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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. **1034**

02/11/2021 Authored by Noor, Greenman and Bierman
The bill was read for the first time and referred to the Committee on Workforce and Business Development Finance and Policy
03/04/2021 Adoption of Report: Amended and re-referred to the Committee on Ways and Means

1.1 A bill for an act
1.2 relating to unemployment insurance; modifying eligibility for certain individuals;
1.3 extending an appeal window; amending Minnesota Statutes 2020, sections 268.035,
1.4 subdivision 21c; 268.085, subdivisions 2, 4a, 7; 268.101, subdivision 2; 268.133;
1.5 268.136, subdivision 1; repealing Minnesota Statutes 2020, section 268.085,
1.6 subdivisions 4, 8.

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

1.8 Section 1. Minnesota Statutes 2020, section 268.035, subdivision 21c, is amended to read:

1.9 Subd. 21c. **Reemployment assistance training.** (a) An applicant is in "reemployment
1.10 assistance training" when:

1.11 (1)(i) a reasonable opportunity for suitable employment for the applicant does not exist
1.12 in the labor market area and additional training will assist the applicant in obtaining suitable
1.13 employment;

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

1.16 ~~(3)~~ (iii) the training is vocational or short term academic training directed to an occupation
1.17 or skill that will substantially enhance the employment opportunities available to the applicant
1.18 in the applicant's labor market area;

1.19 ~~(4)~~ (iv) the training course is full time by the training provider; and

1.20 ~~(5)~~ (v) the applicant is making satisfactory progress in the training;

2.1 (2) the applicant can provide proof of enrollment in one or more programs offered by
2.2 an adult basic education consortium under section 124D.518. Programs may include but
2.3 are not limited to:

2.4 (i) general educational development diploma preparation;

2.5 (ii) local credit completion adult high school diploma preparation;

2.6 (iii) state competency-based adult high school diploma preparation;

2.7 (iv) basic skills enhancement training focused on math, functional literacy, reading, or
2.8 writing;

2.9 (v) computer skills training; or

2.10 (vi) English as a second language instruction;

2.11 (3) the applicant can provide proof of enrollment in an English as a second language
2.12 program taught by a licensed instructor;

2.13 (4) the applicant can provide proof of enrollment in an over-the-road truck driving
2.14 training program offered by a college or university within the Minnesota state system; or

2.15 (5) the applicant can provide proof of enrollment in a program funded under section
2.16 116L.99.

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

2.21 (c) Apprenticeship training provided in order to meet the requirements of an
2.22 apprenticeship program under chapter 178 is "reemployment assistance training."

2.23 (d) An applicant is in reemployment assistance training only if the training course has
2.24 actually started or is scheduled to start within 30 calendar days.

2.25 Sec. 2. Minnesota Statutes 2020, section 268.085, subdivision 2, is amended to read:

2.26 Subd. 2. **Not eligible.** An applicant is ineligible for unemployment benefits for any week:

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

2.28 (2) that the applicant, at any time during the week, has an outstanding misrepresentation
2.29 overpayment balance under section 268.18, subdivision 2, including any penalties and
2.30 interest;

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

3.3 ~~(4)~~(3) that the applicant is incarcerated or performing court-ordered community service.
3.4 The applicant's weekly unemployment benefit amount is reduced by one-fifth for each day
3.5 the applicant is incarcerated or performing court-ordered community service;

3.6 ~~(5)~~(4) that the applicant fails or refuses to provide information on an issue of ineligibility
3.7 required under section 268.101;

3.8 ~~(6)~~(5) that the applicant is performing services 32 hours or more, in employment, covered
3.9 employment, noncovered employment, volunteer work, or self-employment regardless of
3.10 the amount of any earnings; or

3.11 ~~(7)~~(6) with respect to which the applicant has filed an application for unemployment
3.12 benefits under any federal law or the law of any other state. If the appropriate agency finally
3.13 determines that the applicant is not entitled to establish a benefit account under federal law
3.14 or the law of any other state, this clause does not apply.

3.15 **EFFECTIVE DATE.** This section is effective August 1, 2021.

