

meaning of Minnesota Statutes, Sections 475.51, Subdivision 4, Clause (1), and 475.58.

Sec. 2. **EFFECTIVE DATE.** This act is effective upon its approval by the governing body of the city of Brainerd and upon compliance with Minnesota Statutes, Section 645.021.

Approved June 4, 1975.

### CHAPTER 336—H.F.No.1

[Coded in Part]

*An act relating to employment services; unemployment compensation; defining unemployment and wages; eliminating seasonal employment; eliminating collection of contributions of less than \$1; experience rating; deleting obsolete language; joint account; establishing a weekly maximum for benefits; charging of benefits to an employer not a party to a strike; payment of benefits to an employee who refuses to accept reemployment during a strike; appeals; notice of hearing; increasing fees of appeal tribunal members and of advisory council members; benefits paid through error or fraud; records; amending Minnesota Statutes 1974, Sections 268.04, Subdivisions 10, 12, 23, 25 and 26; 268.06, Subdivisions 1, 6, and 22, and by adding a subdivision; 268.07, Subdivision 2; 268.071, Subdivision 1; 268.08, Subdivisions 1, 3, and 5; 268.09, Subdivision 1; 268.10, Subdivisions 2, 4 and 5; 268.12, Subdivisions 8 and 13; 268.16, Subdivision 1, and by adding a subdivision; 268.18, by adding a subdivision; and repealing Minnesota Statutes 1974, Section 268.07, Subdivision 5.*

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

Section 1. Minnesota Statutes 1974, Section 268.04, Subdivision 10, is amended to read:

Subd. 10. **EMPLOYMENT SERVICES; UNEMPLOYMENT COMPENSATION; EMPLOYER.** "Employer" means: (1) Any employing unit which for some portion of a day but not necessarily simultaneously, in each of 20 different weeks, whether or not such weeks are or were consecutive, within the year 1936 has or had in employment eight or more individuals (irrespective of whether the same individuals are or were employed in each such day) and, for any calendar year subsequent to 1936, an employing unit which, for some portion of a day, in each of 20 different weeks, whether or not such weeks are or were consecutive, and whether or not all of such weeks of employment are or were within the state within either the current or preceding calendar year, has or had in employment one or more individuals (irrespective of whether the same individual or individuals were employed in each such day) within the corporate limits of a city of 10,000 population or more, as determined by the most recent United States census and, for any calendar year subsequent to 1950, an employing unit

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which, for some portion of a day, in each of 20 different weeks, whether or not such weeks are or were consecutive, and whether or not all of such weeks of employment are or were within the state within either the current or preceding calendar year, has or had in employment four or more individuals (irrespective of whether the same individual or individuals were employed in each such day) outside the corporate limits of a city of 10,000 population or more. For the purposes of this law, the 1960 United States census shall be applied in determining liability until December 31, 1971. For any calendar year subsequent to December 31, 1971, an employing unit which, for some portion of a day, in each of 20 different weeks, whether or not such weeks are or were consecutive, and whether or not all of such weeks of employment are or were within the state within either the current or preceding calendar year, has or had in employment one or more individuals (irrespective of whether the same individual or individuals were employed in each such day) or in any calendar quarter in either the current or preceding calendar year paid \$1,500 or more for services in employment;

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

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

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

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

(6) Any employing unit which, together with one or more other employing units, is owned or controlled (by legally enforceable means or otherwise) directly or indirectly by the same interests, or which owns or controls one or more other employing units (by legally enforceable means or otherwise) and which, if treated as a single unit with such other employing units or interests or both, would be an em-

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ployer under clause (1) ~~this clause shall be construed so that the aggregate contributions paid by the employing units owned or controlled directly or indirectly by the same interests as to each employee shall not exceed that amount which equals the experience ratio of the employing unit which hires and controls the employee, or the experience ratio which the commissioner determines is applicable to the employee, multiplied by the aggregate wages paid to each such employee by said controlled employing units, as if a single employer ;~~

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

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

(9) Any employing unit for which service in employment, as defined in subdivision 12, clause (9), is performed after December 31, 1971;

(10) Any employing unit which, having become an employer under the preceding clauses, has not, under section 268.11, ceased to be an employer subject to these sections;

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

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

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

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

Sec 2. Minnesota Statutes 1974, Section 268.04, Subdivision 12, is amended to read:

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Subd. 12. "Employment" means: (1) Subject to the other provisions of this subdivision "employment" means service performed prior to January 1, 1945, which was employment as defined in this section prior to such date, and any service performed after December 31, 1944, including service in interstate commerce, by an individual who is a servant under the law of master and servant or who performs services for any employing unit, unless such services are performed by an independent contractor. Any service performed, including service in interstate commerce, by

(a) any officer of a corporation; or

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

Provided, that for purposes of clause (1) (b), the term "employment" shall include services described above performed after December 31, 1971, only if the contract of service contemplates that substantially all of the services are to be performed personally by such individual, the individual does not have a substantial investment in facilities used in connection with the performance of the services (other than in facilities for transportation), and the services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed.

