

local share of several federal demonstration projects.

Sec. 50. EFFECTIVE DATE.

Unless provided otherwise, the sections of this article that amend other 1987 enactments take effect on the same dates as the enactments that they amend.

Approved June 2, 1987

CHAPTER 385—H.F.No. 1542

An act relating to unemployment compensation; making various technical and house-keeping changes; defining "wages"; regulating benefits and contributions; providing for the administration of the unemployment compensation law; providing penalties; amending Minnesota Statutes 1986, sections 268.04, subdivisions 9, 12, 24, 25, 26, 29, and by adding subdivisions; 268.06, subdivisions 2, 3a, 5, 6, 8, 19, 20, 22, and 24; 268.07, subdivision 3; 268.08, subdivisions 3, 3a, and by adding a subdivision; 268.09, subdivisions 1 and 3; 268.12, subdivision 8; 268.121; 268.15, subdivision 3; 268.16, subdivision 2, and by adding subdivisions; 268.161, subdivisions 1, 8, 9, and by adding a subdivision; 268.18, subdivisions 1, 2, 3, 4, 5, and by adding a subdivision; 268.65, subdivision 5; 270A.09, by adding a subdivision; and 508.25; proposing coding for new law in Minnesota Statutes, chapter 268; and repealing Minnesota Statutes 1986, section 268.24.

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

Section 1. Minnesota Statutes 1986, section 268.04, subdivision 9, is amended to read:

Subd. 9. "Employing unit" means any individual or type of organization, including any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor of any of the foregoing, or the legal representative of a deceased person, which has or subsequent to January 1, 1936, had in its employ one or more individuals performing services for it. All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state shall be deemed to be employed by a single employing unit ~~for all the purposes of sections 268.03 to 268.24.~~ Each individual employed to perform or assist in performing the work of any agent or individual employed by an employing unit shall be deemed to be employed by such employing unit ~~for all the purposes of sections 268.03 to 268.24~~ whether such individual was hired or paid directly by such employing unit or by such agent or individual, provided the employing unit had actual or constructive knowledge of such work. ~~For the purposes of sections 268.03 to 268.24~~ Any private or nonprofit organization or government agency providing

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or authorizing the hiring of homeworkers, personal care attendants, or other individuals performing similar services in the private home of an individual is the employing unit of the homemaker, attendant or similar worker whether the agency pays the employee directly or provides funds to the recipient of the services to pay for the services.

Sec. 2. Minnesota Statutes 1986, 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 (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 a principal, or as a traveling or city salesperson, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, a 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; or

(c) any 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.

Provided, that for purposes of clause (1)(b), the term "employment" shall include services described above 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

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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; or (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) The term "employment" shall include an individual's service wherever performed within the United States or Canada, if

(a) such service is not covered under the unemployment compensation law of any other state 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 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).

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(8) Service performed 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).

(a) The provisions of section 268.08, subdivision 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 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 primarily 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 a 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 a program providing remunerative work for individuals who because of ~~their~~ an impaired physical or mental capacity cannot be readily absorbed in the competitive labor market, by an individual receiving ~~such~~ the rehabilitation or remunerative work. This exclusion applies only to services performed in a facility which is certified by the Minnesota department of jobs and training, division of rehabilitative services, and is limited to the effective period of the certificate; or

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(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. This exclusion shall not apply to programs that provide for and require unemployment insurance coverage for the participants; or

(e) by an inmate of a custodial or penal institution; or

(f) 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 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, in the employ of an American employer (other than service which is deemed "employment" under the provisions of clause (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) 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.

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(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 (2), 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 by an individual in agricultural labor as defined in clause (15)(a) 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 the 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 clause (1).

(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

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(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 the crew leader's 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 the crew leader's own behalf or on behalf of such other person) the individuals so furnished by the crew leader 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 or shareholder 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 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 in any calendar quarter in either 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:

(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, feed-

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ing, 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 Statutes 1550, section 3; United States Code, title 12, section 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.

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

(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;

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

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(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 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;

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

(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 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 full-time 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;

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

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

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(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.

(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;

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

(l) Service performed 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~~ a medical or dental intern, or resident in training in the employ of a hospital, clinic, or medical or dental office by an individual who has completed a four years' course in a medical or dental school chartered and approved pursuant to state law;

(m) Service performed 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);

(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;

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

(p) If the service performed during one-half or more of any pay period by an individual for the person employing the individual 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 the individual 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

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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 the individual.

(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;

(r) Services performed as a direct seller as defined in United States Code, title 26, section 3508.

(16) "Institution of higher education," for the purposes of this 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.

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

Sec. 3. Minnesota Statutes 1986, section 268.04, subdivision 24, is amended to read:

Subd. 24. "Valid claim" with respect to any individual means a claim filed by an individual who has registered for work and who has ~~earned wage credits and established credit weeks~~ wages paid during the individual's base period sufficient to entitle the individual to benefits under section 268.07, subdivision 2.

Sec. 4. Minnesota Statutes 1986, section 268.04, subdivision 25, is amended to read:

Subd. 25. **WAGES.** "Wages" means all remuneration for services, including commissions ~~and~~ bonuses; back pay as of the date of payment; ~~and~~ tips and gratuities paid to an employee by a customer of an employer and accounted

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for by the employee to the employer; sickness and accident disability payments, except as otherwise provided in this subdivision; and the cash value of all remuneration in any medium other than cash, except that such term shall not include:

(a) For the purpose of determining contributions payable under section 268.06, subdivision 2, that part of the remuneration which exceeds, for each calendar year, the greater of \$7,000 or that part of the remuneration which exceeds 60 percent of the average annual wage rounded to the nearest \$100 computed in accordance with the provisions of clause ~~(f)~~ (j), paid to an individual by an employer or the employer's predecessor 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 paid to such individual by such covered employer or predecessor during such calendar year; provided, that, Credit for remuneration reported under the unemployment compensation law of another state is limited to that state's taxable wage base.~~ If the term "wages" as contained in the Federal Unemployment Tax Act is amended to include remuneration in excess of 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" shall include service constituting employment under any employment security law of another state or of the federal government;

(b) 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 employees generally or for a class or classes of 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 (1) retirement or (2) ~~sickness or accident disability~~ ~~or~~ (3) medical and hospitalization expenses in connection with sickness or accident disability, or (4) ~~(3)~~ death, provided the employee 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 the employer and 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 withdrawal from the plan or system providing for such benefit or upon termination of such plan or system or policy of insurance or of employment with such employer;

(c) The payment by an employer (without deduction from the remuneration of the employee) (1) of the tax imposed upon an employee under section 3101 of the federal Internal Revenue Code, or (2) of any payment required from an employee under a state unemployment compensation law, with respect to remuneration paid to an employee for domestic service in a private home of the employer or for agricultural labor;

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(d) 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;

(e) Any payment made to, or on behalf of, an employee or beneficiary (1) 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 (2) 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 (3) 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;~~

(f) Sickness or accident disability payments made by the employer after the expiration of six calendar months following the last calendar month in which the individual worked for the employer;

(g) Disability payments made under the provisions of any workers' compensation law;

(h) Sickness or accident disability payments made by a third party payer such as an insurance company;

(i) Payments made into a fund, or for the purchase of insurance or an annuity, to provide for sickness or accident disability payments to employees pursuant to a plan or system established by the employer which provides for his employees generally or for a class or classes of his employees;

(j) 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:

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

(2) 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;

(k) Nothing in this subdivision, other than clause (a), shall exclude from the term "wages" any payment made under any type of salary reduction agreement, including payments made under a cash or deferred arrangement and cafeteria plan, as defined in sections 401(k) and 125(d), respectively, of the federal Internal Revenue Code, to the extent that the employee has the option to receive the payment in cash.

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Sec. 5. Minnesota Statutes 1986, section 268.04, is amended by adding a subdivision to read:

Subd. 25a. WAGES PAID. "Wages paid" means the amount of wages which have been actually paid or which have been credited to or set apart for the employee so that payment and disposition is under the control of the employee. Wage payments delayed beyond their regularly scheduled pay date are considered "actually paid" on the missed pay date. Any wages earned but not paid with no scheduled date of payment shall be considered "actually paid" on the last day services are performed in employment before separation.

Wages paid shall not include wages earned but not paid except as provided for in this subdivision.

Sec. 6. Minnesota Statutes 1986, section 268.04, subdivision 26, is amended to read:

Subd. 26. WAGE CREDITS. "Wage credits" mean the amount of wages actually or constructively paid; wages overdue and delayed beyond the usual time of payment and back pay 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 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 paid within the base period for insured work.

Sec. 7. Minnesota Statutes 1986, section 268.04, subdivision 29, is amended to read:

Subd. 29. CREDIT WEEK. "Credit week" is any week for which wages or back pay, actually or constructively paid; wages overdue and delayed beyond the usual time of payment; and back pay by or from one or more employers to an employee for insured work wage credits equal or exceed 30 percent of the average weekly wage computed to the nearest whole dollar. 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:

(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; and

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

The average weekly wage as so determined computed to the nearest whole

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dollar shall apply to claims for benefits which establish a benefit year which begins subsequent to December 31 of the year of the computation.