3.16 Sec. 3. Minnesota Statutes 2020, section 268.085, subdivision 4a, is amended to read:

3.17 Subd. 4a. **Social Security disability benefits.** (a) An applicant who is receiving, has
3.18 received, or has filed for primary Social Security disability benefits for any week is ineligible
3.19 for unemployment benefits for that week, unless:

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

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

3.25 (b) If an applicant meets the requirements of paragraph (a), clause (1) or (2), there is no
3.26 deduction from the applicant's weekly benefit amount for any Social Security disability
3.27 benefits.

3.28 ~~(c) If an applicant meets the requirements of paragraph (a), clause (2), there must be~~
3.29 ~~deducted from the applicant's weekly unemployment benefit amount 50 percent of the~~
3.30 ~~weekly equivalent of the primary Social Security disability benefits the applicant is receiving,~~
3.31 ~~has received, or has filed for, with respect to that week.~~

4.1 ~~If the Social Security Administration determines that the applicant is not entitled to~~
4.2 ~~receive primary Social Security disability benefits for any week the applicant has applied~~
4.3 ~~for those benefits, then this paragraph does not apply to that week.~~

4.4 ~~(d)~~ (c) Information from the Social Security Administration is conclusive, absent specific
4.5 evidence showing that the information was erroneous.

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

4.7 **EFFECTIVE DATE.** This section is effective retroactively from January 1, 2021.

4.8 Sec. 4. Minnesota Statutes 2020, section 268.085, subdivision 7, is amended to read:

4.9 Subd. 7. **School employees; between terms denial.** (a) Wage credits from employment
4.10 with an educational institution or institutions may not be used for unemployment benefit
4.11 purposes for any week during the period between two successive academic years or terms
4.12 if:

4.13 (1) the applicant had employment for an educational institution or institutions in the
4.14 prior academic year or term; and

4.15 (2) there is a reasonable assurance that the applicant will have employment for an
4.16 educational institution or institutions in the following academic year or term.

4.17 This paragraph applies to a vacation period or holiday recess if the applicant was
4.18 employed immediately before the vacation period or holiday recess, and there is a reasonable
4.19 assurance that the applicant will be employed immediately following the vacation period
4.20 or holiday recess. This paragraph also applies to the period between two regular but not
4.21 successive terms if there is an agreement for that schedule between the applicant and the
4.22 educational institution.

4.23 This paragraph does not apply if the subsequent employment is substantially less
4.24 favorable than the employment of the prior academic year or term, or the employment prior
4.25 to the vacation period or holiday recess.

4.26 (b) Paragraph (a) does not apply to:

4.27 (1) an applicant who, at the end of the prior academic year or term, had an agreement
4.28 for a definite period of employment between academic years or terms in other than an
4.29 instructional, research, or principal administrative capacity and the educational institution
4.30 or institutions failed to provide that employment; or

4.31 (2) an applicant in a position for which no license is required by the Professional Educator
4.32 Licensing and Standards Board or the Board of School Administrators.

5.1 (c) If unemployment benefits are denied to any applicant under paragraph (a) who was
5.2 employed in the prior academic year or term in other than an instructional, research, or
5.3 principal administrative capacity and who was not offered an opportunity to perform the
5.4 employment in the following academic year or term, the applicant is entitled to retroactive
5.5 unemployment benefits for each week during the period between academic years or terms
5.6 that the applicant filed a timely continued request for unemployment benefits, but
5.7 unemployment benefits were denied solely because of paragraph (a).

5.8 (d) This subdivision applies to employment with an educational service agency if the
5.9 applicant performed the services at an educational institution or institutions. "Educational
5.10 service agency" means a governmental entity established and operated for the purpose of
5.11 providing services to one or more educational institutions.

5.12 (e) This subdivision applies to employment with Minnesota, a political subdivision, or
5.13 a nonprofit organization, if the services are provided to or on behalf of an educational
5.14 institution or institutions.

5.15 (f) Paragraph (a) applies beginning the Sunday of the week that there is a reasonable
5.16 assurance of employment.

