

Employment Services

CHAPTER 268

DEPARTMENT OF ECONOMIC SECURITY

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268.01 [Repealed, 1965 c 45 s 73]

268.011 CREATION.

Subdivision 1. There is created the department of economic security with broad responsibility for income and employment policies, and for linking its benefits payments and job training and placement programs with veterans programs, workers' compensation, vocational and post-secondary training, federal income insurance programs, and economic development programs. The department shall be supervised and controlled by the commissioner of economic security, who shall be appointed by the governor with the advice and consent of the senate. The commissioner shall serve at the pleasure of the governor.

Subd. 2. The commissioner may establish six positions in the unclassified service at the deputy, assistant commissioner, or assistant to the commissioner levels. He may appoint and define the duties of other subordinate officers and employees as he deems necessary to discharge the functions of his department. The commissioner may delegate, in written orders filed with the secretary of state, any powers or duties subject to his control to officers and employees in the department. Notwithstanding any other law, the commissioner may delegate the execution of specific contracts or specific types of contracts to his deputy, an assistant commissioner, or a program director if the delegation has been approved by the commissioner of administration and filed with the secretary of state.

History: 1977 c 430 s 1; 1982 c 445 s 1

268.012 TRANSFER OF POWERS.

Subdivision 1. **Department of employment services.** All powers, duties, and functions heretofore vested in or imposed on the commissioner of employment services by this chapter, or any other law relating to the duties and powers of the commissioner of employment services are transferred to, vested in, and imposed upon the commissioner of economic security. The position of commissioner of

employment services and the department of employment services as heretofore constituted are abolished.

Subd. 2. Department of vocational rehabilitation. All powers, duties, and functions heretofore vested in or imposed on the commissioner of vocational rehabilitation by chapter 129A, or any other law relating to the duties and powers of the commissioner of vocational rehabilitation are transferred to, vested in, and imposed on the commissioner of economic security. The commissioner of vocational rehabilitation and the department of vocational rehabilitation as heretofore constituted are abolished.

Subd. 3. Executive council; powers transferred. All the powers and duties now vested in or imposed upon the commissioner of public welfare, or any other agency which may have succeeded to its authority, relating to the administration and distribution of direct relief to the indigent or destitute, including war veterans and their families and dependents, are hereby transferred to, vested in, and imposed upon the commissioner of economic security.

History: 1977 c 430 s 2

268.013 EFFECT OF TRANSFERS.

Subdivision 1. The department of economic security shall be deemed a continuation of the former department or agency as to those matters within the jurisdiction of the former department or agency which are assigned or transferred to the department by Laws 1977, Chapter 430, with the same force and effect as though the functions, powers or duties of the agency or department had not been assigned or transferred, and shall not be held to constitute a new authority for the purpose of succession to all rights, powers, duties and obligations of the former department or agency, as constituted at the time of the assignment or transfer. All rules heretofore promulgated under authority of a power, duty or responsibility transferred by Laws 1977, Chapter 430 to the commissioner of economic security or to the department of economic security shall remain in full force and effect until modified or repealed.

Subd. 2. Any proceeding, court action, prosecution, or other business or matter which is pending on the effective date of this section and which was undertaken or commenced by a department or agency whose functions, powers or duties are transferred to the department of economic security by Laws 1977, Chapter 430, may be conducted and completed by the department of economic security in the same manner, under the same terms and conditions, and with the same effect as though it were undertaken or commenced and conducted or completed by the former department or agency prior to the transfer.

Subd. 3. Except as otherwise provided in Laws 1977, Chapter 430, the head of a department or agency whose functions, powers and duties are transferred to the department of economic security by Laws 1977, Chapter 430 shall transfer all contracts, books, maps, plans, papers, records, and property of every description within his jurisdiction or control to the commissioner of economic security.

Subd. 4. All unexpended funds appropriated to any department or agency for the purposes of any of its functions, powers, or duties which are transferred by Laws 1977, Chapter 430 to the department of economic security are hereby transferred to the department of economic security. When the functions, powers and duties that are affected by Laws 1977, Chapter 430 are the responsibility of the department of economic security and another department or agency, the commissioner of administration shall allocate any unexpended appropriation to the department or agency between the department of economic security and the other departments or agencies affected, as may be appropriate.

Subd. 5. Except as otherwise provided in Laws 1977, Chapter 430, all classified employees and their positions assigned by a department or agency to perform any of the functions, powers or duties which are transferred by Laws 1977, Chapter 430 to the department of economic security, are transferred to the department of economic security. The positions of all employees who are employed in the unclassified civil service by a department or agency to perform any of the functions, powers or duties which are transferred by Laws 1977, Chapter 430 to the department of economic security, with the exception of the unclassified positions established pursuant to the provisions of sections 43.05, subdivision 2, clause (11), and 43.09, subdivision 2, clause (9), are abolished. Any employee in the unclassified civil service whose position is abolished by Laws 1977, Chapter 430 and who is not appointed to an unclassified position authorized by Laws 1977, Chapter 430 may be otherwise continued in the unclassified civil service in the department of economic security, but for a period not to exceed 12 months from the date on which the department commences operation. Such positions shall be authorized pursuant to the provisions of section 43.05, subdivision 2, clause (11). Nothing herein shall be construed as abrogating or modifying any rights now enjoyed by affected employees under terms of an agreement between an exclusive bargaining representative and the state or one of its appointing authorities.

Subd. 6. If the programs of the Federal Comprehensive Employment and Training Act, the Federal Economic Opportunity Act, and the Federal Community Services Act are transferred to the department of economic security, state employees involved in administration and implementation of these programs in the unclassified civil service of the state shall be transferred, except for the positions of executive director and deputy director of the programs, to the classified civil service of the state without competitive examination and shall be placed in the proper classification by the commissioner of employee relations with such compensation as such classifications carry. Incumbents of positions placed in the classified civil service shall receive such status and length of service credit as would have accrued to them had they originally been appointed to the classified civil service; however, such length of service credit shall not include seniority under the provisions of a collective bargaining agreement negotiated pursuant to sections 179.61 to 179.76, until effective date of classified civil service. Annual leave and sick leave shall be transferred and accrued in accordance with the provisions of section 43.222.

History: 1977 c 430 s 3; 1980 c 509 s 107; 1980 c 617 s 47

268.014 COOPERATION WITH OTHER STATE AGENCIES.

To effectively coordinate job training and placement services with future job needs of the state the commissioner shall maintain close liaison, coordination and cooperation with the commissioner of energy, planning and development and any other state agency involved in employment issues affecting the state.

History: 1977 c 430 s 13; 1981 c 356 s 186

268.02 [Repealed, 1965 c 45 s 73]

268.025 [Repealed, 1965 c 45 s 73]

268.026 BUILDING; LEASE OF SPACE.

Subdivision 1. The commissioner of the Minnesota department of economic security, with the approval of the commissioner of the department of administration, may lease portions of the state owned building known as the employment services building located at 309-311 Second Avenue South, Minneapolis, Minnesota, to any department or agency of the state and charge rent therefor on the basis

of space occupied. Any lease made pursuant to this section shall be in such form as the attorney general shall prescribe.

Subd. 2. Notwithstanding the provisions of any other law to the contrary, all moneys collected as rent under the terms of any lease entered into pursuant to the provisions of subdivision 1, shall be deposited in the state treasury and credited to the account known as the employment services administration fund.

History: 1961 c 516 s 1,2; 1969 c 567 s 3; 1973 c 254 s 3; 1977 c 430 s 25 subd 1

268.03 DECLARATION OF PUBLIC POLICY.

As a guide to the interpretation and application of sections 268.03 to 268.24, the public policy of this state is declared to be as follows: Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burdens. This can be provided by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. The legislature, therefore, declares that in its considered judgment the public good and the general welfare of the citizens of this state will be promoted by providing, under the police powers of the state for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own.

History: Ex1936 c 2 s 1 (4337-21)

268.04 DEFINITIONS.

Subdivision 1. Unless the language or context clearly indicates that a different meaning is intended, the following words, terms and phrases, for the purposes of sections 268.03 to 268.24, shall be given the meanings subjoined to them.

Subd. 2. "Base period" means the period of fifty-two calendar weeks immediately preceding the first day of an individual's benefit year. Provided, however, that if a claimant received weekly worker's compensation for temporary total disability under the provisions of chapter 176 or under a similar law of the United States for more than seven weeks within the base period, as heretofore defined, his base period shall be lengthened by the number of such weeks, but not to exceed 52 weeks, for which he received such payments; provided further, that no extended base period shall include wage credits upon which benefits were established and paid with respect to a prior valid claim.

Subd. 3. "Benefits" means the money payments payable to an individual, as provided in sections 268.03 to 268.24, with respect to his unemployment.

Subd. 4. "Benefit year" with respect to any individual means the period of fifty-two calendar weeks beginning with the first day of the first week with respect to which the individual files a valid claim for benefits.

Subd. 5. "Calendar quarter" means the period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31, excluding any calendar quarter or portion thereof which occurs prior to January 1, 1937, or the equivalent thereof, as the commissioner may by regulation prescribe.

Subd. 6. "Contributions" means the money payments required by sections 268.03 to 268.24 to be made by any employing unit on account of having individuals in its employ.

Subd. 7. "Corporation" includes associations, joint-stock companies, and insurance companies. This definition shall not be exclusive.

Subd. 8. "Commissioner" means the commissioner of the economic security.

Subd. 9. "Employing unit" means any individual or type of organization, including any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor of any of the foregoing, or the legal representative of a deceased person, which has or subsequent to January 1, 1936, had in its employ one or more individuals performing services for it. All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of sections 268.03 to 268.24. Each individual employed to perform or assist in performing the work of any agent or individual employed by an employing unit shall be deemed to be employed by such employing unit for all the purposes of sections 268.03 to 268.24 whether such individual was hired or paid directly by such employing unit or by such agent or individual, provided the employing unit had actual or constructive knowledge of such work. For the purposes of sections 268.03 to 268.24 any agency providing or authorizing the hiring of homeworkers, personal care attendants, or other individuals performing similar services in the private home of an individual is the employing unit of the homemaker, attendant or similar worker whether the agency pays the employee directly or provides funds to the recipient of the services to pay for the services.

Subd. 10. "Employer" means: (1) Any employing unit which, for some portion of a day, in each of 20 different weeks, whether or not such weeks are or were consecutive, and whether or not all of such weeks of employment are or were within the state within either the current or preceding calendar year, has or had in employment one or more individuals (irrespective of whether the same individual or individuals were employed in each such day) or in any calendar quarter in either the current or preceding calendar year paid \$1,500 or more for services in employment, except as provided in clause (18) of this subdivision;

(2) Any employing unit (whether or not an employing unit at the time of acquisition) which acquired the organization, trade, or business, or substantially all of the assets thereof, of another employing unit which at the time of such acquisition was an employer subject to this law; or which acquired a part of the organization, trade, or business of another employing unit which at the time of such acquisition was an employer subject to this law;

(3) For purposes of clause (1), employment shall include service which would constitute employment but for the fact that such service is deemed to be performed entirely within another state pursuant to an election under an arrangement entered into (in accordance with section 268.13, subdivision 1) by the commissioner and an agency charged with the administration of any other state or federal unemployment compensation law;

(4) For purposes of clause (1), if any week includes both December 31 and January 1, the days of that week up to January 1 shall be deemed one calendar week and the days beginning January 1 another such week;

(5) Any employing unit which acquired the organization, trade, or business, or substantially all the assets thereof, of another employing unit, and which, if treated as a single unit with such other employing unit, would be an employer under clause (1);

(6) Any employing unit which, together with one or more other employing units, is owned or controlled (by legally enforceable means or otherwise) directly or indirectly by the same interests, or which owns or controls one or more other employing units (by legally enforceable means or otherwise) and which, if treated as a single unit with such other employing units or interests or both, would be an employer under clause (1), except as provided in clause (18) of this subdivision;

(7) Any joint venture composed of one or more employers as otherwise defined herein;

(8) Any non-resident employing unit which employs within this state one or more employees for one or more weeks;

(9) Any employing unit for which service in employment, as defined in subdivision 12, clause (9), is performed;

(10) Any employing unit which, having become an employer under the preceding clauses or clauses (15), (16) or (17) of this subdivision, has not, under section 268.11, ceased to be an employer subject to these sections;

(11) For the effective period of its election pursuant to section 268.11, subdivision 3, any other employing unit which has elected to become subject to sections 268.03 to 268.24;

(12) Notwithstanding any inconsistent provisions of sections 268.03 to 268.24, any employing unit not an employer by reason of any other clause of this subdivision for which service is performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund or which, as a condition for the approval of this law for full tax credit against the tax imposed by the federal unemployment tax act, is required pursuant to such act, to be an "employer" under the law;

(13) Except as provided in clause (12), and notwithstanding any other provisions of sections 268.03 to 268.24, no employing unit shall be initially determined a subject employer on the basis of covered employment performed more than four years prior to the year in which such determination is made, unless the commissioner finds that the records of such employment experience were fraudulently concealed or withheld for the purpose of escaping liability under said sections;

(14) Any employing unit for which service in employment, as defined in subdivision 12, clause (7), is performed;

(15) Any employing unit for which service in employment as defined in subdivision 12, clause (8) is performed;

(16) Any employing unit for which agricultural labor as defined in subdivision 12, clause (13) is performed;

(17) Any employing unit for which domestic service in employment as defined in subdivision 12, clause (14) is performed;

(18) (a) In determining whether or not an employing unit for which domestic service and other than domestic service is performed is an employer under clauses (1) or (6) of this subdivision, the wages earned or the employment of an employee performing domestic service shall not be taken into account.

(b) In determining whether or not an employing unit for which agricultural labor and other than agricultural labor is performed is an employer under clause (1), (9) or (17) of this subdivision, the wages earned or the employment of an employee performing service in agricultural labor after December 31, 1977 shall not be taken into account. If an employing unit is an employer of agricultural labor the determination of whether it is an "employer" shall be governed by clause (1) of this subdivision.

Subd. 11. "Employee" means every individual, whether male, female, citizen, alien, or minor, who is performing, or subsequent to January 1, 1936, has performed services in insured work.

Subd. 12. "Employment" means: (1) Subject to the other provisions of this subdivision "employment" means service performed prior to January 1, 1945, which was employment as defined in this section prior to such date, and any

service performed after December 31, 1944, including service in interstate commerce, by an individual who is a servant under the law of master and servant or who performs services for any employing unit, unless such services are performed by an independent contractor.

The term "employment" shall include: Any service performed, including service in interstate commerce, by:

(a) any officer of any corporation; or

(b) any individual other than an individual who is an employee under clause (1) who performs services for remuneration for any person as an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or dry-cleaning services, for his principal, or as a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a fulltime basis in the solicitation on behalf of, and the transmission to, his principal (except for sideline sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations;

Provided, that for purposes of clause (1) (b), the term "employment" shall include services described above only if the contract of service contemplates that substantially all of the services are to be performed personally by such individual, the individual does not have a substantial investment in facilities used in connection with the performance of the services (other than in facilities for transportation), and the services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed.

(2) The term "employment" shall include an individual's entire service, performed within or both within and without this state if (a) the service is localized in this state; or (b) the service is not localized in any state but some of the service is performed in this state and (1) the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state; (2) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(3) Service shall be deemed to be localized within a state if (a) the service is performed entirely within such state; or (b) the service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

(4) The term "employment" shall include an individual's service wherever performed within the United States or Canada, if

(a) Such service is not covered under the unemployment compensation law of any other state or Canada, and

(b) The place from which the service is directed or controlled is in this state.

(5) (a) Service covered by an election pursuant to section 268.11, subdivision 3; and

(b) Service covered by an arrangement pursuant to section 268.13 between the commissioner and the agency charged with the administration of any other state or federal employment security law, pursuant to which all service performed by an individual for an employing unit is deemed to be performed entirely within this state, shall be deemed to be employment if the commissioner has approved an election of the employing unit for which such service is performed, pursuant to which the entire service of such individual during the period covered by such election is deemed to be employment.

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(6) Notwithstanding any inconsistent provisions of sections 268.03 to 268.24, the term "employment" shall include any services which are performed by an individual with respect to which an employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund or which as a condition for full tax credit against the tax imposed by the federal unemployment tax act is required to be covered under this law.

(7) Service performed by an individual in the employ of the state of Minnesota or any instrumentality which is wholly owned by the state of Minnesota or in the employ of this state and one or more other states or an instrumentality of this state and one or more of its political subdivisions or an instrumentality of this state and another state or an instrumentality of this state and one or more political subdivisions of another state if such service is excluded from "employment" as defined by section 3306(c)(7) of the federal unemployment tax act and is not excluded from "employment" under clause (10) of this subdivision.

(8) Service performed by an individual in the employ of any political subdivision of the state of Minnesota or instrumentality thereof or an instrumentality of two or more political subdivisions of this state or any instrumentality of a political subdivision of this state and another state or political subdivisions of another state if such service is excluded from "employment" as defined by section 3306(c)(7) of the federal unemployment tax act and is not excluded from "employment" under clause (10) of this subdivision.

(a) The provisions of section 268.08, subdivision 6, shall apply to service covered by this section.

(b) The amounts required to be paid in lieu of contributions by any political subdivision shall be billed and payment made as provided in section 268.06, subdivision 28, clause (2), with respect to similar payments by nonprofit organizations.

(9) Service performed by an individual in the employ of a religious, charitable, educational or other organization but only if the following conditions are met:

(a) the service is excluded from "employment" as defined in the federal unemployment tax act solely by reason of section 3306(c) (8) of that act; and

(b) the organization had one or more individuals in employment for some portion of a day in each of 20 different weeks, whether or not such weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time.

(10) For the purposes of clauses (7), (8), and (9), the term "employment" does not apply to service performed

(a) in the employ of a church or convention or association of churches, or an organization which is operated exclusively for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches; or

(b) by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; or

(c) 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 providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work; or

(d) 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

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political subdivision thereof, by an individual receiving such work relief or work training, excepting public service employment and on the job training participants under the federal comprehensive employment and training act, as amended, if the participants are performing services which are the same or similar to those performed by other employees of the employer; or

(e) by an inmate of a custodial or penal institution; or

(f) in the employ of governmental entities referred to in clauses (7) and (8) of this subdivision if such service is performed by an individual in the exercise of duties

(i) as an elected official.

(ii) as a member of a legislative body, or a member of the judiciary,

(iii) as a member of the Minnesota national guard or air national guard,

(iv) as an employee serving only on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency,

(v) (a) in a position with the state of Minnesota which is a major nontenured policy making or advisory position in the unclassified service, or

(b) a policy making position with the state of Minnesota or a political subdivision the performance of the duties of which ordinarily does not require more than eight hours per week; or

(c) in a position with a political subdivision which is a major nontenured policy making or advisory position.

(11) The term "employment" shall include the service of an individual who is a citizen of the United States, performed outside the United States, except in Canada, in the employ of an American employer (other than service which is deemed "employment" under the provisions of clauses (2), (3), or (4) or the parallel provisions of another state's law) if:

(a) The employer's principal place of business in the United States is located in this state; or

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

(c) None of the criteria of (a) and (b) of this clause is met but the employer has elected coverage in this state, or the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this state.

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

(e) As used in this subdivision, the term "United States" includes the states, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

(12) Notwithstanding clause (1), all service performed by an officer or member of the crew of an American vessel on or in connection with such vessel, if the operating office, from which the operations of such vessel operating on navigable waters within, or within and without, the United States are ordinarily and regularly supervised, managed, directed and controlled is within this state.

(13) Service performed by an individual in agricultural labor as defined in clause (15)(a) of this subdivision when:

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(a) Such service is performed for a person who:

(i) during any calendar quarter in either the current or the preceding calendar year paid wages of \$20,000 or more to individuals employed in agricultural labor, or

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

(b) For the purpose of this clause (13) any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of the crew leader:

(i) if the crew leader holds a valid certificate of registration under the farm labor contractor registration act of 1963, as amended; or substantially all of the members of his crew operate or maintain tractors, mechanized harvesting or crop dusting equipment, or any other mechanized equipment, which is provided by the crew leader; and

(ii) if the individual is not an employee of another person as determined by clause (1) of this subdivision.

(c) For the purpose of this clause (13) in the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of the crew leader under subclause (13)(b):

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

(ii) such other person shall be treated as having paid wages to such individual in an amount equal to the amount of wages paid to such individual by the crew leader (either on his own behalf or on behalf of such other person) for the service in agricultural labor performed for such other person.

(d) For the purposes of this clause (13) the term "crew leader" means an individual who:

(i) furnishes individuals to perform service in agricultural labor for any other person,

(ii) pays (either on his own behalf or on behalf of such other person) the individuals so furnished by him for the service in agricultural labor performed by them, and

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

(e) For the purposes of this clause (13) services performed by an officer or shareholder of a family farm corporation shall be excluded from agricultural labor and employment unless said corporation is an employer as defined in section 3306(a)(2) of the Federal Unemployment Tax Act.

(f) For the purposes of this clause (13), services performed by an individual 16 years of age or under shall be excluded from agricultural labor and employment unless the employer is an employer as defined in section 3306(a)(2) of the Federal Unemployment Tax Act.

(14) The term "employment" shall include domestic service in a private home, local college club, or local chapter of a college fraternity or sorority performed for a person who paid wages of \$1,000 or more in the current calendar year or the preceding calendar year to individuals employed in domestic service in any calendar quarter.

"Domestic service" includes all service for an individual in the operation and maintenance of a private household, for a local college club, or local chapter of a

college fraternity or sorority as distinguished from service as an employee in the pursuit of an employer's trade, occupation, profession, enterprise or vocation.

(15) The term "employment" shall not include:

(a) Agricultural labor. Service performed by an individual in agricultural labor, except as provided in clause (13) of this subdivision. The term "agricultural labor" includes all services performed:

(1) On a farm, in the employ of any person or family farm corporation, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, fur-bearing animals and wildlife;

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

(3) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15(g) of the agricultural marketing act, as amended (46 Stat. 1550, sec. 3; 12 U.S.C. 1141j) or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(4) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half of the commodity with respect to which such service is performed, or in the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described herein, but only if such operators produced more than one-half of the commodity with respect to which such service is performed; however, the provisions of this paragraph shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or

(5) On a farm operated for profit if such service is not in the course of the employer's trade or business.

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

(b) Casual labor not in the course of the employing unit's trade or business;

(c) Service performed on the navigable waters of the United States as to which this state is prohibited by the constitution and laws of the United States of America from requiring contributions of employers with respect to wages as provided in sections 268.03 to 268.24;

(d) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of 18 in the employ of his father or mother;

(e) Service performed in the employ of the United States government, or any instrumentality of the United States exempt under the constitution of the United States from the contributions imposed by sections 268.03 to 268.24, except that with respect to such service and to the extent that the congress of the United

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States shall permit states to require any instrumentalities of the United States to make payments into an unemployment compensation fund under a state unemployment compensation act; then, to the extent permitted by congress, and from and after the date as of which such permission becomes effective, all of the provisions of these sections shall be applicable to such instrumentalities and to services performed for such instrumentalities in the same manner, to the same extent, and on the same terms as to all other employers, employing units, individuals, and services; provided, that if this state shall not be certified for any year by the United States department of labor under section 3304(c) of the federal internal revenue code, the payments required of such instrumentalities with respect to such year shall be refunded by the commissioner from the fund in the same manner and within the same period as is provided in section 268.16, subdivision 6, with respect to contributions erroneously collected;

(f) Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of congress;

(g) (1) Service performed in any calendar quarter in the employ of any organization exempt from income tax under section 501(a) (other than an organization described in section 401(a)) or section 521 of the federal internal revenue code, if the remuneration for such service is less than \$50; or

(2) Service performed in the employ of a school, college, or university, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university; or

(3) Service performed by an individual under the age of 22 who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a fulltime program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this paragraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(h) Service performed in the employ of a foreign government (including service as a consular or other officer or employee or a nondiplomatic representative);

(i) Service performed in the employ of an instrumentality wholly owned by a foreign government, if

(1) The service is of a character similar to that performed in foreign countries by employees of the United States government or of an instrumentality thereof; and

(2) The commissioner finds that the United States secretary of state has certified to the United States secretary of the treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States government and of instrumentalities thereof.

