resolution of the governing body of the municipality.

(2) Cause parks, playgrounds, recreational, community, education, water, sewer or drainage facilities, or any other works which it is otherwise empowered to undertake, to be furnished adjacent to or in connection with such projects;

(3) Approve (through its governing body or through an agency designated by it for the purpose) redevelopment plans, plan or replan, zone or rezone its parks; in the case of a city or town, make changes in its map; the governing body of any municipality may waive any building code requirements in connection with the development of projects;

(4) Cause services to be furnished to the authority of the character which it is otherwise empowered to furnish;

(5) Enter into agreements with respect to the exercise by it of its powers relating to the repair, closing, or demolition of unsafe, unsanitary or unfit buildings;

(6) Do any and all things necessary or convenient to aid and cooperate in the planning, undertaking, construction, or operation of such projects;

(7) Incur the entire expense of any public improvements made by it in exercising the powers granted in sections 462.415 to 462.711;

(8) Enter into agreements (which may extend over any period, notwithstanding any provision or rule of law to the contrary) with an authority respecting action to be taken by the state public body pursuant to any of the powers granted by sections 462.415 to 462.711; and

(9) Furnish funds available to it from any source, including the proceeds of bonds, to an authority to pay all or any part of the cost to the authority of the activities authorized by section 462.445, subdivision 1, clause (7) ~~or subdivision~~ 9.

Sec. 4. **EFFECTIVE DATE.** This act is effective the day following its final enactment.

Approved May 24, 1979.

CHAPTER 181—S.F.No.1312

An act relating to unemployment compensation; providing for conformity with federal requirements; altering certain definitions; altering certain provisions as to employer contributions; altering provisions as to deductions from benefits; altering provisions as to between term denial of benefits to certain educational employees; altering certain provisions for disqualification from benefits; altering certain appeal provisions; removing limitation on certain reciprocal benefit arrangements; amending Minnesota Statutes 1978, Sections 268.04, Subdivisions 10, 12 and 23; 268.06, Subdivisions 5, 8, 21, 22, and by adding a subdivision;

268.08, Subdivisions 3 and 4, and 6, as amended; 268.09, Subdivisions 1, 2 and 3; 268.10, Subdivision 2; 268.12, Subdivision 13; 268.13, Subdivision 2; and 268.18, Subdivisions 1 and 2.

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

Section 1. Minnesota Statutes 1978, Section 268.04, Subdivision 10, is amended to read:

Subd. 10. "Employer" means: (1) Any 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, except as provided in clause (18) of this subdivision;

(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 employer under clause (1), except as provided in clause (18) of this subdivision;

(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, except as provided in clause (18) of this subdivision~~;

(10) Any employing unit which, having become an employer under the preceding clauses or clauses (15), (16) or (17) of this subdivision, 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; ~~except as provided in clause (18) of this subdivision~~;

(15) Any employing unit for which service in employment as defined in subdivision 12, clause (8) is performed; ~~except as provided in clause (18) of this subdivision~~;

(16) Any employing unit for which agricultural labor as defined in subdivision 12, clause (13) is performed;

(17) Any employing unit for which domestic service in employment as defined in subdivision 12, clause (14) is performed ~~after December 31, 1977~~;

(18) (a) In determining whether or not an employing unit for which domestic service and other than domestic service is performed is an employer under clauses (1); or (6); ~~(9); (14); (15) or (16)~~ of this subdivision, the wages earned or the employment of an

employee performing domestic service ~~after December 31, 1977~~ shall not be taken into account.

(b) In determining whether or not an employing unit for which agricultural labor and other than agricultural labor is performed is an employer under clause (1), (9) or (17) of this subdivision, the wages earned or the employment of an employee performing service in agricultural labor after December 31, 1977 shall not be taken into account. If an employing unit is an employer of agricultural labor the determination of whether it is an "employer" shall be governed by clause (1) of this subdivision.

Sec. 2. Minnesota Statutes 1978, Section 268.04, Subdivision 12, is amended to read:

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

The term "employment" shall include: Any service performed, including service in interstate commerce, by;

(a) any officer of any corporation; or

(b) any individual other than an individual who is an employee under clause ~~(a)~~ (1) who performs services for remuneration for any person as an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or dry-cleaning services, for his principal, or as a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a 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.

(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 in the employ of the state of Minnesota or any instrumentality which is wholly owned by the state of Minnesota or in the employ of this state and one or more other states or an instrumentality of this state and one or more of its political subdivisions or an instrumentality of this state and another state or an instrumentality of this state and one or more political subdivisions of another state if such service is excluded from "employment" as defined by section 3306(c)(7) of the federal unemployment tax act and is not excluded from "employment" under clause (10) of this subdivision.