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

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

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(4) After December 31, 1971, the term "employment" shall include an individual's service wherever performed within the United States, the Virgin Islands or Canada, if

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

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

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

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

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

(7) Service performed after July 1, 1957, by an individual for the state of Minnesota or any instrumentality which is wholly owned by the state of Minnesota or in the employ of this state and one or more other states or their instrumentalities.

(8) Service performed after January 1, 1974, by an individual for any political subdivision of the state of Minnesota or instrumentality thereof.

(a) The provisions of section 268.08, subdivision 5, shall apply to service covered by this section.

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

(9) Service performed after December 31, 1971, by an individual in the employ of a religious, charitable, educational or other organiza-

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tion but only if the following conditions are met:

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

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

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

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

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

~~(c) in the employ of a school which is not an institution of higher education or not a public school as defined in section 120.06; or~~

~~(d)-(c)~~ in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work; or

~~(e)-(d)~~ as part of an unemployment work relief or work training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training; or

~~(f)-(e)~~ for a hospital in a state prison or other state correctional institution by an inmate of the prison or correctional institution.

(11) The term "employment" shall include the service of an individual who is a citizen of the United States, performed outside the United States (except in Canada or the Virgin Islands), after December 31, 1971, in the employ of an American employer (other than service which is deemed "employment" under the provisions of clauses (2), (3), or (4) or the parallel provisions of another state's law) if:

(a) The employer's principal place of business in the United States

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is located in this state; or

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

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

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

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

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

(13) 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 with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, fur-bearing animals and wildlife;

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

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

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

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

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

Notwithstanding the provisions of clause (13) (a) (1), (2), (3), (4) and (5), services performed after January 1, 1974, for an employing unit which has four or more persons performing services in agricultural labor for some portion of a day in each of 20 different weeks, whether or not such weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time, shall not be excluded from the term "employment".

(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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ployers 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 18 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 with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of congress;

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

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

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

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

(j) 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.

(k) 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;

(l) Service performed in the employ of a hospital, if such service is performed by a patient of the hospital, as defined in clause (16);

(m) 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;

(n) 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 person is performed for remuneration solely by way of commission (the word "insurance" as used in this subdivision shall include an annuity and an optional annuity);

(o) 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;

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

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(q) 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.

(14) Except when performed for an institution of higher education, as defined in clause (15), or a hospital, as defined in clause (16), 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, shall not include the following:

(a) Service performed by elected public officials and unclassified employees appointed for a definite term, except after December 31, 1971, this exclusion shall not apply to service performed by unclassified employees in an instructional, research, or principal administrative capacity in an institution of higher education or a hospital;

(b) Service performed prior to January 1, 1972, by a faculty member in the employ of a university, college, school or any other institution of higher education which is supported wholly or substantially by public funds;

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

(d) Service performed in the employ of the state natural resources department directly and solely in connection with emergency fire fighting, including but not limited to those persons temporarily employed for the purpose of detecting, locating, or suppressing forest fires.

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

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

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

(c) Provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for credit toward such a degree, a program of post-graduate or post-

doctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(d) Is a public or other nonprofit institution.

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

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

Sec. 3. Minnesota Statutes 1974, Section 268.04, Subdivision 23, is amended to read:

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

Sec. 4. Minnesota Statutes 1974, Section 268.04, Subdivision 25, is amended to read:

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

(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 exceeds the lesser of \$6,500 or 70 percent of the average annual wage rounded to the nearest \$100 computed in accordance with the provisions of clause (6) of this subdivision~~ paid to an individual by an employer with respect to covered employment in this state, or with respect to employment under the unemployment compensation law of any other state during any calendar year ; ~~is~~ paid to such individual by such covered employer or his predecessor during such calendar year; provided, that if the term "wages" as contained in the federal unemployment tax act is amended to include remuneration in excess of ~~\$4,800~~ paid the amount required to be paid hereunder to an individual by an employer under the federal act for any calendar year, wages for the purposes of sections 268.03 to 268.24 shall include remuneration paid in a calendar year up to an amount equal to the dollar limitation specified in the federal unemployment tax act. For the purposes of this clause, the term "employment"

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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 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 ;

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

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

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

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

This section shall become effective January 1, 1976 .

Sec. 5. Minnesota Statutes 1974, Section 268.04, Subdivision 26, is amended to read:

Subd. 26. "Wage credits" mean the amount of wages paid and wages due and payable but not paid by or from an employer to an employee for insured work and tips and gratuities paid to an employee by a customer of an employer and accounted for by the employee to the employer except that 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.

Sec. 6. Minnesota Statutes 1974, Section 268.06, Subdivision 1, is amended to read:

**268.06 EMPLOYERS CONTRIBUTIONS.** Subdivision 1. **PAYMENTS.** (1) Contributions shall accrue and become payable by each employer for each calendar year in which he is subject to sections 268.03 to 268.24 with respect to wages (as defined in section 268.04, subdivision 25) for employment. Such contributions shall become due and be paid by each employer to the department of employment services for the fund in accordance with such regulations as the commissioner may prescribe, and shall not be deducted, in whole or in part, from the wages of individuals in such employer's employ. No rule of the commissioner shall be put in force which will permit the payment of such contributions at a time or under conditions which will not allow the employer to take credit for such contribution against the tax imposed by section 3301 of the Internal Revenue Code.

