

senate committees and divisions with jurisdiction over criminal justice policy and funding concerning the use of money collected since the beginning of fiscal year 1998 from penalty assessments under Minnesota Statutes, section 609.3241, and use for the purposes described in Minnesota Statutes, section 626.558, subdivision 2a. The report is requested to be filed with the legislative reference library no later than December 15, 2003.

**EFFECTIVE DATE.** This section is effective the day following final enactment.

**Sec. 5. REVISOR'S INSTRUCTION.**

In the next edition of Minnesota Statutes, the revisor shall change the headnotes for Minnesota Statutes, section 609.324, as follows:

(1) the section headnote from "OTHER PROHIBITED ACTS" to "OTHER PROSTITUTION CRIMES; PATRONS, PROSTITUTES, AND INDIVIDUALS HOUSING INDIVIDUALS ENGAGED IN PROSTITUTION; PENALTIES";

(2) the subdivision 1 headnote from "CRIME DEFINED" to "ENGAGING IN, HIRING, OR AGREEING TO HIRE A MINOR TO ENGAGE IN PROSTITUTION; PENALTIES";

(3) the subdivision 1a headnote from "MINOR ENGAGED IN PROSTITUTION" to "HOUSING AN UNRELATED MINOR ENGAGED IN PROSTITUTION; PENALTIES";

(4) the subdivision 2 headnote from "SOLICITATION IN PUBLIC PLACE" to "SOLICITATION OR ACCEPTANCE OF SOLICITATION TO ENGAGE IN PROSTITUTION; PENALTY"; and

(5) the subdivision 3 headnote from "HIRE TO ENGAGE IN PROSTITUTION" to "ENGAGING IN, HIRING, OR AGREEING TO HIRE AN ADULT TO ENGAGE IN PROSTITUTION; PENALTIES."

Presented to the governor May 24, 2003

Signed by the governor May 28, 2003, 12:46 p.m.

**CHAPTER 3—S.F.No. 18**

*An act relating to unemployment insurance; modifying provisions to increase the solvency of the trust fund; making policy and technical changes; amending Minnesota Statutes 2002, sections 268.035, subdivisions 15, 23; 268.044, subdivision 1, by adding a subdivision; 268.051, subdivisions 1, 2, 3, 5, 6, by adding a subdivision; 268.052, subdivision 1; 268.057, subdivision 5; 268.067; 268.07, subdivision 2; 268.085, subdivision 3; 268.086, subdivision 2; 268.095, subdivisions 1, 2, 6, 11; 268.105, subdivision 7; 268.18, subdivisions 1, 4; proposing coding for*

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*new law in Minnesota Statutes, chapter 268; repealing Minnesota Rules, part 3315.1015, subpart 4.*

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

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ARTICLE 1

SOLVENCY

Section 1. Minnesota Statutes 2002, section 268.051, subdivision 1, is amended to read:

Subdivision 1. **PAYMENTS.** (a) Taxes and any additional assessments, fees, or surcharges shall accrue and become payable by each employer for each calendar year that the employer paid wages to employees in covered employment, except for:

(1) nonprofit organizations that elect to make payments in lieu of taxes reimbursements as provided in section 268.053; and

(2) the state of Minnesota and political subdivisions that make reimbursements, unless they elect to pay taxes as provided in section 268.052.

Each employer shall pay taxes quarterly, at the employer's assigned tax rate, on the taxable wages paid to each employee. The taxes and any additional assessments, fees, or surcharges shall be paid to the trust fund on or before the last day of the month following the end of the calendar quarter.

(b) The tax total payment due may be paid in an amount to the nearest whole dollar.

(c) When the tax total payment due for any calendar quarter is less than \$1, the tax it shall be disregarded.

**EFFECTIVE DATE.** This section is effective the day following final enactment.

Sec. 2. Minnesota Statutes 2002, section 268.051, subdivision 2, is amended to read:

Subd. 2. **COMPUTATION OF TAX RATES; ADDITIONAL ASSESSMENTS.** (a) For each calendar year the commissioner shall compute the tax rate of each taxpaying employer that qualifies for an experience rating by adding the base tax rate to the employer's experience rating.

(b) The base tax rate shall be six-tenths of one percent if the amount in the fund is less than \$200,000,000 on June 30 of the prior calendar year; or five-tenths of one percent if the fund is more than \$200,000,000 but less than \$225,000,000; or

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four-tenths of one percent if the fund is more than \$225,000,000 but less than \$250,000,000; or three-tenths of one percent if the fund is more than \$250,000,000 but less than \$275,000,000; or two-tenths of one percent if the fund is \$275,000,000 but less than \$300,000,000; or one-tenth of one percent if the fund is \$300,000,000 or more.