(8) Service performed ~~after January 1, 1974,~~ by an individual in the employ of any political subdivision of the state of Minnesota or instrumentality thereof or an instrumentality of two or more political subdivisions of this state or any instrumentality of

a political subdivision of this state and another state or political subdivisions of another state if such service is excluded from "employment" as defined by section 3306(c)(7) of the federal unemployment tax act and is not excluded from "employment" under clause (10) of this subdivision.

(a) The provisions of section 268.08, subdivision ~~5~~ 6, shall apply to service covered by this section.

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

(9) Service performed ~~after December 31, 1971,~~ by an individual in the employ of a religious, charitable, educational or other organization but only if the following conditions are met:

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

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

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

(a) in the employ of a church or convention or association of churches, or an organization which is operated 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 a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work; or

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

(e) ~~prior to January 1, 1978 for a hospital in a state prison or other state~~

~~correctional institution by an inmate of the prison or correctional institution and after December 31, 1977~~ by an inmate of a custodial or penal institution; or

(f) ~~prior to January 1, 1978 in the employ of a nonpublic school; after December 31, 1977~~ in the employ of governmental entities referred to in clauses (7) and (8) of this subdivision if such service is performed by an individual in the exercise of duties

(i) as an elected official,

(ii) as a member of a legislative body, ~~or as a temporary employee of the state legislature or of a legislative commission;~~ or a member of the judiciary,

(iii) as a member of the Minnesota national guard or air national guard,

(iv) as an employee serving only on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency,

(v) (a) in a position with the state of Minnesota which is a major nontenured policy making or advisory position in the unclassified service, or

(b) a policy making position with the state of Minnesota or a political subdivision the performance of the duties of which ordinarily does not require more than eight hours per week; or

(c) in a position with a political subdivision which is a major nontenured policy making or advisory position.

(11) The term "employment" shall include the service of an individual who is a citizen of the United States, performed outside the United States (, except in Canada ~~and in the case of the Virgin Islands after December 31, 1971, and before January 1 of the year following the year in which the United States secretary of labor approves the Virgin Islands law for the first time)~~ , in the employ of an American employer (other than service which is deemed "employment" under the provisions of clauses (2), (3), or (4) or the parallel provisions of another state's law) if:

(a) The employer's principal place of business in the United States is located in this state; or

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

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

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

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

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

(13) Service performed ~~after December 31, 1977~~ by an individual in agricultural labor as defined in clause (15)(a) of this subdivision when:

(a) Such service is performed for a person who:

(i) during any calendar quarter in either the current or the preceding calendar year paid wages of $20,000 or more to individuals employed in agricultural labor, or

(ii) for some portion of a day in each of 20 different calendar weeks, whether or not such weeks were consecutive, in either the current or preceding calendar year employed in agricultural labor four or more individuals regardless of whether they were employed at the same time.

(b) For the purpose of this clause (13) any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of the crew leader:

(i) if the crew leader holds a valid certificate of registration under the farm labor contractor registration act of 1963, as amended; or substantially all of the members of his crew operate or maintain tractors, mechanized harvesting or crop dusting equipment, or any other mechanized equipment, which is provided by the crew leader; and

(ii) if the individual is not an employee of another person as determined by ~~subclause (13)(a)~~ clause (1) of this subdivision.

(c) For the purpose of this clause (13) in the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of the crew leader under subclause (13)(b):

(i) such other person and not the crew leader shall be treated as the employer of such individual; and

(ii) such other person shall be treated as having paid wages to such individual in an

amount equal to the amount of wages paid to such individual by the crew leader (either on his own behalf or on behalf of such other person) for the service in agricultural labor performed for such other person.

(d) For the purposes of this clause (13) the term "crew leader" means an individual who:

(i) furnishes individuals to perform service in agricultural labor for any other person,

(ii) pays (either on his own behalf or on behalf of such other person) the individuals so furnished by him for the service in agricultural labor performed by them, and

(iii) has not entered into a written agreement with such other person under which such furnished individual is designated as an employee of such other person.

(e) For the purposes of this clause (13) services performed by an officer of a family farm corporation shall be excluded from agricultural labor and employment unless said corporation is an employer as defined in section 3306(a)(2) of the Federal Unemployment Tax Act.

(f) For the purposes of this clause (13), services performed by an individual 16 years of age or under shall be excluded from agricultural labor and employment unless the employer is an employer as defined in section 3306(a)(2) of the Federal Unemployment Tax Act.

