of a timely protest, the commissioner shall review the denial and either affirm the denial or redetermine the credit adjustment or refund. The affirmation of denial or redetermination of the credit adjustment or refund, sent by mail or electronic transmission, shall be final unless an employer files an appeal within 30 calendar days after sending. Proceedings on the appeal shall be conducted in accordance with section 268.105.

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, including any receivership, assignment for benefit of creditors, adjudicated insolvency, 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 \$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 under federal law, taxes then or thereafter due shall be entitled to the priority provided in that law for taxes due any state.

EFFECTIVE DATE. This section is effective July 1, 2005. Subdivision 5 does not apply to late tax report penalties issued prior to July 1, 2005.

Sec. 38. Minnesota Statutes 2002, section 268.058, as amended by Laws 2003, First Special Session chapter 3, article 2, section 20, is amended to read:

268.058 **LIEN, LEVY, SETOFF, AND CIVIL ACTION.**

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Subdivision 1. **LIEN.** (a) Any taxes, unemployment benefit overpayments, or reimbursements due including interest, penalties, and costs amount due under this chapter or section 116L.20, from an applicant or an employer, shall become a lien upon all the property, within this state, both real and personal, of the person liable, from the date of assessment. The term "date of assessment" means the date the obligation was due.

(b) The lien 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 with the county recorder of the county where the property is situated, or in the case of personal property belonging to a nonresident person in the Office of the Secretary of State. When the notice of lien is filed with the county recorder, the fee for filing and indexing shall be as provided in sections 272.483 and 272.484.

(c) Notices of liens, lien renewals, and lien releases, in a form prescribed by the commissioner, may be filed with the county recorder or the secretary of state by mail, personal delivery, or by electronic transmission into the computerized filing system of the secretary of state. The secretary of state shall, on any notice filed with that office, transmit the notice electronically to the appropriate county recorder. The filing officer, whether the county recorder or the secretary of state, shall endorse and index a printout of the notice as if the notice had been mailed or delivered.

(d) County recorders and the secretary of state shall enter information on lien notices, renewals, and releases 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 be entered into the central database before the close of the working day following the day of the original data entry by the commissioner.

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

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

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

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

(g) The lien 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 before expiration for an additional ten years.

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(h) The lien shall be enforceable by levy under subdivision 2 or by judgment lien foreclosure under chapter 550.

(i) The lien may be imposed upon property defined as homestead property in chapter 510 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. 2. **LEVY.** (a) ~~If any tax, reimbursements, or unemployment benefit overpayment, including interest, penalties, and costs amount due under this chapter or section 116L.20, from an applicant or an employer, is not paid when due, the amount may be collected by the commissioner by direct levy upon all property and rights of property of the person liable for the amount due except that exempt from execution under section 550.37. The term "levy" includes the power of distraint and seizure by any means.~~

(b) In addition to a direct levy, the commissioner 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 delinquent person within the county, except that exempt under section 550.37. The sheriff shall sell that property necessary to satisfy the total amount due, together with the commissioner's and sheriff's costs. The sales shall be governed by the law applicable to sales of like property on execution of a judgment.

(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).

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

(e) In executing the levy, the commissioner shall have all of the powers provided in chapter 550 or any other law that provides for execution against property in this state. The sale of property levied upon and the time and manner of redemption shall be as provided in chapter 550. The seal of the court shall not be required. The levy may be made whether or not the commissioner has commenced a legal action for collection.

(f) Where any assessment has been made by the commissioner, the property seized for collection of the total amount due shall not be sold until any determination of liability has become final. No sale shall be made unless a portion of the amount due remains unpaid for a period of more than 30 calendar days after the determination of

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liability becomes final. Seized property may be sold at any time if:

(1) the 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.

(g) Where a levy has been made to collect 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 orders.

(h) The property seized shall be returned 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 the commissioner considers necessary to insure payment of the liability.

(i) If a levy or sale would irreparably injure rights in property that the court determines superior to rights of the state, the court may grant an injunction to prohibit the enforcement of the levy or to prohibit the sale.

(j) Any person who fails or refuses to surrender without reasonable cause any property or rights to property subject to levy shall be personally liable in an amount equal to the value of the property or rights not so surrendered, but not exceeding the amount due.

(k) If the commissioner has seized the property of any individual, that 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 upon terms and conditions the court considers equitable.

(l) Any person in control or possession of property or rights to property upon which a levy has been made who surrenders the property or rights to property, or who pays the amount due shall be discharged from any obligation or liability to the person liable for the amount due with respect to the property or rights to property.

(m) The notice of any levy may be served personally or by mail.

(n) The commissioner 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 prevent any subsequent levy. If the commissioner determines that property has been wrongfully levied upon, the commissioner shall return:

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

(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.

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(o) Regardless of section 52.12, a levy upon 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 person to the financial institution. A claim by the financial institution that it exercised its right to setoff prior to the levy must be substantiated by evidence of the date of the setoff, and verified by an affidavit from a corporate officer of the financial institution. For purposes of determining the priority of any levy under this subdivision, the levy shall be treated as if it were an execution under chapter 550.

Subd. 3. **RIGHT OF SETOFF.** (a) Upon certification by the commissioner to the commissioner of finance, or to any state agency that disburses its own funds, that a person, applicant, or employer has a liability under this chapter, ~~including interest, penalties, and costs~~ or section 116L.20, and that the state has purchased personal services, supplies, contract services, or property from that person, the commissioner of finance or the state agency shall set off and pay to the commissioner an amount sufficient to satisfy the unpaid liability from funds appropriated for payment of the obligation of the state otherwise due the person. No amount shall be set off from any funds exempt under section 550.37 or funds due an individual who receives assistance under chapter 256.

(b) All funds, whether general or dedicated, shall be subject to setoff.

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

Subd. 4. **COLLECTION BY CIVIL ACTION.** (a) Any ~~delinquent taxes, reimbursements, or unemployment benefit overpayment, including interest, penalties, or costs~~ amount due under this chapter or section 116L.20, from an applicant or employer, may be collected by civil action in the name of the state of Minnesota. Civil actions brought under this subdivision shall be heard as provided under section 16D.14. In any action, judgment shall be entered in default for the relief demanded in the complaint without proof, together with costs and disbursements, upon the filing of an affidavit of default.

(b) Any person that is not a resident of this state and any resident person removed from this state, shall be considered to appoint the secretary of state as its agent for the acceptance of process in any civil action. 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 and shall have the same force and validity as if served personally within this state. Notice of the service of process, together with a copy of the process, shall be sent by certified mail to the person's last known address. An affidavit of compliance with this 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. 5. **INJUNCTION FORBIDDEN.** No injunction or other legal action to prevent the determination, assessment, or collection of any ~~tax, reimbursements, or~~

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~~unemployment benefit overpayment, including interest, penalties, and costs amounts due under this chapter or section 116L.20, from an applicant or employer, shall be allowed.~~

Sec. 39. Minnesota Statutes 2003 Supplement, section 268.059, subdivision 1, is amended to read:

Subdivision 1. **NOTICE.** The commissioner may give notice to any employer that an employee owes ~~delinquent taxes, reimbursements, or overpaid unemployment benefits, including penalties, interest, and costs~~ any amounts due under this chapter or section 116L.20, and that the obligation to the ~~trust fund~~ should be withheld from the employee's wages. The commissioner may proceed only if the tax, reimbursements, or ~~unemployment benefit overpayment amount due~~ is uncontested or if the time for any appeal has expired. The commissioner shall not proceed until 30 calendar days after mailing sending to the debtor employee, at the debtor's last known address by mail or electronic transmission, a written notice of intent to garnish wages and exemption notice. That notice shall list:

- (1) the amount of taxes, reimbursements, ~~overpaid unemployment benefits, interest, penalties, or costs~~ due from the debtor;
- (2) demand for immediate payment; and
- (3) the intention to serve a garnishment notice on the debtor's employer.

The notice shall expire 180 calendar days after it has been ~~mailed sent~~ to the debtor provided that the notice may be renewed by mailing sending a new notice that is in accordance with this section. The renewed notice shall have the effect of reinstating the priority of the original notice. The exemption notice shall be in substantially the same form as in section 571.72. The notice shall inform the debtor of the right to claim exemptions contained in section 550.37, subdivision 14. If no ~~written~~ claim of exemption is received by the commissioner within 30 calendar days after mailing sending of the notice, the commissioner may proceed with the garnishment. The notice to the debtor's employer may be served by mail or electronic transmission and shall be in substantially the same form as in section 571.75.