(j) Service covered by an arrangement between the commissioner and the agency charged with the administration of any other state or federal employment security law pursuant to which all services performed by an individual for an employing unit during the period covered by such employing unit's duly approved election, are deemed to be performed entirely within such agency's state;

(k) Service performed in the employ of a hospital, if such service is performed by a patient of the hospital, as defined in clause (17);

(l) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending

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classes in a nurses' training school chartered and approved pursuant to state law; and service performed as an intern in the employ of a hospital by an individual who has completed a four years' course in a medical school chartered and approved pursuant to state law;

(m) Service performed by an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission (the word "insurance" as used in this subdivision shall include an annuity and an optional annuity);

(n) Service performed by 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;

(o) Service performed by an individual for a person as a real estate salesman, if all such service performed by such individual for such person is performed for remuneration solely by way of commission;

(p) If the service performed during one-half or more of any pay period by an individual for the person employing him constitutes employment, all the service of such individual for such period shall be deemed to be employment; but if the service performed during more than one-half of any such pay period by an individual for the person employing him does not constitute employment, then none of the service of such individual for such period shall be deemed to be employment. As used in this subdivision, the term "pay period" means a period (of not more than 31 consecutive days) for which a payment or remuneration is ordinarily made to the individual by the person employing him.

(q) Services performed for a state, other than the state of Minnesota, or an instrumentality wholly owned by such other state or political subdivision of such other state;

(16) "Institution of higher education," for the purposes of this chapter, means an educational institution which:

(a) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(b) Is legally authorized in this state to provide a program of education beyond high school;

(c) Provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for credit toward such a degree, a program of post-graduate or post-doctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(d) Is a public or other nonprofit institution.

(e) Notwithstanding any of the foregoing provisions of this clause, all colleges and universities in this state are institutions of higher education for purposes of this section.

(17) "Hospital" means an institution which has been licensed, certified or approved by the department of health as a hospital.

Subd. 13. "Employment Services Administration Fund" means the employment services administration fund established by sections 268.03 to 268.24, from which administrative expenses under these sections shall be paid.

Subd. 14. "Employment office" means a free public employment office, or branch thereof, operated by this or any other state, territory, or the District of Columbia as a part of a state-controlled system of public employment offices charged with the administration of an employment security program or free public employment offices.

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Subd. 15. "Filing" means the delivery of any document to the commissioner or any of his agents or representatives, or the depositing of the same in the United States mail properly addressed to the department with postage prepaid thereon, in which case the same shall have been filed on the day indicated by the cancellation mark of the United States Post Office Department.

Subd. 16. "Fund" means the unemployment compensation fund established by sections 268.03 to 268.24.

Subd. 17. "Insured work" means employment for employers as defined in this section, except that for the purposes of interstate reciprocal benefit payment arrangements and the clearing of disqualifications under this law, the term "insured work" shall mean employment in insured work under this law or a similar law of any other state.

Subd. 18. "Interested party" includes the claimant, his base period employers, and his most recent employer prior to the filing of a valid claim for benefits.

Subd. 19. "Person" means an individual, trust or estate, a partnership or a corporation.

Subd. 20. "Social Security Act" means the Social Security Act passed by the Congress of the United States of America, approved August 14, 1935, as amended.

Subd. 21. "Social Security Administration" means the board established pursuant to Title VII of the Social Security Act.

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

Subd. 23. "Unemployment". An individual shall be deemed "unemployed" in any week during which he performs no service and with respect to which no wages are payable to him, or in any week of less than full time work if the wages payable to him with respect to such week are less than his weekly benefit amount. Any individual unemployed as a result of a uniform vacation shutdown shall not be deemed to be voluntarily unemployed. The commissioner may, in his discretion, prescribe regulations relating to the payment of benefits to such unemployed individuals.

Subd. 24. "Valid claim" with respect to any individual means a claim filed by an individual who has registered for work and who has earned wage credits and established credit weeks during his base period sufficient to entitle him to benefits under section 268.07, subdivision 2.

Subd. 25. **Wages.** "Wages" means all remuneration for services, including commissions and bonuses, and tips and gratuities paid to an employee by a customer of an employer and accounted for by the employee to the employer, and the cash value of all remuneration in any medium other than cash, except that such term shall not include:

(a) For the purpose of determining contributions payable under section 268.06, subdivision 2, that part of the remuneration which exceeds \$8,000 during the calendar years 1979, 1980 and 1981 and for all subsequent calendar years that part of the remuneration which exceeds 60 percent of the average annual wage rounded to the nearest \$100 computed in accordance with the provisions of clause (f), paid to an individual by an employer with respect to covered employment in this state, or with respect to employment under the unemployment compensation law of any other state during any calendar year paid to such individual by such covered employer or his predecessor during such calendar year; provided, that if the term "wages" as contained in the federal unemployment tax act is amended to include remuneration in excess of the amount required to be paid hereunder to an individual by an employer under the federal act for any calendar year, wages for the purposes of sections 268.03 to 268.24 shall include remuneration paid in a calendar year up to an amount equal to the dollar limitation specified in the

federal unemployment tax act. For the purposes of this clause, the term "employment" shall include service constituting employment under any employment security law of another state or of the federal government;

(b) The amount of any payment made to, or on behalf of, an employee under a plan or system established by an employer which makes provision for his employees generally or for a class or classes of his employees (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment), on account of (1) retirement or (2) sickness or accident disability or (3) medical and hospitalization expenses in connection with sickness or accident disability, or (4) death, provided the employee has not the option to receive, instead of provision for such death benefit, any part of such payment, or if such death benefit is insured, any part of the premium (or contributions to premiums) paid by his employer and has not the right, under the provisions of the plan or system or policy of insurance providing for such death benefit, to assign such benefit, or to receive a cash consideration in lieu of such benefit either upon his withdrawal from the plan or system providing for such benefit or upon termination of such plan or system or policy of insurance or of his employment with such employer;

(c) The payment by an employer (without deduction from the remuneration of the employee) (1) of the tax imposed upon an employee under section 3101 of the federal internal revenue code, or (2) of any payment required from an employee under a state unemployment compensation law, with respect to remuneration paid to an employee for domestic service in a private home of the employer or for agricultural labor;

(d) Any payments made to a former employee during the period of active military service in the armed forces of the United States by such employer, whether legally required or not;

(e) Any payment made to, or on behalf of, an employee or his beneficiary (1) from or to a trust described in section 401(a) of the federal internal revenue code which is exempt from tax under section 501(a) of such code at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as an employee and not as a beneficiary of the trust, or (2) under or to an annuity plan which, at the time of such payment is a plan described in section 403(a) of the federal internal revenue code, or (c) under or to a bond purchase plan which, at the time of such payment, is a qualified bond purchase plan described in section 405(a) of the federal internal revenue code;

(f) On or before July 1 of each year the commissioner shall determine the average annual wage paid by employers subject to sections 268.03 to 268.24 in the following manner:

(1) The sum of the total monthly employment reported for the previous calendar year shall be divided by 12 to determine the average monthly employment;

(2) The sum of the total wages reported for the previous calendar year shall be divided by the average monthly employment to determine the average annual wage.

The average annual wage determined shall be effective for the calendar year next succeeding the determination.

Subd. 26. "Wage credits" mean the amount of wages paid and wages due and payable but not paid by or from an employer to an employee for insured work and tips and gratuities paid to an employee by a customer of an employer and accounted for by the employee to the employer except that wages earned in part-time employment by a student as an integral part of an occupational course of study, under a plan for vocational education accepted by the Minnesota

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department of education, shall not result in wage credits available for benefit purposes.

Subd. 27. "Week" means calendar week, ending at midnight Saturday, or the equivalent thereof, as determined in accordance with regulations prescribed by the commissioner.

Subd. 28. "Weekly benefit amount" with respect to any particular week of total unemployment means the amount of benefits computed in accordance with the provisions of section 268.07, which an individual would be entitled to receive for such week, if totally unemployed and eligible.

Subd. 29. "Credit week" is any week for which the wages which have been paid and wages which are due and payable but not paid by or from one or more employers to an employee for insured work equal or exceed 30 percent of the average weekly wage computed to the nearest whole dollar. On or before June 30 of each year the commissioner shall determine the average weekly wage paid by employers subject to sections 268.03 to 268.24 in the following manner:

(a) The sum of the total monthly employment reported for the previous calendar year shall be divided by 12 to determine the average monthly employment;

(b) The sum of the total wages reported for the previous calendar year shall be divided by the average monthly employment to determine the average annual wage; and

(c) The average annual wage shall be divided by 52 to determine the average weekly wage.

The average weekly wage as so determined computed to the nearest whole dollar shall apply to claims for benefits which establish a benefit year which begins subsequent to December 31 of the year of the computation.

Subd. 30. "Average weekly wage" means the quotient derived by dividing the total wage credits earned by an individual from all employers in insured work in the base period by the number of credit weeks.

Subd. 31. "Family farm corporation" has the meaning given to it in section 500.24, subdivision 2.

Subd. 32. "Nonpublic school" means any school within the state, other than a public school, wherein a resident of Minnesota may legally fulfill the compulsory school attendance requirements of section 120.10, or any school (1) which operates on a nonprofit basis, (2) which admits only pre-kindergarten children, (3) which has as its primary purpose the education of its students as determined by the commissioner of public welfare pursuant to section 245.791, clause (15), and (4) which operates on a regular basis for at least eight months and no more than nine months a year.

History: *Ex1936 c 2 s 2; 1937 c 43 s 1; 1937 c 306; 1939 c 443 s 1; 1941 c 554 s 1; 1943 c 650 s 1; 1945 c 376 s 1; 1947 c 432 s 1,2; 1947 c 574 s 1; 1949 c 605 s 1; 1951 c 442 s 1; 1953 c 97 s 1,2; 1953 c 603 s 1; 1955 c 380 s 1; 1957 c 467 s 1; 1957 c 873 s 1; 1957 c 883 s 1; 1959 c 595 s 1,2; 1959 c 702 s 1; 1963 c 562 s 1; 1963 c 588 s 1; 1965 c 45 s 39; 1965 c 741 s 1-5; 1967 c 439 s 1,2; 1967 c 573 s 1,2; 1969 c 567 s 3; 1969 c 585 s 1; 1969 c 854 s 1-5; 1969 c 1129 art 10 s 2; 1971 c 942 s 1,2; 1973 c 65 s 1; 1973 c 123 art 5 s 7; 1973 c 254 s 3; 1973 c 431 s 1; 1973 c 599 s 1; 1973 c 725 s 51; 1975 c 143 s 1; 1975 c 336 s 1-5; 1976 c 2 s 90; 1976 c 43 s 1,2; 1977 c 4 s 1-3; 1977 c 297 s 1-5; 1977 c 430 s 24; 1978 c 688 s 1; 1978 c 722 s 3; 1979 c 181 s 1-3; 1979 c 212 s 1; 1980 c 508 s 1; 1Sp1982 c 1 s 1-3 (4337-22)*

268.05 UNEMPLOYMENT COMPENSATION FUND.

Subdivision 1. **Establishment; how constituted.** There is hereby established as a special fund, separate and apart from all public moneys or funds of this state, an unemployment compensation fund, which shall be administered by the commissioner exclusively for the purpose of sections 268.03 to 268.24. This fund shall consist of:

- (1) All contributions collected under those sections;
- (2) Interest earned upon any moneys in the fund;
- (3) Any property or securities acquired through the use of moneys belonging to the fund;
- (4) All earnings of such property or securities;
- (5) Any moneys received from the Federal Unemployment Account in the unemployment trust fund in accordance with Title XII of the Social Security Act, as amended, and any other moneys made available to the fund and received pursuant to an agreement, between this state and any agency of the federal government or any other state, for the payment of unemployment benefits;
- (6) All money recovered on losses sustained by the fund;
- (7) All money credited to the account of this state in the unemployment trust fund pursuant to section 903 of the Social Security Act, as amended; and
- (8) All money received for the fund from any other source.

All moneys in the fund shall be mingled and undivided.

Subd. 2. **State treasurer to be custodian; separate accounts; bonds.** The state treasurer shall be ex-officio the treasurer and custodian of the fund. He shall administer the fund in accordance with the directions of the commissioner, and issue his warrants upon it in accordance with such regulations as the commissioner shall prescribe. He shall maintain within the fund three separate accounts:

- (1) A clearing account;
- (2) An unemployment trust fund account; and
- (3) A benefit account.

All moneys payable to the fund, upon receipt thereof by the commissioner, shall be forwarded to the treasurer who shall immediately deposit them in the clearing account. All moneys in the clearing account, after clearance thereof, shall, except as herein otherwise provided, be immediately deposited with the secretary of the treasury of the United States to the credit of the account of this state in the unemployment trust fund established and maintained pursuant to section 904 of the Social Security Act, as amended, any provisions of law in this state relating to the deposit, administration, release, or disbursement of moneys in the possession or custody of this state to the contrary notwithstanding. Refunds payable pursuant to section 268.16, subdivision 6, and section 268.04, subdivision 12, clause (8) (f), may be paid from the clearing account or the benefit account. The benefit account shall consist of all moneys requisitioned from this state's account in the unemployment trust fund in the United States Treasury for the payment of benefits. Except as herein otherwise provided, moneys in the clearing and benefit accounts may be deposited by the treasurer, under the direction of the commissioner, in any depository bank in which general funds of the state may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. Moneys in the clearing and benefit accounts shall not be commingled with other state funds, but shall be maintained in separate accounts on the books of the depository bank. Such money shall be secured by the depository bank to the same extent and in the same manner as required by the general depository law of this state; and collateral pledged for this purpose shall be kept separate and distinct from any collateral pledged to secure other funds of the state. The

treasurer shall give a separate bond conditioned upon the faithful performance of his duties with respect to the fund in an amount not less than \$25,000. The bond shall be approved by the attorney general. Premiums for this bond shall be paid from the administration fund. All sums recovered for losses sustained by the fund shall be deposited therein.

Subd. 3. **Withdrawals.** (1) Moneys requisitioned from this state's account in the unemployment trust fund shall be used exclusively for the payment of benefits and for refunds pursuant to sections 268.16, subdivision 6, and 268.04, subdivision 12, clause (8) (f) except that money credited to this state's account pursuant to section 903 of the Social Security Act, as amended, shall be used exclusively as provided in subdivision 5 of this section. The commissioner or his duly authorized agent for that purpose, shall from time to time requisition from the unemployment trust fund such amounts, not exceeding the amount standing to this state's account therein, as he deems necessary for the payment of such benefits and refunds for a reasonable future period. Upon receipt thereof the treasurer shall deposit such moneys in the benefit account and issue his warrants for the payment of benefits solely from such benefit account. Expenditures of such moneys in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody. All warrants issued by the treasurer for the payment of benefits and refunds shall bear the signature of the treasurer and the counter signature of the commissioner or his duly authorized agent for that purpose.

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

Subd. 4. **Disposal of certain moneys.** Any moneys made available to the unemployment compensation fund and received pursuant to an agreement between this state and any agency of the federal government or any other state for the payment of unemployment benefits shall be placed directly in the benefit account of the unemployment trust fund.

Subd. 5. **Payment of expenses of administration.** (1) Money credited to the account of this state in the unemployment trust fund by the secretary of the treasury of the United States of America pursuant to section 903 of the Social Security Act, as amended, may be requisitioned and used for the payment of expenses incurred for the administration of Laws 1957, Chapter 883 pursuant to a specific appropriation by the legislature, provided that the expenses are incurred and the money is requisitioned after the enactment of an appropriation law which:

(a) Specifies the purposes for which such money is appropriated and the amounts appropriated therefor.

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

(c) Limits the amount which may be obligated during any twelve-month period beginning on July 1 and ending on the next June 30 to an amount which does not exceed the amount by which (i) the aggregate of the amounts credited to the account of this state pursuant to section 903 of the Social Security Act, as amended, during the same twelve-month period and the 24 preceding twelve-month periods, exceeds (ii) the aggregate of the amounts used pursuant to this subdivision and charged against the amounts credited to the account of this state

during any of such 25 twelve-month periods. For the purposes of this subdivision, amounts used during any such twelve-month period shall be charged against equivalent amounts which were first credited and which are not already so charged; except that no amount obligated for administration during any such twelve-month period may be charged against any amount credited during such a twelve-month period earlier than the 24th preceding such period.

(2) Money credited to the account of this state pursuant to section 903 of the Social Security Act, as amended, may not be withdrawn or used except for the payment of benefits and for the payment of expenses for the administration of Laws 1957, Chapter 883 and of public employment offices pursuant to this subdivision.

(3) Money requisitioned for the payment of expenses of administration pursuant to this subdivision shall be deposited in the employment services administration fund, but, until expended, shall remain a part of the unemployment fund. The commissioner shall maintain a separate record of the deposit, obligation, expenditure, and return of funds so deposited. If any money so deposited is, for any reason, not to be expended for the purpose for which it was appropriated, or, if it remains unexpended at the end of the period specified by the law appropriating such money, it shall be withdrawn and returned to the secretary of the treasury of the United States for credit to this state's account in the unemployment trust fund.

Subd. 6. Advance on federal funds. (1) The governor is hereby authorized to make application as may be necessary to secure any advance of funds by the secretary of the treasury of the United States in accordance with the authority extended under section 1201 of the social security act, as amended.

(2) Any amount transferred to the Minnesota unemployment compensation fund by the secretary of the treasury of the United States under the terms of any application made pursuant to this subdivision shall be repayable in the manner provided in sections 901(d) 1, 903(b) 2 and 1202 of the social security act, as amended.

History: *Ex1936 c 2 s 3; 1937 c 452 s 1; 1939 c 443 s 2; 1941 c 554 s 2; 1945 c 376 s 2; 1949 c 605 s 2; 1953 c 97 s 3,4; 1957 c 883 s 2-5; 1961 c 517 s 1; 1969 c 310 s 1; 1969 c 567 s 3; 1975 c 302 s 1; 1Sp1982 c 1 s 4 (4337-23)*

268.06 EMPLOYERS CONTRIBUTIONS.

Subdivision 1. Payments. (1) Contributions shall accrue and become payable by each employer for each calendar year in which he is subject to sections 268.03 to 268.24 with respect to wages (as defined in section 268.04, subdivision 25) for employment, except that contributions shall not be payable after December 31, 1974 upon public service wages. "Public service wages" are remuneration for services performed in a public service job to the extent that such remuneration is paid with funds provided under the comprehensive employment and training act of 1973 and to the extent that the unemployment compensation fund is reimbursed for benefits based upon said public service wages pursuant to section 221 of United States Public Law 94-444. Such contributions shall become due and be paid by each employer to the department of economic security for the fund in accordance with such regulations as the commissioner may prescribe, and shall not be deducted, in whole or in part, from the wages of individuals in such employer's employ. No rule of the commissioner shall be put in force which will permit the payment of such contributions at a time or under conditions which will not allow the employer to take credit for such contribution against the tax imposed by section 3301 of the Internal Revenue Code.

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(2) In the payment of any contribution, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more in which case it shall be increased to one cent.

(3) When the contribution rate applied to an employer's taxable payroll for any given calendar quarter results in a computed contribution of less than \$1, the contribution shall be disregarded.

Subd. 2. Rates. Each employer who is not eligible for an experience ratio or who has an experience ratio of one-tenth of one percent or more as computed in subdivision 6 shall pay contributions equal to two and seven-tenths percent of wages paid and wages overdue and delayed beyond the usual time of payment from him with respect to employment occurring during each calendar year, except as may be otherwise prescribed in subdivisions 3a and 4. Each employer who has an experience ratio of less than one-tenth of one percent shall pay contributions on only the first \$8,000 in wages paid and wages overdue and delayed beyond the usual time of payment to each employee with respect to employment occurring during each calendar year.

Subd. 3. [Repealed, 1969 c 854 s 14]

Subd. 3a. Rate for new employers. Notwithstanding the provisions of subdivision 2, each employer, who becomes subject to this law, shall pay contributions at a rate:

(a) Not exceeding two and seven-tenths percent, that is the higher of (1) one percent and (2) the state's three-year benefit cost rate for the 36 consecutive month period immediately preceding July 1 of each year for each employer who becomes subject to this law prior to January 1, 1984. For purposes of this clause, the state's three-year benefit cost rate shall be computed annually and shall be derived by dividing the total dollar amount of benefits paid to claimants under this law during the 36 consecutive calendar months immediately preceding July 1 of each year by the total dollar amount of wages subject to contributions under this law during the same period. The rate so determined shall be applicable for the calendar year next succeeding each computation date.

(b) Not exceeding 2-7/10 percent, that is the higher of (1) one percent and (2) the state's four-year benefit cost rate for the 48 consecutive month period immediately preceding July 1 of each year for each employer, except employers in the construction industry, as determined by the commissioner, principally employing laborers and construction tradesmen, who becomes subject to this law subsequent to December 31, 1983 and prior to January 1, 1985. For purposes of this clause, the state's four-year benefit cost rate shall be computed and derived by dividing the total dollar amount of benefits paid to claimants under this law during the 48 consecutive calendar months immediately preceding July 1, 1983 by the total dollar amount of wages subject to contributions under this law during the same period. The rate so determined shall be applicable for the calendar year 1984.

Each construction employer described above who becomes subject to chapter 268 shall pay contributions at a rate, not exceeding 7.5 percent, that is the higher of (1) one percent, or (2) the state's four-year benefit cost rate for construction employers for the 48 consecutive month period immediately preceding July 1, 1983. For purposes of this clause, the state's four-year benefit cost rate shall be computed and derived by dividing the total dollar amount of benefits paid to claimants of construction employers, as determined by the commissioner, during the 48 consecutive calendar months immediately preceding July 1, 1983 by the total dollar amount of wages of construction employers subject to contributions during the same period. The rate so determined shall be applicable for the calendar year 1984.

(c) Not exceeding 2-7/10 percent, that is the higher of (1) one percent and (2) the state's five-year benefit cost rate for the 60 consecutive month period immediately preceding July 1, 1984 and each year thereafter for each employer, except employers in the construction industry, as determined by the commissioner, principally employing laborers and construction tradesmen, who becomes subject to this law on January 1, 1985 and thereafter. For purposes of this clause, the state's five-year benefit cost rate shall be computed annually and shall be derived by dividing the total dollar amount of benefits paid to claimants under this law during the 60 consecutive calendar months immediately preceding July 1, 1984 and each year thereafter by the total dollar amount of wages subject to contributions under this law during the same period. The rate so determined shall be applicable for the calendar year next succeeding each computation date.

Each construction employer described above who becomes subject to this chapter shall pay contributions at a rate, not exceeding 7.5 percent, that is the higher of (1) one percent, or (2) the state's five-year benefit cost rate for construction employers for the 60 consecutive month period immediately preceding July 1, 1984 and each year thereafter. For purposes of this clause, the state's five-year benefit cost rate shall be computed annually and shall be derived by dividing the total dollar amount of benefits paid to claimants of construction employers, as determined by the commissioner, during the 60 consecutive calendar months immediately preceding July 1, 1984 and each year thereafter by the total dollar amount of wages of construction employers subject to contributions during the same period. The rate so determined shall be applicable for the calendar year next succeeding each computation date.

Subd. 4. Rates; schedules. The commissioner shall for the year 1943 and for each calendar year thereafter determine the contribution rate of each employer whose unemployment experience as an employer under these sections is equivalent to the minimum requirements of section 3303 of the federal internal revenue code for the purpose of obtaining additional credit thereunder with respect to any reduced rates of state contributions.

Subd. 5. Benefits charged as and when paid. Benefits paid to an individual pursuant to a valid claim shall be charged against the account of his employer as and when paid, except that benefits paid to an individual who earned base period wages for part time employment shall not be charged to an employer that is liable for payments in lieu of contributions or to the experience rating account of an employer if the employer: (1) provided weekly base period part time employment; (2) continues to provide weekly employment equal to at least 90 percent of the part time employment provided in the base period; and (3) is an interested party because of the individual's loss of other employment. The amount of benefits so chargeable against each base period employer's account shall bear the same ratio to the total benefits paid to an individual as the base period wage credits of the individual earned from such employer bear to the total amount of base period wage credits of the individual earned from all his base period employers.

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

An employer's account shall not be charged with respect to benefits paid to any individual whose base period wage credits include wages for previously uncovered services as defined in section 268.07, subdivision 4 to the extent that the unemployment compensation fund is reimbursed for such benefits pursuant to section 121 of United States Public Law 94-566.