Sec. 8. Minnesota Statutes 1986, section 268.04, is amended by adding a subdivision to read:

Subd. 34. CONTRIBUTION REPORT. "Contribution report" means the summary report of wages paid and employment used to determine the amount of contributions due by employers on a calendar quarter basis. An auxiliary report of wages paid and employment broken down by business locations, when required, is part of the contribution report.

Sec. 9. Minnesota Statutes 1986, section 268.04, is amended by adding a subdivision to read:

Subd. 35. WAGE DETAIL REPORT. "Wage detail report" means the itemized report used to record the information required by section 268.121.

Sec. 10. Minnesota Statutes 1986, section 268.06, subdivision 2, is amended to read:

Subd. 2. **RATES.** Each employer shall pay contributions equal to two and seven-tenths percent for each calendar year prior to 1985 and 5-4/10 percent for 1985 and each subsequent calendar year of wages paid ~~and wages overdue and delayed beyond the usual time of payment~~ from the employer with respect to employment occurring during each calendar year, except as may be otherwise prescribed in subdivisions 3a and 4. Each employer who has an experience ratio of less than one-tenth of one percent shall pay contributions on only the first \$8,000 in wages paid and wages overdue and delayed beyond the usual time of payment to each employee with respect to employment occurring during each calendar year.

Sec. 11. Minnesota Statutes 1986, section 268.06, subdivision 3a, is amended to read:

Subd. 3a. **RATE FOR NEW EMPLOYERS.** Notwithstanding the provisions of subdivision 2, each employer, who becomes subject to this law, shall pay contributions at a rate:

(a) ~~Not exceeding 2-7/10 percent; that is the higher of (1) one percent and (2) the state's three-year benefit cost rate for the 36 consecutive month period immediately preceding July 1 of each year for each employer who becomes subject to this law prior to January 1, 1984. For purposes of this clause, the state's three-year benefit cost rate shall be computed annually and shall be derived by dividing the total dollar amount of benefits paid to claimants under this law during the 36 consecutive calendar months immediately preceding July 1 of each year by the total dollar amount of wages subject to contributions under this law during the same period. The rate so determined shall be applicable for the calendar year next succeeding each computation date.~~

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(b) Not exceeding 2-7/10 percent, that is the higher of (1) one percent and (2) the state's four-year benefit cost rate for the 48 consecutive month period immediately preceding July 1 of each year for each employer, except employers in the construction industry, as determined by the commissioner, who becomes subject to this law subsequent to December 31, 1983 and prior to January 1, 1985. For purposes of this clause, the state's four-year benefit cost rate shall be computed and derived by dividing the total dollar amount of benefits paid to claimants under this law during the 48 consecutive calendar months immediately preceding July 1, 1983 by the total dollar amount of wages subject to contributions under this law during the same period. The rate so determined shall be applicable for the calendar year 1984.

Each construction employer described above who becomes subject to chapter 268 shall pay contributions at a rate, not exceeding 7-1/2 percent, that is the higher of (1) one percent, or (2) the state's four-year benefit cost rate for construction employers for the 48 consecutive month period immediately preceding July 1, 1983. For purposes of this clause, the state's four-year benefit cost rate shall be computed and derived by dividing the total dollar amount of benefits paid to claimants of construction employers, as determined by the commissioner, during the 48 consecutive calendar months immediately preceding July 1, 1983 by the total dollar amount of wages of construction employers subject to contributions during the same period. The rate so determined shall be applicable for the calendar year 1984.

(e) Not exceeding 5-4/10 percent, that is the higher of (1) one percent and (2) the state's five-year benefit cost rate for the 60 consecutive month period immediately preceding July 1, 1984 and of each year thereafter for each employer, except employers in the construction industry, as determined by the commissioner who becomes subject to this law on January 1, 1985 and thereafter. For purposes of this clause, the state's five-year benefit cost rate shall be computed annually and shall be derived by dividing the total dollar amount of benefits paid to claimants under this law during the 60 consecutive calendar months immediately preceding July 1, 1984 and of each year thereafter by the total dollar amount of wages subject to contributions under this law during the same period. The rate so determined shall be applicable for the calendar year next succeeding each computation date.

(b) Each construction employer described above in the construction industry who becomes subject to this chapter shall pay contributions at a rate, not exceeding 7-1/2 percent, that is the higher of (1) one percent, or (2) the state's five-year benefit cost rate for construction employers for the 60 consecutive month period immediately preceding July 1, 1984 and of each year thereafter. For purposes of this clause, the state's five-year benefit cost rate shall be computed annually and shall be derived by dividing the total dollar amount of benefits paid to claimants of construction employers, as determined by the commissioner, during the 60 consecutive calendar months immediately preceding July 1, 1984 and of each year thereafter by the total dollar amount of wages of construction employers subject to contributions during the same period. The

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rate so determined shall be applicable for the calendar year next succeeding each computation date.

For purposes of this subdivision an employer is in the construction industry if assigned an industrial classification within division C of the Standard Industrial Classification Manual issued by the United States Office of Management and Budget as determined by the tax branch of the department.

Sec. 12. Minnesota Statutes 1986, 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 shall be charged against the account of the individual's employer as and when paid, except that benefits paid to an individual who earned base period wages for part-time employment shall not be charged to an employer that is liable for payments in lieu of contributions or to the experience rating account of an employer if the employer: (1) provided weekly base period regularly scheduled part-time employment to the individual during the individual's base period; (2) during the individual's benefit year, continues to provide weekly the individual with regularly scheduled employment equal to at least approximating 90 percent of the part-time employment provided the claimant by that employer in the base period; and (3) is an interested party because of the individual's loss of other employment. The relief of charges shall terminate effective the first week in the claimant's benefit year that the employer fails to meet the provisions of clause (2). 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 the individual's 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.

Benefits shall not be charged to an employer that is liable for payments in lieu of contributions or to the experience rating account of an employer for unemployment (1) that is directly caused by a major natural disaster declared by the president pursuant to section 102(2) of the Disaster Relief Act of 1974 (United States Code, title 42, section 5122(2)), if the unemployed individual would have been eligible for disaster unemployment assistance with respect to that unemployment but for the individual's receipt of unemployment insurance benefits, or (2) that is directly caused by a fire, flood, or act of God where 70 percent or more of the employees employed in the affected location become unemployed as a result and the employer substantially reopens its operations in that same area within 360 days of the fire, flood, or act of God. Benefits shall be charged to the employer's account where the unemployment is caused by the willful act of the employer or a person acting on behalf of the employer.

Sec. 13. Minnesota Statutes 1986, section 268.06, subdivision 6, is amended to read:

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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;

(a) ~~During the 36 consecutive calendar months immediately preceding July 1 of the preceding calendar year for calendar years up to December 31, 1983; except that, for any employer who has not been subject to the Minnesota economic security law for a period of time sufficient to meet the 36 consecutive months requirement, the commissioner shall compute an experience ratio if the employer's 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 the 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 the employer's total taxable payroll for the same period on which all contributions due have been paid to the department of jobs and training on or before July 31 of the preceding calendar year. Such experience ratio shall be computed to the nearest one-tenth of a percent.~~

(b) ~~During the 48 consecutive calendar months immediately preceding July 1, 1983 for the calendar year for 1984; except that, for any employer who has not been subject to the Minnesota economic security law for a period of time sufficient to meet the 48 consecutive months requirement, the commissioner shall compute an experience ratio if the employer's account has been chargeable with benefits during at least the 12 consecutive calendar months immediately preceding July 1, 1983. 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 the account has been chargeable but not less than the 12 or more than the 48 consecutive calendar months ending on June 30, 1983, by the employer's total taxable payroll for the same period on which all contributions due have been paid to the department of jobs and training on or before July 31, 1983. Such experience ratio shall be computed to the nearest one-tenth of a percent.~~

(c) ~~during the 60 consecutive calendar months immediately preceding July 1 of the preceding calendar year for 1985 and each year thereafter; except that, for any employer who has not been subject to the Minnesota economic security law for a period of time sufficient to meet the 60 consecutive months requirement, the commissioner shall compute an experience ratio if the employer's 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 the account has been chargeable but not less than the 12 or more than the 60 consecutive calendar months ending on June 30 of the preceding calendar year for 1985 and each year thereafter; by the employer's total taxable payroll for the same period on which all contributions due have been paid to the department of jobs and~~

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training on or before July ~~October~~ 31 of the preceding calendar year. Such experience ratio shall be computed to the nearest one-tenth of a percent.

