

CHAPTER 268

DEPARTMENT OF ECONOMIC SECURITY

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268.011 CREATION.

[For text of subd 1, see M.S.1982]

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. The commissioner may accept gifts, bequests, grants, payments for services, and other public and private funds to help finance the activities of 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: 1983 c 339 s 1

268.021 RULES.

The commissioner of the department of economic security is authorized to adopt rules, including temporary rules, in accordance with chapter 14, with respect to programs the commissioner administers under chapter 268 and other programs for which the commissioner is responsible under federal or state law.

History: 1983 c 268 s 1

268.04 DEFINITIONS.

[For text of subd 1, see M.S.1982]

Subd. 2. "Base period" means the period of 52 calendar weeks immediately preceding the first day of an individual's benefit year. However, 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, or if a claimant, whose own serious illness caused a loss of credit weeks within the base period, received compensation due to the illness from some other source or under a law of this state other than chapter 176 or under a similar law of the United States for more than seven weeks within the base period, the claimant's base period shall be lengthened by the same number of weeks, but not to exceed 52 weeks, for which the claimant received the payments. No extended base period shall include wage credits upon which benefits were established and paid with respect to a prior valid claim.

[For text of subs 3 to 11, see M.S.1982]

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 full-time 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.

(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 primarily 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 political subdivision thereof, by an individual receiving such work relief or work training. This exclusion shall not apply to programs that provide for and require unemployment insurance coverage for the participants; 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 (2), 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:

(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 Statutes 1550, section 3; 12 United States Code 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 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 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 full-time 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 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;

(r) Services performed as a direct seller as defined in United States Code, title 26, section 3508.

(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.

[For text of subs 13 to 16, see M.S.1982]

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. Periods for which an individual receives back pay are periods of insured work for benefit purposes, except for the clearing of disqualifications under this chapter.

[For text of subs 18 to 24, see M.S.1982]

Subd. 25. **Wages.** "Wages" means all remuneration for services, including commissions and bonuses, back pay as of the date of payment, 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, for each calendar year, the greater of \$7,000 or 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 actually or constructively paid, wages overdue and delayed beyond the usual time of payment and back pay 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 department of education, shall not result in wage credits available for benefit purposes.

[For text of subds 27 and 28, see M.S.1982]

Subd. 29. "Credit week" is any week for which wages or back pay, actually or constructively paid, wages overdue and delayed beyond the usual time of payment, and back pay 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.

[For text of subds 30 to 32, see M.S.1982]

Subd. 33. **Back pay.** "Back pay" means a retroactive payment of money by an employer to an employee or former employee for lost wages because of the employer's noncompliance with a state or federal law or a collective bargaining agreement as determined in an arbitration award, administrative or judicial decision, or negotiated settlement. The period to which the payment shall be applied shall commence immediately following the last day of work or as specified in the arbitration award, administrative or judicial decision, or negotiated settlement.

History: 1983 c 372 s 1-7

268.05 UNEMPLOYMENT COMPENSATION FUND.

[For text of subds 1 to 4, see M.S.1982]

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 12-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 12-month period and the 34 preceding 12-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 35 12-month periods. For the purposes of this subdivision, amounts used during any such 12-month period shall be charged against equivalent amounts which were first credited and which are not already so charged; except that no amount obligated for administration during any such 12-month period may be charged against any amount credited during such a 12-month period earlier than the 24th preceding such period.

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

(3) 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.

[For text of subd 6, see M.S.1982]

History: 1983 c 372 s 8

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. 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.

(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 shall pay contributions equal to two and seven-tenths percent for each calendar year prior to 1985 and 5-4/10 percent for 1985 and each subsequent calendar year 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. 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 2-7/10 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, 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 5-4/10 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 immedi-

ately preceding July 1, 1984 and each year thereafter for each employer, except employers in the construction industry, as determined by the commissioner 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.

[For text of subd 4, see M.S.1982]

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.

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 United States Code 5122(2)), 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.

[For text of subds 6 to 19, see M.S.1982]

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 the 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. The date shall appear on the notice. Upon receipt of the protest, the commissioner shall refer the matter to an official designated by him to review the charges appearing on the 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. The official shall either affirm or make a redetermination rectifying the charges or rate as the case may be, and a notice of the affirmation or redetermination shall immediately be mailed to the employer. If the employer is not satisfied with the affirmation or redetermination, he may appeal by filing a notice with the department within ten days after the date of mailing appearing upon the redetermination. Upon the receipt of the 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, consolidation will not be prejudicial to any interested party. At any 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 provided by section 268.10, subdivision 5.

[For text of subs 21 to 27, see M.S.1982]

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 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 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.

(b) 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.

(c) 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.

(d) 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.

(e) 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. Each member of the group shall be jointly and severally liable for payments in lieu of contributions for all benefits paid based upon wage credits earned with a group member during the period the group account was in effect. 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.

[For text of subds 30 and 31, see M.S.1982]

Subd. 32. [Repealed, 1983 c 372 s 48]

[For text of subd 33, see M.S.1982]

History: 1983 c 247 s 112; 1983 c 372 s 9-15

268.061 SURCHARGE; EMERGENCY INTEREST REPAYMENT FUND.

Subdivision 1. **Amount.** Each employer, except those making payments in lieu of contributions pursuant to section 268.06, subdivisions 25, 26, 27 and 28, shall pay an annual surcharge of ten percent of contributions paid or due and payable for the calendar years 1982 and 1983. The commissioner shall notify employers of the contributions upon which the surcharge is based and the amount of surcharge payable no later than August 1, 1983, and August 1, 1984. The surcharge for taxable year 1982 shall be paid no later than August 31, 1983, and the surcharge for taxable year 1983 shall be paid no later than August 31, 1984. Payments due under this subdivision are subject to the collection provisions of sections 268.16 and 268.161. The surcharges paid under this subdivision are not contributions for the purposes of section 268.06, subdivision 6. The commissioner may temporarily reduce the amount of surcharge imposed by this section when there are sufficient funds raised by the surcharge to make the interest payment required on federal funds advanced to the state under section 1202 of the Social Security Act.

Subd. 2. **Emergency interest repayment fund, creation.** A special fund to be known as the emergency interest repayment fund is created in the state treasury. The special fund is separate and distinct from any fund or account created for any other purposes of sections 268.03 to 268.24. All collections from the surcharge shall be deposited in the special fund. All money in the special fund is appropriated to the commissioner to pay interest accruing on funds advanced from the federal government pursuant to section 1202 of the Social Security Act, and shall not be used for any other obligation of the state. All money 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, except that all interest or net income resulting from the investment or deposit of money in the fund shall accrue to the emergency fund for the purposes of the fund.

Subd. 3. **Report to legislature.** On January 1, 1984, and on January 1, 1985, the commissioner shall report to the legislature on the status of the outstanding funds advanced pursuant to section 1202 of the Social Security Act, including the interest charged on those funds. When all advanced funds and the interest charged on those funds have been repaid to the federal government, the commissioner shall recommend appropriate action by the legislature relating to the termination of the emergency interest repayment fund and the disposition of any money still in the fund.