(b) The base tax rate for the calendar year and any additional assessments under this subdivision shall be determined based upon the amount in the trust fund on March 31 of the prior year as a percentage of total wages paid in covered employment. The base tax rate shall be:

- (1) one-tenth of one percent if the trust fund is equal to or more than 0.75 percent;
- (2) two-tenths of one percent if the trust fund is less than 0.75 percent but equal to or more than 0.65 percent;
- (3) three-tenths of one percent if the trust fund is less than 0.65 percent but equal to or more than 0.55 percent; or
- (4) four-tenths of one percent if the trust fund is less than 0.55 percent.

(c) There shall be a "falling fund adjustment" to the base tax rate for the calendar year if the amount in the trust fund on March 31 of the prior year is less than 0.75 percent of total wages paid in covered employment and:

- (1) the amount in the trust fund on March 31 of the prior year is ten percent or more below the amount in the trust fund on March 31 of the year prior to that; or
- (2) the amount in the trust fund on March 31 of the prior year is greater than the amount in the trust fund on June 30 of that same year.

If a "falling fund adjustment" is applicable, then the base tax rate shall be 0.1 percent greater than otherwise provided for under paragraph (b).

(d) In addition to the base tax rate under paragraph (b), there shall be an additional assessment for the calendar year on all quarterly unemployment taxes due from every taxpaying employer if the amount in the trust fund on March 31 of the prior year is less than .55 percent of total wages paid in covered employment. The assessment shall be as follows:

- (1) a five percent assessment if the trust fund is less than 0.55 percent but equal to or more than 0.45 percent;
- (2) a ten percent assessment if the trust fund is less than 0.45 percent but equal to or more than 0.35 percent; or
- (3) a 14 percent assessment if the trust fund is less than 0.35 percent.

(e) For the purposes of this subdivision the trust fund shall not include any money borrowed from the federal unemployment trust fund pursuant to section 268.194, subdivision 6.

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(f) For the purposes of this subdivision, total wages paid in covered employment shall be those wages paid to all employees in covered employment during the calendar year prior to the March 31 date used in paragraph (b).

(g) The commissioner may compute any assessment under this subdivision, and any assessment under subdivision 8, as a percentage of the employer's experience rating and the base tax rate, rounded to the nearest hundredth of a percent.

On tax rate notices sent under subdivision 6, any assessments under this subdivision may be combined with any special assessments for interest on federal loans provided for in subdivision 8 into a single combined assessment.

EFFECTIVE DATE. Paragraph (c) is effective January 1, 2005. The remainder of this section is effective the day following final enactment.

Sec. 3. Minnesota Statutes 2002, section 268.051, subdivision 3, is amended to read:

**Subd. 3. COMPUTATION OF A TAXPAYING EMPLOYER'S EXPERIENCE RATING.** (a) For each calendar year, the commissioner shall compute an experience rating for each taxpaying employer who has been subject to this chapter paying unemployment taxes for at least the 12 calendar months prior to July 1 of the prior calendar year.

(b) The experience rating shall be the ratio obtained by dividing 125 percent of the total unemployment benefits required under section 268.047 to be used in computing the employer's tax rate during the 60 48 calendar months ending on June 30 of the prior calendar year, by the employer's total taxable payroll for that same period.

(c) For purposes of paragraph (b), only that taxable payroll upon which taxes have been paid on or before September 30 of the prior calendar year may be used in computing an employer's experience rating.

(d) The experience rating shall be computed to the nearest one-tenth of a percent, to a maximum of 8.9 percent.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 4. Minnesota Statutes 2002, section 268.051, subdivision 5, is amended to read:

**Subd. 5. TAX RATE FOR NEW EMPLOYERS.** (a) Each new taxpaying employer that does not qualify for an experience rating under subdivision 3, paragraph (a), except new employers in a high experience rating industry, shall be assigned, for a calendar year, a tax rate the higher of (1) one percent, or (2) the state's average cost rate. For purposes of this paragraph, the state's average cost tax rate shall be computed annually by dividing the total amount of unemployment benefits paid all applicants during the 60 48 calendar months prior to July 1 of each ending on June 30 of the prior calendar year by the total taxable wages of all taxpaying employers during the same period, plus the applicable base tax rate. This rate for new employers shall be

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applicable for the calendar year following the computation date.

(b) Each new taxpaying employer in a high experience rating industry that does not qualify for an experience rating under subdivision 3, ~~paragraph (a)~~, shall be assigned, for a calendar year, a tax rate of 8.0 percent, plus the applicable base tax rate.

An employer is considered to be in a high experience rating industry if:

(1) the employer is engaged in residential, commercial, or industrial construction, including general contractors;

(2) the employer is engaged in sand, gravel, or limestone mining;

(3) the employer is engaged in the manufacturing of concrete, concrete products, or asphalt; or

(4) the employer is engaged in road building, repair, or resurfacing, including bridge and tunnels and residential and commercial driveways and parking lots.