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

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

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~~tion for such quarter contribution shall be disregarded .~~

Sec. 7. Minnesota Statutes 1974, Section 268.06, Subdivision 6, is amended to read:

Subd. 6. **COMPUTATION OF EACH EMPLOYER'S EXPERIENCE RATIO.** The commissioner shall, for the calendar year 1966, and for each calendar year thereafter, compute an experience ratio for each employer whose account has been chargeable with benefits during the 36 consecutive calendar months immediately preceding July 1 of the preceding calendar year; except that, for any employer who has not been subject to the Minnesota employment services law for a period of time sufficient to meet the 36 consecutive months requirement, the commissioner shall compute an experience ratio if his account has been chargeable with benefits during at least the 12 consecutive calendar months immediately preceding July 1 of the preceding calendar year. Such experience ratio shall be the quotient obtained by dividing 1 1/4 times the total benefits charged to the employer's account during the period his account has been chargeable but not less than the 12 or more than the 36 consecutive calendar months ending on June 30 of the preceding calendar year, by his total taxable payroll for the same period on which all contributions due have been paid to the department of employment services on or before July 31 of the preceding calendar year. Such experience ratio shall be computed to the nearest one tenth of a percent. ~~Provided, that any employer who has not submitted contribution and wage reports or has not paid the contributions due and payable to the department of employment services on or before July 31 of the preceding calendar year with respect to taxable payrolls for previous periods within the experience period shall be entitled to have such taxable payroll included as a factor in the computation of his experience ratio and contribution rate upon filing with the commissioner written application therefor supported by affidavits showing to the satisfaction of the commissioner that good cause for such delinquency exists and submitting said reports and payment of contributions on or before September 30 of said preceding year.~~

Sec. 8. Minnesota Statutes 1974, Section 268.06, Subdivision 8, is amended to read:

Subd. 8. **DETERMINATION OF CONTRIBUTION RATES.** For the year ~~1974-1976~~ and for each calendar year thereafter the commissioner shall determine the contribution rate of each employer by adding the ~~experience ratio to the minimum rate~~ minimum rate to the experience ratio, except that if the ratio for the current calendar year exceeds the experience ratio for the preceding calendar year by more than one and one half percentage points, the increase for the current year shall be limited to one and one half percentage points. The minimum rate for all employers shall be nine tenths of one percent if the amount in the unemployment compensation fund is less than \$90,000,000 on June 30 of the preceding calendar year; or eight tenths of one percent if the fund is more than \$90,000,000 but less than \$110,000,000; or seven

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tenths of one percent if the fund is more than \$110,000,000 but less than \$130,000,000; or six tenths of one percent if the fund is more than \$130,000,000 but less than \$150,000,000; or five tenths of one percent if the fund is more than \$150,000,000 but less than \$170,000,000; or three tenths of one percent if the fund is more than \$170,000,000 but less than \$200,000,000; or one tenth of one percent if the fund is \$200,000,000 or more; provided that no employer shall have a contribution rate of more than five percent except that in the case of an employer whose experience ratio in each of the immediately preceding three calendar years was in excess of five percent, the maximum contribution rate shall be six percent .

Sec. 9. Minnesota Statutes 1974, Section 268.06, Subdivision 22, is amended to read:

Subd. 22. **EMPLOYMENT EXPERIENCE RECORD TRANSFER.** For experience rating purposes, one or more employing units which is or are the subject of or parties to a change of ownership or any form of organization or reorganization of an employing enterprise including a change in legal identity or form shall be deemed to be a successor, and there shall be transferred to such successor the employment experience record of all or any severable portion thereof of one or more such employing enterprises involved in such change of ownership, organization, or reorganization if the commissioner finds that there is a continuation of the employment activities of the predecessor employing unit or units and that the purpose of such change is not to avoid a contribution rate in excess of 2.7 percent, and such transfer would not be inequitable and would not tend to defeat the object and purpose of this law.

Provided that in no event shall a successor be assigned a rate of less than 2.7 percent until such time as all of the unpaid contributions of the predecessor have been paid.

(a) When an employing unit succeeds to or acquires the organization, trade or business or substantially all the assets of another employing unit which at the time of the acquisition was an employer subject to this law, the employment experience of the predecessor employer shall be transferred as of the date of acquisition to the successor employer for the purpose of rate determination.

(b) When an employing unit succeeds to or acquires a distinct severable portion of the organization, trade, business or assets which is less than substantially all of the employing enterprises of another employing unit, the successor employing unit shall acquire the experience rating record attributable to the portion to which it has succeeded, and the predecessor employing unit shall retain the experience rating record attributable to the portion which it has retained, if (1) the successor files a written application for the experience rating record; (2) the application contains the information the commissioner shall by regulation prescribe to show that the experience rating record is identi-

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fiable and segregable; and (3) the application is filed prior to whichever of the following dates is the latest: (a) 60 days after the date of the succession; or (b) the date that the rate determination of the employing unit which has applied for the experience rating record has become final for the calendar year immediately following the calendar year in which the succession occurs.

