

Sec. 2. **EFFECTIVE DATE.**

Section 1 is effective the day following final enactment.

Presented to the governor April 17, 1995

Signed by the governor April 18, 1995, 12:14 p.m.

CHAPTER 54—S.F.No. 1060

An act relating to employment; modifying provisions relating to reemployment insurance; amending Minnesota Statutes 1994, sections 268.04, subdivision 10; 268.06, subdivisions 3a, 18, 19, 20, and 22; 268.08, subdivision 6, and by adding a subdivision; 268.10, subdivision 2; 268.12, subdivision 12; 268.16, subdivisions 3a, 6, and by adding a subdivision; 268.161, subdivisions 8 and 9; 268.162, subdivision 2; 268.163, subdivision 3; 268.164, subdivision 3; 268.18, subdivisions 1, 2, 3, and 6; 270A.09, subdivision 1a; 352.01, subdivision 2b; 352.22, subdivision 10; and 574.26, subdivision 1; proposing coding for new law in Minnesota Statutes, chapter 268; repealing Minnesota Statutes 1994, sections 268.10, subdivisions 3, 4, 5, 6, 7, 8, 9, and 10; and 268.12, subdivisions 9, 10, and 13.

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

Section 1. Minnesota Statutes 1994, section 268.04, subdivision 10, is amended to read:

Subd. 10. **EMPLOYER.** "Employer" means: (1) Any employing unit which, ~~for some portion of a day, in each of 20 different weeks, whether or not such weeks are or were consecutive, and whether or not all of such weeks of employment are or were within the state within either the current or preceding calendar year, has or had in employment one or more individuals (irrespective of whether the same individual or individuals were employed in each such day) or in any calendar quarter in either the current or preceding calendar year paid \$1,500 or more for services in employment; after December 31, 1995, has one or more individuals performing services in employment for which there were wages paid, within either the current or preceding calendar year,~~ except as provided in clause ~~(18)~~ (17) of this subdivision;

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

(3) For purposes of clause (1), employment shall include service which would constitute employment but for the fact that such service is deemed to be

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performed entirely within another state pursuant to an election under an arrangement entered into (in accordance with section 268.13, subdivision 1) by the commissioner and an agency charged with the administration of any other state or federal unemployment compensation law;

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

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

(6) (5) Any employing unit which, together with one or more other employing units, is owned or controlled (by legally enforceable means or otherwise) directly or indirectly by the same interests, or which owns or controls one or more other employing units (by legally enforceable means or otherwise) and which, if treated as a single unit with such other employing units or interests or both, would be an employer under clause (1), except as provided in clause ~~(18)~~ (17);

~~(7)~~ (6) Any joint venture composed of one or more employers as otherwise defined herein;

~~(8)~~ (7) Any nonresident employing unit which employs within this state one or more employees for one or more weeks;

~~(9)~~ (8) Any employing unit for which service in employment, as defined in subdivision 12, clause (9), is performed;

~~(10)~~ (9) Any employing unit which, having become an employer under the preceding clauses or clause (14), (15), or (16) ~~or (17)~~, has not, under section 268.11, ceased to be an employer subject to these sections;

~~(11)~~ (10) For the effective period of its election pursuant to section 268.11, subdivision 3, any other employing unit which has elected to become subject to sections 268.03 to 268.231;

~~(12)~~ (11) Notwithstanding any inconsistent provisions of sections 268.03 to 268.231, any employing unit not an employer by reason of any other clause of this subdivision for which service is performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund or which, as a condition for the approval of this law for full tax credit against the tax imposed by the federal unemployment tax act, is required pursuant to such act, to be an "employer" under the law;

~~(13)~~ (12) Except as provided in clause ~~(12)~~ (11), and notwithstanding any other provisions of sections 268.03 to 268.231, no employing unit shall be ini-

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tially determined a subject employer on the basis of covered employment performed more than four years prior to the year in which such determination is made, unless the commissioner finds that the records of such employment experience were fraudulently concealed or withheld for the purpose of escaping liability under said sections;

~~(14)~~ (13) Any employing unit for which service in employment, as defined in subdivision 12, clause (7), is performed;

~~(15)~~ (14) Any employing unit for which service in employment as defined in subdivision 12, clause (8) is performed;

~~(16)~~ (15) Any employing unit for which agricultural labor as defined in subdivision 12, clause (13) is performed;

~~(17)~~ (16) Any employing unit for which domestic service in employment as defined in subdivision 12, clause (14) is performed;

~~(18)~~ (17) (a) In determining whether or not an employing unit for which domestic service and other than domestic service is performed is an employer under clause (1) or ~~(6)~~ (5), the wages earned or the employment of an employee performing domestic service shall not be taken into account.