Benefits shall not be charged to an employer that is liable for payments in lieu of contributions or to the experience rating account of an employer for unemployment that is directly caused by a major natural disaster declared by the president pursuant to section 102 (2) of the Disaster Relief Act of 1974 (42 U.S.C. 5122 (2)),

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if the unemployed individual would have been eligible for disaster unemployment assistance with respect to that unemployment but for the individual's receipt of unemployment insurance benefits.

Subd. 6. Computation of each employer's experience ratio. The commissioner shall, for the calendar year 1966, and for each calendar year thereafter, compute an experience ratio for each employer whose account has been chargeable with benefits:

(a) During the 36 consecutive calendar months immediately preceding July 1 of the preceding calendar year for calendar years up to December 31, 1983; except that, for any employer who has not been subject to the Minnesota employment services law for a period of time sufficient to meet the 36 consecutive months requirement, the commissioner shall compute an experience ratio if his account has been chargeable with benefits during at least the 12 consecutive calendar months immediately preceding July 1 of the preceding calendar year. Such experience ratio shall be the quotient obtained by dividing $1\frac{1}{4}$ times the total benefits charged to the employer's account during the period his account has been chargeable but not less than the 12 or more than the 36 consecutive calendar months ending on June 30 of the preceding calendar year, by his total taxable payroll for the same period on which all contributions due have been paid to the department of economic security on or before July 31 of the preceding calendar year. Such experience ratio shall be computed to the nearest one-tenth of a percent.

(b) During the 48 consecutive calendar months immediately preceding July 1, 1983 for the calendar year for 1984; except that, for any employer who has not been subject to the Minnesota employment services law for a period of time sufficient to meet the 48 consecutive months requirement, the commissioner shall compute an experience ratio if his account has been chargeable with benefits during at least the 12 consecutive calendar months immediately preceding July 1, 1983. Such experience ratio shall be the quotient obtained by dividing $1\frac{1}{4}$ times the total benefits charged to the employer's account during the period his account has been chargeable but not less than the 12 or more than the 48 consecutive calendar months ending on June 30, 1983, by his total taxable payroll for the same period on which all contributions due have been paid to the department of economic security on or before July 31, 1983. Such experience ratio shall be computed to the nearest one-tenth of a percent.

(c) During the 60 consecutive calendar months immediately preceding July 1 of the preceding calendar year for 1985 and each year thereafter; except that, for any employer who has not been subject to the Minnesota employment services law for a period of time sufficient to meet the 60 consecutive months requirement, the commissioner shall compute an experience ratio if his account has been chargeable with benefits during at least the 12 consecutive calendar months immediately preceding July 1 of the preceding calendar year. Such experience ratio shall be the quotient obtained by dividing $1\frac{1}{4}$ times the total benefits charged to the employer's account during the period his account has been chargeable but not less than the 12 or more than the 60 consecutive calendar months ending on June 30 of the preceding calendar year for 1985 and each year thereafter, by his total taxable payroll for the same period on which all contributions due have been paid to the department of economic security on or before July 31 of the preceding calendar year. Such experience ratio shall be computed to the nearest one-tenth of a percent.

Subd. 7. [Repealed, 1949 c 605 s 15]

Subd. 8. Determination of contribution rates. For each calendar year the commissioner shall determine the contribution rate of each employer by adding

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the minimum rate to the experience ratio, except that if the ratio for the current calendar year increases or decreases the experience ratio for the preceding calendar year by more than one and one-half percentage points for 1982; and 2-1/2 percentage points for 1983 and each year thereafter, the increase or decrease for the current year shall be limited to one and one-half percentage points for 1982; and 2-1/2 percentage points for 1983 and each year thereafter, provided that a small business employer shall be eligible, upon application, for a reduction in the limitation to 1-1/2 percentage points for 1983 and each year thereafter. "Small business employer" for the purpose of this subdivision means an employer with an annual covered payroll of \$250,000 or less, or fewer than 20 employees in three of the four quarters ending June 30, of the previous calendar year.

The minimum rate for all employers shall be one percent if the amount in the unemployment compensation fund is less than \$80,000,000 on June 30 of the preceding calendar year; or nine-tenths of one percent if the fund is more than \$80,000,000 but less than \$90,000,000; or eight-tenths of one percent if the fund is more than \$90,000,000 but less than \$110,000,000; or seven-tenths of one percent if the fund is more than \$110,000,000 but less than \$130,000,000; or six-tenths of one percent if the fund is more than \$130,000,000 but less than \$150,000,000; or five-tenths of one percent if the fund is more than \$150,000,000 but less than \$170,000,000; or three-tenths of one percent if the fund is more than \$170,000,000 but less than \$200,000,000; or one-tenth of one percent if the fund is \$200,000,000 or more; provided that no employer shall have a contribution rate of more than 7.5 percent.

For the purposes of this section the unemployment compensation fund shall not include any moneys advanced from the Federal Unemployment Account in the unemployment trust fund in accordance with Title XII of the Social Security Act, as amended. No employer first assigned an experience ratio in accordance with subdivision 6, shall have his contribution rate increased or decreased by more than one and one-half percentage points for 1982; and 2-1/2 percentage points for 1983 and each year thereafter over the contribution rate assigned for the preceding calendar year in accordance with subdivision 3a, provided that a small business employer shall be eligible, upon application, for a reduction in the limitation to 1-1/2 percentage points for 1983 and each year thereafter.

Subd. 9. [Repealed, 1949 c 605 s 15]

Subd. 10. [Repealed, 1949 c 605 s 15]

Subd. 11. [Repealed, 1953 c 97 s 7]

Subd. 12. [Repealed, 1953 c 97 s 7]

Subd. 13. [Repealed, 1953 c 97 s 7]

Subd. 14. [Repealed, 1953 c 97 s 7]

Subd. 15. [Repealed, 1953 c 97 s 7]

Subd. 16. [Repealed, 1953 c 97 s 7]

Subd. 17. [Repealed, 1949 c 605 s 15]

Subd. 18. **Notice to employer.** The commissioner shall at least twice each year notify each employer of the benefits as determined by the department which have been charged to his account subsequent to the last notice. Unless reviewed in the manner hereinafter provided, charges set forth in such notice, or as modified by a redetermination, a decision of a referee, or the commissioner, shall be final and shall be used in determining the contribution rates for all years in which the charges occur within the employer's experience period and shall not be subject to collateral attack by way of review of a rate determination, application for adjustment or refund, or otherwise.

Subd. 19. **Notice of rate.** The commissioner shall mail to each employer notice of his rate of contributions as determined for any calendar year pursuant to this section. Such notice shall contain the contribution rate, factors used in determining the individual employer's experience rating, and such other information as the commissioner may prescribe. Unless reviewed in the manner herein-after provided, the rate as determined or as modified by a redetermination, a decision of a referee, or the commissioner shall be final except for fraud and shall be the rate upon which contributions shall be computed for the calendar year for which such rate was determined, and shall not be subject to collateral attack for any errors, clerical or otherwise, whether by way of claim for adjustment or refund, or otherwise. If the legislature changes any of the factors used to determine the contribution rate of any employer for any year subsequent to the original mailing of such notice for the year, the earlier notice shall be void. The notice based on the new factors shall be deemed to be the only notice of rate of contributions for that year and shall be subject to the same finality, redetermination and review procedures as provided above.

Subd. 20. **Protest, review, redetermination, appeal.** A review of the charges made to an employer's account as set forth in the notice of charges referred to in subdivision 18 and a review of an employer's contribution rate as set forth in the notice of his rate for any calendar year as provided in subdivision 19, may be had by such employer if he files with the commissioner a written protest setting forth his reasons therefor within 30 days from the date of the mailing of the notice of charges or contribution rate to him, which date shall appear on such notice. Upon receipt of such protest the commissioner shall refer the matter to an official designated by him to review the charges appearing on such notice appealed from or the computations of the protesting employer's rate, as the case may be, to determine whether or not there has been any clerical error or error in computation in either case, and he shall either affirm or make a redetermination rectifying said charges or rate as the case may be, and a notice of such affirmation or redetermination shall immediately be mailed to said employer. If the employer is not satisfied with such affirmation or redetermination, he may appeal therefrom by filing a notice thereof with the department within ten days after the date of mailing appearing upon said redetermination. Upon the receipt of such appeal the commissioner shall refer the matter to a referee for a hearing and after opportunity for a fair hearing, the referee shall affirm, modify or set aside the original determination with its affirmation or the redetermination, as appears just and proper. The commissioner may at any time upon his own motion correct any clerical error of the department resulting in charges against an employer's account or any error in the computation of an employer's contribution rate. The referee may order the consolidation of two or more appeals whenever, in his judgment, such consolidation will not be prejudicial to any interested party. At any such hearing a written report of any employee of the department which has been authenticated shall be admissible in evidence. Appeals from the decision of the referee shall be made in the same manner as appeals from the decision of an appeal tribunal. Decisions of the commissioner made upon appeal from a decision of the referee shall be reviewed by the supreme court upon certiorari in accordance with the procedure outlined therefor with respect to benefit decisions.

Subd. 21. **Separate account for each employer.** (1) The commissioner shall maintain a separate account for each employer, except as provided in clause (2), and shall credit his account with all the contributions paid by him. Nothing in sections 268.03 to 268.24 shall be construed to grant any employer or individuals in his service prior claims or rights to the amounts paid by the employer into the fund.

(2) Two or more related corporations concurrently employing the same individual and compensating the individual through a common paymaster which is one of the corporations may apply to the commissioner to establish a joint account or to merge their several individual accounts into a joint account. Upon approval of the application, a joint account shall be maintained as if it constituted a single employer's account. The commissioner may prescribe rules as to the establishment, maintenance and termination of joint accounts.

Subd. 22. **Employment experience record transfer.** (a) When an employing unit succeeds to or acquires the organization, trade or business or substantially all the assets of another employing unit which at the time of the acquisition was an employer subject to this law, and continues such organization, trade or business, the experience rating record of the predecessor employer shall be transferred as of the date of acquisition to the successor employer for the purpose of rate determination.

(b) When an employing unit succeeds to or acquires a distinct severable portion of the organization, trade, business or assets which is less than substantially all of the employing enterprises of another employing unit, the successor employing unit shall acquire the experience rating record attributable to the portion to which it has succeeded, and the predecessor employing unit shall retain the experience rating record attributable to the portion which it has retained, if (1) the successor continues the organization, trade or business of the portion acquired, (2) the successor within 90 days of acquisition makes a written request to file an application as prescribed by the commissioner for the transfer of the experience rating record for the severable portion acquired from the predecessor (3) and within 90 days from the date the application is mailed to the successor the successor and predecessor employing units sign the application that furnishes the commissioner with sufficient information to substantiate the severable portion and to assign the total and taxable wages and benefit charges to the successor for experience rating purposes.

(c) An employing unit which succeeds to or acquires the organization, trade or business or substantially all of the assets of an employer shall notify the department in writing of the acquisition not later than 30 days after the acquisition. Failure to give notice shall render the predecessor and successor employing unit jointly and severally liable for contributions due and unpaid by the predecessor.

(d) Employment with a predecessor employer shall not be deemed to have been terminated if similar employment is offered by the successor employer and accepted by the employee.

(e) An official, designated by the commissioner, upon his own motion or upon application of an employing unit shall determine if an employing unit is a successor within the meaning of this subdivision and shall notify the employing unit of the determination. The determination shall be final unless the employing unit shall within 30 days after mailing of notice of determination to the employing unit's last known address file a written appeal. Proceedings on the appeal shall be in accordance with section 268.12, subdivision 13.

(f) Notwithstanding subdivision 19, the commissioner may, after any determination of succession, recompute the rate of the employer for any prior year affected by the transfer of part or all of the experience rating record under this subdivision.

Subd. 23. [Repealed, 1955 c 380 s 5]

Subd. 24. **Reassignment.** Notwithstanding any inconsistent provisions of law any employer who has been assigned a contribution rate pursuant to subdivisions 4, 6, and 8 of this section may, for the calendar year 1967, or any calendar year thereafter, upon the voluntary payment of an amount equivalent to any

portion or all of the benefits charged to his account during the period ending June 30 of the preceding year used for the purpose of computing an employer's experience ratio as authorized by said subdivisions 4, 6, and 8, obtain a cancellation of benefits charged to his account during such period equal to such payment so voluntarily made. Upon the payment of such voluntary contribution, plus a surcharge of 25 percent of such benefit charged, within the applicable period prescribed by the provisions of this subdivision, the commissioner shall cancel the benefits equal to such payment, excluding the 25 percent surcharge, so voluntarily made and compute a new experience ratio for such employer. The employer then shall be assigned the contribution rate applicable to the category within which his recomputed experience ratio is included. Such voluntary payments may be made only during the 30-day period immediately following the date of mailing to the employer of the notice of his contribution rate as prescribed in this section; provided that the commissioner may extend this period if he finds that the employer's failure to make such payment within such 30-day period was for good cause; and provided further that notwithstanding any of the foregoing provisions of this subdivision, in no event shall any new experience ratio be computed for any employer or his contribution rate be reduced as a result of any such voluntary payment which he made after the expiration of the 120-day period commencing with the first day of the calendar year for which such rate is effective. Any adjustments under this subdivision shall be used only in the form of credits against accrued or future contributions.

When all or a part of the benefits charged to an employer's account are for the unemployment of 75 percent or more of the employees in an employing unit and the unemployment is caused by damages to the unit by fire, flood, wind or other act of God, the employer may obtain a cancellation of benefits incurred because of that unemployment in the manner provided by this subdivision without being subject to the surcharge of 25 percent otherwise required.

Subd. 25. Payments to fund by state and political subdivisions in lieu of contributions. In lieu of contributions required of employers under this law, the state of Minnesota or its political subdivisions governed by this law shall pay into the unemployment compensation fund an amount equivalent to the amount of benefits charged, and as to weeks of unemployment beginning after January 1, 1979, all of the extended benefits paid based on wages paid by the state of Minnesota or such political subdivisions. If benefits paid an individual are based on wages paid by both the state of Minnesota or such political subdivisions and one or more other employers, the amount payable by the state of Minnesota or such political subdivisions to the fund shall bear the same ratio to total benefits paid to the individual as the base-period wages paid to the individual by the state of Minnesota or such political subdivisions bear to the total amount of base-period wages paid to the individual by all his base-period employers. The amount of payment required under this subdivision shall be ascertained by the commissioner at least four times per year. Payments shall be made and become due on the last day of the month next following the month in which the notice of benefits charged is mailed to the employer. Past due payments of amounts determined due under this subdivision shall be subject to the same interest charges and collection procedures that apply to past due contributions under sections 268.16 and 268.161.

Subd. 26. Reimbursement of fund by state. To facilitate the discharge by the state of Minnesota and its wholly owned instrumentalities of their obligations under subdivision 25 of this section, the state and its wholly owned instrumentalities shall reimburse the unemployment compensation fund as provided in the following clauses:

(1) Every self-sustaining department, institution and wholly owned instrumentality of the state shall pay into the unemployment compensation fund such

amounts as the department of economic security shall certify has been paid from the fund to eligible individuals. For the purposes of this clause a "self-sustaining department, institution or wholly owned instrumentality" is one in which the dedicated income and revenue substantially offsets its cost of operation.

(2) Every partially self-sustaining department, institution and wholly owned instrumentality of the state shall pay into the unemployment compensation fund such proportion of the sum which the department of economic security certifies has been paid from the fund to eligible individuals as the total of its income and revenue bears to its annual cost of operation.

(3) Every department, institution or wholly owned instrumentality of the state which is not self-sustaining shall pay to the unemployment compensation fund such sums as the department of economic security certifies have been paid from the fund to eligible individuals to the extent funds are available from appropriated funds.

(4) The departments, institutions and wholly owned instrumentalities of the state, including the University of Minnesota, which have money available shall immediately reimburse the unemployment compensation fund for benefits paid which were charged to their accounts upon receiving notification from the department of economic security of such charges. If an individual to whom benefits were paid was paid by a department, institution or wholly owned instrumentality during his base period from a special or administrative account or fund provided by law, the payment into the unemployment compensation fund shall be made from such special or administrative account or fund with the approval of the department of administration and such amounts are hereby appropriated.

(5) For those departments, institutions and wholly owned instrumentalities of the state which cannot immediately reimburse the unemployment compensation fund for benefits that were charged to their accounts, the commissioner of economic security shall certify on November 1 of each calendar year to the department of finance as to the unpaid balances due and owing. Upon receipt of the certification the commissioner of the department of finance shall include such unpaid balances in the biennial budget to be submitted to the legislature.

Subd. 27. Method of payment by political subdivision to fund. Effective January 1, 1974, a political subdivision or instrumentality thereof is hereby authorized and directed to pay its obligations under subdivision 25 by moneys collected from taxes or other revenues. Each and every political subdivision authorized to levy taxes may include in its tax levy the amount necessary to pay such obligations. If the taxes authorized to be levied under this subdivision cause the total amount of taxes levied to exceed any limitation whatsoever upon the power of a political subdivision to levy taxes, such political subdivision may levy taxes in excess of the limitations in such amounts as is necessary to meet its obligation under subdivision 25. The expenditures authorized to be made under subdivision 25 shall not be included in computing the cost of government as defined in any home rule charter of any city affected thereby. The governing body of a municipality, for the purpose of meeting its liabilities under subdivision 25, in the event of a deficit, may issue its obligations payable in not more than two years, in an amount which may cause its indebtedness to exceed any statutory or charter limitations, without an election, and may levy taxes to pay therefor in the manner provided in section 475.61.

Subd. 28. Payment to fund by nonprofit corporation and allocation of benefit costs by base period reimbursers. (1) Benefits paid to employees of nonprofit organizations shall be financed in accordance with the provisions of this subdivision. For the purpose of this subdivision, a nonprofit organization is an organization (or group of organizations) described in section 501(c) (3) of the United States

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internal revenue code which is exempt from income tax under section 501(a) of such code. Any nonprofit organization which, pursuant to section 268.04, subdivision 10, clause (9) is, or becomes, subject to this law on or after January 1, 1972, shall pay contributions under the provisions of section 268.06, subdivision 1, unless it elects, in accordance with this paragraph, to pay to the commissioner for the unemployment fund an amount equal to the amount of regular benefits and the state share of the extended benefits charged, that is attributable to service in the employ of such nonprofit organization, to individuals for weeks of unemployment which begin during the effective period of such election.

(a) Any nonprofit organization which is, or becomes, subject to this law on January 1, 1972, may elect to become liable for payments in lieu of contributions for a period of not less than two calendar years beginning with January 1, 1972; provided it files with the commissioner a written notice of its election within the 30 day period immediately following such date.

(b) Any nonprofit organization which becomes subject to this law after January 1, 1972, may elect to become liable for payments in lieu of contributions for a period of not less than two calendar years beginning with the date on which such subjectivity begins by filing a written notice of its election with the commissioner not later than 30 days immediately following the date of the determination of such subjectivity.

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

(d) Any nonprofit organization which has been paying contributions under this law for a period subsequent to January 1, 1972, may change to a reimbursable basis by filing with the commissioner not later than 30 days prior to the beginning of any calendar year a written notice of election to become liable for payments in lieu of contributions. Such election shall not be terminable by the organization for that and the next year.

(e) The commissioner may for good cause extend the period within which a notice of election, or a notice of termination, must be filed and may permit an election to be retroactive but not any earlier than with respect to benefits paid after December 31, 1971.

(f) The commissioner, in accordance with such regulations as he may prescribe, shall notify each nonprofit organization of any determination which he may make of its status as an employer and of the effective date of any election which it makes and of any termination of such election. Such determinations shall be final unless reviewed in accordance with the provisions of section 268.12, subdivision 13.

(2) Payments in lieu of contributions shall be made at the end of each calendar quarter, or at the end of any other period as determined by the commissioner and become due on the last day of the month next following the month in which the notice of benefits charged is mailed to the employer. The commissioner shall bill each nonprofit organization (or group of such organizations) which has elected to make payments in lieu of contributions for an amount equal to the full amount of regular benefits plus one-half of the amount of extended benefits charged during such quarter or other prescribed period that is attributable to service in the employ of such organization.

(3) Past due payments of amounts in lieu of contributions shall be subject to the same interest charges and collection procedures that apply to past due contributions under sections 268.16 and 268.161.

(4) If any nonprofit organization is delinquent in making payments in lieu of contributions as required under this subdivision, the commissioner may terminate such organization's election to make payments in lieu of contributions as of the beginning of the next taxable year, and such termination shall be effective for that and the following taxable year.

Subd. 29. Group accounts. Two or more employers that have become liable for payments in lieu of contributions may file a joint application to the commissioner for the establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of such employers. Each such application shall identify and authorize a group representative to act as the group's agent for the purposes of this subdivision. Upon his approval of the application, the commissioner shall establish a group account for such employers effective as of the beginning of the calendar year in which the application is received by the commissioner and shall notify the group's representative of the effective date of the account. Such account shall remain in effect for not less than two years and thereafter until terminated at the discretion of the commissioner or upon application by the group at least 30 days prior to the end of such two year period or 30 days prior to January 1 of any calendar year subsequent to such two calendar years. Upon establishment of the account, each member of the group shall be liable for payments in lieu of contributions in the amount that bears the same ratio to the total benefits paid that are attributable to service performed in the employ of all members of the group as the total wage credits for service in employment by such member bear to the total during the base period for service performed in the employ of all members of the group. The commissioner shall prescribe such regulations as he deems necessary with respect to applications for establishment, maintenance and termination of group accounts that are authorized by this subdivision, for addition of new members to, and withdrawal of active members from, such account, and for the determination of the amounts that are payable under this subdivision by members of the group and the time and manner of such payments.

Subd. 30. Payments reimbursed by federal government. Notwithstanding the provisions of subdivisions 25, 26 and 28, clause (1), no employer shall be liable for payments in lieu of contributions with respect to extended benefit payments which are wholly reimbursed to this department by the federal government.

Subd. 31. Election by state or political subdivision to be a contributing employer. (1) Notwithstanding the provisions of section 268.06, subdivisions 25 and 26, after December 31, 1977 an employer as defined in section 268.04, subdivision 10, clauses (14) and (15) may:

(a) Elect to be a contributing employer subject to the provisions of section 268.06, subdivisions 1, 2, 3a, 4, 5, 6, 8, 18, 19, 20 and 24 and section 268.16 beginning with January 1, 1978 if it files with the commissioner a written notice of its election within 30 days immediately following January 1, 1978; or

(b) Elect for a subsequent calendar year, not having elected to be a contributing employer beginning with January 1, 1978, to be a contributing employer subject to the provisions of section 268.06, subdivisions 1, 2, 3a, 4, 5, 6, 8, 18, 19, 20 and 24 and section 268.16 if it files with the commissioner a written notice of its election within 30 days immediately following the first day of the subsequent calendar year.

An election shall continue for a minimum period of two calendar years immediately following the effective date of the election and thereafter unless a written notice terminating the election is filed with the commissioner not later than 30 days prior to the beginning of the calendar year for which the termination shall first be effective.

(2) The provisions of section 268.06, subdivisions 25, 26, and 27 as to the method of payments to the unemployment compensation fund shall apply to all contributions paid by or due from employers electing to be contributing employers under clause (1) of this subdivision.

Subd. 32. **Noncharging benefits based on public service wages.** Notwithstanding any other provision of section 268.06, benefits paid for weeks of unemployment subsequent to January 1, 1976 based upon public service wages for services performed in a public service job to the extent that the wages are paid with funds provided under the comprehensive employment and training act of 1973, shall not be charged against the account of an employer under the provisions of section 268.06, subdivision 5 or section 268.06, subdivisions 25, 28, or 29 to the extent that the unemployment compensation fund is reimbursed for the benefits pursuant to section 221 of United States Public Law 94-444. An employer's account that has been charged with such benefits prior to the effective date of this act shall be relieved of such charges to the extent that the unemployment compensation fund is reimbursed for such benefits pursuant to section 221, United States Public Law 94-444.

Subd. 33. **Non-charging provisions not applicable to reimbursing employers.** The non-charging of benefits provisions of section 268.09 do not apply to employers making payments in lieu of contributions in accordance with subdivisions 25, 26, 28 and 29.