**EFFECTIVE DATE.** This section is effective the day following final enactment.

Sec. 5. Minnesota Statutes 2002, section 268.051, subdivision 6, is amended to read:

Subd. 6. **NOTICE OF TAX RATE.** (a) The commissioner shall notify each employer by mail or electronic transmission of the employer's tax rate, along with any additional assessments, fees, or surcharges, as determined for any calendar year. The notice shall contain the tax rate and the factors used in determining the employer's experience rating. Unless a protest of the rate is made, the assigned rate shall be final except for fraud and shall be the rate at which taxes shall be paid. The tax rate shall not be subject to collateral attack by way of claim for a credit adjustment or refund, or otherwise.

(b) If the legislature, subsequent to the sending of the tax rate, changes any of the factors used to determine the rate, the earlier notice shall be void. A new tax rate based on the new factors shall be computed and sent to the employer.

(c) A review of an employer's tax rate may be obtained by the employer filing, in a manner prescribed by the commissioner, a protest within 30 calendar days from the date the tax rate notice was sent to the employer. Upon receipt of the protest, the commissioner shall review the tax rate to determine whether or not there has been any clerical error or error in computation. The commissioner shall either affirm or make a redetermination of the rate and a notice of the affirmation or redetermination shall be sent to the employer by mail or electronic transmission. The affirmation or redetermination shall be final unless the employer files an appeal within 30 calendar days after the date the affirmation or redetermination was sent. Proceedings on the appeal shall be conducted in accordance with section 268.105.

(d) The commissioner may at any time upon the commissioner's own motion correct any error in the computation or the assignment of an employer's tax rate.

**EFFECTIVE DATE.** This section is effective the day following final enactment.

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

Sec. 6. Minnesota Statutes 2002, section 268.051, is amended by adding a subdivision to read:

Subd. 9. ASSESSMENTS, FEES, AND SURCHARGES; TREATMENT. Any assessment, fee, or surcharge imposed under the Minnesota Unemployment Insurance Law shall be treated the same as, and considered as, a tax. Any assessment, fee, or surcharge shall be subject to the same collection procedures that apply to past due taxes.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 7. Minnesota Statutes 2002, section 268.07, subdivision 2, is amended to read:

Subd. 2. **BENEFIT ACCOUNT REQUIREMENTS AND WEEKLY UNEMPLOYMENT BENEFIT AMOUNT AND MAXIMUM AMOUNT OF UNEMPLOYMENT BENEFITS.** (a) To establish a benefit account, an applicant must have:

- (1) high quarter wage credits of at least \$1,000; and
- (2) wage credits, in other than the high quarter, of at least \$250.

(b) If an applicant has established a benefit account, the weekly unemployment benefit amount available during the benefit year shall be the higher of:

- (1) 50 percent of the applicant's average weekly wage during the base period, to a maximum of 66-2/3 percent of the state's average weekly wage; or
- (2) 50 percent of the applicant's average weekly wage during the high quarter, to a maximum of ~~50~~ 45 percent of the state's average weekly wage.

The applicant's average weekly wage under clause (1) shall be computed by dividing the total wage credits by 52. The applicant's average weekly wage under clause (2) shall be computed by dividing the high quarter wage credits by 13.

(c) The state's maximum weekly unemployment benefit amount and the applicant's weekly unemployment benefit amount and maximum amount of unemployment benefits shall be rounded down to the next lowest whole dollar.

(d) The maximum amount of unemployment benefits available on any benefit account shall be the lower of:

- (1) 33-1/3 percent of the applicant's total wage credits; or
- (2) 26 times the applicant's weekly unemployment benefit amount.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 8. Minnesota Statutes 2002, section 268.085, subdivision 3, is amended to read:

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

Subd. 3. **DEDUCTIBLE PAYMENTS THAT DELAY UNEMPLOYMENT BENEFITS.** (a) An applicant shall not be eligible to receive unemployment benefits for any week with respect to which the applicant is receiving, has received, or has filed for payment in an amount equal to or in excess of the applicant's weekly unemployment benefit amount in the form of:

(1) severance pay, bonus pay, vacation pay, sick pay, and any other money payments, except earnings under subdivision 5, and back pay under subdivision 6, paid by an employer because of, upon, or after separation from employment that are, but only if the money payment is considered wages at the time of payment under section 268.035, subdivision 29, or United States Code, title 26, section 3121, clause (2) of the Federal Insurance Contribution Act. This clause shall apply to all the first four weeks of payment and to one-half of the total number of any additional weeks of payment. This clause and shall be applied to the period immediately following the last day of employment. The number of weeks of payment shall be determined as follows:

(i) if the payments are made periodically, the total of the payments to be received shall be divided by the applicant's last level of regular weekly pay from the employer; or

(ii) if the payment is made in a lump sum, that sum shall be divided by the applicant's last level of regular weekly pay from the employer. This clause shall not apply to vacation pay paid by an employer upon permanent separation from employment;

(2) pension, retirement, or annuity payments from any plan contributed to by a base period employer including the United States government, except social security benefits which are provided for in subdivision 4. The base period employer contributed to the plan if the contribution is excluded from the definition of wages under section 268.035, subdivision 29, clause (1), or United States Code, title 26, section 3121, clause (2), of the Federal Insurance Contribution Act.