(b) In determining whether or not an employing unit for which agricultural labor and other than agricultural labor is performed is an employer under clause (1), ~~(9)~~ (8) or ~~(17)~~ (16), the wages earned or the employment of an employee performing service in agricultural labor after December 31, 1977 shall not be taken into account. If an employing unit is an employer of agricultural labor the determination of whether it is an "employer" shall be governed by clause (1).

Sec. 2. [268.041] DETERMINATIONS OF COVERAGE.

An official, designated by the commissioner, upon the commissioner's own motion or upon application of an employing unit, shall determine if an employing unit is an employer within the meaning of this chapter or as to whether services performed for it constitute employment within the meaning of this chapter, or whether the remuneration for services constitutes wages as defined in section 268.04, subdivision 25, and shall notify the employing unit of the determination. The determination shall be final unless the employing unit, within 30 days after the mailing of notice of the determination to the employing unit's last known address, files a written appeal from it. Proceedings on the appeal shall be conducted in accordance with section 268.105.

Sec. 3. Minnesota Statutes 1994, 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:

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(a) 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 of each year for each employer, except employers in the construction industry. 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 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.

(b) Each employer in the construction industry who becomes subject to this chapter shall pay contributions at a rate, not exceeding the maximum contribution rate for all employers as provided under subdivision 8, 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 of each year. 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 during the 60 consecutive calendar months immediately preceding July 1 of each year 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 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, except as excluded by rules adopted by the commissioner.

Sec. 4. Minnesota Statutes 1994, section 268.06, subdivision 18, is amended to read:

Subd. 18. **NOTICE TO EMPLOYER.** The commissioner shall mail to the last known address of each employer a quarterly notice of the benefits which have been charged to the employer's account, as determined by the department. Unless reviewed in the manner hereinafter provided, charges set forth in such notice, or as modified by a redetermination, a decision of a ~~referee~~ reemployment insurance judge, or the commissioner, shall be final and shall be used in determining the contribution rates for all years in which the charges occur within the employer's experience period and shall not be subject to collateral attack by way of review of a rate determination, application for adjustment or refund, or otherwise.

Sec. 5. Minnesota Statutes 1994, section 268.06, subdivision 19, is amended to read:

Subd. 19. **NOTICE OF RATE.** The commissioner shall mail to the last known address of each employer notice of the employer's contribution rate as

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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 changed by the procedure provided in this subdivision, the assigned rate as initially determined or as changed by a redetermination by the tax branch of this department, a decision of a ~~referee~~ reemployment insurance judge, 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 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. 6. Minnesota Statutes 1994, 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 written 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. Proceedings on the appeal shall be conducted in accordance with section 268.105.~~ 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 the department which has been authenticated shall be admissible in evidence. Appeals~~

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~~from the decision of the referee shall be provided by section 268.10, subdivision 5.~~

Sec. 7. Minnesota Statutes 1994, 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 makes a written request to file an application 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 last known address of the successor the successor and predecessor employing units jointly sign 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) 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.

(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 mail notice of such determination to the last known address of the employing unit. The determination shall be final unless a written appeal is filed by the employing unit within 30 days after mailing of the notice of determination. Proceedings on the appeal shall be conducted in accordance with section ~~268.12, subdivision 43~~ 268.105.

(e) Notwithstanding subdivision 19, the commissioner may, as the result of any determination or decision regarding succession or nonsuccession, recompute the rate of all employers affected by the determination or decision for any year,

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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. 8. Minnesota Statutes 1994, section 268.08, is amended by adding a subdivision to read:

Subd. 5a. SELF-EMPLOYMENT. (a) An individual who is determined to be likely to exhaust regular reemployment insurance benefits and is enrolled in a dislocated worker program shall be considered in approved training for purposes of this chapter for each week the individual is engaged on a full-time basis in activities, including training, relating to the establishment of a business and becoming self-employed. An individual who meets the requirements of this subdivision shall be considered unemployed for purposes of this chapter. Income earned from the self-employment activity shall not be considered for purposes of section 268.07, subdivision 2, paragraph (g). Under no circumstances shall more than five percent of the number of individuals receiving regular reemployment insurance benefits be actively enrolled in this program at any time. This subdivision shall not apply to persons claiming state or federal extended or additional benefits.

