

patient, shall promptly furnish to the patient (1) copies of the patient's health record, including but not limited to laboratory reports, X-rays, prescriptions, and other technical information used in assessing the patient's health condition, or (2) the pertinent portion of the record relating to a condition specified by the patient. With the consent of the patient, the provider may instead furnish only a summary of the record. The provider may exclude from the health record written speculations about the patient's health condition, except that all information necessary for the patient's informed consent must be provided.

(c) If a provider, as defined in subdivision 1, clause (b)(1), reasonably determines that the information is detrimental to the physical or mental health of the patient, or is likely to cause the patient to inflict self harm, or to harm another, the provider may withhold the information from the patient and may supply the information to an appropriate third party or to another provider, as defined in subdivision 1, clause (b)(1). The other provider or third party may release the information to the patient.

(d) A provider as defined in subdivision 1, clause (b)(2), shall release information upon written request unless, prior to the request, a provider as defined in subdivision 1, clause (b)(1), has designated and described a specific basis for withholding the information as authorized by paragraph (c).

Sec. 2. Minnesota Statutes 1988, section 144.335, subdivision 3, is amended to read:

Subd. 3. **PROVIDER TRANSFERS AND LOANS.** A patient's health record, including but not limited to, laboratory reports, X-rays, prescriptions, and other technical information used in assessing the patient's condition, or the pertinent portion of the record relating to a specific condition, or a summary of the record, shall promptly be furnished to another provider upon the written request of the patient. The written request shall specify the name of the provider to whom the health record is to be furnished. The provider who furnishes the health record or summary may retain a copy of the materials furnished. The patient shall be responsible for the reasonable costs of furnishing the information.

Presented to the governor April 28, 1989

Signed by the governor May 1, 1989, 8:27 a.m.

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#### CHAPTER 65—S.F.No. 1270

*An act relating to unemployment compensation; making various technical corrections; amending Minnesota Statutes 1988, sections 268.04, subdivisions 12 and 25; 268.06, subdivisions 1, 8a, and 28; 268.07, subdivisions 2 and 3; 268.09, subdivision 1; 268.10, subdivisions 1 and 2; 268.12, subdivision 12; 268.16, subdivision 4; 268.162, subdivision 1; 268.163, subdivision 1; and 268.165, subdivisions 1 and 2.*

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

Section 1. Minnesota Statutes 1988, section 268.04, subdivision 12, is amended to read:

Subd. 12. "Employment" means: (1) Any service performed, including service in interstate commerce, by;

(a) any officer of any corporation;

(b) any individual 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 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.

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(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).

(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,~~

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~~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 an impaired physical or mental capacity cannot be readily absorbed in the competitive labor market, by an individual receiving 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 or in day training and habilitation programs licensed by the department of human services, and is limited to the effective period of the certificate or license; or

(d) as part of an unemployment work relief or work training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training. 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) if such service is performed by an individual in the exercise of duties

(i) as an elected official,

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(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 clauses (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.

(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

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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~~ Migrant and Seasonal Agricultural Worker Protection Act; 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

(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,

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(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) 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 or preceding calendar year to individuals employed in domestic service.

"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). 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, feeding, caring for, training, and management of livestock, bees, poultry, fur-bearing animals and wildlife;

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

(3) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15(g) of the Agricultural Marketing Act, as amended (46 Statutes 1550, section 3; United States Code, title

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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;

(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

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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

(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.

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(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 a ~~medical or dental~~ an 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 other than a corporate officer, 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 other than a corporate officer, 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 period" means a period (of not more than ~~31 consecutive days~~) a calendar month 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.