Sec. 14. Minnesota Statutes 1986, section 268.06, subdivision 8, is amended to read:

Subd. 8. **DETERMINATION OF CONTRIBUTION RATES.** (a) For each calendar year 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 increases or decreases the experience ratio for the preceding calendar year by more than one and one-half percentage points for 1982; and 2-1/2 percentage points for 1983 and each year thereafter; the increase or decrease for the current year shall be limited to one and one-half percentage points for 1982; and 2-1/2 percentage points for 1983 and each year thereafter; provided that a small business employer shall be eligible, upon application; for a reduction in the limitation to 1-1/2 percentage points for 1983 and each year thereafter. "Small business employer" for the purpose of this subdivision means an employer with an annual covered payroll of \$250,000 or less; or fewer than 20 employees in three of the four quarters ending June 30, of the previous calendar year.~~

(b) 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.

(c) 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 a contribution rate increased or decreased by more than one and one-half percentage points for 1982; and 2-1/2 percentage points for 1983 and each year thereafter over the contribution rate assigned for the preceding calendar year in accordance with subdivision 3a; provided that a small business employer shall be eligible, upon application; for a reduction in the limitation to 1-1/2 percentage points for 1983 and each year thereafter.~~

Sec. 15. Minnesota Statutes 1986, section 268.06, subdivision 19, is amended to read:

Subd. 19. **NOTICE OF RATE.** The commissioner shall mail to each employ-

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er notice of the employer's rate of contributions as determined for any calendar year pursuant to this section. Such notice shall contain the contribution rate, factors used in determining the individual employer's experience rating, and such other information as the commissioner may prescribe. Unless ~~reviewed in the manner hereinafter~~ changed by the procedure provided in this subdivision, the assigned rate as initially determined or as modified ~~changed~~ by a redetermination by the tax branch of this department, a decision of a referee, or the commissioner shall be final except for fraud and shall be the rate upon which contributions shall be computed for the calendar year for which such rate was ~~determined~~ assigned, and shall not be subject to collateral attack for any errors, clerical or otherwise, whether by way of claim for adjustment or refund, or otherwise. If the legislature changes any of the factors used to determine the contribution rate of any employer for any year subsequent to the original mailing of such notice for the year, the earlier notice shall be void. The notice based on the new factors shall be deemed to be the only notice of rate of contributions for that year and shall be subject to the same finality, redetermination and review procedures as provided above.

Sec. 16. Minnesota Statutes 1986, section 268.06, subdivision 20, is amended to read:

Subd. 20. **PROTEST, REVIEW, REDETERMINATION, APPEAL.** A review of the charges made to an employer's account as set forth in the notice of charges referred to in subdivision 18 and a review of an employer's contribution rate as set forth in the notice of the employer's rate for any calendar year as provided in subdivision 19, may be had by the employer by filing with the commissioner a written protest setting forth reasons therefor within 30 days from the date of the mailing of the notice of charges or contribution rate to the employer. The date shall appear on the notice. Upon receipt of the protest, the commissioner shall refer the matter to an official designated by the commissioner to review the charges appearing on the notice appealed from or the computations of the protesting employer's rate, as the case may be, to determine whether or not there has been any clerical error or error in computation in either case. The official shall either affirm or make a redetermination rectifying the charges or rate as the case may be, and a notice of the affirmation or redetermination shall immediately be mailed to the employer. If the employer is not satisfied with the affirmation or redetermination, the employer may appeal by filing a notice with the department within ten days after the date of mailing appearing upon the redetermination. Upon the receipt of the appeal, the commissioner shall refer the matter to a referee for a hearing and after opportunity for a fair hearing, the referee shall affirm, modify or set aside the original determination with its affirmation or the redetermination, as appears just and proper. The commissioner may at any time upon the commissioner's own motion correct any clerical error of the department resulting in charges against an employer's account or any error in the computation or the assignment of an employer's contribution rate. The referee may order the consolidation of two or more appeals whenever, in the referee's judgment, consolidation will not be prejudicial to any interested party. At any hearing a written report of any employee of

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the department which has been authenticated shall be admissible in evidence. Appeals from the decision of the referee shall be provided by section 268.10, subdivision 5.

Sec. 17. Minnesota Statutes 1986, 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 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 continues the organization, trade or business of the portion acquired, (2) the successor ~~within 90 days of acquisition~~ makes a written request to file an application ~~as prescribed by the commissioner~~ for the transfer of the experience rating record for the severable portion acquired from the predecessor (3) and within 90 days from the date the application is mailed to the successor the successor and predecessor employing units jointly sign the and file a properly completed, written application as prescribed by the commissioner that furnishes the commissioner with sufficient information to substantiate the severable portion and to assign the appropriate total and taxable wages and benefit charges to the successor for experience rating purposes. Previously assigned contribution rates that have become final in accordance with subdivision 19 prior to the filing of the written request to file an application shall not be affected by the transfer.

(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 in writing of the acquisition not later than 30 days after 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) 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.

(e) ~~(d)~~ An official, designated by the commissioner, upon the official's own motion or upon application of an employing unit shall determine if an employing unit is a successor within the meaning of this subdivision and shall notify

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the employing unit of the determination. The determination shall be final unless the employing unit shall within 30 days after mailing of notice of determination to the employing unit's last known address file a written appeal. Proceedings on the appeal shall be in accordance with section 268.12, subdivision 13.

(F) (e) Notwithstanding subdivision 19, the commissioner may, after as the result of any determination of or decision regarding succession or nonsuccession, recompute the rate of the employer all employers affected by the determination or decision for any prior year, including the year of the acquisition or succession and subsequent years, that is affected by the transfer or nontransfer of part or all of the experience rating record under this subdivision. This paragraph does not apply to rates that have become final in accordance with subdivision 19 prior to the filing of a written request to file an application for the transfer of a severable portion of the experience rating record as provided in paragraph (b).

Sec. 18. Minnesota Statutes 1986, section 268.06, subdivision 24, is amended to read:

Subd. 24. ~~REASSIGNMENT~~ VOLUNTARY CONTRIBUTIONS. Notwithstanding any inconsistent provisions of law any employer who has been assigned a contribution rate pursuant to subdivisions 4, 6, and 8 of this section may, for the calendar year 1967, or any calendar year thereafter, upon the voluntary payment of an amount equivalent to any portion or all of the benefits charged to the employer's account during the period ending June 30 of the preceding year used for the purpose of computing an employer's experience ratio as authorized by said subdivisions 4, 6, and 8, obtain a cancellation of benefits charged to the account during such period equal to such payment so voluntarily made. Upon the payment of such voluntary contribution, plus a surcharge of 25 percent of such benefit charged, within the applicable period prescribed by the provisions of this subdivision, the commissioner shall cancel the benefits equal to such payment, excluding the 25 percent surcharge, so voluntarily made and compute a new experience ratio for such employer. The employer then shall be assigned the contribution rate applicable to the category within which the recomputed experience ratio is included. Such voluntary payments may be made only during the 30-day period immediately following the date of mailing to the employer of the notice of contribution rate as prescribed in this section; provided that the commissioner may extend this period if the commissioner finds that the employer's failure to make such payment within such 30-day period was for good cause; and provided further that notwithstanding any of the foregoing provisions of this subdivision, in no event shall any new experience ratio be computed for any employer or a contribution rate be reduced as a result of any such voluntary payment which is made after the expiration of the 120-day period commencing with the first day of the calendar year for which such rate is effective. Any adjustments under this subdivision shall be used only in the form of credits against accrued or future contributions. Voluntary contributions made within the required time limits will not be refunded unless a request is made in writing at the time of payment that the department refund the voluntary contribution if it does not result in a lower rate.

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When all or a part of the benefits charged to an employer's account are for the unemployment of 75 percent or more of the employees in an employing unit and the unemployment is caused by damages to the unit by fire, flood, wind or other act of God, the employer may obtain a cancellation of benefits incurred because of that unemployment in the manner provided by this subdivision without being subject to the surcharge of 25 percent otherwise required.

Sec. 19. Minnesota Statutes 1986, section 268.07, subdivision 3, is amended to read:

Subd. 3. WHEN WAGE CREDITS ARE NOT AVAILABLE. (1) No individual may receive benefits in a benefit year unless, subsequent to the beginning of the next preceding benefit year during which benefits were received, the individual performed service in insured work as defined in section 268.04, subdivision 17, and earned remuneration for the service in an amount equal to not less than the minimum wage credits required to qualify for benefits.

(2) No employer who provided 90 percent or more of the wage credits in a claimant's base period shall be charged for benefits based upon earnings of the claimant during a subsequent base period unless the employer has employed the claimant in any part of the subsequent base period.

(3) Wages paid by an employing unit may not be used for benefit purposes by any individual claimant who (a) individually ~~or~~, jointly, or in combination with ~~a~~ the claimant's spouse, parent, or child owns or controls directly or indirectly 25 percent or more interest in the employing unit; or (b) is the spouse, parent, or minor child of any individual who owns or controls directly or indirectly 25 percent or more interest in the employing unit; and (c) is not permanently separated from employment.

This clause is effective when the individual has been paid four times the individual's weekly benefit amount in the current benefit year.

