

provide for multiple choice voting, nomination by primaries or run-off elections, or other method of election by which selection by a majority may be obtained. In the absence of such provision, the candidate for any office receiving the largest number of votes cast for that office shall be declared elected. It is the duty of every labor organization and the officers thereof to hold an election for the purpose of electing the successor of every such officer prior to the expiration of his term. *Any employee who is elected to a full time position in a labor organization shall be given a leave of absence for the duration of time he holds such office, without losing his seniority or his entitlement to any rights acquired as a result of his employment.*

Approved May 28, 1969.

CHAPTER 854—S. F. No. 1754

An act relating to employment security; amending Minnesota Statutes 1967, Sections 268.04, Subdivisions 12, 25, 26, 29 and 30; 268.06, Subdivision 2; 268.07, Subdivision 2; 268.10, Subdivision 1; 268.11, Subdivisions 1 and 2; 268.12, Subdivisions 1 and 13; 268.16, Subdivision 6; repealing Minnesota Statutes 1967, Section 268.06, Subdivision 3; and Laws 1967, Chapter 439, Section 3.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Minnesota Statutes 1967, Section 268.04, Subdivision 12, is amended to read:

Subd. 12. **Employment security.** (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 such individual in pursuit of his independently established business or is in fact an independent contractor. The services performed by officers of corporations are included as employment under sections 268.03 to 268.24.

(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

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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) (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.

(5) 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.

(6) Service performed after July 1, 1957, by an individual for the state of Minnesota or any instrumentality which is wholly owned by the state of Minnesota.

(7) Service performed after July 1, 1957, by an individual for any political subdivision of the state of Minnesota or instrumentality thereof which elects to be an employer with respect to one or more of its departments under the Minnesota employment security law and notifies the department of employment security of such election.

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

(a) *Agricultural labor.* The term "agricultural labor" includes all services performed subsequent to December 31, 1939:

(1) On a farm, in the employ of any person, in connection

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with cultivating the soil, or in connection with raising, harvesting or threshing any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock, bees, poultry, furbearing 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 hurricane or fire, if the major part of such service is performed on a farm.

(3) In connection with the production or harvesting of maple syrup or maple sugar or any commodity defined as an agricultural commodity in section 15 (g) of the agricultural marketing act, as amended, or in connection with the raising or harvesting of mushrooms, or in connection with the hatching of poultry, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying and storing water for farming purposes.

(4) 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, any agricultural or horticultural commodity; but only if such service is performed as an incident to ordinary farming operations or, in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market. 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.

As used in this subdivision, the term "farm" includes stock, dairy, poultry, fruit, furbearing animals, 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) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority;

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

(d) 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 em-

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employers with respect to wages as provided in sections 268.03 to 268.24;

(e) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of 21 in the employ of his father or mother;

(f) 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 performed subsequent to December 31, 1939, 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;

(g) Service performed in the employ of any political subdivision of this state and or any instrumentality thereof which has not elected to be an employer with respect to one or more of its departments under the Minnesota employment security law;

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

(i) (1) Service performed in any calendar quarter ~~subsequent to December 31, 1940~~, in the employ of any organization exempt from income tax under section 3306 ~~(e)~~ ~~(10)~~ 501 (a) (other than an organization described in section 401 (a)) or section 521 of the federal internal revenue code, ~~from the tax imposed by section 3301 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

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and is regularly attending classes at such school, college, or university;

(j) Service performed in the employ of a foreign government (including service as a consular or other officer or employee or a non-diplomatic representative);

(k) 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.

(l) 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;

(m) Services performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation;

(n) Service performed subsequent to December 31, 1940, 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;

(o) Service performed subsequent to December 31, 1940, 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 per-

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son 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);

(p) 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;

(q) Service performed in the employ of any farmers' cooperative association dealing primarily with agricultural or dairy products or farmers' mutual insurance company, not subject to the tax imposed by section 3301 of the federal internal revenue code;

(r) Service performed subsequent to December 31, 1939, without wages by an officer of a corporation which is not subject to the tax imposed by section 3301 of the federal internal revenue code;

(s) Service performed subsequent to December 31, 1952 both outside and within the corporate limits of a city, village, or borough of 10,000 population or more, in the transportation and delivery of livestock, whenever the transportation and delivery of such livestock comprises more than 50 percent by weight of the total freight hauled during the calendar year by the person, firm, or corporation engaged in such services;

(t) If the service performed subsequent to December 31, 1940, 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. This subdivision shall not be applicable with respect to service performed in a pay period by an individual for the person employing him, where any of such service is excluded by section 268.04, subdivision 12, clause (8) (h) and (s).