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(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 postgraduate or postdoctoral 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. 2. Minnesota Statutes 1988, section 268.04, subdivision 25, is amended to read:

Subd. 25. **WAGES.** "Wages" means all remuneration for services, including commissions; bonuses; back pay as of the date of payment; tips and gratuities paid to an employee by a customer of an employer and accounted 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 (j), paid to an individual by an employer or the employer's predecessor with respect to covered employment in this state or under the unemployment compensation law of any other state. 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

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"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) medical and hospitalization expenses in connection with sickness or accident disability, or (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;

(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;

(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

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pursuant to a plan or system established by the employer which provides for the employer's employees generally or for a class or classes of 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)~~ 125, respectively, of the federal Internal Revenue Code, to the extent that the employee has the option to receive the payment in cash.

Sec. 3. Minnesota Statutes 1988, section 268.06, subdivision 1, is amended to read:

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

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

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

Sec. 4. Minnesota Statutes 1988, section 268.06, subdivision 8a, is amended to read:

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Subd. 8a. **SOLVENCY ASSESSMENT.** (a) If the fund balance is greater than \$75,000,000 but less than \$150,000,000 on June 30 of any year, a solvency assessment will be in effect for the following calendar year. Each employer, except those making payments in lieu of contributions under subdivisions 25, 26, 27, and 28, shall pay a quarterly solvency assessment of ten percent multiplied by the contributions paid or due and payable for each calendar quarter in that year. Quarterly contributions and the solvency assessment payments shall be combined and will be computed notwithstanding the maximum rate established in subdivision 3a or 8, by multiplying the quarterly taxable payroll by the assigned contribution rate multiplied by 1.10.

(b) If the fund balance is less than \$75,000,000 on June 30 of any year, a solvency assessment will be in effect for the following calendar year. Each employer, except those making payments in lieu of contributions under subdivisions 25, 26, 27, and 28, shall pay a quarterly solvency assessment of 15 percent multiplied by the contributions paid or due and payable for each calendar quarter in that year. Quarterly contributions and the solvency assessment payments shall be combined and will be computed notwithstanding the maximum rate established in subdivision 3a or 8, by multiplying the quarterly taxable payroll by the assigned contribution rate multiplied by 1.15 rounded to the nearest one-hundredth of a percent.

Sec. 5. Minnesota Statutes 1988, section 268.06, subdivision 28, is amended to read:

**Subd. 28. PAYMENT TO FUND BY NONPROFIT CORPORATION AND ALLOCATION OF BENEFIT COSTS BY BASE PERIOD REIMBURSERS.** (1) Benefits paid to employees of nonprofit organizations shall be financed in accordance with the provisions of this subdivision. For the purpose of this subdivision, a nonprofit organization is an organization (or group of organizations) described in section 501(c)(3) of the United States Internal Revenue Code which is exempt from income tax under section 501(a) of such code. Any nonprofit organization which, pursuant to section 268.04, subdivision 10, clause (9) is, or becomes, subject to this law on or after January 1, 1972, shall pay contributions under the provisions of section 268.06, subdivision 1, unless it elects, in accordance with this paragraph, to pay to the commissioner for the unemployment fund an amount equal to the amount of regular benefits and the state share of the extended benefits charged, that is attributable to service in the employ of such nonprofit organization, to individuals for weeks of unemployment which begin during the effective period of such election.

(a) Any nonprofit organization which becomes subject to this law after January 1, 1972, may elect to become liable for payments in lieu of contributions for a period of not less than two calendar years beginning with the date on which such subjectivity begins by filing a written notice of its election with the commissioner not later than 30 days immediately following the date of the determination of such subjectivity.

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(b) Any nonprofit organization which makes an election in accordance with clause (a) ~~or clause (b)~~ will continue to be liable for payments in lieu of contributions until it files with the commissioner a written notice terminating its election not later than 30 days prior to the beginning of the calendar year for which such termination shall first be effective.

(c) Any nonprofit organization which has been paying contributions under this law for a period subsequent to January 1, 1972, may change to a reimbursable basis by filing with the commissioner not later than 30 days prior to the beginning of any calendar year a written notice of election to become liable for payments in lieu of contributions. Such election shall not be terminable by the organization for that and the next year.

(d) The commissioner may for good cause extend the period within which a notice of election, or a notice of termination, must be filed and may permit an election to be retroactive but not any earlier than with respect to benefits paid after December 31, 1971.