(4) Wages paid in seasonal employment, as defined in subdivision 2a, are not available for benefit purposes during weeks in which there is no seasonal employment available with the employer.

Sec. 20. Minnesota Statutes 1986, section 268.08, is amended by adding a subdivision to read:

Subd. 1a. BENEFITS DUE DECEASED PERSONS. Upon the death of any claimant for benefits, and in the event it is found by the commissioner that benefits have accrued and are due and payable to that claimant and remain wholly or partially unpaid at the time of the claimant's death, or in the event there have been issued and unpaid one or more benefit checks, those checks may, upon application therefor, be paid to the duly qualified administrator or executor of the estate of the deceased claimant. In the event that no administrator or executor is appointed to administer the estate of the deceased, if any, the benefits may, upon the order and direction of the commissioner be paid to any person designated by the commissioner in the following order: (1) the surviving spouse, (2) the surviving child or children, or (3) the surviving parent or parents.

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A person seeking payment under this subdivision shall complete an affidavit on a form prescribed by the department and the payment of benefits to a person pursuant to an affidavit under this subdivision shall discharge the obligations of the department to the claimant to the extent of the payment, and no other person shall claim or assert any right with respect thereto.

Sec. 21. Minnesota Statutes 1986, 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 the individual is receiving, has received, or has filed a claim for remuneration in an amount equal to or in excess of the individual's 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 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 immediately following the last day of work but not to exceed 28 calendar days; or

(2) vacation allowance paid directly by the employer for a period of requested vacation, including vacation periods assigned by the employer under the provisions of a collective bargaining agreement, or uniform vacation shutdown; 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 except that this does not apply to an individual who is receiving temporary partial compensation pursuant to section 176.101, subdivision 3k; or

(4) 50 percent of the pension payments from any fund, annuity or insurance maintained or contributed to by a base period employer including the armed forces of the United States if the employee contributed to the fund, annuity or insurance and all of the pension payments if the employee did not contribute to the fund, annuity or insurance; or

(5) 50 percent of 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; or

(6) holiday pay, in excess of \$25.

Provided, that if such remuneration is less than the benefits which would otherwise be due under sections 268.03 to 268.24, the individual 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 the individ-

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ual is not entitled to such benefits, this provision shall not apply. If the computation of reduced benefits, required by this subdivision, is not a whole dollar amount, it shall be rounded down to the next lower dollar amount.

Sec. 22. Minnesota Statutes 1986, section 268.08, subdivision 3a, is amended to read:

Subd. 3a. **RECEIPT OF BACK PAY.** Back pay received by an individual with respect to any weeks of unemployment occurring in the 104 weeks immediately preceding the payment of the back pay shall be deducted from benefits paid for those weeks.

The amount deducted shall not reduce the benefits for which the individual is otherwise eligible for that week below zero. If the amount of benefits after the deduction of back pay is not a whole dollar amount, it shall be rounded to the next lower dollar.

If a deduction from back pay is paid to the fund for benefits deductible under this subdivision, the payment the back pay awarded the individual is reduced by benefits paid, the amounts withheld shall be: (a) shall be paid by the employer into the fund within 30 days of the award and are subject to the same collection procedures that apply to past due contributions under this chapter; (b) applied to benefit overpayments resulting from the payment of the back pay; ~~(b)~~ (c) credited to the individual's maximum amount of benefits payable in a benefit year which includes the weeks of unemployment for which back pay was deducted; and (e). Benefit charges for those weeks shall be removed from the employer's account as of the calendar quarter in which the fund receives payment.

Payments to the fund under this subdivision are made by the employer on behalf of the individual and are not voluntary contributions under section 268.06, subdivision 24.

Sec. 23. Minnesota Statutes 1986, section 268.09, subdivision 1, is amended to read:

Subdivision 1. **DISQUALIFYING CONDITIONS.** An individual separated from any employment under ~~clause (1); (2); or (3)~~ paragraph (a), (b), or (d) shall be disqualified for waiting week credit and benefits. For separations under ~~clauses (1)~~ paragraphs (a) and (2) (b), the disqualification shall continue until four calendar weeks have elapsed following the individual's separation and the individual has earned four times the individual's weekly benefit amount in insured work.

~~(1)~~ (a) **VOLUNTARY LEAVE.** The individual voluntarily and without good cause attributable to the employer discontinued employment with such employer. For the purpose of this ~~clause~~ paragraph, a separation from employment by reason of its temporary nature or for inability to pass a test or for inability to meet performance standards necessary for continuation of employment ~~or based solely on a provision in a collective bargaining agreement by which an individu-~~

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al has vested discretionary authority in another to act in behalf of the individual shall not be deemed voluntary.

A separation shall be for good cause attributable to the employer if it occurs as a consequence of sexual harassment. Sexual harassment means unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact or other conduct or communication of a sexual nature when: (1) the employee's submission to such conduct or communication is made a term or condition of the employment, (2) the employee's submission to or rejection of such conduct or communication is the basis for decisions affecting employment, or (3) such conduct or communication has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment and the employer knows or should know of the existence of the harassment and fails to take timely and appropriate action.

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

(c) **EXCEPTIONS TO DISQUALIFICATION.** An individual shall not be disqualified under ~~clauses (1) and (2)~~ paragraphs (a) and (b) of this subdivision under any of the following conditions:

~~(a)~~ (1) the individual voluntarily discontinued employment to accept work offering substantially better conditions of work or substantially higher wages or both;

~~(b)~~ (2) the individual is separated from employment due to personal, serious illness provided that such individual has made reasonable efforts to retain employment;

An individual who is separated from employment due to the individual's illness of chemical dependency which has been professionally diagnosed or for which the individual has voluntarily submitted to treatment and who fails to make consistent efforts to maintain the treatment the individual knows or has been professionally advised is necessary to control that illness has not made reasonable efforts to retain employment.

~~(c)~~ (3) the individual accepts work from a base period employer which involves a change in 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 employment due to reasons which would have caused the work to be unsuitable under the provision of said subdivision 2;

~~(d)~~ (4) the individual left employment because of reaching mandatory retirement age and was 65 years of age or older;

~~(e)~~ (5) the individual is terminated by the employer because the individual

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gave notice of intention to terminate employment within 30 days. This exception shall be effective only 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 the individual receives the individual's normal wage or salary which is equal to or greater than the weekly benefit amount;

(~~6~~) (6) the individual is separated from employment due to the completion of an apprenticeship program, or segment thereof, approved pursuant to chapter 178;

(~~6~~) (7) the individual voluntarily leaves part-time employment with a base period employer while continuing full-time employment if the individual attempted to return to part-time employment after being separated from the full-time employment, and if substantially the same part-time employment with the base period employer was not available for the individual;

(8) the individual is separated from employment based solely on a provision in a collective bargaining agreement by which an individual has vested discretionary authority in another to act on behalf of the individual. Except as provided in paragraph (d), separations from part-time employment will not be disqualifying when the claim is based on sufficient full-time employment to establish a valid claim from which the claimant has been separated for nondisqualifying reasons.

(~~3~~) (d) **DISCHARGE FOR GROSS MISCONDUCT.** The individual was discharged for gross misconduct connected with work or gross misconduct which interferes with and adversely affects the individual's employment. For a separation under this clause, the commissioner shall impose a total disqualification for the benefit year and cancel all of the wage credits from the last employer from whom the individual was discharged for gross misconduct connected with work.

For the purpose of this ~~clause~~ paragraph "gross misconduct" is defined as misconduct involving assault and battery or the malicious destruction of property or arson or sabotage or embezzlement or any other act, including theft, the commission of which amounts to a felony or gross misdemeanor. For an employee of a health care facility, gross misconduct also includes misconduct involving an act of patient or resident abuse as defined in section 626.557, subdivision 2, clause (d).

If an individual is convicted of a felony or gross misdemeanor for the same act or acts of misconduct for which the individual was discharged, the misconduct is conclusively presumed to be gross misconduct if it was connected with the individual's work.

(4) (e) **LIMITED OR NO CHARGE OF BENEFITS.** Benefits paid subsequent to an individual's separation under any of the foregoing ~~clauses~~ paragraphs, excepting ~~clauses (2)(e) and (2)(e) paragraphs (c)(3), (c)(5), and (c)(8)~~, shall not be used as a factor in determining the future contribution rate of the employer from whose employment such individual separated.

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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 was not accepted or whose offer of re-employment was refused solely due to the distance of the available work from the individual's residence, the individual's own serious illness ~~or~~, the individual's other employment at the time of the offer, or if the individual is in training with the approval of the commissioner.

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

(6) (g) **DISCIPLINARY SUSPENSIONS.** An individual shall be disqualified for waiting week credit and benefits for the duration of any disciplinary suspension of 30 days or less resulting from the individual's own misconduct. Disciplinary suspensions of more than 30 days shall constitute a discharge from employment.

Sec. 24. Minnesota Statutes 1986, section 268.09, subdivision 3, is amended to read:

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

(a) (1) For each week during which the strike or labor dispute is in progress; or

(b) (2) For one week following the commencement of the strike or labor dispute if the individual 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.