If the applicant receives a lump sum pension payment, that sum shall be divided by the applicant's last level of regular weekly pay to determine the number of weeks of payment. The number of weeks of payment shall be applied to the period immediately following the last day of employment. An applicant shall not be considered to have received the lump sum payment if the applicant immediately deposits that payment in a qualified pension plan or account; or

(3) holiday pay.

(b) If the deductible payment is less than the applicant's weekly unemployment benefit amount, unemployment benefits shall be reduced by the amount of the payment. If the computation of reduced unemployment benefits is not a whole dollar, it shall be rounded down to the next lowest dollar.

**EFFECTIVE DATE.** This section is effective for benefit accounts established August 3, 2003, and thereafter.

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

**Sec. 9. MAXIMUM BENEFIT AMOUNT.**

Notwithstanding Minnesota Statutes, section 268.07, subdivision 2, paragraph (b), clause (2), the maximum amount of weekly unemployment benefits available based upon the high quarter calculation shall not be less than \$350.

EFFECTIVE DATE. This section is effective the day following enactment and sunsets September 1, 2006.

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**ARTICLE 2****POLICY AND TECHNICAL CHANGES**

Section 1. Minnesota Statutes 2002, section 268.035, subdivision 15, is amended to read:

Subd. 15. **EMPLOYMENT.** "Employment" means service performed by:

(1) an individual who is considered an employee under the common law of employer-employee and not considered an independent contractor;

(2) an officer of a corporation;

(3) a member of a limited liability company who has less than a 25 percent ownership share and is considered an employee under the common law of employer-employee; or

(4) an individual who performs services for a person for compensation, as:

(i) an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, beverages, or laundry or dry cleaning services; or

(ii) a traveling or city salesperson, other than as an agent-driver or commission-driver, engaged full-time in the solicitation on behalf of the 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.

This clause shall apply only if the contract of service provides that substantially all of the services are to be performed personally by the individual, and the services are part of a continuing relationship with the person for whom the services are performed, and the individual does not have a substantial investment in facilities used in connection with the performance of the services, other than facilities for transportation.

Sec. 2. Minnesota Statutes 2002, section 268.035, subdivision 23, is amended to read:

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



Subd. 23. **STATE'S AVERAGE ANNUAL AND AVERAGE WEEKLY WAGE.** (a) On or before June 30 of each year, the commissioner shall calculate the state's average annual wage and the state's average weekly wage in the following manner:

(1) The sum of the total monthly covered employment reported by all employers for the prior calendar year shall be divided by 12 to calculate the average monthly covered employment.

(2) The sum of the total wages paid for all covered employment reported by all employers for the prior calendar year shall be divided by the average monthly covered employment to calculate the state's average annual wage.

(3) The state's average annual wage shall be divided by 52 to calculate the state's average weekly wage.

(b) For purposes of calculating the amount of taxable wages, the state's average annual wage shall apply to the calendar year following the calculation.

(c) For purposes of calculating the state's maximum weekly unemployment benefit amount payable available on any benefit account under section 268.07, subdivision 2, the state's average weekly wage shall apply to the ~~12-month~~ one-year period beginning the first Sunday in August of the calendar year of the calculation.

**EFFECTIVE DATE.** This section is effective the day following final enactment.

Sec. 3. Minnesota Statutes 2002, section 268.044, subdivision 1, is amended to read:

Subdivision 1. **WAGE DETAIL REPORT.** (a) Each employer that has employees in covered employment shall ~~provide the commissioner with~~ file a quarterly wage detail report, in a manner and format prescribed by the commissioner. The report shall include for each employee in covered employment, the employee's name, social security number, the total wages paid to the employee, and total number of paid hours worked. For employees exempt from the definition of employee in section 177.23, subdivision 7, clause (6), the employer shall report 40 hours worked for each week any duties were performed by a full-time employee and shall report a reasonable estimate of the hours worked for each week duties were performed by a part-time employee. If the information required is not filed in a manner and format prescribed by the commissioner, it shall not be considered a wage detail report. The report is due and must be filed on or before the last day of the month following the end of the calendar quarter.

(b) The employer may report the wages paid to the nearest whole dollar amount.

(c) An employer need not include the name of the employee or other required information on the wage detail report if disclosure is specifically exempted by federal law.

Sec. 4. Minnesota Statutes 2002, section 268.044, is amended by adding a subdivision to read:

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

Subd. 1a. ELECTRONIC TRANSMISSION OF REPORT REQUIRED. Each employer that has 50 or more employees to report for a calendar quarter under subdivision 1 must file the quarterly wage detail report by electronic transmission in a format prescribed by the commissioner. The commissioner shall have the discretion to accept wage detail reports by magnetic media, in a format prescribed by the commissioner. Wage detail reports from an employer with 50 or more employees to report for a calendar quarter that are filed by any other means may be returned to the employer, and reports returned shall be considered as not filed and the penalties under subdivision 2 may be imposed.