History: 1983 c 372 s 16

268.07 BENEFITS PAYABLE.

[For text of subd 1, see M.S.1982]

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. The amount so computed if not a whole dollar shall be rounded down to the next lower dollar amount. The maximum weekly benefit amount of claims for benefits which establish a benefit year subsequent to July 1, 1979 shall be $66\frac{2}{3}$ 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 or \$200 for earnings from service in the national guard or a United States military reserve unit. Jury duty pay is not considered as earnings and shall not be deducted from benefits paid. Such benefit, if not a whole dollar amount shall be rounded down to the next lower dollar amount.

(4) The provisions of clauses (1) and (2) shall apply to claims for benefits which establish a benefit year subsequent to June 30, 1983.

[For text of subd 2a, see M.S.1982]

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 benefits were received, the individual performed service

in insured work as defined in section 268.04, subdivision 17, and earned remuneration for the 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 the claimant during a subsequent base period unless the employer has employed the claimant in any part of the 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 is effective when the individual has been paid four times the individual's weekly benefit amount in the current benefit year.

(4) 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.

History: 1983 c 372 s 17,18

268.071 EXTENDED BENEFITS.

[For text of subs 1 and 2, see M.S.1982]

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, except that an individual disqualified for benefits pursuant to section 268.09, subdivision 1, clause (6) is not eligible for extended benefits unless the individual has, subsequent to the disciplinary suspension, earned at least four times his or her weekly extended benefit amount; 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.

[For text of subs 4 to 9, see M.S.1982]

History: 1983 c 372 s 19

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 the individual:

(1) has registered for work at and thereafter has continued to report to an employment office, or agent of the office, in accordance with rules the commissioner may adopt; except that the commissioner may by rule waive or alter either or both of the requirements of this clause as to types of cases or situations with

respect to which the commissioner finds that compliance with the requirements would be oppressive or would be inconsistent with the purposes of sections 268.03 to 268.24;

(2) has made a claim for benefits in accordance with rules as the commissioner may adopt; and

(3) was able to work and was available for work, and was actively seeking work. The individual's weekly benefit amount shall be reduced one-fifth for each day the individual is unable to work or is unavailable for work. 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 is deemed unavailable for work with respect to any week which occurs in a period when the individual 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 the base period were for services performed during weeks in which the student was attending school as a full-time student.

An individual serving as a juror shall be considered as available for work and actively seeking work on each day the individual is on jury duty.

(4) has been unemployed for a waiting period of one week during which the individual is otherwise eligible for benefits under sections 268.03 to 268.24. However, payment for the waiting week shall be made to the individual after the individual has qualified for and been paid benefits for four weeks of unemployment in a benefit year which period of unemployment is terminated because of the individual's return to employment. No individual is 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 the valid claim was filed.

[For text of subd 2, see M.S.1982]

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 except that this does not apply to an individual who is receiving temporary partial compensation pursuant to section 176.101, subdivision 3k; 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. If the computation of reduced benefits, required by this subdivision, is not a whole dollar amount, it shall be rounded down to the next lower dollar amount.

Subd. 3a. **Receipt of back pay.** Back pay received by an individual with respect to any weeks of unemployment occurring in the 104 weeks immediately preceding the payment of the back pay shall be deducted from benefits paid for those weeks.

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

If a deduction from back pay is paid to the fund for benefits deductible under this subdivision, the payment: (a) shall be applied to benefit overpayments resulting from the payment of the back pay; (b) credited to the individual's maximum amount of benefits payable in a benefit year which includes the weeks of unemployment for which back pay was deducted; and (c) benefit charges for those weeks shall be removed from the employer's account as of the calendar quarter in which the fund receives payment.

Payments to the fund under this subdivision are made by the employer on behalf of the individual and are not voluntary contributions under section 268.06, subdivision 24.

[For text of subd 4, see M.S.1982]

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

(a) Benefits based upon service performed in an instructional, research, or principal administrative 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, or other educational service agency, in the second of the academic years or terms, and

(b) With respect to service performed in any capacity other than those capacities described in clause (a) of this subdivision, for an institution of higher education, or 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. If benefits are denied to any individual under this clause and the individual was not offered an opportunity to perform the services in the second of the academic years or term, the individual shall be entitled to a retroactive payment of benefits for each week in which the individual filed a timely claim for benefits, but the claim was denied solely because of this clause; and

(c) With respect to services described in clauses (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.

[For text of subs 7 and 8, see M.S.1982]

Subd. 9. Services for certain contractors. Benefits based upon services performed for an employer are subject to subdivision 6, clauses (b) and (c) if:

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

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

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

(d) the individual is notified in writing of the provisions of this subdivision while employed in 1983 or prior to or at the time of commencing the employment.

History: 1983 c 290 s 168; 1983 c 372 s 20-24

268.081 SHARED WORK PLAN.

The commissioner shall prepare a report on the implementation of a shared work benefit program. The report shall be given to the senate committee on employment and the house committee on governmental operations no later than January 15, 1984. The report shall evaluate existing state laws establishing shared work programs and shall contain recommendations for statutory changes to implement a program in Minnesota.

History: 1983 c 372 s 25

268.09 UNEMPLOYMENT COMPENSATION; DISQUALIFIED FROM BENEFITS.

Subdivision 1. **Disqualifying conditions.** An individual separated from employment under clauses (1), (2), or (3) shall be disqualified for waiting week credit and benefits. For separations under clauses (1) and (2), the disqualification shall continue until four calendar weeks have elapsed following his separation and the individual 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 or based solely on a provision in a collective bargaining agreement by which an individual has vested discretionary authority in another to act in behalf of the individual 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;

(g) The individual voluntarily leaves part-time employment with a base period employer while continuing full-time employment if the individual attempted to return to part-time employment after being separated from the full-time employment, and if substantially the same part-time employment with the base period employer was not available for the individual.

(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. For a separation under this clause, the commissioner shall impose a total disqualification for the benefit year and cancel 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" is defined as misconduct involving assault and battery or the malicious destruction of property or arson or sabotage or embezzlement or any other act, including theft, the commission of which amounts to a felony or gross misdemeanor. For an employee of a health care facility, gross misconduct also includes misconduct involving an act of patient or resident abuse as defined in section 626.557, subdivision 2, clause (d).

If an individual is convicted of a felony or gross misdemeanor for the same act or acts of misconduct for which the individual was discharged, the misconduct is conclusively presumed to be gross misconduct if it was connected with his work.

(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 a base period employer's offer of re-employment offering substantially the same or better hourly wages and conditions of work as were previously provided by that employer in his base period.

(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.

(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.

