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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 784

01/25/2023 Authored by Noor, Xiong and Hassan

The bill was read for the first time and referred to the Committee on Workforce Development Finance and Policy

1.1 A bill for an act  
1.2 relating to unemployment; modifying penalties for a misrepresentation  
1.3 overpayment; amending Minnesota Statutes 2022, sections 268.069, subdivision  
1.4 1; 268.085, subdivision 2; 268.101, subdivisions 1, 2; 268.133; 268.18; repealing  
1.5 Minnesota Statutes 2022, section 268.183.

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

1.7 Section 1. Minnesota Statutes 2022, section 268.069, subdivision 1, is amended to read:

1.8 Subdivision 1. **Requirements.** The commissioner must pay unemployment benefits  
1.9 from the trust fund to an applicant who has met each of the following requirements:

1.10 (1) the applicant has filed an application for unemployment benefits and established a  
1.11 benefit account in accordance with section 268.07;

1.12 (2) the applicant has not been held ineligible for unemployment benefits under section  
1.13 268.095 because of a quit or discharge;

1.14 (3) the applicant has met all of the ongoing eligibility requirements under section 268.085;  
1.15 and

1.16 (4) the applicant does not have an outstanding overpayment of unemployment benefits,  
1.17 including any penalties ~~or interest;~~ and.

1.18 ~~(5) the applicant has not been held ineligible for unemployment benefits under section~~  
1.19 ~~268.183.~~

1.20 Sec. 2. Minnesota Statutes 2022, section 268.085, subdivision 2, is amended to read:

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

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

2.2 ~~(2) that the applicant, at any time during the week, has an outstanding misrepresentation~~  
 2.3 ~~overpayment balance under section 268.18, subdivision 2, including any penalties and~~  
 2.4 ~~interest;~~

2.5 ~~(3)~~ (2) that the applicant is incarcerated or performing court-ordered community service.  
 2.6 The applicant's weekly unemployment benefit amount is reduced by one-fifth for each day  
 2.7 the applicant is incarcerated or performing court-ordered community service;

2.8 ~~(4)~~ (3) that the applicant fails or refuses to provide information on an issue of ineligibility  
 2.9 required under section 268.101;

2.10 ~~(5)~~ (4) that the applicant is performing services 32 hours or more, in employment, covered  
 2.11 employment, noncovered employment, volunteer work, or self-employment regardless of  
 2.12 the amount of any earnings; or

2.13 ~~(6)~~ (5) with respect to which the applicant has filed an application for unemployment  
 2.14 benefits under any federal law or the law of any other state. If the appropriate agency finally  
 2.15 determines that the applicant is not entitled to establish a benefit account under federal law  
 2.16 or the law of any other state, this clause does not apply.

2.17 Sec. 3. Minnesota Statutes 2022, section 268.101, subdivision 1, is amended to read:

2.18 Subdivision 1. **Notification.** (a) In an application for unemployment benefits, each  
 2.19 applicant must report the name and the reason for no longer working for the applicant's  
 2.20 most recent employer, as well as the names of all employers and the reasons for no longer  
 2.21 working for all employers during the six calendar months before the date of the application.  
 2.22 If the reason reported for no longer working for any of those employers is other than a layoff  
 2.23 because of lack of work, that raises an issue of ineligibility that the department must  
 2.24 determine. An applicant must report any offers of employment refused during the eight  
 2.25 calendar weeks before the date of the application for unemployment benefits and the name  
 2.26 of the employer that made the offer. An applicant's failure to report the name of an employer,  
 2.27 or giving an incorrect reason for no longer working for an employer, or failing to disclose  
 2.28 an offer of employment that was refused, is a violation of section ~~268.183~~ 268.18.

2.29 In an application, the applicant must also provide all information necessary to determine  
 2.30 the applicant's eligibility for unemployment benefits under this chapter. If the applicant fails  
 2.31 or refuses to provide information necessary to determine the applicant's eligibility for  
 2.32 unemployment benefits, the applicant is ineligible for unemployment benefits under section  
 2.33 268.085, subdivision 2, until the applicant provides this required information.

