

SENATE
STATE OF MINNESOTA
EIGHTY-NINTH SESSION

S.F. No. 1496

(SENATE AUTHORS: SPARKS)

DATE	D-PG	OFFICIAL STATUS
03/09/2015	605	Introduction and first reading Referred to Jobs, Agriculture and Rural Development
03/18/2015		Comm report: To pass as amended Second reading

A bill for an act
relating to unemployment insurance; adopting recommendations of the
Unemployment Insurance Advisory Council; making federal conformity, policy,
and technical changes; amending Minnesota Statutes 2014, sections 268.035,
subdivisions 6, 21b, 26, 30; 268.051, subdivision 7; 268.07, subdivisions 2, 3b;
268.085, subdivisions 1, 2; 268.095, subdivisions 1, 10; 268.105, subdivisions 3,
7; 268.136, subdivision 1; 268.188; 268.194, subdivision 1; repealing Minnesota
Statutes 2014, section 268.042, subdivision 4.

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

ARTICLE 1

FEDERAL CONFORMITY

Section 1. Minnesota Statutes 2014, section 268.07, subdivision 2, is amended to read:

Subd. 2. **Benefit account requirements.** (a) Unless paragraph (b) applies, to
establish a benefit account an applicant must have total wage credits in the applicant's four
quarter base period of at least: (1) \$2,400; or (2) 5.3 percent of the state's average annual
wage rounded down to the next lower \$100, whichever is higher.

(b) To establish a new benefit account ~~within 52 calendar weeks~~ following the
expiration of the benefit year on a prior benefit account, an applicant must have performed
services in covered employment and have been paid wages in one or more completed
calendar quarters that started after the effective date of the prior benefit account. The
wages paid for those services must be at least enough to meet the requirements of
paragraph (a). A benefit account under this paragraph may not be established effective
earlier than the Sunday following the end of the most recent completed calendar quarter in
which the requirements of paragraph (a) were met. One of the reasons for this paragraph

2.1 is to prevent an applicant from establishing a second benefit account as a result of one
2.2 loss of employment.

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

2.4 Sec. 2. Minnesota Statutes 2014, section 268.136, subdivision 1, is amended to read:

2.5 Subdivision 1. **Shared work plan requirements.** An employer may submit a
2.6 proposed shared work plan for an employee group to the commissioner for approval in a
2.7 manner and format set by the commissioner. The proposed shared work plan must include:

2.8 (1) a certified statement that the normal weekly hours of work of all of the proposed
2.9 participating employees were full time or regular part time but are now reduced, or will be
2.10 reduced, with a corresponding reduction in pay, in order to prevent layoffs;

2.11 (2) the name and Social Security number of each participating employee;

2.12 (3) the number of layoffs that would have occurred absent the employer's ability to
2.13 participate in a shared work plan;

2.14 (4) a certified statement that each participating employee was first hired by the
2.15 employer at least one year before the proposed shared work plan is submitted and is not a
2.16 seasonal, temporary, or intermittent worker;

2.17 (5) the hours of work each participating employee will work each week for the
2.18 duration of the shared work plan, which must be at least 50 percent of the normal weekly
2.19 hours but no more than ~~90~~ 80 percent of the normal weekly hours, except that the plan
2.20 may provide for a uniform vacation shutdown of up to two weeks;

2.21 (6) a certified statement that any health benefits and pension benefits provided by
2.22 the employer to participating employees will continue to be provided under the same
2.23 terms and conditions as though the participating employees' hours of work each week had
2.24 not been reduced;

2.25 (7) a certified statement that the terms and implementation of the shared work plan is
2.26 consistent with the employer's obligations under state and federal law;

2.27 (8) an acknowledgement that the employer understands that unemployment benefits
2.28 paid under a shared work plan will be used in computing the future tax rate of a taxpaying
2.29 employer or charged to the reimbursable account of a nonprofit or government employer;

2.30 (9) the proposed duration of the shared work plan, which must be at least two months
2.31 and not more than one year, although a plan may be extended for up to an additional
2.32 year upon approval of the commissioner;

2.33 (10) a starting date beginning on a Sunday at least 15 calendar days after the date the
2.34 proposed shared work plan is submitted; and

(11) a signature of an owner or officer of the employer who is listed as an owner or officer on the employer's account under section 268.045.