(14) The term "employment" shall include domestic service ~~after December 31, 1977~~ in a private home, local college club, or local chapter of a college fraternity or sorority performed for a person who paid wages of $1,000 or more ~~after December 31, 1977~~ in the current calendar year or the preceding calendar year to individuals employed in domestic service in any calendar quarter.

"Domestic service" includes all service for an individual in the operation and maintenance of a private household, for a local college club, or local chapter of a college fraternity or sorority as distinguished from service as an employee in the pursuit of an employer's trade, occupation, profession, enterprise or vocation.

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

(a) Agricultural labor. Service performed by an individual in agricultural labor, except as provided in clause (13) of this subdivision. The term "agricultural labor" includes all services performed ~~subsequent to December 31, 1939~~:

(1) On a farm, in the employ of any person or family farm corporation, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, fur-bearing animals and

wildlife;

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

(3) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15(g) of the agricultural marketing act, as amended (46 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.

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), (15) (a) (1), (2), (3), (4) and (5), services performed after January 1, 1974, and prior to January 1, 1978 for an employing unit which has four or more persons, excluding the officers of the corporation if the employing unit is a family farm corporation, 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) Until January 1, 1978 domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in clause (14) of this subdivision;~~

Changes or additions indicated by underline **deletions by** ~~strikeout~~

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

~~(d)~~ (c) Service performed on the navigable waters of the United States as to which this state is prohibited by the constitution and laws of the United States of America from requiring contributions of employers with respect to wages as provided in sections 268.03 to 268.24;

~~(e)~~ (d) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of 18 in the employ of his father or mother;

~~(f)~~ (e) Service performed in the employ of the United States government, or any instrumentality of the United States exempt under the constitution of the United States from the contributions imposed by sections 268.03 to 268.24, except that with respect to such service ~~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)~~ (f) Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of congress;

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

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

(3) Service performed by an individual 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;

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

~~(j)~~ (i) Service performed in the employ of an instrumentality wholly owned by a foreign government, if

(1) The service is of a character similar to that performed in foreign countries by employees of the United States government or of an instrumentality thereof; and

(2) The commissioner finds that the United States secretary of state has certified to the United States secretary of the treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States government and of instrumentalities thereof.

~~(k)~~ (j) Service covered by an arrangement between the commissioner and the agency charged with the administration of any other state or federal employment security law pursuant to which all services performed by an individual for an employing unit during the period covered by such employing unit's duly approved election, are deemed to be performed entirely within such agency's state;

~~(l)~~ (k) Service performed in the employ of a hospital, if such service is performed by a patient of the hospital, as defined in clause ~~(18)~~ (17);

~~(m)~~ (l) 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)~~ (m) 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)~~ (n) Service performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

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

~~(q)~~ (p) 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.

~~(r)~~ (q) Services performed for a state, other than the state of Minnesota, or an instrumentality wholly owned by such other state or political subdivision of such other state;

~~(16) Except when performed for an institution of higher education, as defined in clause (17), or a hospital, as defined in clause (18), the term "employment" as applied to services performed prior to January 1, 1978 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 and employees of the legislature or a legislative commission employed as temporary employees, 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.~~

~~(17)~~ (16) "Institution of higher education," for the purposes of this ~~subdivision~~ chapter, means an educational institution which:

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

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

(c) Provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for credit toward such a degree, a program of post-graduate or post-doctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(d) Is a public or other nonprofit institution.

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

~~(18)~~ (17) "Hospital" means an institution which has been licensed, certified or approved by the department of health as a hospital.

Sec. 3. Minnesota Statutes 1978, 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; ~~provided that no permanent employee of the legislature or a legislative commission shall be deemed to be unemployed while on a leave of absence~~. 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 1978, Section 268.06, Subdivision 5, is amended to read:

Subd. 5. **BENEFITS CHARGED AS AND WHEN PAID.** Benefits paid to an individual pursuant to a valid claim ~~filed subsequent to June 30, 1941,~~ shall be charged against the account of his employer as and when paid, except that benefits paid to an *individual who* ~~during his base period earned wages for part time employment with an employer who continues to give the employee part time employment substantially equal to the part time employment previously furnished such employee by such employer shall not be charged to such employer's account~~ earned base period wages for part time employment shall not be charged to the experience rating account of an employer who: (1) provided weekly base period part time employment; (2) continues to provide weekly employment equal to at least 90 percent of the part time employment provided in the base period; and (3) is an interested party because of the individual's loss of other employment. The amount of benefits so chargeable against each base period employer's account shall bear the same ratio to the total benefits paid to an individual as the base period wage credits of the individual earned from such employer bear to the total amount of base period wage credits of the individual earned from all his base period employers.