History: *Ex1936 c 2 s 4; 1937 c 306 s 2; 1939 c 443 s 3; 1941 c 554 s 3; 1943 c 650 s 2; 1945 c 376 s 3; 1947 c 32 s 1-8; 1947 c 432 s 3-5,11; 1947 c 600 s 7; 1949 c 526 s 1; 1949 c 605 s 3-6,17,18; 1951 c 442 s 2; 1953 c 97 s 5,6,8; 1953 c 288 s 1; 1955 c 380 s 2-4,6; 1957 c 25 s 1; 1957 c 873 s 2; 1959 c 702 s 2-4; 1965 c 45 s 40; 1965 c 741 s 6-11; 1967 c 573 s 3; 1967 c 617 s 1; 1967 c 856 s 1; 1969 c 3 s 1; 1969 c 567 s 3; 1969 c 854 s 6; 1971 c 860 s 1; 1971 c 942 s 3-6; 1973 c 254 s 3; 1973 c 599 s 2-4; 1975 c 336 s 6-10; 1977 c 4 s 4,5; 1977 c 297 s 6-11; 1977 c 430 s 25 subd 1; 1977 c 455 s 82; 1978 c 674 s 60; 1979 c 181 s 4-8; 1980 c 508 s 2-7; 1Sp1982 c 1 s 5-12 (4337-24)*

268.07 BENEFITS PAYABLE.

Subdivision 1. **Paid from the fund.** All benefits provided herein shall be payable from the fund and shall be paid through employment offices, in accordance with such regulations as the commissioner may prescribe.

Subd. 2. **Weekly benefit amount and duration.** If the commissioner finds that an individual has earned 15, or more, credit weeks within the base period of employment in insured work with one or more employers, benefits shall be payable to such individual during his benefit year as follows:

(1) Weekly benefit amount shall be equal to 60 percent of the first \$85, 40 percent of the next \$85 and 50 percent of the remainder of the average weekly wage of such individual, computed to the nearest whole dollar. The maximum weekly benefit amount of claims for benefits which establish a benefit year subsequent to July 1, 1979 shall be 66 2/3 percent of the average weekly wage, except as provided in clause (d).

On or before June 30 of each year the commissioner shall determine the average weekly wage paid by employers subject to sections 268.03 to 268.24 in the following manner:

(a) The sum of the total monthly employment reported for the previous calendar year shall be divided by 12 to determine the average monthly employment.

(b) The sum of the total wages reported for the previous calendar year shall be divided by the average monthly employment to determine the average annual wage.

(c) The average annual wage shall be divided by 52 to determine the average weekly wage.

The maximum weekly benefit amount as so determined computed to the nearest whole dollar shall apply to claims for benefits which establish a benefit year which begins subsequent to June 30 of each year.

(d) The maximum weekly benefit amount for claims for benefits which establish a benefit year subsequent to June 30, 1982, and prior to July 1, 1983, shall be \$184.

The maximum weekly benefit amount for claims for benefits which establish a benefit year subsequent to June 30, 1983, and prior to July 1, 1984, shall be \$191.

The maximum weekly benefit amount for claims for benefits which establish a benefit year subsequent to June 30, 1984, and prior to July 1, 1985, shall be \$198.

(2) An individual's maximum amount of regular benefits payable in a benefit year shall not exceed the lesser of (a) 26 times his weekly benefit amount or (b) 70 percent of the number of credit weeks earned by such an individual computed to the nearest whole week times his weekly benefit amount.

(3) Each eligible individual who is unemployed in any week shall be paid with respect to such week a benefit in an amount equal to his weekly benefit amount less that part of his earnings, including holiday pay, payable to him with respect to such week which is in excess of \$25. Such benefit, if not a multiple of \$1, shall be computed to the next higher multiple of \$1.

(4) The provisions of this subdivision shall apply to claims for benefits which establish a benefit year subsequent to June 30, 1982.

Subd. 2a. **Exception.** Notwithstanding the provisions of subdivision 2, if the commissioner finds that an individual has earned credit weeks in seasonal employment, benefits shall be payable only if the commissioner finds that the individual has earned 15 credit weeks in employment which is not seasonal, in addition to any credit weeks in seasonal employment. For the purposes of this subdivision, "seasonal employment" means employment with a single employer in the recreation or tourist industry which is available with the employer for 15 consecutive weeks or less each calendar year.

Subd. 3. **When wage credits are not available.** (1) No individual may receive benefits in a benefit year unless, subsequent to the beginning of the next preceding benefit year during which he received benefits, he performed service in insured work as defined in section 268.04, subdivision 17, and earned remuneration for such service in an amount equal to not less than the minimum wage credits required to qualify for benefits.

(2) No employer who provided 90 percent or more of the wage credits in a claimant's base period shall be charged for benefits based upon earnings of such claimant during a subsequent base period unless he has employed such claimant in any part of such subsequent base period.

(3) Wages paid by an employing unit may not be used for benefit purposes by any individual who (a) individually or jointly with a spouse, parent or child owns or controls directly or indirectly 25 percent or more interest in the employing unit; or (b) is the spouse, parent or minor child of any individual who owns or controls directly or indirectly 25 percent or more interest in the employing unit; and (c) is not permanently separated from employment.

This clause shall be effective when the individual has been paid four times the individual's weekly benefit amount in the current benefit year.

(4) Wages paid by an employing unit may not be used for benefit purposes during a benefit year commencing after October 1, 1982, if the total amount of wage credits in the base period equal or exceed three times the average annual wage, as determined in subdivision 2, in the second year preceding the calendar year in which the individual's valid claim was established.

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(5) Wages paid in seasonal employment, as defined in subdivision 2a, are not available for benefit purposes during weeks in which there is no seasonal employment available with the employer.

Subd. 4. MS1949 [Repealed, 1951 c 442 s 3]

Subd. 4. MS1980 [Repealed, 1Sp1981 c 1 s 43]

Subd. 5. [Repealed, 1975 c 336 s 25]

Subd. 6. [Repealed, 1947 c 32 s 9]

History: *Ex1936 c 2 s 5; 1937 c 306 s 3; 1939 c 443 s 4; 1941 c 554 s 4; 1943 c 650 s 3; 1945 c 376 s 4; 1947 c 432 s 6; 1949 c 605 s 7,8; 1951 c 442 s 3; 1953 c 587 s 1; 1955 c 816 s 1; 1957 c 780 s 1; 1965 c 741 s 12,13; 1967 c 573 s 4; 1969 c 854 s 7; 1971 c 408 s 1; 1971 c 942 s 7,8; Ex1971 c 10 s 1; 1973 c 599 s 5; 1975 c 104 s 1; 1975 c 336 s 11; 1977 c 4 s 6; 1977 c 297 s 12; 1979 c 284 s 1; 1Sp1982 c 1 s 13-15 (4337-25)*

268.071 EXTENDED BENEFITS.

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

(1) **Extended benefit period.** "Extended benefit period" means a period which

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

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

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

(2) **State "on" indicator.** There is a "state 'on' indicator" for this state for a week if the commissioner determines, in accordance with the regulations of the United States secretary of labor, that for the period consisting of such week and the immediately preceding 12 weeks, the rate of insured unemployment (not seasonally adjusted) under this law

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

(b) equaled or exceeded five percent.

The determination of whether there has been a state "on" indicator beginning any extended benefit period may be made as provided in clauses (a) and (b) above or a "state 'on' indicator" shall exist if the rate described in clause (b) equaled or exceeded six percent irrespective of whether the percentage requirement provided by clause (a) is met or exceeded.

(3) **State "off" indicator.** There is a "state 'off' indicator" for this state for a week if, for the period consisting of such week and the immediately preceding 12 weeks, the rate of insured unemployment is less than six percent and the requirements for a "state 'on' indicator" under clause (2) of this subdivision are not satisfied.

(4) **Rate of insured unemployment.** "Rate of insured unemployment," for purposes of clauses (2) and (3), means the percentage derived by dividing the average weekly number of individuals filing claims for regular benefits in this state for weeks of unemployment with respect to the most recent 13 consecutive week period, as determined by the commissioner on the basis of his reports to the United States secretary of labor, by the average monthly employment covered

under this law for the first four of the most recent six completed calendar quarters ending before the end of such 13 week period.

(5) **Regular benefits.** "Regular benefits" means benefits payable to an individual under this law or under any other state law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) other than extended benefits and additional benefits.

(6) **Extended benefits.** "Extended benefits" means benefits (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) payable to an individual under the provisions of this section for weeks of unemployment in his eligibility period.

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

(8) **Eligibility period.** "Eligibility period" of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

(9) **Exhaustee.** "Exhaustee" means an individual who, with respect to any week of unemployment in his eligibility period:

(a) Has received, prior to such week, all of the regular benefits that were available to him under this law or any other state law (including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. chapter 85) in his current benefit year that includes such week;

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

(b) His benefit year having expired prior to such week, has no, or insufficient, wages and/or employment on the basis of which he could establish a new benefit year that would include such week or having established a benefit year that includes such week, he is precluded from receiving regular compensation by reason of: (i) a state law provision which meets the requirements of section 3304 (a) (7) of the Internal Revenue Code of 1954, or (ii) a disqualification determination which cancelled wage credits or totally reduced his benefit rights, or (iii) benefits are not payable by reason of a seasonal limitation in a state unemployment insurance law; and

(c) Has no right to unemployment benefits or allowances, as the case may be, under the railroad unemployment insurance act, the trade expansion act of 1962, the automotive products act of 1965 and such other federal laws as are specified in regulations issued by the United States secretary of labor; and has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada; but if he is seeking such benefits and the appropriate agency finally determines that he is not entitled to benefits under such law he is considered an exhaustee.

(10) **State law.** "State law" means the unemployment insurance law of any state, approved by the United States secretary of labor under section 3304 of the Internal Revenue Code of 1954.

Subd. 2. **Effect of state law provisions relating to regular benefits on claims for, and the payment of, extended benefits.** Except when the result would be inconsistent with the other provisions of this section, as provided in the regulations of the commissioner, the provisions of this chapter which apply to claims for, or

the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits.

Subd. 3. Eligibility requirements for extended benefits. An individual shall be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period only if the commissioner finds that with respect to such week:

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

(2) He has satisfied the requirements of this law for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits; and

(3) He has, during his base period earned wage credits available for benefit purposes of not less than 40 times his weekly benefit amount as determined pursuant to section 268.07, subdivision 2.

Subd. 4. Weekly extended benefit amount. The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be an amount equal to the weekly benefit amount payable to him during his applicable benefit year.

Subd. 5. Total extended benefit amount. The total extended benefit amount payable to any eligible individual with respect to his applicable benefit year shall be 50 percent of the total amount of regular benefits which were payable to him under this law in his applicable benefit year, provided that at the expiration of his benefit year, his remaining balance of extended benefits shall be reduced, but not below zero, by the product arrived at by multiplying his weekly extended benefit amount by the number of weeks in his expired benefit year for which any trade readjustment allowance was paid him pursuant to sections 231 to 234 of the trade act of 1974, as amended.

Subd. 6. Beginning and termination of extended benefit period. (1) Whenever an extended benefit period is to become effective in this state as a result of a state "on" indicator, or an extended benefit period is to be terminated in this state as a result of a state "off" indicator the commissioner shall make an appropriate public announcement.

(2) Computations required by the provisions of subdivision 1, clause (4) shall be made by the commissioner, in accordance with regulations prescribed by the United States secretary of labor.

(3) Except as otherwise provided, the state share of the benefits paid to an individual under this section shall be charged to the employment experience record of the base period employer of the individual to the extent regular benefits were charged to the base period employer under sections 268.06, subdivision 5, and 268.09, subdivision 1, clause (4).

(4) With respect to an employer which has elected to be a contributing employer under the provisions of section 268.06, subdivision 31, all benefits paid under this section which are based upon services for such contributing employer shall be charged to such contributing employer's account as to weeks of unemployment beginning after January 1, 1979.

Subd. 7. Effect of federal law. If the Federal-State Extended Unemployment Compensation Act of 1970 is amended so as to authorize this state to pay benefits for an extended benefit period in a manner other than that currently provided by this section, then, and in such case, all the terms and conditions contained in the amended provisions of such federal law shall become a part of this section to the extent necessary to authorize the payment of benefits to eligible individuals as permitted under such amended provision, provided that the federal share continues to be at least 50 percent of the extended benefits paid to individuals under the extended benefit program. The commissioner shall also pay

benefits at the earliest possible date in the manner allowed by the Federal-State Unemployment Compensation Act of 1970, as amended through January 1, 1975, the provisions of which shall become a part of this section to the extent necessary to authorize the payment of benefits to eligible individuals.

Subd. 8. **Interstate claims.** An individual shall not be eligible for extended benefits for any week if:

(a) Extended benefits are payable for that week pursuant to an interstate claim filed in any state under the interstate benefit payment plan; and

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

Subd. 9. **Eligibility requirements.** Notwithstanding the provisions of subdivision 2, an individual shall be ineligible for the payment of extended benefits for any week of unemployment in his eligibility period if the commissioner finds that during that week he failed to accept any offer of suitable work, failed to apply for any suitable work to which he was referred by the commissioner or failed to actively engage in seeking work.

Any individual who has been found ineligible for extended benefits for any week by reason of this subdivision shall also be denied benefits for the week following the week in which the failure occurred and until he has been employed in each of four subsequent weeks, whether or not consecutive, and has earned remuneration of not less than four times his extended weekly benefit amount.

For the purpose of this subdivision "suitable work" means, with respect to any individual, any work which is within that individual's capabilities and which has a gross average weekly remuneration payable which exceeds the sum of the individual's weekly benefit amount as determined under subdivision 4 plus the amount, if any, of supplemental unemployment benefits, as defined in section 501(c) (17) (D) of the Internal Revenue Code of 1954, as amended, payable to the individual for that week. The work must pay wages not less than the higher of the minimum wage provided by section 6(a) (1) of the Fair Labor Standards Act of 1938, as amended, without regard to any exemption, or the applicable state or local minimum wage.

No individual shall be denied extended benefits for failure to accept an offer of or apply for any suitable work if: (a) the position was not offered to the individual in writing or was not listed with employment service; (b) the failure could not result in a denial of benefits under the definition of suitable work for regular benefit claimants in section 268.09, subdivision 2 to the extent that the criteria of suitability therein are not inconsistent with this subdivision; or (c) the individual furnishes satisfactory evidence to the commissioner that his prospects for obtaining work in his customary occupation within a reasonably short period are good. If the evidence furnished is found to be satisfactory for this purpose, the determination of whether any work is suitable for the individual shall be made in accordance with the definition of suitable work for regular benefit claimants in section 268.09, subdivision 2, clause (a) without regard to the definition or special disqualification specified in this subdivision.

No work shall be found to be suitable work for an individual which does not accord with the labor standard provisions required by section 3304(a) (5) of the Internal Revenue Code of 1954, as amended, and set forth in section 268.09, subdivision 2, clauses (b) (1) (2) and (3).

For the purpose of this subdivision an individual is "actively seeking work" during any week if the individual has engaged in a systematic and sustained effort

to obtain work during the week, and the individual furnishes tangible evidence that he has engaged in that effort during the week.

The employment service shall refer any claimant entitled to extended benefits under section 268.071 to any work which is suitable work for that individual under this subdivision.

History: 1971 c 61 s 1; 1974 c 355 s 58; 1975 c 1 s 1; 1975 c 336 s 12; 1977 c 297 s 13,14; 1Sp1982 c 1 s 16-21

268.072 CHILD SUPPORT INTERCEPT OF UNEMPLOYMENT BENEFITS.

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

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

(b) "Child support obligations" means obligations which are being enforced by the public agency responsible for child support enforcement pursuant to a plan described in section 454 of the social security act which has been approved by the secretary of health and human services under part D of title IV of the social security act;

(c) "Child support agency" means the public agency responsible for child support enforcement pursuant to a plan described in section 454 of the social security act.

Subd. 2. **Notice of claim.** An individual filing a new claim for unemployment compensation shall, at the time of filing the claim, disclose whether or not the individual owes child support obligations. If any individual discloses that he or she owes child support obligations, and is determined to be eligible for unemployment compensation, the commissioner shall notify the child support agency that the individual has been determined to be eligible for unemployment compensation.

Subd. 3. **Withholding of benefits.** The commissioner shall deduct and withhold from any unemployment compensation payable to an individual that owes child support obligations:

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

(b) The amount determined pursuant to an agreement submitted to the commissioner under section 454 (20) (B) (i) of the social security act by the child support agency, unless (c) is applicable; or

(c) Any amount otherwise required to be so deducted and withheld from the unemployment compensation pursuant to "legal process" as defined in section 462(e) of the social security act, properly served upon the commissioner.

Subd. 4. **Payment by the commissioner.** Any amount deducted and withheld under subdivision 3 shall be paid by the commissioner to the public agency responsible for child support enforcement.

Subd. 5. **Effect of payments.** Any amount deducted and withheld under subdivision 3 shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by the individual to the public agency responsible for child support enforcement in satisfaction of the individual's child support obligations.

Subd. 6. **Reimbursement of costs.** Appropriate arrangements shall be made for reimbursement by the child support agency for the administrative costs

incurred by the commissioner under this subdivision and sections 256.872 to 256.878 and 518.551 and 518.611 which are attributable to child support obligations being enforced by the public agency responsible for child support enforcement.

History: *1Sp1982 c 1 s 22*

268.08 PERSONS ELIGIBLE TO RECEIVE BENEFITS.

Subdivision 1. **Eligibility conditions.** An individual shall be eligible to receive benefits with respect to any week of unemployment only if the commissioner finds that:

(1) He has registered for work at and thereafter has continued to report to an employment office, or agent of such office, in accordance with such regulations as the commissioner may prescribe; except that the commissioner may by regulation waive or alter either or both of the requirements of this clause as to types of cases or situations with respect to which he finds that compliance with such requirements would be oppressive or would be inconsistent with the purposes of sections 268.03 to 268.24;

(2) He has made a claim for benefits in accordance with such regulations as the commissioner may prescribe; and

(3) He was able to work and was available for work, and was actively seeking work, provided that individual's weekly benefit amount shall be reduced one-fifth for each day such individual is unable to work or unavailable for work; provided further that benefits shall not be denied by application of this clause to an individual who is in training with the approval of the commissioner or in training approved pursuant to section 236 of the Trade Act of 1974, as amended:

An individual shall be deemed unavailable for work with respect to any week which occurs in a period when he is a full-time student in attendance at, or on vacation from an established school, college or university unless a majority of the credit weeks earned in his base period were for services performed during weeks in which he was attending school as a full-time student.

(4) He has been unemployed for a waiting period of one week during which he is otherwise eligible for benefits under sections 268.03 to 268.24, provided, however, payment for the waiting week shall be made to such individual after he has qualified for and been paid benefits for four weeks of unemployment in a benefit year which period of unemployment is terminated because of such individual's return to employment. No individual shall be required to serve a waiting period of more than one week within the one year period subsequent to filing a valid claim and commencing with the week within which such valid claim was filed.

Subd. 2. Week of unemployment. No week shall be counted as a week of unemployment for the purposes of this section:

(1) Unless it occurs subsequent to the filing of a valid claim for benefits;

(2) Unless it occurs after benefits first could become payable to any individual under sections 268.03 to 268.24;

(3) With respect to which he is receiving, has received, or has filed a claim for unemployment compensation benefits under any other law of this state, or of any other state, or the federal government, including readjustment allowances under Title V, Servicemen's Readjustment Act, 1944, but not including benefits under the Veterans Readjustment Assistance Act of 1952 or any other federal or state benefits which are merely supplementary to those provided for under sections 268.03 to 268.24; provided that if the appropriate agency of such other state or the federal government finally determines that he is not entitled to such benefits, this provision shall not apply.

Subd. 3. **Not eligible.** An individual shall not be eligible to receive benefits for any week with respect to which he is receiving, has received, or has filed a claim for remuneration in an amount equal to or in excess of his weekly benefit amount in the form of

(1) termination, severance, or dismissal payment or wages in lieu of notice whether legally required or not; provided that if a termination, severance, or dismissal payment is made in a lump sum, the employer may allocate such lump sum payment over a period equal to the lump sum divided by the employee's regular pay while employed by such employer; provided any such payment shall be applied for a period immediately following the last day of work but not to exceed 28 calendar days; or

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

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

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

(5) 50 percent of a primary insurance benefit under Title II of the social security act as amended, or similar old age benefits under any act of congress or this state or any other state.

Provided, that if such remuneration is less than the benefits which would otherwise be due under sections 268.03 to 268.24, he shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration; provided, further, that if the appropriate agency of such other state or the federal government finally determines that he is not entitled to such benefits, this provision shall not apply.

Subd. 4. **Social security amount deducted from benefits.** Any claimant aged 62 or over who has not established a valid claim based on employment subsequent to the first receipt of primary insurance benefits under Title II of the federal social security act, as amended, or similar old age benefits under any act of congress or this state or any other state shall be required to state in writing at the time of the filing of his claim whether he intends to seek Title II social security benefits for any week during which he will receive unemployment benefits, and if he so intends there shall be withheld from his weekly unemployment benefits an amount sufficient to cover the weekly equivalent of his social security benefit. Any claimant disclaiming such intention but who nevertheless receives such social security benefits for weeks for which he previously received unemployment benefits shall be liable for repayment of such unemployment benefits and otherwise subject to the provisions of section 268.18.

Subd. 5. [Repealed, 1977 c 297 s 22]

Subd. 6. **Services performed for state, municipalities or charitable corporation.** Effective January 1, 1978 benefits based on service in employment defined in section 268.04, subdivision 12, clauses (7), (8) and (9), shall be payable in the same amount, on the same terms and subject to the same conditions as benefits payable on the basis of other service subject to this chapter; except that

(a) With respect to weeks of unemployment after December 31, 1977, benefits based upon service performed in an instructional, research, or principal adminis-

trative capacity for an institution of higher education or a public school, or a nonpublic school or the Minnesota school for the deaf or Minnesota braille and sight saving school, or in a public or nonpublic school for an educational cooperative service unit established under section 123.58, or any other educational service agency as defined in section 3304 (a) (6) (A) (IV) of the federal unemployment tax act, shall not be paid for any week of unemployment commencing during the period between two successive academic years or terms, or during a similar period between two regular but not successive terms, or during a period of paid sabbatical leave provided for in the individual's contract, to any individual if the individual performs the services in the first of the academic years or terms and if there is a contract or a reasonable assurance that the individual will perform services in any such capacity for any institution of higher education, public school, nonpublic school, state deaf and sight saving schools, an educational cooperative service unit, other educational service agency, or developmental achievement center in the second of the academic years or terms, and

(b) With respect to service performed after December 31, 1977 in any capacity, other than those capacities described in clause (a) of this subdivision, for a public school or nonpublic school, or the Minnesota school for the deaf or Minnesota braille and sight saving school, or in a public or nonpublic school or for an educational cooperative service unit established under section 123.58, or any other educational service agency as defined in section 3304 (a) (6) (A) (IV) of the federal unemployment tax act, benefits shall not be paid on the basis of these services to any individual for any week which commences during a period between two successive academic years or terms if the individual performs the services in the first of the academic years or terms and there is a reasonable assurance that the individual will perform the services in the second of the academic years or terms, and

(c) With respect to any services described in clause (a) or (b), benefits payable on the basis of the services shall not be paid to any individual for any week which commences during an established and customary vacation period or holiday recess if the individual performs the services in the period immediately before the vacation period or holiday recess, and there is a reasonable assurance that the individual will perform the services in the period immediately following the vacation period or holiday recess.

Subd. 7. Professional athletes. Benefits shall not be paid to an individual on the basis of any service substantially all of which consist of participating in sports or athletic events or training or preparing to so participate for any week which commences during the period between two successive sport seasons (or similar periods) if such individual performed such service in the first of such seasons (or similar period) and there is a reasonable assurance that such individual will perform such service in the later of such seasons (or similar periods).

Subd. 8. Illegal aliens. (a) Benefits shall not be paid on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for the purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed (including an alien who was lawfully present in the United States as a result of the application of the provision of section 203(a)(7) or section 212(d)(5) of the Immigration and Nationality Act).

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

(c) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable

because of his alien status shall be made except upon a preponderance of the evidence.