(e) The commissioner, in accordance with such rules as the commissioner may prescribe, shall notify each nonprofit organization of any determination which the commissioner may make of its status as an employer and of the effective date of any election which it makes and of any termination of such election. Such determinations shall be final unless reviewed in accordance with the provisions of section 268.12, subdivision 13.

(2) Payments in lieu of contributions shall be made at the end of each calendar quarter, or at the end of any other period as determined by the commissioner and become due on the last day of the month next following the month in which the notice of benefits charged is mailed to the employer. The commissioner shall bill each nonprofit organization (or group of such organizations) which has elected to make payments in lieu of contributions for an amount equal to the full amount of regular benefits plus one-half of the amount of extended benefits charged during such quarter or other prescribed period that is attributable to service in the employ of such organization.

(3) Past due payments of amounts in lieu of contributions shall be subject to the same interest charges and collection procedures that apply to past due contributions under sections 268.16 and 268.161.

(4) If any nonprofit organization is delinquent in making payments in lieu of contributions as required under this subdivision, the commissioner may terminate such organization's election to make payments in lieu of contributions as of the beginning of the next taxable year, and such termination shall be effective for that and the following taxable year.

Sec. 6. Minnesota Statutes 1988, section 268.07, subdivision 2, is amended to read:

Subd. 2. **WEEKLY BENEFIT AMOUNT AND DURATION.** (a) To estab-

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lish a benefit year for unemployment insurance benefits, effective after January 1, 1988, and thereafter, an individual must have:

(1) wage credits in two or more calendar quarters of the individual's base period;

(2) minimum total base period wage credits equal to the high quarter wages multiplied by 1.25;

(3) high quarter wage credits of not less than \$1,000; and

(4) ~~wage credits~~ performed work in 15 or more calendar weeks in the base period.

(b) If the commissioner finds that an individual has sufficient wage credits and weeks worked within the base period to establish a valid claim, the weekly benefit amount payable to the individual during the individual's benefit year shall be equal to 1/26 of the individual's high quarter wage credits, rounded to the next lower whole dollar.

(c) Notwithstanding paragraph (b), the maximum weekly benefit amount of claims for benefits which establish a benefit year subsequent to July 1, 1979, shall be a percentage of the average weekly wage as determined under paragraphs (d) and (e).

(d) On or before June 30 of each year the commissioner shall determine the average weekly wage for purposes of paragraph (c) 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.

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

(e) The maximum weekly benefit amount for any claim filed during the 12-month period subsequent to June 30 of any year shall be determined on the basis of the unemployment fund balance on December 31 of the preceding year. If the fund balance is less than \$70,000,000 on that date, the maximum weekly benefit amount shall be 66-2/3 percent of the average weekly wage; if the fund balance is more than \$70,000,000 but less than \$100,000,000, the maximum weekly benefit amount is 66 percent of the average weekly wage; if the fund balance is more than \$100,000,000 but less than \$150,000,000, the maximum weekly benefit amount is 65 percent of the average weekly wage; if the fund balance is more than \$150,000,000 but less than \$200,000,000, the maximum

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weekly benefit amount is 64 percent of the average weekly wage; if the fund balance is more than \$200,000,000 but less than \$250,000,000, the maximum weekly benefit amount is 63 percent of the average weekly wage; if the fund balance is more than \$250,000,000 but less than \$300,000,000, the maximum weekly benefit amount is 62 percent of the average weekly wage; if the fund balance is more than \$300,000,000 but less than \$350,000,000, the maximum weekly benefit amount is 61 percent of the average weekly wage; if the fund balance is more than \$350,000,000, the maximum weekly benefit amount is 60 percent. The maximum weekly benefit amount as determined under this paragraph computed to the nearest whole dollar shall apply to claims for benefits which establish a benefit year which begins subsequent to June 30 of each year.

