

## Manpower Services

## CHAPTER 268

## DEPARTMENT OF MANPOWER SERVICES

Sec.		Sec.	
268.026	Manpower services building; lease of space	268.14	Free employment offices
268.03	Declaration of public policy	268.15	Unemployment compensation fund
268.04	Definitions	268.16	Collection of contributions
268.05	Unemployment compensation fund	268.17	Protection of rights and benefits
268.06	Employers, contributions	268.18	Return of benefits; offenses
268.07	Benefits payable	268.20	Representation in court
268.08	Persons eligible to receive benefits	268.21	Non-liability of state
268.09	Disqualified from benefits	268.22	Saving clause
268.10	Determination of claims for benefits; appeals	268.23	Severable
268.11	Employers coverage	268.231	Effective rate; subsequent years
268.12	Creation	268.24	Citation, manpower services law
268.13	Reciprocal benefit arrangements	268.25	Effective dates

268.01 [Repealed, 1965 c 45 s 73]

268.02 [Repealed, 1965 c 45 s 73]

268.025 [Repealed, 1965 c 45 s 73]

**268.026 MANPOWER SERVICES BUILDING; LEASE OF SPACE.** Subdivision 1. The commissioner of the Minnesota department of manpower services, with the approval of the commissioner of the department of administration, may lease portions of the state owned building known as the manpower services building located at 309-311 Second Avenue South, Minneapolis, Minnesota, to any department or agency of the state and charge rent therefor on the basis of space occupied. Any lease made pursuant to this section shall be in such form as the attorney general shall prescribe.

Subd. 2. Notwithstanding the provisions of any other law to the contrary, all moneys collected as rent under the terms of any lease entered into pursuant to the provisions of subdivision 1, shall be deposited in the state treasury and credited to the account known as the manpower services administration fund.

[1961 c 516 s 1, 2; 1969 c 567 s 3]

**268.03 DECLARATION OF PUBLIC POLICY.** As a guide to the interpretation and application of sections 268.03 to 268.24, the public policy of this state is declared to be as follows: Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burdens. This can be provided by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. The legislature, therefore, declares that in its considered judgment the public good and the general welfare of the citizens of this state will be promoted by providing, under the police powers of the state for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own.

[*Ex. 1936 c. 2 s. 1*] (4337-21)

**268.04 DEFINITIONS.** Subdivision 1. Unless the language or context clearly indicates that a different meaning is intended, the following words, terms and phrases, for the purposes of sections 268.03 to 268.24, shall be given the meanings subjoined to them.

Subd. 2. "Base period" means the period of fifty-two calendar weeks immediately preceding the first day of an individual's benefit year.

Subd. 3. "Benefits" means the money payments payable to an individual, as provided in sections 268.03 to 268.24, with respect to his unemployment.

Subd. 4. "Benefit year" with respect to any individual means the period of fifty-two calendar weeks beginning with the first day of the first week with respect to which the individual files a valid claim for benefits.

Subd. 5. "Calendar quarter" means the period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31, excluding any calendar quarter or portion thereof which occurs prior to January 1, 1937, or the equivalent thereof, as the commissioner may by regulation prescribe.

Subd. 6. "Contributions" means the money payments required by sections 268.03 to 268.24 to be made by any employing unit on account of having individuals in its employ.

Subd. 7. "Corporation" includes associations, joint-stock companies, and insurance companies. This definition shall not be exclusive.

Subd. 8. "Commissioner" means the commissioner of the department of manpower services.

Subd. 9. "Employing unit" means any individual or type of organization, including any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor of any of the foregoing, or the legal representative of a deceased person, which has or subsequent to January 1, 1936, had in its employ one or more individuals performing services for it. All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of sections 268.03 to 268.24. Each individual employed to perform or assist in performing the work of any agent or individual employed by an employing unit shall be deemed to be employed by such employing unit for all the purposes of sections 268.03 to 268.24 whether such individual was hired or paid directly by such employing unit or by such agent or individual, provided the employing unit had actual or constructive knowledge of such work.

Subd. 10. "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 joint venture composed of one or more employers as otherwise defined herein;

(6) Any non-resident employing unit which employs within this state one or more employees for one or more weeks;

(7) Any employing unit which, having become an employer under clauses (1),

# MINNESOTA STATUTES 1969

2811

DEPARTMENT OF MANPOWER SERVICES 268.04

(2), (3), (4), (5), or (6), has not, under section 268.11, ceased to be an employer subject to these sections;

(8) 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;

(9) 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;

(10) Except as provided in clause (9), 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.

Subd. 11. "Employee" means every individual, whether male, female, citizen, alien, or minor, who is performing, or subsequent to January 1, 1936, has performed services in insured work.