5.17 (g) Employment and a reasonable assurance with multiple education institutions must
5.18 be aggregated for purposes of application of this subdivision.

5.19 (h) If all of the applicant's employment with any educational institution or institutions
5.20 during the prior academic year or term consisted of on-call employment, and the applicant
5.21 has a reasonable assurance of any on-call employment with any educational institution or
5.22 institutions for the following academic year or term, it is not considered substantially less
5.23 favorable employment.

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

5.26 (j) An "educational institution" is a school, college, university, or other educational entity
5.27 operated by Minnesota, a political subdivision or instrumentality thereof, or a nonprofit
5.28 organization.

5.29 (k) An "instructional, research, or principal administrative capacity" does not include
5.30 an educational assistant.

6.1 Sec. 5. Minnesota Statutes 2020, section 268.101, subdivision 2, is amended to read:

6.2 Subd. 2. **Determination.** (a) The commissioner must determine any issue of ineligibility
6.3 raised by information required from an applicant under subdivision 1, paragraph (a) or (c),
6.4 and send to the applicant and any involved employer, by mail or electronic transmission, a
6.5 document titled a determination of eligibility or a determination of ineligibility, as is
6.6 appropriate. The determination on an issue of ineligibility as a result of a quit or a discharge
6.7 of the applicant must state the effect on the employer under section 268.047. A determination
6.8 must be made in accordance with this paragraph even if a notified employer has not raised
6.9 the issue of ineligibility.

6.10 (b) The commissioner must determine any issue of ineligibility raised by an employer
6.11 and send to the applicant and that employer, by mail or electronic transmission, a document
6.12 titled a determination of eligibility or a determination of ineligibility as is appropriate. The
6.13 determination on an issue of ineligibility as a result of a quit or discharge of the applicant
6.14 must state the effect on the employer under section 268.047.

6.15 If a base period employer:

6.16 (1) was not the applicant's most recent employer before the application for unemployment
6.17 benefits;

6.18 (2) did not employ the applicant during the six calendar months before the application
6.19 for unemployment benefits; and

6.20 (3) did not raise an issue of ineligibility as a result of a quit or discharge of the applicant
6.21 within ten calendar days of notification under subdivision 1, paragraph (b);

6.22 then any exception under section 268.047, subdivisions 2 and 3, begins the Sunday two
6.23 weeks following the week that the issue of ineligibility as a result of a quit or discharge of
6.24 the applicant was raised by the employer.

6.25 A communication from an employer must specifically set out why the applicant should
6.26 be determined ineligible for unemployment benefits for that communication to be considered
6.27 to have raised an issue of ineligibility for purposes of this section. A statement of "protest"
6.28 or a similar term without more information does not constitute raising an issue of ineligibility
6.29 for purposes of this section.

6.30 (c) Subject to section 268.031, an issue of ineligibility is determined based upon that
6.31 information required of an applicant, any information that may be obtained from an applicant
6.32 or employer, and information from any other source.

7.1 (d) Regardless of the requirements of this subdivision, the commissioner is not required
7.2 to send to an applicant a copy of the determination where the applicant has satisfied a period
7.3 of ineligibility because of a quit or a discharge under section 268.095, subdivision 10.

7.4 (e) The department is authorized to issue a determination on an issue of ineligibility
7.5 within 24 months from the establishment of a benefit account based upon information from
7.6 any source, even if the issue of ineligibility was not raised by the applicant or an employer.

7.7 If an applicant obtained unemployment benefits through misrepresentation under section
7.8 268.18, subdivision 2, the department is authorized to issue a determination of ineligibility
7.9 within 48 months of the establishment of the benefit account.

7.10 If the department has filed an intervention in a worker's compensation matter under
7.11 section 176.361, the department is authorized to issue a determination of ineligibility within
7.12 48 months of the establishment of the benefit account.

7.13 (f) A determination of eligibility or determination of ineligibility is final unless an appeal
7.14 is filed by the applicant or employer within ~~20~~ 60 calendar days after sending. The
7.15 determination must contain a prominent statement indicating the consequences of not
7.16 appealing. Proceedings on the appeal are conducted in accordance with section 268.105.