3.1 (b) Upon establishment of a benefit account under section 268.07, subdivision 2, the  
3.2 commissioner must notify, by mail or electronic transmission, all employers the applicant  
3.3 was required to report on the application and all base period employers and determined  
3.4 successors to those employers under section 268.051, subdivision 4, in order to provide the  
3.5 employer an opportunity to raise, in a manner and format prescribed by the commissioner,  
3.6 any issue of ineligibility. An employer must be informed of the effect that failure to raise  
3.7 an issue of ineligibility as a result of a quit or discharge of the applicant, as provided for  
3.8 under subdivision 2, paragraph (b), may have on the employer under section 268.047.

3.9 (c) Each applicant must report any employment, and loss of employment, and offers of  
3.10 employment refused, during those weeks the applicant filed continued requests for  
3.11 unemployment benefits under section 268.0865. Each applicant who stops filing continued  
3.12 requests during the benefit year and later begins filing continued requests during that same  
3.13 benefit year must report the name of any employer the applicant worked for during the  
3.14 period between the filing of continued requests and the reason the applicant stopped working  
3.15 for the employer. The applicant must report any offers of employment refused during the  
3.16 period between the filing of continued requests for unemployment benefits. Those employers  
3.17 from which the applicant has reported a loss of employment under this paragraph must be  
3.18 notified by mail or electronic transmission and provided an opportunity to raise, in a manner  
3.19 prescribed by the commissioner, any issue of ineligibility. An employer must be informed  
3.20 of the effect that failure to raise an issue of ineligibility as a result of a quit or a discharge  
3.21 of the applicant may have on the employer under section 268.047.

3.22 (d) The purpose for requiring the applicant to report the name of employers and the  
3.23 reason for no longer working for those employers, or offers of employment refused, under  
3.24 paragraphs (a) and (c) is for the commissioner to obtain information from an applicant  
3.25 raising all issues that may result in the applicant being ineligible for unemployment benefits  
3.26 under section 268.095, because of a quit or discharge, or the applicant being ineligible for  
3.27 unemployment benefits under section 268.085, subdivision 13c. If the reason given by the  
3.28 applicant for no longer working for an employer is other than a layoff because of lack of  
3.29 work, that raises an issue of ineligibility and the applicant is required, as part of the  
3.30 determination process under subdivision 2, paragraph (a), to state all the facts about the  
3.31 cause for no longer working for the employer, if known. If the applicant fails or refuses to  
3.32 provide any required information, the applicant is ineligible for unemployment benefits  
3.33 under section 268.085, subdivision 2, until the applicant provides this required information.

4.1 Sec. 4. Minnesota Statutes 2022, section 268.101, subdivision 2, is amended to read:

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

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

4.15 If a base period employer:

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

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

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

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

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

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

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

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

5.7 ~~If an applicant obtained unemployment benefits through misrepresentation under section~~  
 5.8 ~~268.18, subdivision 2, the department is authorized to issue a determination of ineligibility~~  
 5.9 ~~within 48 months of the establishment of the benefit account.~~

5.10 If the department has filed an intervention in a worker's compensation matter under  
 5.11 section 176.361, the department is authorized to issue a determination of ineligibility within  
 5.12 48 months of the establishment of the benefit account.

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

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

5.21 Sec. 5. Minnesota Statutes 2022, section 268.133, is amended to read:

5.22 **268.133 UNEMPLOYMENT BENEFITS WHILE IN ENTREPRENEURIAL**  
 5.23 **TRAINING.**

5.24 Unemployment benefits are available to dislocated workers participating in the converting  
 5.25 layoffs into Minnesota businesses (CLIMB) program under section 116L.17, subdivision  
 5.26 11. Applicants participating in CLIMB are considered in reemployment assistance training  
 5.27 under section 268.035, subdivision 21c. All requirements under section 268.069, subdivision  
 5.28 1, must be met, except the commissioner may waive:

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

5.30 (2) the 32 hours of work limitation in section 268.085, subdivision 2, clause ~~(5)~~ (4). A  
 5.31 maximum of 500 applicants may receive a waiver at any given time.

6.1 Sec. 6. Minnesota Statutes 2022, section 268.18, is amended to read:

6.2 **268.18 UNEMPLOYMENT BENEFIT OVERPAYMENTS.**

6.3 Subdivision 1. **Repaying an overpayment.** (a) Any applicant who (1) because of a  
6.4 determination or amended determination issued under section 268.07 or 268.101, or any  
6.5 other section of this chapter, or (2) because of an unemployment law judge's decision under  
6.6 section 268.105, has received any unemployment benefits that the applicant was held not  
6.7 entitled to, is overpaid the benefits, and must promptly repay the benefits to the trust fund.