(b) This subdivision shall apply to weeks beginning after the date of enactment or weeks beginning after approval of this subdivision by the United States Department of Labor whichever date is later. This subdivision shall have no force or effect for any purpose as of the end of the week preceding the date when federal law no longer authorizes the provisions of this subdivision, unless such date is a Saturday in which case this subdivision shall have no force and effect for any purpose as of that date.

Sec. 9. Minnesota Statutes 1994, section 268.08, subdivision 6, is amended to read:

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

(a) Benefits based upon service performed in an instructional, research, or principal administrative capacity for an educational institution, ~~or any other educational service agency as defined in section 3304(a)(6)(A)(IV) of the Federal Unemployment Tax Act,~~ shall not be paid for any week of unemployment commencing during the period between two successive academic years or terms, or during a similar period between two regular but not successive terms, or during a period of paid sabbatical leave provided for in the individual's contract, to any individual if the individual performs the services in the first of the academic

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years or terms and if there is a contract or a reasonable assurance that the individual will perform services in any such capacity for an educational institution in the second of the academic years or terms;

(b) With respect to service performed in any capacity other than those capacities described in clause (a) of this subdivision, including instructional assistants, for an educational institution, benefits shall not be paid on the basis of these services to any individual for any week which commences during a period between two successive academic years or terms if the individual performs the services in the first of the academic years or terms and there is a reasonable assurance that the individual will perform the services in the second of the academic years or terms. An individual who has an agreement for a definite period of employment between academic years or terms shall be eligible for any weeks within that period the educational institution fails to provide employment. If benefits are denied to any individual under this clause and the individual was not offered an opportunity to perform the services in the second of the academic years or term, the individual shall be entitled to a retroactive payment of benefits for each week in which the individual filed a timely claim for benefits, but the claim was denied solely because of this clause;

(c) With respect to services described in clause (a) or (b), benefits payable on the basis of the services shall not be paid to any individual for any week which commences during an established and customary vacation period or holiday recess if the individual performs the services in the period immediately before the vacation period or holiday recess, and there is a reasonable assurance that the individual will perform the services in the period immediately following the vacation period or holiday recess;

(d) With respect to services described in clause (a) or (b), benefits shall not be payable on the basis of services in any capacity specified in clauses (a), (b), and (c) to any individual who performed those services in an educational institution while in the employ of an educational service agency. For purposes of this clause, "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing services to one or more educational institutions; and

(e) With respect to services to state and local government, or nonprofit organizations covered by section 501(c)(3) of the Internal Revenue Code of 1986, as amended through December 31, 1992, if services are provided to or on behalf of an educational institution, benefits must be denied under the same circumstances as described in clauses (a) to (d).

Sec. 10. Minnesota Statutes 1994, 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

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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 a ~~referee's~~ reemployment insurance judge'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 a ~~referee's~~ reemployment insurance judge's decision modifies or reverses an initial determination awarding benefits, or if a commissioner's decision modifies or reverses ~~an appeal a~~ reemployment insurance judge's decision awarding benefits, any benefits paid under the award of such initial determination or ~~referee's~~ reemployment insurance judge'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 268.231 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~~ a written 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 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~~ An interested party may appeal from a determination of validity ~~in which issued pursuant to clause (1) on~~ the issue ~~is of~~ 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. Proceedings on the appeal shall be conducted in accordance with section 268.105.~~

(4) At any time within 24 months from the date of the filing of a valid claim

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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~~ reemployment insurance judge for hearing and ~~determination decision~~ in accordance with ~~the procedure outlined in subdivision 3 section 268.105~~ and the effect and status of such ~~determination decision~~ 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~~ reemployment insurance judge's decision affirms an initial determination awarding benefits or the commissioner affirms a ~~referee's reemployment insurance judges's~~ decision awarding benefits, the decision, if finally reversed, shall result in a disqualification only for weeks following the week in which the decision reversing the award of benefits was issued and benefits paid for that week and previous weeks 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. **[268.105] APPEAL; HEARING.**

Subdivision 1. HEARING. Upon appeal the department shall set a time and place for a de novo hearing and give the interested parties written notice of it, by mail, not less than ten days prior to the time of the hearing. The commissioner shall by rule adopt a procedure by which reemployment insurance judges hear and decide appeals, subject to further appeal to the commissioner. The rules need not conform to common law or statutory rules of evidence and other technical rules of procedure. The written report of any employee of the department of economic security, except a determination, made in the regular course of the performance of the employee's duties, shall be competent evidence of the facts contained in it. After the conclusion of the hearing, upon the evidence presented, the reemployment insurance judge shall mail findings of fact and decision to all interested parties. The reemployment insurance judge's decision is final unless a further appeal is filed pursuant to subdivision 3.