[For text of subds 3 to 8, see M.S.1982]

History: 1983 c 372 s 26,27

268.10 DETERMINATION OF CLAIMS FOR BENEFITS; APPEALS.

[For text of subd 1, see M.S.1982]

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 employer notifies the department that an individual's weekly benefit amount as determined under section 268.07 exceeds the individual's weekly wages earned with the employer, the individual's weekly benefit amount shall be the lesser of (1) the weekly benefit amount as determined under section 268.07, or (2) the weekly benefit amount which is 50 percent of the quotient derived by dividing the total wage credits earned in the individual's base period credit weeks from all employers in insured work by the number of base period credit weeks. 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 24 months from the date of the filing of a valid 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. A determination issued under this clause which denies benefits for weeks for which the claimant has previously been paid benefits is an overpayment of those benefits subject to section 268.18.

(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 24 months from the date of the filing of a valid 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. A determination or redetermination issued under this clause which denies benefits for weeks for which the claimant has previously been paid benefits is an overpayment of those benefits subject to section 268.18.

(5) However, the commissioner may in his discretion refer any disputed claims directly to a referee 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 a referee's 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 an appeal is withdrawn, the date for hearing before a referee shall be set and notice of the hearing shall be mailed to the last known address of all interested parties at least ten days prior to the date

set for the hearing. The hearing may be conducted by means of a conference telephone call except that the appellant may request that the hearing be conducted in person. The hearing shall be a trial de novo, and, upon the evidence presented, the referee shall affirm, modify, or set aside the initial determination. Where the same or substantially similar evidence is relevant and material to the issues in appeals by more than one individual or in appeals by one individual with respect to two or more weeks of unemployment, the appeals may be consolidated into one hearing. The referee shall exclude from any consolidated hearing the appeal of an individual who may be prejudiced because of the consolidation. A referee shall not hear any appeal in which the referee has a direct interest. The parties shall be notified of the referee's decision and the reason for it. The referee's decision is deemed to be the final decision unless a further appeal is initiated pursuant to subdivision 5.

Subd. 4. Referees. In order to assure the prompt disposition of all claims for benefits, the commissioner shall appoint one or more impartial referees. The commissioner shall by rule adopt a procedure by which referees 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 that person is an interested party. The commissioner may designate alternates to serve in the absence or disqualification of a referee. There shall be no charges, fees, transcript costs, or other cost imposed upon the employee in prosecuting an appeal. All decisions of referees shall be made available to the public in accordance with rules the commissioner may prescribe, except that names of interested parties may be deleted.

Subd. 5. Review by commissioner. Within 30 days after mailing or personal delivery of the notice of a referee's decision to the claimant or employer at the last known address, a party may appeal from the decision and obtain a review of it by the commissioner or an authorized representative. The commissioner within the same period of time may on the commissioner's own motion order a review of a decision. Upon review, the commissioner or authorized representative may affirm, modify, or set aside any finding of fact or decision, or both, of the referee on the basis of the evidence previously submitted in the case, or remand the matter back to the referee for the taking of additional evidence and new findings and decision based on all of the evidence before the referee. 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 authorized representative may remove to himself or herself or transfer to another referee the proceedings on any claim pending before a referee. Any proceedings removed to the commissioner or authorized 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 are presented, the reports required from the claimant and from employers, and the conduct of hearings and appeals shall be in accordance with the rules adopted by the commissioner for determining the rights of the parties, whether or not the 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 recorded, but need not be transcribed unless the disputed claim is further appealed.

Subd. 7. **Subpoenaed.** Witnesses, other than an interested party or officers and employees of an interested party, subpoenaed pursuant to this section shall be allowed fees the same as witness fees in a civil action in district court. These fees shall be deemed a part of the expense of administering sections 268.03 to 268.24.

Subd. 8. **Certiorari.** Any decision of the commissioner may be reviewed on certiorari by the court of appeals provided a petition for the writ is filed 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 the 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 a referee 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 a proceeding before a referee, the commissioner, commissioner's 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 counsel shall either charge or receive for the 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.

[For text of subd 10, see M.S.1982]

History: 1983 c 247 s 113; 1983 c 372 s 28-34

268.11 EMPLOYERS COVERAGE.

[For text of subd 1, see M.S.1982]

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), (5), or (6), 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.

The commissioner at the commissioner's discretion may on his or her own motion terminate the coverage of any employer who no longer meets the definition of employer under section 268.04, subdivision 10.

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.

(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 must terminate any election agreement under this subdivision upon 30 days notice to the employer, if the employer fails to pay all contributions due under section 268.06, subdivision 1, or reimburse the unemployment fund in accordance with section 268.06, subdivisions 25, 26, 27, and 28.

History: 1983 c 372 s 35,36

268.12 CREATION.

[For text of subds 1 to 2, see M.S.1982]

Subd. 3. *[Repealed, 1983 c 268 s 2]*

[For text of subds 4 and 5, see M.S.1982]

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 advisory 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.

[For text of subd 7, see M.S.1982]

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, 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, 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 include the employee's name, social security number, and total wages paid to the employee.

(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, 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, other than interested parties or officers and employees of an employing unit which is an interested party, subpoenaed pursuant to this subdivision or sections 268.03 to 268.24, shall be allowed fees the same as witness fees in civil actions in district court, 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, 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.

[For text of subs 10 and 11, see M.S.1982]

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, or for any employment or training program administered by those agencies, whether alone, in combination with another welfare agency, or in conjunction with the department of economic security; 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 the determination. The determination shall be final unless the employing unit, within 30 days after the mailing of notice of the determination to the employing unit's last known address, files a written appeal from it.

(2) The commissioner shall designate one or more 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 the hearing and give interested parties written notice of it, by mail, not less than ten days prior to the time of the hearing. In the discharge of the duties imposed by this subdivision, the referee may administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with the subject matter of the hearing. The written report of any employee of the department of economic security, made in the regular course of the performance of the employee's duties, shall be competent evidence of the facts contained in it and shall be prima facie correct, unless refuted by other credible evidence.

(3) Upon the conclusion of the hearing, the referee shall serve upon the interested parties by mail findings of fact and decision. The decision of the referee, together with his findings of fact and reasons in support of them, is final unless an interested party, within 30 days after the mailing of a copy of it to the interested parties' last known addresses, files an appeal with the commissioner, or unless the commissioner, within 30 days after mailing of the 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 in the manner provided by rule. 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 any findings of fact as the evidence taken before the referee may, in the judgment of the commissioner, require, and make any decision as the facts found by him require. The commissioner shall notify the employing unit of his findings and decision by mail, mailed to the interested parties' last known addresses. The decision of the commissioner is final unless judicial review of it is sought as provided by this subdivision. Any interested party to a proceeding before the commissioner may obtain a transcript of the testimony taken before the referee upon payment to the commissioner of the cost of the transcript at the rate of ten cents per 100 words.

(4) The court of appeals may, by writ of certiorari to the commissioner, review all questions of law and fact presented by the record in accordance with chapter 14. The commissioner shall not be required to certify the record to the court unless the party commencing the proceedings for review pays to the commissioner the cost of certification of the record at the rate of ten cents per 100 words less any amount previously paid by the party for a transcript. The commissioner shall, upon receipt of the payment, prepare and certify to the court a true and correct typewritten copy of all matters contained in the record. The costs collected by the commissioner shall be deposited in the employment services administration fund provided for in section 268.15.