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

(d) Credits due to a predecessor as a result of overpayment of contributions under this subdivision may be granted to the successor upon assignment thereof by such predecessor in such form and in accordance with such regulations as may be prescribed by the commissioner. Employment with a predecessor employer shall not be deemed to have been terminated if similar employment is offered by the successor employer and accepted by the employee.

Sec. 10. Minnesota Statutes 1974, Section 268.06, is amended by adding a subdivision to read:

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

Sec. 11. Minnesota Statutes 1974, Section 268.07, Subdivision 2, is amended to read:

Subd. 2. WEEKLY BENEFIT AMOUNT AND DURATION. If the commissioner finds that an individual has earned 18, or more, credit weeks, and \$540 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 during his benefit year as follows:

(1) Weekly benefit amount shall be equal to ~~50 percent~~ 60 percent of the first \$85, 40 percent of the next \$85 and 50 percent of the remainder of the average weekly wage of such individual, computed to the nearest whole dollar, subject to a maximum of ~~\$85 per week—the~~ lesser of \$116 or 62 percent of the average weekly wage paid to individuals by employers subject to the provisions of sections 268.03 to 268.24 .

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

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

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

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

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

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

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

(4) The provisions of this subdivision shall apply to claims for benefits which establish a benefit year subsequent to June 30, ~~1973~~ 1975.

Sec. 12. Minnesota Statutes 1974, Section 268.071, Subdivision 1, is amended to read:

268.071 **EXTENDED BENEFITS.** Subdivision 1. **DEFINITIONS.** As used in this section, unless the context clearly requires otherwise:

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

(a) Begins with the third week after whichever of the following weeks occurs first: A week for which there is a national "on" indicator, or a week for which there is a state "on" indicator; and

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

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Provided, that no extended benefit period may begin by reason of a state "on" indicator before the 14th week following the end of a prior extended benefit period which was in effect with respect to this state; and

Provided further, that within the period beginning on March 10, 1971, and ending on December 31, 1971, an extended benefit period may become effective and be terminated in this state solely by reason of a state "on" and a state "off" indicator, respectively.

(2) **NATIONAL "ON" INDICATOR.** There is a "national 'on' indicator" for a week if the United States secretary of labor determines that for each of the three most recent completed calendar months ending before such week, the rate of insured unemployment (seasonally adjusted) for all states equaled or exceeded four and one half percent.

(3) **NATIONAL "OFF" INDICATOR.** There is a "national 'off' indicator" for a week if the United States secretary of labor determines that for each of the three most recent completed calendar months ending before such week, the rate of insured unemployment (seasonally adjusted) for all states was less than four and one half percent.

(4) **STATE "ON" INDICATOR.** There is a "state 'on' indicator" for this state for a week if the commissioner determines, in accordance with the regulations of the United States secretary of labor, that for the period consisting of such week and the immediately preceding 12 weeks, the rate of insured unemployment (not seasonally adjusted) under this law equaled or exceeded 120 percent of the average of such rates for the corresponding 13 week period ending in each of the preceding two calendar years, and equaled or exceeded four percent.

(5) **STATE "OFF" INDICATOR.** There is a "state 'off' indicator" for this state for a week if the commissioner determines, in accordance with the regulations of the United States secretary of labor, that for the period consisting of such week and the immediately preceding 12 weeks, the rate of insured unemployment (not seasonally adjusted) under this law was less than 120 percent of the average of such rates for the corresponding 13 week period ending in each of the preceding two calendar years, or was less than four percent.

(6) **RATE OF INSURED UNEMPLOYMENT.** "Rate of insured unemployment," for purposes of clauses (4) and (5), means the percentage derived by dividing the average weekly number of individuals filing claims in this state for weeks of unemployment with respect to the most recent 13 consecutive week period, as determined by the commissioner on the basis of his reports to the United States secretary of labor, by the average monthly employment covered under this law for the first four of the most recent six completed calendar quarters ending before the end of such 13 week period.

(7) **REGULAR BENEFITS.** "Regular benefits" means benefits pay-

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

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

(9) **ADDITIONAL BENEFITS.** "Additional benefits" means benefits payable to exhaustees by reason of conditions of high unemployment or by reason of other special factors under the provisions of ~~section 268.07, subdivision 2, clause (3)~~ any state law .

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

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

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

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

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

(c) Has no right to unemployment benefits or allowances, as the case may be, under the railroad unemployment insurance act, the trade

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expansion act of 1962, the automotive products act of 1965 and such other federal laws as are specified in regulations issued by the United States secretary of labor; and has not received and is not seeking unemployment benefits under the unemployment compensation law of the Virgin Islands or of Canada; but if he is seeking such benefits and the appropriate agency finally determines that he is not entitled to benefits under such law he is considered an exhaustee.

(12) **STATE LAW.** "State law" means the unemployment insurance law of any state, approved by the United States secretary of labor under section 3304 of the internal revenue code of 1954.