In making computations under this provision, the amount of wage credits if not a multiple of $1, shall be computed to the nearest multiple of $1.

An employer's account shall not be charged with respect to benefits paid to any individual whose base period wage credits include wages for previously uncovered services as defined in section 268.07, subdivision ~~7~~ 4 to the extent that the unemployment compensation fund is reimbursed for such benefits pursuant to section 121 of United States Public Law 94-566.

Sec. 5. Minnesota Statutes 1978, Section 268.06, Subdivision 8, is amended to read:

Subd. 8. **DETERMINATION OF CONTRIBUTION RATES.** For ~~the year 1976 and for~~ each calendar year ~~thereafter~~ the commissioner shall determine the contribution rate of each employer by adding the 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 one percent if the amount in the unemployment compensation fund is less than $80,000,000 on June 30 of the preceding calendar year; or nine-tenths of one percent if the fund is more than $80,000,000 but less than $90,000,000; or eight-tenths of one percent if the fund is more than $90,000,000 but less than $110,000,000; or *seven-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 7.5 percent.

For the purposes of this section the unemployment compensation fund shall not include any moneys advanced from the Federal Unemployment Account in the unemployment trust fund in accordance with Title XII of the Social Security Act, as amended. No employer first assigned an experience ratio in accordance with subdivision 6, shall have his contribution rate increased by more than one and one-half percentage points over the contribution rate assigned for the preceding calendar year in accordance with subdivision 3a.

Sec. 6. Minnesota Statutes 1978, Section 268.06, Subdivision 21, is amended to read:

Subd. 21. **SEPARATE ACCOUNT FOR EACH EMPLOYER.** (1) The commissioner shall maintain a separate account for each employer, except as provided in clause (2), and shall credit his account with all the contributions paid by him. Nothing in sections 268.03 to 268.24 shall be construed to grant any employer or individuals in his service prior claims or rights to the amounts paid by the employer into the fund.

(2) Two or more related corporations concurrently employing the same individual and compensating the individual through a common paymaster which is one of the corporations may apply to the commissioner to establish a joint account or to merge their several individual accounts into a joint account. Upon approval of the application, a joint account shall be maintained as if it constituted a single employer's account. The commissioner may prescribe rules as to the establishment, maintenance and termination of joint accounts.

Sec. 7. Minnesota Statutes 1978, Section 268.06, Subdivision 22, is amended to read:

Subd. 22. **EMPLOYMENT EXPERIENCE RECORD TRANSFER.** (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, and continues such organization, trade or business, the ~~employment~~ experience rating record 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 identifiable 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 certified 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. 8. Minnesota Statutes 1978, Section 268.06, is amended by adding a subdivision to read:

Subd. 33. **NON-CHARGING PROVISIONS NOT APPLICABLE TO REIMBURSING EMPLOYERS.** The non-charging of benefits provisions of this chapter, including sections 268.06 and 268.09, do not apply to employers making payments in lieu of contributions in accordance with subdivisions 25, 26, 28 and 29.

Sec. 9. Minnesota Statutes 1978, Section 268.08, Subdivision 3, is 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~~ 28 calendar days ; 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~~ paid for a period of requested vacation or uniform vacation shutdown, provided the employee returns to work or work is available on the next day of work following the period; or

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

(4) ~~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 if a claimant has established a valid claim based on employment subsequent to the effective date of an award, 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, shall not be deductible nor shall 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 effect the eligibility of an employee of the United States to receive benefits~~ pension payments from any fund, annuity or insurance provided by or through a base period employer who contributed at least 50 percent of the premiums or contributions during the claimant's base period employment with the employer; or

(5) a primary insurance benefit under Title II of the social security act as amended, or similar old age benefits under any act of congress or this state or any other state, except that these benefits shall not be treated as deductible remuneration if the claimant has established a valid claim based on employment subsequent to the first receipt of these benefits; or

(6) that part of a pension in excess of $700 per month received as a consequence of service in the armed forces of the United States.

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. 10. Minnesota Statutes 1978, Section 268.08, Subdivision 4, is amended to read:

Subd. 4. **SOCIAL SECURITY AMOUNT DEDUCTED FROM BENEFITS.** Any claimant aged 62 or over who has not established a valid claim based on employment *subsequent to the ~~effective date of an award for a~~ first receipt of primary insurance ~~benefit~~* benefits 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 shall be required to state in writing at the time of the filing of his claim whether he intends to seek Title II social security benefits for any week during which he will receive unemployment benefits, and if he so intends there shall be withheld from his weekly unemployment benefits an amount sufficient to cover the weekly equivalent of his social security benefit. Any claimant disclaiming such intention but who nevertheless receives such social security benefits for weeks for which he previously received unemployment benefits shall be liable for repayment of such unemployment benefits and otherwise subject to the provisions of section 268.18.