(f) Any eligible individual shall be entitled during any benefit year to a total amount of benefits equal to one-third of the individual's total base period wage credits rounded to the next lower dollar, not to exceed 26 times the individual's weekly benefit amount.

(g) Each eligible individual who is unemployed in any week shall be paid with respect to such week a benefit in an amount equal to the individual's weekly benefit amount less that part of the individual's earnings, including holiday pay, payable to the individual with respect to such week which is in excess of \$200 for earnings from service in the national guard or a United States military reserve unit and the greater of \$25 or 25 percent of the earnings in other work; provided that no deduction may be made from the weekly benefit amount for earnings from service as a volunteer firefighter or volunteer ambulance service personnel. Jury duty pay is not considered as earnings and shall not be deducted from benefits paid. Such benefit, if not a whole dollar amount shall be rounded down to the next lower dollar amount.

Sec. 7. Minnesota Statutes 1988, section 268.07, subdivision 3, is amended to read:

Subd. 3. **WHEN WAGE CREDITS ARE NOT AVAILABLE.** (1) To establish a second benefit year following the expiration of an immediately preceding benefit year, an individual must have sufficient wage credits and weeks of employment to establish a claim under the provisions of subdivision 2 and must have performed services after the establishment of the expired benefit year. The services performed must have been in insured work and the ~~wage credits from the wages paid for those~~ wages paid for those services must equal not less than ten times the weekly benefit amount of the second benefit year. It is the purpose of this provision that an individual cannot establish more than one benefit year as a result of one separation from employment.

(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

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by any claimant who (a) individually, jointly, or in combination with 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.

(5) No employer shall be charged for benefits if the employer is a base period employer on a second claim solely because of the transition from a base period consisting of the 52-week period preceding the claim date to a base period as defined in section 268.04, subdivision 2.

Sec. 8. Minnesota Statutes 1988, section 268.09, subdivision 1, is amended to read:

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

(a) **VOLUNTARY LEAVE.** The individual voluntarily and without good cause attributable to the employer discontinued employment with such employer. For the purpose of this 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 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.

(b) **DISCHARGE FOR MISCONDUCT.** The individual was discharged

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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 paragraphs (a) and (b) under any of the following conditions:

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

(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.

(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;

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

(5) the individual is terminated by the employer because the individual 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) the individual is separated from employment due to the completion of an apprenticeship program, or segment thereof, approved pursuant to chapter 178;

(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;

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(9) 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.

(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 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.

(e) **LIMITED OR NO CHARGE OF BENEFITS.** Benefits paid subsequent to an individual's separation under any of the foregoing paragraphs, excepting 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.

Benefits paid subsequent to an individual's failure, without good cause, to accept an offer of suitable reemployment shall not be used as a factor in determining the future contribution rate of the employer whose offer of reemployment was not accepted or whose offer of reemployment was refused solely due to the distance of the available work from the individual's residence, the individual's own serious illness, the individual's other employment at the time of the offer, or if the individual is in training with the approval of the commissioner.

(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.

(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.

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Sec. 9. Minnesota Statutes 1988, section 268.10, subdivision 1, is amended to read:

Subdivision 1. **FILING.** (a) Claims for benefits shall be made in accordance with such rules as the commissioner may prescribe. Each employer shall post and maintain printed statements of such rules in places readily accessible to individuals in the employer's service and shall make available to each such individual at the time of becoming unemployed, a printed statement of such rules. Such printed statements shall be supplied by the commissioner to each employer without cost to the employer.

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

(c) For the purpose of complying with section 268.04, subdivision 2, the commissioner may require all base period employers to provide such information as the commissioner may prescribe, including, but not limited to, wages paid during any part of the base period, whether or not such information was previously provided.

(d) Upon establishment of a benefit year, the commissioner shall give notice to the last employer for whom the individual worked and all base period employers. The employer so notified shall have seven days after the mailing of the notice to file a protest to monetary entitlement or a protest raising an issue of ineligibility or disqualification.