~~(u) Service performed as an agent or solicitor engaged or employed in the sale or purchase of real estate solely and exclusively upon a commission basis, to the extent only that such service is hereafter excluded under section 3306 of the federal internal revenue code.~~

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(9) The term "employment" as applied to services performed by an individual for the state of Minnesota or any instrumentality wholly owned by the state, except political subdivisions or instrumentalities thereof which duly elect otherwise with the commissioner's approval, shall not include the following:

(a) Service performed by elected public officials and unclassified employees appointed for a definite term;

(b) Service performed by a faculty member in the employ of a university, college, school or any other institution which is supported wholly or substantially by public funds;

(c) Service performed by a student in the employ of an educational institution supported wholly or substantially by public funds at which the student is enrolled, or was enrolled during the most recent regular school term;

(d) Service performed by an individual who is financially supported in whole or in part by a state or federal scholarship program;

(e) Service performed in the employ of a department, institution, or wholly owned instrumentality of the state which is supported wholly or substantially by public funds under a training program required by either a public or private educational institution;

(f) Service performed by members of the Minnesota national guard when ordered to duty for military assignments;

(g) Service performed in the employ of the state conservation department directly and solely in connection with emergency fire fighting.

~~The specific exclusions mentioned in clause (8) of this subdivision shall not be exclusive.~~

Sec. 2. Minnesota Statutes 1967, Section 268.04, Subdivision 25, is amended to read:

Subd. 25. "Wages" means all remuneration for services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash, except that such term shall not include:

(1) For the purpose of determining contributions payable under section 268.06, subdivision 2, clause (2), that part of the remuneration which, after remuneration equal to \$4,800 has been paid to an individual by an employer with respect to *covered* employment

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in this state, or *with respect to employment under the unemployment compensation law of any other state during any calendar year subsequent to December 31, 1965*, is paid to such individual by such *covered employer with respect to employment during such calendar year or his predecessor during such calendar year*; provided, that if the ~~definition of the term~~ "wages" as contained in the federal unemployment tax act is amended to include remuneration in excess of \$4,800 paid to an individual by an employer under the federal act *during for* any calendar year, wages for the purposes of sections 268.03 to 268.24 shall include remuneration paid in a calendar year ~~to an individual by an employer subject thereto or his predecessor with respect to employment during any 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;

(2) 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 (a) retirement or (b) sickness or accident disability or (c) medical and hospitalization expenses in connection with sickness or accident disability, or (d) death, provided the employee (i) 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 (ii) 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;

(3) The payment by an employer (without deduction from the remuneration of the employee) (a) of the tax imposed upon an employee under section 3101 of the federal internal revenue code, or (b) of any payment required from an employee under a state unemployment compensation law;

(4) 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;

(5) *Any payment made to, or on behalf of, an employee or*

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his beneficiary (a) 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 (b) 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.

Sec. 3. Minnesota Statutes 1967, Section 268.04, Subdivision 26, is amended to read:

Subd. 26. (1) "Wage credits" mean the amount of wages paid and wages due and payable but not paid by or from an employer to an employee for insured work except that with respect to wages paid and wages due and payable but not paid by or from an employer to an employee for seasonal employment (as defined in section 268.07, subdivision 5), "wage credits" shall mean the proportion (computed to the next highest multiple of five percent) of such wages which the customary period of operations bears to a calendar year. 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.

(2) ~~Notwithstanding the provisions of clause (1); for the period from April 1, 1965 through June 30, 1967, "wage credits" mean the remuneration earned from an employer by an employee for insured work except that with respect to wages earned from an employer by an employee for seasonal employment (as defined in section 268.07, subdivision 5), "wage credits" shall mean the proportion (computed to the next highest multiple of five percent) of the remuneration earned which the customary period of operations bears to a calendar year. 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.~~

(3) ~~The provisions of clauses (1) and (2) shall become effective July 1, 1967, but the provisions of clause (2) shall expire September 30, 1968.~~

Sec. 4. Minnesota Statutes 1967, Section 268.04, Subdivision 29, is amended to read:

Subd. 29. "Credit week" *with respect to any claim for*

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benefits which establishes a benefit year subsequent to June 27, 1970, is any week for which wages have been paid and wages are due and payable but not paid of ~~\$26~~ \$30 or more by or from one or more employers to an employee for insured work.