Sec. 40. Minnesota Statutes 2002, section 268.059, subdivision 3, is amended to read:

Subd. 3. **DISCHARGE OR DISCIPLINE PROHIBITED.** (a) If the employee ceases to be employed by the employer before the full amount set forth on the garnishment notice plus accrued interest has been withheld, the employer shall immediately notify the commissioner in writing or by electronic transmission, as prescribed by the commissioner, of the termination date of the employee and the total amount withheld. No employer may discharge or discipline any employee because the commissioner has proceeded under this section. If an employer discharges an employee in violation of this section, the employee shall have the same remedy as provided in section 571.927, subdivision 2.

(b) This section shall apply if the employer is the state of Minnesota or any political subdivision.

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(c) The commissioner shall refund to the employee any excess amounts withheld from the employee.

(d) An employer that fails or refuses to comply with this section shall be jointly and severally liable for the total amount due from the employee. Any amount due from the employer under this paragraph may be collected in accordance with section 268.058 the same manner as any other amounts due from an employer under this chapter.

Sec. 41. Minnesota Statutes 2002, section 268.0625, as amended by Laws 2003, First Special Session chapter 3, article 2, section 20, is amended to read:

268.0625 REVOCATIONS OF BUSINESS LICENSES.

Subdivision 1. **NOTICE OF DEBT TO LICENSING AUTHORITY.** The state of Minnesota or a political subdivision 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 licensee, applicant, or employer owes ~~delinquent taxes, reimbursements, or unemployment benefit overpayments, including interest, penalties, and costs~~ any amount due under this chapter or section 116L.20, of \$500 or more. A licensing authority that has received such a notice may issue, transfer, renew, or not revoke the license only if the licensing authority has received a copy of the debt clearance certificate issued by the commissioner.

Subd. 2. **DEBT CLEARANCE CERTIFICATE.** The commissioner may issue a debt clearance certificate only if:

(1) the licensee has fully paid any ~~delinquent taxes, reimbursements, or unemployment benefit overpayments, including interest, penalties, and costs~~ amounts due under this chapter or section 116L.20; or

(2) the licensee has entered into an agreement to pay the total amount due and is current with all the terms of that agreement.

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

(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

(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, reimbursements, or unemployment benefit overpayments~~ amounts due under this chapter or section 116L.20, either for the entity that the license is at issue or for another entity that the liability was incurred, or personally as a licensee. "Licensee" includes both the transferor and the transferee of the license and any holder of a license.

Subd. 4. **NOTICE AND RIGHT TO HEARING.** At least 30 calendar days before the commissioner notifies a licensing authority, a notice of action under this section shall be ~~mailed~~ sent to the licensee by mail or electronic transmission. If the licensee disputes the action, the licensee must appeal within 30 calendar days after the

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~~mailing~~ sending of the notice to the licensee's ~~last known~~ address licensee. The only issue on any appeal is whether the commissioner has complied with the requirements of this section. Proceedings on the appeal shall be conducted in accordance with section 268.105.

Subd. 5. **LICENSING AUTHORITY; DUTIES.** Upon request, the licensing authority shall provide the commissioner with a list of all licensees, including the name, address, business name and address, Social Security number, and business identification number. The commissioner may request a list of the licensees no more than once each calendar year. Regardless of section 268.19, the commissioner may release information necessary to accomplish this section.

Sec. 42. Minnesota Statutes 2003 Supplement, section 268.063, is amended to read:

268.063 PERSONAL LIABILITY.

(a) Any officer, director, or employee of a corporation or any manager, governor, member, or employee of a limited liability company who

(1) either individually or jointly with others, have or should have had control of, supervision over, or responsibility for the ~~filling of the tax reports or~~ paying the amounts due under this chapter or section 116L.20, and

(2) ~~willfully knowingly~~ fails to file the tax reports or pay the amounts due, shall be personally liable for ~~taxes or reimbursements, including interest, penalties, and costs~~ the amount due in the event the employer does not pay.

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

(b) Any partner of a limited liability partnership, or professional limited liability partnership, shall be jointly and severally liable for ~~taxes or reimbursements, including interest, penalties, and costs~~ any amount due under this chapter or section 116L.20 in the event the employer does not pay.

(c) Any personal representative of the estate of a decedent or fiduciary who voluntarily distributes the assets without reserving a sufficient amount to pay the ~~taxes, reimbursements, interest, and penalties~~ amount due shall be personally liable for the deficiency.

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

(e) The commissioner shall make an ~~initial~~ determination as to personal liability. The determination shall be final unless the individual found to be personally liable, within 30 calendar days after ~~mailing of~~ sending, by mail or electronic transmission,

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a notice of determination to the individual's last known address, files a protest. Upon receipt of the protest, the commissioner shall reexamine the personal liability determination and either affirm or redetermine the assessment of personal liability and a notice of the affirmation or redetermination shall be mailed to the individual's last known address sent to the individual by mail or electronic transmission. The affirmation or redetermination shall become final unless an appeal is filed within 30 calendar days after the date of mailing sending. Proceedings on the appeal shall be conducted in accordance with section 268.105.

Sec. 43. Minnesota Statutes 2002, section 268.064, subdivision 1, is amended to read:

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

Sec. 44. Minnesota Statutes 2002, section 268.064, subdivision 3, is amended to read:

Subd. 3. **STATEMENT OF AMOUNT DUE.** Prior to the date of acquisition, the commissioner shall furnish the acquiring person with a statement of the taxes amounts due and unpaid under this chapter or section 116L.20 upon the written request of the potential acquiring person and the written release of the obligor. No release is required after the date of acquisition.

Sec. 45. Minnesota Statutes 2002, section 268.065, subdivision 1, is amended to read:

Subdivision 1. **SUBCONTRACTORS.** A contractor who contracts with any subcontractor shall guarantee the payment of all the taxes, interest, penalties, and collection costs amounts that are due or become due from the subcontractor with respect to taxable wages paid on the contract by:

- (1) withholding sufficient money on the contract; or
- (2) requiring the subcontractor to provide a sufficient bond guaranteeing the payment of all taxes, interest, penalties, and collection costs amounts 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 wage detail report that includes the final wages paid for employment performed under the contract. If the subcontractor has paid the taxes amounts due for the period covered by the contract, the commissioner may release the contractor from its liability.

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

Sec. 46. Minnesota Statutes 2002, section 268.065, subdivision 2, is amended to read:

Subd. 2. **EMPLOYEE LEASING FIRMS.** A person whose work force consists of 50 percent or more of workers provided by employee leasing firms, is jointly and severally liable for the unpaid taxes, penalties, interest, and collection costs amounts that are due under this chapter or section 116L.20 on the wages paid on the contract with the employee leasing firm. "Employee leasing firm" means an employer that provides its employees to other persons without severing its employer-employee relationship with the worker for the services performed for the lessee.

Sec. 47. Minnesota Statutes 2003 Supplement, section 268.066, is amended to read:

268.066 CANCELLATION OF DELINQUENT TAXES, AMOUNTS DUE FROM AN EMPLOYER.

(a) The commissioner shall cancel as uncollectible any taxes, reimbursements, penalties, or the interest or costs thereon amounts due from an employer under this chapter or section 116L.20, which remain unpaid six years after the amounts have been first determined due and payable, except where the delinquent amounts are secured by a notice of lien, a judgment, are in the process of garnishment, or are under a payment plan.

(b) The commissioner may cancel at any time as uncollectible any taxes, reimbursements, penalties, or the interest or costs thereon amount due, or any portion of an amount due, from an employer under this chapter or section 116L.20, that the commissioner determines (1) are uncollectible due to death or bankruptcy, (2) the Minnesota Collection Enterprise under section 16D.04 was unable to collect, or (3) the commissioner determines that it is not in the public interest to pursue collection of the amount due.

Sec. 48. Minnesota Statutes 2003 Supplement, section 268.067, is amended to read:

268.067 COMPROMISE.

(a) The commissioner may compromise in whole or in part any action, determination, or decision that affects only an employer and not an applicant, and that has occurred during the prior 24 months. This paragraph may apply if it is determined by a court of law, or a confession of judgment, that an applicant, while employed, wrongfully took from the employer \$500 or more in money or property.