Sec. 5. Minnesota Statutes 2002, section 268.052, subdivision 1, is amended to read:

Subdivision 1. **PAYMENTS.** In lieu of taxes payable on a quarterly basis, the state of Minnesota or its political subdivisions shall pay into reimburse the trust fund the amount of unemployment benefits charged to its reimbursable account under section 268.047. Payments Reimbursements in the amount of unemployment benefits charged to the reimbursable account during a calendar quarter shall be made on or before the last day of the month following the month that the notice of unemployment benefits paid is sent pursuant to section 268.047, subdivision 5. Past due payments in lieu of taxes reimbursements shall be subject to the same interest charges and collection procedures that apply to past due taxes.

Sec. 6. Minnesota Statutes 2002, section 268.057, subdivision 5, is amended to read:

Subd. 5. **INTEREST ON PAST DUE TAXES.** If any taxes or payments in lieu of taxes to the fund, reimbursements, fees, assessments, surcharges, or any penalties under section 268.184, are not paid on the date due the unpaid balance shall bear interest at the rate of one and one-half percent per month or any part thereof. Taxes or Any payments in lieu of taxes received by mail postmarked on a day following the date due shall be considered to have been paid on the due date if there is substantial evidence that the payment was actually deposited in the United States mail properly addressed to the department with postage prepaid thereon on or before the due date. Interest collected shall be credited to the contingent account. Interest may be waived by rules adopted by the commissioner under section 268.067.

**EFFECTIVE DATE.** This section is effective the day following final enactment.

Sec. 7. Minnesota Statutes 2002, section 268.067, is amended to read:

268.067 **COMPROMISE.**

(a) The commissioner may compromise in whole or in part any action, determination, or decision that affects only an employer and not an applicant, and that has occurred during the prior 24 months. This paragraph may apply if it is determined by a court of law, or a confession of judgment, that an applicant, while employed, wrongfully took from the employer \$500 or more, in money or property.

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(b) The commissioner may at any time compromise delinquent employer taxes, ~~payments in lieu of taxes~~ reimbursements, interest, penalties, and costs.

(c) Any compromise shall be by written order signed by an attorney who is a classified employee of the department designated by the commissioner for that purpose.

(d) Any compromise order must set out all the terms and the reason for the order and must be in the best interest of the state of Minnesota.

Sec. 8. Minnesota Statutes 2002, section 268.07, subdivision 2, is amended to read:

Subd. 2. **BENEFIT ACCOUNT REQUIREMENTS AND WEEKLY UNEMPLOYMENT BENEFIT AMOUNT AND MAXIMUM AMOUNT OF UNEMPLOYMENT BENEFITS.** (a) To establish a benefit account, an applicant must have:

- (1) high quarter wage credits of at least \$1,000; and
- (2) wage credits, in other than the high quarter, of at least \$250.

(b) If an applicant has established a benefit account, the weekly unemployment benefit amount available during the benefit year shall be the higher of:

(1) 50 percent of the applicant's average weekly wage during the base period, to a maximum of 66-2/3 percent of the state's average weekly wage; or

(2) 50 percent of the applicant's average weekly wage during the high quarter, to a maximum of 50 percent of the state's average weekly wage.

The applicant's average weekly wage under clause (1) shall be computed by dividing the total wage credits by 52. The applicant's average weekly wage under clause (2) shall be computed by dividing the high quarter wage credits by 13.

(c) The state's maximum weekly unemployment benefit amount and ~~the~~ an applicant's weekly unemployment benefit amount and maximum amount of unemployment benefits available shall be rounded down to the next lowest whole dollar. The state's maximum weekly benefit amount, computed in accordance with section 268.035, subdivision 23, shall apply to a benefit account established effective on or after the first Sunday in August. Once established, an applicant's weekly unemployment benefit amount shall not be affected by the first Sunday in August change in the state's maximum weekly unemployment benefit amount.

(d) The maximum amount of unemployment benefits available on any benefit account shall be the lower of:

- (1) 33-1/3 percent of the applicant's total wage credits; or
- (2) 26 times the applicant's weekly unemployment benefit amount.

**EFFECTIVE DATE.** This section is effective the day following final enactment.

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

**Sec. 9. [268.084] PERSONAL IDENTIFICATION NUMBER; PRESUMPTION.**

(a) Each applicant shall be issued a personal identification number (PIN) for the purpose of filing continued biweekly requests for unemployment benefits, accessing information, and engaging in other transactions with the department.

(b) If a PIN assigned to an applicant is used in the filing of a continued biweekly request for unemployment benefits under section 268.086 or any other type of transaction, the applicant shall be presumed to have been the individual using that PIN and presumed to have received any unemployment benefit payment issued. This presumption may be rebutted by a preponderance of the evidence showing that the applicant assigned the PIN was not the individual who used that PIN in the transaction.

(c) The commissioner shall notify each applicant of this section.