Subd. 12. (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 manpower services law and notifies the department of manpower services 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, furbearing animals and wildlife.

(2) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a 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, furbearing 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

# MINNESOTA STATUTES 1969

2813

DEPARTMENT OF MANPOWER SERVICES 268.04

respect to one or more of its departments under the Minnesota manpower services law;

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

(i) (1) Service performed in any calendar quarter in the employ of any organization exempt from income tax under section 501 (a) (other than an organization described in section 401(a) ) or section 521 of the federal internal revenue code, if the remuneration for such service is less than \$50, or

(2) Service performed in the employ of a school, college, or university, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university;

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

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

(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 intern 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).

(9) The term "employment" as applied to services performed by an individual for the state of Minnesota or any instrumentality wholly owned by the state, except political subdivisions or instrumentalities thereof which duly elect otherwise with the commissioner's approval, shall not include the following:

(a) Service performed by elected public officials and unclassified employees appointed for a definite term;

(b) Service performed by a faculty member in the employ of a university, college, school or any other institution which is supported wholly or substantially by public funds;

(c) Service performed by a student in the employ of an educational institution supported wholly or substantially by public funds at which the student is enrolled, or was enrolled during the most recent regular school term;

(d) Service performed by an individual who is financially supported in whole or in part by a state or federal scholarship program;

(e) Service performed in the employ of a department, institution, or wholly owned instrumentality of the state which is supported wholly or substantially by public funds under a training program required by either a public or private educational institution;

(f) Service performed by members of the Minnesota national guard when ordered to duty for military assignments;

(g) Service performed in the employ of the state natural resources department directly and solely in connection with emergency fire fighting, including but not limited to those persons temporarily employed for the purpose of detecting, locating, or suppressing forest fires.

Subd. 13. "Manpower Services Administration Fund" means the manpower services administration fund established by sections 268.03 to 268.24, from which administrative expenses under these sections shall be paid.

Subd. 14. "Employment office" means a free public employment office, or branch thereof, operated by this or any other state, territory, or the District of Columbia as a part of a state-controlled system of public employment offices charged with the administration of an employment security program or free public employment offices.

Subd. 15. "Filing" means the delivery of any document to the commissioner or any of his agents or representatives, or the depositing of the same in the United States mail properly addressed to the department with postage prepaid thereon, in which case the same shall have been filed on the day indicated by the cancellation mark of the United States Post Office Department.

Subd. 16. "Fund" means the unemployment compensation fund established by sections 268.03 to 268.24.

Subd. 17. "Insured work" means employment for employers as defined in this section, except that for the purposes of interstate reciprocal benefit payment arrangements and the clearing of disqualifications under this law, the term "insured work" shall mean employment in insured work under this law or a similar law of any other state.

Subd. 18. "Interested party" includes the claimant, his base period employers, and his most recent employer prior to the filing of a valid claim for benefits.

Subd. 19. "Person" means an individual, trust or estate, a partnership or a corporation.

Subd. 20. "Social Security Act" means the Social Security Act passed by the Congress of the United States of America, approved August 14, 1935, as amended.

Subd. 21. "Social Security Administration" means the board established pursuant to Title VII of the Social Security Act.

Subd. 22. "State" includes, in addition to the states of the United States of America, Puerto Rico, and the District of Columbia.

Subd. 23. "Unemployment"—An individual shall be deemed "unemployed" in any week during which he performs no service and with respect to which no wages are payable to him, or in any week of less than full time work if the wages payable to him with respect to such week are less than his weekly benefit amount. The commissioner may, in his discretion, prescribe regulations relating to the payment of benefits to such unemployed individuals.

Subd. 24. "Valid claim" with respect to any individual means a claim filed by an individual who has registered for work and who has earned wage credits and established credit weeks during his base period sufficient to entitle him to benefits under section 268.07, subdivision 2.

Subd. 25. "Wages" means all remuneration for services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash, except that such term shall not include:

(1) For the purpose of determining contributions payable under section 268.06, subdivision 2, clause (2), that part of the remuneration which, after remuneration equal to \$4,800 has been paid to an individual by an employer with respect to covered employment in this state, or with respect to employment under the unemployment compensation law of any other state during any calendar year, is paid to such individual by such covered employer or his predecessor during such calendar year; provided, that if the term "wages" as contained in the federal unemployment tax act is amended to include remuneration in excess of \$4,800 paid to an individual by an employer under the federal act for any calendar year, wages for the purposes of sections 268.03 to 268.24 shall include remuneration paid in a calendar year up to an amount equal to the dollar limitation specified in the federal unemployment tax act. For the purposes of this clause, the term "employment" shall include service constituting employment under any employment security law of another state or of the federal government;