7.17 (g) An issue of ineligibility required to be determined under this section includes any
7.18 question regarding the denial or allowing of unemployment benefits under this chapter
7.19 except for issues under section 268.07. An issue of ineligibility for purposes of this section
7.20 includes any question of effect on an employer under section 268.047.

7.21 Sec. 6. Minnesota Statutes 2020, section 268.133, is amended to read:

7.22 **268.133 UNEMPLOYMENT BENEFITS WHILE IN ENTREPRENEURIAL**
7.23 **TRAINING.**

7.24 Unemployment benefits are available to dislocated workers participating in the converting
7.25 layoffs into Minnesota businesses (CLIMB) program under section 116L.17, subdivision
7.26 11. Applicants participating in CLIMB are considered in reemployment assistance training
7.27 under section 268.035, subdivision 21c. All requirements under section 268.069, subdivision
7.28 1, must be met, except the commissioner may waive:

7.29 (1) the deductible earnings provisions in section 268.085, subdivision 5; and

7.30 (2) the 32 hours of work limitation in section 268.085, subdivision 2, clause ~~(6)~~ (5). A
7.31 maximum of 500 applicants may receive a waiver at any given time.

7.32 **EFFECTIVE DATE.** This section is effective August 1, 2021.

8.1 Sec. 7. Minnesota Statutes 2020, section 268.136, subdivision 1, is amended to read:

8.2 Subdivision 1. **Shared work plan requirements.** An employer may submit a proposed
8.3 shared work plan for an employee group to the commissioner for approval in a manner and
8.4 format set by the commissioner. The proposed shared work plan must include:

8.5 (1) a certified statement that the normal weekly hours of work of all of the proposed
8.6 participating employees were full time or regular part time but are now reduced, or will be
8.7 reduced, with a corresponding reduction in pay, in order to prevent layoffs;

8.8 (2) the name and Social Security number of each participating employee;

8.9 (3) the number of layoffs that would have occurred absent the employer's ability to
8.10 participate in a shared work plan;

8.11 (4) a certified statement that each participating employee was first hired by the employer
8.12 at least ~~one year~~ three months before the proposed shared work plan is submitted and is not
8.13 a seasonal, temporary, or intermittent worker;

8.14 (5) the hours of work each participating employee will work each week for the duration
8.15 of the shared work plan, which must be at least 50 percent of the normal weekly hours but
8.16 no more than 80 percent of the normal weekly hours, except that the plan may provide for
8.17 a uniform vacation shutdown of up to two weeks;

8.18 (6) a certified statement that any health benefits and pension benefits provided by the
8.19 employer to participating employees will continue to be provided under the same terms and
8.20 conditions as though the participating employees' hours of work each week had not been
8.21 reduced;

8.22 (7) a certified statement that the terms and implementation of the shared work plan is
8.23 consistent with the employer's obligations under state and federal law;

8.24 (8) an acknowledgment that the employer understands that unemployment benefits paid
8.25 under a shared work plan will be used in computing the future tax rate of a taxpaying
8.26 employer or charged to the reimbursable account of a nonprofit or government employer;

8.27 (9) the proposed duration of the shared work plan, which must be at least two months
8.28 and not more than one year, although a plan may be extended for up to an additional year
8.29 upon approval of the commissioner;

8.30 (10) a starting date beginning on a Sunday at least 15 calendar days after the date the
8.31 proposed shared work plan is submitted; and

9.1 (11) a signature of an owner or officer of the employer who is listed as an owner or
9.2 officer on the employer's account under section 268.045.

9.3 **EFFECTIVE DATE.** This section is effective the day following final enactment.

9.4 Sec. 8. **CONTINUED SUSPENSION OF ONE-WEEK WAITING PERIOD.**

9.5 Notwithstanding Minnesota Statutes, section 268.085, subdivision 1, the one-week
9.6 nonpayable waiting period to receive unemployment benefits is waived for applicants for
9.7 unemployment insurance benefit accounts established between December 27, 2020, and
9.8 August 28, 2021.