(5) A final decision of the commissioner or referee, in the absence of appeal, is conclusive for all the purposes of sections 268.03 to 268.24 except as 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 the amount, together with interest and penalties, is not paid within 30 days after the decision, the provisions of section 268.161 shall apply. The commissioner shall proceed thereunder, substituting a certified copy of the final decision in place of the contribution report.

History: 1983 c 247 s 114; 1983 c 260 s 58; 1983 c 312 art 8 s 2; 1983 c 372 s 37,38

268.16 COLLECTION OF CONTRIBUTIONS.

[For text of subd 1, see M.S.1982]

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 1-1/2 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 as provided by section 268.161.

(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, willfully 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.

[For text of subds 4 to 8, see M.S.1982]

History: 1983 c 372 s 39

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, within this state, both real and personal, of the person liable therefor, 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.

The lien imposed by this section shall be enforceable by levy as authorized in subdivision 8 or by judgment lien foreclosure as authorized in chapter 550.

[For text of subds 2 and 3, see M.S.1982]

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 may be collected by civil action in the name of the state of Minnesota, and any money recovered shall be credited to the funds provided for under 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 six 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 or to any state agency which disburses its own funds, 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 or the state agency 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 those funds owed an individual employer who receives assistance under chapter 256.

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.

[For text of subd 6, see M.S.1982]

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 willfully 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 six years after a report or form is filed, notwithstanding section 541.09, enter judgment on any confession of judgment contained in the contribution report or form 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), or property on which there is a lien provided by subdivision 1. 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 maintained under full supervision of the court, the property shall not be sold until the probate proceedings are completed or until the court so orders.

(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.

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

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

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

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

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

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

[For text of subd 9, see M.S.1982]

History: 1983 c 372 s 40-44

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 or because of a determination or redetermination issued pursuant to section 268.10, subdivision 2, 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 a referee 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. Benefits paid for weeks more than three years prior to the discovery of error are not erroneous payments.

Subd. 2. **Fraud.** Any claimant who files a claim for or receives benefits by knowingly and willfully misrepresenting or misstating any material fact or by knowingly and willfully 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. The claimant shall promptly repay in cash to the department of economic security any benefits 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 appeals from the determination within the time above specified the matter shall be referred to a referee 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. A determination of fraud may be made at any time.

[For text of subs 3 to 6, see M.S.1982]

History: 1983 c 216 art 1 s 42; 1983 c 372 s 45,46

268.34 EMPLOYMENT CONTRACTS.

The commissioner may 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 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 and the disbursement of funds.

History: 1983 c 339 s 2

268.37 COORDINATION OF FEDERAL AND STATE RESIDENTIAL WEATHERIZATION PROGRAMS.

[For text of subd 1, see M.S.1982]

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 promulgated by the commissioner.

[For text of subd 3, see M.S.1982]

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) emergency needs, and (c) 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 July 31 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, and (d) any other information the commissioner feels is relevant, including information routinely submitted to the federal government.

History: 1983 c 339 s 3-5

268.52 FINANCIAL ASSISTANCE FOR COMMUNITY ACTION AGENCIES.

[For text of subd 1, see M.S.1982]

Subd. 2. **Allocation of funds.** Funds appropriated for Minnesota economic opportunity grants and community service block grants for the purpose of subdivision 1 shall be allocated annually to community action agencies under either 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 for Minnesota economic opportunity grants or community service block grants is less than the previous fiscal year 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 the previous fiscal year, 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" for the Minnesota Economic Opportunity Grant Program 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 community services block grant, "hold-harmless" is the amount of funding received by a community action agency from the community services block grant act basic allotment 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.

[For text of subds 3 and 4, see M.S.1982]

History: 1983 c 339 s 6

268.60 PURPOSE.

It is the purpose of sections 268.60 to 268.64 to provide financial assistance for comprehensive job training and related services for economically disadvantaged, unemployed, and underemployed individuals through opportunities industrialization centers.

History: 1983 c 312 art 6 s 1

268.61 DEFINITIONS.

Subdivision 1. **Scope.** When used in sections 268.60 to 268.64 the terms in this section have the meanings given them.

Subd. 2. **Commissioner.** "Commissioner" means the commissioner of economic security.

Subd. 3. **Council.** "Council" means the Minnesota state council of the opportunities industrialization centers of America.

Subd. 4. **Economically disadvantaged.** "Economically disadvantaged" means an individual who meets the criteria for an economically disadvantaged person established by rule by the commissioner.

Subd. 5. **Underemployed.** "Underemployed" means an individual:

(a) Working part time but seeking full-time work; or

(b) Working full time but receiving wages below the greater of:

(1) the poverty level determined in accordance with criteria established by the department of economic security; or

(2) 70 percent of the lower living standard income level as determined by the United States bureau of labor statistics.

Subd. 6. **Unemployed.** "Unemployed" means an individual who is without a job, and who wants and is available for work.

History: 1983 c 312 art 6 s 2

268.62 DISTRIBUTION AND USE OF STATE MONEY.

The commissioner shall distribute the money appropriated for:

(a) comprehensive job training and related services or job opportunities programs for economically disadvantaged, unemployed, and underemployed individuals, including persons of limited English speaking ability, through opportunities industrialization centers; and

(b) the establishment and operation in Minnesota of these centers.

Comprehensive job training and related services include: recruitment, counseling, remediation, motivational pre-job training, vocational training, job development, job placement, and other appropriate services enabling individuals to secure and retain employment at their maximum capacity.

History: 1983 c 312 art 6 s 3

268.63 CRITERIA FOR DISTRIBUTION OF MONEY.

The commissioner, with the advice of the council, shall establish criteria for the distribution of state money for the purpose of section 268.62. The criteria shall include requirements that:

(a) the program receiving state assistance:

(1) involve residents in the area to be served by the program in the planning and operation of the program; and

(2) involve the business community in the area to be served by the program in its development and operation;

(b) the distribution of assistance among areas within the state be equitable, with priority being given to areas with high unemployment or underemployment;

(c) financial assistance under sections 268.60 to 268.64 to any program may not exceed 25 percent of the cost of the program including costs of administration; and

(d) a program receiving financial assistance has adequate internal administrative controls, accounting procedures, personnel standards, evaluation procedures, availability of in-service training and technical assistance programs, and other policies necessary to promote the effective use of state money.

The commissioner may make a distribution in excess of the limit prescribed in clause (c) if the commissioner determines that the excess distribution is necessary to further the objectives of sections 268.60 and 268.62.

History: 1983 c 312 art 6 s 4

268.64 MONEY DISTRIBUTION.

The commissioner may make a distribution of money directly to a program, or make a distribution subject to conditions that ensure use consistent with the distribution and utilization of money under federal legislation regarding job training and related services.

History: 1983 c 312 art 6 s 5

268.671 CITATION.

Sections 268.671 to 268.686 may be cited as the "Minnesota Emergency Employment Development (MEED) Act."

History: 1983 c 312 art 7 s 1

NOTE: This section, as added by Laws 1983, chapter 312, article 7, section 1, is repealed effective June 30, 1985. See Laws 1983, chapter 312, article 7, section 16.