(2) The amount of any payment made to, or on behalf of, an employee under a plan or system established by an employer which makes provision for his employees generally or for a class or classes of his employees (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment), on account of (a) retirement or (b) sickness or accident disability or (c) medical and hospitalization expenses in connection with sickness or accident disability, or (d) death, provided the employee (i) has not the option to receive, instead of provision for such death benefit, any part of such payment, or if such death benefit is insured, any part of the premium (or contributions to premiums) paid by his employer and (ii) has not the right, under the provisions of the plan or system or policy of insurance providing for such death benefit, to assign such benefit, or to receive a cash consideration in lieu of such benefit either upon his withdrawal from the plan or system providing for such benefit or upon termination of such plan or system or policy of insurance or of his employment with such employer;

(3) The payment by an employer (without deduction from the remuneration of the employee) (a) of the tax imposed upon an employee under section 3101 of the federal internal revenue code, or (b) of any payment required from an employee under a state unemployment compensation law;

(4) Any payments made to a former employee during the period of active military service in the armed forces of the United States by such employer, whether legally required or not;

(5) Any payment made to, or on behalf of, an employee or his beneficiary (a) from or to a trust described in section 401(a) of the federal internal revenue code which is exempt from tax under section 501(a) of such code at the time of such payment unless such payment is made to an employee of the trust as remuneration

for services rendered as an employee and not as a beneficiary of the trust, or (b) under or to an annuity plan which, at the time of such payment is a plan described in section 403(a) of the federal internal revenue code, or (c) under or to a bond purchase plan which, at the time of such payment, is a qualified bond purchase plan described in section 405(a) of the federal internal revenue code.

Subd. 26. "Wage credits" mean the amount of wages paid and wages due and payable but not paid by or from an employer to an employee for insured work except that with respect to wages paid and wages due and payable but not paid by or from an employer to an employee for seasonal employment (as defined in section 268.07, subdivision 5), "wage credits" shall mean the proportion (computed to the next highest multiple of five percent) of such wages which the customary period of operations bears to a calendar year. Wages earned in part-time employment by a student as an integral part of an occupational course of study, under a plan for vocational education accepted by the Minnesota department of education, shall not result in wage credits available for benefit purposes.

Subd. 27. "Week" means calendar week, ending at midnight Saturday, or the equivalent thereof, as determined in accordance with regulations prescribed by the commissioner.

Subd. 28. "Weekly benefit amount" with respect to any particular week of total unemployment means the amount of benefits computed in accordance with the provisions of section 268.07, which an individual would be entitled to receive for such week, if totally unemployed and eligible.

Subd. 29. "Credit week" with respect to any claim for benefits which establishes a benefit year subsequent to June 27, 1970, is any week for which wages have been paid and wages are due and payable but not paid of \$30 or more by or from one or more employers to an employee for insured work.

Subd. 30. "Average weekly wage" means the quotient derived by dividing the total wage credits earned by an individual from all employers in insured work in the base period by the number of credit weeks.

[*Ex 1936 c 2 s 2; 1937 c 43 s 1; 1937 c 306; 1939 c 443 s 1; 1941 c 554 s 1; 1943 c 650 s 1; 1945 c 376 s 1; 1947 c 432 s 1, 2; 1947 c 574 s 1; 1949 c 605 s 1; 1951 c 442 s 1; 1953 c 97 s 1, 2; 1953 c 603 s 1; 1955 c 380 s 1; 1957 c 467 s 1; 1957 c 873 s 1; 1957 c 883 s 1; 1959 c 595 s 1, 2; 1959 c 702 s 1; 1963 c 562 s 1; 1963 c 588 s 1; 1965 c 45 s 39; 1965 c 741 s 1-5; 1967 c 439 s 1, 2; 1967 c 573 s 1, 2; 1969 c 567 s 3; 1969 c 585 s 1; 1969 c 854 s 1-5; 1969 c 1129 art 10 s 2*] (4337-22)

**268.05 UNEMPLOYMENT COMPENSATION FUND.** Subdivision 1. **Establishment; how constituted.** There is hereby established as a special fund, separate and apart from all public moneys or funds of this state, an unemployment compensation fund, which shall be administered by the commissioner exclusively for the purpose of sections 268.03 to 268.24. This fund shall consist of:

- (1) All contributions collected under those sections;
- (2) Interest earned upon any moneys in the fund;
- (3) Any property or securities acquired through the use of moneys belonging to the fund;
- (4) All earnings of such property or securities;
- (5) Any moneys received from the Federal Unemployment Account in the unemployment trust fund in accordance with Title XII of the Social Security Act, as amended, and any other moneys made available to the fund and received pursuant to an agreement, between this state and any agency of the federal government or any other state, for the payment of unemployment benefits;
- (6) All money recovered on losses sustained by the fund;
- (7) All money credited to the account of this state in the unemployment trust fund pursuant to section 903 of the Social Security Act, as amended; and
- (8) All money received for the fund from any other source.