Sec. 10. Minnesota Statutes 2002, section 268.086, subdivision 2, is amended to read:

**Subd. 2. CONTINUED BIWEEKLY REQUEST FOR UNEMPLOYMENT BENEFITS DEFINED.** A continued biweekly request for unemployment benefits is a certification by an applicant, done on a ~~weekly~~ or biweekly basis as prescribed by the commissioner, ~~or that the applicant's applicant is unemployed and meets the ongoing eligibility requirements for unemployment benefits under section 268.085 for a specific week or two-week period.~~ A continued biweekly request shall include information on possible issues of disqualification in accordance with section 268.101, subdivision 1, paragraph (c).

Sec. 11. Minnesota Statutes 2002, section 268.095, subdivision 1, is amended to read:

Subdivision 1. **QUIT.** An applicant who quit employment shall be disqualified from all unemployment benefits except when:

(1) the applicant quit the employment because of a good reason caused by the employer;

(2) the applicant quit the employment to accept other covered employment that provided substantially better terms and conditions of employment, but the applicant did not work long enough at the other employment to have sufficient subsequent earnings to satisfy the disqualification that would otherwise be imposed;

(3) the applicant quit the employment within 30 calendar days of beginning the employment because the employment was unsuitable for the applicant;

(4) the employment was unsuitable for the applicant and the applicant quit to enter reemployment assistance training;

(5) the employment was part time and the applicant had full-time employment in the base period, that the applicant separated from because of nondisqualifying reasons,

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sufficient to meet the minimum requirements to establish a benefit account under section 268.07;

(6) the applicant quit because the employer notified the applicant that the applicant was going to be laid off due to lack of work within 30 calendar days. An applicant who quit employment within 30 calendar days of a notified date of layoff due to lack of work shall be disqualified from unemployment benefits through the end of the week that includes the scheduled date of layoff;

(7) the applicant quit the employment because the applicant's serious illness or injury made it medically necessary that the applicant quit, ~~provided that the applicant made reasonable efforts to remain in that employment in spite of the serious illness or injury.~~

Reasonable efforts to remain in that employment are those a reasonable individual would make if interested in remaining with the employer and require that the applicant inform the employer of the serious illness or injury and request accommodation and no reasonable accommodation is made available.

If the applicant's serious illness is chemical dependency, the applicant has not made reasonable efforts to remain in that employment this exception shall not apply if the applicant has was previously been diagnosed as chemically dependent, or has previously had treatment for chemical dependency, and since that diagnosis or treatment has failed to make consistent efforts to control the chemical dependency; or

(8) domestic abuse of the applicant or the applicant's minor child, necessitated the applicant's quitting the employment. Domestic abuse shall be shown by one or more of the following:

(i) a court order for protection or other documentation of equitable relief issued by a court;

(ii) a police record documenting the domestic abuse;

(iii) documentation that the perpetrator of the domestic abuse has been convicted of the offense of domestic abuse;

(iv) medical documentation of domestic abuse; or

(v) documentation or certification written statement that the applicant or the applicant's minor child is a victim of the domestic abuse, provided by a social worker, member of the clergy, shelter worker, attorney at law, or other professional who has assisted the applicant in dealing with the domestic abuse.

Domestic abuse for purposes of this clause shall be defined under section 518B.01.

Sec. 12. Minnesota Statutes 2002, section 268.095, subdivision 2, is amended to read:

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

Subd. 2. **QUIT DEFINED.** (a) A quit from employment occurs when the decision to end the employment was, at the time the employment ended, the employee's.

(b) An employee who has been notified that the employee will be discharged in the future, who chooses to end the employment while employment in any capacity is still available, shall be considered to have quit the employment.

(c) An employee who seeks to withdraw a previously submitted notice of quitting shall be considered to have quit the employment if the employer does not agree that the notice may be withdrawn.

(d) An applicant who, ~~without good cause, fails to affirmatively request an additional job assignment within five calendar days after completion of a suitable temporary job assignment from a staffing service employer, (1) fails without good cause to affirmatively request an additional job assignment, or (2) refuses without good cause an additional suitable job assignment offered,~~ shall be considered to have quit employment.

This paragraph shall apply only if, at the time of beginning of employment with the staffing service employer, the applicant signed and was provided a copy of a separate document written in clear and concise language that informed the applicant of this paragraph and that unemployment benefits may be affected.

For purposes of this paragraph, "good cause" shall be a reason that is significant and would compel an average, reasonable worker, who would otherwise want an additional temporary job assignment with the staffing service employer, (1) to fail to contact the staffing service employer, or (2) to refuse an offered assignment. ~~The applicant shall be considered to have good cause if the temporary job assignment just completed was not suitable employment for the applicant.~~

For purposes of this paragraph, a "staffing service employer" is an employer whose business involves employing individuals directly for the purpose of furnishing temporary help job assignment workers to clients of the staffing service.