History: *Ex*1936 c 2 s 6; 1937 c 43 s 2; 1937 c 306 s 4; 1939 c 443 s 5; 1941 c 554 s 5; 1943 c 650 s 4; 1945 c 376 s 5; 1949 c 605 s 9; 1953 c 97 s 9; 1953 c 699 s 10; 1965 c 741 s 14-16; 1969 c 6 s 34; 1971 c 942 s 9,10; 1973 c 599 s 6-8; 1975 c 104 s 2; 1975 c 336 s 13-15; 1975 c 359 s 23; 1976 c 163 s 59; 1976 c 271 s 78; 1977 c 4 s 7; 1977 c 297 s 15-18; 1978 c 612 s 1; 1979 c 24 s 1; 1979 c 181 s 9,10,19; 1980 c 508 s 8; 1Sp1982 c 1 s 23-25 (4337-26)

268.09 UNEMPLOYMENT COMPENSATION; DISQUALIFIED FROM BENEFITS.

Subdivision 1. Disqualifying conditions. An individual separated from employment under clauses (1), (2) and (3) shall be disqualified for waiting week credit and benefits until 4 calendar weeks have elapsed following his separation and he has earned four times his weekly benefit amount in insured work.

(1) **Voluntary leave.** The individual voluntarily and without good cause attributable to the employer discontinued his employment with such employer. For the purpose of this clause, a separation from employment by reason of its temporary nature or for inability to pass a test or for inability to meet performance standards necessary for continuation of employment shall not be deemed voluntary.

A separation shall be for good cause attributable to the employer if it occurs as a consequence of sexual harassment. 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 employee's submission to such conduct or communication is made a term or condition of the employment, (2) the employee's submission to or rejection of such conduct or communication is the basis for decisions affecting employment, or (3) such conduct or communication has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment and the employer knows or should know of the existence of the harassment and fails to take timely and appropriate action.

(2) **Discharge for misconduct.** The individual was discharged for misconduct, not amounting to gross misconduct connected with his work or for misconduct which interferes with and adversely affects his employment.

An individual shall not be disqualified under clauses (1) and (2) of this subdivision under any of the following conditions:

(a) The individual voluntarily discontinued his employment to accept work offering substantially better conditions of work or substantially higher wages or both;

(b) The individual is separated from employment due to his own serious illness provided that such individual has made reasonable efforts to retain his employment;

An individual who is separated from his employment due to his illness of chemical dependency which has been professionally diagnosed or for which he has voluntarily submitted to treatment and who fails to make consistent efforts to maintain the treatment he knows or has been professionally advised is necessary to control that illness has not made reasonable efforts to retain his employment.

(c) The individual accepts work from a base period employer which involves a change in his location of work so that said work would not have been deemed to be suitable work under the provisions of subdivision 2 and within a period of 13 weeks from the commencement of said work voluntarily discontinues his employment due to reasons which would have caused the work to be unsuitable under the provision of said subdivision 2;

(d) The individual left employment because he had reached mandatory retirement age and was 65 years of age or older;

(e) The individual is terminated by his employer because he gave notice of intention to terminate employment within 30 days. This exception shall be effective only through the calendar week which includes the date of intended termination, provided that this exception shall not result in the payment of benefits for any week for which he receives his normal wage or salary which is equal to or greater than his weekly benefit amount;

(f) The individual is separated from employment due to the completion of an apprenticeship program, or segment thereof, approved pursuant to chapter 178.

(3) **Discharge for gross misconduct.** The individual was discharged for gross misconduct connected with his work or gross misconduct which interferes with and adversely affects his employment and provided further that the commissioner is empowered to impose a total disqualification for the benefit year and to cancel part or all of the wage credits from the last employer from whom he was discharged for gross misconduct connected with his work.

For the purpose of this clause "gross misconduct" shall be defined as misconduct involving assault and battery or the malicious destruction of property or the theft of money or property of a value of \$100 or more or arson or sabotage or embezzlement or any other act the commission of which amounts to a felony or gross misdemeanor.

(4) **Limited or no charge of benefits.** Benefits paid subsequent to an individual's separation under any of the foregoing clauses, excepting clauses (2)(c) and (2)(e), shall not be used as a factor in determining the future contribution rate of the employer from whose employment such individual separated.

Benefits paid subsequent to an individual's failure, without good cause, to accept an offer of suitable re-employment shall not be used as a factor in determining the future contribution rate of the employer whose offer of re-employment he failed to accept or whose offer of re-employment was refused solely due to the distance of the available work from his residence, the individual's own serious illness or his other employment at the time of the offer.

(5) An individual who was employed by an employer shall not be disqualified for benefits under this subdivision for any acts or omissions occurring after his separation from employment with the employer.

(6) **Disciplinary suspensions.** An individual shall be disqualified for waiting week credit and benefits for the duration of any disciplinary suspension of 30 days or less resulting from his own misconduct. Disciplinary suspensions of more than 30 days shall constitute a discharge from employment.

Subd. 2. Failure to apply for or accept suitable work or re-employment. An individual shall be disqualified for waiting week credit and benefits during the week of occurrence and until four calendar weeks have elapsed following his refusal or failure and he has earned four times his weekly benefit amount in insured work if the commissioner finds that he has failed, without good cause, either to apply for available, suitable work of which he was advised by the employment office, or the commissioner or to accept suitable work when offered him, or to return to his customary self-employment (if any) when so directed by the commissioner, or to accept suitable re-employment offered by a base period employer.

(a) In determining whether or not any work is suitable for an individual, the commissioner shall consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience, his length of unemployment and prospects of securing local work in his customary occupation, and the distance of the available work from his residence.

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(b) Notwithstanding any other provisions of sections 268.03 to 268.24, no work shall be deemed suitable, and benefits shall not be denied thereunder to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

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

(2) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(3) if as a condition of being employed the individual would be required to join a union or to resign from or refrain from joining any bona fide labor organization;

(4) if the individual is in training with the approval of the commissioner.

Subd. 3. Labor dispute. An individual who has left or partially or totally lost his employment with an employer because of a strike or other labor dispute at the establishment in which he is or was employed shall be disqualified for benefits:

(a) For each week during which the strike or labor dispute is in progress; or

(b) For one week following the commencement of the strike or labor dispute if he is not participating in or directly interested in the strike or labor dispute.

Participation includes the failure or refusal of an individual to accept and perform available and customary work at the establishment.

An individual who has left or partially or totally lost his employment with an employer because of a jurisdictional controversy between two or more labor organizations at the establishment in which he is or was employed shall be disqualified for benefits for each week during which the jurisdictional controversy is in progress.

For the purpose of this subdivision the term "labor dispute" shall have the same definition as provided in the Minnesota labor relations act. Nothing in this subdivision shall be deemed to deny benefits to any employee:

(a) who becomes unemployed because of a strike or lockout caused by an employer's willful failure to observe the terms of the safety and health section of a union contract or failure to comply with an official citation for a violation of federal and state laws involving occupational safety and health; provided, however, that benefits paid in accordance with this provision shall not be charged to the employer's experience rating account if, following official appeal proceedings, it is held that there was no willful failure on the part of the employer.

(b) who becomes unemployed because of a lockout.

(c) who is dismissed during the period of negotiation in any labor dispute and prior to the commencement of a strike.

Provided, however, that voluntary separation during the time that the strike or other labor dispute is in progress at the establishment shall not be deemed to terminate the individual's participation in or direct interest in such strike or other labor dispute for purposes of this subdivision.

Benefits paid to an employee who has left or partially or totally lost his employment because of a strike or other labor dispute at his primary place of employment shall not be charged to his employer's account unless the employer was a party to the particular strike or labor dispute.

Notwithstanding any other provision of this section, an individual whose last separation from employment with an employer occurred prior to the commencement of the strike or other labor dispute and was permanent or for an indefinite period, shall not be denied benefits or waiting week credit solely by reason of his failure to apply for or to accept recall to work or re-employment with the employer

during any week in which the strike or other labor dispute is in progress at the establishment in which he was employed.

Subd. 4. **Insured work.** "Insured work" as used in this section means insured work as defined in section 268.04, subdivision 17, and employment which is covered by the provisions of the Railroad Unemployment Compensation Act or Title 5 of U.S.C. Chapter 85.

Subd. 5. **Concurrent weeks.** Weeks of disqualification imposed under the provisions of this section shall be concurrent where two or more disqualifying periods overlap.

Subd. 6. **Week of unemployment defined.** A week of unemployment, as used in this section, shall mean a week during which such individual would be otherwise eligible for benefits.

Subd. 7. **Application.** This section shall apply to any separation from employment or refusal of a job referral or job offer occurring in this or any other state if such employment is insured under this law, a similar law of another state, the Railroad Unemployment Act or Title 5 of U.S.C. Chapter 85.

Subd. 8. **Training approved under trade act of 1974.** An individual shall not be disqualified for benefits under subdivision 1, clause (1) if he left work which was not suitable employment to enter approved training or disqualified under subdivision 2, if he is in approved training. For the purposes of this subdivision "suitable employment" is defined in and the criteria for approval of training are set forth in section 236 of the Trade Act of 1974, as amended.

History: *Ex*1936 c 2 s 7; 1937 c 401 s 1; 1939 c 443 s 6; 1941 c 554 s 6; 1943 c 650 s 5; 1945 c 376 s 6; 1947 c 432 s 7; 1965 c 741 s 17; 1967 c 342 s 1; 1967 c 573 s 5; 1969 c 42 s 1; 1971 c 942 s 11; 1973 c 23 s 1; 1973 c 599 s 9; 1974 c 477 s 1; 1975 c 336 s 16; 1977 c 4 s 8; 1977 c 242 s 1; 1977 c 297 s 19; 1978 c 618 s 1; 1979 c 181 s 11-13; 1980 c 508 s 9; 1982 c 619 s 1; 1Sp1982 c 1 s 26-28 (4337-27)

268.10 DETERMINATION OF CLAIMS FOR BENEFITS; APPEALS.

Subdivision 1. **Filing.** Claims for benefits shall be made in accordance with such regulations as the commissioner may prescribe. Each employer shall post and maintain printed statements of such regulations in places readily accessible to individuals in his service and shall make available to each such individual at the time he becomes unemployed, a printed statement of such regulations. Such printed statements shall be supplied by the commissioner to each employer without cost to him.

(1) Any employer upon separation of an employee from his employment for any reason which may result in disqualification for benefits under section 268.09, shall furnish to such employee a separation notice which shall provide the employer's name, address, and employer account number as registered with the department, the employee's name and social security account number, the inclusive dates of his employment, and the reason for the separation. A copy of such separation notice shall be filed with the commissioner within seven days of such separation. The commissioner shall require each individual filing a claim for benefits to establish a benefit year to furnish the reason for separation from all employers in his base period.

(2) Upon the filing, by an individual, of a claim for benefits, the commissioner shall give notice to all such base period employers of the filing of such claim and request each such base period employer, within seven days after the mailing of such notice, to furnish the following information:

- (a) The total wage credits earned in the base period;
- (b) The number of credit weeks which end within the base period;

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(c) The week ending dates for each calendar week within the base period in which the individual earned less than the amount required to make a credit week and the amount of earnings in each such week;

(d) The reason for the separation or separations of such individual from the employ of the employer in the base period; and

(e) Such employer's protest, if any, relating to the ineligibility or disqualification of such individual.

(3) If any base period employer, after the notice of filing of a claim and the request for wage and separation information has been duly mailed to his last known address, fails to file information as provided by items (a) through (e) of clause 2 of this subdivision within seven days, the commissioner shall:

(a) Determine the validity of an individual's claim based on the claimant's statements or any other available information. An employer shall be liable for a late filing fee of not less than \$5 nor more than \$25, as the commissioner may determine, to be paid to the department of economic security and credited to the contingent fund if he has failed without good cause to submit the wage and separation information as required in clause 2 of this subdivision within seven days after the request has been duly mailed to his last known address. In the absence of fraud, if a redetermination of validity of claim based on an employer's late report subsequently cancels or reduces the amount of benefits to which a claimant was entitled under the initial determination, the claimant shall not be required to make repayment to the fund of any benefits paid to him prior to such redetermination; and

(b) Determine any issue of disqualification raised by clause (1) or by an employer's late report. If an employer fails to file a separation notice within the time limits prescribed in clause (1), any relief from benefit charges provided by section 268.09, subdivision 1, clause (4), shall apply to weeks of unemployment beginning after the filing of the late report.

Subd. 2. Examination of claims; determination; appeal. (1) An official, designated by the commissioner, shall promptly examine each claim for benefits filed to establish a benefit year pursuant to this section, and, on the basis of the facts found, shall determine whether or not such claims are valid, and if valid, the weekly benefit amount payable, the maximum benefit amount payable during the benefit year, and the date the benefit year terminates, and this determination shall be known as the determination of validity. Notice of the determination of validity or any redetermination as provided for in clause (4) shall be promptly given the claimant and all other interested parties. If within the time limits for filing a protest an interested party notifies the department that an individual's weekly benefit amount as determined under section 268.07 exceeds the individual's weekly wages while employed by the interested party, the weekly benefit amount shall be the lesser of the amount derived by dividing the total base period wages earned in all credit weeks by the number of base period credit weeks computed to the nearest whole dollar or the amount as computed under section 268.07. If within the time specified for the filing of wage and separation information as provided in subdivision 1, clause (2), the employer makes an allegation of disqualification or raises an issue of the chargeability to his account of benefits that may be paid on such claim, if the claim is valid, the issue thereby raised shall be promptly determined by said official and a notification of the determination delivered or mailed to the claimant and the employer. If an initial determination or an appeal tribunal decision or the commissioner's decision awards benefits, the benefits shall be paid promptly regardless of the pendency of any appeal period or any appeal or other proceeding which may thereafter be taken. Except as provided in clause (6), if an appeal tribunal decision modifies or reverses an initial determination awarding benefits, or if a commissioner's decision modifies or reverses an appeal

decision awarding benefits, any benefits paid under the award of such initial determination or appeal tribunal decision shall be deemed erroneous payments.

(2) At any time within 15 months from the date of the filing of a claim for benefits by an individual, an official of the department or any interested party or parties raises an issue of claimant's eligibility for benefits for any week or weeks in accordance with the requirements of the provisions of sections 268.03 to 268.24 or any official of the department or any interested party or parties or benefit year employer raises an issue of disqualification in accordance with the regulations of the commissioner, a determination shall be made thereon and a written notice thereof shall be given to the claimant and such other interested party or parties or benefit year employer.

(3) A determination issued pursuant to clauses (1) and (2) shall be final unless an appeal therefrom is filed by a claimant or employer within 15 days after the mailing of the notice of the determination to his last known address or personal delivery of the notice. Every notice of determination shall contain a prominent statement indicating in clear language the method of appealing the determination, the time within which such an appeal must be made, and the consequences of not appealing the determination. A timely appeal from a determination of validity in which the issue is whether an employing unit is an employer within the meaning of this chapter or whether services performed for an employer constitute employment within the meaning of this chapter shall be subject to the provisions of section 268.12, subdivision 13.

(4) At any time within 15 months from the date of the filing of a claim for benefits by an individual, the commissioner on his own motion may reconsider a determination of validity made thereon and make a redetermination thereof if he finds that an error in computation or identity or the crediting of wage credits has occurred in connection therewith or if the determination was made as a result of a nondisclosure or misrepresentation of a material fact.

(5) However, the commissioner may in his discretion refer any disputed claims directly to the appeal tribunal for hearing and determination in accordance with the procedure outlined in subdivision 3 and the effect and status of such determination in such a case shall be the same as though the matter had been determined upon an appeal to the tribunal from an initial determination.

(6) If an appeal tribunal decision affirms an initial determination awarding benefits or the commissioner affirms an appeal tribunal decision awarding benefits, the decision, if finally reversed, shall not result in a disqualification and benefits paid shall neither be deemed overpaid nor shall they be considered in determining any individual employer's future contribution rate under section 268.06.

Subd. 3. Appeal; hearing. Unless such appeal is withdrawn, the date for hearing before an appeal tribunal shall be set and notice of such hearing shall be mailed to the last known address of all interested parties at least ten days prior to the date set for such hearing. Such hearing shall be a trial de novo, and, upon the evidence presented, the appeal tribunal shall affirm, modify, or set aside the initial determination. The commissioner may, by regulation, provide for the taking of evidence or for the admission of sworn statements in case any interested party is unable to be present at the hearing. The parties shall be duly notified of such tribunal's decision, together with its reason therefor, which shall be deemed to be the final decision unless further appeal is initiated pursuant to subdivision 5.

Subd. 4. Appeal tribunals established. In order to assure the prompt disposition of all claims for benefits, the commissioner shall establish one or more impartial appeal tribunals consisting of a salaried examiner who shall serve as chairman, and two additional members, one of whom shall be a representative of employers and the other of whom shall be a representative of employees; each of

the latter two members shall serve at the pleasure of the commissioner and be paid a fee of not more than \$35 per day of active service on such tribunal plus necessary expense. The commissioner shall by regulation prescribe the procedure by which such appeal tribunals shall hear and decide disputed claims, subject to appeal to the commissioner. No person shall participate on behalf of the commissioner in any case in which he is an interested party. The commissioner may designate alternates to serve in the absence or disqualification of any member of any appeal tribunal. The chairman shall act alone in the absence or disqualification of any other member and his alternates. In no case shall a hearing before an appeal tribunal proceed unless the chairman of such tribunal is present. There shall be no charges, fees, transcript costs, or other cost imposed upon the employee in prosecuting his appeal. All decisions of such tribunal, complete as to the names of members of such tribunal, shall be made available to the public in accordance with such regulations as the commissioner may prescribe, except that names of interested parties may be deleted.

Subd. 5. Review by commissioner. Within 30 days after mailing of the notice of an appeal tribunal decision to the claimant or employer at his last known address or personal delivery thereof, any such party may appeal from such decision and obtain a review thereof by the commissioner or his duly authorized representative, and the commissioner within the same period of time may on his own motion order a review of any such decision. Upon review, the commissioner or his duly authorized representative may affirm, modify, or set aside any finding of fact or decision, or both, of the appeal tribunal on the basis of the evidence previously submitted in such case, or remand such matter back to the appeal tribunal for the taking of additional evidence and new findings and decision based on all of the evidence before it. Notice of all hearings on review shall be given to all interested parties in the same manner as provided for by subdivision 3. The commissioner or his representative may remove to himself or transfer to another appeal tribunal the proceedings on any claim pending before an appeal tribunal. Any proceedings so removed to the commissioner or his representative shall be heard upon notice in accordance with the requirements of subdivision 3. The department of economic security shall mail to all interested parties a notice of the filing of and a copy of the findings and decision of the commissioner or his representative.

Subd. 6. Commissioner. The manner in which disputed claims shall be presented, the reports thereon required from the claimant and from employers, and the conduct of hearings and appeals shall be in accordance with the regulations prescribed by the commissioner for determining the rights of the parties, whether or not such regulations conform to common law or statutory rules of evidence and other technical rules of procedure. A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing shall be reduced to writing, but need not be transcribed unless the disputed claim is further appealed.

Subd. 7. Subpoenaed. Witnesses subpoenaed pursuant to this section shall be allowed fees at a rate fixed by the commissioner. Such fees shall be deemed a part of the expense of administering sections 268.03 to 268.24.

Subd. 8. Certiorari. Any such decision of the commissioner may be reviewed on certiorari by the supreme court provided such writ is issued and served upon the adverse party or parties within 30 days after the date of mailing notice of any decision to him at his last known address.

Any party in interest except a claimant for benefits upon the service of such writ shall furnish a cost bond to be approved by the commissioner and pay to the department of economic security the fee prescribed by rule 103.01 of the rules of civil appellate procedure which shall be disposed of in the manner provided by that rule.

Subd. 9. **Representation by attorney.** In any proceeding under these sections before an appeal tribunal or the commissioner, a party may be represented by an agent or attorney, but no individual claiming benefits shall be charged fees of any kind in any proceeding thereunder by the appeal tribunal, the commissioner, or his representatives, or by any court or any officers thereof. Any individual claiming benefits in any proceedings before the commissioner or his representatives or a court may be represented by counsel or other duly authorized agent, except that said agent in any court proceedings under these sections, must be an attorney at law; but no such counsel shall either charge or receive for such services more than an amount approved by the commissioner and no fees shall be collected from an individual claiming benefits by any agent unless he is an attorney at law.

Subd. 10. **Attorney for commissioner.** The commissioner shall be deemed to be a party to any judicial action involving any decision and shall be represented therein by any qualified attorney who is a regular salaried employee of the department of economic security and has been designated by the commissioner for that purpose or, at the commissioner's request, by the attorney general.

History: *Ex1936 c 2 s 8; 1937 c 306 s 5; 1939 c 443 s 7; 1941 c 554 s 7; 1943 c 650 s 6; 1945 c 376 s 7; 1947 c 600 s 1; 1951 c 442 s 4,5; 1953 c 97 s 10-12; 1957 c 307 s 1; 1957 c 883 s 6; 1967 c 439 s 4,5; 1969 c 567 s 3; 1969 c 854 s 8; 1971 c 686 s 2; Ex1971 c 28 s 1; 1973 c 254 s 3; 1975 c 336 s 17-19; 1976 c 239 s 39; 1977 c 4 s 9; 1977 c 430 s 25 subd 1; 1979 c 181 s 14; 1980 c 508 s 10; 1Sp1982 c 1 s 29,30 (4337-28)*

268.11 EMPLOYERS COVERAGE.

Subdivision 1. **Employer for part of year.** Except as provided in subdivisions 2 and 3, any employing unit which is or becomes an employer subject to sections 268.03 to 268.24 within any calendar year shall be deemed to be an employer during the whole of such calendar year.

Subd. 2. **Application for termination of coverage.** Except as otherwise provided in subdivision 3, any employing unit shall cease to be an employer subject to sections 268.03 to 268.24 as of the last day of the calendar quarter in which the employing unit files with the commissioner a written application for termination of coverage, if the commissioner finds the employment in the preceding calendar year and during the current calendar year, up to the last day of the calendar quarter in which the application was received, was not sufficient to make the employing unit liable under the provisions of section 268.04, subdivision 10. For the purpose of this subdivision the two or more employing units mentioned in section 268.04, subdivision 10, clause (2), (3), (4), or (5), shall be treated as a single employing unit.

The commissioner shall waive the requirement for an application for termination of coverage whenever it shall appear that the employer was unable to comply with such requirement for the reason that, at the time when he had qualified for release from liability under the provisions of this chapter, he was in good faith not aware of the fact that he was an employer subject to the provisions of this chapter.

Subd. 3. **Election agreements; termination powers of commissioner.** (1) An employing unit, not otherwise subject to sections 268.03 to 268.24 as an employer, which files with the commissioner its written election to become an employer subject thereto for not less than two calendar years, shall, with the written approval of such election by the commissioner, become an employer subject hereto to the same extent as all other employers, as of the date stated in such approval and cease to be subject hereto as of the first day of January of any calendar year subsequent to such two calendar years, only, if at least 30 days prior to such first day of January, it has filed with the commissioner a written notice to that effect;

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(2) Any employing unit for which services that do not constitute employment are performed, may file with the commissioner a written election that all such service performed by individuals in its employ in one or more distinct establishments or places of business shall be deemed to constitute employment for all the purposes of sections 268.03 to 268.24 for not less than two calendar years. Upon the written approval of such election by the commissioner, such services shall be deemed to constitute employment subject to these sections from and after the date stated in such approval. Such services shall cease to be deemed employment subject hereto as of the first day of January of any calendar year subsequent to such two calendar years only if at least 30 days prior to such first day of January such employing unit has filed with the commissioner a written notice to that effect.

(3) The commissioner in his discretion may on his own motion terminate any election agreement under this subdivision upon 30 days notice to the employer, and he may also in his discretion and on his own motion terminate the coverage of any employer who has had less than 20 weeks of employment in a calendar year.

History: *Ex 1936 c 2 s 9; 1937 c 306 s 6; 1941 c 554 s 8; 1945 c 376 s 8; 1947 c 600 s 2; 1949 c 605 s 10; 1953 c 97 s 13.14; 1965 c 45 s 41; 1969 c 854 s 9.10 (4337-29)*

268.115 [Expired]

268.12 CREATION.

Subdivision 1. **Department of economic security; commissioner.** There is created a department of economic security under the control of a commissioner who shall be appointed by the governor under the provisions of section 15.06. The commissioner shall be selected on the basis of ability and experience without regard to political affiliations.

Subd. 1a. **Change of name.** The name of the department of employment services is changed to the department of economic security. The name of the commissioner of employment services is changed to the commissioner of economic security.

Subd. 2. **Report; recommendations; studies.** (1) Not later than the first day of August each year, the commissioner shall submit to the governor a report covering the administration and operation of these sections during the preceding calendar year and make such recommendations for amendments thereto as the commissioner deems proper. When the commissioner believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, he shall promptly so inform the governor and the legislature and make recommendations with respect thereto.