All moneys in the fund shall be mingled and undivided.

Subd. 2. **State treasurer to be custodian; separate accounts; bonds.** The state treasurer shall be ex-officio the treasurer and custodian of the fund. He shall administer the fund in accordance with the directions of the commissioner, and issue his warrants upon it in accordance with such regulations as the commissioner shall prescribe. He shall maintain within the fund three separate accounts:

- (1) A clearing account;
- (2) An unemployment trust fund account; and
- (3) A benefit account.



All moneys payable to the fund, upon receipt thereof by the commissioner, shall be forwarded to the treasurer who shall immediately deposit them in the clearing account. All moneys in the clearing account, after clearance thereof, shall, except as herein otherwise provided, be immediately deposited with the secretary of the treasury of the United States to the credit of the account of this state in the unemployment trust fund established and maintained pursuant to section 904 of the Social Security Act, as amended, any provisions of law in this state relating to the deposit, administration, release, or disbursement of moneys in the possession or custody of this state to the contrary notwithstanding. Refunds payable pursuant to section 268.16, subdivision 6, and section 268.04, subdivision 12, clause (8) (f), may be paid from the clearing account or the benefit account. The benefit account shall consist of all moneys requisitioned from this state's account in the unemployment trust fund in the United States Treasury for the payment of benefits. Except as herein otherwise provided, moneys in the clearing and benefit accounts may be deposited by the treasurer, under the direction of the commissioner, in any depository bank in which general funds of the state may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. Moneys in the clearing and benefit accounts shall not be commingled with other state funds, but shall be maintained in separate accounts on the books of the depository bank. Such money shall be secured by the depository bank to the same extent and in the same manner as required by the general depository law of this state; and collateral pledged for this purpose shall be kept separate and distinct from any collateral pledged to secure other funds of the state. The treasurer shall give a separate bond conditioned upon the faithful performance of his duties with respect to the fund in an amount not less than \$25,000. The bond shall be approved by the attorney general. Premiums for this bond shall be paid from the administration fund. All sums recovered for losses sustained by the fund shall be deposited therein.

**Subd. 3. Withdrawals.** (1) Moneys requisitioned from this state's account in the unemployment trust fund shall be used exclusively for the payment of benefits and for refunds pursuant to sections 268.16, subdivision 6, and 268.04, subdivision 12, clause (8) (f) except that money credited to this state's account pursuant to section 903 of the Social Security Act, as amended, shall be used exclusively as provided in subdivision 5 of this section. The commissioner or his duly authorized agent for that purpose, shall from time to time requisition from the unemployment trust fund such amounts, not exceeding the amount standing to this state's account therein, as he deems necessary for the payment of such benefits and refunds for a reasonable future period. Upon receipt thereof the treasurer shall deposit such moneys in the benefit account and issue his warrants for the payment of benefits solely from such benefit account. Expenditures of such moneys in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody. All warrants issued by the treasurer for the payment of benefits and refunds shall bear the signature of the treasurer and the counter signature of the commissioner or his duly authorized agent for that purpose.

(2) Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits and refunds during succeeding periods or, in the discretion of the commissioner, shall be redeposited with the secretary of the treasury of the United States, to the credit of this state's account in the unemployment trust fund, as provided in subdivision 2.

**Subd. 4. Disposal of certain moneys.** Any moneys made available to the unemployment compensation fund and received pursuant to an agreement between this state and any agency of the federal government or any other state for the payment of unemployment benefits shall be placed directly in the benefit account of the unemployment trust fund.

**Subd. 5. Payment of expenses of administration.** (1) Money credited to the account of this state in the unemployment trust fund by the secretary of the treasury of the United States of America pursuant to section 903 of the Social Security Act, as amended, may be requisitioned and used for the payment of expenses incurred for the administration of Laws 1957, Chapter 883 pursuant to a specific appropriation by the legislature, provided that the expenses are incurred and the money is requisitioned after the enactment of an appropriation law which:

(a) Specifies the purposes for which such money is appropriated and the amounts appropriated therefor.