(e) If, upon review of the wage information on file with the department, it is found that an employer failed to provide wage information for the claimant, the commissioner shall accept a claimant certification as to the wage credits earned, based upon the claimant's records, and issue a monetary determination of validity certification. This determination may be modified based upon corrected information subsequently received from the employer or other sources. The employer who failed to report the individual's wages or filed an erroneous report may be penalized in accordance with section 268.16 or 268.18. In the absence of fraud, if a redetermination of validity of claim based on an employer's late corrected or erroneous report subsequently cancels or reduces the amount of benefits to which a claimant was entitled under the initial determination, the claimant shall not be required to make repayment to the fund of any benefits paid prior to such redetermination; and

(f) The commissioner shall determine any issue raised under paragraph (d)

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or by an employer's late report. If an employer fails to file a separation notice within the time limits prescribed in paragraph (b), any relief from benefit charges provided by section 268.09, subdivision 1, ~~clause (4)~~ paragraph (e), shall apply to weeks of unemployment beginning after the filing of the late report or protest.

Sec. 10. Minnesota Statutes 1988, section 268.10, subdivision 2, is amended to read:

**Subd. 2. EXAMINATION OF CLAIMS; DETERMINATION; APPEAL.**

(1) An official, designated by the commissioner, shall promptly examine each claim for benefits filed to establish a benefit year pursuant to this section, and, on the basis of the facts found, shall determine whether or not such claims are valid, and if valid, the weekly benefit amount payable, the maximum benefit amount payable during the benefit year, and the date the benefit year terminates, and this determination shall be known as the determination of validity. Notice of the determination of validity or any redetermination as provided for in clause (4) shall be promptly given the claimant and all other interested parties. If within the time specified for the filing of a protest as provided in subdivision 1, the employer makes an allegation of disqualification or raises an issue of the chargeability to the employer's account of benefits that may be paid on such claim, if the claim is valid, the issue thereby raised shall be promptly determined by said official and a notification of the determination delivered or mailed to the claimant and the employer. If an initial determination or ~~an appeal tribunal~~ a referee's decision or the commissioner's decision awards benefits, the benefits shall be paid promptly regardless of the pendency of any appeal period or any appeal or other proceeding which may thereafter be taken. Except as provided in clause (6), if ~~an appeal tribunal~~ a referee's decision modifies or reverses an initial determination awarding benefits, or if a commissioner's decision modifies or reverses an appeal decision awarding benefits, any benefits paid under the award of such initial determination or ~~appeal tribunal~~ referee's decision shall be deemed erroneous payments.

(2) At any time within 24 months from the date of the filing of a valid claim for benefits by an individual, an official of the department or any interested party or parties raises an issue of claimant's eligibility for benefits for any week or weeks in accordance with the requirements of the provisions of sections 268.03 to 268.24 or any official of the department or any interested party or parties or benefit year employer raises an issue of disqualification in accordance with the rules of the commissioner, a determination shall be made thereon and a written notice thereof shall be given to the claimant and such other interested party or parties or benefit year employer. A determination issued under this clause which denies benefits for weeks for which the claimant has previously been paid benefits is an overpayment of those benefits subject to section 268.18.

(3) A determination issued pursuant to clauses (1) and (2) shall be final unless an appeal therefrom is filed by a claimant or employer within 15 days after the mailing of the notice of the determination to the last known address or personal delivery of the notice. Every notice of determination shall contain a

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prominent statement indicating in clear language the method of appealing the determination, the time within which such an appeal must be made, and the consequences of not appealing the determination. A timely appeal from a determination of validity in which the issue is whether an employing unit is an employer within the meaning of this chapter or whether services performed for an employer constitute employment within the meaning of this chapter shall be subject to the provisions of section 268.12, subdivision 13.