Sec. 13. Minnesota Statutes 1974, Section 268.08, Subdivision 1, is amended to read:

**268.08 PERSONS ELIGIBLE TO RECEIVE BENEFITS.** Subdivision 1. **ELIGIBILITY CONDITIONS.** An individual shall be eligible to receive benefits with respect to any week of unemployment only if the commissioner finds that:

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

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

(3) He was able to work and was available for work, and was actively seeking work, provided that individual's weekly benefit amount shall be reduced one-fifth for each day such individual is unable to work or unavailable for work; provided further that benefits after December 31, 1971, shall not be denied by application of this clause to an individual who is in training with the approval of the commissioner;

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

Sec. 14. Minnesota Statutes 1974, Section 268.08, Subdivision 3, is

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amended to read:

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

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

(2) vacation allowance, except that vacation allowance paid with respect to periods following termination or indefinite separation from employment shall not be treated as deductible income, or holiday pay; or

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

(4) a primary insurance benefit under Title II of the federal social security act, as amended, or similar old age benefits under any act of congress, or this state or any other state, or benefit payments from any fund, annuity, or insurance provided by or through the employer and to which the employer contributes 50 percent or more of the total of the entire premiums or contributions to the fund, except that remuneration in the form of a pension received as a consequence of service in the armed forces of the United States up to an amount of \$700 monthly or its weekly equivalent shall not effect the eligibility of an employee of the United States to receive benefits.

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

Sec. 15. Minnesota Statutes 1974, Section 268.08, Subdivision 5, is amended to read:

Subd. 5. **SERVICES PERFORMED FOR STATE, MUNICIPALITIES OR CHARITABLE CORPORATIONS.** Effective January 1, 1974, benefits based on service in employment defined in section 268.04, sub-

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division 12, clauses (7), (8), and (9), shall be payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the basis of other service subject to this law except that, (a) benefits based on service in an instructional, research, or principal administrative capacity in an institution of higher education (as defined in section 268.04, subdivision 12, clause (15)) shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years, or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or contracts to perform services in any such capacity for any institution or institutions of higher education for both such academic years or both such terms; (b) benefits based on wage credits earned in the employment of a public or private school, or a political subdivision for service with respect to a school, shall not be paid to an individual during any period between two successive school years when the activity in which the wage credits were earned is not normally performed. This provision shall not apply to any individual who, prior to the end of a school year, has voluntarily left or has been indefinitely separated from such employment. For the purposes of this clause, school year means that period established by a school board in accordance with Minnesota Statutes 1971, Section 126.12.

Sec. 16. Minnesota Statutes 1974, Section 268.09, Subdivision 1, is amended to read:

**268.09 UNEMPLOYMENT COMPENSATION; DISQUALIFIED FROM BENEFITS.** Subdivision 1. **DISQUALIFYING CONDITIONS.** An individual shall be disqualified for benefits:

(1) **VOLUNTARY LEAVING OR DISCHARGE FOR MISCONDUCT.** If such individual voluntarily and without good cause attributable to the employer discontinued his employment with such employer or was discharged for misconduct, not amounting to gross misconduct, connected with his work or for misconduct which interferes with and adversely affects his employment, if so found by the commissioner, for not less than five nor more than eight weeks of unemployment in addition to and following the waiting period, or was discharged for gross misconduct connected with his work or gross misconduct which interferes with and adversely affects his employment, if so found by the commissioner, for 12 weeks of unemployment in addition to and following the waiting period, which disqualification shall not be removed by subsequent employment, and provided further that the commissioner is empowered to impose a total disqualification for the benefit year and to cancel part or all of the wage credits from the last employer from whom he was discharged for gross misconduct connected with his work, and the maximum benefit amount payable to such individual shall be reduced as follows:

(a) by an amount equal to the weekly benefit amount times the

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number of weeks for which such individual was disqualified, when the separation occurs because of a voluntary separation as described in this clause or as a result of discharge for misconduct;

(b) by an amount equal to two times the weekly benefit amount, when the separation occurs because of a voluntary separation as described in this clause;

~~(c)~~ (b) by an amount equal to 12 times his weekly benefit amount, when the separation occurs as a result of a discharge for gross misconduct.

For the purpose of this clause "gross misconduct" shall be defined as misconduct involving assault and battery, or an immoral act, or the malicious destruction of property or the theft of money or property of a value of \$50, or more.

This provision shall not apply to any individual who left his employment to accept work offering substantially better conditions of work or substantially higher wages or both, or whose separation from such employment was due to serious illness of such individual.

(2) **SEPARATION TO ASSUME FAMILY OBLIGATIONS.** If such individual voluntarily leaves employment because of pregnancy without availing herself of maternity leave rights provided by law, provided that such disqualification shall be removed by subsequent employment in insured work for a period of not less than six weeks.

(3) **LIMITED OR NO CHARGE OF BENEFITS.** Benefits paid subsequent to an individual's separation under any of the foregoing clauses or because of his failure, without good cause, to accept an offer of suitable re-employment, shall not be used as a factor in determining the future contribution rate of the employer from whose employment such individual separated or whose offer of re-employment he refused; provided that this clause shall not apply to an individual involuntarily separated from employment because of pregnancy.