(b) Limits the period within which such money may be obligated to a period ending not more than two years after the date of the enactment of the appropriation law, and

(c) Limits the amount which may be obligated during any twelve-month period beginning on July 1 and ending on the next June 30 to an amount which does not exceed the amount by which (i) the aggregate of the amounts credited to the account of this state pursuant to section 903 of the Social Security Act, as amended, during the same twelve-month period and the 14 preceding twelve-month periods, exceeds (ii) the aggregate of the amounts used pursuant to this subdivision and charged against the amounts credited to the account of this state during any of such 15 twelve-month periods. For the purposes of this subdivision, amounts used during any such twelve-month period shall be charged against equivalent amounts which were first credited and which are not already so charged; except that no amount obligated for administration during any such twelve-month period may be charged against any amount credited during such a twelve-month period earlier than the 14th preceding such period.

(2) Money credited to the account of this state pursuant to section 903 of the Social Security Act, as amended, may not be withdrawn or used except for the payment of benefits and for the payment of expenses for the administration of Laws 1957, Chapter 883 and of public employment offices pursuant to this subdivision.

(3) Money requisitioned for the payment of expenses of administration pursuant to this subdivision shall be deposited in the manpower services administration fund, but, until expended, shall remain a part of the unemployment fund. The commissioner shall maintain a separate record of the deposit, obligation, expenditure, and return of funds so deposited. If any money so deposited is, for any reason, not to be expended for the purpose for which it was appropriated, or, if it remains unexpended at the end of the period specified by the law appropriating such money, it shall be withdrawn and returned to the secretary of the treasury of the United States for credit to this state's account in the unemployment trust fund.

**Subd. 6. Advance on federal funds.** (1) The governor is hereby authorized to make application as may be necessary to secure any advance of funds by the secretary of the treasury of the United States in accordance with the authority extended under section 1201 of the social security act, as amended.

(2) Any amount transferred to the Minnesota unemployment compensation fund by the secretary of the treasury of the United States under the terms of any application made pursuant to this subdivision shall be repayable, without interest, in the manner provided in sections 901(d) 1, 903(b) 2 and 1202 of the social security act, as amended.

[*Ex 1936 c 2 s 3; 1937 c 452 s 1; 1939 c 443 s 2; 1941 c 554 s 2; 1945 c 376 s 2; 1949 c 605 s 2; 1953 c 97 s 3, 4; 1957 c 883 s 2-5; 1961 c 517 s 1; 1969 c 310 s 1; 1969 c 567 s 3*] (*4337-23*)

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

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

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

Subd. 2. **Rates.** Each employer shall pay contributions equal to two and seven tenths percent of wages paid and wages overdue and delayed beyond the usual time of payment from him with respect to employment occurring during each calendar year, except as may be otherwise prescribed in subdivisions 3 and 4.

Subd. 3. [Repealed, 1969 c 854 s 14]

Subd. 4. **Rates; schedules.** The commissioner shall for the year 1943 and for each calendar year thereafter determine the contribution rate of each employer whose unemployment experience as an employer under these sections is equivalent to the minimum requirements of section 3303 of the federal internal revenue code for the purpose of obtaining additional credit thereunder with respect to any reduced rates of state contributions.

Subd. 5. **Benefits charged as and when paid.** (1) Benefits paid to an individual pursuant to a valid claim filed subsequent to June 30, 1941, shall be charged against the account of his employer as and when paid, except that benefits paid to an individual who during his base period earned wages for part time employment with an employer who continues to give the employee part time employment substantially equal to the part time employment previously furnished such employee by such employer shall not be charged to such employer's account. The amount of benefits so chargeable against each base period employer's account shall bear the same ratio to the total benefits paid to an individual as the base period wage credits of the individual earned from such employer bear to the total amount of base period wage credits of the individual earned from all his base period employers.

(2) When, however, the base period earnings of an individual to whom benefits are paid are less than \$520, then the proportional benefits which would ordinarily be charged to such employer shall not be charged to him, except that this provision shall not apply if the commissioner finds that the employment practices of an employer result in his separation of employees for whom work is available solely for the purpose of evading charges to his account.

In making computations under this provision, the amount of wage credits if not a multiple of \$1, shall be computed to the nearest multiple of \$1.

Subd. 6. **Employer's separate account.** The commissioner shall, for the calendar year 1966, and for each calendar year thereafter, compute an experience ratio for each employer whose account has been chargeable with benefits during the 36 consecutive calendar months immediately preceding July 1 of the preceding calendar year; except that, for any employer who has not been subject to the Minnesota manpower services law for a period of time sufficient to meet the 36-consecutive months requirement, the commissioner shall compute an experience ratio if his account has been chargeable with benefits during at least the 12 consecutive calendar months immediately preceding July 1 of the preceding calendar year. Such experience ratio shall be the quotient obtained by dividing  $1\frac{1}{4}$  times the total benefits charged to the employer's account during the period his account has been chargeable but not less than the 12 or more than the 36 consecutive calendar months ending on June 30 of the preceding calendar year, by his total taxable payroll for the same period on which all contributions due have been paid to the department of manpower services on or before July 31 of the preceding calendar year. Such experience ratio shall be computed to the nearest one tenth of a percent. Provided, that any employer who has not submitted contribution and wage reports or has not paid the contributions due and payable to the department of manpower services on or before July 31 of the preceding calendar year with respect to taxable payrolls for previous periods within the experience period shall be entitled to have such taxable payroll included as a factor in the computation of his experience ratio and contribution rate upon filing with the commissioner written application therefor supported by affidavits showing to the satisfaction of the commissioner that good cause for such delinquency exists and submitting said reports and payment of contributions on or before September 30 of said preceding year.