(2) For the purpose of ascertaining the point at which the unemployment compensation fund should be stabilized in order to both avoid possible insolvency and the building up of unnecessary reserves and for the further purpose of ascertaining what might be a stabilized average annual rate of contributions over a period of years thereby eliminating great fluctuations in contribution rates from year to year, the commissioner is hereby authorized and directed to make a study thereof. For such study he is hereby authorized to utilize such funds as may be available to him to contract for the services of specialists in this field, or utilize such public personnel as may be furnished to assist him in making such study. Such study shall be made with the advice and counsel of the state advisory council to the department of economic security, and a report of such study shall be made to the governor and the legislature from time to time.

Subd. 3. **Rules, regulations.** Notwithstanding any inconsistent provision of law the commissioner is hereby authorized to adopt, amend, or rescind regulations as may be necessary for the administration of sections 268.03 to 268.24. Each

proposed regulation, excepting those relating solely to the internal operation of the department, shall be adopted pursuant to the provisions of chapter 14.

Subd. 4. **Printing and publication.** The commissioner shall cause to be printed for distribution to the public the text of sections 268.03 to 268.24, the commissioner's regulations and general rules, his annual reports to the governor, and any other material the commissioner deems relevant and suitable, provided such printing methods and means are not inconsistent with present statutes.

Subd. 5. **Assistance.** (1) Subject to the provisions of the state civil service act and to the other provisions of sections 268.03 to 268.24 the commissioner is authorized to appoint, and prescribe the duties and powers of, such officers, accountants, experts, and other persons as may be necessary in the performance of his duties thereunder. The commissioner may delegate to any such person so appointed such power and authority as he deems reasonable and proper for the effective administration of those sections and may, in his discretion, bond any person handling moneys or signing checks thereunder. The commissioner is authorized to adopt such personnel and fiscal regulations as he deems necessary to satisfy fiscal and personnel standards required by the secretary of labor pursuant to the Social Security Act, as amended, and the act of Congress entitled "An act to provide for the establishment of a national employment system and to cooperate with the states in the promotion of such system and for other purposes," approved June 6, 1933, as amended. The commissioner may, subject to the approval of the commissioner of administration, also adopt regulations relating to reimbursement to department employees for travel expenses incurred while traveling on official business including allowances on a per diem basis in lieu of actual subsistence expenses incurred. The commissioner is also hereby authorized to purchase liability and property damage automobile insurance to cover any automobiles owned by the Minnesota department of economic security for the protection of its employees who may be required to operate the same in pursuit of their duties for the department.

(2) No officer or employee engaged in the administration of these sections shall, for political purposes, furnish or disclose, or aid or assist in furnishing or disclosing, any list or names of persons obtained in the administration of these sections, to a political candidate, committee, campaign manager, or to any person for delivery to a political candidate, committee, or campaign manager, and it shall be unlawful for any person to receive any such list or names for political purposes.

Subd. 6. **Advisory councils.** The commissioner of economic security shall appoint a state advisory council and may appoint such local advisory councils as he deems advisable, composed in each case of an equal number of employer and employee representatives who shall be selected because of their vocation, employment, or affiliation, and of such members representing the general public as he may designate. The commissioner may also appoint an agricultural employment advisory council and such other advisory councils as may be found necessary for proper administration. Such councils shall aid the commissioner in formulating policies and discussing problems relating to the administration of sections 268.03 to 268.24 and in assuring impartiality and freedom from political influence in the solution of such problems. The councils shall expire and the terms, compensation and removal of members shall be as provided in section 15.059.

Subd. 7. **Employment stabilization.** The commissioner is authorized to take all appropriate steps to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining, and vocational guidance; to investigate, recommend, advise, and assist in the establishment and operation, by municipalities, counties, school districts, and the state, of reserves for public works to be used in times of business depression and unemployment; to promote the reemployment of unemployed workers throughout the state

in every other way that may be feasible; and to these ends to carry on and publish the results of investigations and research studies.

Subd. 8. **Records; reports.** (1) Each employing unit shall keep true and accurate work records for such periods of time and containing such information as the commissioner may prescribe. Such records shall be open to inspection, audit, and verification, and be subject to being copied by any authorized representative of the commissioner at any reasonable time and as often as may be necessary. The commissioner, appeal referee, chairman of an appeal tribunal, or any other duly authorized representative of the commissioner, may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which the commissioner, appeal referee, chairman of an appeal tribunal, or any other duly authorized representative of the commissioner deems necessary for the effective administration of sections 268.03 to 268.24, provided that quarterly contribution and wage report forms shall be made to correspond wherever possible with the reports required from employers under the federal insurance contributions act, so that such state forms may be prepared as duplicates of such federal forms, except that no employer shall be permitted to submit a duplicate report which is not thoroughly legible.

(2) The commissioner may cause to be made such summaries, compilations, photographs, duplications, or reproductions of any records, reports, or transcripts thereof as he may deem advisable for the effective and economical preservation of the information contained therein, and such summaries, compilations, photographs, duplications or reproductions, duly authenticated, shall be admissible in any proceeding under sections 268.03 to 268.24, if the original record or records would have been admissible therein. Notwithstanding any restrictions contained in section 16.02, except restrictions as to quantity, the commissioner is hereby authorized to duplicate, on equipment furnished by the federal government or purchased with funds furnished for that purpose by the federal government, records, reports, summaries, compilations, instructions, determinations, or any other written matter pertaining to the administration of the Minnesota Employment Services Law.

(3) Notwithstanding any inconsistent provisions elsewhere, the commissioner may provide for the destruction or disposition of any records, reports, transcripts, or reproductions thereof, or other papers in his custody, which are more than two years old, the preservation of which is no longer necessary for the establishment of contribution liability or benefit rights or for any purpose necessary to the proper administration of sections 268.03 to 268.24, including any required audit thereof, provided, that the commissioner may provide for the destruction or disposition of any record, report, or transcript, or other paper in his custody which has been photographed, duplicated, or reproduced in the manner provided in clause (2).

(4) Notwithstanding the provisions of the Minnesota State Archives Act the commissioner shall with the approval of the legislative auditor destroy all benefit checks and benefit check authorization cards that are more than two years old and no person shall make any demand, bring any suit or other proceeding to recover from the state of Minnesota any sum alleged to be due him on any claim for benefits after the expiration of two years from the date of filing such claim.

Subd. 9. **Testimonial powers.** (1) In the discharge of the duties imposed by sections 268.03 to 268.24, the commissioner, the chairman of the appeal tribunal, appeal referee, or any duly authorized representative of the commissioner, shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim or the administration of these sections;

(2) Witnesses subpoenaed pursuant to this subdivision or sections 268.03 to 268.24, shall be allowed fees at a fixed rate prescribed by regulation by the commissioner, which fees need not be paid in advance of the time of giving of testimony, and such fees of witnesses so subpoenaed shall be deemed part of the expense of administering these sections;

(3) In case of contumacy by, or refusal to obey, a subpoena issued to any person, any court of this state within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which such person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the commissioner, chairman of an appeal tribunal, or referee, or any duly authorized representative of the commissioner, shall have jurisdiction to issue to such person an order requiring such person to appear before the commissioner, the chairman of an appeal tribunal, referee, or any duly authorized representative of the commissioner, there to produce evidence if so ordered or there to give testimony relative to the matter under investigation or in question; and any failure to obey such order of the court may be punished by the court as a contempt thereof.

Subd. 10. **Self-incrimination.** No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the commissioner, the chairman of an appeal tribunal, referee, or any duly authorized representative of the commissioner, or in obedience to the subpoena of any of them in any cause or proceeding before the commissioner, an appeal tribunal, referee, or any duly authorized representative of the commissioner on the grounds that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

✓ Subd. 11. **Cooperation with the secretary of labor.** (1) In the administration of this law, the commissioner shall cooperate with the United States department of labor to the fullest extent consistent with the provisions of this law, and shall take such action, through the adoption of appropriate rules, regulations, administrative methods and standards, as may be necessary to secure to this state and its citizens all advantages available under the provisions of the Social Security Act that relate to unemployment compensation, the Federal Unemployment Tax Act, the Wagner-Peyser Act, and the Federal-State Extended Unemployment Compensation Act of 1970.

In the administration of the provisions in section 268.071, which are enacted to conform with the requirements of the Federal-State Extended Unemployment Compensation Act of 1970, the commissioner shall take such action as may be necessary to ensure that the provisions are so interpreted and applied as to meet the requirements of such federal act as interpreted by the United States department of labor, and to secure to this state the full reimbursement of the federal share of extended and regular benefits paid under this law that are reimbursable under the federal act.

(2) If section 303(a) (5) of Title III of the Social Security Act and section 3304(a) (4) of the Internal Revenue Code are amended to permit a state agency to use, in financing administrative expenditures incurred in carrying out its employment services functions, some part of the moneys collected or to be collected under the state unemployment compensation law, in partial or complete substitution for grants under said Title III, in that event sections 268.03 to 268.24 shall, by the commissioner's proclamation and rules to be issued with the governor's

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approval, be modified in the manner and to the extent and within the limits necessary to permit such use by the commissioner under these sections; and such modifications shall become effective on the same date as such use becomes permissible under such federal amendments.

(3) The commissioner is also authorized and directed to apply for an advance to the state unemployment fund and to do any and all acts necessary and lawfully required for the repayment of such advance in accordance with the conditions specified in Title XII of the Social Security Act, as amended, in order to secure to this state and its citizens the advantages available under the provisions of such title.

Subd. 12. Information. Except as hereinafter otherwise provided, data gathered from any employing unit, employer or individual pursuant to the administration of sections 268.03 to 268.24, and from any determination as to the benefit rights of any individual shall be private data on individuals or nonpublic data not on individuals as defined in section 13.02, subdivisions 9 and 12 and shall not be disclosed except pursuant to this subdivision or pursuant to a valid court order. This private data may be disseminated to and used by the following agencies without the consent of the subject of the data:

(a) State and federal agencies specifically authorized access to the data by state or federal law;

(b) Any agency of this or any other state; or any federal agency charged with the administration of an employment security law or the maintenance of a system of public employment offices;

(c) Local human rights groups within the state which have enforcement powers;

(d) The Minnesota department of revenue on an interchangeable basis with the department of economic security subject to the following restrictions and notwithstanding any law to the contrary:

(1) The department of revenue may have access to department of economic security data on individuals and employing units only to the extent necessary for proper enforcement of tax laws; and

(2) The department of economic security may have access to department of revenue data pertaining only to individuals who have claimed benefits under sections 268.03 to 268.24 and only if the individuals are the subject of investigations based on other information available to the department of economic security. The data provided by the department of revenue shall be limited to the amount of gross income earned by an individual, the total amount of earnings from each employer and the employers' names. Upon receipt of the data, the department of economic security may not disseminate the data to any individual or agency except in connection with a prosecution for violation of the provisions of sections 268.03 to 268.24. This clause shall not be construed to be a restriction on the exchange of information pertaining to corporations or other employing units to the extent necessary for the proper enforcement of this chapter;

(e) Public and private agencies responsible for administering publicly financed assistance programs for the purpose of monitoring the eligibility of the program's recipients;

(f) The department of labor and industry for the purpose of determining the eligibility of the data subject;

(g) Local and state welfare agencies for monitoring the eligibility of the data subject for assistance programs; and

(h) Local, state and federal law enforcement agencies for the sole purpose of ascertaining the last known address and employment location of the data subject, provided the data subject is the subject of a criminal investigation.

Data on individuals, employers, and employing units which are collected, maintained, or used by the department in an investigation pursuant to section 268.18, subdivision 3 are confidential as to data on individuals and protected nonpublic data as defined in section 13.02, subdivisions 3 and 13 as to nonindividual employers and employing units, and shall not be disclosed except pursuant to statute or valid court order or to a party named in a criminal proceeding, administrative or judicial, for preparation of a defense.

Data on individuals, employers, and employing units which are collected, maintained, or used by the department in the adjudication of a separation or eligibility issue pursuant to the administration of section 268.10, subdivision 2 are confidential as to data on individuals and protected nonpublic data as to nonindividual employers and employing units as defined in section 13.02, subdivisions 3 and 13 and shall not be disclosed except pursuant to the administration of section 268.10, subdivisions 3 to 8 or pursuant to a valid court order.

Aggregate data about employers compiled from individual job orders placed with the department of economic security are nonpublic data as defined in section 13.02, subdivision 9 if the commissioner determines that divulging the data would result in disclosure of the identity of the employer. The general aptitude test battery and the nonverbal aptitude test battery as administered by the department are also classified as nonpublic data.

Data on individuals collected, maintained or created because an individual applies for benefits or services provided by the energy assistance and weatherization programs administered by the department of economic security is private data on individuals and shall not be disseminated except pursuant to section 13.05, subdivisions 3 and 4.

Data gathered by the department pursuant to the administration of sections 268.03 to 268.24 shall not be made the subject or the basis for any suit in any civil proceedings, administrative or judicial, unless the action is initiated by the department.

Subd. 13. Determinations. (1) An official, designated by the commissioner, upon his own motion or upon application of an employing unit shall determine if an employing unit is an employer within the meaning of this chapter or as to whether services performed for it constitute employment within the meaning of this chapter, and shall notify the employing unit of such determination. Such determination shall be final unless the employing unit shall within 30 days after the mailing of notice of the determination to the employing unit's last known address file written appeal therefrom.

(2) The commissioner shall designate one or more representatives, herein referred to as referees, to conduct hearings on appeals. The employing unit and any claimant whose filed claim for benefits may be affected by a determination issued under clause (1) shall be interested parties to an appeal. The referee shall fix a time and place within this state for such hearing and shall give interested parties written notice thereof, by mail, not less than ten days prior to the time of such hearing. In the discharge of the duties imposed by this subdivision, the referee shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with the subject matter of such hearing. The written report of any employee of the department of economic security, made in the regular course of the performance of such employee's duties, shall be competent evidence of the facts therein contained and shall be prima facie correct, unless refuted by other credible evidence.

(3) Upon the conclusion of such hearing, the referee shall serve upon the interested parties by mail findings of fact and decision in respect thereto. The

decision of the referee, together with his findings of fact and reasons in support thereof, shall be final unless an interested party shall within 30 days after the mailing of a copy thereof to the interested parties' last known addresses, file an appeal with the commissioner, or unless the commissioner, within 30 days after mailing of such decision, on his own motion orders the matter certified to him for review. Appeal from and review by the commissioner of the decision of the referee shall be had in the manner provided by regulation. The commissioner may without further hearing affirm, modify, or set aside the findings of fact or decision, or both, of the referee on the basis of the evidence previously submitted in the case, or direct the taking of additional evidence. The commissioner may disregard the findings of fact of the referee and examine the testimony taken and make such findings of fact as the evidence taken before the referee may, in the judgment of the commissioner, require, and make such decision as the facts so found by him may require. The commissioner shall notify the employing unit of his findings and decision by mail, mailed to the interested parties' last known addresses, and notice of such decision shall contain a statement setting forth the cost of certification of the record in the matter. The decision of the commissioner shall become final unless judicial review thereof is sought as provided by this subdivision. Any interested party to a proceeding before a referee or the commissioner may obtain a transcript of the testimony taken before the referee upon payment to the commissioner of the cost of such transcript to be computed at the rate of ten cents per 100 words.

(4) The district court of the county wherein the hearing before the referee was held shall, by writ of certiorari to the commissioner, have power to review all questions of law and fact presented by the record. The court shall not accept any new or additional evidence and shall not try the matter de novo. Such action shall be commenced within 30 days of the mailing of notice of the findings and decision of the commissioner to the interested parties affected thereby mailed to their last known addresses. The commissioner shall not be required to certify the record to the district court unless the party commencing such proceedings for review, as provided above, shall pay to the commissioner the cost of certification of the record computed at the rate of ten cents per 100 words less such amount as may have been previously paid by such party for a transcript. It shall be the duty of the commissioner upon receipt of such payment to prepare and certify to the court a true and correct typewritten copy of all matters contained in such record. The costs so collected by the commissioner shall be deposited by him in the employment services administration fund provided for in section 268.15.

The party commencing proceedings for review shall file his brief with the court and serve it upon the commissioner within 60 days of commencing proceedings. The commissioner shall file his brief with the court and serve it upon the party within 45 days of the service of the party's brief upon the commissioner. The party may file a reply brief with the court and serve it upon the commissioner within 15 days of the service of the commissioner's brief upon him. The proceedings shall be given precedence over all other civil cases before the court.

The court may confirm or set aside the decision and determination of the commissioner. If the decision and determination is set aside and the facts found in the proceedings before the referee are sufficient, the court may enter such decision as is justified by law, or may remand the cause to the commissioner for further proceedings and may state the questions requiring further hearing, and give such other instructions as may be proper.

Any decision of the district court may be reviewed on certiorari by the supreme court provided the writ is issued and served upon the adverse party or parties within 30 days after the mailing of the notice of the decision.

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(5) A final decision of the commissioner or referee, in the absence of appeal therefrom, shall be conclusive for all the purposes of sections 268.03 to 268.24 except as herein otherwise provided, and, together with the records therein made, shall be admissible in any subsequent judicial proceeding involving liability for contributions. A final decision of the commissioner or referee may be introduced in any proceeding involving a claim for benefits.

(6) In the event a final decision of the commissioner or referee determines the amount of contributions due under sections 268.03 to 268.24, then, if such amount, together with interest and penalties, is not paid within 30 days after such decision, the provisions of section 268.161 shall apply; and the commissioner shall proceed thereunder, substituting a certified copy of the final decision in place of the contribution report therein provided.

Subd. 14. [Repealed, 1949 c 605 s 15]

History: *Ex1936 c 2 s 10; 1937 c 306 s 7; 1939 c 441 s 42; 1939 c 443 s 8, 10; 1941 c 554 s 9; 1943 c 650 s 7; 1945 c 376 s 9; 1947 c 600 s 3-6; 1949 c 605 s 15; 1949 c 739 s 8; 1951 c 442 s 6-10; 1951 c 713 s 29; 1953 c 97 s 15; 1953 c 603 s 1; 1953 c 612 s 1; 1955 c 847 s 22; 1957 c 883 s 7; 1965 c 45 s 42-44; 1965 c 741 s 18; 1967 c 770 s 1; 1969 c 9 s 63; 1969 c 310 s 2; 1969 c 567 s 1.3; 1969 c 854 s 11, 12; 1969 c 1129 art 8 s 7; 1971 c 942 s 12; 1973 c 254 s 1.3; 1973 c 492 s 14; 1974 c 241 s 1; 1975 c 315 s 19; 1975 c 336 s 20, 21; 1977 c 172 s 2; 1977 c 237 s 1; 1977 c 297 s 20; 1977 c 305 s 31; 1977 c 430 s 25 subd 1; 1978 c 674 s 60; 1979 c 181 s 15; 1980 c 615 s 37; 1981 c 311 s 39; 1982 c 424 s 130; 1982 c 545 s 23, 24; 1Sp1982 c 1 s 31, 32 (4337-30)*

NOTE: Subdivision 12 was also amended by Laws 1982, Chapter 416, Section 1 to read as follows:

"Subd. 12. **Information.** Except as hereinafter otherwise provided, information obtained from any employing unit or individual pursuant to the administration of sections 268.03 to 268.24, and from any determination as to the benefit rights of any individual shall be held confidential and shall not be disclosed or be open to public inspection in any manner revealing the individual's or employing unit's identity. Any claimant or other interested party (or his legal representative) shall be supplied with information from the records of the department of economic security, to the extent necessary for the proper presentation of his claim, contention or refutation of any claim in which he is an interested party in any proceeding under these sections with respect thereto. Subject to such restrictions as the commissioner may by regulation prescribe, such information may be made available to any agency of this or any other state, or any federal agency charged with the administration of an employment and security law or the maintenance of a system of public employment offices, any agency of this state which is required by law to provide statistical information to the bureau of labor statistics of the United States department of labor, any local human rights department within the state which has enforcement powers, the Bureau of Internal Revenue of the United States Department of the Treasury, or the Minnesota department of revenue and information obtained in connection with administration of the employment service may be made available to persons or agencies for purposes appropriate to the operation of a public employment service. Upon request therefor, the commissioner shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, and may furnish to any state agency similarly charged, or any local human rights department within the state which has enforcement powers, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under these sections. The commissioner may request the Comptroller of the Currency of the United States to cause an examination of the correctness of any return or report of any national banking association rendered pursuant to the provisions of these sections, and may in connection with such request, transmit any such report or return to the Comptroller of the Currency of the United States as provided in section 3305(c) of the federal internal revenue code.

All letters, reports, communications, or any other matters, either oral or written, from an employer or his workers to each other or to the commissioner or any of his agents, representatives, or employees, which shall have been written or made in connection with the requirements and administration of sections 268.03 to 268.24 or the regulations thereunder, shall be absolutely privileged and shall not be made subject matter or basis for any suit for slander or libel in any court of this state."

268.121 WAGE REPORTING.

Beginning on April 1, 1984, each employer subject to this chapter shall provide the commissioner with a quarterly report of wages, as defined in section 268.04, subdivision 25, paid to each employee of that employer covered by this chapter. The commissioner shall provide the legislature with his recommendations for statutory changes to fully implement this section no later than January 1, 1983.

History: *1Sp1982 c 1 s 42*

268.13 RECIPROCAL BENEFIT ARRANGEMENTS.

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

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

(a) in which any part of any such individual's service is performed, or

(b) in which any such individual has his residence, or

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

(2) The commissioner shall participate in any arrangements for the payment of compensation on the basis of combining an individual's wages and employment covered under this law with his wages and employment covered under the unemployment compensation laws of other states which are approved by the United States secretary of labor in consultation with the state unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of compensation in such situations and which include provisions for applying the base period of a single state law to a claim involving the combining of an individual's wages and employment covered under two or more state unemployment compensation laws, and avoiding the duplicate use of wages and employment by reason of such combining;

(3) Wages or services, upon the basis of which an individual may become entitled to benefits under an employment security law of another state or of the federal government, shall be deemed to be wages for insured work for the purpose of determining his rights to benefits under sections 268.03 to 268.24, and wages for insured work, on the basis of which an individual may become entitled to benefits thereunder shall be deemed to be wages or services on the basis of which unemployment compensation under such law of another state or of the federal government is payable, but no such arrangement shall be entered into unless it contains provisions for reimbursements to the fund for such of the benefits paid thereunder upon the basis of such wages or service, and provisions for reimbursements from the fund for such of the compensation paid under such other law upon the basis of wages for insured work;

(4) Contributions due thereunder with respect to wages for insured work shall for the purpose of section 268.16 be deemed to have been paid to the fund as of the date payment was made as contributions therefor under another state or federal employment security law, but no such arrangement shall be entered into unless it contains provisions for such reimbursement to the fund of such contributions and the actual earnings thereon.

Subd. 2. Reimbursements. Reimbursements paid from the fund pursuant to subdivision 1 shall be deemed to be benefits for the purposes of sections 268.05 to 268.09. The commissioner is authorized to make to other state or federal agencies and to receive from such other state or federal agencies, reimbursements from or to the fund, in accordance with arrangements entered into pursuant to subdivision 1.

Subd. 3. Cooperation. The administration of sections 268.03 to 268.24 and of other state and federal employment security and public employment service laws will be promoted by cooperation between this state and such other states and the appropriate federal agencies in exchanging services, and making available facilities and information. The commissioner is therefore authorized to make such investigation and audits, secure and transmit such information, make available such services and facilities and exercise such of the other powers provided herein with respect to the administration of these sections as he deems necessary or appropriate to facilitate the administration of any such employment security or

public employment service law, and in like manner, to accept and utilize information, services and facilities made available to this state by the agency charged with the administration of any such other employment security or public employment service law.

If after entering into an arrangement under subdivision 1, clause (2) or (3), the commissioner finds that the unemployment compensation law of any state or of the federal government participating in such arrangement has been changed in a material respect, the commissioner may make new findings and a determination as to whether such arrangement shall be continued with such state or states or with the federal government.

Subd. 4. Utilization of federal benefits. To the extent permissible under the laws and Constitution of the United States, the commissioner is authorized to enter into or cooperate in arrangements whereby facilities and services provided under sections 268.03 to 268.24 and facilities and services provided under the employment security law of any foreign government, may be utilized for the taking of claims and the payment of benefits under the employment security law of this state or under a similar law of such government.