Sec. 11. Minnesota Statutes 1978, 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 waiting week credit and benefits for the duration of his unemployment and until he has earned four times his weekly benefit amount in insured work if he is separated from employment under any of the following conditions:

(1) **VOLUNTARY LEAVE.** ~~If such~~ The individual voluntarily and without good cause attributable to the employer discontinued his employment with such employer.

(2) **DISCHARGE FOR MISCONDUCT.** ~~If such~~ The individual was discharged for misconduct, not amounting to gross misconduct connected with his work or for misconduct which interferes with and adversely affects his employment.

An individual shall not be disqualified under clauses (1) and (2) of this subdivision under any of the following conditions:

(a) ~~If such~~ The individual voluntarily discontinued his employment to accept work offering substantially better conditions of work or substantially higher wages or both;

(b) ~~If such~~ The individual is separated from employment due to his own serious illness provided that such individual has made reasonable efforts to retain his employment;

(c) ~~If such~~ The individual accepts work from a base period employer which involves a change in his location of work so that said work would not have been deemed to be suitable work under the provisions of subdivision 2 and within a period of 13 weeks from the commencement of said work voluntarily discontinues his employment due to reasons which would have caused the work to be unsuitable under the provision of said subdivision 2;

(d) ~~If such~~ The individual left employment because he had reached mandatory

retirement age and was 65 years of age or older; or

(e) ~~If such~~ The individual is terminated by his employer because he gave notice of intention to terminate employment ~~at some future date~~ within 30 days. This exception shall be effective only ~~to the date of intended termination as indicated by the individual in his notice, or for a period of four weeks from the date of the notice, whichever is shorter~~ through the calendar week which includes the date of intended termination, provided that this exception shall not result in the payment of benefits for any week for which he receives his normal wage or salary which is equal to or greater than his weekly benefit amount;

(f) The individual is separated from employment due to the completion of an apprenticeship program, or segment thereof, approved pursuant to chapter 178.

(3) **DISCHARGE FOR GROSS MISCONDUCT.** ~~If such~~ The individual was discharged for gross misconduct connected with his work or gross misconduct which interferes with and adversely affects his 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.

For the purpose of this clause "gross misconduct" shall be defined as misconduct involving assault and battery or the malicious destruction of property or the theft of money or property of a value of $100 or more or arson or sabotage or embezzlement. However, no person shall be deemed to have been discharged for gross misconduct for purposes of this chapter unless (1) the person makes an admission to the conduct in writing or under oath, or (2) the person is found to have engaged in such conduct by an appeals tribunal established pursuant to section 268.10, or (3) the person has been convicted by a court of competent jurisdiction of acts constituting gross misconduct.

(4) **LIMITED OR NO CHARGE OF BENEFITS.** Benefits paid subsequent to an individual's separation under any of the foregoing clauses, excepting clauses (2)(c) and (2)(e), ~~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; provided further that no charges against an employer's account shall be made for benefits paid to an individual separated under clause (2)(e), if the employer paid to the individual his normal wage or salary for the period between the date of notice and the date of intended termination, or for four weeks, whichever is shorter~~.

Benefits paid subsequent to an individual's failure, without good cause, to accept an offer of suitable re-employment shall not be used as a factor in determining the future contribution rate of the employer whose offer of re-employment he failed to accept or whose offer of re-employment was refused solely due to the distance of the available work from his residence, the individual's own serious illness or his other employment at the time of the offer.

(5) An individual who was employed by an employer shall not be disqualified for benefits under this subdivision for any acts or omissions occurring after his separation from employment with the employer.

Sec. 12. Minnesota Statutes 1978, Section 268.09, Subdivision 2, is amended to read:

Subd. 2. **FAILURE TO APPLY FOR OR ACCEPT SUITABLE WORK OR RE-EMPLOYMENT.** An individual shall be disqualified for waiting week credit and benefits during the week of occurrence and until he has earned four times his weekly benefit amount in insured work if the commissioner finds that he has failed, without good cause, either to apply for available, suitable work ~~when so directed~~ of which he was advised by the employment office, or the commissioner or to accept suitable work when offered him, or to return to his customary self-employment (if any) when so directed by the commissioner, or to accept suitable re-employment offered by a base period employer.