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

ARTICLE 2

POLICY AND HOUSEKEEPING PROPOSALS

Section 1. Minnesota Statutes 2014, section 268.035, subdivision 21b, is amended to read:

Subd. 21b. **Preponderance of the evidence.** "Preponderance of the evidence" means evidence in substantiation support of a fact that, ~~when weighed against the evidence~~ opposing the fact, is more convincing and has a greater probability of truth than the evidence opposing the fact.

EFFECTIVE DATE. This section is effective August 2, 2015.

Sec. 2. Minnesota Statutes 2014, section 268.07, subdivision 3b, is amended to read:

Subd. 3b. **Limitations on applications and benefit accounts.** (a) An application for unemployment benefits is effective the Sunday of the calendar week that the application was filed. An application for unemployment benefits may be backdated one calendar week before the Sunday of the week the application was actually filed if the applicant requests the backdating at the time the application is filed. An application may be backdated only if the applicant was unemployed during the period of the backdating. If an individual attempted to file an application for unemployment benefits, but was prevented from filing an application by the department, the application is effective the Sunday of the calendar week the individual first attempted to file an application.

(b) A benefit account established under subdivision 2 is effective the date the application for unemployment benefits was effective.

(c) A benefit account, once established, may later be withdrawn only if:

(1) the applicant has not been paid any unemployment benefits on that benefit account; and

(2) a new application for unemployment benefits is filed and a new benefit account is established at the time of the withdrawal.

A determination or amended determination of eligibility or ineligibility issued under section 268.101, that was sent before the withdrawal of the benefit account, remains in effect and is not voided by the withdrawal of the benefit account.

(d) An application for unemployment benefits is not allowed before the Sunday following the expiration of the benefit year on a prior benefit account. Except as allowed under paragraph (c), an applicant may establish only one benefit account each 52 calendar weeks. This paragraph applies to benefit accounts established under any federal law or the law of any other state.

EFFECTIVE DATE. This section is effective August 2, 2015.

Sec. 3. Minnesota Statutes 2014, section 268.085, subdivision 1, is amended to read:

Subdivision 1. **Eligibility conditions.** An applicant may be eligible to receive unemployment benefits for any week if:

(1) the applicant has filed a continued request for unemployment benefits for that week under section 268.0865;

(2) the week for which unemployment benefits are requested is in the applicant's benefit year;

(3) the applicant was unemployed as defined in section 268.035, subdivision 26;

(4) the applicant was available for suitable employment as defined in subdivision 15. The applicant's weekly unemployment benefit amount is reduced one-fifth for each day the applicant is unavailable for suitable employment. This clause does not apply to an applicant who is in reemployment assistance training, or each day the applicant is on jury duty or serving as an election judge;

(5) the applicant was actively seeking suitable employment as defined in subdivision 16. This clause does not apply to an applicant who is in reemployment assistance training or who was on jury duty throughout the week;

(6) the applicant has served a nonpayable period of one week that the applicant is otherwise entitled to some amount of unemployment benefits. This clause does not apply if the applicant would have been entitled to federal disaster unemployment assistance because of a disaster in Minnesota, but for the applicant's establishment of a benefit account under section 268.07; and

(7) the applicant has been participating in reemployment assistance services, such as job development of, and adherence to, a work search and resume writing classes plan, if the applicant has been ~~determined in need of reemployment assistance services~~ directed to participate by the commissioner, ~~unless~~. This clause does not apply if the applicant has good cause for failing to participate.

EFFECTIVE DATE. This section is effective August 2, 2015.