Subd. 2. REEMPLOYMENT INSURANCE JUDGES. The commissioner shall designate one or more impartial reemployment insurance judges to conduct hearings on appeals. The commissioner or authorized representative may personally hear or transfer to another reemployment insurance judge any proceedings pending before a reemployment insurance judge. Any proceedings removed to the commissioner or authorized representative shall be heard in accordance with subdivision 1.

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Subd. 3. COMMISSIONER REVIEW. Within 30 days after mailing of the reemployment insurance judge's decision, an interested party may appeal in writing and obtain a review by the commissioner or an authorized representative. The commissioner within the same period of time may on the commissioner's own motion order a review of a decision. Upon review, the commissioner or authorized representative shall, on the basis of the evidence submitted at the hearing before the reemployment insurance judge, make findings of fact and decision, or remand the matter back to the reemployment insurance judge for the taking of additional evidence and new findings and decision based on all the evidence. The commissioner may disregard the findings of fact of the reemployment insurance judge and examine the evidence and make any findings of fact as the evidence may, in the judgment of the commissioner require, and make any decision as the facts found by the commissioner require. The commissioner shall mail to all interested parties the findings of fact and decision. The decision of the commissioner is final unless judicial review is sought as provided by subdivision 7.

Subd. 4. TESTIMONIAL POWERS. In the discharge of the duties imposed by this section, the reemployment insurance judge, the commissioner, or authorized representative, may administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with the subject matter of the hearing. The subpoenas shall be enforceable through the district court in the district in which the subpoena is issued. Witnesses, other than an interested party or officers and employees of an interested party, subpoenaed pursuant to this section shall be allowed fees the same as witness fees in a civil action in district court. These fees shall be deemed a part of the expense of administering sections 268.03 to 268.231.

Subd. 5. USE OF INFORMATION. All testimony at any hearing conducted pursuant to subdivision 1 shall be recorded, but shall be transcribed only if the disputed claim is appealed further and is requested by a party, or as directed by the commissioner or an authorized representative. Testimony obtained under subdivision 1, may not be used or considered in any civil, administrative, or contractual proceeding, except by a local, state, or federal human rights group with enforcement powers, unless the proceeding is initiated by the department. No findings of fact or decision issued by a reemployment insurance judge or the commissioner or authorized representative may be held conclusive or binding or used as evidence in any separate or subsequent action in any other forum, except proceedings provided for under chapter 268, regardless of whether the action involves the same or related parties or involves the same facts.

Subd. 6. REPRESENTATION; FEES. In any proceeding under these sections, a party may be represented by any agent. Except for services provided by an attorney-at-law, a claimant for benefits shall not be charged fees of any kind in a proceeding before a reemployment insurance judge, the commissioner or authorized representative, or by any court or any of its officers.

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Subd. 7. COURT OF APPEALS; ATTORNEY FOR COMMISSIONER.

The court of appeals may, by writ of certiorari to the commissioner, review any decision of the commissioner provided a petition for the writ is filed and served upon the commissioner and the adverse party within 30 days of the mailing of the commissioner's decision. Any interested party, except a claimant for benefits, upon the service of the writ shall furnish a cost bond to the commissioner in accordance with rule 107 of the rules of civil appellate procedure. The commissioner shall be deemed to be a party to any judicial action involving any decision and shall be represented by any qualified attorney who is a regular salaried employee of the department of economic security and has been designated by the commissioner for that purpose or, at the commissioner's request, by the attorney general.

Sec. 12. Minnesota Statutes 1994, section 268.12, subdivision 12, is amended to read:

Subd. 12. **INFORMATION.** Except as hereinafter otherwise provided, data gathered from any employing unit or individual pursuant to the administration of sections 268.03 to 268.231, and from any determination as to the benefit rights of any individual are private data on individuals or nonpublic data not on individuals as defined in section 13.02, subdivisions 9 and 12, and may not be disclosed except pursuant to this subdivision or a 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;

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

(d) the department of revenue shall have access to department of economic security private data on individuals and nonpublic data not on individuals only to the extent necessary for enforcement of Minnesota tax laws;

(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 on an interchangeable basis with the department of economic security subject to the following limitations and notwithstanding any law to the contrary:

(1) the department of economic security shall have access to private data on individuals and nonpublic data not on individuals for uses consistent with the administration of its duties under sections 268.03 to 268.231; and

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(2) the department of labor and industry shall have access to private data on individuals and nonpublic data not on individuals for uses consistent with the administration of its duties under state law;

(g) the department of trade and economic development may have access to private data on individual employing units and nonpublic data not on individual employing units for its internal use only; when received by the department of trade and economic development, the data remain private data on individuals or nonpublic data;

(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 economic security;

(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; and

(j) the department of health may have access to private data on individuals and nonpublic data not on individuals solely for the purposes of epidemiologic investigations.