Subd. 5. Cooperate with other states. The commissioner shall fully cooperate with the agencies of other states, and shall make every proper effort within his means to oppose and prevent any further action which would in his judgment tend to effect complete or substantial federalization of state unemployment compensation funds or state employment security programs.

History: *Ex1936 c 2 s 11; 1937 c 306 s 8; 1939 c 443 s 9; 1941 c 554 s 10; 1943 c 650 s 8; 1945 c 376 s 10; 1947 c 432 s 8-10; 1965 c 45 s 45; 1969 c 9 s 64; 1971 c 942 s 13; 1979 c 181 s 16 (4337-31)*

268.14 FREE EMPLOYMENT OFFICES.

Subdivision 1. Acceptance of federal act. A state employment service is hereby established in the department of economic security. The commissioner in the conduct of such service shall establish and maintain free public employment offices, in such number and in such places as may be necessary for the proper administration of sections 268.03 to 268.24 and for the purpose of performing such functions as are within the purview of the act of Congress entitled "An act to provide for the establishment of a national employment system for the cooperation with the states in the promotion of such system and for other purposes," approved June 6, 1933, as amended. The provisions of such act of Congress are hereby accepted by this state and the department of economic security is hereby designated and constituted the agency of this state for the purposes of such act. The commissioner, pending the return of the employment service, its facilities, property, and personnel, to state control after the war emergency, may loan to the United States employment service facilities, property and personnel.

Subd. 2. Financing. All moneys received by this state under such act of Congress referred to in subdivision 1 shall be paid into the employment services administration fund, and expended solely for the maintenance of state public employment offices. For the purpose of establishing and maintaining free public employment offices and promoting the use of their facilities, the commissioner is authorized to enter into agreements with the railroad retirement board or any other agency of the United States or of this or any other state charged with the administration of any law whose purposes are reasonably related to the purposes of sections 268.03 to 268.24.

Subd. 3. Reciprocal agreements. The commissioner may enter into agreements with any political subdivision of this state or with any private organization or person, and as a part of any such agreements, may accept moneys, services, or

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quarters as a contribution to the maintenance of the state system of public employment offices or as reimbursement for services performed. All moneys received for such purposes shall be paid into the employment services contingent fund provided for in section 268.15, subdivision 3.

Subd. 4. Auxiliary offices. The commissioner may establish auxiliary employment offices and may, notwithstanding any other law to the contrary, employ individuals as agents or as employment services representatives on a part time or temporary basis to perform services in such offices and for related purposes, compensate such individuals for such services, and reimburse such individuals for necessary expenses incurred by them in the performance of such services. Such individuals shall serve at the pleasure of the commissioner. The employment of such individuals, however, shall not be subject to the various provisions of the Minnesota civil service law nor shall such individuals by reason of such employment become members of the state employees retirement association.

Subd. 5. Veterans representatives. As may be determined by the commissioner, based on a demonstrated need for the service, there shall be assigned by the commissioner to the staff of each full functioning employment service office a veterans employment representative whose activities shall be devoted to discharging the duties prescribed of a veterans employment representative. The position of veterans employment representative shall be filled by one or more employees of the department of economic security who are veterans as defined in section 197.447.

Subd. 6. MS1980 [Expired]

History: *Ex1936 c 2 s 12; 1937 c 306 s 9; 1939 c 443 s 11; 1941 c 554 s 11; 1945 c 376 s 11; 1949 c 605 s 11; 1969 c 567 s 3; 1973 c 254 s 3; 1977 c 151 s 1; 1977 c 430 s 25 subd 1; 1980 c 350 s 1 (4337-32)*

268.15 UNEMPLOYMENT COMPENSATION FUND.

Subdivision 1. Administration fund. There is hereby created in the state treasury a special fund to be known as the employment services administration fund. All moneys which are deposited or paid into this fund shall be continuously available to the commissioner for expenditure in accordance with the provisions of sections 268.03 to 268.24, and shall not lapse at any time. The fund shall consist of all moneys received from the United States or any agency thereof, including the United States department of labor, and include any moneys received from any agency of the United States or any other state as compensation for services or facilities supplied to such agency, any amounts received pursuant to any surety bond or insurance policy or from other sources for losses sustained by the employment services administration fund or by reason of damage to equipment or supplies purchased from moneys in such fund, and any proceeds realized from the sale or disposition of any such equipment or supplies which may no longer be necessary for the proper administration of those sections. Notwithstanding any provision of this section, all money requisitioned and deposited in this fund pursuant to section 268.05, subdivision 5, shall remain part of the unemployment fund and shall be used only in accordance with the conditions specified in section 268.05, subdivision 5. All moneys in this fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as are provided by law for the other special funds in the state treasury. The state treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the employment services administration fund provided for under these sections. Such liability on the official bond shall be effective immediately upon the enactment of this provision, and such liability shall exist in addition to any liability upon any separate bond existent on the effective date of

this provision, or which may be given in the future. All sums recovered on any surety bond for losses sustained by the employment services administration fund shall be deposited in this fund. All money in this fund, except money received pursuant to section 268.05, subdivision 5, clause (3) shall be expended solely for the purposes and in the amounts found necessary by the secretary of labor for the proper and efficient administration of the employment services program.

Subd. 2. State to replace moneys wrongfully used. If any moneys received after June 30, 1941, under Title III of the Federal Social Security Act, or any unencumbered balances in the employment services administration fund as of that date, or any moneys granted after that date to the state pursuant to the provisions of the Wagner-Peyser Act, are found by the secretary of labor, because of any action or contingency, to have been lost or been expended for purposes other than, or in amounts in excess of, those found necessary by the secretary of labor for the proper administration of these sections, the commissioner may, with the approval of the commissioner of administration, replace such moneys from the employment services contingent fund hereinafter established. If such moneys are not thus replaced, it is the policy of this state that such moneys shall be replaced by moneys appropriated for such purpose from the general funds of this state to the employment services administration fund for expenditure as provided in subdivision 1. Upon receipt of notice of such a finding by the secretary of labor, the commissioner shall promptly report the amount required for such replacement to the governor and the governor shall, at the earliest opportunity, submit to the legislature a request for the appropriation of such amount. This subdivision shall not be construed to relieve this state of its obligation with respect to funds received prior to July 1, 1941, pursuant to the provisions of Title III of the Social Security Act.

Subd. 3. Contingent account. There is hereby created in the state treasury a special account, to be known as the employment services contingent account, which shall not lapse nor revert to any other fund. Such account shall consist of all moneys appropriated therefor by the legislature, all moneys in the form of interest and penalties collected pursuant to section 268.16 and all moneys received in the form of voluntary contributions to this account and interest thereon. All moneys in such account shall be supplemental to all federal moneys that would be available to the commissioner but for the existence of this account. Moneys in this account are hereby appropriated to the commissioner and shall be expended in accordance with the provisions of section 3.30, in connection with the administration of sections 268.03 to 268.24. Whenever the commissioner expends moneys from said contingent account for the proper and efficient administration of the Minnesota employment services law for which funds have not yet been made available by the federal government, such moneys so withdrawn from the contingent account shall be replaced as hereinafter provided. Upon the deposit in the employment services administration fund of moneys which are received in reimbursement of payments made as above provided for said contingent account, the commissioner shall certify to the state treasurer the amount of such reimbursement and thereupon the state treasurer shall transfer such amount from the employment services administration fund to said contingent account. All moneys in this account shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for the other special accounts in the state treasury. The state treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the employment services contingent account provided for herein. Notwithstanding anything to the contrary contained herein, on June 30 of each year, except 1982, all amounts in excess of \$300,000 in this account shall be paid over to the

unemployment compensation fund established under section 268.05 and administered in accordance with the provisions set forth therein.

Subd. 4. [Repealed, 2Sp1981 c 1 s 8]

History: *Ex1936 c 2 s 13; 1941 c 554 s 12; 1945 c 376 s 12; 1953 c 97 s 16; 1957 c 883 s 8-10; 1963 c 721 s 1; 1965 c 45 s 46; 1969 c 399 s 1; 1969 c 567 s 3; 1973 c 254 s 3; 1973 c 492 s 14; 1973 c 720 s 73 subd 1; 1974 c 497 s 1; 1975 c 302 s 2; 1Sp1982 c 1 s 33 (4337-33)*

268.16 COLLECTION OF CONTRIBUTIONS.

Subdivision 1. **Interest on past due contributions.** If contributions or reimbursements to the unemployment fund are not paid on the date on which they are due the unpaid balance thereof shall bear interest at the rate of one and one-half percent per month or any part thereof. Contributions or reimbursements received by mail postmarked on a day following the date on which the law requires contributions to be paid shall be deemed to have been paid on the due date if there is substantial evidence tending to prove that the contribution was actually deposited in the United States mails properly addressed to the department with postage prepaid thereon on or before the due date. Interest collected pursuant to this subdivision shall be paid into the contingent account. Interest on contributions due under this subdivision may be waived in accordance with rules as the commissioner may adopt.

Subd. 2. **Reports; delinquencies; penalties.** (1) Any employer who knowingly fails to make and submit to the department of economic security any report of wages paid by or due from him for insured work in the manner and at the time such report is required by regulations prescribed by the commissioner shall pay to the department of economic security for the contingent account a penalty in the amount of one and one-half percent of contributions accrued during the period for which such report is required, for each month from and after such date until such report is properly made and submitted to the department of economic security. In no case shall the amount of the penalty imposed hereby be less than \$5 per month. The maximum penalty imposed hereby shall be \$25 or the amount determined at the rate of one and one-half percent per month, whichever is greater. Any employing unit which fails to make and submit to the commissioner any report, other than one of wages paid or payable for insured work, as and when required by the regulations of the commissioner, shall be subject to a penalty in the sum of \$10 payable to the department of economic security for the contingent account. All such penalties shall be in addition to interest and any other penalties provided for by sections 268.03 to 268.24 and shall be collected by civil action as hereinafter provided.

(2) If any employing unit required by sections 268.03 to 268.24 to make and submit contribution reports shall fail to do so within the time prescribed by these sections or by regulations under the authority thereof, or shall make, wilfully or otherwise, an incorrect, false or fraudulent contribution report, he shall, on the written demand of the commissioner, make such contribution report, or corrected report, within ten days after the mailing of such written demand and at the same time pay the whole contribution, or additional contribution, due on the basis thereof. If such employer shall fail within that time to make such report, or corrected report, the commissioner shall make for him a report, or corrected report, from his own knowledge and from such information as he can obtain through testimony, or otherwise, and assess a contribution on the basis thereof, which contribution, plus penalties and interest which thereafter accrued (less any payments theretofore made) shall be paid within ten days after the commissioner has mailed to such employer a written notice of the amount thereof and demand

for its payment. Any such contribution report or assessment made by the commissioner on account of the failure of the employer to make a report or corrected report shall be prima facie correct and valid, and the employer shall have the burden of establishing its incorrectness or invalidity in any action or proceeding in respect thereto. Whenever such delinquent employer shall file a report or corrected report, the commissioner may, if he finds it substantially correct, substitute it for the commissioner's report. If an employer has failed to submit any report of wages paid, or has filed an incorrect report, and the commissioner finds that such noncompliance with the terms of sections 268.03 to 268.24 was not wilful and that such employer was free from fraudulent intent, the commissioner shall limit the charge against such employer to the period of the year in which such condition has been found to exist and for the preceding calendar year.

Subd. 3. [Repealed, 1Sp1982 c 1 s 43]

Subd. 4. **Compromise agreements.** The commissioner, or any officer or employee of the state department of economic security authorized in writing by the commissioner, is authorized to enter into an agreement in writing with any employer relating to the liability of such employer in respect to delinquent contributions, interest, penalties, and costs; provided that such agreement shall not be made in respect to liability for the principal sum of delinquent contributions unless the same has been delinquent for a period of at least four years prior to the making of such agreement. The commissioner may also enter into an agreement, with respect to liability for delinquent contributions, interest, penalties and costs, with any employer who has never paid any contributions to the fund and such failure to pay contributions was, in the opinion of the commissioner, due to an honest belief on the part of such employer that he was not covered by sections 268.03 to 268.24. Any agreements made under this subdivision shall be subject to the approval of the attorney general and a summary of any such agreements shall be published in the next succeeding annual report of the commissioner to the governor.

If such agreements are approved by the commissioner and the attorney general, the same shall be final and conclusive; and, except upon a showing of fraud or malfeasance or misrepresentation of a material fact, the case shall not be reopened as to the matters agreed upon or the agreement modified by any officer, employee or agent of the state; and, in any suit, action or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside or destroyed.

Subd. 5. **Priorities under legal dissolutions or distributions.** In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this state, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceeding, contributions then or thereafter due shall be paid in full prior to all other claims except claims for wages of not more than \$250 to each claimant, earned within six months of the commencement of the proceedings. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the federal bankruptcy act of 1898, as amended, contributions then or thereafter due shall be entitled to such priority as is provided in that act for taxes due any state of the United States.

Subd. 6. **Adjustments, refunds.** If an employer makes an application for an adjustment of any amount paid as contributions or interest thereon, to be applied against subsequent contribution payments, or for a refund thereof because such adjustment cannot be made, and the payment was made within four years prior to

the year in which the application is made, and if the commissioner shall determine that payment of such contributions or interest or any portion thereof was erroneous, the commissioner shall allow such employer to make an adjustment thereof, without interest, in connection with subsequent contribution payments by him, or if such adjustment cannot be made, the commissioner shall refund from the fund to which such payment has been credited, without interest, the amount erroneously paid. For like cause and within the same period, adjustment or refund may be so made on the commissioner's own initiative.

In the event that any application for adjustment or refund is denied in whole or in part, a written notice of such denial shall be mailed to the applicant. Within 30 days after the mailing of such notice of denial to the applicant's last known address, the applicant may request, in writing, that the commissioner grant a hearing for the purpose of reconsidering the facts submitted and to consider any additional information. Proceedings on the appeal shall be had in accordance with section 268.12, subdivision 13.

Subd. 7. Limitation. Nothing in sections 268.03 to 268.24, or any part thereof, shall be construed to authorize any refund of moneys due and payable under the law and regulations in effect at the time such moneys were paid.

Subd. 8. Compromise by attorney general. The attorney general may compromise contributions, penalties, and interest in any case referred to him, whether reduced to judgment or not, when, in his opinion, it shall be in the best interests of the state to do so. A compromise made hereunder shall be in the form the attorney general prescribes and in writing signed by the attorney general, the taxpayer or his representative, and the commissioner or his authorized representative. No compromise is authorized under this subdivision when the amount of contributions, interest, and penalties exceeds \$5,000.

History: *Ex1936 c 2 s 14; 1941 c 554 s 13; 1943 c 650 s 9; 1945 c 376 s 13; 1949 c 605 s 12,13; 1951 c 55 s 1; 1953 c 97 s 17; 1969 c 9 s 65; 1969 c 567 s 3; 1969 c 854 s 13; 1973 c 254 s 3; 1973 c 720 s 73 subds 2,3; 1975 c 108 s 1; 1975 c 302 s 3,4; 1975 c 336 s 22,23; 1977 c 430 s 25 subd 1; 1978 c 674 s 60; 1978 c 618 s 2; 1980 c 508 s 11-13; 3Sp1981 c 2 art 1 s 33; 1Sp1982 c 1 s 34.35 (4337-34)*

268.161 CONTRIBUTION AND REIMBURSEMENT LIEN.

Subdivision 1. Lien. Any contributions or reimbursements due under sections 268.03 to 268.24 and interest and penalties imposed with respect thereto, shall become a lien upon all the property, both real and personal, of the person liable therefor, within this state, except his homestead, from and after the filing by the commissioner of a notice of lien in the office of the county recorder of the county in which the property is situated, or in the case of personal property belonging to an individual who is not a resident of this state, or which is a corporation, partnership, or other organization, in the office of the secretary of state.

The lien created under this section shall become effective with respect to personal property from and after the date of filing by the commissioner of a notice of the lien describing the property to which the lien attaches in the office of the county recorder of the county in which the commissioner believes the property is located at the time the lien is filed, and with the secretary of state.

The lien imposed on personal property by this section, even though properly filed, shall not be valid as against a purchaser with respect to tangible personal property purchased at retail or as against the personal property listed as exempt in sections 550.37, 550.38 and 550.39.

Subd. 2. Injunction forbidden. No suit shall lie to enjoin the assessment or collection of any contribution or reimbursement imposed by this chapter, or the interest and penalties imposed thereby.

Subd. 3. **Legal action.** If after due notice any employer defaults in any payment of contributions, reimbursements, and interest due thereon or penalties for failure to file returns and other reports as required by the provisions of sections 268.03 to 268.24 or by any rule of the commissioner, the commissioner shall, unless he proceeds under one of the other subdivisions of this section, bring against the person liable for payment thereof an action at law, in the name of the state, for the recovery of the contribution, reimbursement, interest and penalties due in respect thereof under this chapter. The action shall be brought in the district court of the county of the residence or principal place of business within this state of the employer, or, in the case of an estate or trust, of the place of its principal administration, and for this purpose the place named in the report, if any, made by the employer shall be conclusive against the employer. If no place is named in the report, the action may be commenced in Ramsey county. The action shall be commenced by filing with the clerk of court a statement showing the name and address of the employer, if known, an itemized summary of the taxable wages on the basis of which the contribution has been computed, the contribution due and unpaid thereon, and the interest and penalties due with respect thereto under this chapter, and shall contain a prayer that the court adjudge the employer to be indebted on account of the contribution, interest, and penalties in the amount thereof specified in the statement. The clerk shall mail a copy of the statement by certified mail to the employer at the address given in the report, if any, and, if no address is given, then at his last known address, within five days after the same is filed, except that, if the employer's address is not known, notice to him shall be made by posting a copy of the statement for ten days in the place in the courthouse where public notices are regularly posted. The employer shall, if he desires to litigate the claim, or any part thereof, file a verified answer with the clerk setting forth his objections to the claim, or any part thereof. The answer shall be filed on or before the lapse of the 20th day after the date of mailing the statement. If notice has been given by posting, the answer shall be filed on or before the 20th day after the expiration of the period during which the notice was required to be posted. If no answer is filed within the specified time, the clerk, upon the filing of an affidavit of default, shall enter judgment for the state in the amount prayed for, plus costs of \$10. If an answer be filed, the issues raised shall stand for trial as soon as possible after the filing of the answer, and the court shall determine the issues and direct judgment accordingly and, if the contribution, interest, or penalties are sustained to any extent over the amount rendered by the employer, shall assess \$10 costs against the employer. The court shall disregard all technicalities and matters of form not affecting the substantial merits. The commissioner may call upon a county attorney or the attorney general to conduct the proceedings on behalf of the state. Execution shall be issued upon the judgment at the request of the commissioner, and the execution shall, in all other respects, be governed by the laws applicable to executions issued on judgments. Only the homestead and household goods of the judgment debtor shall be exempt from seizure and sale upon the execution.

Subd. 4. **Collection by civil action.** (1) In addition to all other collection methods authorized, if, after due notice, any employer defaults in any payment of contributions or interest due thereon or penalties for failure to file returns and other reports as required by sections 268.03 to 268.24 or by any rule of the commissioner, the amount due shall be collected by civil action in the name of the state of Minnesota, and any money recovered shall be credited to the funds provided for under those sections. Any employer adjudged in default shall pay the costs of the action. Civil actions brought under this section to collect contributions, interest due thereon, or penalties from an employer shall be heard by the court at the earliest possible date. No action for the collection of contributions or interest thereon shall be commenced more than four years after

the contributions have been reported by the employer or determined by the commissioner to be due and payable. In any action, judgment shall be entered against any defendant in default for the relief demanded in the complaint without proof, together with costs and disbursements, upon the filing of an affidavit of default.

(2) Any employing unit which is not a resident of this state and which exercises the privilege of having one or more individuals perform service for it within this state, and any resident employing unit which exercises that privilege and thereafter removes from this state, shall be deemed thereby to appoint the secretary of state as its agent and attorney for the acceptance of process in any civil action under this subdivision. In instituting an action against any employing unit, the commissioner shall cause process or notice to be filed with the secretary of state, together with a payment of a fee of \$15 and that service shall be sufficient service upon the employing unit, and shall be of the same force and validity as if served upon it personally within this state. The commissioner shall forthwith send notice of the service of process or notice, together with a copy thereof, by certified mail, return receipt requested, to the employing unit at its last known address. The return receipt, the commissioner's affidavit of compliance with the provisions of this section, and a copy of the notice of service shall be appended to the original of the process filed in the court in which the civil action is pending.

Subd. 5. Right of setoff. Upon certification by the commissioner to the commissioner of finance that an employer has an uncontested delinquent contribution or reimbursement liability owed to the department, and that the state has purchased personal services, supplies, contract services, or property from said employer, the commissioner of finance shall apply to the delinquent contribution or reimbursement liability funds sufficient to satisfy the unpaid liability from funds appropriated for payment of said obligation of the state or any of its agencies that are due and owing the employer. The credit shall not be made against any funds exempt under section 550.37 or owed the employer under chapter 256 or 256B.

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

Subd. 6. Contribution or reimbursement presumed valid. The contribution and reimbursement, as assessed 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. The statement filed by the commissioner with the clerk of court, as provided in subdivision 3, or any other certificate by the commissioner of the amount of the contribution, reimbursement, interest and penalties as determined or assessed by him, shall be admissible in evidence and shall establish prima facie the facts set forth therein.

Subd. 7. Confession of judgment. (a) Any contribution report or form that is required to be filed with the commissioner concerning contributions or reimbursements due, shall contain a written declaration that it is made under the penalties of section 268.18, subdivision 3 for wilfully making a false report and shall contain a confession of judgment for the amount of the contribution or reimbursement shown due thereon to the extent not timely paid together with any interest and penalty due under this chapter.

(b) The commissioner may, within four years after a report is filed, notwithstanding section 541.09, enter judgment after 20 days notice served upon the employer by mail at the address shown in the employer's report. The judgment

shall be entered by the clerk of court of any county upon the filing of a photocopy or similar reproduction of that part of the contribution report or form containing the confession of judgment along with a statement of the commissioner or his agent that the contribution or reimbursement has not been paid.

Subd. 8. **Levy.** (a) If any contribution or reimbursement payable to the department is not paid when due, the amount may be collected by the commissioner, his duly authorized representative, or by the sheriff of any county to whom the commissioner has issued his warrant, who may levy upon all property and rights of property of the person liable for the contribution or reimbursement, except that which is exempt from execution pursuant to section 550.37. The terms "contribution or reimbursement" shall include any penalty, interest, and costs. The term "levy" includes the power of distraint and seizure by any means. Before a levy is made or warrant issued, notice and demand for payment of the amount due shall be given to the person liable for the contribution or reimbursement at least ten days prior to the levy or issuing of a warrant.

(b) Upon the commissioner issuing a warrant, the sheriff shall proceed within 60 days to levy upon the rights to property of the employer within his county, except the homestead and household goods of the employer and property of the employer not liable to attachment, garnishment, or sale on any final process issued from any court under the provisions of section 550.37, and shall sell so much thereof as is required to satisfy the contribution, reimbursement, interest, and penalties, together with his costs. The sales shall, as to their manner, be governed by the law applicable to sales of like property on execution issued against property upon a judgment of a court of record. The proceeds of the sales, less the sheriff's costs, shall be turned over to the commissioner, who shall retain a part thereof as is required to satisfy the contribution, reimbursement, interest, penalties, and costs, and pay over any balance to the employer.

(c) If the commissioner has reason to believe that collection of the contribution or reimbursement is in jeopardy, notice and demand for immediate payment of the amount may be made by the commissioner. If the contribution or reimbursement is not paid, the commissioner may proceed to collect by levy or issue his warrant without regard to the ten day period provided herein.

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

(e) Where a jeopardy assessment or any other assessment has been made by the commissioner, the property seized for collection of the contribution or reimbursement shall not be sold until any determination of liability, rate or benefit charges has become final. No sale shall be made unless the contribution or reimbursement remain unpaid for a period of more than 30 days after the determination becomes final. Seized property may be sold at any time if:

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

(f) Where a levy has been made to collect contributions or reimbursements pursuant to this subdivision and the property seized is properly included in a formal proceeding commenced under sections 524.3-401 to 524.3-505 and main-

tained under full supervision of the court, the property shall not be sold until the probate proceedings are completed or until the court so orders.