(4) **FAILURE TO APPLY FOR OR ACCEPT SUITABLE WORK.** If the commissioner finds that he has failed, without good cause, either to apply for available, suitable work when so directed by the employment office, or the commissioner or to accept suitable work when offered him, or to return to his customary self-employment (if any) when so directed by the commissioner, or to actively seek employment. Such disqualification shall continue for the week in which such refusal or failure occurred and for a period of seven weeks of unemployment immediately following such refusal or failure.

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

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local work in his customary occupation, and the distance of the available work from his residence.

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

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

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

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

(4) if after December 31, 1971, such individual is in training with the approval of the commissioner.

(5) **LABOR DISPUTE.** If such individual has left or partially or totally lost his employment with an employer because of a strike or other labor dispute. Such disqualification shall prevail for each week during which such strike or other labor dispute is in progress at the establishment in which he is or was employed, except that such disqualification shall be for one week following commencement of the strike or other labor dispute for any employee who is not participating in or directly interested in the labor dispute which caused such individual to leave or partially or totally lose such employment. Failure or refusal of an individual to accept and perform available and customary work in the establishment constitutes participation. For the purpose of this section the term "labor dispute" shall have the same definition as provided in the Minnesota labor relations act. Nothing in this subdivision shall be deemed to deny benefits to any employee:

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

(b) who becomes unemployed because of a lockout,

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

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(d) unless he is unemployed because of a jurisdictional dispute between two or more unions.

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

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

Notwithstanding any other provision of this section, an individual whose last separation from employment with an employer occurred prior to the commencement of the strike or other labor dispute and was permanent or for an indefinite period, shall not be denied benefits or waiting week credit solely by reason of his failure to apply for or to accept recall to work or reemployment with the employer during any week in which the strike or other labor dispute is in progress at the establishment in which he was employed.

(6) **REFUSAL OF SUITABLE REEMPLOYMENT.** If such individual has failed without good cause to accept suitable re-employment offered by a base period employer. Such disqualification shall prevail for the week in which the failure occurred and for a period of seven weeks of unemployment following such failure, provided such disqualification shall not apply if such individual is in training with the approval of the commissioner.

Sec. 17. Minnesota Statutes 1974, Section 268.10, Subdivision 2, is amended to read:

Subd. 2. **EXAMINATION OF CLAIMS; DETERMINATION; APPEAL.**(1) An official, designated by the commissioner, shall promptly examine each claim for benefits filed to establish a benefit year pursuant to this section, and, on the basis of the facts found, shall determine whether or not such claims are valid, and if valid, the weekly benefit amount payable, the maximum benefit amount payable during the benefit year, and the date the benefit year terminates, and such determination shall be known as the determination of validity. Notice of any such determination of validity or any redetermination as provided for in clause ~~(2)-(4)~~ shall be promptly given the claimant and all other interested parties. ~~Unless the claimant or such other interested party or parties within seven calendar days after the delivery of such notification; or within seven calendar days after such notification was mailed to his last known address; files an appeal from such determination of validity such determination shall be final and benefits shall be paid or denied in accordance therewith.~~ If within the time specified for the filing of wage and separation information as provided in subdivi-

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sion 1, clause (2), the employer makes an allegation of disqualification or raises an issue of the chargeability to his account of benefits that may be paid on such claim, if such claim is valid, the issue thereby raised shall be promptly determined by said official and a notification of such determination delivered or mailed to the claimant and the employer. ~~Such determination shall become final unless any interested party or parties appeals therefrom within seven calendar days after the delivery of such notification or within seven calendar days after such notification was mailed to his last known address; provided that such determinations shall not become final until ten calendar days after the delivery or 12 calendar days after the mailing of the determination notice if the commissioner finds that the failure to file such appeal timely was due to a compelling good cause.~~ If an initial determination or an appeal tribunal decision or the commissioner's decision awards benefits, such benefits shall be paid promptly regardless of the pendency of any appeal period or any appeal or other proceeding which may thereafter be taken. Except as provided in clause ~~(5)-(6)~~, if an appeal tribunal decision modifies or reverses an initial determination awarding benefits, or if a commissioner's decision modifies or reverses an appeal decision awarding benefits, any benefits paid under the award of such initial determination or appeal tribunal decision shall be deemed erroneous payments.

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

(3) A determination issued pursuant to clauses (1) and (2) may be appealed by a claimant or employer within 15 days after the mailing of the notice of the determination to his last known address or personal delivery of the notice. A timely appeal from a determination of validity in which the issue is whether an employing unit is an employer within the meaning of chapter 268 or whether services performed for an employer constitute employment within the meaning of chapter 268 shall be subject to the provisions of section 268.12, subdivision 13.

~~(2)-(4)~~ At any time within one year from the date of the filing of a claim for benefits by an individual, the commissioner on his own motion may reconsider a determination made thereon and make a redetermination thereof if he finds that an error in computation or identity or the crediting of wage credits has occurred in connection therewith or if such determination was made as a result of a nondisclosure or misrepresentation of a material fact.