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

(c) For the purpose of this 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) (1) 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

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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; or

(b) (2) who becomes unemployed because of a lockout; or

(e) (3) who is dismissed during the period of negotiation in any labor dispute and prior to the commencement of a strike.

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

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

(f) 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 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 the individual was employed.

Sec. 25. Minnesota Statutes 1986, 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, 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, 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 include the employee's name, social security number, and total wages paid to the employee~~ For the purpose of determining compliance with this chapter, or for the purpose of collection of any amounts due under this chapter, the commissioner or any authorized representative of the commissioner has the power to examine, or cause to be examined or copied, any books, correspondence, papers, records, or memoranda which are relevant to making these determinations, whether the books, correspondence, papers, records, or memoranda are

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the property of or in the possession of the employing unit or any other person or corporation at any reasonable time and as often as may be necessary.

(2) The commissioner or any other duly authorized representative of the commissioner may cause to be made such summaries, compilations, photographs, duplications, or reproductions of any records, reports, or transcripts thereof as the commissioner 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~~ this chapter, if the original record or records would have been admissible therein. Notwithstanding any restrictions contained in section 16B.50, 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 economic security law.

(3) 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 the commissioner's custody, which are more than 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~~ this chapter, 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 the commissioner's custody which has been photographed, duplicated, or reproduced ~~in the manner provided in clause (2).~~

(4) 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 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 on any claim for benefits after the expiration of two years from the date of filing such claim.

Sec. 26. Minnesota Statutes 1986, section 268.121, is amended to read:

268.121 WAGE REPORTING.

Beginning on April 1, 1984, each employer subject to this chapter shall provide the commissioner with a quarterly report of the wages, as defined in section 268.04, subdivision 25, paid to each employee of that employer covered by this chapter. ~~The commissioner shall provide the legislature with recommendations for statutory changes to fully implement this section no later than January 1, 1983~~ The report must include the employee's name, social security number, and total wages paid to the employee. The report shall be due and filed at the same time as the contribution report in accordance with rules established by the commissioner for filing of quarterly contribution reports.

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Sec. 27. Minnesota Statutes 1986, section 268.15, subdivision 3, is amended to read:

Subd. 3. **CONTINGENT ACCOUNT.** There is hereby created in the state treasury a special account, to be known as the economic security contingent account, which shall not lapse nor revert to any other fund. Such account shall consist of all moneys appropriated therefor by the legislature, all moneys in the form of interest and penalties collected pursuant to section 268.16 and all moneys received in the form of voluntary contributions to this account and interest thereon. All moneys in such account shall be supplemental to all federal moneys that would be available to the commissioner but for the existence of this account. Moneys in this account are hereby appropriated to the commissioner and shall be ~~expended in accordance with the provisions of section 3.30, in connection with the administration of sections 268.03 to 268.24~~ available to the commissioner for such expenditures as the commissioner may deem necessary in connection with the administration of sections 268.04 to 268.24. Whenever the commissioner expends moneys from said contingent account for the proper and efficient administration of the Minnesota economic security law for which funds have not yet been made available by the federal government, such moneys so withdrawn from the contingent account shall be replaced as hereinafter provided. Upon the deposit in the economic security administration fund of moneys which are received in reimbursement of payments made as above provided for said contingent account, the commissioner shall certify to the state treasurer the amount of such reimbursement and thereupon the state treasurer shall transfer such amount from the economic security administration fund to said contingent account. All moneys in this account shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for the other special accounts in the state treasury. The state treasurer shall be liable on the treasurer's official bond for the faithful performance of duties in connection with the economic security contingent account provided for herein. Notwithstanding anything to the contrary contained herein, on June 30 of each year, except 1982, all amounts in excess of \$300,000 in this account shall be paid over to the unemployment compensation fund established under section 268.05 and administered in accordance with the provisions set forth therein.

Sec. 28. Minnesota Statutes 1986, section 268.16, is amended by adding a subdivision to read:

Subd. 1a. INTEREST ON JUDGMENTS. Notwithstanding section 549.09, if judgment is or has been entered upon any past due contribution or reimbursement which has not been paid within the time specified by law for payment, the unpaid judgment shall bear interest at the rate specified in subdivision 1 until the date of payment. The rate will be effective after July 1, 1987, on any unpaid judgment balances and all new judgments docketed after that date.

Sec. 29. Minnesota Statutes 1986, section 268.16, subdivision 2, is amended to read:

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Subd. 2. **REPORTS; DELINQUENCIES; PENALTIES.** (1) (a) Any employer who knowingly fails to make and submit to the department of jobs and training any contribution report of wages paid by or due from the employer for insured work in the manner and at the time such the report is required by rules prescribed by the commissioner shall pay to the department of jobs and training for the contingent account a penalty in the amount of 1-1/2 percent of contributions accrued during the period for which such the report is required, for each month from and after such the due date until such the report is properly made and submitted to the department of jobs and training. In no case shall the amount of the penalty imposed hereby be less than \$5 per month. The maximum penalty imposed hereby shall be \$25 or the amount determined at the rate of 1-1/2 percent per month, whichever is greater. ~~Any employing unit which fails to make and submit to the commissioner any report, other than one of wages paid or payable for insured work, as and when required by the rules of the commissioner, shall be subject to a penalty in the sum of \$10 payable to the department of jobs and training for the contingent account. All such penalties shall be in addition to interest and any other penalties provided for by sections 268.03 to 268.24 and shall be collected as provided by section 268.161.~~

(2) (b) If any employing unit required by sections 268.03 to 268.24 to make and submit contribution reports shall fail to do so within the time prescribed by these sections or by rules under the authority thereof, or shall make, willfully or otherwise, an incorrect, false or fraudulent contribution report, it shall, on the written demand of the commissioner, make such contribution report, or corrected report, within ten days after the mailing of such written demand and at the same time pay the whole contribution, or additional contribution, due on the basis thereof. If such employer shall fail within that time to make such report, or corrected report, the commissioner shall make a report, or corrected report, from the commissioner's own knowledge and from such information as the commissioner can obtain through testimony, or otherwise, and assess a contribution on the basis thereof, which contribution, plus penalties and interest which thereafter accrued (less any payments theretofore made) shall be paid within ten days after the commissioner has mailed to such employer a written notice of the amount thereof and demand for its payment. Any such contribution report or assessment made by the commissioner on account of the failure of the employer to make a report or corrected report shall be prima facie correct and valid, and the employer shall have the burden of establishing its incorrectness or invalidity in any action or proceeding in respect thereto. Whenever such delinquent employer shall file a report or corrected report, the commissioner may, on finding it substantially correct, substitute it for the commissioner's report.

(c) Any employer who fails to file the wage detail report required by section 268.121 shall pay to the department for each month the report is delinquent a penalty of one-half of one percent of total wages paid. The penalty shall not be assessed if the wage detail report is properly made and filed within 30 days after a demand for the report is mailed to the employer's address of record. In no case shall the amount of the penalty, if assessed, be less than \$25. Penalties due under this subdivision may be waived where good cause for late filing is found by the commissioner.

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(d) Any employer who files the wage detail report required by section 268.121 but knowingly fails to include any of the required information or knowingly enters erroneous information shall be subject to a penalty of \$25 for each individual for whom the information is missing or erroneous.

(e) Any employing unit which fails to make and submit to the commissioner any report, other than a contribution report or wage detail report, as and when required by rule, shall be subject to a penalty of \$50 payable to the department.

(f) Penalties provided for in paragraphs (a), (c), (d), and (e) are in addition to interest and any other penalties imposed by sections 268.03 to 268.24 and shall be collected as provided by section 268.161 and shall be credited to the contingent account.

Sec. 30. Minnesota Statutes 1986, section 268.16, is amended by adding a subdivision to read:

Subd. 3a. COSTS. Any employing unit which fails to make and submit reports or pay any contributions or reimbursement when due is liable to the department for any recording fees, sheriff fees, or litigation costs incurred in the collection of the amounts due or obtaining the reports.

If any check or money order, in payment of any amount due under this chapter, is not honored when presented for payment, the employing unit will be assessed a fee of \$20 which is in addition to any other fees provided by this chapter. The fee shall be assessed regardless of the amount of the check or money order or the reason for nonpayment with the exception of processing errors made by a financial institution.

Costs due under this subdivision shall be paid to the department and credited to the administration fund.

Sec. 31. Minnesota Statutes 1986, section 268.161, subdivision 1, is amended to read:

Subdivision 1. LIEN. (a) Any contributions, benefit overpayments, or reimbursements due under sections 268.03 to 268.24 this chapter and interest and penalties imposed with respect thereto, shall become a lien upon all the property, within this state, both real and personal, of the person liable therefor, except the person's homestead, from and after the filing by the commissioner of a notice of lien in the office of the county recorder of the county in which the property is situated, or in the case of personal property belonging to an individual who is not a resident of this state, or which is a corporation, partnership, or other organization, in the office of the secretary of state. When the filing of the notice of lien is made in the office of the county recorder, the fee for filing and indexing shall be as prescribed in sections 272.483 and 272.484 the date of assessment of the contribution, benefit overpayment, or reimbursement. The term "date of assessment" means the date a report was due or the payment due date of the notice of benefits charged to a reimbursable account.