Data on individuals 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 not on individuals as defined in section 13.02, subdivisions 3 and 13, and shall not be disclosed except pursuant to statute or court order or to a party named in a criminal proceeding, administrative or judicial, for preparation of a defense.

Tape recordings and transcripts of recordings of proceedings ~~before a referee of the department~~ conducted in accordance with section 268.105 and exhibits offered by parties ~~other than the department~~ and received into evidence at those proceedings are private data on individuals and nonpublic data not on individuals and shall be disclosed only pursuant to the administration of section ~~268.10, subdivisions 3 to 6~~ 268.105, or pursuant to a court order.

Aggregate data about employers compiled from individual job orders placed with the department of economic security are private data on individuals and nonpublic data not on individuals as defined in section 13.02, subdivisions 9 and 12, 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 private data on individuals or 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 economic security is private data on individuals and shall not be disseminated except pursuant to section 13.05, subdivisions 3 and 4.

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Data gathered by the department pursuant to the administration of sections 268.03 to 268.231 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.

~~Testimony obtained under subdivision 13 and section 268.10, subdivision 3, may not be used or considered in any civil, administrative, or contractual proceeding, except by a local, state, or federal human rights group with enforcement powers, unless the proceeding is initiated by the department.~~

Sec. 13. Minnesota Statutes 1994, section 268.16, subdivision 3a, is amended 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, costs incurred by referral to any public or private agency outside the department, 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. 14. Minnesota Statutes 1994, section 268.16, subdivision 6, is amended to read:

Subd. 6. **ADJUSTMENTS, REFUNDS.** If an employer makes an application for an adjustment of any amount paid as contributions or interest thereon, to be applied against subsequent contribution payments, or for a refund thereof because such adjustment cannot be made, and the payment was made within four years prior to the year in which the application is made, and if the commissioner shall determine that payment of such contributions or interest or any portion thereof was erroneous, the commissioner shall allow such employer to make an adjustment thereof, without interest, in connection with subsequent contribution payments by the employer, or if such adjustment cannot be made, the commissioner shall refund from the fund to which such payment has been credited, without interest, the amount erroneously paid. For like cause and within the same period, adjustment or refund may be so made on the commissioner's own initiative.

In the event that any application for adjustment or refund is denied in whole or in part, a written notice of such denial shall be mailed to the applicant. Within 30 days after the mailing of such notice of denial to the applicant's last

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known address, the applicant may request, in writing, that the commissioner grant a hearing for the purpose of reconsidering the facts submitted and to consider any additional information. Proceedings on the appeal shall be ~~had~~ conducted in accordance with section ~~268.12, subdivision 4~~ 268.105.

Sec. 15. Minnesota Statutes 1994, section 268.16, is amended by adding a subdivision to read:

Subd. 9. PRIOR DECISIONS. In the event a final decision on an appeal under section 268.105 determines the amount of contributions due under sections 268.03 to 268.231, then, if the amount, together with interest and penalties, is not paid within 30 days after the decision, the provisions of section 268.161 apply. The commissioner shall proceed thereunder, substituting a certified copy of the final decision in place of the contribution report. A final decision on an appeal under section 268.105 is conclusive for all the purposes of sections 268.03 to 268.231 except as otherwise provided, and, together with the records therein made, shall be admissible in any subsequent judicial proceeding involving liability for contributions.

Sec. 16. Minnesota Statutes 1994, 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.

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(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 reimbursement 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 commis-

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sioner 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.

(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 economic security.

(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

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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. 17. Minnesota Statutes 1994, section 268.161, subdivision 9, is amended to read:

Subd. 9. **PERSONAL LIABILITY.** Any officer, director, or employee of a corporation or any manager, governor, member, or employee of a limited liability company which is an employer under sections 268.03 to 268.231, who

(1) either individually or jointly with others, have or should have had control of, supervision over, or responsibility for the filing of the tax reports or the making of payments under this chapter, and

(2) 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.