(b) The commissioner may at any time compromise delinquent any amount due from an employer taxes, reimbursements, interest, penalties, and costs under this chapter or section 116L.20.

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(c) Any compromise involving an amount over \$2,500 shall be authorized by written order signed by an attorney who is a classified an employee of the department 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. 49. Minnesota Statutes 2003 Supplement, section 268.0675, is amended to read:

268.0675 NO ELECTION OF REMEDY.

Use of any remedy under this chapter for the collection of any delinquent taxes, reimbursements, or unemployment benefit overpayment, including penalties, interest, and costs, amount due from an employer or an applicant shall not constitute an election of remedy to the exclusion of any other available remedy.

Sec. 50. Minnesota Statutes 2002, section 268.07, subdivision 1, is amended to read:

Subdivision 1. **APPLICATION FOR UNEMPLOYMENT BENEFITS; TERMINATION OF BENEFIT ACCOUNT.** (a) An application for unemployment benefits may be filed in person, by mail, by telephone, or by electronic transmission as the commissioner shall require. The applicant must be unemployed at the time the application is filed and must provide all requested information in the manner required. If the applicant is not unemployed at the time of the application or fails to provide all requested information, the communication shall not be considered an application for unemployment benefits.

(b) The commissioner shall examine each application for unemployment benefits to determine the base period and the benefit year, and based upon all the covered employment in the base period the commissioner shall determine the weekly unemployment benefit amount available, if any, and the maximum amount of unemployment benefits available, if any. The determination shall be known as the determination of benefit account. A determination of benefit account shall be sent to the applicant and all base period employers, by mail or electronic transmission.

(c) If a base period employer did not provide wage information for the applicant as provided for in section 268.044, or provided erroneous information, the commissioner shall may accept an applicant certification as to wage credits, based upon the applicant's records, and issue a determination of benefit account.

(d) The commissioner may, at any time within 24 months from the establishment of a benefit account, reconsider any determination of benefit account and make an amended determination if the commissioner finds that the determination was incorrect for any reason. An amended determination shall be promptly sent to the applicant and all base period employers, by mail or electronic transmission.

If an amended determination of benefit account reduces the weekly unemployment benefit amount or maximum amount of unemployment benefits available, any unemployment benefits that have been paid greater than the applicant was entitled is

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considered an overpayment of unemployment benefits under section 268.18, subdivision 1.

Sec. 51. Minnesota Statutes 2003 Supplement, section 268.07, subdivision 2, is amended to read:

Subd. 2. BENEFIT ACCOUNT REQUIREMENTS AND WEEKLY UNEMPLOYMENT BENEFIT AMOUNT AND MAXIMUM AMOUNT OF UNEMPLOYMENT BENEFITS. (a) To establish a benefit account, an applicant must have:

- (1) high quarter wage credits of at least \$1,000; and
- (2) wage credits, in other than the high quarter, of at least \$250.

(b) If an applicant has established a benefit account, the weekly unemployment benefit amount available during the benefit year shall be the higher of:

- (1) 50 percent of the applicant's average weekly wage during the base period, to a maximum of $66\frac{2}{3}$ percent of the state's average weekly wage; or
- (2) 50 percent of the applicant's average weekly wage during the high quarter, to a maximum of 45 percent of the state's average weekly wage.

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

(c) The state's maximum weekly unemployment benefit amount and an applicant's weekly unemployment benefit amount and maximum amount of unemployment benefits available shall be rounded down to the next lowest lower whole dollar. The state's maximum weekly benefit amount, computed in accordance with section 268.035, subdivision 23, shall apply to a benefit account established effective on or after the first Sunday in August. Once established, an applicant's weekly unemployment benefit amount shall not be affected by the first Sunday in August change in the state's maximum weekly unemployment benefit amount.

(d) The maximum amount of unemployment benefits available on any benefit account shall be the lower of:

- (1) $33\frac{1}{3}$ percent of the applicant's total wage credits; or
- (2) 26 times the applicant's weekly unemployment benefit amount.

Sec. 52. Minnesota Statutes 2002, section 268.07, subdivision 3, is amended to read:

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

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anticipated loss of employment to make the limitations of this subdivision ineffective shall not be allowed. The purpose of this subdivision is to prevent an applicant from establishing more than one benefit account as a result of one loss of employment.

Sec. 53. Minnesota Statutes 2003 Supplement, section 268.085, subdivision 1, is amended to read:

Subdivision 1. **ELIGIBILITY CONDITIONS.** An applicant shall be eligible to receive unemployment benefits for any week if:

(1) the applicant has an active benefit account and has filed a continued biweekly request for unemployment benefits for that week pursuant to section 268.086;

(2) the applicant was able to work and was available for suitable employment, and was actively seeking suitable employment. The applicant's weekly unemployment benefit amount shall be reduced one-fifth for each day the applicant is unable to work or is unavailable for suitable employment. If the computation of the reduced unemployment benefits is not a whole dollar, it shall be rounded down to the next lower whole dollar.

This clause shall not apply to an applicant who is in reemployment assistance training.

This clause shall not apply, or each day the applicant is on jury duty;

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

(4) the applicant has been participating in reemployment assistance services, such as job search and resume writing classes, if the applicant has been determined in need of reemployment assistance services by the commissioner, unless there is good cause for the applicant's failure to participate.

Sec. 54. Minnesota Statutes 2002, section 268.085, subdivision 2, is amended to read:

Subd. 2. **NOT ELIGIBLE.** An applicant shall not be eligible to receive unemployment benefits for any week:

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

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

(3) that the applicant is incarcerated or performing court ordered community service. The applicant's weekly unemployment benefit amount shall be reduced by one-fifth for each day the applicant is incarcerated or performing court ordered community service. If the computation of the reduced unemployment benefits is not a

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whole dollar, it shall be rounded down to the next lower whole dollar;

(4) that the applicant fails or refuses to provide information on an issue of eligibility required under section 268.101, subdivision 1, paragraph (a), or an issue of disqualification required under section 268.101, subdivision 1, paragraph (d);

(5) that the applicant is performing services 32 hours or more, in employment, covered employment, noncovered employment, or self-employment regardless of the amount of any earnings; or

(6) with respect to which the applicant is receiving, has received, or has filed an application for unemployment benefits under any federal law or the law of any other state. If the appropriate agency finally determines that the applicant is not entitled to the unemployment benefits, this clause shall not apply.

Sec. 55. Minnesota Statutes 2003 Supplement, section 268.085, subdivision 3, is amended to read:

Subd. 3. PAYMENTS THAT DELAY UNEMPLOYMENT BENEFITS. (a) An applicant shall not be eligible to receive unemployment benefits for any week with respect to which the applicant is receiving, has received, or has filed for payment, equal to or in excess of the applicant's weekly unemployment benefit amount, in the form of:

(1) severance pay, bonus pay, vacation pay, sick pay, and any other money payments, except earnings under subdivision 5, and back pay under subdivision 6, paid by an employer because of, upon, or after separation from employment, but only if the money payment is considered wages at the time of payment under section 268.035, subdivision 29, or United States Code, title 26, section 3121, clause (2), of the Federal Insurance Contribution Act. This clause shall apply to all the weeks of payment and 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 applicant'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 applicant's last level of regular weekly pay from the employer. This clause shall not apply to vacation pay paid by an employer upon permanent separation from employment;

(2) pension, retirement, or annuity payments from any plan contributed to by a base period employer including the United States government, except Social Security benefits 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 applicant receives a lump sum pension payment, that sum shall be divided by the applicant'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

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immediately following the last day of employment. An applicant shall not be considered to have received the lump sum payment if the applicant immediately deposits that payment in a qualified pension plan or account; or

(3) holiday pay.

(b) If the payment is less than the applicant's weekly unemployment benefit amount, unemployment benefits shall be reduced by the amount of the payment. If the computation of reduced unemployment benefits is not a whole dollar, it shall be rounded down to the next lowest lower whole dollar.

Sec. 56. Minnesota Statutes 2003 Supplement, section 268.085, subdivision 4, is amended to read:

Subd. 4. **SOCIAL SECURITY BENEFITS.** (a) Any applicant aged 62 or over shall be required to state when filing an application for unemployment benefits and when filing continued biweekly requests for unemployment benefits whether the applicant 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.