6.8 (b) If the applicant fails to repay the unemployment benefits overpaid, including any  
6.9 penalty ~~and interest~~ assessed under ~~subdivisions~~ subdivision 2 and 2b, the total due may be  
6.10 collected by the methods allowed under state and federal law.

6.11 Subd. 2. **Overpayment because of misrepresentation.** (a) An applicant has committed  
6.12 misrepresentation if the applicant is overpaid unemployment benefits by making ~~a~~ an  
6.13 intentional false statement or representation ~~without~~ in an effort to fraudulently collect  
6.14 benefits. Overpayment because of misrepresentation does not occur where there is  
6.15 unintentional mistake or a good faith belief as to the correctness of the statement or  
6.16 representation.

6.17 (b) In reviewing the facts of an alleged misrepresentation, the department shall consider  
6.18 any literacy, language, disability, and mental health barriers of the applicant. After the  
6.19 discovery of facts indicating misrepresentation, the commissioner must issue a determination  
6.20 of overpayment penalty assessing a penalty equal to ~~40~~ 15 percent of the amount overpaid.  
6.21 ~~This penalty is in addition to penalties under section 268.183.~~

6.22 ~~(b)~~ (c) Unless the applicant files an appeal within ~~20~~ 60 calendar days after the sending  
6.23 of a determination of overpayment penalty to the applicant by mail or electronic transmission,  
6.24 the determination is final. Proceedings on the appeal are conducted in accordance with  
6.25 section 268.105.

6.26 ~~(e)~~ (d) A determination of overpayment penalty must state the methods of collection the  
6.27 commissioner may use to recover the overpayment; and penalty; ~~and interest~~ assessed.  
6.28 Money received in repayment of overpaid unemployment benefits; and penalties; ~~and interest~~  
6.29 is first applied to the benefits overpaid, and then to the penalty amount due; ~~then to any~~  
6.30 ~~interest due.~~ 62.5 percent of the payments made toward the penalty are credited to the  
6.31 contingent account and 37.5 percent credited to the trust fund.

7.1 ~~(d)~~ (e) The department is authorized to issue a determination of overpayment penalty  
 7.2 under this subdivision within 48 months of the establishment of the benefit account upon  
 7.3 which the unemployment benefits were obtained through misrepresentation.

7.4 ~~Subd. 2b. **Interest.** On any unemployment benefits obtained by misrepresentation, and~~  
 7.5 ~~any penalty amounts assessed under subdivision 2, the commissioner must assess interest~~  
 7.6 ~~on any amount that remains unpaid beginning 30 calendar days after the date of a~~  
 7.7 ~~determination of overpayment penalty. Interest is assessed at the rate of one percent per~~  
 7.8 ~~month or any part of a month. A determination of overpayment penalty must state that~~  
 7.9 ~~interest will be assessed. Interest is not assessed on unpaid interest. Interest collected under~~  
 7.10 ~~this subdivision is credited to the trust fund.~~

7.11 **Subd. 3a. Offset of unemployment benefits.** (a) The commissioner may offset from  
 7.12 any future unemployment benefits otherwise payable the amount of ~~a nonmisrepresentation~~  
 7.13 an overpayment. Except when the ~~nonmisrepresentation~~ overpayment resulted because the  
 7.14 applicant failed to report deductible earnings or deductible or benefit delaying payments,  
 7.15 no single offset may exceed 50 percent of the amount of the payment from which the offset  
 7.16 is made.

7.17 (b) Overpayments of unemployment benefits under a federal program, may be recovered  
 7.18 by offset from future benefits otherwise payable.

7.19 (c) If an applicant has been overpaid unemployment benefits under the law of another  
 7.20 state, the commissioner may offset from future benefits otherwise payable the amount of  
 7.21 overpayment.

7.22 (d) ~~Nonmisrepresentation~~ Unemployment benefit overpayments may be recovered by  
 7.23 offset from future benefits otherwise payable under a federal program.