For purposes of this subdivision, "willfulness" means that the facts demonstrate that the responsible party used or allowed the use of corporate or company assets to pay other creditors knowing that the payments required under this chapter were unpaid. An evil motive or intent to defraud is not necessary to satisfy the willfulness requirement. 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, 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~~ protest. Upon receipt of the protest, the official shall reexamine the personal liability determination and either affirm or redetermine the assessment of personal liability and a notice of the affirmation or redetermination shall be mailed to the person's last known address. The affirmation or redetermination shall become final unless a written appeal is filed within ten days of the date of mailing. Proceedings on the appeal shall be conducted in ~~the same manner as an appeal of an employer's contribution rate or benefits charged to an employer's account under section 268.06, subdivision 20~~ accordance with section 268.105.

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Sec. 18. Minnesota Statutes 1994, section 268.162, subdivision 2, is amended to read:

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 1-3.~~ Proceedings on the appeal shall be conducted in accordance with section 268.105.

Sec. 19. Minnesota Statutes 1994, section 268.163, subdivision 3, is amended to read:

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 1-3~~ accordance with section 268.105.

Sec. 20. Minnesota Statutes 1994, section 268.164, subdivision 3, is amended to read:

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 1-3~~ accordance with section 268.105.

Sec. 21. Minnesota Statutes 1994, section 268.18, subdivision 1, is amended to read:

Subdivision 1. **ERRONEOUS PAYMENTS.** (a) 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 268.231 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 those benefits in cash to the nearest office of the Minnesota department of economic security. If the claimant fails to

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return the benefits, the department of economic security shall, as soon as it discovers the erroneous payment, determine the amount due and notify the individual to return it.

(b) Unless the claimant files a written appeal with the department of economic security 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 above 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.~~ Proceedings on the appeal shall be conducted in accordance with section 268.105.

(c) The commissioner of the department of economic security is 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 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 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.

(d) Notwithstanding paragraph (a), the commissioner shall waive recovery of an overpayment if a ~~referee~~ reemployment insurance judge or the commissioner's representative determines the overpayment resulted from an administrative failure to identify that a claimant's wage credits were not earned in covered employment.

Sec. 22. Minnesota Statutes 1994, 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 268.231 is guilty of fraud. After the discovery of facts by the commissioner indicating fraud in claiming or obtaining benefits under sections 268.03 to 268.231, 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

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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 economic security any benefits fraudulently obtained. Unless the claimant files a written appeal with the department of economic security 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.~~ Proceedings on the appeal shall be conducted in accordance with section 268.105. 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 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. 23. Minnesota Statutes 1994, section 268.18, subdivision 3, is amended to read:

Subd. 3. **FALSE REPRESENTATIONS; CONCEALMENT OF FACTS; PENALTY.** (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 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 theft and shall be sentenced pursuant to section 609.52, subdivision 3, clauses (2), (3)(a) ~~and~~, (c), and (d), (4), 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

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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 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 at the time required 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 or 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. 24. Minnesota Statutes 1994, section 268.18, subdivision 6, is amended to read:

Subd. 6. **EMPLOYER MISCONDUCT; PENALTY.** If the commissioner finds that any employing unit or any employee, officer, or agent of any employing unit, is in collusion with any employee for the purpose of assisting the claimant to receive benefits illegally, the employing unit shall be penalized \$500 or an amount equal to the amount of benefits determined to be overpaid, whichever is greater.

If the commissioner finds that any part of any employer's contribution deficiency is due to fraud with intent to avoid payment of contributions to the fund, 50 percent of the total amount of the deficiency or \$500, whichever is greater, shall be assessed as a penalty against the employer and collected in addition to the deficiency.

Penalties assessed under this section shall be in addition to any other penalties provided for by sections 268.03 to 268.231 and be subject to the same collection procedures that apply to past due contributions under this chapter. Penalties under this section shall be paid to the department and credited to the contingent fund.

The assessment of the penalty shall be final unless the employer files a written appeal with the department within 15 days after the notice of determination to the employer's last known address. ~~If the employer shall appeal from the determination within the time above specified, the matter shall be referred for a hearing as set forth in section 268.10. Proceedings on the appeal shall be conducted in accordance with section 268.105.~~

Sec. 25. Minnesota Statutes 1994, section 270A.09, subdivision 1a, is amended to read:

Subd. 1a. **ECONOMIC SECURITY CLAIMS.** Notwithstanding subdivi-

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sion 1, any debtor contesting a setoff claim by the department of economic security shall have a hearing conducted in the same manner as an appeal under section ~~268.12, subdivision 13~~ 268.105.