268.672 DEFINITIONS.

Subdivision 1. **Terms.** For the purposes of sections 268.671 to 268.686, the following terms have the meanings given them.

Subd. 2. **Coordinator.** "Coordinator" means the Minnesota emergency employment development coordinator appointed under section 268.674.

Subd. 3. **Eligible business.** "Eligible business" means a for-profit business.

Subd. 4. **Eligible employer.** "Eligible employer" means an eligible government agency, an eligible nonprofit agency, or an eligible business.

Subd. 5. **Eligible government agency.** "Eligible government agency" means a county, municipality, school district, or other local governmental subdivision, a state agency, or a federal agency office in Minnesota.

Subd. 6. **Eligible job applicant.** "Eligible job applicant" means a person who: (1) has been a resident of this state for at least one month, (2) is unemployed, (3) is not receiving and is not qualified to receive unemployment compensation or workers' compensation, and (4) is determined by the employment administrator to be likely to be available for employment by an eligible employer for the duration of the job.

Subd. 7. **Eligible nonprofit agency.** "Eligible nonprofit agency" means an organization exempt from taxation under the Internal Revenue Code of 1954, section 501(c)(3), as amended through December 31, 1982.

Subd. 8. **Employment administrator.** "Employment administrator" means the administrative entity designated by the coordinator to administer the provisions of this act in each service delivery area. The coordinator may designate an administrative entity authorized under the Job Training Partnership Act or its predecessor administrative entity authorized under United States Code, title 29, section 801, et seq., or a job training or placement agency with proven effectiveness.

Subd. 9. **Household.** "Household" means a group of persons living at the same residence consisting of, at a maximum, spouses and the minor children of each.

Subd. 10. **Job Training Partnership Act.** "Job Training Partnership Act" means the federal Job Training Partnership Act of 1982 (JTPA), Statutes at Large, volume 92, page 1322.

Subd. 11. **Program.** "Program" means the Minnesota emergency employment development program created by sections 268.671 to 268.686 consisting of temporary work relief projects in the government and nonprofit agencies and new job creation in the private sector.

Subd. 12. **Service delivery area.** "Service delivery area" means an area designated as a service delivery area by the coordinator.

History: 1983 c 312 art 7 s 2

NOTE: This section, as added by Laws 1983, chapter 312, article 7, section 2, is repealed effective June 30, 1985. See Laws 1983, chapter 312, article 7, section 16.

268.673 MINNESOTA EMERGENCY EMPLOYMENT DEVELOPMENT COORDINATOR.

Subdivision 1. **Appointment.** The governor shall appoint a Minnesota emergency employment development coordinator to administer the provisions of sections 268.671 to 268.686. The coordinator shall be within the department of economic security, but shall be responsible directly to the governor. The coordinator shall have the powers necessary to carry out the purposes of the program.

Subd. 2. **Responsibilities.** The coordinator shall:

(a) Obtain an inventory of community needs from each local governmental subdivision and compile a statewide inventory of needs within 30 days after his appointment;

(b) Enter into a contract with one or more employment administrators in each service delivery area;

(c) Review the emergency employment development plan submitted by the employment administrator of each service delivery area and approve satisfactory plans. If an employment administrator submits an unsatisfactory plan, the coordinator shall assist the employment administrator in developing a satisfactory one;

(d) Coordinate the program with other state agencies;

(e) Coordinate administration of the program with the general assistance program;

(f) Set policy regarding disbursement of program funds; and

(g) Perform general program marketing and monitoring functions.

Subd. 3. **Department of economic security.** The coordinator shall administer the program within the department of economic security. The commissioner of economic security shall provide administrative support services to the coordinator for the purposes of the program.

Subd. 4. **Enforcement.** (a) The coordinator shall ensure that all eligible employers and employment administrators comply with sections 268.671 to 268.686 and all other applicable state and federal laws, including those relating to: (1) affirmative action; (2) occupational health and safety standards; (3) environmental standards; and (4) fair labor practices.

(b) The coordinator may:

(1) make public or private investigations within or without this state necessary to determine whether any person has violated or is about to violate sections 268.671 to 268.686, a contract entered into under them, or any rule or order adopted under them, or to aid in the enforcement of sections 268.671 to 268.686 or in rules and forms adopted under them;

(2) require or permit any person to file a written statement under oath or otherwise, as the commissioner determines, as to all the facts and circumstances concerning the matter being investigated;

(3) publish information contained in any order issued by the coordinator;

(4) hold hearings, upon reasonable notice, on any matter arising out of the administration of sections 268.671 to 268.686; and

(5) conduct investigations and hold hearings for the purpose of compiling information with a view to recommending changes in sections 268.671 to 268.686 to the legislature.

(c) The attorney general shall assign from his staff one or more assistant attorneys general to the coordinator and shall conduct all proceedings involving the violation of sections 268.671 to 268.686 and all other enforcement proceedings.

(d) Whenever it appears to the coordinator that any person has violated a provision of sections 268.671 to 268.686, a contract entered into under them, or a rule or order adopted under them:

(1) He may issue and cause to be served upon the person an order requiring the person to cease and desist from the violation. The order must be calculated to give reasonable notice of the right of the person to request a hearing on it and must state the reasons for the entry of the order. A hearing must be held not later than seven days after a request for the hearing is received by the coordinator, after which and within 20 days of the date of the hearing the coordinator shall issue a further order vacating the cease and desist order or making it permanent as the facts require. If no hearing is requested within 30 days of service of the order, the order becomes final and remains in effect until it is modified or vacated by the coordinator. If the person to whom a cease and desist order is issued fails to appear at the hearing after being duly notified, the person shall be deemed in default, and the proceeding may be determined against him upon consideration of the cease and desist order, the allegations of which may be deemed to be true;

(2) He may bring an action in the district court of the appropriate county to enjoin the violation and to enforce compliance with the provisions of sections 268.671 to 268.686, a contract entered into under them, or any rule or order adopted under them, and he may refer the matter to the attorney general. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted. The court may not require the coordinator to post a bond.

Any injunction proceeding under the provisions of sections 268.671 to 268.686 may be brought on for hearing and disposition upon an order to show cause returnable upon not more than eight days notice to the defendant. The case has precedence over other cases upon the court calendar and may not be continued without the consent of the state, except upon good cause shown to the court, and then only for a reasonable length of time necessary in the opinion of the court to protect the rights of the defendant.

Subd. 5. Report to governor and legislature. The coordinator shall report to the legislative advisory commission and the governor on a quarterly basis: (1) the number of persons employed; (2) the number and type of employers under the program; (3) the amount of money spent in each service delivery area for wages for each type of employment and each type of other expense; (4) the number of persons who have completed participation in the program and their current employment, educational, or training status; and (5) any other information requested by the commission or the governor or deemed pertinent by the coordinator.

Subd. 6. Rules. The commissioner of economic security may adopt rules necessary to implement Laws 1983, chapter 312, article 7. These rules are not subject to chapter 14, the Administrative Procedure Act.