(4) At any time within 24 months from the date of the filing of a valid claim for benefits by an individual, the commissioner on the commissioner's own motion may reconsider a determination of validity made thereon and make a redetermination thereof on finding that an error in computation or identity or the crediting of wage credits has occurred in connection therewith or if the determination was made as a result of a nondisclosure or misrepresentation of a material fact. A determination or redetermination issued under this clause which denies benefits for weeks for which the claimant has previously been paid benefits is an overpayment of those benefits subject to section 268.18.

(5) However, the commissioner may refer any disputed claims directly to a referee for hearing and determination in accordance with the procedure outlined in subdivision 3 and the effect and status of such determination in such a case shall be the same as though the matter had been determined upon an appeal to the tribunal from an initial determination.

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

Sec. 11. Minnesota Statutes 1988, section 268.12, subdivision 12, is amended to read:

Subd. 12. **INFORMATION.** Except as hereinafter otherwise provided, data gathered from any employing unit, employer or individual pursuant to the administration of sections 268.03 to 268.24, and from any determination as to the benefit rights of any individual are private data on individuals or nonpublic data as defined in section 13.02, subdivisions 9 and 12 and may not be disclosed except pursuant to this subdivision or a valid court order. These data may be disseminated to and used by the following agencies without the consent of the subject of the data:

(a) State and federal agencies specifically authorized access to the data by state or federal law;

(b) Any agency of this or any other state; or any federal agency charged with the administration of an employment security law or the maintenance of a system of public employment offices;

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(c) Local human rights groups within the state which have enforcement powers;

(d) The Minnesota department of revenue on an interchangeable basis with the department of jobs and training subject to the following restrictions and notwithstanding any law to the contrary:

(1) The department of revenue may have access to department of jobs and training data on individuals and employing units only to the extent necessary for proper enforcement of tax laws; and

(2) The department of jobs and training ~~may~~ shall have access to department of revenue individual income tax return data pertaining ~~only to individuals who have claimed benefits under sections 268.03 to 268.24 and only if the individuals are the subject of investigations based on other information available to the department of jobs and training.~~ The data provided by the department of revenue shall be limited to the amount of gross income earned by an individual; the total amount of earnings from each employer and the employers' names to the identity, whereabouts, employment, income, and property of an individual who; owes or allegedly owes an obligation to the department of jobs and training; is subject to a benefit overpayment or fraud investigation; or is subject to an investigation, for possible criminal prosecution under this chapter. Upon receipt of the data, the department of jobs and training may not disseminate the data to any other individual or agency except in connection with a prosecution for violation of the provisions of sections 268.03 to 268.24. ~~This clause shall not be construed to be a restriction on the exchange of information pertaining to corporations or other employing units shall be disclosed to the extent necessary for the proper enforcement of this chapter;~~

(e) Public and private agencies responsible for administering publicly financed assistance programs for the purpose of monitoring the eligibility of the program's recipients;

(f) The department of labor and industry ~~for the purpose of determining the eligibility of the data subject on an interchangeable basis with the department of jobs and training subject to the following limitations and notwithstanding any law to the contrary:~~

(1) the department of jobs and training shall have access to nonpublic data on employers, individuals, and employing units for uses consistent with the administration of its duties under sections 268.03 to 268.24; and

(2) the department of labor and industry shall have access to nonpublic data on employers, individuals, and employing units for uses consistent with the administration of its duties under state law;

(g) The department of trade and economic development may have access to nonpublic data as defined in section 13.02, subdivision 9, for its internal use only; when received by the department of trade and economic development, the data remain nonpublic data;

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(h) Local and state welfare agencies for monitoring the eligibility of the data subject for assistance programs, or for any employment or training program administered by those agencies, whether alone, in combination with another welfare agency, or in conjunction with the department of jobs and training; and

(i) Local, state and federal law enforcement agencies for the sole purpose of ascertaining the last known address and employment location of the data subject, provided the data subject is the subject of a criminal investigation.

Data on individuals, employers, and employing units which are collected, maintained, or used by the department in an investigation pursuant to section 268.18, subdivision 3, are confidential as to data on individuals and protected nonpublic data as defined in section 13.02, subdivisions 3 and 13, as to nonindividual employers and employing units, and shall not be disclosed except pursuant to statute or valid court order or to a party named in a criminal proceeding, administrative or judicial, for preparation of a defense.