Sec. 5. Minnesota Statutes 1967, Section 268.04, Subdivision 30, is amended to read:

Subd. 30. "Average weekly wage" means the quotient derived by dividing the total wage credits earned by an individual from all employers in insured work in the base period by the number of *credit weeks. in which such individual has earned \$26, or more, in wage credits.*

Sec. 6. Minnesota Statutes 1967, Section 268.06, Subdivision 2, is amended to read:

Subd. 2. **Rates.** ~~(1) Each employer shall pay contributions equal to the following percentages of wages payable by him with respect to employment:~~

~~(a) Nine tenths of one percent with respect to employment occurring during the calendar year 1936;~~

~~(b) One and eight tenths percent with respect to employment occurring during the calendar year 1937;~~

~~(c) Two and seven tenths percent with respect to employment occurring during the calendar years 1938, 1939, 1940; and~~

~~(2) Each employer shall pay contributions equal to two and seven tenths percent of wages paid and wages overdue and delayed beyond the usual time of payment from him with respect to employment occurring during each calendar year subsequent to December 31, 1940, except as may be otherwise prescribed in subdivisions 3 and 4.~~

Sec. 7. Minnesota Statutes 1967, Section 268.07, Subdivision 2, is amended to read:

Subd. 2. **Maximums.** If the commissioner finds that an individual has earned 18, or more, credit weeks, and \$520 or more in wage credits, within the base period of employment in insured work with one or more employers, benefits shall be payable to such individual as follows:

(1) Weekly benefit amount shall be equal to 50 percent of the average weekly wage of such individual, computed to the nearest even dollar, subject to a maximum of ~~\$50~~ \$57 per week.

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(2) Benefits shall be paid weekly for a period not to exceed 70 percent of the number of credit weeks earned by such individual computed to the nearest even week, subject to a maximum of 26 weeks.

(3) *An individual who has exhausted his entitlement to benefits as determined by sections 268.02 through 268.25 and cannot establish entitlement to unemployment compensation benefits under the law of any other state or the federal government may have his entitlement during his current benefit year extended by three weeks if during the 52 calendar week period immediately preceding his base period he earned 37 credit weeks in employment insured under this law and by three weeks for each successive previous 52 calendar week period subject to a maximum of nine weeks. Such extended benefits shall be payable only if the commissioner finds that the individual is either enrolled in a course of training or retraining approved by the commissioner and for which training allowances are not payable under any other state or federal law or the individual has completed such a course of training or retraining. Benefits paid under such extension are not chargeable to any employer's experience rating account. The commissioner shall establish suitable procedures for verifying prior employment and for the determination of appropriate training.*

~~(3)~~ (4) 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, payable to him with respect to such week which is in excess of ~~\$6~~ \$12. Such benefit, if not a multiple of \$1, shall be computed to the next higher multiple of \$1.

(4) (5) The provisions of this subdivision shall apply to claims for benefits which establish a benefit year subsequent to June 30, ~~1967~~ 28, 1969.

Sec. 8. Minnesota Statutes 1967, Section 268.10, Subdivision 1, is amended to read:

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

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

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

- (a) The total wage credits earned in the base period;
- (b) The number of credit weeks which end within the base period;
- (c) The week ending dates for each calendar week within the base period in which the individual earned less than *\$26 the amount required to make a credit week* and the amount of earnings in each such week;
- (d) The reason for the separation or separations of such individual from the employ of the employer in the base period; and
- (e) Such employer's protest, if any, relating to the ineligibility or disqualification of such individual.

(3) If any base period employer, after the notice of filing of a claim and the request for wage and separation information has been duly mailed to his last known address, fails to file information as provided by items (a) through (e) of clause 2 of this subdivision within seven days, the commissioner shall determine an individual's benefit rights based on the claimant's statements or any other available information. Any employer shall be liable for a late filing fee of *not less than \$5 nor more than \$25, as the commissioner may determine*, to be paid to the department of employment security and credited to the contingent fund if he has failed without good cause to submit the wage and separation information as required in clause 2 of this subdivision within seven days after the request has been duly mailed to his last known address. In the absence of fraud, if a redetermination of

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benefit rights based on an employer's late report subsequently cancels or reduces the amount of benefits to which a claimant was entitled under the initial determination, the claimant shall not be required to make repayment to the fund of any benefits paid to him prior to such redetermination.