(b) There shall be deducted from an applicant's weekly unemployment benefit amount 50 percent of the weekly equivalent of the primary Social Security old age or disability benefit the applicant has received, has filed for, or intends to file for, with respect to that week.

(c) ~~Regardless of paragraph (b), An applicant shall be ineligible for unemployment benefits for any week with respect to which the applicant who is receiving, has received, or has filed for primary Social Security disability benefits.~~

This paragraph shall not apply if for any week during the benefit year shall be determined unable to work and unavailable for suitable employment for that week, unless:

(1) the Social Security Administration approved the collecting of primary Social Security disability benefits each month the applicant was employed during the base period; or

(2) the applicant provides a statement from an appropriate health care professional who is aware of the applicant's Social Security disability claim and the basis for that claim, certifying that the applicant is able to work and available for suitable employment.

If an applicant meets the requirements of clause (1) or (2), then there shall be deducted from the applicant's weekly unemployment benefit amount 50 percent of the weekly equivalent of the primary Social Security disability benefits the applicant is receiving, has received, or has filed for, with respect to that week; provided, however, that if the Social Security Administration determines that an individual is not entitled to receive primary Social Security disability benefits for any week the applicant has applied for those benefits, the 50 percent deduction shall not apply to that week.

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

~~(e) Any applicant who receives primary Social Security old age or disability benefits for periods that the applicant has been paid unemployment benefits shall be considered overpaid those unemployment benefits under section 268.18, subdivision 1~~
(d) If the computation of the reduced unemployment benefits is not a whole dollar, it shall be rounded down to the next lower whole dollar.

(e) This subdivision does not apply to Social Security survivor benefits.

Sec. 57. Minnesota Statutes 2003 Supplement, section 268.085, subdivision 5, is amended to read:

Subd. 5. **DEDUCTIBLE EARNINGS.** (a) If the applicant has earnings with respect to any week, from employment, covered employment, noncovered employment, self-employment, or volunteer work, equal to or in excess of the applicant's weekly unemployment benefit amount, the applicant shall be ineligible for unemployment benefits for that week.

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

(1) 25 percent of earnings or \$50, whichever is higher; and

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

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

(c) No deduction shall be made from an applicant's weekly unemployment 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 applicant may report deductible earnings on continued biweekly requests for unemployment benefits at the nearest next lower 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.

Sec. 58. Minnesota Statutes 2003 Supplement, section 268.085, subdivision 6, is amended to read:

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

~~If an arbitration award, administrative or judicial decision, or negotiated settlement that provides for the back pay does not specify the period is not paid~~ with respect

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to which it is paid a specific period, the back pay shall be applied to the period immediately following the last day of employment.

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

(1) paid by the employer to the trust fund within 30 calendar days and subject to the same collection procedures that apply to past due taxes;

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

(3) credited to the maximum amount of unemployment benefits available to the applicant in a benefit year that includes the weeks for which back pay was deducted.

(c) Unemployment benefits paid the applicant shall be removed from the computation of the tax rate for taxpaying employers and removed from the reimbursable account for nonprofit and government employers that have elected to be liable for reimbursements in the calendar quarter the trust fund receives payment.

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

Sec. 59. Minnesota Statutes 2002, section 268.085, subdivision 12, is amended to read:

Subd. 12. **ALIENS.** (a) An alien shall be ineligible for unemployment 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. Pursuant to the existing agreement between the United States and Canada, this paragraph shall not apply to an applicant who is a Canadian citizen and has returned to and is living in Canada each week unemployment benefits are requested.

(b) Unemployment 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.

(c) Any information required of applicants applying for unemployment benefits to determine eligibility because of their alien status shall be required from all applicants.

Sec. 60. Minnesota Statutes 2002, section 268.085, subdivision 13a, is amended to read:

Subd. 13a. **LEAVE OF ABSENCE.** (a) An applicant on a voluntary leave of absence shall be ineligible for unemployment benefits for the duration of the leave of absence. An applicant on an involuntary leave of absence shall not be ineligible under this subdivision.

A leave of absence is voluntary when work that the applicant can then perform is available with the applicant's employer but the applicant chooses not to work. A

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medical leave of absence shall not be presumed to be voluntary.

(b) A period of vacation requested by the applicant, paid or unpaid, shall be considered a voluntary leave of absence. A vacation period assigned by an employer under: (1) a uniform vacation shutdown; (2) a collective bargaining agreement; or (3) an established employer policy, shall not be considered a ~~voluntary~~ an involuntary leave of absence.

(c) A voluntary leave of absence shall not be considered a quit or and an involuntary leave of absence shall not be considered a discharge from employment for purposes of section 268.095.

(d) An applicant who is on a paid leave of absence, whether the leave of absence is voluntary or involuntary, shall be ineligible for unemployment benefits for the duration of the leave.

(e) This subdivision shall apply to a leave of absence from a base period employer, an employer during the period between the end of the base period and the effective date of the benefit account, or an employer during the benefit year.

Sec. 61. Minnesota Statutes 2002, section 268.085, subdivision 14, is amended to read:

Subd. 14. **ABLE TO WORK DEFINED.** "Able to work" means an applicant has the physical and mental ability to perform (1) the usual duties of the applicant's usual occupation or of comparable (2) the usual duties of work that is gainful employment engaged in by others as a means of livelihood.

EFFECTIVE DATE. This section is effective August 1, 2004, and applies to all determinations and decisions issued on or after that date.

Sec. 62. Minnesota Statutes 2003 Supplement, section 268.095, subdivision 1, is amended to read:

Subdivision 1. **QUIT.** An applicant who quit employment shall be ineligible for all unemployment benefits except when:

(1) the applicant quit the employment because of a good reason caused by the employer as defined in subdivision 3;

(2) the applicant quit the employment to accept other covered employment that provided substantially better terms and conditions of employment, but the applicant did not work long enough at the ~~other~~ second employment to have sufficient subsequent earnings to satisfy the disqualification that would otherwise be imposed under subdivision 10 for quitting the first employment;

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

(4) the employment was unsuitable for the applicant and the applicant quit to enter reemployment assistance training;

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(5) the employment was part time and the applicant also had full-time employment in the base period, that from which full-time employment the applicant separated ~~from~~ because of nondisqualifying reasons, and the wage credits from the full-time employment are sufficient to meet the minimum requirements to establish a benefit account under section 268.07;

(6) the applicant quit because the employer notified the applicant that the applicant was going to be laid off due to lack of work within 30 calendar days. An applicant who quit employment within 30 calendar days of a notified date of layoff due to lack of work shall be ineligible for unemployment benefits through the end of the week that includes the scheduled date of layoff;

(7) the applicant quit the employment because the applicant's serious illness or injury made it medically necessary that the applicant quit, provided that the applicant inform the employer of the serious illness or injury and request accommodation and no reasonable accommodation is made available.

If the applicant's serious illness is chemical dependency, this exception shall not apply if the applicant was previously diagnosed as chemically dependent or had treatment for chemical dependency, and since that diagnosis or treatment has failed to make consistent efforts to control the chemical dependency; or

(8) domestic abuse of the applicant or the applicant's minor child, necessitated the applicant's quitting the employment. Domestic abuse shall be shown by one or more of the following:

(i) a court order for protection or other documentation of equitable relief issued by a court;

(ii) a police record documenting the domestic abuse;

(iii) documentation that the perpetrator of the domestic abuse has been convicted of the offense of domestic abuse;

(iv) medical documentation of domestic abuse; or

(v) written statement that the applicant or the applicant's minor child is a victim of domestic abuse, provided by a social worker, member of the clergy, shelter worker, attorney at law, or other professional who has assisted the applicant in dealing with the domestic abuse.

Domestic abuse for purposes of this clause shall be defined under section 518B.01.

EFFECTIVE DATE. This section is effective August 1, 2004, and applies to all determinations and decisions issued by the department on or after that date.

Sec. 63. Minnesota Statutes 2003 Supplement, section 268.095, subdivision 3, is amended to read:

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

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

(2) that is adverse to the worker; and

~~(2)~~ (3) that is significant and would compel an average, reasonable worker to quit and become unemployed rather than remaining in the employment.

(b) The analysis required in paragraph (a) must be applied to the specific facts of each case.

(c) If an applicant was subjected to adverse working conditions by the employer, the applicant 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.

~~(e)~~ (d) A substantial adverse change in the wages, hours, or other terms of reason for quitting employment by the employer shall not be considered a good reason caused by the employer for quitting unless the change if the reason for quitting occurred because of the applicant's employment misconduct.