Subd. 7. [Repealed, 1949 c 605 s 15]

Subd. 8. **Adjustments.** For the year 1969 and for each calendar year thereafter the commissioner shall determine the contribution rate of each employer by adding the experience ratio to the minimum rate. The minimum rate for all employers shall be seven tenths of one percent if the amount in the unemployment

compensation fund is less than \$110,000,000 on June 30 of the preceding calendar year; or five tenths of one percent if the fund is more than \$110,000,000 but less than \$120,000,000; or three tenths of one percent if the fund is more than \$120,000,000 but less than \$140,000,000; or one tenth of one percent if the fund is \$140,000,000 or more; provided that no employer shall have a contribution rate of more than  $4\frac{5}{10}$  percent.

Subd. 9. [Repealed, 1949 c 605 s 15]

Subd. 10. [Repealed, 1949 c 605 s 15]

Subd. 11. [Repealed, 1953 c 97 s 7]

Subd. 12. [Repealed, 1953 c 97 s 7]

Subd. 13. [Repealed, 1953 c 97 s 7]

Subd. 14. [Repealed, 1953 c 97 s 7]

Subd. 15. [Repealed, 1953 c 97 s 7]

Subd. 16. [Repealed, 1953 c 97 s 7]

Subd. 17. [Repealed, 1949 c 605 s 15]

Subd. 18. **Notice to employer.** The commissioner shall at least twice each year notify each employer of the benefits as determined by the department which have been charged to his account subsequent to the last notice. Unless reviewed in the manner hereinafter provided, charges set forth in such notice, or as modified by a redetermination, a decision of a referee, or the commissioner, shall be final and shall be used in determining the contribution rates for all years in which the charges occur within the employer's experience period and shall not be subject to collateral attack by way of review of a rate determination, application for adjustment or refund, or otherwise.

Subd. 19. **Notice of rate.** The commissioner shall mail to each employer notice of his rate of contributions as determined for any calendar year pursuant to this section. Such notice shall contain the contribution rate, factors used in determining the individual employer's experience rating, and such other information as the commissioner may prescribe. Unless reviewed in the manner hereinafter provided, the rate as determined or as modified by a redetermination, a decision of a referee, or the commissioner shall be final except for fraud and shall be the rate upon which contributions shall be computed for the calendar year for which such rate was determined, and shall not be subject to collateral attack for any errors, clerical or otherwise, whether by way of claim for adjustment or refund, or otherwise.

Subd. 20. **Protest, review, redetermination, appeal.** A review of the charges made to an employer's account as set forth in the notice of charges referred to in subdivision 18 and a review of an employer's contribution rate as set forth in the notice of his rate for any calendar year as provided in subdivision 19, may be had by such employer if he files with the commissioner a written protest setting forth his reasons therefor within 30 days from the date of the mailing of the notice of charges or contribution rate to him, which date shall appear on such notice. Upon receipt of such protest the commissioner shall refer the matter to an official designated by him to review the charges appearing on such notice appealed from or the computations of the protesting employer's rate, as the case may be, to determine whether or not there has been any clerical error or error in computation in either case, and he shall either affirm or make a redetermination rectifying said charges or rate as the case may be, and a notice of such affirmation or redetermination shall immediately be mailed to said employer. If the employer is not satisfied with such affirmation or redetermination, he may appeal therefrom by filing a notice thereof with the department within ten days after the date of mailing appearing upon said redetermination. Upon the receipt of such appeal the commissioner shall refer the matter to a referee for a hearing and after opportunity for a fair hearing, the referee shall affirm, modify or set aside the original determination with its affirmation or the redetermination, as appears just and proper. The commissioner may at any time upon his own motion correct any clerical error of the department resulting in charges against an employer's account or any error in the computation of an employer's contribution rate. The referee may order the consolidation of two or more appeals whenever, in his judgment, such consolidation will not be prejudicial to any interested party. At any such hearing a written report of any employee of the department which has been authenticated shall be admissible in evidence. Appeals from the decision of the referee shall be made in the same

manner as appeals from the decision of an appeal tribunal. Decisions of the commissioner made upon appeal from a decision of the referee shall be reviewed by the supreme court upon certiorari in accordance with the procedure outlined therefor with respect to benefit decisions.