Sec. 26. Minnesota Statutes 1994, section 352.01, subdivision 2b, is amended to read:

Subd. 2b. **EXCLUDED EMPLOYEES.** "State employee" does not include:

- (1) elective state officers;
- (2) students employed by the University of Minnesota, the state universities, and community colleges unless approved for coverage by the board of regents, the state university board, or the state board for community colleges, as the case may be;
- (3) employees who are eligible for membership in the state teachers retirement association except employees of the department of education who have chosen or may choose to be covered by the Minnesota state retirement system instead of the teachers retirement association;
- (4) employees of the University of Minnesota who are excluded from coverage by action of the board of regents;
- (5) officers and enlisted personnel in the national guard and the naval militia who are assigned to permanent peacetime duty and who under federal law are or are required to be members of a federal retirement system;
- (6) election officers;
- (7) persons engaged in public work for the state but employed by contractors when the performance of the contract is authorized by the legislature or other competent authority;
- (8) officers and employees of the senate and house of representatives or a legislative committee or commission who are temporarily employed;
- (9) receivers, jurors, notaries public, and court employees who are not in the judicial branch as defined in section 43A.02, subdivision 25, except referees and adjusters employed by the department of labor and industry;
- (10) patient and inmate help in state charitable, penal, and correctional institutions including the Minnesota veterans home;
- (11) persons employed for professional services where the service is incidental to regular professional duties and whose compensation is paid on a per diem basis;
- (12) employees of the Sibley House Association;
- (13) the members of any state board or commission who serve the state

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intermittently and are paid on a per diem basis; the secretary, secretary-treasurer, and treasurer of those boards if their compensation is \$5,000 or less per year, or, if they are legally prohibited from serving more than three years; and the board of managers of the state agricultural society and its treasurer unless the treasurer is also its full-time secretary;

(14) state troopers;

(15) temporary employees of the Minnesota state fair employed on or after July 1 for a period not to extend beyond October 15 of that year; and persons employed at any time by the state fair administration for special events held on the fairgrounds;

(16) emergency employees in the classified service; except that if an emergency employee, within the same pay period, becomes a provisional or probationary employee on other than a temporary basis, the employee shall be considered a "state employee" retroactively to the beginning of the pay period;

(17) persons described in section 352B.01, subdivision 2, clauses (2) to (5);

(18) temporary employees in the classified service, temporary employees in the unclassified service appointed for a definite period of not more than six months and employed less than six months in any one-year period and seasonal help in the classified service employed by the department of revenue;

(19) trainee employees, except those listed in subdivision 2a, clause (10);

(20) persons whose compensation is paid on a fee basis;

(21) state employees who in any year have credit for 12 months service as teachers in the public schools of the state and as teachers are members of the teachers retirement association or a retirement system in St. Paul, Minneapolis, or Duluth;

(22) employees of the adjutant general employed on an unlimited intermittent or temporary basis in the classified and unclassified service for the support of army and air national guard training facilities;

(23) chaplains and nuns who are excluded from coverage under the federal Old Age, Survivors, Disability, and Health Insurance Program for the performance of service as specified in United States Code, title 42, section 410(a)(8)(A), as amended, if no irrevocable election of coverage has been made under section 3121(r) of the Internal Revenue Code of 1986, as amended through December 31, 1992;

(24) examination monitors employed by departments, agencies, commissions, and boards to conduct examinations required by law;

(25) ~~members of appeal tribunals, exclusive of the chair, to which reference is made in section 268.10, subdivision 4;~~

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~~(26)~~ persons appointed to serve as members of fact-finding commissions or adjustment panels, arbitrators, or labor referees under chapter 179;

~~(27)~~ (26) temporary employees employed for limited periods under any state or federal program for training or rehabilitation including persons employed for limited periods from areas of economic distress except skilled and supervisory personnel and persons having civil service status covered by the system;

~~(28)~~ (27) full-time students employed by the Minnesota historical society intermittently during part of the year and full-time during the summer months;

~~(29)~~ (28) temporary employees, appointed for not more than six months, of the metropolitan council and of any of its statutory boards, if the board members are appointed by the metropolitan council;

~~(30)~~ (29) persons employed in positions designated by the department of employee relations as student workers;

~~(31)~~ (30) members of trades employed by the successor to the metropolitan waste control commission with trade union pension plan coverage under a collective bargaining agreement first employed after June 1, 1977;

~~(32)~~ (31) persons employed in subsidized on-the-job training, work experience, or public service employment as enrollees under the federal Comprehensive Employment and Training Act after March 30, 1978, unless the person has as of the later of March 30, 1978, or the date of employment sufficient service credit in the retirement system to meet the minimum vesting requirements for a deferred annuity, or the employer agrees in writing on forms prescribed by the director to make the required employer contributions, including any employer additional contributions, on account of that person from revenue sources other than funds provided under the federal Comprehensive Employment and Training Act, or the person agrees in writing on forms prescribed by the director to make the required employer contribution in addition to the required employee contribution;