(g) The property seized shall be returned by the commissioner if the owner gives a surety bond equal to the appraised value of his interest in the property, as determined by the commissioner, or deposits with the commissioner security in a form and amount as he deems necessary to insure payment of the liability, but not more than twice the liability.

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

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

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

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

Subd. 9. Personal liability. Any officer or any employee having 20 percent ownership interest of a corporation which is an employer under sections 268.03 to 268.24 who has control of or supervision over the filing of and responsibility for filing contribution reports or of making payment of contributions under these sections, and who wilfully fails to file the reports or to make payments as required, shall be personally liable for contributions or reimbursement, including interest, penalties, and costs in the event the corporation does not pay to the department those amounts for which the employer is liable.

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

The personal liability of any person as provided herein shall survive dissolution, reorganization, bankruptcy, receivership, or assignment for the benefit of creditors.

An official designated by the commissioner shall make an initial determination as to the personal liability under this section. The determination shall be final unless the person found to be personally liable shall within 30 days after mailing of notice of determination to his last known address files a written appeal. Proceedings on the appeal shall be conducted in the same manner as an appeal from a determination of employer liability under section 268.12, subdivision 13.

History: *1Sp1982 c 1 s 36*

268.17 PROTECTION OF RIGHTS AND BENEFITS.

Subdivision 1. **Waiver of rights void.** Any agreement by an individual to waive, release, or commute his rights to benefits or any other rights under sections 268.03 to 268.24 shall be void. Any agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contributions, required under these sections from such employer, shall be void. No employer shall directly or indirectly make or require or accept any deduction from wages to finance the employer's contributions required from him, require or accept any waiver of any right hereunder by any individual in his employ or in any manner obstruct or impede the filing of claims for benefits. Any employer or officer or agent of any employer who violates any provision of this subdivision shall, for each offense, be guilty of a misdemeanor.

Subd. 2. **No assignment of benefits; exemptions.** Any assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under sections 268.03 to 268.24 shall be void; and such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy provided for the collection of debt; and benefits received by any individual so long as they are not mingled with other funds of the recipient shall be exempt from any remedy for the collection of all debts, except debts incurred for necessities furnished to such individual or his spouse or dependents during the time when such individual was unemployed. Any waiver of any exemption provided for in this subdivision shall be void.

History: *Ex1936 c 2 s 15; 1941 c 554 s 14 (4337-35)*

268.18 RETURN OF BENEFITS; OFFENSES.

Subdivision 1. **Erroneous payments.** Any claimant for benefits who, by reason of his own mistake or through the error of any individual engaged in the administration of sections 268.03 to 268.24, has received any sum as benefits to which he was not entitled under these sections, shall promptly return such benefits in cash to the nearest office of the Minnesota department of economic security. If such claimant fails to return such benefits, the department of economic security shall, as soon as it discovers such erroneous payment, determine the amount thereof and notify said individual to return the same. Unless the claimant files a written appeal with the department of economic security within 15 days after the mailing of the notice of determination to his last known address or personal delivery of the notice, the determination shall become final. If the claimant files an appeal with the department in writing within the time aforesaid the matter shall be set for hearing before an appeal tribunal of the department and heard as other benefit matters are heard in accordance with section 268.10 with the same rights of review as outlined for benefit cases in that section. The commissioner of the department of economic security is hereby authorized to deduct from any future benefits payable to the claimant under these sections in either the current or any subsequent benefit year an amount equivalent to the overpayment determined or the overpayment may be collected without interest by civil action in the name of the commissioner. If a claimant has been overpaid benefits under the law of another state and that state certifies to the department the facts involved and that the individual is liable under its law to repay the benefits and requests the department to recover the overpayment, the commissioner is authorized to deduct from future benefits payable to the claimant in either the current or any subsequent benefit year an amount equivalent to the amount of overpayment determined by that state.

Subd. 2. **Fraud.** Any claimant who files a claim for or receives benefits by knowingly and wilfully misrepresenting or misstating any material fact or by knowingly and wilfully failing to disclose any material fact which would make him

ineligible for benefits under sections 268.03 to 268.24 is guilty of fraud. After the discovery of facts by the commissioner indicating fraud in claiming or obtaining benefits under sections 268.03 to 268.24, he is hereby authorized to make a determination that the claimant was ineligible for each week with reference to which benefits were claimed or obtained by fraud for the amount as was in excess of what the claimant would have been entitled to had he not made the fraudulent statements or failed to disclose any material facts. The commissioner also may disqualify an individual from benefits for one to 52 weeks in which the claimant is otherwise eligible for benefits following the week in which the fraud was determined. A disqualification imposed for fraud shall not be removed by subsequent insured work or the expiration of a benefit year but shall not apply to any week more than 104 weeks after the week in which the fraud was determined. Said claimant shall within 20 days from the date of mailing the notice of said determination to him repay in cash to the department of economic security any benefits so fraudulently obtained. Unless the claimant files a written appeal with the department of economic security within 15 days after the mailing of the notice of determination to his last known address or personal delivery of the notice. The determination shall become final. If the claimant shall appeal from such determination within the time above specified said matter shall be referred to an appeal tribunal for a hearing as in other benefit cases and thereafter the procedure for review shall be the same as set forth in section 268.10. The commissioner is hereby authorized to deduct from future benefits payable to the claimant in either the current or any subsequent benefit year an amount equivalent to the amount of overpayment determined or the overpayment may be collected without interest by civil action in the name of the commissioner. If a claimant has been overpaid benefits under the law of another state and that state certifies to the department the facts involved and that the individual is liable to repay the benefits and requests the department to recover the overpayment, the commissioner is authorized to deduct from future benefits payable to the claimant in either the current or any subsequent benefit year an amount equivalent to the amount of overpayment determined by that state.

Subd. 3. False representations; concealment of facts; penalty. Whoever makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact to obtain or increase any benefit or other payment under sections 268.03 to 268.24, or under the employment security law of any state or of the federal government or of a foreign government, either for himself or any other person, shall be guilty of a gross misdemeanor.

Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining a subject employer or to avoid or reduce any contribution or other payment required from an employing unit under those sections or under the employment security law of any state or of the federal government, or who wilfully fails or refuses to make any such contributions or other payment or to furnish any reports at the time when required hereunder or to produce or permit the inspection or copying of records as required hereunder, shall be guilty of a gross misdemeanor.

Subd. 4. Cancellation of benefits paid through error or fraud. When benefits paid through error or fraud are not repaid or deducted from subsequent benefit amounts as provided for in subdivisions 1 and 2 within six years after the date of the determination that benefits were paid through error or fraud irrespective of subsequent partial recovery dates, the commissioner may, in a manner he prescribes by regulation, cancel as uncollectible the overpayment balance, and no administrative or legal proceedings shall be instituted under the Minnesota employment services law to enforce collection of those amounts.

Subd. 5. **Erroneous payments; charging.** The amount of benefits paid and subsequently determined to have been paid: (a) erroneously by the claimant's own mistake; (b) through error by any individual engaged in the administration of sections 268.03 to 268.24; or (c) based upon the claimant's fraudulent statements or his failure to disclose any material facts, shall not be charged to or will be removed from an employer's experience rating account for all subsequent rate computations which have not become final under section 268.06, and shall not be charged to employers electing to reimburse the unemployment fund in accordance with section 268.06, for all benefits paid, based upon wages for services performed with the employer.

Subd. 6. **Employer misconduct; penalty.** If the commissioner finds that any employing unit or any employee, officer, or agent of any employing unit, is in collusion with any employee for the purpose of assisting the claimant to receive benefits illegally, the employing unit shall be penalized \$500 or an amount equal to the amount of benefits determined to be overpaid, whichever is greater.

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

Penalties assessed under this section shall be in addition to any other penalties provided for by sections 268.03 to 268.24 and be subject to the same collection procedures that apply to past due contributions under this chapter. Penalties under this section shall be paid to the department and credited to the contingent fund.

The assessment of the penalty shall be final unless the employer files a written appeal with the department within 15 days after the notice of determination to his last known address. If the employer shall appeal from the determination within the time above specified, the matter shall be referred for a hearing as set forth in section 268.10.

History: *Ex1936 c 2 s 16; 1941 c 554 s 15; 1951 c 442 s 11; 1953 c 97 s 18; 1969 c 567 s 3; 1973 c 254 s 3; 1975 c 336 s 24; 1977 c 4 s 10; 1977 c 430 s 25 subd 1; 1979 c 181 s 17,18; 1Sp1982 c 1 s 37-40 (4337-36)*

268.20 REPRESENTATION IN COURT.

In any civil action to enforce the provisions of sections 268.03 to 268.24, the commissioner shall be represented by the attorney general.

History: *Ex1936 c 2 s 17; 1941 c 554 s 16 (4337-37)*

268.21 NON-LIABILITY OF STATE.

Benefits shall be deemed to be due and payable under sections 268.03 to 268.24 only to the extent provided therein and to the extent that moneys are available therefor to the credit of the unemployment compensation fund and neither the state nor the commissioner shall be liable for any amount in excess of such sums.

History: *Ex1936 c 2 s 18; 1941 c 554 s 17 (4337-38)*

268.22 SAVING CLAUSE.

The legislature reserves the right to amend or repeal all or any part of sections 268.03 to 268.24 at any time; and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred thereby, or by acts done pursuant thereto, shall exist subject to the power of the legislature to amend or repeal these sections at any time.

History: *Ex1936 c 2 s 19; 1941 c 554 s 18 (4337-39)*

268.23 SEVERABLE.

In the event that the United States department of labor shall determine that any provision of sections 268.03 to 268.24 is not in conformity with various provisions of the Federal Internal Revenue Code or the Social Security Act then such provision shall have no force or effect for any purpose but if any provision of sections 268.03 to 268.24, or the application thereof to any person or circumstances, is held invalid, the remainder of said sections and the application of such provision to other persons or circumstances shall not be affected thereby.

History: *Ex1936 c 2 s 20; 1941 c 554 s 19; 1949 c 605 s 14; 1965 c 45 s 47 (4337-40)*

268.231 EFFECTIVE RATE; SUBSEQUENT YEARS.

The rate schedule set forth in section 268.06 shall be effective for the year 1949 and subsequent years. The benefit schedule set forth in section 268.07 and the one week waiting period requirement set forth in section 268.08 shall apply to claims filed for benefits which establish a benefit year after June 30, 1949.

History: *1949 c 605 s 16*

268.24 CITATION, EMPLOYMENT SERVICES LAW.

Sections 268.03 to 268.24 shall be known and may be cited as the Minnesota employment services law.

History: *Ex1936 c 2 s 21; 1941 c 554 s 20; 1945 c 376 s 14; 1953 c 603 s 1; 1969 c 567 s 2; 1973 c 254 s 2 (4337-41)*

268.25 EFFECTIVE DATES.

Laws 1945, Chapter 376, shall take effect and be in force from and after its passage, unless otherwise specifically provided therein, except that sections 268.04, 268.06, 268.07, 268.08, 268.09, and 268.16, Minnesota Statutes 1941, as amended by Laws 1943, Chapter 650, and as amended by Laws 1945, Chapter 376, shall take effect and be in force from and after July 1, 1945; provided that sections 268.04, 268.07 and 268.08, Minnesota Statutes 1941, as amended by Laws 1943, Chapter 650, and as amended by Laws 1945, Chapter 376, shall not affect the determination of or rights to claims filed prior to July 1, 1945.

History: *1945 c 376 s 15*

268.31 DEVELOPMENT OF YOUTH EMPLOYMENT OPPORTUNITIES.

To the extent of available funding, the commissioner of economic security shall hire individuals from the ages of 14 years up to 22 years for a maximum of 12 weeks, not to exceed 40 hours per week per individual, during the summer for the purpose of placing such individuals in service with the department of economic security and with other departments, agencies and instrumentalities of the state, county, local governments, school districts and with nonprofit organizations. Priority for employment shall be given to those young individuals between the ages of 16 years up to 22 years.

History: *1977 c 254 s 1; 1977 c 430 s 25 subd 1*

268.32 RATE OF PAY.

Persons hired pursuant to sections 268.31 to 268.36 shall be compensated at the federal minimum wage rate. Persons hired in a supervisory capacity shall be compensated at a rate established by the commissioner.

History: *1977 c 254 s 2*

268.33 ELIGIBILITY FOR EMPLOYMENT AND PLACEMENT.

Subdivision 1. The department of economic security shall promulgate rules determining the eligibility for employment and placement pursuant to sections 268.31 to 268.36. The department shall have emergency powers to implement rules for carrying out sections 268.31 to 268.36.

Subd. 2. The department of economic security shall, for the purposes of sections 268.31 to 268.36, be exempt from complying with any law relating to hiring by departments, agencies or instrumentalities of the state.

History: 1977 c 254 s 3; 1977 c 430 s 25 subd 1

268.34 EMPLOYMENT CONTRACTS WITH GOVERNMENTAL SUBDIVISIONS AND NONPROFIT ORGANIZATIONS.

The commissioner is authorized to enter into arrangements with existing public and private nonprofit organizations and agencies with experience in administering summer youth employment programs for the purpose of providing employment opportunities in furtherance of sections 268.31 to 268.36 and to advance up to 20 percent of a summer youth employment contract to any participating organization or agency. The commissioner shall enter into these agreements with organizations designated by the prime sponsors authorized under the comprehensive employment and training act (CETA). The department of economic security shall retain ultimate responsibility for the administration of this employment program, including but not limited to, approval of summer job opportunities, review of applicants therefor, placement of youth in jobs subject to the approval of prime sponsors and the disbursement of funds. Any administrative costs, with the exception of worker's compensation, incurred by any nonprofit organization or any governmental agency with which an arrangement has been made by the department of economic security shall not be paid from appropriated funds available for the purposes of sections 268.31 to 268.36.

History: 1977 c 254 s 4; 1977 c 430 s 25 subd 1; 1981 c 82 s 1

268.35 ALLOCATION OF FUNDS.

The commissioner shall allocate funds to recipient organizations and agencies throughout the state taking into account in making such allocations the youth population of the county adjusted to eliminate the influence of post secondary educational institutions located in the county, the county unemployment rate and the number of families living below the poverty level in the county in which the recipient organization or agency is located.

History: 1977 c 254 s 5

268.36 REPORT TO THE GOVERNOR AND THE LEGISLATURE.

The commissioner, after consultation with the CETA prime sponsors, shall evaluate the effectiveness of the youth employment program, taking into account the extent of other programs which are providing summer employment opportunities for youth covered under sections 268.31 to 268.36, and shall report to the governor and the legislature no later than January 15 of each even numbered year with an evaluation of the program and any recommendations for improvements.

History: 1977 c 254 s 6

268.37 COORDINATION OF FEDERAL AND STATE RESIDENTIAL WEATHERIZATION PROGRAMS.

Subdivision 1. The department of economic security is the state agency to apply for, receive, and disburse money made available to the state by federal law

for the purpose of weatherizing the residences of low-income persons. The commissioner of economic security shall coordinate available federal money with state money appropriated for this purpose.

Subd. 2. The commissioner shall make grants of federal and state money to community action agencies and other public or private nonprofit agencies for the purpose of weatherizing the residences of low-income persons. Grant applications shall be submitted in accordance with rules developed pursuant to 42 U.S.C., Sections 6861 to 6872, any other relevant federal weatherization program, and rules promulgated by the commissioner.

Subd. 3. The commissioner shall promulgate temporary rules as necessary to administer the grants program and shall promulgate permanent rules by July 1, 1980. The rules shall describe: (a) procedures for the administration of grants, (b) data to be reported by grant recipients, and (c) other matters the commissioner finds necessary for the proper administration of the grant program including compliance with relevant federal regulations. Weatherization assistance shall be given to households where the total income does not exceed 125 percent of the poverty level as updated by the federal office of management and budget poverty guidelines.

Subd. 4. The commissioner shall distribute supplementary state grants in a manner consistent with the goal of producing the maximum number of weatherized units. Supplementary state grants are provided primarily for the payment of additional labor costs for the federal weatherization program, and as an incentive for the increased production of weatherized units.

Criteria for the allocation of state grants to local agencies include: (a) existing local agency production levels, (b) availability of CETA resources in the area, (c) emergency needs, and (d) the potential for maintaining or increasing acceptable levels of production in the area.

An eligible local agency may receive advance funding for 90 days' production, but thereafter shall receive grants solely on the basis of program criteria.

Subd. 5. The commissioner shall submit reports to the legislature by March 1 of each year, evaluating the weatherization program. The reports shall describe: (a) the number of households weatherized, (b) the average cost per household, (c) any change in energy consumption after weatherization, (d) outreach efforts, and (e) any other information the commissioner feels is relevant, including information routinely submitted to the federal government.

History: *Ex1979 c 2 s 37; 1980 c 579 s 19*

268.40 MS1980 [Expired]

268.41 MS1980 [Expired]

268.42 MS1980 [Expired]

268.43 MS1980 [Expired]

COMMUNITY ACTION AGENCIES

268.52 FINANCIAL ASSISTANCE FOR COMMUNITY ACTION AGENCIES.

Subdivision 1. **Authorization.** The commissioner of economic security may provide financial assistance for community action agencies, Indian reservations and the statewide migrant seasonal farmworker organization known as the Minnesota migrant council to carry out community action programs as described in section 268.54 in accordance with state and federal law and regulation.

Subd. 2. **Allocation of funds.** Funds appropriated for the purpose of subdivision 1 shall be allocated annually to community action agencies under either

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clause (a) or (b), whichever is more advantageous to the agency, to Indian reservations under clause (c) and to the Minnesota migrant council under clause (d).

If the appropriation is insufficient to fully fund each agency, the insufficiency shall be prorated annually among the agencies.

(a) In proportion to the size of the poverty level population served by the agency when compared to the size of the poverty level population in the state; or

(b) Determined as follows:

If the appropriation of funds for community action agencies shall be equal to or more than that available in fiscal years 1979 and 1980, there shall be in place a "hold-harmless" provision for the allocation of funds among community action agencies. For purposes of this section, "hold-harmless" is the amount of funding received by a community action agency under the Economic Opportunity Grant Program in the previous fiscal year when calculating an agency's economic opportunity grant. When calculating an agency's community services block grant, "hold-harmless" is the amount of funding received by a community action agency from the local initiative or community services block grant in the previous fiscal year.

(c) Allocation of funds to Indian reservations is based on the poverty level population of the reservation.

(d) Allocation of funds to the Minnesota migrant council shall not exceed three percent of the total funds available. The state office of economic opportunity shall negotiate the percentage allocation annually based on the most recent low income population figures.

Subd. 3. **Reports.** Each community action agency receiving funds under this section shall report annually to the commissioner concerning the use of the funds.

Subd. 4. **Definition.** For the purposes of sections 268.52 to 268.54, "poverty level population" means the number of people whose household income is at or below the poverty line established by the United States office of management and budget in accordance with the most recent state population figures established by the United States Department of Commerce, Bureau of the Census.

History: 1981 c 367 s 2; 1982 c 571 s 1-3

268.53 COMMUNITY ACTION AGENCIES.

Subdivision 1. **In general.** A community action agency is a political subdivision of the state, a combination of political subdivisions, a public agency, or a private nonprofit agency which has the authority under its applicable charter or laws to receive funds under section 268.52 to support community action programs as described in section 268.54 and which was designated as a community action agency according to federal law or regulations, or recognized as a community action agency by the governor.

Subd. 1a. **Designation and recognition.** To obtain recognition by the governor a community action agency must be designated by a political subdivision having jurisdiction over the entire area to be served by the agency. To designate a community action agency, the political subdivision must hold a public hearing, pass a resolution to designate, and file a "notice of intent to designate" and eligibility documents with the state office of economic opportunity for final review and authorization for a new community action agency.

Subd. 2. **Administering board.** Each community action agency shall administer its community action programs through a community action board consisting of 15 to 51 members.

(a) One-third of the members of the board shall be elected public officials, currently holding office, or their representatives.

(b) At least one-third of the members shall be persons chosen in accordance with democratic selection procedures adequate to assure that they are representative of the poor in the area served.

(c) The other members shall be officials or members of business, industry, labor, religious, welfare, education, or other major groups and interests in the community. Each member of the board selected to represent a specific geographic area within a community must reside in the area represented.

(d) No person selected under clause (b) or (c) shall serve for more than five consecutive years or more than a total of ten years.

(e) The public community action agency shall have an administering board which meets the requirements of this subdivision.

(f) The statewide migrant seasonal farmworker organization known as the Minnesota migrant council and Indian reservations carrying out community action programs are exempt from the board composition requirements of this subdivision.

Subd. 3. Delegation of powers. If a community action agency places responsibility for major policy determinations with respect to the character, funding, extent, and administration of and budgeting for programs to be carried on in a particular geographic area within the community in a subsidiary board, council, or similar agency, that board, council, or agency shall be broadly representative of the area.

Subd. 4. Local participation. Each community action agency shall consult neighborhood based organizations composed of residents of the area or members of the groups served to assist the agency in the planning, conduct, and evaluation of components of the community action program.

Subd. 5. Functions; powers. A community action agency shall:

(a) Plan systematically for an effective community action program; develop information as to the problems and causes of poverty in the community; determine how much and how effectively assistance is being provided to deal with those problems and causes; and establish priorities among projects, activities and areas as needed for the best and most efficient use of resources;

(b) Encourage agencies engaged in activities related to the community action program to plan for, secure, and administer assistance available under section 268.52 or from other sources on a common or cooperative basis; provide planning or technical assistance to those agencies; and generally, in cooperation with community agencies and officials, undertake actions to improve existing efforts to reduce poverty, such as improving day-to-day communications, closing service gaps, focusing resources on the most needy, and providing additional opportunities to low-income individuals for regular employment or participation in the programs or activities for which those community agencies and officials are responsible;

(c) Initiate and sponsor projects responsive to needs of the poor which are not otherwise being met, with particular emphasis on providing central or common services that can be drawn upon by a variety of related programs, developing new approaches or new types of services that can be incorporated into other programs, and filling gaps pending the expansion or modification of those programs;

(d) Establish effective procedures by which the poor and area residents concerned will be enabled to influence the character of programs affecting their interests, provide for their regular participation in the implementation of those programs, and provide technical and other support needed to enable the poor and neighborhood groups to secure on their own behalf available assistance from public and private sources;

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(e) Join with and encourage business, labor and other private groups and organizations to undertake, together with public officials and agencies, activities in support of the community action program which will result in the additional use of private resources and capabilities, with a view to developing new employment opportunities, stimulating investment that will have a measurable impact on reducing poverty among residents of areas of concentrated poverty, and providing methods by which residents of those areas can work with private groups, firms, and institutions in seeking solutions to problems of common concern.

Subd. 6. **Agencies as local providers.** Agencies defined by this section shall be considered among local providers of outreach services and activities for all anti-poverty efforts.

Subd. 7. **Categorical funds.** Federal anti-poverty categorical funds consolidated into block grants to the state of Minnesota shall be designated by the state for anti-poverty purposes.

History: 1981 c 367 s 3; 1982 c 571 s 4-8

268.54 COMMUNITY ACTION PROGRAMS.

Subdivision 1. **In general.** A community action program is a community based and operated program which:

(a) Includes or is designed to include a sufficient number of projects or components to provide, in sum, a range of services and activities having a measurable and potentially major impact on causes of poverty in the community or those areas of the community where poverty is a particularly acute problem;

(b) Has been developed, and which organizes and combines its component projects and activities, in a manner appropriate to carry out all the purposes of sections 268.52 to 268.54; and

(c) Conforms to any other supplementary criteria as the governor may prescribe consistent with the purposes and provisions of sections 268.52 to 268.54.

Subd. 2. **Components.** The components of a community action program shall be designed to assist participants, including the elderly poor to achieve increased self-sufficiency and greater participation in the affairs of the community by providing services and programs not sufficiently provided in the community by any governmental unit, any public institution, or any other publicly funded agency or corporation. Community action agencies, governmental units, public institutions or other publicly funded agencies or corporations shall consult on whether or not a program or service is sufficiently provided in the community.

Subd. 3. **Administration.** Components of a community action program may be administered by the community action agency when consistent with sound and efficient management and applicable law, or by other agencies. They may be projects eligible for assistance under section 268.52, or projects assisted from other public or private sources; and they may be either specially designed to meet local needs, or designed pursuant to the eligibility standards of a state or federal program providing assistance to a particular kind of activity which will help in meeting those needs.

History: 1981 c 367 s 4; 1982 c 571 s 9