History: 1983 c 312 art 7 s 3

NOTE: This section, as added by Laws 1983, chapter 312, article 7, section 3, is repealed effective June 30, 1985. See Laws 1983, chapter 312, article 7, section 16.

268.674 MINNESOTA EMERGENCY EMPLOYMENT DEVELOPMENT TASK FORCE.

Subdivision 1. Creation. There is created a Minnesota emergency employment development task force to advise the coordinator in the administration of sections 268.671 to 268.686.

Subd. 2. **Membership.** The task force shall consist of nine members as follows: the coordinator, the commissioner of economic security, the commissioner of energy and economic development, the commissioner of labor and industry, the commissioner of public welfare, a representative of labor, a representative of business, a representative of nonprofit employers, and an employment administrator. The coordinator shall be the chairman and shall appoint the noncommissioner members.

Subd. 3. **Terms; compensation; removal.** The terms, compensation, and removal of the noncommissioner members are governed by section 15.059.

Subd. 4. **Meetings.** The task force shall meet at the call of the coordinator.

History: 1983 c 312 art 7 s 4

NOTE: This section, as added by Laws 1983, chapter 312, article 7, section 4, is repealed effective June 30, 1985. See Laws 1983, chapter 312, article 7, section 16.

268.675 ALLOCATION OF FUNDS AMONG SERVICE DELIVERY AREAS.

(a) Ninety percent of the funds available for allocation to employment administrators for the program must be allocated among service delivery areas as follows: each service delivery area shall be eligible to receive that proportion of the funds available which equals the number of unemployed persons in the service delivery area divided by the total number of unemployed persons in the state for the 12-month period ending the most recent March 31.

(b) Ten percent of the funds available for allocation to employment administrators under the program must be allocated at the discretion of the coordinator to employment administrators:

(1) who will maximize the use of the funds through coordination with other programs and state, local, and federal agencies, through the use of matching funds or through the involvement of low-income constituent groups;

(2) who have demonstrated need beyond the allocation available under clause (1); or

(3) who have demonstrated outstanding performance in job creation.

History: 1983 c 312 art 7 s 5

NOTE: This section, as added by Laws 1983, chapter 312, article 7, section 5, is repealed effective June 30, 1985. See Laws 1983, chapter 312, article 7, section 16.

268.676 ALLOCATION WITHIN SERVICE DELIVERY AREAS; PRIORITIES.

Subdivision 1. **Among job applicants.** Allocation of funds among eligible job applicants within a service delivery area shall be determined by the employment administrator in each service delivery area. The employment administrator shall give priority to:

(1) applicants living in households with no other income source; and

(2) applicants who would otherwise be eligible to receive general assistance under Minnesota Statutes 1980, section 256D.05.

Subd. 2. **Among employers.** Allocation of funds among eligible employers within a service area shall be determined by the employment administrator within each service delivery area according to the priorities in sections 268.68 and 268.681. The employment administrator shall give priority to funding private sector jobs to the extent that eligible businesses apply for funds. If possible, no more than 60 percent of the funds may be allocated for jobs with eligible government and nonprofit agencies during the biennium.

Subd. 3. **Among employment administrators.** If the coordinator designates more than one employment administrator in a service delivery, the coordinator shall determine the allocation of funds to be distributed by each employment administrator in the service delivery area.

History: 1983 c 312 art 7 s 6

NOTE: This section, as added by Laws 1983, chapter 312, article 7, section 6, is repealed effective June 30, 1985. See Laws 1983, chapter 312, article 7, section 16.

268.677 USE OF FUNDS.

Funds appropriated for the purposes of sections 268.671 to 268.686 may be used as follows:

(a) To provide a state contribution for wages and fringe benefits for eligible job applicants for a maximum of 1,040 hours over a maximum period of 26 weeks per job applicant. For eligible job applicants participating in a job training program, the state contribution for wages may be used for a maximum period of 52 weeks per job applicant. The state contribution for wages shall be up to \$4 per hour for each eligible job applicant employed. The state contribution for fringe benefits may be up to \$1 per hour for each eligible job applicant employed. However, the employer may use funds from other sources to provide increased wages to the applicants it employs. At least 75 percent of the funds appropriated for the program must be used to pay wages for eligible job applicants;

(b) To reimburse the commissioner of economic security in an amount not to exceed one percent of the funds appropriated for the actual cost of administering sections 268.671 to 268.686, and to reimburse the employment administrators in an amount not to exceed 4-1/2 percent of the funds appropriated for their actual cost of administering sections 268.671 to 268.686. The commissioner of economic security and the employment administrators shall reallocate funds from other sources to cover the administrative costs of this program whenever possible;

(c) To provide child care services or subsidies to applicants employed under sections 268.671 to 268.686;

(d) To provide workers' compensation coverage to applicants employed by government or nonprofit agencies under sections 268.671 to 268.686;

(e) To provide job search assistance, labor market orientation, job seeking skills, and referral for other services;

(f) To purchase supplies and materials for projects creating permanent improvements to public property in an amount not to exceed one percent of the funds appropriated.

The employment administrator of each service delivery area shall submit to the coordinator a spending plan establishing that funds allocated to the service delivery area will be used by October 1, 1984, in the manner required by sections 268.671 to 268.686. Any funds allocated to the service delivery area for which there is no spending plan approved by the coordinator shall cancel back to the Minnesota emergency employment development account and may be reallocated by the coordinator to other employment administrators.

History: 1983 c 312 art 7 s 7

NOTE: This section, as added by Laws 1983, chapter 312, article 7, section 7, is repealed effective June 30, 1985. See Laws 1983, chapter 312, article 7, section 16.

268.678 EMPLOYMENT ADMINISTRATORS; POWERS AND DUTIES.

Subdivision 1. **In general.** The employment administrator for each service delivery area has the powers and duties given in this section and any additional duties given by the coordinator.

Subd. 2. **Employment plan.** Each employment administrator shall develop an emergency employment development plan for his service delivery area under guidelines developed by the coordinator and submit it to the coordinator within the period allowed by the coordinator. To the extent feasible, the employment administrator shall seek input from potential eligible employers and the public.

Subd. 3. **Outreach.** Each employment administrator shall publicize the program within his service delivery area to seek maximum participation by eligible job applicants and employers.

Subd. 4. **Contracts.** Each employment administrator shall enter into contracts with eligible employers setting forth the terms of their participation in the program as required by sections 268.671 to 268.686.

Subd. 5. **Screening and coordination.** Each employment administrator shall screen job applicants and employers to achieve the best possible placement of eligible job applicants with eligible employers.

Subd. 6. **Eligible job applicant priority lists.** Each employment administrator shall maintain a list of eligible job applicants unable to secure employment under the program at the time of application. The list shall prioritize eligible job applicants and shall be used to fill jobs with eligible employers as they become available.

Subd. 7. **Coordination of education and training programs.** Each employment administrator shall cooperate with local educational and training institutions to coordinate and publicize the availability of their resources to assure that applicants may receive training needed before or while employed in jobs which are available under the program.