Sec. 13. Minnesota Statutes 2002, section 268.095, subdivision 6, is amended to read:

Subd. 6. **EMPLOYMENT MISCONDUCT DEFINED.** (a) Employment misconduct means:

(1) any intentional, negligent, or indifferent conduct, on the job or off the job, (1) that disregards evinces a serious violation of the standards of behavior that an the employer has the right to reasonably expect of the employee or disregards the employee's duties and obligations to the employer, or (2) negligent or indifferent conduct, on the job or off the job, that demonstrates a substantial lack of concern for the employment.

(b) Inefficiency, inadvertence, simple unsatisfactory conduct, a single incident that does not have a significant adverse impact on the employer, conduct an average reasonable employee would have engaged in under the circumstances, poor perfor-

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mance because of inability or incapacity, good faith errors in judgment if judgment was required, or absence because of illness or injury with proper notice to the employer, are not employment misconduct.

(e) ~~Any conduct in violation of paragraph (a), clause (1) or (2);~~ (b) Conduct that was a direct result of the applicant's chemical dependency is not employment misconduct if unless the applicant has was previously been diagnosed chemically dependent or had treatment for chemical dependency, and since that diagnosis or treatment has failed to make consistent efforts to control the chemical dependency.

(c) Conduct that was a result of the applicant, or the applicant's minor child, being a victim of domestic abuse as defined under section 518B.01, is not employment misconduct. Domestic abuse shall be shown as provided for in section 268.095, subdivision 1, clause (8).

(d) A driving offense in violation of sections 169A.20, 169A.31, or 169A.50 to 169A.53 that interferes with or adversely affects the employment is employment misconduct.

(e) The definition of employment misconduct provided by this subdivision shall be exclusive.

Sec. 14. Minnesota Statutes 2002, section 268.095, subdivision 11, is amended to read:

Subd. 11. **APPLICATION.** (a) This section shall apply to all covered employment, full time or part time, temporary or of limited duration, permanent or of indefinite duration, that occurred in Minnesota during the base period, the period between the end of the base period and the effective date of the benefit account, or the benefit year, except as provided for in subdivision 1, clause (5). Subdivision 8 shall only apply to offers of suitable employment made during the applicant's benefit year.

(b) Paragraph (a) shall also apply to employment covered under an unemployment insurance program of any other state or established by an act of Congress.

Sec. 15. Minnesota Statutes 2002, section 268.105, subdivision 7, is amended to read:

Subd. 7. **JUDICIAL REVIEW.** (a) The Minnesota court of appeals shall, by writ of certiorari to the commissioner, review the decision of the commissioner provided a petition for the writ is filed with the court and a copy is served upon the commissioner and any other involved party within 30 calendar days of the mailing of the commissioner's decision.

(b) Any employer petitioning for a writ of certiorari shall pay to the court the required filing fee and upon the service of the writ shall furnish a cost bond to the commissioner in accordance with the rules of civil appellate procedure. If the employer requests a written transcript of the testimony received at the evidentiary hearing conducted pursuant to subdivision 1, the employer shall pay to the commissioner the cost of preparing the transcript.

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(c) Upon issuance by the Minnesota court of appeals of a writ of certiorari as a result of an applicant's petition, the commissioner shall furnish to the applicant at no cost a written transcript of the testimony received at the evidentiary hearing conducted pursuant to subdivision 1, and, if requested, a copy of all exhibits entered into evidence. No filing fee or cost bond shall be required of an applicant petitioning the Minnesota court of appeals for a writ of certiorari.

(d) The commissioner shall be considered the primary responding party to any judicial action involving the commissioner's decision. The commissioner may be represented by an attorney who is a ~~classified~~ an employee of the department designated by the commissioner for that purpose.

**EFFECTIVE DATE.** This section is effective the day following final enactment.

Sec. 16. Minnesota Statutes 2002, section 268.18, subdivision 1, is amended to read:

Subdivision 1. **NONFRAUD OVERPAYMENT DUE TO ERROR.** (a) Any applicant who (1) by reason of the applicant's own mistake, or (2) because of an error by any employee of the department, or (3) because of a determination, redetermination, or amended determination issued pursuant to section 268.07 or 268.101, or (4) because of an appeal decision under section 268.105, has received any unemployment benefits that the applicant was not entitled to, shall promptly repay the unemployment benefits to the trust fund. ~~If the applicant fails to repay the unemployment benefits,~~ The commissioner shall, as soon as the ~~erroneous payment~~ overpayment is discovered, determine the amount due and notify the applicant in writing to repay the unemployment benefits.

(b) Unless the applicant files an appeal within 30 calendar days after the mailing of the determination of overpayment to the applicant's last known address, the determination shall become final. Proceedings on the appeal shall be conducted in accordance with section 268.105. An applicant may not collaterally attack, by way of an appeal to an overpayment determination, any prior determination issued pursuant to section 268.07 or 268.101, or decision issued pursuant to section 268.105, that has become final.