~~(d)~~ (e) 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)~~ (f) An applicant 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 applicant's submission to the conduct or communication is made a term or condition of the employment;

(2) the applicant'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 an applicant's work performance or creating an intimidating, hostile, or offensive working environment.

~~(f)~~ (g) The definition of a good reason caused by the employer for quitting employment provided by this subdivision shall be exclusive and no other definition shall apply.

EFFECTIVE DATE. This section is effective August 1, 2004, and applies to all determinations and decisions issued by the department on or after that date.

Sec. 64. Minnesota Statutes 2002, section 268.095, subdivision 4, is amended to read:

Subd. 4. **DISCHARGE.** An applicant who was discharged from employment by an employer shall not be ineligible for any unemployment benefits except when:

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(1) the applicant was discharged because of employment misconduct as defined in subdivision 6; or

(2) the applicant was discharged because of aggravated employment misconduct as defined in subdivision 6a.

Sec. 65. Minnesota Statutes 2002, section 268.095, subdivision 6a, is amended to read:

Subd. 6a. **AGGRAVATED EMPLOYMENT MISCONDUCT DEFINED.** (a) For the purpose of this section, "aggravated employment misconduct" means:

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

(2) for an employee of a facility as defined in section 626.5572, 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.

(b) If an applicant is convicted of a gross misdemeanor or felony for the same act for which the applicant was discharged, it is aggravated employment misconduct if the act substantially interfered with the employment or had a significant adverse effect on the employment.

(c) The definition of aggravated employment misconduct provided by this subdivision shall be exclusive and no other definition shall apply.

Sec. 66. Minnesota Statutes 2002, section 268.101, subdivision 2, is amended to read:

Subd. 2. **DISQUALIFICATION DETERMINATION.** (a) The commissioner shall determine any issue of disqualification raised by information required from an applicant under subdivision 1, paragraph (a) or (c), and ~~mail send~~ to the applicant and employer at the last known address, by mail or electronic transmission, a determination of disqualification or a determination of nondisqualification, as is appropriate. The determination shall state the effect on the employer under section 268.047. A determination shall be made pursuant to this paragraph even if a notified employer has not raised the issue of disqualification.

(b) The commissioner shall determine any issue of disqualification raised by an employer and ~~mail send~~ to the applicant and that employer at the last known address, by mail or electronic transmission, a determination of disqualification or a determination of nondisqualification as is appropriate. The determination shall state the effect on the employer under section 268.047.

If a base period employer:

(1) was not the applicant's most recent employer prior to the application for unemployment benefits;

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(2) did not employ the applicant during the six calendar months prior to the application for unemployment benefits; and

(3) did not raise an issue of disqualification within ten calendar days of notification under subdivision 1, paragraph (b);

then any exception under section 268.047, subdivisions 2 and 3, shall begin the Sunday two weeks following the week that the issue of disqualification was raised by the employer.

(c) If any time within 24 months from the establishment of a benefit account the commissioner finds that an applicant failed to report any employment, loss of employment, or offers of employment that were required to be provided by the applicant under this section, the commissioner shall determine any issue of disqualification on that loss of employment or offer of employment and ~~mail send~~ send to the applicant and involved employer at the last known address, by mail or electronic transmission, a determination of disqualification or a determination of nondisqualification, as is appropriate. The determination shall state the effect on the employer under section 268.047.

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

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

(e) A determination of disqualification or a determination of nondisqualification shall be final unless an appeal is filed by the applicant or notified employer within 30 calendar days after ~~mailing sending~~ mailing. The determination shall contain a prominent statement indicating the consequences of not appealing. Proceedings on the appeal shall be conducted in accordance with section 268.105.

(f) An issue of disqualification for purposes of this section shall include any reason for no longer working for an employer other than a layoff due to lack of work, any question of a disqualification from unemployment benefits under section 268.095, any question of an exception to disqualification under section 268.095, any question of effect on an employer under section 268.047, and any question of an otherwise imposed disqualification that an applicant has satisfied under section 268.095, subdivision 10.

(g) Regardless of the requirements of this subdivision, the commissioner is not required to ~~mail send~~ send to an applicant a determination where the applicant has satisfied any otherwise potential disqualification under section 268.095, subdivision 10.

Sec. 67. Minnesota Statutes 2003 Supplement, section 268.101, subdivision 3, is amended to read:

Subd. 3. **ELIGIBILITY DETERMINATION.** (a) The commissioner shall determine any issue of eligibility raised by an employer, ~~whether timely or untimely,~~

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and ~~mail send~~ to the applicant and that employer at the last known address, by mail or electronic transmission, a determination of eligibility or a determination of ineligibility, as is appropriate.

(b) The commissioner shall determine any issue of eligibility raised by information obtained from an applicant and ~~mail send~~ to the applicant at the last known address, by mail or electronic transmission, 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) If any time within 24 months from the establishment of a benefit account the commissioner finds the applicant failed to provide, on an application for unemployment benefits or on a continued biweekly request for unemployment benefits, requested information on an issue of eligibility, the commissioner shall determine the issue of eligibility and ~~mail send~~ to the applicant at the last known address, by mail or electronic transmission, a determination of eligibility or a determination of ineligibility, as is appropriate.

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 applicant or notified employer within 30 calendar days after mailing sending. The determination shall contain a prominent statement indicating 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 regarding the denial or allowing of unemployment 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 sent~~ the determination of eligibility or a determination of ineligibility, or (2) considered an involved employer for purposes of an appeal under section 268.105.

Sec. 68. Minnesota Statutes 2003 Supplement, section 268.101, subdivision 3a, is amended to read:

Subd. 3a. **DIRECT HEARING.** Regardless of any provision of the Minnesota Unemployment Insurance Law, the commissioner or an unemployment law judge or a senior unemployment review judge may, prior to a determination being made under this chapter, refer any issue of disqualification, any issue of eligibility, or any other issue under sections 268.035 to 268.23 this chapter, 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.

Sec. 69. Minnesota Statutes 2002, section 268.101, subdivision 4, is amended to read:

Subd. 4. **AMENDED DETERMINATION.** Unless an appeal has been filed, the commissioner, on the commissioner's own motion, may reconsider a determination of

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disqualification or nondisqualification or a determination of eligibility or ineligibility that has not become final and issue an amended determination. Any amended determination shall be ~~mailed~~ sent to the applicant and any involved employer at the last known address by mail or electronic transmission. Any amended determination shall be final unless an appeal is filed by the applicant or notified employer within 30 calendar days after mailing sending. Proceedings on the appeal shall be conducted in accordance with section 268.105.

Sec. 70. Minnesota Statutes 2002, section 268.103, is amended to read:

268.103 APPEALS BY TELEPHONE; ELECTRONIC TRANSMISSION.

Subdivision 1. **IN COMMISSIONER'S DISCRETION.** (a) ~~Unless the statutory provision providing for an appeal requires that the appeal be in writing,~~ The commissioner shall have the discretion to allow an appeal to be made filed by telephone or by electronic transmission. If the commissioner allows an appeal to be made filed by telephone or by electronic transmission, that shall be clearly set out on the determination or decision subject to appeal.

(b) The commissioner may restrict the manner, format, and conditions under which an appeal by telephone or electronic transmission may be made filed. Any restrictions as to days, hours, telephone number, electronic transmission address, or other conditions, shall be clearly set out on the determination or decision subject to appeal.

(e) All information requested by the commissioner when an appeal is made by telephone or filed by electronic transmission must be supplied or the communication will shall not constitute an appeal.

Subd. 2. **APPEAL IN WRITING BY MAIL.** (a) The commissioner must allow an appeal may to be made in writing filed by mail even if an appeal by telephone or by electronic transmission is allowed.

(b) A written statement delivered or mailed to the department that could reasonably be interpreted to mean that an involved applicant or employer is in disagreement with a specific determination or decision shall be considered an appeal. No specific words need be used for the written statement to be considered an appeal.

Subd. 3. **EXCLUSIVE MEANS OF APPEAL.** A written appeal, or if allowed an appeal by telephone or electronic transmission, shall be the only manner of appeal.