~~(3)-(5)~~ However, the commissioner may in his discretion refer any

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disputed claims directly to the appeal tribunal for hearing and determination in accordance with the procedure outlined in subdivision 3 and the effect and status of such determination in such a case shall be the same as though the matter had been determined upon an appeal to such tribunal from an initial determination.

(4) If within the benefit year an official of the department or any interested party or parties raises an issue of claimant's eligibility for benefits for any week or weeks in accordance with the requirements of the provisions of sections 268.03 to 268.24 or any official of the department or any interested party or parties or benefit year employer raises an issue of disqualification in accordance with the regulations of the commissioner, a determination shall be made thereon and a written notice thereof shall be given to the claimant and such other interested party or parties or benefit year employer. Unless the claimant or such other interested party or parties or benefit year employer shall within seven calendar days after the delivery of such notice, or within seven days after such notice was mailed to his last known address, files an appeal from such determination, such determination shall be final and benefits shall be paid or denied in accordance therewith.

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

Sec. 18. Minnesota Statutes 1974, Section 268.10, Subdivision 4, is amended to read:

**Subd. 4. APPEAL TRIBUNALS ESTABLISHED.** In order to assure the prompt disposition of all claims for benefits, the commissioner shall establish one or more impartial appeal tribunals consisting of a salaried examiner who shall serve as chairman, and two additional members, one of whom shall be a representative of employers and the other of whom shall be a representative of employees; each of the latter two members shall serve at the pleasure of the commissioner and be paid a fee of not more than ~~\$25~~\$35 per day of active service on such tribunal plus necessary expense. The commissioner shall by regulation prescribe the procedure by which such appeal tribunals shall hear and decide disputed claims, subject to appeal to the commissioner. No person shall participate on behalf of the commissioner in any case in which he is an interested party. The commissioner may designate alternates to serve in the absence or disqualification of any member of any appeal tribunal. The chairman shall act alone in the absence or disqualification of any other member and his alternates. In no case shall a hearing before an appeal tribunal proceed unless the chairman of such tribunal is present. There shall be no charges, fees, transcript costs, or other cost imposed upon the employee in prosecuting his appeal. All decisions of such tribunal, complete as to the names of

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members of such tribunal, shall be made available to the public in accordance with such regulations as the commissioner may prescribe, except that names of interested parties may be deleted.

Sec. 19. Minnesota Statutes 1974, Section 268.10, Subdivision 5, is amended to read:

Subd. 5. **REVIEW BY COMMISSIONER.** Within ~~ten calendar~~ 30 days after ~~the delivery of or within 12 days after the mailing to an interested party at his last known address notice of the filing of an appeal tribunal decision, together with a copy of such decision, mailing of the notice of an appeal tribunal decision to the claimant or employer at his last known address or personal delivery thereof,~~ any such party may appeal from such decision and obtain a review thereof by the commissioner or his duly authorized representative, and the commissioner within the same period of time may on his own motion order a review of any such decision. Upon review, the commissioner or his duly authorized representative may affirm, modify, or set aside any finding of fact or decision, or both, of the appeal tribunal on the basis of the evidence previously submitted in such case, or remand such matter back to the appeal tribunal for the taking of additional evidence and new findings and decision based on all of the evidence before it. Notice of all hearings on review shall be given to all interested parties in the same manner as provided for by subdivision 3. The commissioner or his representative may remove to himself or transfer to another appeal tribunal the proceedings on any claim pending before an appeal tribunal. Any proceedings so removed to the commissioner or his representative shall be heard upon notice in accordance with the requirements of subdivision 3. The department of employment services shall mail to all interested parties a notice of the filing of and a copy of the findings and decision of the commissioner or his representative.

Sec. 20. Minnesota Statutes 1974, Section 268.12, Subdivision 8, is amended to read:

Subd. 8. **RECORDS; REPORTS.** (1) Each employing unit shall keep true and accurate work records for such periods of time and containing such information as the commissioner may prescribe. Such records shall be open to inspection, audit, and verification, and be subject to being copied by any authorized representative of the commissioner at any reasonable time and as often as may be necessary. The commissioner, appeal referee, chairman of an appeal tribunal, or any other duly authorized representative of the commissioner, may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which the commissioner, appeal referee, chairman of an appeal tribunal, or any other duly authorized representative of the commissioner deems necessary for the effective administration of sections 268.03 to 268.24, provided that quarterly contribution and wage report forms shall be made to correspond wherever possible with the reports required from employers under the federal insurance contributions act, so that such state forms

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may be prepared as duplicates of such federal forms, except that no employer shall be permitted to submit a duplicate report which is not thoroughly legible.