Sec. 4. Minnesota Statutes 2014, section 268.085, subdivision 2, is amended to read:

Subd. 2. **Not eligible.** An applicant is ineligible for unemployment benefits for any week:

(1) that occurs before the effective date of a benefit account;

(2) that the applicant, at the beginning of the week, has an outstanding fraud overpayment balance under section 268.18, subdivision 2, including any penalties and interest;

(3) that occurs in a period when the applicant is a student in attendance at, or on vacation from a secondary school including the period between academic years or terms;

(4) that the applicant is incarcerated or performing court-ordered community service. The applicant's weekly unemployment benefit amount is reduced by one-fifth for each day the applicant is incarcerated or performing court-ordered community service;

(5) that the applicant fails or refuses to provide information on an issue of ineligibility required under section 268.101;

(6) that the applicant is performing services 32 hours or more, in employment, covered employment, noncovered employment, volunteer work, or self-employment regardless of the amount of any earnings; or

(7) with respect to which the applicant ~~is receiving, has received, or has filed an application for unemployment benefits under any federal law or the law of any other state. If the appropriate agency finally determines that the applicant is not entitled to the unemployment benefits~~ establish a benefit account under federal law of the law of any other state, this clause does not apply.

EFFECTIVE DATE. This section is effective August 2, 2015.

Sec. 5. Minnesota Statutes 2014, section 268.095, subdivision 1, is amended to read:

Subdivision 1. **Quit.** An applicant who quit employment is ineligible for all unemployment benefits according to subdivision 10 except when:

(1) the applicant quit the employment because of a good reason caused by the employer as defined in subdivision 3;

(2) the applicant quit the employment to accept other covered employment that provided substantially equal to or better terms and conditions of employment, but the applicant did not work long enough at the second employment to have sufficient subsequent earnings to satisfy the period of ineligibility that would otherwise be imposed under subdivision 10 for quitting the first employment;

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

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

6.3 (5) the employment was part time and the applicant also had full-time employment
6.4 in the base period, from which full-time employment the applicant separated because of
6.5 reasons for which the applicant ~~was held~~ is not to be ineligible, and the wage credits from
6.6 the full-time employment are sufficient to meet the minimum requirements to establish a
6.7 benefit account under section 268.07;

6.8 (6) the applicant quit because the employer notified the applicant that the applicant
6.9 was going to be laid off because of lack of work within 30 calendar days. An applicant
6.10 who quit employment within 30 calendar days of a notified date of layoff because of lack
6.11 of work is ineligible for unemployment benefits through the end of the week that includes
6.12 the scheduled date of layoff;

6.13 (7) the applicant quit the employment (i) because the applicant's serious illness or
6.14 injury made it medically necessary that the applicant quit; or (ii) in order to provide
6.15 necessary care because of the illness, injury, or disability of an immediate family member
6.16 of the applicant. This exception only applies if the applicant informs the employer of
6.17 the medical problem and requests accommodation and no reasonable accommodation
6.18 is made available.

6.19 If the applicant's serious illness is chemical dependency, this exception does not
6.20 apply if the applicant was previously diagnosed as chemically dependent or had treatment
6.21 for chemical dependency, and since that diagnosis or treatment has failed to make
6.22 consistent efforts to control the chemical dependency.

6.23 This exception raises an issue of the applicant's being available for suitable
6.24 employment under section 268.085, subdivision 1, that the commissioner must determine;

6.25 (8) the applicant's loss of child care for the applicant's minor child caused the
6.26 applicant to quit the employment, provided the applicant made reasonable effort to obtain
6.27 other child care and requested time off or other accommodation from the employer and no
6.28 reasonable accommodation is available.

6.29 This exception raises an issue of the applicant's being available for suitable
6.30 employment under section 268.085, subdivision 1, that the commissioner must determine;

6.31 (9) the applicant quit because domestic abuse, sexual assault, or stalking of the
6.32 applicant or an immediate family member of the applicant, necessitated the applicant's
6.33 quitting the employment.