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. 71. Minnesota Statutes 2002, section 268.105, as amended by Laws 2003, First Special Session chapter 3, article 2, section 15, is amended to read:

268.105 HEARINGS; APPEALS.

Subdivision 1. **EVIDENTIARY HEARING BY AN UNEMPLOYMENT LAW JUDGE.** (a) Upon a timely appeal having been filed, the department shall send

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a notice of appeal to all involved parties that an appeal has been filed, that a de novo due process evidentiary hearing will be scheduled, and that the parties have certain rights and responsibilities regarding the hearing. The department shall set a time and place for a de novo due process evidentiary hearing and mail send notice to any involved applicant and any involved employer, by mail or electronic transmission, not less than ten calendar days prior to the date of the hearing.

(b) The evidentiary hearing shall be conducted by an unemployment law judge without regard to any common law burden of proof as an evidence gathering inquiry and not an adversarial proceeding. The unemployment law judge shall ensure that all relevant facts are clearly and fully developed. The commissioner department shall adopt rules on evidentiary hearings. The rules need not conform to common law or statutory rules of evidence and other technical rules of procedure. The department shall have discretion regarding the method by which the evidentiary hearing is conducted. A report of any employee of the department, except a determination, made in the regular course 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 obtained, the unemployment law judge shall make written findings of fact and decision and mail send those, by mail or electronic transmission, to all involved parties. The unemployment law judge's decision is the final department decision unless a further appeal is filed pursuant to subdivision 2.

(d) The commissioner shall designate classified Only employees of the department shall serve as unemployment law judges to conduct evidentiary hearings on appeals. The commissioner or authorized representative A senior unemployment review judge may personally hear or transfer to another unemployment law judge any proceedings pending before an unemployment law judge. Any proceedings removed to the commissioner or authorized representative a senior unemployment review judge shall be heard in accordance with this subdivision.

Subd. 2. COMMISSIONER DE NOVO REVIEW BY A SENIOR UNEMPLOYMENT REVIEW JUDGE. (a) Within 30 calendar days after mailing of the unemployment law judge's decision Except as provided under subdivision 2a, any involved applicant or involved employer may appeal a decision of an unemployment law judge and obtain a de novo review by the commissioner or an authorized representative a senior unemployment review judge by filing with a senior unemployment review judge an appeal within 30 calendar days after the sending of the unemployment law judge's decision. The commissioner A senior unemployment review judge within the same period of time may, on the commissioner's a senior unemployment review judge's own motion, order a de novo review of any decision of an unemployment law judge.

(b) The authorized representative of the commissioner A senior unemployment review judge shall be an attorney who is a classified an 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.

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

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

(e) ~~The commissioner~~ senior unemployment review judge shall send, by mail or electronic transmission, to any involved party the ~~commissioner's~~ senior unemployment review judge's findings of fact and decision. The decision of the ~~commissioner~~ senior unemployment review judge is the final ~~department~~ decision of the department. Unless judicial review is sought under subdivision 7, the decision of the ~~commissioner~~ senior unemployment review judge shall become final 30 calendar days after mailing sending.

Subd. 2a. ORDERS BY A SENIOR UNEMPLOYMENT REVIEW JUDGE.

(a) If an applicant or employer files an appeal in a matter where an unemployment law judge affirmed a determination issued under section 268.101, and there is no dispute regarding the determinative facts, a senior unemployment review judge shall have the discretion to decline to conduct a de novo review. If de novo review is declined, the senior unemployment review judge shall issue an order adopting the unemployment law judge's findings of fact and decision.

(b) If an involved party fails, without good cause, to appear and participate at the evidentiary hearing conducted by an unemployment law judge under subdivision 1, and that party files an appeal, a senior unemployment review judge shall have the discretion to decline to conduct a de novo review. If de novo review is declined, the senior unemployment review judge shall issue an order dismissing the appeal.

Submission of a written statement shall not constitute an appearance and participation at an evidentiary hearing for purposes of this paragraph.

All involved parties must be notified of this paragraph with the notice of appeal and notice of hearing provided for under subdivision 1. The senior unemployment review judge shall allow for the submission of a written argument on the issue of good cause before dismissing an appeal under this paragraph.

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“Good cause” for purposes of this paragraph is a compelling reason that would have prevented a reasonable person acting with due diligence from appearing and participating at the evidentiary hearing.

(c) The senior unemployment review judge shall send to any involved party the order issued under this subdivision. The order may be sent by mail or electronic transmission. Unless judicial review is sought under subdivision 7, the order of a senior unemployment review judge becomes final 30 calendar days after sending.

Subd. 3. **WITHDRAWAL OF APPEAL.** (a) Any appeal that is pending a decision before an unemployment law judge or ~~the commissioner~~ a senior unemployment review judge 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~~ an unemployment law judge or a senior unemployment review judge, 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 an unemployment law judge’s decision or ~~the commissioner’s~~ a senior unemployment review judge’s decision or order allows unemployment benefits to an applicant, the unemployment benefits shall be paid regardless of any appeal period or any appeal having been filed.

(b) If an unemployment law judge’s decision modifies or reverses a determination allowing unemployment benefits to an applicant, any benefits paid pursuant to the determination is considered an overpayment of those unemployment benefits under section 268.18, subdivision 1.

(c) If a ~~commissioner’s~~ senior unemployment review judge’s decision modifies or reverses an unemployment law judge’s decision allowing unemployment benefits to an applicant, any unemployment benefits paid pursuant to the unemployment law judge’s decision is considered an overpayment of those unemployment benefits under section 268.18, subdivision 1.

(d) If ~~the commissioner~~ a senior unemployment review judge affirms an unemployment law judge’s decision on an issue of disqualification that allows unemployment benefits to an applicant, ~~and the commissioner’s senior unemployment review judge’s decision, if finally or order is reversed by the Minnesota Court of Appeals or the Supreme Court of Minnesota, shall not result in a disqualification of the applicant shall not be disqualified from unemployment benefits under section 268.095, subdivision 10.~~

(e) If ~~the commissioner~~ a senior unemployment review judge, pursuant to subdivision 2, remands a matter to an unemployment law judge for the taking of additional evidence, the prior unemployment law judge’s decision shall continue to be

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enforced until new findings of fact and decision are made by an unemployment law judge.

Subd. 4. **TESTIMONIAL POWERS.** The An unemployment law judge, the commissioner, or authorized representative, and a senior unemployment review judge may administer oaths and affirmations, take depositions, and issue subpoenas to compel the attendance of witnesses and the production of documents and other personal property considered necessary as evidence in connection with the subject matter of an evidentiary hearing. The subpoenas shall be enforceable through the district court in the district that the subpoena is issued. Witnesses subpoenaed, other than an involved applicant or involved employer or officers and employees of an involved employer, shall be paid by the ~~commissioner~~ department the same witness fees as in a civil action in district court.

Subd. 5. **USE OF INFORMATION EVIDENCE; DATA PRIVACY.** (a) All testimony at any evidentiary hearing conducted pursuant to subdivision 1 shall be recorded. A copy of any recorded testimony and exhibits offered or received into evidence at the hearing shall, upon request, or upon directive of the ~~commissioner~~ a senior unemployment review judge, be furnished to a party at no cost during the time period for filing an appeal to the ~~commissioner~~ a senior unemployment review judge or while such an appeal is pending. If requested, the ~~commissioner~~ department shall make available a device for listening to the recording if an appeal is pending before the ~~commissioner~~ a senior unemployment review judge 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~~ a senior unemployment review judge, 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.

(d) Subd. 5a. **NO COLLATERAL ESTOPPEL.** No findings of fact or decision or order issued by an unemployment law judge or the ~~commissioner~~ a senior unemployment review judge may be held conclusive or binding or used as evidence in any separate or subsequent action in any other forum, be it contractual, administrative, or judicial, 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 subdivision 1 ~~or 2~~, or 2a, an applicant or involved employer may be represented by any agent.

(b) Except for services provided by an attorney-at-law, an applicant shall not be charged fees, costs, or disbursements of any kind in a proceeding before an unemployment law judge, the ~~commissioner~~ a senior unemployment review judge, the

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Minnesota Court of Appeals, or Supreme Court of Minnesota.

Subd. 7. JUDICIAL REVIEW. (a) The Minnesota Court of Appeals shall, by writ of certiorari to the ~~commissioner department~~, review the senior unemployment review judge's decision of the commissioner under subdivision 2 or order under subdivision 2a, provided a petition for the writ is filed with the court and a copy is served upon the senior unemployment review judge or the commissioner and any other involved party within 30 calendar days of the mailing sending of the commissioner's senior unemployment review judge's decision under subdivision 2 or order under subdivision 2a.