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

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

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

Sec. 21. Minnesota Statutes 1974, Section 268.12, Subdivision 13, is amended to read:

Subd. 13. **DETERMINATIONS.** (1) An official, designated by the commissioner, upon his own motion or upon application of an employing unit shall determine if an employing unit is an employer within the meaning of this chapter or as to whether services performed for it constitute employment within the meaning of this chapter, and shall notify

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the employing unit of such determination. Such determination shall be final unless the employing unit ~~shall~~ within 30 days after the mailing of notice of the determination ; ~~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 to the employing unit's last known address file written appeal therefrom .~~

(2) The commissioner shall designate one or more representatives, herein referred to as referees, to conduct ~~such hearing~~ hearings on appeals . 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 services, 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~~ be final unless ~~the employing unit shall within ten-30 days after the mailing by registered mail of a copy thereof to the employing unit,~~ unit's last known address, file an appeal is filed with the commissioner, or unless the commissioner, within ~~12-30~~ 30 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 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 , mailed to the employing unit's last known address, 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 com-

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missioner may obtain a transcript of the testimony taken before the referee upon payment to the commissioner of the cost of such transcript to be computed at the rate of ten cents per 100 words.

(4) The district court of the county wherein the hearing before the referee was held shall, by writ of certiorari to the commissioner, have power to review all questions of law and fact presented by the record. The court shall not accept any new or additional evidence and shall not try the matter de novo. Such action shall be commenced within ~~20-30~~ 30 days of the ~~service by registered mail~~ mailing of notice of the findings and decision of the commissioner ~~upon~~ by registered mail to the employing unit affected thereby mailed to the employing units last known address. ~~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 services administration fund provided for in section 268.15.

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

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

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

(6) In the event a final decision of the commissioner or referee de-  
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termines 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. 22. Minnesota Statutes 1974, Section 268.16, Subdivision 1, is amended to read:

**268.16 COLLECTION OF CONTRIBUTIONS.** Subdivision 1. **INTEREST ON PAST DUE CONTRIBUTIONS.** If contributions are not paid on the date on which they are due and payable, as prescribed by the commissioner, the whole or part thereafter remaining unpaid shall bear interest at the rate of one percent per month from and after such date until the first day of the calendar month during which payment is made to the department of employment services; provided, however, that during the first month of delinquency interest shall be computed on the basis of one-thirtieth of one percent per month for each and every day of such delinquency. After any contribution has become delinquent for a period of 12 months thereafter interest thereon shall be computed at the rate of six percent per annum. Contributions, if mailed, shall be deemed to have been paid on the date of mailing as indicated by the postmark on the cover thereof; provided, however, that after January 1, 1949, contributions received by mail postmarked on a day following the date on which the law requires such contributions to be paid shall be deemed to have been paid on the due date if there is substantial evidence by affidavit or otherwise reasonably tending to prove that said report or contribution was actually deposited in the United States mails properly addressed to the department with postage prepaid thereon on or before the due date the unpaid balance thereof shall bear interest at the rate of one percent per month or any part thereof for the first 12 months of delinquency and one half of one percent per month thereafter. Contributions received by mail postmarked on a day following the date on which the law requires contributions to be paid shall be deemed to have been paid on the due date if there is substantial evidence tending to prove that the contribution was actually deposited in the United States mails properly addressed to the department with postage prepaid thereon on or before the due date .

Sec. 23. Minnesota Statutes 1974, Section 268.16, is amended by adding a subdivision to read:

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

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amount of contributions, interest, and penalties exceeds \$5,000.

Sec. 24. Minnesota Statutes 1974, Section 268.18, is amended by adding a subdivision to read:

**Subd. 4. CANCELLATION OF BENEFITS PAID THROUGH ERROR OR FRAUD.** When benefits paid through error or fraud are not repaid or deducted from subsequent benefit amounts as provided for in subdivisions 1 and 2 within six years after the date of the determination that benefits were paid through error or fraud, the commissioner may, in a manner he prescribes by regulation, cancel as uncollectible the benefit payments, and no administrative or legal proceedings shall be instituted under the Minnesota employment services law to enforce collection of those amounts.

Sec. 25. Minnesota Statutes 1974, Section 268.07, Subdivision 5, is repealed.

Sec. 26. The portions of this act amending Minnesota Statutes 1974, Section 268.04, Subdivision 12, and Section 268.08, Subdivision 5, shall become effective on July 1, 1977 except for the provision in section 268.08, subdivision 5, relating to payments to employees of political subdivisions, which provision shall become effective the day following final enactment.

Approved June 4, 1975.

#### CHAPTER 337—H.F.No.67

[Coded]

*An act relating to handicapped persons; providing an interpreter in all proceedings.*

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

Section 1. **[546.42] HANDICAPPED PERSONS; INTERPRETERS.** For the purposes of sections 1 to 3 a handicapped person is one who, because of a hearing, speech or other communication disorder, or because of the inability to speak or comprehend the English language, is unable to understand the proceedings in which he is required to participate, or when named as a party to a legal proceeding, is unable by reason of such deficiency to obtain due process of law.

Sec. 2. **[546.43] PROCEEDINGS WHERE INTERPRETER APPOINTED.** Subdivision 1. In a civil action in which a handicapped person is a litigant or witness, the presiding judicial officer shall appoint a qualified interpreter to serve throughout the proceedings.

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