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

The lien created under this section shall become effective with respect to personal property from and after the date of filing by the commissioner of a notice of the lien describing the property to which the lien attaches in the office of the county recorder of the county in which the commissioner believes the property is located at the time the lien is filed, and with the secretary of state (b) The lien imposed by this section is not enforceable against any purchaser, mortgagee, pledgee, holder of a uniform commercial code security interest, mechanic's lien, or judgment lien creditor, until a notice of lien has been filed by the commissioner in the office of the county recorder of the county in which the property is situated, or in the case of personal property belonging to an individual who is not a resident of the state, or which is a corporation, partnership, or other organization, in the office of the secretary of state. When the filing of the notice of lien is made in the office of the county recorder, the fee for filing and indexing shall be as prescribed in sections 272.483 and 272.484.

(c) The lien imposed on personal property by this section, even though properly filed, shall not be valid as is not enforceable against a purchaser with respect to tangible personal property purchased at retail or as against the personal property listed as exempt in sections 550.37, 550.38 and 550.39.

(d) A notice of tax lien filed pursuant to this section has priority over any security interest arising under chapter 336, article 9, which is perfected prior in time to the lien imposed by this section, but only if:

(1) the perfected security interest secures property not in existence at the time the notice of tax lien is filed; and

(2) the property comes into existence after the 45th day following the day on which the notice of tax lien is filed, or after the secured party has actual notice or knowledge of the tax lien filing, whichever is earlier.

(e) The lien imposed by this section shall be enforceable from the time the lien arises and for ten years from the date of filing the notice of lien. A notice of lien may be renewed by the commissioner before the expiration of the ten-year period for an additional ten years. The delinquent employer must receive notice of the renewal.

(f) The lien imposed by this section shall be enforceable by levy as authorized in subdivision 8 or by judgment lien foreclosure as authorized in chapter 550.

Sec. 32. Minnesota Statutes 1986, section 268.161, is amended by adding a subdivision to read:

Subd. 1a. LIMITATION FOR HOMESTEAD PROPERTY. The lien imposed by this section is a lien upon property defined as homestead property in chapter 510. The lien may be enforced only upon the sale, transfer, or conveyance of the homestead property.

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

Sec. 33. Minnesota Statutes 1986, section 268.161, subdivision 8, is amended to read:

Subd. 8. **LEVY.** (a) If any contribution or reimbursement payable to the department is not paid when due, the amount may be collected by the commissioner, a duly authorized representative, or by the sheriff of any county to whom the commissioner has issued a warrant, who may levy upon all property and rights of property of the person liable for the contribution or reimbursement, (except that which is exempt from execution pursuant to section 550.37), or property on which there is a lien provided by subdivision 1. The terms "contribution or reimbursement" shall include any penalty, interest, and costs. The term "levy" includes the power of distraint and seizure by any means. Before a levy is made or warrant issued, notice and demand for payment of the amount due shall be given to the person liable for the contribution or reimbursement at least ten days prior to the levy or issuing of a warrant.

(b) Upon the commissioner issuing a warrant, the sheriff shall proceed within 60 days to levy upon the rights to property of the employer within the employer's county, except the homestead and household goods of the employer and property of the employer not liable to attachment, garnishment, or sale on any final process issued from any court under the provisions of section 550.37, and shall sell so much thereof as is required to satisfy the contribution, reimbursement, interest, and penalties, together with the commissioner's costs. The sales shall, as to their manner, be governed by the law applicable to sales of like property on execution issued against property upon a judgment of a court of record. The proceeds of the sales, less the sheriff's costs, shall be turned over to the commissioner, who shall retain a part thereof as is required to satisfy the contribution, reimbursement, interest, penalties, and costs, and pay over any balance to the employer.

(c) If the commissioner has reason to believe that collection of the contribution or reimbursement is in jeopardy, notice and demand for immediate payment of the amount may be made by the commissioner. If the contribution or reimbursement is not paid, the commissioner may proceed to collect by levy or issue a warrant without regard to the ten-day period provided herein.

(d) In making the execution of the levy and in collecting the contribution or reimbursement due, the commissioner shall have all of the powers provided in chapter 550 and in any other law for purposes of effecting an execution against property in this state. The sale of property levied upon and the time and manner of redemption therefrom shall be as provided in chapter 550. The seal of the court, subscribed by the court administrator, as provided in section 550.04, shall not be required. The levy for collection of contributions or reimbursements may be made whether or not the commissioner has commenced a legal action for collection of the amount.

(e) Where a jeopardy assessment or any other assessment has been made by the commissioner, the property seized for collection of the contribution or reim-

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bursement shall not be sold until any determination of liability, rate or benefit charges has become final. No sale shall be made unless the contribution or reimbursement remain unpaid for a period of more than 30 days after the determination becomes final. Seized property may be sold at any time if:

(1) the employer consents in writing to the sale; or

(2) the commissioner determines that the property is perishable or may become greatly reduced in price or value by keeping, or that the property cannot be kept without great expense.

(f) Where a levy has been made to collect contributions or reimbursements pursuant to this subdivision and the property seized is properly included in a formal proceeding commenced under sections 524.3-401 to 524.3-505 and maintained under full supervision of the court, the property shall not be sold until the probate proceedings are completed or until the court so orders.

(g) The property seized shall be returned by the commissioner if the owner gives a surety bond equal to the appraised value of the owner's interest in the property, as determined by the commissioner, or deposits with the commissioner security in a form and amount as the commissioner deems necessary to insure payment of the liability, but not more than twice the liability.

(h) Notwithstanding any other law to the contrary, if a levy or sale pursuant to this section would irreparably injure rights in property which the court determines to be superior to rights of the state in the property, the district court may grant an injunction to prohibit the enforcement of the levy or to prohibit the sale.

(i) Any person who fails or refuses to surrender without reasonable cause any property or rights to property subject to levy upon demand by the commissioner shall be personally liable to the department in an amount equal to the value of the property or rights not so surrendered, but not exceeding the amount of contribution or reimbursement for the collection of which the levy has been made. Any amount recovered under this subdivision shall be credited against the contribution or reimbursement liability for the collection of which the levy was made. The term "person" includes an officer or employee of a corporation or a member or employee of a partnership who, as an officer, employee, or member is under a duty to surrender the property or rights to property or to discharge the obligation.

(j) Any action taken by the commissioner pursuant to this subdivision shall not constitute an election by the department to pursue a remedy to the exclusion of any other remedy.

(k) After the commissioner has seized the property of any person, that person may, upon giving 48 hours notice to the commissioner and to the court, bring a claim for equitable relief before the district court for the release of the property to the employer upon terms and conditions as the court may deem equitable.

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(l) Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made who, upon demand by the commissioner, surrenders the property or rights to property or who pays a liability under this subdivision shall be discharged from any obligation or liability to the person liable for the payment of the delinquent contribution or reimbursement with respect to the property or rights to property so surrendered or paid.

(m) Notwithstanding any other provisions of law to the contrary, the notice of any levy authorized by this section may be served by certified or registered mail or by delivery by an employee or agent of the department of jobs and training.

(n) It shall be lawful for the commissioner to release the levy upon all or part of the property or rights to property levied upon if the commissioner determines that the release will facilitate the collection of the liability, but the release shall not operate to prevent any subsequent levy. If the commissioner determines that property has been wrongfully levied upon, it shall be lawful for the commissioner to return:

- (1) the specific property levied upon, at any time; or
- (2) an amount of money equal to the amount of money levied upon, at any time before the expiration of nine months from the date of levy.

(o) Notwithstanding section 52.12, a levy by the commissioner made pursuant to the provisions of this section upon an employer's funds on deposit in a financial institution located in this state, shall have priority over any unexercised right of setoff of the financial institution to apply the levied funds toward the balance of an outstanding loan or loans owed by the employer to the financial institution. A claim by the financial institution that it exercised its right to setoff prior to the levy by the commissioner must be substantiated by evidence of the date of the setoff, and shall be verified by the sworn statement of a responsible corporate officer of the financial institution. Furthermore, for purposes of determining the priority of any levy made under this section, the levy shall be treated as if it were an execution made pursuant to chapter 550.

Sec. 34. Minnesota Statutes 1986, section 268.161, subdivision 9, is amended to read:

Subd. 9. **PERSONAL LIABILITY.** Any officer, director, or any employee having 20 percent ownership interest of a corporation which is an employer under sections 268.03 to 268.24 who has control of or supervision over the filing of and responsibility for filing contribution reports or of making payment of contributions under these sections, and who willfully fails to file the reports or to make payments as required, shall be personally liable for contributions or reimbursement, including interest, penalties, and costs in the event the corporation does not pay to the department those amounts for which the employer is liable.