(b) Any 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 department~~ 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 department~~ the cost of preparing the transcript. That money shall be credited to the administration account.

(c) Upon issuance by the Minnesota Court of Appeals of a writ of certiorari as a result of an applicant's petition, the ~~commissioner department~~ shall furnish to the applicant at no cost a written transcript of the any 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 an applicant petitioning the Minnesota Court of Appeals for a writ of certiorari.

(d) The ~~commissioner department~~ shall be considered the primary responding party to any judicial action involving the ~~commissioner's~~ a senior unemployment review judge's decision or order. The ~~commissioner department~~ may be represented by an attorney who is an employee of the department designated by the ~~commissioner~~ for that purpose.

EFFECTIVE DATE. This section is effective August 1, 2004, and applies to all decisions issued by the department on or after that date.

Sec. 72. Minnesota Statutes 2002, section 268.115, subdivision 5, is amended to read:

Subd. 5. MAXIMUM AMOUNT OF EXTENDED UNEMPLOYMENT BENEFITS. The maximum amount of extended unemployment benefits available to an applicant shall be 50 percent of the maximum amount of regular unemployment benefits available in the benefit year, rounded down to the next lower whole dollar. If the total rate of unemployment computed under subdivision 1, clause (2)(ii), equaled or exceeded eight percent, the maximum amount of extended unemployment benefits available shall be 80 percent of the maximum amount of regular unemployment benefits available in the benefit year.

Sec. 73. Minnesota Statutes 2002, section 268.125, subdivision 5, is amended to read:

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Subd. 5. **MAXIMUM AMOUNT OF UNEMPLOYMENT BENEFITS.** The maximum amount of additional unemployment benefits available in the applicant's benefit year shall be one-half of the applicant's maximum amount of regular unemployment benefits available under section 268.07, subdivision 2, rounded down to the next lower whole dollar. Extended unemployment benefits paid and unemployment benefits paid under any federal law other than regular unemployment benefits shall be deducted from the maximum amount of additional unemployment benefits available.

Sec. 74. Minnesota Statutes 2002, section 268.135, subdivision 1, is amended to read:

Subdivision 1. **DEFINITIONS.** For purposes of this section:

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

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

(3) "Shared work plan" or "plan" means an employer's ~~written~~ plan, submitted in a manner and format prescribed by the commissioner, under which a group of employees whose normal weekly hours of work are reduced, in order to prevent employees from being laid off due to lack of work.

(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.

Sec. 75. Minnesota Statutes 2002, section 268.135, subdivision 2, is amended to read:

Subd. 2. **PARTICIPATION.** (a) An employer wishing to participate in the shared work benefit program shall submit a ~~written~~ shared work plan to the commissioner in a manner and format prescribed for approval. The commissioner may 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 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 that otherwise would result in at least as large a reduction in the total normal weekly hours of work;

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

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(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 that covers any employee in the affected group.

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

(c) The commissioner shall mail send to the employer a written determination, by mail or electronic transmission, approving or disapproving the plan within 15 calendar days of its receipt. Determinations are final.

(d) Disapproval of a plan may be reconsidered at the discretion of the commissioner. Approval of a shared work plan may be revoked if the approval was based, in whole or in part, upon information that was false or misleading.

Sec. 76. Minnesota Statutes 2002, section 268.135, subdivision 4, is amended to read:

Subd. 4. **WEEKLY BENEFIT AMOUNT.** (a) An applicant who is eligible for shared work benefits shall be paid an amount equal to the regular weekly unemployment benefit amount multiplied by the nearest full percentage of reduction of the applicant's regular weekly hours of work as set in the plan. The benefit payment, if not a whole dollar shall be rounded down to the next lower whole dollar.

(b) The deductible earnings provisions of section 268.085, subdivision 5, shall not apply to earnings from the shared work employer of an applicant eligible for shared work benefits unless the resulting amount would be less than the regular weekly unemployment benefit amount the applicant would otherwise be eligible for without regard to shared work benefits.

(c) An applicant shall not be eligible for shared work benefits for any week that employment is performed for the shared work employer in excess of the reduced hours set forth in the plan.

Sec. 77. Minnesota Statutes 2002, section 268.145, subdivision 1, is amended to read:

Subdivision 1. **NOTIFICATION.** (a) Upon filing an application for unemployment benefits, the applicant shall be informed that:

(1) unemployment benefits are subject to federal and state income tax;

(2) there are requirements for filing estimated tax payments;

(3) the applicant may elect to have federal income tax withheld from unemployment benefits;

(4) if the applicant elects to have federal income tax withheld, the applicant may, in addition, elect to have Minnesota state income tax withheld; and

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(5) at any time during the benefit year the applicant may change a prior election.

(b) If an applicant elects to have federal income tax withheld, the commissioner shall deduct ten percent for federal income tax, rounded down to the nearest next lower whole dollar. If an applicant also elects to have Minnesota state income tax withheld, the commissioner shall make an additional five percent deduction for state income tax, rounded down to the next lower whole dollar. Any amounts deducted or offset pursuant to sections 268.155, 268.156, 268.18, and 268.184 have priority over any amounts deducted under this section. Federal income tax withholding has priority over state income tax withholding.

(c) An election to have income tax withheld shall not be retroactive and shall only apply to unemployment benefits paid after the election.

Sec. 78. Minnesota Statutes 2003 Supplement, section 268.18, subdivision 1, is amended to read:

Subdivision 1. **NONFRAUD OVERPAYMENT.** (a) Any applicant who (1) by reason of the applicant's own mistake, or (2) because of an error by any 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 unemployment benefits that the applicant was not entitled to, shall promptly repay the unemployment benefits to the trust fund. The commissioner shall, as soon as the overpayment is discovered, determine the amount due and notify the applicant ~~in writing~~ to repay the unemployment benefits.

(b) Unless the applicant files an appeal within 30 calendar days after the ~~mailing~~ sending of the determination of overpayment to the ~~applicant's last known address~~ applicant by mail or electronic transmission, the determination shall become final. Proceedings on the appeal shall be conducted in accordance with section 268.105. An applicant 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 applicant fails to repay the unemployment benefits determined overpaid under this subdivision, the commissioner may offset from any future unemployment benefits otherwise payable the amount of the overpayment. Except when the overpayment resulted because the applicant failed to report deductible earnings or deductible or benefit delaying payments, no single offset shall exceed 50 percent of the amount of the payment from which the offset is made. The overpayment may also be collected by the same methods as delinquent ~~taxes~~ payments from an employer. A determination of overpayment shall state the methods of collection the commissioner may use to recover the overpayment.

(d) If an applicant has been overpaid unemployment benefits under the law of another state, due to a reason other than fraud, and that state certifies that the applicant is liable under its law to repay the unemployment benefits and requests the commissioner to recover the overpayment, the commissioner may offset from future

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unemployment benefits otherwise payable the amount of overpayment, except that no single offset shall exceed 50 percent of the amount of the payment from which the offset is made.

(e) If under paragraph (c) or (d) the reduced unemployment benefits as a result of a 50 percent offset is not a whole dollar amount, it shall be rounded down to the next lower whole dollar.

(f) Unemployment benefits paid for weeks more than three years prior to the discovery of overpayment under this subdivision are not overpaid unemployment benefits.

Sec. 79. Minnesota Statutes 2003 Supplement, section 268.18, subdivision 2, is amended to read:

Subd. 2. **OVERPAYMENT DUE TO FRAUD.** (a) Any applicant who receives unemployment benefits by intentionally misrepresenting, misstating, or failing to disclose any material fact, or who makes a false statement or representation without a good faith belief as to the correctness of the statement or representation, has committed fraud. After the discovery of facts indicating fraud, the commissioner shall make a written determination that the applicant obtained unemployment benefits by fraud and that the applicant must promptly repay the unemployment benefits to the trust fund. In addition, the commissioner shall assess a penalty equal to 25 percent of the amount fraudulently obtained. If the applicant 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. This penalty is in addition to penalties under section 268.182.

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

(c) If the applicant fails to repay the unemployment benefits, penalty, and interest assessed, the commissioner shall offset from future unemployment benefits otherwise payable the total amount of overpayment due. The total due may also be collected by the same methods as delinquent taxes payments from an employer. 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 unemployment benefits, penalties, and interest shall first be applied to the unemployment benefits overpaid, then to the penalty amount due, then to any interest due. Payments made toward penalty and interest shall be credited to the contingent account.

