

qualified therefor under Minnesota Statutes 1957, Chapter 268, and said Temporary Unemployment Compensation Act of 1958, as amended, who, after June 30, 1957, have exhausted or will exhaust their right to benefits under said Chapter 268 and, except for such exhaustion, continue to be so qualified; and (b) cooperate with the Secretary of Labor of the United States in making payment of such temporary unemployment compensation benefits.

Subd. 2. The temporary unemployment compensation benefits payable to an individual under this act for a week of total unemployment shall be the weekly benefit amount for total unemployment which was payable to him pursuant to said Chapter 268 under which he most recently exhausted his rights. The temporary unemployment compensation benefits payable to an individual under this act for a week of less than total unemployment shall be computed on the basis of such weekly benefit amount. The maximum aggregate amount of temporary unemployment compensation benefits payable to any individual under this act shall be an amount equal to 50 percent of the total amount which was payable to him, under said Chapter 268.

Subd. 3. No payment of temporary unemployment compensation benefits shall be made for a week which begins after July 1, 1959.

Subd. 4. This act to be effective upon its passage.

Approved April 24, 1959.

CHAPTER 595—H. F. No. 1757

An act relating to employment security; amending Minnesota Statutes 1957, Section 268.04, Subdivisions 10 and 12.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Minnesota Statutes 1957, 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 but not necessarily simultaneously, in each of 20 different weeks, whether or not such weeks are or were consecutive, within the year 1936 has or had in employment eight or more individuals (irrespective of whether the same individuals are or were employed in each such day) and, for any calendar year subsequent

to 1936, an 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) *within the corporate limits of a city, village, or borough of 10,000 population or more, as determined by the most recent United States census and, for any calendar year subsequent to 1959, an 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 four or more individuals (irrespective of whether the same individual or individuals were employed in each such day) outside the corporate limits of a city, village, or borough of 10,000 population or more, as determined by the most recent United States census;*

(2) Any employing unit which acquired the organization, trade, or business or substantially all the assets thereof, of another which at the time of such acquisition was an employer subject to sections 268.03 to 268.24;

(3) 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) of this subdivision;

(4) 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) of this subdivision;

(5) Any employing unit which, having become an employer under clauses (1), (2), (3), or (4), has not, under section 268.11, ceased to be an employer subject to these sections;

(6) For the effective period of its election pursuant to section 268.11, subdivision 3, any other employing unit which has elected to become fully subject to sections 268.03 to 268.24;

(7) Notwithstanding any inconsistent provisions of sections 268.03 to 268.24, any employing unit not an employer by reason of any other clause of this subdivision for which service is performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund;

(8) Except as provided in clause (7), and notwithstanding any other provisions of sections 268.03 to 268.24, no employing unit shall be initially determined a subject employer on the basis of covered employment performed more than four years prior to the year in which such determination is made, unless the commissioner finds that the records of such employment experience were fraudulently concealed or withheld for the purpose of escaping liability under said sections.

Sec. 2. Minnesota Statutes 1957, Section 268.04, Subdivision 12, is amended to read:

Subd. 12. **Employment.** (1) Subject to the other provisions of this subdivision "employment" means service performed prior to January 1, 1945, which was employment as defined in this section prior to such date, and any service performed after December 31, 1944, including service in interstate commerce, by an individual who is a servant under the law of master and servant or who performs services for any employing unit, unless such services are performed by such individual in pursuit of his independently established business or is in fact an independent contractor. The services performed by officers of corporations are included as employment under sections 268.03 to 268.24.

(2) The term "employment" shall include an individual's entire service, performed within or both within and without this state if (a) the service is localized in this state; or (b) the service is not localized in any state but some of the service is performed in this state and (1) the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state; (2) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(3) Service shall be deemed to be localized within a state if (a) the service is performed entirely within such state; or (b) the service is performed both within and without such state, but the service performed without such state is

incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

(4) (a) Service covered by an election pursuant to section 268.11, subdivision 3; and

(b) Service covered by an arrangement pursuant to section 268.13 between the commissioner and the agency charged with the administration of any other state or federal employment security law, pursuant to which all service performed by an individual for an employing unit is deemed to be performed entirely within this state, shall be deemed to be employment if the commissioner has approved an election of the employing unit for which such service is performed, pursuant to which the entire service of such *individual during the period covered by such election is deemed to be* employment.

(5) Notwithstanding any inconsistent provisions of sections 268.03 to 268.24, the term "employment" shall include any services which are performed by an individual with respect to which an employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund.