Sec. 9. Minnesota Statutes 1967, Section 268.11, Subdivision 1, is amended to read:

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

Sec. 10. Minnesota Statutes 1967, Section 268.11, Subdivision 2, is amended to read:

Subd. 2. **Application for termination of coverage.** Except as otherwise provided in subdivision 3, any employing unit; ~~with reference to which the commissioner finds that there were not 20 different days, each day being in a different week within the preceding calendar year, within which such employing unit employed one or more individuals in employment, as provided in section 268.04, subdivision 12, or any employing unit, for which services are performed outside the corporate limits of a city, village or borough of 10,000 population or more, which was subject to the Minnesota employment security law in the preceding year and which during the current year is not subject to the tax imposed by section 3301 of the Federal Internal Revenue Code, shall cease to be an employer subject to sections 268.03 to 268.24 as of the first day of January of any calendar year; if during such current calendar year it files with the commissioner a written application for termination of coverage; provided, however, that if such employing unit makes such application during such current calendar year and he is to be entitled to a refund by reason of such termination of coverage, the amount of such refund shall be reduced by the amount of benefits paid based on wage credits reported during the year in which coverage is terminated. 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,

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clause (2), (3) ~~or~~, (4), or (5), shall be treated as a single employing unit.

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

Sec. 11. Minnesota Statutes 1967, Section 268.12, Subdivision 1, is amended to read:

268.12 Creation. Subdivision 1. **Department of employment security; commissioner; succession to division of employment and security.** (1) There is hereby created and established a department of employment security which shall be the successor to the division of employment and security, which said division is hereby abolished as a division of the department of social security as established by Laws 1939, Article VII, Section 1.

(2) A commissioner of employment security shall be appointed by the governor with the advice and consent of the senate to administer ~~Minnesota Statutes 1949, Sections 268.03 to 268.24, as amended, and this chapter~~ as the same may hereafter from time to time be amended. The term of office of the commissioner first appointed shall expire February 1, 1959, after which the term of office of the commissioner shall be for a term of six years. The commissioner shall be selected on the basis of ability and experience and without regard to political affiliations. The governor may remove the commissioner at any time for cause after notice and hearing. Subject to the provisions of sections 268.03 to 268.24 and other applicable laws now or hereafter enacted, the commissioner shall have the power to organize his department in such manner as he may deem necessary. Appointments to exercise delegated powers shall be written orders filed with the secretary of state. The salary of the commissioner shall be ~~\$7,400 per year prescribed by the legislature~~ and he shall give bond in the sum of \$10,000; ~~provided that the annual adjustment increment shall be \$200, and the basic salary herein provided adjusted in accordance with the provisions of Laws 1951, Chapter 713, Section 2.~~

(3) All proceedings, court actions, prosecutions or other business undertaken or commenced prior to April 21, 1953, by the division of employment and security and any other matters of the division of employment and security pending at the time of the passage of this act may be conducted and completed by the new department

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of employment security in the same manner and under the same terms and conditions and with the same effect as though it were undertaken, commenced or conducted or completed by said division of employment and security prior to such change. All functions, powers and duties of such division of employment and security are by this act assigned and transferred to the department of employment security.

(4) All the powers and duties now vested in or imposed upon the director of the division of employment and security as a division of the department of social security are hereby vested in and imposed upon the commissioner of employment security.

All of the employees of said division of employment and security are hereby transferred to the department of employment security created by this section, and said commissioner shall take charge of said employees and shall employ them in the exercise of the respective functions, powers and duties transferred as aforesaid without reduction of compensation or civil service status enjoyed by said employees at the time of such transfer, subject, however, to change or termination of employment, compensation or civil service status as may be otherwise provided by law.

(5) All other acts or parts of acts now in effect inconsistent with the provisions of this section are hereby repealed, superseded, modified or amended so far as necessary to conform to and give full force and effect to the provisions of this section.

(6) Laws 1953, Chapter 603, shall take effect and be in force from and after its passage; provided, that no transfer of functions, rights, powers, duties, or funds made thereby shall take effect until the commissioner of the department to whom the same are transferred shall have been appointed; taken his oath of office and filed oath and bond in the office of the secretary of state; and until then the former division or agency vested therewith shall continue to exercise and perform such functions, rights, powers, and duties, and to have charge of such funds.

Sec. 12. Minnesota Statutes 1967, Section 268.12, Subdivision 13, is amended to read:

Subd. 13. **Determinations.** (1) ~~The commissioner may, upon his own motion or upon the written application of an employing unit, and after a fair hearing, notice of which has been given such employing unit as hereinafter provided, make findings of fact, and on the basis thereof, a determination with respect to whether an employing unit constitutes an employer and whether services performed for, or in connection with, the business of any employing unit constitutes em-~~

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~~ployment for such employing unit.~~ *An official, designated by the commissioner, upon his own motion or upon application of an employing unit shall determine if an employing unit is an employer within the meaning of this chapter or as to whether services performed for it constitute employment within the meaning of this chapter, and shall notify the employing unit of such determination. Such determination shall be final unless the employing unit, within 30 days after the mailing of notice of the determination, files a request in writing that the commissioner grant a hearing for the purpose of reconsidering the facts submitted and to consider any additional information.*

(2) The commissioner shall designate one or more representatives, herein referred to as referees, to conduct such hearing. Any person who can show that he has a real interest in the outcome of such determination shall be entitled to appear in person by counsel or representative, at such hearing and present evidence and be heard. The referee shall fix a time and place within this state for such hearing and shall give the employing unit written notice thereof, by registered mail, not less than ten days prior to the time of such hearing. In the discharge of the duties imposed by this subdivision, the referee shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with the subject matter of such hearing. The written report of any employee of the department of employment security, made in the regular course of the performance of such employee's duties, shall be competent evidence of the facts therein contained and shall be prima facie correct, unless refuted by other credible evidence.