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

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

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

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

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

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

Sec. 13. Minnesota Statutes 1978, Section 268.09, Subdivision 3, is amended to read:

Subd. 3. **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.~~ An individual who has left or partially or totally lost his employment with an employer because of a strike or other labor dispute at the establishment in which he is or was employed shall be disqualified for benefits:

(a) For each week during which the strike or labor dispute is in progress; or

(b) For one week following the commencement of the strike or labor dispute if he is not participating in or directly interested in the strike or labor dispute.

Participation includes the failure or refusal of an individual to accept and perform available and customary work at the establishment.

An individual who has left or partially or totally lost his employment with an employer because of a jurisdictional controversy between two or more labor organizations at the establishment in which he is or was employed shall be disqualified for benefits for each week during which the jurisdictional controversy is in progress.

For the purpose of this ~~section~~ subdivision 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~~

~~(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~~ the strike or other labor dispute is in progress at ~~such~~ the establishment shall not be deemed to terminate ~~such~~ the 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 at his primary place of employment 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 re-employment 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.

Sec. 14. Minnesota Statutes 1978, 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~~ this determination shall be known as the determination of validity. Notice of ~~any such~~ the determination of validity or any redetermination as provided for in clause (4) shall be promptly given the claimant and all other interested parties. If within the time specified for the filing of wage and separation information as provided in subdivision 1, clause (2), the employer makes an allegation of disqualification or raises an issue of the chargeability to his account of benefits that may be paid on such claim, if ~~such~~ the claim is valid, the issue thereby raised shall be promptly determined by said official and a notification of ~~such~~ the determination delivered or mailed to the claimant and the employer. If an initial determination or an appeal tribunal decision or the commissioner's decision awards benefits, ~~such~~ the benefits shall be paid promptly regardless of the pendency of any appeal period or any appeal or other proceeding which may thereafter be taken. Except as provided in clause (6), if an appeal tribunal decision modifies or reverses an initial determination awarding benefits, or if a commissioner's decision modifies or reverses an appeal decision awarding benefits, any benefits paid under the award of such initial determination or appeal tribunal decision shall be deemed erroneous payments.

(2) 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~~ shall be final unless an appeal therefrom is filed by a claimant or employer within 15 days after the mailing of the notice of the determination to his last known address or personal delivery of the notice. Every notice of determination shall contain a prominent statement indicating in clear language the method of appealing the determination, the time within which such an appeal must be made, and the consequences of not appealing the determination. A timely appeal from a determination of validity in which the issue is whether an employing unit is an employer within the meaning of this chapter or whether

services performed for an employer constitute employment within the meaning of this chapter shall be subject to the provisions of section 268.12, subdivision 13.

(4) At any time within 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~~ the determination was made as a result of a nondisclosure or misrepresentation of a material fact.

(5) However, the commissioner may in his discretion refer any 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~~ the tribunal from an initial determination.

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

Sec. 15. Minnesota Statutes 1978, 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 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 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 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 employing unit and any claimant whose filed claim for benefits may be affected by a determination issued under clause (1) shall be interested parties to an appeal. The referee shall fix a time and place within this state for such hearing and shall give ~~the employing unit~~ interested parties written notice thereof, by ~~certified~~ 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 economic security, made in the regular course of the performance of such employee's duties, shall be competent evidence of the

facts therein contained and shall be prima facie correct, unless refuted by other credible evidence.

(3) Upon the conclusion of such hearing, the referee shall serve upon the ~~employing unit~~ interested parties by ~~certified~~ 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 be final unless ~~the employing unit~~ an interested party shall within 30 days after the mailing ~~by certified mail~~ of a copy thereof to the ~~employing unit's~~ interested parties' last known ~~address~~ addresses, file an appeal with the commissioner, or unless the commissioner, within 30 days after 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 ~~certified~~ mail, mailed to the ~~employing unit's~~ interested parties' last known ~~address~~ addresses, and notice of such decision shall contain a statement setting forth the cost of certification of the record in the matter. The decision of the commissioner shall become final unless judicial review thereof is sought as provided by this subdivision. Any interested party to a proceeding before a referee or the commissioner may obtain a transcript of the testimony taken before the referee upon payment to the commissioner of the cost of such transcript to be computed at the rate of ten cents per 100 words.

(4) The district court of the county wherein the hearing before the referee was held shall, by writ of certiorari to the commissioner, have power to review all questions of law and fact presented by the record. The court shall not accept any new or additional evidence and shall not try the matter de novo. Such action shall be commenced within 30 days of the mailing of notice of the findings and decision of the commissioner ~~by certified mail~~ to the ~~employing unit~~ interested parties affected thereby mailed to ~~the employing units~~ their last known ~~address~~ addresses. 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 determines the amount of contributions due under sections 268.03 to 268.24, then, if such amount, together with interest and penalties, is not paid within 30 days after such decision, the provisions of section 268.16, subdivision 3, shall apply; and the commissioner shall proceed thereunder, substituting a certified copy of the final decision in place of the contribution report therein provided.