6.34 For purposes of this subdivision:

6.35 (i) "domestic abuse" has the meaning given in section 518B.01;

(ii) "sexual assault" means an act that would constitute a violation of sections 609.342 to 609.3453 or 609.352; and

(iii) "stalking" means an act that would constitute a violation of section 609.749; or

(10) the applicant quit in order to relocate to accompany a spouse whose job location changed making it impractical for the applicant to commute. This exception only applies if the spouse's job is in the military or provides total wages and other compensation that is equal to or better than the applicant's employment.

EFFECTIVE DATE. This section is effective August 2, 2015.

Sec. 6. Minnesota Statutes 2014, section 268.095, subdivision 10, is amended to read:

Subd. 10. **Ineligibility duration.** (a) Ineligibility from the payment of all unemployment benefits under subdivisions 1 and 4 is for the duration of the applicant's unemployment and until the end of the calendar week that the applicant had total wages paid for actual work performed in subsequent covered employment sufficient to meet one-half of the requirements of section 268.07, subdivision 2, paragraph (a).

(b) Ineligibility imposed under subdivisions 1 and 4 begins on the Sunday of the week that the applicant became separated from employment.

(c) In addition to paragraph (a), if the applicant was discharged from employment because of aggravated employment misconduct, wage credits from that employment are canceled and cannot be used for purposes of a benefit account under section 268.07, subdivision 2.

EFFECTIVE DATE. This section is effective August 2, 2015.

Sec. 7. Minnesota Statutes 2014, section 268.105, subdivision 3, is amended to read:

Subd. 3. **Withdrawal of an appeal.** (a) ~~Any~~ An appeal that is pending before an unemployment law judge may be withdrawn by the appealing ~~person~~ party, or an authorized representative of that ~~person~~ party, ~~upon~~ by filing of a notice of withdrawal. A notice of withdrawal may be filed by mail or by electronic transmission.

(b) The appeal must, by order, be dismissed if a notice of withdrawal is filed, unless an unemployment law judge directs that further ~~adjudication is~~ proceedings are required for a proper result. An order of dismissal issued as a result of a notice of withdrawal is not subject to reconsideration or appeal.

(c) ~~A notice of withdrawal may be filed by mail or by electronic transmission.~~ A party may file a new appeal after the order of dismissal, but the original 20-calendar-day period for appeal begins from the date of issuance of the determination and that time

period is not suspended or restarted by the notice of withdrawal and order of dismissal.

The new appeal may only be filed by mail or facsimile transmission.

(d) For purposes of this subdivision, "appeals" includes a request for reconsideration filed under subdivision 2.

EFFECTIVE DATE. This section is effective August 2, 2015.

Sec. 8. Minnesota Statutes 2014, section 268.105, subdivision 7, is amended to read:

Subd. 7. **Judicial review.** (a) The Minnesota Court of Appeals must, by writ of certiorari to the department, review the unemployment law judge's decision on reconsideration, provided a petition for the writ is filed with the court and a copy is served upon the unemployment law judge or the commissioner and any other party within 30 calendar days of the sending of the unemployment law judge's decision on reconsideration under subdivision 2. Three days are added to the 30-calendar-day period if the decision on reconsideration was mailed to the parties.

(b) Any employer petitioning for a writ of certiorari must pay to the court the required filing fee in accordance with the Rules of Civil Appellate Procedure. If the employer requests a written transcript of the testimony received at the hearing conducted under subdivision 1, the employer must pay to the department the cost of preparing the transcript. That money is credited to the administration account.

(c) Upon issuance by the Minnesota Court of Appeals of a writ of certiorari as a result of an applicant's petition, the department must furnish to the applicant at no cost a written transcript of any testimony received at the hearing conducted under subdivision 1, and, if requested, a copy of all exhibits entered into evidence. No filing fee or cost bond is required of an applicant petitioning the Minnesota Court of Appeals for a writ of certiorari.