Subd. 8. **Materials.** Each employment administrator may disburse funds not to exceed one percent of the amount allocated to his service delivery area for the purchase of supplies and materials for projects creating permanent improvements to public property.

History: 1983 c 312 art 7 s 8

NOTE: This section, as added by Laws 1983, chapter 312, article 7, section 8, is repealed effective June 30, 1985. See Laws 1983, chapter 312, article 7, section 16.

268.679 DUTIES OF OTHER AGENCIES.

Subdivision 1. **Energy and economic development authority.** The energy and economic development authority shall publicize the Minnesota emergency employment development program and shall provide staff assistance as requested by employment administrators in the screening of businesses and the collection of data to the extent feasible under its existing budget and staff complement.

Subd. 2. **Education agencies.** The state board for vocational education shall review its policies for post-secondary vocational education to ensure that the programs serve the training needs of economically disadvantaged persons. Education programs shall attempt to provide training that will help individuals to obtain and retain employment. The training may include customized short-term training, basic skills training, programs to develop work habits, and other services designed for eligible job applicants and persons employed under sections 268.671 to 268.686. Examples of education programs include, but are not limited to adult vocational programs, adult basic or continuing education, area vocational-technical institutes, colleges, secondary education programs, and private and proprietary schools.

Subd. 3. **Department of public welfare.** The commissioner of public welfare shall provide to each employment administrator lists of currently licensed local

day care facilities, updated quarterly, to be available to all persons employed under sections 268.671 to 268.686.

History: 1983 c 312 art 7 s 9

NOTE: This section, as added by Laws 1983, chapter 312, article 7, section 9, is repealed effective June 30, 1985. See Laws 1983, chapter 312, article 7, section 16.

268.68 ELIGIBLE GOVERNMENT AND NONPROFIT AGENCY EMPLOYMENT.

A government or nonprofit agency is an eligible employer with respect to temporary work relief projects that are determined by the employment administrator to have long-term benefit to or are needed by the community including, but not limited to, jobs in permanent public improvement projects, residential or public building weatherization projects, reforestation projects, mineland reclamation projects, planting or tree trimming projects, soil conservation projects, natural resource development projects, and community social service programs such as child care and home health care.

History: 1983 c 312 art 7 s 10

NOTE: This section, as added by Laws 1983, chapter 312, article 7, section 10, is repealed effective June 30, 1985. See Laws 1983, chapter 312, article 7, section 16.

268.681 BUSINESS EMPLOYMENT.

Subdivision 1. **Eligible businesses.** A business employer is an eligible employer if it enters into a written contract, signed and subscribed to under oath, with the employment administrator in its service delivery area, containing assurances that:

(a) funds received by a business shall be used only as permitted under sections 268.671 to 268.686;

(b) the business has submitted a plan to the employment administrator (1) describing the duties and proposed compensation of each employee proposed to be hired under the program; and (2) demonstrating that, with the funds provided under sections 268.671 to 268.686, the business is likely to succeed and continue to employ persons hired under the program;

(c) the business will use funds exclusively for compensation and fringe benefits of eligible job applicants and will provide employees hired with these funds with fringe benefits and other terms and conditions of employment comparable to those provided to other employees of the business who do comparable work;

(d) the funds are necessary to allow the business to begin, or to employ additional people, but not to fill positions which would be filled even in the absence of funds from this program;

(e) the business will cooperate with the coordinator and the employment administrator in collecting data to assess the result of the program; and

(f) the business is in compliance with all applicable affirmative action, fair labor, health, safety, and environmental standards.

Subd. 2. **Priorities.** In allocating funds among eligible businesses, the employment administrator shall give priority to businesses which best satisfy the following criteria:

(a) have a high potential for growth and long-term job creation;

(b) are labor intensive;

(c) meet the definition of a small business as defined in section 645.445;

- (d) make high use of local and Minnesota resources;
- (e) are under ownership of women and minorities;
- (f) make high use of new technology;
- (g) produce energy conserving materials or services or are involved in development of renewable sources of energy; and
- (h) have their primary place of business in Minnesota.

Subd. 3. **Payback.** A business receiving funds under this program shall repay 70 percent of the amount initially received for each eligible job applicant employed, if the employee does not continue in the employment of the business beyond the six-month subsidized period. If the employee continues in the employment of the business for one year or longer after the six-month subsidized period, the business need not repay any of the funds received for that employee's wages. If the employee continues in the employment of the business for a period of less than one year after the expiration of the six-month subsidized period, the business shall receive a proportional reduction in the amount it must repay. If an employer dismisses an employee for good cause and works in good faith with the program administrator to employ and train another person referred by the employment administrator, the payback formula shall apply as if the original person had continued in employment.

A repayment schedule shall be negotiated and agreed to by the employment administrator and the business prior to the disbursement of the funds and is subject to renegotiation. The employment administrator shall forward payments received under this subdivision to the coordinator on a monthly basis. The coordinator shall deposit these payments in the Minnesota emergency employment development account created by subdivision 4.

Subd. 4. **Minnesota emergency employment development account.** The Minnesota emergency employment development account is created in the state treasury. All payments from businesses pursuant to subdivision 3 shall be deposited in this account, and all funds in the account are appropriated to the commissioner of economic security for the purpose of making disbursements pursuant to section 268.675.

History: 1983 c 312 art 7 s 11

NOTE: This section, as added by Laws 1983, chapter 312, article 7, section 11, is repealed effective June 30, 1985. See Laws 1983, chapter 312, article 7, section 16.

268.682 WORKER DISPLACEMENT PROHIBITED.

Subdivision 1. **Layoffs; work reductions.** An eligible employer may not terminate, lay off, or reduce the working hours of an employee for the purpose of hiring an individual with funds available under sections 268.671 to 268.686.

Subd. 2. **Hiring during layoffs.** An eligible employer may not hire an individual with funds available under sections 268.671 to 268.686 if any other person is on layoff from the same or a substantially equivalent job.

Subd. 3. **Employer certification.** In order to qualify as an eligible employer, a government or nonprofit agency or business must certify to the employment administrator that each job created and funded under sections 268.671 to 268.686:

- (a) will result in an increase in employment opportunities over those which would otherwise be available;
- (b) will not result in the displacement of currently employed workers, including partial displacement such as reduction in hours of nonovertime work, wages, or employment benefits; and

(c) will not impair existing contracts for service or result in the substitution of program funds for other funds in connection with work that would otherwise be performed.

History: 1983 c 312 art 7 s 12

NOTE: This section, as added by Laws 1983, chapter 312, article 7, section 12, is repealed effective June 30, 1985. See Laws 1983, chapter 312, article 7, section 16.

268.683 WORK INCENTIVE DEMONSTRATION PROJECT.

Subdivision 1. Availability of program. In order to maximize the opportunity for recipients of aid to families with dependent children to take full advantage of the jobs created by sections 268.671 to 268.686, the commissioner of public welfare shall inform each applicant or recipient of the availability of this program.