Sec. 16. Minnesota Statutes 1978, Section 268.13, Subdivision 2, is amended to read:

Subd. 2. **REIMBURSEMENTS.** Reimbursements paid from the fund pursuant to subdivision 1 shall be deemed to be benefits for the purposes of sections 268.05 to 268.09, ~~except that no charges with respect thereto shall be made to employers' accounts unless so required by standards prescribed by the secretary of labor but in no event shall such charges be in excess of the benefits payable under section 268.07~~. The commissioner is authorized to make to other state or federal agencies and to receive from such other state or federal agencies, reimbursements from or to the fund, in accordance with arrangements entered into pursuant to subdivision 1.

Sec. 17. Minnesota Statutes 1978, Section 268.18, Subdivision 1, is amended to read:

268.18 **RETURN OF BENEFITS; OFFENSES.** Subdivision 1. **ERRONEOUS PAYMENTS.** Any claimant for benefits who, by reason of his own mistake or through the error of any individual engaged in the administration of sections 268.03 to 268.24, has received any sum as benefits to which he was not entitled under these sections, shall promptly return such benefits in cash to the nearest office of the Minnesota department of economic security. If such claimant fails to return such benefits, the department of economic security shall, as soon as it discovers such erroneous payment, determine the amount thereof and notify said individual to return the same, within a period of 20 days from the date of such notification. Unless ~~such~~ the claimant files a written ~~protest~~ appeal

with the department of economic security within ~~ten days after the delivery of such notice or within 12 days after the date of the mailing thereof, such~~ 15 days after the mailing of the notice of determination to his last known address or personal delivery of the notice, the determination shall become final. If ~~such~~ the claimant files ~~a protest~~ an appeal with the department in writing within the time aforesaid the matter shall be set for hearing before an appeal tribunal of the department and heard as other benefit matters are heard in accordance with section 268.10 with the same rights of review as outlined for benefit cases in that section. In the event that the claimant fails to return to the department within 20 days after ~~such~~ the notification to do so, the benefits he received unlawfully, the commissioner of the department of economic security is hereby authorized to deduct from any future benefits payable to such claimant under these sections in the current or any subsequent benefit year an amount equivalent to such erroneous payment.

Sec. 18. Minnesota Statutes 1978, Section 268.18, Subdivision 2, is amended to read:

Subd. 2. **FRAUD.** Any claimant who files a claim for or receives benefits by knowingly and wilfully misrepresenting or misstating any material fact or by knowingly and wilfully failing to disclose any material fact which would make him ineligible for benefits under sections 268.03 to 268.24 ~~and as specifically set forth in section 268.08, in force at the time of filing such claim for benefits, shall be deemed~~ is guilty of fraud. ~~Notwithstanding the provisions of Minnesota Statutes 1949, Section 268.09, Subdivision 1, Clause (7),~~ After the discovery of facts by the commissioner indicating ~~such~~ fraud in claiming or obtaining benefits under sections 268.03 to 268.24, he is hereby authorized to make a determination that ~~such~~ the claimant was ineligible for each week with reference to which benefits were claimed or obtained by ~~such~~ fraud for ~~such~~ the amount as was in excess of what ~~such~~ the claimant would have been entitled to had he not made ~~such~~ the fraudulent statements or failed to disclose any material facts; ~~and at the discretion of the commissioner, disqualifying such claimant from receiving any unemployment benefits under the Minnesota law for any part or all of the remainder of the current or next subsequent benefit year following the week when such fraud was committed, and that~~ . The commissioner also may disqualify an individual from benefits for one to 52 weeks in which the claimant is otherwise eligible for benefits following the week in which the fraud was determined. A disqualification imposed for fraud shall not be removed by subsequent insured work or the expiration of a benefit year but shall not apply to any week more than 104 weeks after the week in which the fraud was determined. Said claimant shall within 20 days from the date of mailing the notice of said determination to him repay in cash to the department of economic security any benefits so fraudulently obtained. Unless ~~such~~ the claimant files a written ~~protest~~ appeal with the department of economic security within ~~ten days after the delivery of such notice or within 12 days after the date of mailing thereof, such~~ 15 days after the mailing of the notice of determination to his last known address or personal delivery of the notice. The determination shall become final. If ~~such~~ the claimant shall appeal from such determination within the time above specified said matter shall be referred to an appeal tribunal for a hearing as in other benefit cases and thereafter the procedure for review shall be the same as set forth in section 268.10. If ~~such~~ the benefits so fraudulently obtained are not repaid to the department in cash within 20 days from the date of mailing the notice to ~~such~~ the claimant of ~~such~~ the determination, the commissioner is hereby authorized to deduct from future benefits

payable to ~~such~~ the claimant in either the current or any subsequent benefit year an amount equivalent to the amount of overpayment determined.