9.9 **EFFECTIVE DATE.** This section is effective retroactively from December 27, 2020.

9.10 Sec. 9. **CONTINUED SUSPENSION OF FIVE-WEEK BUSINESS OWNER**
9.11 **BENEFIT LIMITATION.**

9.12 Notwithstanding Minnesota Statutes, section 268.085, subdivision 9, the five-week
9.13 limitation for receipt of unemployment benefits for business owners is suspended for
9.14 applicants for unemployment insurance benefit accounts established between December
9.15 27, 2020, and August 28, 2021.

9.16 **EFFECTIVE DATE.** This section is effective retroactively from December 27, 2020.

9.17 Sec. 10. **PANDEMIC UNEMPLOYMENT ASSISTANCE TO HIGH SCHOOL**
9.18 **STUDENTS.**

9.19 Pandemic Unemployment Assistance payments made to high school students under the
9.20 federal CARES Act, United States Code, title 15, chapter 116, and extended by the federal
9.21 Consolidated Appropriations Act, 2021, Public Law 116-260, subject to any necessary
9.22 federal approval, must not be counted as income when determining eligibility for the
9.23 programs administered by the Department of Human Services.

9.24 **EFFECTIVE DATE.** This section is effective retroactively from January 7, 2021.

9.25 Sec. 11. **LEAVE OF ABSENCE DUE TO COVID-19.**

9.26 Notwithstanding Minnesota Statutes, section 268.085, subdivision 13a, for an applicant
9.27 applying for an unemployment insurance benefit account established between December
9.28 27, 2020, and August 28, 2021, a leave of absence is presumed to be an involuntary leave
9.29 of absence and not ineligible if:

10.1 (1) a determination has been made by health authorities or by a health care professional
10.2 that the presence of the applicant in the workplace would jeopardize the health of others,
10.3 whether or not the applicant has actually contracted a communicable disease;

10.4 (2) a quarantine or isolation order has been issued to the applicant pursuant to Minnesota
10.5 Statutes, sections 144.419 to 144.4196;

10.6 (3) there is a recommendation from health authorities or from a health care professional
10.7 that the applicant should self-isolate or self-quarantine due to elevated risk from COVID-19
10.8 due to being immunocompromised;

10.9 (4) the applicant has been instructed by the applicant's employer not to come to the
10.10 employer's place of business due to an outbreak of a communicable disease; or

10.11 (5) the applicant has received a notification from a school district, day care, or other
10.12 child care provider that either (i) classes are canceled, or (ii) the applicant's ordinary child
10.13 care is unavailable, provided that the applicant made reasonable effort to obtain other child
10.14 care and requested time off or other accommodation from the employer and no reasonable
10.15 accommodation was available.

10.16 **EFFECTIVE DATE.** This section is effective retroactively from December 27, 2020.

10.17 Sec. 12. **REPEALER.**

10.18 (a) Minnesota Statutes 2020, section 268.085, subdivision 4, is repealed January 1, 2021.

10.19 (b) Minnesota Statutes 2020, section 268.085, subdivision 8, is repealed.

268.085 ELIGIBILITY REQUIREMENTS; PAYMENTS THAT AFFECT BENEFITS.

Subd. 4. **Social Security old age insurance benefits.** (a) If all of the applicant's wage credits were earned while the applicant was claiming Social Security old age benefits, there is no deduction of the Social Security benefits from the applicant's weekly unemployment benefit amount.

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

(c) Any applicant aged 62 or over is required to state when filing an application for unemployment benefits and when filing continued requests for unemployment benefits if the applicant is receiving, has filed for, or intends to file for, primary Social Security old age benefits.

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

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

Subd. 8. **Services for school contractors.** (a) Wage credits from an employer are subject to subdivision 7, if:

(1) the employment was provided under a contract between the employer and an elementary or secondary school; and

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

(b) Wage credits from an employer are not subject to subdivision 7 if:

(1) those wage credits were earned by an employee of a private employer performing work under a contract between the employer and an elementary or secondary school; and

(2) the employment was related to food services provided to the school by the employer.