(c) If the applicant fails to repay the unemployment benefits determined overpaid under this subdivision, the commissioner may offset from any future unemployment benefits otherwise payable the amount of the overpayment. Except when the overpayment resulted because the applicant failed to report deductible earnings or deductible or benefit delaying payments, no single offset shall exceed 50 percent of the amount of the payment from which the offset is made. The overpayment may also be collected by the same methods as delinquent taxes. A determination of overpayment shall state the methods of collection the commissioner may use to recover the overpayment.

(d) If an applicant has been overpaid unemployment benefits under the law of another state ~~because of an error,~~ due to a reason other than fraud, and that state

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certifies that the applicant is liable under its law to repay the unemployment benefits and requests the commissioner to recover the overpayment, the commissioner may offset from future unemployment benefits otherwise payable the amount of overpayment, except that no single offset shall exceed 50 percent of the amount of the payment from which the offset is made.

(e) Unemployment benefits paid for weeks more than three years prior to the discovery of error overpayment under this subdivision are not overpaid unemployment benefits.

Sec. 17. Minnesota Statutes 2002, section 268.18, subdivision 4, is amended to read:

Subd. 4. **CANCELLATION OF OVERPAYMENTS.** (a) If unemployment benefits paid because of an error determined overpaid under subdivision 1 are not repaid or offset from subsequent unemployment benefits as provided for in subdivision 1 within six years after the date of the determination of overpayment, the commissioner shall cancel the overpayment balance, and no administrative or legal proceedings shall be used to enforce collection of those amounts.

(b) If unemployment benefits paid as a result of fraud determined overpaid under subdivision 2 including penalties and interest are not repaid or offset from subsequent unemployment benefits as provided for in subdivision 2 within ten years after the date of the determination of overpayment by fraud, the commissioner shall cancel the overpayment balance and any penalties and interest due, and no administrative or legal proceeding shall be used to enforce collection of those amounts.

(c) The commissioner may cancel at any time any overpayment, including penalties and interest, that the commissioner determines is uncollectible due to death or bankruptcy.

**Sec. 18. GATE PILOT PROJECT.**

The commissioner of economic security may implement a pilot project involving unemployment benefit applicants who are participating in the Growing America Through Entrepreneurship, (GATE) program, a joint initiative of the Small Business Administration and the United States Department of Labor, to help create, support, and expand small business opportunities in diverse communities. The commissioner may waive all or part of the ongoing eligibility requirements under Minnesota Statutes, sections 268.085 and 268.086 for GATE participants.

A maximum of 200 unemployment benefit applicants may be involved in this pilot project at any one time.

**EFFECTIVE DATE.** This section is effective the day following final enactment.

**Sec. 19. SUNSET.**

Section 18 expires on June 30, 2008.

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

**Sec. 20. REVISOR'S INSTRUCTION.**

(a) The revisor of statutes shall change the term "unemployment insurance benefits program" to "unemployment insurance program" throughout Minnesota Statutes.

(b) The revisor of statutes shall change the term "payments in lieu of taxes" to "reimbursements" in Minnesota Statutes, sections 268.01 to 268.23.

(c) The revisor of statutes shall change the term "continued request" to "continued biweekly request" in Minnesota Statutes, sections 268.029 to 268.23.

(d) The revisor of statutes shall change the term "unemployment insurance program law" to "unemployment insurance law" in Minnesota Statutes, sections 268.029 to 268.23.

(e) The revisor of statutes shall change the term "unemployment insurance program trust fund" to "unemployment insurance trust fund" in Minnesota Statutes, sections 268.029 to 268.23.

(f) The revisor of statutes shall change the term "experience rating record" to "experience rating" in Minnesota Statutes, sections 268.029 to 268.23.

(g) The revisor of statutes shall change the term "this subdivision shall be exclusive" to "this subdivision shall be exclusive and no other definition shall apply" in Minnesota Statutes, sections 268.029 to 268.23.

(h) The revisor of statutes shall change the term "applicants" to "unemployment benefit applicants" in Minnesota Statutes, section 268.26.

(i) The revisor of statutes shall change the term "benefits" to "unemployment benefits" in Minnesota Statutes, sections 268.07, subdivision 3, paragraph (b); 268.101, subdivision 1; and 268.18, subdivision 3a.

(j) The revisor of statutes shall change the term "disqualified from" to "ineligible for" and change the term "disqualified" to "ineligible" in Minnesota Statutes, section 268.095, subdivision 12.

(k) The revisor of statutes shall renumber each section of Minnesota Statutes listed in column A with the number listed in column B. The revisor shall also make necessary cross-reference changes consistent with the renumbering.

Column A  
268.095, subd. 12  
268.035, subd. 18

Column B  
268.085, subd. 13b  
268.035, subd. 25a

(l) The revisor of statutes shall change the term "fund" to "trust fund" in Minnesota Statutes, sections 268.029 to 268.23.

**Sec. 21. REPEALER.**

Minnesota Rules, part 3315.1015, subpart 4, is repealed.

Presented to the governor May 27, 2003

Signed by the governor May 30, 2003, 3:47 p.m.

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