Sec. 19. Minnesota Statutes 1978, Section 268.08, Subdivision 6, as amended by Laws 1979, Chapter 24, is amended to read:

Subd. 6. **SERVICES PERFORMED FOR STATE, MUNICIPALITIES OR CHARITABLE CORPORATION.** Effective January 1, 1978 benefits based on service in employment defined in section 268.04, subdivision 12, clauses (7), (8) and (9), shall be payable in the same amount, on the same terms and subject to the same conditions as benefits payable on the basis of other service subject to this chapter; except that

(a) With respect to weeks of unemployment after December 31, 1977, benefits based upon service performed in an instructional, research, or principal administrative capacity for an institution of higher education or a public school, or a nonpublic school or the Minnesota school for the deaf or Minnesota braille and sight saving school, ~~or~~ for an educational cooperative service unit established under section 123.58, or any other educational service agency as defined in section 3304 (a) (6) (A) (IV) of the federal unemployment tax act, ~~or a developmental achievement center operating pursuant to sections 252.21 to 252.26 and licensed pursuant to section 245.783,~~ shall not be paid for any week of unemployment commencing during the period between two successive academic years or terms, or during a similar period between two regular but not successive terms, or during a period of paid sabbatical leave provided for in the individual's contract, to any individual if the individual performs the services in the first of the academic years or terms and if there is a contract or a reasonable assurance that the individual will perform services in any such capacity for any institution of higher education, public school, nonpublic school, state deaf and sight saving schools, an educational cooperative service unit, other educational service agency, or developmental achievement center in the second of the academic years or terms, and

(b) With respect to service performed after December 31, 1977 in any capacity, other than those capacities described in clause (a) of this subdivision, for a public school or nonpublic school, or the Minnesota school for the deaf or Minnesota braille and sight saving school, ~~and for service with a political subdivision with respect to a school,~~ or for an educational cooperative service unit established under section 123.58, or any other educational service agency as defined in section 3304 (a) (6) (A) (IV) of the federal unemployment tax act, ~~or a developmental achievement center operating pursuant to sections 252.21 to 252.26 and licensed pursuant to section 245.783,~~ benefits shall not be paid on the basis of these services to any individual for any week which commences during a period between two successive academic years or terms if the individual performs the services in the first of the academic years or terms and there is a reasonable assurance that the individual will perform the services in the second of the academic years or terms, and

(c) With respect to any services described in clause (a) or (b), ~~compensation~~ benefits payable on the basis of the services shall not be paid to any individual for any week which commences during an established and customary vacation period or holiday recess if the individual performs the services in the period immediately before the

vacation period or holiday recess, and there is a reasonable assurance that the individual will perform the services in the period immediately following the vacation period or holiday recess. ~~School year for a developmental achievement center operating pursuant to sections 252.21 to 252.26 and licensed pursuant to section 245.783, means that period established by resolution of its board of directors.~~

Sec. 20. **EFFECTIVE DATES.** Subdivision 1. Sections 1, 2 and 3 of this act shall be effective January 1, 1979.

Subd. 2. Sections 5 and 6 of this act shall be effective January 1, 1980.

Subd. 3. Sections 4, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19 of this act shall be effective the day following final enactment.

Approved May 24, 1979.

CHAPTER 182—H.F.No.340

An act relating to the town of Leota in Nobles County; authorizing the establishment of a detached banking facility.

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

Section 1. **LEOTA, TOWN OF; DETACHED BANKING FACILITY; AUTHORIZATION.** With the prior approval of the commissioner of banks, any bank doing business within 25 miles of the town of Leota in Nobles County may establish and maintain not more than one detached facility. Any bank desiring to establish a detached facility shall follow the approval procedure prescribed in Minnesota Statutes, Section 47.54. The establishment of a detached facility in the town of Leota shall be subject to the provisions of Minnesota Statutes, Sections 47.51 to 47.57 except insofar as inconsistent with this section.

Sec. 2. This act takes effect when approved by the town board of the town of Leota and upon compliance with Minnesota Statutes, Section 645.021.

Approved May 24, 1979.

CHAPTER 183—H.F.No.607

An act relating to public employment labor relations; permitting certain public employees to use certain grievance procedures; amending Minnesota Statutes 1978, Section 179.70, Subdivision 1.

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