~~(33)~~ (32) off-duty peace officers while employed by the metropolitan council;

~~(34)~~ (33) persons who are employed as full-time police officers by the metropolitan council and as police officers are members of the public employees police and fire fund;

~~(35)~~ (34) persons who are employed as full-time firefighters by the department of military affairs and as firefighters are members of the public employees police and fire fund;

~~(36)~~ (35) foreign citizens with a work permit of less than three years, or an H-1b/JV visa valid for less than three years of employment, unless notice of extension is supplied which allows them to work for three or more years as of the date the extension is granted, in which case they are eligible for coverage from the date extended; and

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~~(37)~~ (36) persons who are employed by the higher education board and who elect to remain members of the public employees retirement association or the Minneapolis employees retirement fund, whichever applies, under section 136C.75.

Sec. 27. Minnesota Statutes 1994, section 352.22, subdivision 10, is amended to read:

Subd. 10. **OTHER REFUNDS.** Former employees covered by the system are entitled to apply for refunds if they are or become members of the state patrol retirement fund, the state teacher's retirement association, or employees of the University of Minnesota excluded from coverage under the system by action of the board of regents; or labor service employees, excluded from coverage under section 352.01, subdivision 2b, clause ~~(26)~~ (25); or employees of the adjutant general who under federal law effectually elect membership in a federal retirement system; or officers or employees of the senate or house of representatives, excluded from coverage under section 352.01, subdivision 2b, clause (8). The refunds must include accumulated contributions plus interest as provided in subdivision 2. These employees may apply 30 days or more after their coverage ceases, even if they continue in state service but in positions not covered by this chapter.

Sec. 28. Minnesota Statutes 1994, section 574.26, subdivision 1, is amended to read:

Subdivision 1. **CITATION.** (a) Sections 574.26 to 574.32 are the "public contractors' performance and payment bond act," within those sections referred to as "the act."

(b) For the purposes of the act:

(1) "public body" means the state, municipal corporation, school district, or other public board or body; and

(2) "labor and materials" means work, skill, tools, machinery, materials, insurance premiums, equipment or supplies, or taxes incurred under section 290.92 ~~or~~, chapter 297A or 268; and

(3) "contract" means a contract with a public body for the doing of public work.

Sec. 29. **REPEALER.**

Minnesota Statutes 1994, section 268.10, subdivisions 3, 4, 5, 6, 7, 8, 9, and 10; 268.12, subdivisions 9, 10, and 13, are repealed.

Sec. 30. **EFFECTIVE DATE.**

Section 1 is effective January 1, 1996. Sections 2 to 29 are effective the day following final enactment.

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Presented to the governor April 17, 1995

Signed by the governor April 18, 1995, 12:18 p.m.

CHAPTER 55—S.F.No. 320

An act relating to criminal procedure; allowing warrantless probable cause arrests for certain offenses committed on school property; proposing coding for new law in Minnesota Statutes, chapter 629.

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

Section 1. [629.343] ALLOWING PROBABLE CAUSE ARRESTS FOR OFFENSES ON SCHOOL PROPERTY.

Notwithstanding section 629.34, a peace officer, as defined in section 626.84, subdivision 1, paragraph (c), who is on or off duty within the jurisdiction of the appointing authority or on duty outside the jurisdiction of the appointing authority pursuant to section 629.40, may arrest a person without a warrant if the peace officer has probable cause to believe that the person within the preceding four hours has committed a fifth-degree assault, as defined in section 609.224, on school property, as defined in section 609.66, subdivision 1d. The arrest may be made even though the crimes were not committed in the presence of the peace officer.

Sec. 2. EFFECTIVE DATE.

Section 1 is effective August 1, 1995, and applies to crimes committed on or after that date.

Presented to the governor April 17, 1995

Signed by the governor April 18, 1995, 12:20 p.m.

CHAPTER 56—S.F.No. 264

An act relating to drivers' licenses; abolishing separate review process for commercial driver's license disqualification; amending Minnesota Statutes 1994, section 171.166, subdivision 3; repealing Minnesota Statutes 1994, section 171.166, subdivision 4.

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

Section 1. Minnesota Statutes 1994, section 171.166, subdivision 3, is amended to read:

New language is indicated by underline, deletions by ~~strikeout~~.