**Subd. 21. Separate account.** The commissioner shall maintain a separate account for each employer, and shall credit his account with all the contributions paid by him. Nothing in sections 268.03 to 268.24 shall be construed to grant any employer or individuals in his service prior claims or rights to the amounts paid by the employer into the fund.

**Subd. 22. Employment experience record transfer.** For experience rating purposes, one or more employing units which is or are the subject of or parties to a change of ownership or any form of organization or reorganization of an employing enterprise including a change in legal identity or form, shall upon application be deemed to be a successor entitled to the transfer of the employment experience record of all or any severable portion thereof of one or more such employing enterprises involved in such change of ownership, organization, or reorganization if the commissioner finds that there is a continuation of the employment activities of the predecessor employing unit or units and that the purpose of such change is not to avoid a contribution rate in excess of 2.7 percent, and such transfer would not be inequitable and would not tend to defeat the object and purpose of this law.

Provided that in no event shall a successor be assigned a rate of less than 2.7 percent until such time as all of the unpaid contributions of the predecessor have been paid. Credits due to a predecessor as a result of overpayment of contributions under this subdivision may be granted to the successor upon assignment thereof by such predecessor in such form and in accordance with such regulations as may be prescribed by the commissioner. Employment with a predecessor employer shall not be deemed to have been terminated if similar employment is offered by the successor employer and accepted by the employee.

**Subd. 23.** [Repealed, 1955 c 380 s 4]

**Subd. 24. Reassignment.** Notwithstanding any inconsistent provisions of law any employer who has been assigned a contribution rate pursuant to subdivisions 4, 6, and 8 of this section may, for the calendar year 1967, or any calendar year thereafter, upon the voluntary payment of an amount equivalent to any portion or all of the benefits charged to his account during the period ending June 30 of the preceding year used for the purpose of computing an employer's experience ratio as authorized by said subdivisions 4, 6, and 8, obtain a cancellation of benefits charged to his account during such period equal to such payment so voluntarily made. Upon the payment of such voluntary contribution, plus a surcharge of 25 percent of such benefit charged, within the applicable period prescribed by the provisions of this subdivision, the commissioner shall cancel the benefits equal to such payment, excluding the 25 percent surcharge, so voluntarily made and compute a new experience ratio for such employer. The employer then shall be assigned the contribution rate applicable to the category within which his recomputed experience ratio is included. Such voluntary payments may be made only during the 30-day period immediately following the date of mailing to the employer of the notice of his contribution rate as prescribed in this section; provided that the commissioner may extend this period if he finds that the employer's failure to make such payment within such 30-day period was for good cause; and provided further that notwithstanding any of the foregoing provisions of this subdivision, in no event shall any new experience ratio be computed for any employer or his contribution rate be reduced as a result of any such voluntary payment which he made after the expiration of the 120-day period commencing with the first day of the calendar year for which such rate is effective. Any adjustments under this subdivision shall be used only in the form of credits against accrued or future contributions.

When all or a part of the benefits charged to an employer's account are for the unemployment of 75 percent or more of the employees in an employing unit and the unemployment is caused by damages to the unit by fire, flood, wind or other act of God, the employer may obtain a cancellation of benefits incurred because of that unemployment in the manner provided by this subdivision without being subject to the surcharge of 25 percent otherwise required.

**Subd. 25. Payments into fund.** In lieu of contributions required of employers

under this law, the state of Minnesota or its political subdivisions which have elected to be governed by the Minnesota manpower services law shall pay into the unemployment compensation fund an amount equivalent to the amount of benefits paid to individuals based on wages paid by the state of Minnesota or such political subdivisions. If benefits paid an individual are based on wages paid by both the state of Minnesota or such political subdivisions and one or more other employers, the amount payable by the state of Minnesota or such political subdivisions to the fund shall bear the same ratio to total benefits paid to the individual as the base-period wages paid to the individual by the state of Minnesota or such political subdivisions bear to the total amount of base-period wages paid to the individual by all his base-period employers. The amount of payment required under this subdivision shall be ascertained by the commissioner semi-annually. If the amount of benefits paid in any fiscal year from the fund to former employees paid from any one account from which salaries are paid as ascertained by the commissioner exceeds three percent of the total wages paid to all employees from that salary account during the preceding completed fiscal year, the excess amount shall be paid to the fund by including such sum in the biennial budget as submitted by the commissioner of the department of administration and shall be paid from such moneys in the state treasury that have not otherwise been appropriated.