(6) Service performed after July 1, 1957, by an individual for the State of Minnesota or any instrumentality which is wholly owned by the State of Minnesota.

(7) Service performed after July 1, 1957, by an individual for any political subdivision of the State of Minnesota or instrumentality thereof which elects to be an employer with respect to one or more of its departments under the Minnesota Employment Security Law and notifies the Department of Employment Security of such election.

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

(a) Agricultural labor. The term "agricultural labor" includes all services performed subsequent to December 31, 1939:

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

(2) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, manage-

ment, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane or fire, if the major part of such service is performed on a farm.

(3) In connection with the production or harvesting of maple syrup or maple sugar or any commodity defined as an agricultural commodity in section 15 (g) of the Agricultural Marketing Act, as amended, or in connection with the raising or harvesting of mushrooms, or in connection with the hatching of poultry, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying and storing water for farming purposes.

(4) In handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; but only if such service is performed as an incident to ordinary farming operations or, in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market. The provisions of this paragraph shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

As used in this subdivision, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animals, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(b) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority;

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

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

(e) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of 21 in the employ of his father or mother;

(f) Service performed in the employ of the United States government, or any instrumentality of the United States exempt under the Constitution of the United States from the contributions imposed by sections 268.03 to 268.24, except that with respect to such service performed subsequent to December 31, 1939, and to the extent that the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment compensation fund under a state unemployment compensation act; then, to the extent permitted by Congress, and from and after the date as of which such permission becomes effective, all of the provisions of these sections shall be applicable to such instrumentalities and to services performed for such instrumentalities in the same manner, to the same extent, and on the same terms as to all other employers, employing units, individuals, and services; provided, that if this state shall not be certified for any year by the *United States department of labor* under section 3304 (c) of the Federal Internal Revenue Code, the payments required of such instrumentalities with respect to such year shall be refunded by the commissioner from the fund in the same manner and within the same period as is provided in section 268.16, subdivision 6, with respect to contributions erroneously collected;

(g) Service performed in the employ of any political subdivision of this state and or any instrumentality thereof which has not elected to be an employer with respect to one or more of its departments under the Minnesota Employment Security Law;

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

(i) Service performed in any calendar quarter subsequent to December 31, 1940, in the employ of any organization exempt under section 3306 (c) (10) of the federal internal revenue code *from the tax imposed by section 3301 of the federal internal revenue code*;

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

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

(1) The service is of a character similar to that per-

formed in foreign countries by employees of the United States government or of an instrumentality thereof; and

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

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

(m) Services performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation;

(n) Service performed subsequent to December 31, 1940, as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered *and* approved pursuant to state law; and service performed as an interne in the employ of a hospital by an individual who has completed a four years' course in a medical school chartered *and* approved pursuant to state law;

(o) Service performed subsequent to December 31, 1940, by an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission (the word "insurance" as used in this subdivision shall include an annuity and an optional annuity);

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

(q) Service performed in the employ of any farmers' cooperative association dealing primarily with agricultural or dairy products or farmers' mutual insurance company, not subject to the tax imposed by section 3301 of the Federal Internal Revenue Code;

(r) Service performed subsequent to December 31, 1939, without wages by an officer of a corporation which is not subject to the tax imposed by section 3301 of the Federal Internal Revenue Code;

(s) *Service performed subsequent to December 31, 1952 both outside and within the corporate limits of a city, village, or borough of 10,000 population or more, in the transportation and delivery of livestock, whenever the transportation and delivery of such livestock comprises more than 50 percent by weight of the total freight hauled during the calendar year by the person, firm or corporation engaged in such services;*

(t) If the service performed subsequent to December 31, 1940, during one-half or more of any pay period by an individual for the person employing him constitutes employment, all the service of such individual for such period shall be deemed to be employment; but if the service performed during more than one-half of any such pay period by an individual for the person employing him does not constitute employment, then none of the service of such individual for such period shall be deemed to be employment. As used in this subdivision, the term "pay period" means a period (of not more than 31 consecutive days) for which a payment or remuneration is ordinarily made to the individual by the person employing him. This subdivision shall not be applicable with respect to service performed in a pay period by an individual for the person employing him, where any of such service is excluded by section 268.04, subdivision 12, clause (8) (h) and (s).

(u) Service performed as an agent or solicitor engaged or employed in the sale or purchase of real estate solely and exclusively upon a commission basis, to the extent only that such service is hereafter excluded under section 3306 of the Federal Internal Revenue Code.

(v) Elected public officials and unclassified employees appointed for a definite term.

Sec. 3. This act shall become effective upon passage.

Approved April 24, 1959.