(3) Upon the conclusion of such hearing, the referee shall serve upon the employing unit by registered mail findings of fact and decision in respect thereto. The decision of the referee, together with his findings of fact and reasons in support thereof, shall become final unless, within ten days after the mailing by registered mail of a copy thereof to the employing unit, an appeal is filed with the commissioner, or unless the commissioner, within 12 days after the mailing of such decision, on his own motion orders the matter certified to him for review. Appeal from and review by the commissioner of the decision of the referee shall be had in the manner provided by regulation. The commissioner may without further hearing affirm, modify, or set aside the findings of fact or decision, or both, of the referee on the basis of the evidence previously submitted in the case, or direct the taking of additional evidence. The commissioner may disregard the findings of fact of the referee and examine the testimony taken and make such findings of fact as the evidence taken before the referee

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may, in the judgment of the commissioner, require, and make such decision as the facts so found by him may require. The commissioner shall notify the employing unit of his findings and decision by registered mail and notice of such decision shall contain a statement setting forth the cost of certification of the record in the matter. The decision of the commissioner shall become final unless judicial review thereof is sought as provided by this subdivision. Any interested party to a proceeding before a referee or the commissioner may obtain a transcript of the testimony taken before the referee upon payment to the commissioner of the cost of such transcript to be computed at the rate of ten cents per 100 words.

(4) The district court of the county wherein the hearing before the referee was held shall, by writ of certiorari to the commissioner, have power to review all questions of law and fact presented by the record. Such action shall be commenced within 20 days of the service by registered mail of notice of the decision of the commissioner upon the employing unit affected thereby. Such proceedings before the courts shall be given precedence over all other civil cases. The commissioner shall not be required to certify the record to the district court unless the party commencing such proceedings for review, as provided above, shall pay to the commissioner the cost of certification of the record computed at the rate of ten cents per 100 words less such amount as may have been previously paid by such party for a transcript. It shall be the duty of the commissioner upon receipt of such payment to prepare and certify to the court a true and correct typewritten copy of all matters contained in such record. The costs so collected by the commissioner shall be deposited by him in *the employment security administration fund provided for in section 268.15*. The court may confirm or set aside the decision and determination of the commissioner. If the decision and determination is set aside and the facts found in the proceedings before the referee are sufficient, the court may enter such decision as is justified by law, or may remand the cause to the commissioner for further proceedings and may state the questions requiring further hearing, and give such other instructions as may be proper.

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

(6) In the event a final decision of the commissioner or ref-

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eree determines the amount of contributions due under sections 268.03 to 268.24, then, if such amount, together with interest and penalties, is not paid within 30 days after such decision, the provisions of section 268.16, subdivision 3, shall apply; and the commissioner shall proceed thereunder, substituting a certified copy of the final decision in place of the contribution report therein provided.

Sec. 13. Minnesota Statutes 1967, Section 268.16, Subdivision 6, is amended to read:

Subd. 6. **Adjustments, refunds.** If, not later than three years after the date of payment of any amount as contributions or interest thereon, an employer who has made such payment shall make application for an adjustment thereof in connection with subsequent contribution payments, or for a refund thereof because such adjustment cannot be made, and if the commissioner shall determine that payment of such contributions or interest or any portion thereof was erroneous, the commissioner shall allow such employer to make an adjustment thereof, without interest, in connection with subsequent contribution payments by him, or if such adjustment cannot be made, the commissioner shall refund from the fund to which such payment has been credited, without interest, the amount erroneously paid. For like cause and within the same period, adjustment or refund may be so made on the commissioner's own initiative.

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

Sec. 14. Minnesota Statutes 1967, Section 268.06, Subdivision 3, and Laws 1967, Chapter 439, Section 3, are repealed.

Approved May 28, 1969.

CHAPTER 855—S. F. No. 1813

An act relating to highway advertising; removal of advertising devices; amending Minnesota Statutes 1967, Section 173.49.

Be it enacted by the Legislature of the State of Minnesota:

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