Data on individuals, employers, and employing units which are collected, maintained, or used by the department in the adjudication of a separation or eligibility issue pursuant to the administration of section 268.10, subdivision 2, are ~~confidential~~ private as to data on individuals and protected nonpublic data as to nonindividual employers and employing units as defined in section 13.02, subdivisions 3 and 13, and shall not be disclosed except pursuant to the administration of section 268.10, subdivisions 3 to 8, or pursuant to a valid court order.

Aggregate data about employers compiled from individual job orders placed with the department of jobs and training are nonpublic data as defined in section 13.02, subdivision 9, if the commissioner determines that divulging the data would result in disclosure of the identity of the employer. The general aptitude test battery and the nonverbal aptitude test battery as administered by the department are also classified as nonpublic data.

Data on individuals collected, maintained or created because an individual applies for benefits or services provided by the energy assistance and weatherization programs administered by the department of jobs and training is private data on individuals and shall not be disseminated except pursuant to section 13.05, subdivisions 3 and 4.

Data gathered by the department pursuant to the administration of sections 268.03 to 268.24 shall not be made the subject or the basis for any suit in any civil proceedings, administrative or judicial, unless the action is initiated by the department.

Sec. 12. Minnesota Statutes 1988, section 268.16, subdivision 4, is amended to read:

Subd. 4. **COMPROMISE AGREEMENTS.** The commissioner, or any officer or employee of the state department of jobs and training authorized in

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writing by the commissioner, is authorized to enter into an agreement in writing with any employer relating to the liability of such employer in respect to delinquent contributions, reimbursements, interest, penalties, and costs; provided that such agreement shall not be made in respect to liability for the principal sum of delinquent contributions or reimbursements unless the same has been delinquent for a period of at least four years prior to the making of such agreement. The commissioner may also enter into an agreement, with respect to liability for delinquent contributions, interest, penalties and costs, with any employer who has never paid any contributions to the fund and such failure to pay contributions was, in the opinion of the commissioner, due to an honest belief on the part of such employer that the employer was not covered by sections 268.03 to 268.24. Any agreements made under this subdivision shall be subject to the approval of the attorney general ~~and a summary of any such agreements shall be published in the next succeeding annual report of the commissioner to the governor.~~

If such agreements are approved by the commissioner and the attorney general, the same shall be final and conclusive; and, except upon a showing of fraud or malfeasance or misrepresentation of a material fact, the case shall not be reopened as to the matters agreed upon or the agreement modified by any officer, employee or agent of the state; and, in any suit, action or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside or destroyed.

Sec. 13. Minnesota Statutes 1988, section 268.162, subdivision 1, is amended to read:

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. This subdivision does not apply to sales in the normal course of the employer's business.

Sec. 14. Minnesota Statutes 1988, section 268.163, subdivision 1, is amended to read:

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~~ shall guarantee 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 by:~~

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(a) withholding sufficient money on the contract; or

(b) requiring 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 contractor may make a written request for verification that the subcontractor has paid the contributions due 60 days after the due date for filing the contribution report that includes the final wages paid for services performed under the contract. If department records show that the subcontractor has paid the contributions for the period covered by the contract, the department may release the contractor from its liability under this subdivision.

The words "contractor" and "subcontractor" include individuals, partnerships, firms, or corporations, or other association of persons engaged in the construction industry.

Sec. 15. Minnesota Statutes 1988, section 268.165, subdivision 1, is amended to read:

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.

This subdivision is effective to the extent permitted by federal law.

Sec. 16. Minnesota Statutes 1988, section 268.165, subdivision 2, is amended to read:

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.~~

Sec. 17. **EFFECTIVE DATE.**

This act is effective the day following final enactment.

Presented to the governor May 2, 1989

Signed by the governor May 3, 1989, 3:09 p.m.

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