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Any personal representative of the estate of a decedent or fiduciary who voluntarily distributes the assets filed therein without reserving a sufficient amount to pay the contributions, interest, and penalties due pursuant to this chapter shall be personally liable for the deficiency.

The personal liability of any person as provided herein shall survive dissolution, reorganization, bankruptcy, receivership, or assignment for the benefit of creditors. For the purposes of this subdivision, all wages paid by the corporation shall be considered earned from the person determined to be personally liable.

An official designated by the commissioner shall make an initial determination as to the personal liability under this section. The determination shall be final unless the person found to be personally liable shall within 30 days after mailing of notice of determination to the person's last known address file a written appeal. Proceedings on the appeal shall be conducted in the same manner as an appeal from a determination of employer liability under section 268.12, subdivision 13.

Sec. 35. [268.162] LIABILITY OF SUCCESSOR.

Subdivision 1. ACQUISITION OF ORGANIZATION, TRADE, OR BUSINESS. Any individual or organization, whether or not an employing unit, which acquires all or part of the organization, trade, or business or all or part of the assets thereof from an employer, is jointly and severally liable, in an amount not to exceed the reasonable value of that part of the organization, trade, or business or assets acquired, for the contributions due and unpaid by the employer, and the amount of liability shall, in addition, be a lien against the property or assets so acquired which shall be prior to all other unrecorded liens.

Subd. 2. REASONABLE VALUE. An official, designated by the commissioner, upon the official's own motion or upon application of the potential successor, shall determine the reasonable value of the organization, trade, or business or assets acquired by the successor based on available information. The determination shall be final unless the successor, within 30 days after the mailing of notice of the determination to the successor's last known address, files a written appeal from it. Any appeals of a determination under this subdivision shall be conducted in the same manner as an appeal under section 268.12, subdivision 13.

Subd. 3. STATEMENT OF AMOUNT DUE. Prior to the date of acquisition, the commissioner shall furnish the potential successor with a written statement of the predecessor's contributions due and unpaid, on record as of the date of issuance, only upon the written request of the potential successor and the written release of the predecessor. No release is required after the date of acquisition.

Subd. 4. ADDITIONAL REMEDY. The remedy provided by this section is in addition to all other existing remedies against the employer or his successor

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and is not an election by the department to pursue this remedy to the exclusion of any other remedy.

Sec. 36. [268.163] LIABILITY OF THIRD PARTIES TO ASSURE PAYMENT OF AMOUNTS DUE FROM CONTRACTORS, SUBCONTRACTORS, AND EMPLOYEE LEASING FIRMS.

Subdivision 1. CONTRACTORS. A contractor, who is or becomes an employer under this chapter, who contracts with any subcontractor, who is or becomes an employer under this chapter, is directly liable for the payment of all the contributions, interest, penalties, and collection costs which are due or become due from the subcontractor with respect to wages paid for employment on the contract, unless the contractor requires the subcontractor to provide a good and sufficient bond guaranteeing the payment of all contributions, interest, penalties, and collection costs which may become due. The words "contractor" and "subcontractor" includes individuals, partnerships, firms, or corporations, or other association of persons engaged in the construction industry.

Subd. 2. EMPLOYEE LEASING FIRMS. A person whose workforce consists of 50 percent or more of workers provided by employee leasing firms, is directly liable for the payment of all the contributions, penalties, interest, and collection costs which are due or become due from wages paid for employment on the contract, unless the contract requires the employee leasing firm to provide a good and sufficient bond guaranteeing the payment of all contributions, penalties, interest, and collection costs which may become due. "Employee leasing firm" means an employing unit that provides its employees to other firms, persons, and employing units without severing its employer-employee relationship with the worker for the services performed for the lessee.

Subd. 3. DETERMINATION OF LIABILITY. An official designated by the commissioner shall make an initial determination as to the liability under this section. The determination shall be final unless the contractor or person found to be liable files a written appeal within 30 days after mailing of notice of determination to the person's last known address. Proceedings on the appeal shall be conducted in the same manner as an appeal from a determination of employer liability under section 268.12, subdivision 13.

Sec. 37. [268.164] UNEMPLOYMENT TAX CLEARANCES; ISSUANCES OF LICENSES.

Subdivision 1. UNEMPLOYMENT CLEARANCE REQUIRED. The state or a political subdivision of the state may not issue, transfer, or renew a license for the conduct of any profession, trade, or business, if the commissioner notifies the licensing authority that the applicant owes the state delinquent contributions, reimbursements, or benefit overpayments. The commissioner may not notify the licensing authority unless the applicant owes \$500 or more to the unemployment compensation fund. A licensing authority that has received a notice from the commissioner may issue, transfer, or renew the applicant's license only if (a) the commissioner issues an unemployment tax clearance certificate; and (b) the commissioner or the applicant forwards a copy of the clearance to the licensing authority.

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

Subd. 2. ISSUANCE OF CLEARANCE. The commissioner may issue an unemployment tax clearance certificate only if (a) the applicant does not owe the state any delinquent contributions, reimbursements, or benefit overpayments; or (b) the applicant has entered into a payment agreement to liquidate the delinquent contributions, reimbursements, or benefit overpayments and is current with all the terms of that payment agreement.

For the purposes of this section, "applicant" means: (a) an individual if the license is issued to or in the name of an individual or the corporation or partnership if the license is issued to or in the name of a corporation or partnership; or (b) an officer of a corporation or a member of a partnership who is liable for the delinquent contributions, reimbursements, or benefit overpayments.

Subd. 3. NOTICE AND RIGHT TO HEARING. At least 30 days before the commissioner notifies a licensing authority pursuant to subdivision 1, a notice and demand for payment of the amount due shall be given to the applicant. If the applicant disputes the amount due, the applicant must request a hearing in writing within 30 days after the mailing of the notice and demand for payment to the applicant's last known address. Proceedings on the appeal of the amount due shall be conducted in the same manner as an appeal from a determination of employer liability under section 268.12, subdivision 13.

Subd. 4. LICENSING AUTHORITY; DUTIES. Upon request of the commissioner, the licensing authority must provide the commissioner with a list of all applicants, including the name, address, business name and address, social security number, and business identification number of each applicant. The commissioner may request from a licensing authority a list of the applicants no more than once each calendar year. Notwithstanding section 268.12, the commissioner may release information necessary to accomplish the purpose of this section.

Subd. 5. OTHER REMEDIES. Any action taken by the commissioner pursuant to this section is not an election by the commissioner to pursue a remedy to the exclusion of any other remedy.

Sec. 38. [268.165] WITHHOLDING OF BENEFITS FOR UNPAID CONTRIBUTIONS.

Subdivision 1. WITHHOLDING OF UNEMPLOYMENT BENEFITS. Notwithstanding section 268.17, the commissioner may deduct and withhold up to 50 percent of each unemployment compensation payment payable to an individual under this chapter for unpaid contributions, interest, penalties, and costs which the individual has been determined liable to pay.

Subd. 2. EFFECT OF PAYMENTS. Any amounts deducted and withheld under this section shall be treated as if paid to the individual as benefits and paid by the individual to the department in satisfaction of the individual's delinquent contributions, interest, penalties, and costs.

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Subd. 3. PRIORITY OF WITHHOLDING. Any amounts deducted and withheld under this section have priority over any other levy, garnishment, attachment, execution, or setoff, except for the recoupment of benefit overpayments allowed under section 268.18.

Sec. 39. [268.166] CANCELLATION OF DELINQUENT CONTRIBUTIONS.

Notwithstanding section 10.12, the commissioner may cancel as uncollectible any contributions, reimbursements, penalties, or the interest or costs thereon, which remain unpaid six years after the amounts have been determined by the commissioner to be due and payable. This section does not prohibit the commissioner from collecting any amounts secured by a notice of lien or a judgment which are older than six years.

Sec. 40. Minnesota Statutes 1986, section 268.18, subdivision 1, is amended to read:

Subdivision 1. **ERRONEOUS PAYMENTS.** Any claimant for benefits who, by reason of the claimant's own mistake or through the error of any individual engaged in the administration of sections 268.03 to 268.24 or because of a determination or redetermination issued pursuant to section 268.10, subdivision 2, has received any sum as benefits to which the claimant was not entitled under these sections, shall promptly return such benefits in cash to the nearest office of the Minnesota department of jobs and training. If such claimant fails to return such benefits, the department of jobs and training shall, as soon as it discovers such erroneous payment, determine the amount thereof and notify said individual to return the same. Unless the claimant files a written appeal with the department of jobs and training within 15 days after the mailing of the notice of determination to the claimant's last known address or personal delivery of the notice, the determination shall become final. If the claimant files an appeal with the department in writing within the time aforesaid the matter shall be set for hearing before a referee 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. The commissioner of the department of jobs and training is hereby authorized to deduct from any future benefits payable to the claimant under these sections in either the current or any subsequent benefit year an amount equivalent to the overpayment determined, except that no single deduction shall exceed 50 percent of the amount of the payment from which the deduction is made, or the overpayment may be collected ~~without interest by civil action in the name of the commissioner~~ the same as contributions or reimbursements under section 268.161. If a claimant has been overpaid benefits under the law of another state due to error and that state certifies to the department the facts involved and that the individual is liable under its law to repay the benefits and requests the department to recover the overpayment, the commissioner is authorized to deduct from future benefits payable to the claimant in either the current or any subsequent benefit year an amount equivalent to the amount of overpayment determined by that state, except that no single

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deduction shall exceed 50 percent of the amount of the payment from which the deduction is made. Benefits paid for weeks more than three years prior to the discovery of error are not erroneous payments.