(d) If an applicant has been overpaid unemployment benefits under the law of another state because of fraud and that state certifies that the applicant is liable to repay the unemployment benefits and requests the commissioner to recover the overpayment, the commissioner may offset from future unemployment benefits otherwise payable the amount of overpayment.

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(e) A determination of overpayment by fraud may only be made at any time within four years of the effective date of the benefit account from which the unemployment benefits were fraudulently obtained.

Sec. 80. Minnesota Statutes 2002, section 268.18, subdivision 2b, is amended to read:

Subd. 2b. **INTEREST.** (a) On any unemployment benefits fraudulently obtained, and any penalty amounts assessed under subdivision 2, the commissioner may assess interest at the rate of 1-1/2 percent per month on any 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 shall be assessed.

(b) If this subdivision became effective after the date of the determination, or the determination did not state that interest shall be assessed, interest shall be assessed beginning 30 calendar days after written notification, by mail or electronic transmission, to the applicant.

Sec. 81. Minnesota Statutes 2002, section 268.18, subdivision 6, is amended to read:

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 ~~tell~~ suspend the assessment of interest, penalties, or collection of an overpayment under this section.

(e) Section 16A.626 applies to the repayment by an applicant of any overpayment, penalty, or interest under this section.

Sec. 82. Minnesota Statutes 2002, section 268.182, is amended to read:

268.182 APPLICANT'S FALSE REPRESENTATIONS; CONCEALMENT OF FACTS; PENALTY.

(a) **Subdivision 1. CRIMINAL PENALTIES.** 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, unemployment benefits that the individual is not entitled or unemployment benefits greater than the individual is entitled under this chapter, or under the law of any state or of the federal government, either personally

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or for any other individual, is guilty of theft and shall be sentenced pursuant to section 609.52.

(b) Subd. 2. **ADMINISTRATIVE PENALTIES.** Any individual who 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 unemployment benefits may be assessed, in addition to any other penalties, an administrative penalty of denial of unemployment benefits for one to 52 weeks that the individual would otherwise be entitled to unemployment benefits. A denial shall not apply to any week more than two years after the week that the penalty was determined. A ~~written~~ determination of denial shall be ~~mailed sent~~ to the ~~individual's last known address~~ individual by mail or electronic transmission. Unless an appeal is filed within 30 calendar days of ~~mailing sending~~, the determination shall be final. Proceeding on the appeal shall be conducted in accordance with section 268.105.

Sec. 83. Minnesota Statutes 2002, section 268.184, is amended to read:

268.184 EMPLOYER MISCONDUCT; PENALTY.

Subdivision 1. ADMINISTRATIVE PENALTIES. (a) If the commissioner finds that any employer or any employee, officer, or agent of any employer, is in collusion with any applicant for the purpose of assisting the applicant to receive unemployment benefits ~~illegally fraudulently~~, the employer shall be penalized \$500 or the amount of unemployment benefits determined to be overpaid, whichever is greater.

(b) If the commissioner finds that any employer or any employee, officer, or agent of an employer has made (1) a false statement or representation knowing it to be false, or (2) has made a false statement or representation without a good faith belief as to correctness of the statement or representation, or (3) who knowingly fails to disclose a material fact, to prevent or reduce the payment of unemployment benefits to any applicant or to reduce or ~~prevent the effects of unemployment benefits paid on its tax or reimbursable account~~ avoid any payment required from an employer under this chapter or section 116L.20, the employer shall be penalized \$500, or 50 percent of the reduced unemployment benefits or payment required, whichever is greater.

(c) If the commissioner finds that an employer failed or refused to honor a subpoena issued under section 268.105, subdivision 4, or section 268.188, the employer shall be penalized \$500 and any costs of enforcing the subpoena, including attorney fees.

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

(d) (e) The assessment of the penalty shall be final unless the employer files an appeal within 30 calendar days after the sending of notice of the penalty to the employer by mail or electronic transmission. Proceedings on the appeal shall be conducted in accordance with section 268.105.

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

(e) Subd. 2. CRIMINAL PENALTIES. Any employer or any officer or agent of an employer or any other individual who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact to avoid or reduce any payment required from an employer under this chapter or section 116L.20, or to prevent or reduce the payment of unemployment benefits to any applicant, is guilty of a gross misdemeanor unless the ~~unemployment benefit~~ underpayment exceeds \$500, in that case the individual is guilty of a felony.

Sec. 84. Minnesota Statutes 2003 Supplement, section 268.186, is amended to read:

268.186 RECORDS; AUDITS.

(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 administering this chapter, the commissioner has the power to audit, examine, or cause to be supplied or copied, any books, correspondence, papers, records, or memoranda that are relevant, whether the books, correspondence, papers, records, or memoranda are the property of or in the possession of the employer or any other person at any reasonable time and as often as may be necessary.

(b) Any employer that refuses to allow an audit of its records by the department, or that fails to make all necessary records available for audit in Minnesota upon request of the commissioner, may be assessed an administrative penalty of \$500. The penalty collected shall be credited to the administration account to be used by the commissioner to ensure integrity in the administration of the unemployment insurance program.

(c) The commissioner may make summaries, compilations, photographs, duplications, or reproductions of any records, or reports that the commissioner considers advisable for the preservation of the information contained therein. Any summaries, compilations, photographs, duplications, or reproductions shall be admissible in any proceeding under this chapter. The commissioner may duplicate records, reports, summaries, compilations, instructions, determinations, or any other written or recorded matter pertaining to the administration of this chapter.

(e) (d) Regardless of any law to the contrary, the commissioner may provide for the destruction of any records, reports, or reproductions thereof, or other papers, that ~~are more than two years old, and that are no longer necessary for determining employer liability or an applicant's unemployment benefit rights or for the administration of this chapter, including any required audit.~~ In addition, the commissioner may provide for the destruction or disposition of any record, report, or other paper from which the information has been electronically captured and stored, or that has been photographed, duplicated, or reproduced.

Sec. 85. Minnesota Statutes 2003 Supplement, section 268.19, subdivision 2, is amended to read:

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Subd. 2. **EMPLOYER INFORMATION; ABSOLUTE PRIVILEGE.** (a) Regardless of any provision of law to the contrary, an employer may provide the commissioner with information on an applicant so that the commissioner can determine an applicant's entitlement to unemployment benefits under the Minnesota Unemployment Insurance Law.

(b) The commissioner may disseminate any employer's name and address and the name and address of any employer's unemployment insurance processing agent in order to administer the Minnesota unemployment insurance program.

(c) Information obtained pursuant to the Minnesota Unemployment Insurance Law, in order to determine an applicant's entitlement to unemployment benefits, shall be absolutely privileged and shall not be made the subject matter or the basis for any civil proceeding, administrative, or judicial.

Sec. 86. **REVISOR'S INSTRUCTION.**

The revisor of statutes shall renumber Minnesota Statutes, section 268.022, as Minnesota Statutes, section 116L.20.

The revisor of statutes shall change the terms "evinces" and "demonstrates" to "displays clearly" wherever they appear in Minnesota Statutes, chapter 268.

Presented to the governor May 7, 2004

Signed by the governor May 10, 2004, 9:03 p.m.

CHAPTER 184—S.F.No. 2387

An act relating to crimes; treating probation officers the same as correctional employees for purposes of certain assaults; amending Minnesota Statutes 2002, section 609.2231, subdivision 1; Minnesota Statutes 2003 Supplement, section 609.2231, subdivision 3.

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

Section 1. Minnesota Statutes 2002, section 609.2231, subdivision 1, is amended to read:

Subdivision 1. **PEACE OFFICERS.** Whoever physically assaults a peace officer licensed under section 626.845, subdivision 1, when that officer is effecting a lawful arrest or executing any other duty imposed by law is guilty of a gross misdemeanor and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both. If the assault inflicts demonstrable bodily harm or the person intentionally throws or otherwise transfers bodily fluids or feces at or onto the officer, the person is guilty of a felony and may be sentenced to imprisonment for not more than three years or to payment of a fine of not more than \$6,000, or both.

EFFECTIVE DATE. This section is effective August 1, 2004, and applies to crimes committed on or after that date.

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