(d) The Minnesota Court of Appeals may affirm the decision of the unemployment law judge or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioner may have been prejudiced because the findings, inferences, conclusion, or decision are:

(1) in violation of constitutional provisions;

(2) in excess of the statutory authority or jurisdiction of the department;

(3) made upon unlawful procedure;

(4) affected by other error of law;

(5) unsupported by substantial evidence in view of the entire record as submitted; or

(6) arbitrary or capricious.

(e) The department is considered the primary responding party to any judicial action involving an unemployment law judge's decision. The department may be represented by an attorney licensed to practice law in Minnesota who is an employee of the department.

EFFECTIVE DATE. This section is effective August 2, 2015.

Sec. 9. Minnesota Statutes 2014, section 268.188, is amended to read:

268.188 SUBPOENAS; OATHS.

(a) The commissioner or an unemployment law judge has authority to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of individuals and the production of documents and other personal property necessary in connection with the administration of the Minnesota unemployment insurance program.

(b) Individuals subpoenaed, other than applicants or officers and employees of an employer that is the subject of the inquiry, are paid witness fees the same as witness fees in civil actions in district court. The fees need not be paid in advance.

(c) The subpoena is enforceable through the district court in Ramsey County.

EFFECTIVE DATE. This section is effective August 2, 2015.

Sec. 10. **REPEALER.**

Minnesota Statutes 2014, section 268.042, subdivision 4, is repealed.

EFFECTIVE DATE. This section is effective August 2, 2015.

ARTICLE 3

STYLE AND TECHNICAL CHANGES

Section 1. Minnesota Statutes 2014, section 268.035, subdivision 6, is amended to read:

Subd. 6. **Benefit year.** "Benefit year" means the period of 52 calendar weeks beginning the date a benefit account is effective. For a benefit account established effective any January 1, April 1, July 1, or October 1, ~~or January 2, 2000, or October 2, 2011,~~ the benefit year will be a period of 53 calendar weeks.

EFFECTIVE DATE. This section is effective August 2, 2015.

Sec. 2. Minnesota Statutes 2014, section 268.035, subdivision 26, is amended to read:

Subd. 26. **Unemployed.** An applicant is considered "unemployed" (1) in any week that:

(1) the applicant performs less than 32 hours of service in employment, covered employment, noncovered employment, self-employment, or volunteer work; and

(2) any earnings with respect to that week are less than the applicant's weekly unemployment benefit amount.

EFFECTIVE DATE. This section is effective August 2, 2015.

Sec. 3. Minnesota Statutes 2014, section 268.035, subdivision 30, is amended to read:

Subd. 30. **Wages paid.** (a) "Wages paid" means the amount of wages:

(1) that have been actually paid; or

(2) that have been credited to or set apart so that payment and disposition is under the control of the employee.

(b) Wage payments delayed beyond the regularly scheduled pay date are considered "wages paid" on the missed pay date. Back pay is considered "wages paid" on the date of actual payment. Any wages earned but not paid with no scheduled date of payment is considered "wages paid" on the last day of employment.

~~(b)~~ (c) Wages paid does not include wages earned but not paid except as provided for in this subdivision.

EFFECTIVE DATE. This section is effective August 2, 2015.

Sec. 4. Minnesota Statutes 2014, section 268.051, subdivision 7, is amended to read:

Subd. 7. **Tax rate buydown.** (a) Any taxpaying employer that has been assigned a tax rate based upon an experience rating, and has no amounts past due under this chapter, may, upon the payment of an amount equivalent to any portion or all of the unemployment benefits used in computing the experience rating plus a surcharge of 25 percent, obtain a cancellation of unemployment benefits used equal to the payment made, less the surcharge. The payment is applied to the most recent unemployment benefits paid that are used in computing the experience rating. Upon the payment, the commissioner must compute a new experience rating for the employer, and compute a new tax rate.

(b) Payments for a tax rate buydown may be made only by electronic payment and must be received within 120 calendar days from the beginning of the calendar year for which the tax rate is effective.