Sec. 41. Minnesota Statutes 1986, 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 willfully misrepresenting or misstating any material fact or by knowingly and willfully failing to disclose any material fact which would make the claimant ineligible for benefits under sections 268.03 to 268.24 is guilty of fraud. After the discovery of facts by the commissioner indicating fraud in claiming or obtaining benefits under sections 268.03 to 268.24, the commissioner is hereby authorized to make a determination that the claimant was ineligible for each week with reference to which benefits were claimed or obtained by fraud for the amount as was in excess of what the claimant would have been entitled to had the claimant not made the fraudulent statements or failed to disclose any material facts. 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. The claimant shall promptly repay in cash to the department of jobs and training any benefits fraudulently obtained. Unless the claimant files a written appeal with the department of jobs and training within 15 days after the mailing of the notice of determination to the claimant's last known address or personal delivery of the notice, the determination shall become final. If the claimant appeals from the determination within the time above specified the matter shall be referred to a referee 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. The commissioner is hereby authorized to deduct from future benefits payable to the claimant in either the current or any subsequent benefit year an amount equivalent to the amount of overpayment determined disregarding the 50 percent limitation provided for in subdivision 1 or the overpayment may be collected ~~without interest by civil action in the name of the commissioner~~ the same as contributions or reimbursements under section 268.161. If a claimant has been overpaid benefits under the law of another state due to fraud and that state certifies to the department the facts involved and that the individual is liable to repay the benefits and requests the department to recover the overpayment, the commissioner is authorized to deduct from future benefits payable to the claimant in either the current or any subsequent benefit year an amount equivalent to the amount of overpayment determined by that state disregarding the 50 percent limitation provided for in subdivision 1. A determination of fraud may be made at any time.

Sec. 42. Minnesota Statutes 1986, section 268.18, is amended by adding a subdivision to read:

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Subd. 2a. OFFSET OF STATE AND FEDERAL UNEMPLOYMENT BENEFITS. To the extent permissible under the laws and constitution of the United States, the commissioner is authorized to enter into or cooperate in arrangements or reciprocal agreements with the United States Secretary of Labor, whereby, overpayments of unemployment benefits as determined under applicable federal law, with respect to benefits or allowances for unemployment provided under a federal program administered by this state under an agreement with the United States Secretary of Labor, may be recovered by offset from unemployment benefits otherwise payable under this chapter or any such federal program. As provided by reciprocal agreement, benefit overpayments as determined under subdivisions 1 and 2 may be recovered by offset from benefits or allowances for unemployment otherwise payable under a federal program administered by this state.

Sec. 43, Minnesota Statutes 1986, section 268.18, subdivision 3, is amended to read:

Subd. 3. FALSE REPRESENTATIONS; CONCEALMENT OF FACTS; PENALTY. Whoever makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact to obtain or increase any benefit or other payment (a) Whoever obtains, or attempts to obtain, or aids or abets any person to obtain by means of a willfully false statement or representation, by intentional concealment of a material fact, or by impersonation or other fraudulent device, benefits to which the person is not entitled or benefits greater than that to which the person is entitled under sections 268.03 to 268.24 this chapter, or under the employment security law of any state or of the federal government or of a foreign government, either personally or for any other person, shall be guilty of a gross misdemeanor theft and shall be sentenced pursuant to section 609.52, subdivision 3, clauses (1), (2), and (5). The amount of the benefits incorrectly paid shall be the difference between the amount of benefits actually received and the amount which the person would have been entitled under state and federal law had the department been informed of all material facts.

(b) Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining a subject employer or to avoid or reduce any contribution or other payment required from an employing unit under these sections this chapter or under the employment security law of any state or of the federal government, or who willfully fails or refuses to make any such contributions or other payment or to furnish any reports at the time when required hereunder or shall be guilty of a gross misdemeanor unless the benefit underpayment, contribution, or other payment involved exceeds \$250, in which event the person is guilty of a felony.

(c) Any person who willfully fails to produce or permit the inspection or copying of books, papers, records, or memoranda as required hereunder, or

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when requested under section 268.12, subdivision 8, or to furnish any required reports other than contribution reports shall be guilty of a gross misdemeanor.

Sec. 44. Minnesota Statutes 1986, section 268.18, subdivision 4, is amended 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 irrespective of subsequent partial recovery dates, the commissioner ~~may, in a manner the commissioner prescribes by rule, shall cancel as uncollectible~~ the overpayment balance, and no administrative or legal proceedings shall be instituted under the Minnesota economic security law to enforce collection of those amounts. The commissioner may cancel at any time benefits paid through error or fraud which the commissioner determines are uncollectible due to death or bankruptcy.

Sec. 45. Minnesota Statutes 1986, section 268.18, subdivision 5, is amended to read:

Subd. 5. **ERRONEOUS PAYMENTS; CHARGING.** The amount of benefits paid and subsequently determined to have been paid: (a) erroneously by the claimant's own mistake; (b) through error by any individual engaged in the administration of sections 268.03 to 268.24; or (c) based upon the claimant's fraudulent statements or failure to disclose any material facts, shall not be charged to or will be removed from an employer's experience rating account for all subsequent rate computations which have not become final under section 268.06, and shall not be charged to employers electing to reimburse the unemployment fund in accordance with section 268.06; ~~for all benefits paid, based upon wages for services performed with the employer.~~

Sec. 46. Minnesota Statutes 1986, section 268.65, subdivision 5, is amended to read:

Subd. 5. **EMPLOYER PENALTY.** An employer who enters into an on-the-job training agreement with the commissioner and who terminates the trainee in a manner other than provided in this subdivision shall repay 70 percent of the amount of unemployment insurance benefits paid to the individual while in the training program with that employer if the termination occurs during the training period. If the termination occurs during the 12-month period of guaranteed employment, the employer receives a proportional reduction in the amount it must repay. Penalties assessed under this subdivision are in addition to any other penalties provided for by this chapter and are subject to the same collection procedures that apply to past due contributions under this chapter. Penalties under this subdivision shall be paid to the commissioner and credited to the job search and relocation fund. When it is determined to be in the best interest of the state, the commissioner may waive all or part of the employer penalty. The commissioner shall use any money collected under this paragraph for job

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search and relocation expenses of structurally unemployed workers participating in the training program.

Sec. 47. **[268.001] CITATION; JOBS AND TRAINING LAW.**

Chapter 268 shall be known and may be cited as the "Minnesota Jobs and Training Law."

Sec. 48. Minnesota Statutes 1986, section 270A.09, is amended by adding a subdivision to read:

Subd. 1a. Notwithstanding subdivision 1, any debtor contesting a setoff claim by the department of jobs and training shall have a hearing conducted in the same manner as an appeal under section 268.12, subdivision 13.

Sec. 49. Minnesota Statutes 1986, section 508.25, is amended to read:

508.25 RIGHTS OF PERSON HOLDING CERTIFICATE OF TITLE.

Every person receiving a certificate of title pursuant to a decree of registration and every subsequent purchaser of registered land who receives a certificate of title in good faith and for a valuable consideration shall hold it free from all encumbrances and adverse claims, excepting only the estates, mortgages, liens, charges, and interests as may be noted in the last certificate of title in the office of the registrar, and also excepting any of the following rights or encumbrances subsisting against it, if any:

- (1) Liens, claims, or rights arising or existing under the laws or the constitution of the United States, which this state cannot require to appear of record;
- (2) The lien of any real property tax or special assessment for which the land has not been sold at the date of the certificate of title;
- (3) Any lease for a period not exceeding three years when there is actual occupation of the premises thereunder;
- (4) All rights in public highways upon the land;
- (5) The right of appeal, or right to appear and contest the application, as is allowed by this chapter;
- (6) The rights of any person in possession under deed or contract for deed from the owner of the certificate of title;
- (7) Any outstanding mechanics lien rights which may exist under sections 514.01 to 514.17.
- (8) Liens or judgments, notwithstanding section 508.63, arising under the laws of this state for the nonpayment of any amounts due under chapter 268 or any tax administered by the commissioner of revenue.

Sec. 50. **REPEALER.**

Minnesota Statutes 1986, section 268.24, is repealed.

Approved June 2, 1987

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