Subd. 2. Changes in state plan and rules; waivers. The commissioner shall make changes in the state plan and rules, or seek any waivers or demonstration authority necessary to minimize the barriers to participation in the programs or to employment. Changes shall be sought in the following areas, including but not limited to: allowances, child care, work expenses, the amount and duration of earning incentives, medical care coverage, limitations on the hours of employment, and the diversion of payments to wage subsidies. The commissioner shall implement each change as soon as possible.

Subd. 3. Referrals. Persons required to register for the work incentive program under section 256.736 or to register with job services shall be referred to the program for the required orientation, appraisal, and job search activities.

Subd. 4. Medical assistance. Participants shall receive medical assistance and other benefits provided under the aid to families with dependent children program according to the applicable standards and any authority granted by the department of health and human services.

Subd. 5. Rules. The commissioner of public welfare may adopt rules, including temporary rules, for the implementation of this section.

History: 1983 c 312 art 7 s 13

NOTE: This section, as added by Laws 1983, chapter 312, article 7, section 13, is repealed effective June 30, 1985. See Laws 1983, chapter 312, article 7, section 16.

268.684 WORK INCENTIVE FUNDS.

Funds made available to the commissioner of economic security for purposes of administration of the jobs program may be used in part, at the discretion of the commissioner, to ensure that persons eligible for or receiving income maintenance grants have access to work and training programs.

History: 1983 c 312 art 7 s 14

NOTE: This section, as added by Laws 1983, chapter 312, article 7, section 14, is repealed effective June 30, 1985. See Laws 1983, chapter 312, article 7, section 16.

268.685 TERMINATION; NOTIFICATION.

The commissioner of economic security shall immediately terminate the Minnesota emergency employment development program if and when none of the money appropriated under Laws 1983, chapter 312, article 1, section 3 remains. The commissioner of economic security shall immediately notify the commissioner of public welfare of the program's termination. The commissioner of public welfare shall immediately notify each local agency referring recipients under

section 256D.112 of the program's termination and require the local agency to cease transferring recipients.

On the date the program is terminated, any balance remaining in the Minnesota emergency employment development account established under section 268.681, subdivision 4 shall cancel to the general fund. Any payments received under section 268.681, subdivisions 3 and 4 on or after that date shall be deposited in the general fund.

History: 1983 c 312 art 7 s 15

NOTE: This section, as added by Laws 1983, chapter 312, article 7, section 15, is repealed effective June 30, 1985. See Laws 1983, chapter 312, article 7, section 16.

268.686 SUNSET.

Laws 1983, chapter 312, article 7, sections 1 to 18 are repealed June 30, 1985.

History: 1983 c 312 art 7 s 16

NOTE: This section, as added by Laws 1983, chapter 312, article 7, section 16, is repealed effective June 30, 1985. See Laws 1983, chapter 312, article 7, section 16.

268.80 APPLICATION PROCESS; DETERMINATIONS.

Any person may apply to the commissioner for services under the Minnesota emergency employment development jobs program. Upon receiving an application, the commissioner shall promptly determine the person's eligibility for services under the program; the person's ability to successfully perform a job available through the program; and, within three business days, the person's eligibility for an allowance pursuant to section 268.81. In determining the eligibility of a person for the allowance, the commissioner shall apply the eligibility standards set forth in sections 256D.01 to 256D.21. A person referred by a local agency pursuant to the provisions of section 256D.112 shall be deemed to be eligible for the allowance. If the commissioner finds at any time that a person is not eligible for services under the jobs program, or if the commissioner determines after a three-month period that the person is unlikely to secure a job through the jobs program, then the commissioner shall issue a written determination stating the findings and provide the person with a written referral to the appropriate local agency. If the commissioner finds at any time, pursuant to standards established by the commissioner by rule or temporary rule, that a person is not able to successfully perform a job available through the jobs program, the commissioner shall issue a written determination stating the findings and explaining the person's right to appeal pursuant to section 268.82, and shall provide the person with a written referral to the appropriate local agency. If the commissioner finds that a person is not eligible for an allowance pursuant to section 268.81, the commissioner shall advise the person in writing that the person may make an application for general assistance with the appropriate local agency.

History: 1983 c 312 art 8 s 12

NOTE: This section, as added by Laws 1983, chapter 312, article 8, section 12, is repealed effective June 30, 1985. See Laws 1983, chapter 312, article 8, section 18.

268.81 PAYMENT OF ALLOWANCE.

A person accepted pursuant to section 268.80 for participation in the Minnesota emergency employment development jobs program and determined by the commissioner to satisfy the eligibility standards set forth in sections 256D.01 to 256D.21, shall be paid a cash allowance by the commissioner in an amount which is not less than the amount of the general assistance grant that the person would

otherwise receive pursuant to sections 256D.01 to 256D.21. The commissioner shall adopt a permanent or temporary rule establishing the amounts of allowances to be paid pursuant to this section. The initial allowance shall be paid to the person as soon as administratively feasible. A person referred by a local agency pursuant to section 256D.112 shall be paid the initial allowance upon the expiration of the period covered by the one-month grant received from the local agency. Thereafter, the allowance shall be paid at intervals as the commissioner shall prescribe by rule or temporary rule. Until June 30, 1985, a person receiving an allowance when the Minnesota emergency employment development jobs program is terminated under section 268.685, shall continue to be paid an allowance under this section if he continues to meet the eligibility standards set forth in sections 256D.01 to 256D.21.

History: 1983 c 216 art 2 s 27; 1983 c 312 art 8 s 13

NOTE: This section, as added by Laws 1983, chapter 312, article 8, section 13, is repealed effective June 30, 1985. See Laws 1983, chapter 312, article 8, section 18.

268.82 APPEAL PROCEDURE.

A person aggrieved by a determination issued pursuant to section 268.80 that the person is not able to successfully perform a job available through the Minnesota emergency employment development jobs program may appeal that determination, in accordance with the time limits and procedures applicable to the work incentive program, as prescribed in section 256.736, subdivision 4, clause (4). If otherwise eligible under section 268.81, the person shall receive the allowance prescribed by section 268.81 until a final decision on the appeal is rendered.

History: 1983 c 312 art 8 s 14

NOTE: This section, as added by Laws 1983, chapter 312, article 8, section 14, is repealed effective June 30, 1985. See Laws 1983, chapter 312, article 8, section 18.

268.83 SUITABLE EMPLOYMENT FOR PURPOSES OF GENERAL ASSISTANCE.

For purposes of eligibility for general assistance pursuant to sections 256D.01 to 256D.21, a job provided through the Minnesota emergency employment development jobs program is "suitable employment," as that term is defined in section 256D.02, subdivision 13.

History: 1983 c 312 art 8 s 15

NOTE: This section, as added by Laws 1983, chapter 312, article 8, section 15, is repealed effective June 30, 1985. See Laws 1983, chapter 312, article 8, section 18.

268.84 SUNSET PROVISION.

Laws 1983, chapter 312, article 8, sections 5 and 11 to 16 are repealed June 30, 1985.

History: 1983 c 312 art 8 s 18