~~(c) For calendar years 2011, 2012, and 2013, the surcharge of 25 percent provided for in paragraph (a) does not apply.~~

11.1 **EFFECTIVE DATE.** This section is effective August 2, 2015.

11.2 Sec. 5. Minnesota Statutes 2014, section 268.07, subdivision 2, is amended to read:

11.3 Subd. 2. **Benefit account requirements.** (a) Unless paragraph (b) applies, to
11.4 establish a benefit account an applicant must have total wage credits in the applicant's four
11.5 quarter base period of at least: ~~(1) \$2,400; or (2) 5.3 percent of the state's average annual~~
11.6 wage rounded down to the next lower \$100, ~~whichever is higher.~~

11.7 (b) To establish a new benefit account within 52 calendar weeks following the
11.8 expiration of the benefit year on a prior benefit account, an applicant must have performed
11.9 ~~services~~ actual work in subsequent covered employment and have been paid wages in one
11.10 or more completed calendar quarters that started after the effective date of the prior benefit
11.11 account. The wages paid for ~~those services~~ that employment must be at least enough to
11.12 meet the requirements of paragraph (a). A benefit account under this paragraph may not
11.13 be established effective earlier than the Sunday following the end of the most recent
11.14 completed calendar quarter in which the requirements of paragraph (a) were met. ~~One~~
11.15 ~~of the reasons for this paragraph is to prevent~~ An applicant ~~from establishing~~ may not
11.16 establish a second benefit account as a result of one loss of employment.

11.17 **EFFECTIVE DATE.** This section is effective August 2, 2015.

11.18 Sec. 6. Minnesota Statutes 2014, section 268.194, subdivision 1, is amended to read:

11.19 Subdivision 1. **Establishment.** There is established as a special state trust fund,
11.20 separate and apart from all other public money or funds of this state, an unemployment
11.21 insurance trust fund, that is administered by the commissioner exclusively for the payment
11.22 of unemployment benefits. This trust fund consists of:

11.23 (1) all taxes collected;

11.24 (2) interest earned upon any money in the trust fund;

11.25 (3) reimbursements paid by nonprofit organizations and the state and political
11.26 subdivisions;

11.27 (4) tax rate buydown payments under section 268.051, subdivision 7;

11.28 (5) any money received as a loan from the federal unemployment trust fund in
11.29 accordance with United States Code, title 42, section 1321, of the Social Security Act;

11.30 (6) any other money received under a reciprocal unemployment benefit arrangement
11.31 with the federal government or any other state;

11.32 (7) money recovered on overpaid unemployment benefits ~~except, if allowed by~~
11.33 ~~federal law, five percent of any recovered amount is credited to the administration account;~~

11.34 (8) all money credited to the account under this chapter;

12.1 (9) all money credited to the account of Minnesota in the federal unemployment
12.2 trust fund under United States Code, title 42, section 1103, of the Social Security Act,
12.3 also known as the Reed Act; and

12.4 (10) all money received for the trust fund from any other source.

12.5 **EFFECTIVE DATE.** This section is effective August 2, 2015.

APPENDIX
Article locations in 15-0343

ARTICLE 1 FEDERAL CONFORMITY Page.Ln 1.10

ARTICLE 2 POLICY AND HOUSEKEEPING PROPOSALS Page.Ln 3.4

ARTICLE 3 STYLE AND TECHNICAL CHANGES Page.Ln 9.20

APPENDIX
Repealed Minnesota Statutes: 15-0343

268.042 EMPLOYERS COVERAGE.

Subd. 4. **Authorization.** The commissioner is authorized to enter into reciprocal arrangements with other states and the federal government, or both, whereby employment by an employee or employees for a single employer that is customarily performed in more than one state is considered performed entirely within any one of the states:

- (1) where any part of the employee's employment is performed, or
- (2) where the employee has a residence, or
- (3) where the employer maintains a place of business; provided, there is in effect, as to the employment, an election, approved by the state, under which all the employment by the employee or employees for the employer is considered to be performed entirely within that state.