7.24 **Subd. 4. Cancellation of overpayments.** (a) If unemployment benefits overpaid ~~for~~  
 7.25 ~~reasons other than misrepresentation~~ are not repaid or offset from subsequent benefits within  
 7.26 six years after the date of the determination or decision holding the applicant overpaid, the  
 7.27 commissioner must cancel the overpayment balance, and no administrative or legal  
 7.28 proceedings may be used to enforce collection of those amounts.

7.29 ~~(b) If unemployment benefits overpaid because of misrepresentation including penalties~~  
 7.30 ~~and interest are not repaid within ten years after the date of the determination of overpayment~~  
 7.31 ~~penalty, the commissioner must cancel the overpayment balance and any penalties and~~  
 7.32 ~~interest due, and no administrative or legal proceeding may be used to enforce collection~~  
 7.33 ~~of those amounts.~~

8.1 ~~(e)~~ (b) The commissioner may cancel at any time any overpayment, including penalties  
8.2 ~~and interest~~, that the commissioner determines is uncollectible because of death or  
8.3 bankruptcy.

8.4 Subd. 4a. **Court fees; collection fees.** (a) If the department is required to pay any court  
8.5 fees in an attempt to enforce collection of overpaid unemployment benefits, or penalties,  
8.6 ~~or interest~~, the amount of the court fees may be added to the total amount due.

8.7 (b) If an applicant who has been overpaid unemployment benefits because of  
8.8 misrepresentation seeks to have any portion of the debt discharged under the federal  
8.9 bankruptcy code, and the department files an objection in bankruptcy court to the discharge,  
8.10 the cost of any court fees may be added to the debt if the bankruptcy court does not discharge  
8.11 the debt.

8.12 (c) If the Internal Revenue Service assesses the department a fee for offsetting from a  
8.13 federal tax refund the amount of any overpayment, including penalties ~~and interest~~, the  
8.14 amount of the fee may be added to the total amount due. The offset amount must be put in  
8.15 the trust fund and that amount credited to the total amount due from the applicant.

8.16 Subd. 5. **Remedies.** (a) Any method undertaken to recover an overpayment of  
8.17 unemployment benefits, including any penalties ~~and interest~~, is not an election of a method  
8.18 of recovery.

8.19 (b) Intervention or lack thereof, in whole or in part, in a workers' compensation matter  
8.20 under section 176.361 is not an election of a remedy and does not prevent the commissioner  
8.21 from determining an applicant ineligible for unemployment benefits.

8.22 Subd. 6. **Collection of overpayments.** (a) The commissioner may not compromise the  
8.23 amount of any overpaid unemployment benefits including penalties ~~and interest~~.

8.24 (b) The commissioner has discretion regarding the recovery of any overpayment ~~for~~  
8.25 ~~reasons other than misrepresentation~~. Regardless of any law to the contrary, the commissioner  
8.26 is not required to refer any overpayment ~~for reasons other than misrepresentation~~ to a public  
8.27 or private collection agency, including agencies of this state.

8.28 (c) Amounts overpaid ~~for reasons other than misrepresentation~~ are not considered a  
8.29 "debt" to the state of Minnesota for purposes of any reporting requirements to the  
8.30 commissioner of management and budget.

8.31 (d) A pending appeal under section 268.105 does not suspend the assessment of ~~interest~~,  
8.32 penalties, or collection of an overpayment.

9.1 (e) Section 16A.626 applies to the repayment by an applicant of any overpayment, or  
9.2 penalty, ~~or interest~~.

9.3 Sec. 7. **REPEALER.**

9.4 Minnesota Statutes 2022, section 268.183, is repealed.

**268.183 APPLICANT ADMINISTRATIVE PENALTIES.**

(a) Any applicant who makes a false statement or representation without a good faith belief as to the correctness of the statement or representation, in order to obtain or in an attempt to obtain unemployment benefits may be assessed, in addition to any other penalties, an administrative penalty of being ineligible for unemployment benefits for 13 to 104 weeks.

(b) A determination of ineligibility setting out the weeks the applicant is ineligible must be sent to the applicant by mail or electronic transmission. The department is authorized to issue a determination of ineligibility under this subdivision within 48 months of the establishment of the benefit account upon which the unemployment benefits were obtained, or attempted to be obtained. Unless an appeal is filed within 20 calendar days of sending, the determination is final. Proceedings on the appeal are conducted in accordance with section 268.105.