Subd. 26. **Reimbursement of fund by state.** To facilitate the discharge by the state of Minnesota and its wholly owned instrumentalities of their obligations under subdivision 25 of this section, the state and its wholly owned instrumentalities shall reimburse the unemployment compensation fund as provided in the following clauses:

(1) Every self-sustaining department, institution and wholly owned instrumentality of the state shall pay into the unemployment compensation fund semi-annually such amounts as the department of manpower services shall certify has been paid from the fund to eligible individuals. For the purposes of this clause a "self-sustaining department, institution or wholly owned instrumentality" is one in which the dedicated income and revenue substantially offsets its cost of operation.

(2) Every partially self-sustaining department, institution and wholly owned instrumentality of the state shall pay semi-annually to the unemployment compensation fund such proportion of the sum which the department of manpower services certifies has been paid from the fund during the preceding six months to eligible individuals as the total of its income and revenue bears to its annual cost of operation.

(3) Every department, institution or wholly owned instrumentality of the state which is not self-sustaining shall pay to the unemployment compensation fund such sums as the department of manpower services certifies have been paid from the fund to eligible individuals to the extent funds are available from appropriated funds.

(4) The departments, institutions and wholly owned instrumentalities of the state, including the University of Minnesota, which have money available shall immediately reimburse the unemployment compensation fund for benefits paid which were charged to their accounts upon receiving notification from the department of manpower services of such charges. If an individual to whom benefits were paid was paid by a department, institution or wholly owned instrumentality during his base period from a special or administrative account or fund provided by law, the payment into the unemployment compensation fund shall be made from such special or administrative account or fund with the approval of the department of administration and such amounts are hereby appropriated.

(5) For those departments, institutions and wholly owned instrumentalities of the state which cannot immediately reimburse the unemployment compensation fund for benefits that were charged to their accounts, the commissioner of manpower services shall certify on November 1 of each even-numbered year to the department of administration as to the unpaid balances due and owing. Upon receipt of the certification the commissioner of the department of administration shall include such unpaid balances in the biennial budget to be submitted to the legislature.

Subd. 27. **Political subdivisions electing to become employers.** Any political subdivision or instrumentality thereof which elects to be an employer under the Minnesota manpower services law is hereby authorized and directed to pay its

obligations under subdivision 25 of this section by moneys collected from taxes or other revenues. Each and every political subdivision authorized to levy taxes may include in its tax levy the amount necessary to pay such obligations. If the taxes authorized to be levied under this subdivision cause the total amount of taxes levied to exceed any limitation whatsoever upon the power of a political subdivision to levy taxes, such political subdivision may levy taxes in excess of the limitations in such amounts as is necessary to meet its obligation under subdivision 25 of this section. The expenditures authorized to be made under subdivision 25 of this section shall not be included in computing the cost of government as defined in any home rule charter of any city affected thereby. The governing body of a municipality, for the purpose of meeting its liabilities under subdivision 25 of this section, in the event of a deficit, may issue its obligations payable in not more than two years, in an amount which may cause its indebtedness to exceed any statutory or charter limitations, without an election, and may levy taxes to pay therefor in the manner provided in Minnesota Statutes, Section 475.61.

[*Ex*1936 c 2 s 4; 1937 c 306 s 2; 1939 c 443 s 3; 1941 c 554 s 3; 1943 c 650 s 2; 1945 c 376 s 3; 1947 c 32 s 1, 2, 3, 4, 5, 6, 7, 8; 1947 c 432 s 3, 4, 5, 11; 1947 c 600 s 7; 1949 c 526 s 1; 1949 c 605 s 3, 4, 5, 6, 17, 18; 1951 c 442 s 2; 1953 c 97 s 5, 6, 8; 1953 c 288 s 1; 1955 c 380 s 2-4, 6; 1957 c 25 s 1; 1957 c 873 s 2; 1959 c 702 s 2-4; 1965 c 45 s 40; 1965 c 741 s 6-11; 1967 c 573 s 3; 1967 c 617 s 1; 1967 c 856 s 1; 1969 c 3 s 1; 1969 c 567 s 3; 1969 c 854 s 6] (4337-24)

**268.07 BENEFITS PAYABLE.** Subdivision 1. **Paid from the fund.** All benefits provided herein shall be payable from the fund and shall be paid through employment offices, in accordance with such regulations as the commissioner may prescribe.

Subd. 2. **Maximums.** If the commissioner finds that an individual has earned 18, or more, credit weeks, and \$520 or more in wage credits, within the base period of employment in insured work with one or more employers, benefits shall be payable to such individual as follows:

(1) Weekly benefit amount shall be equal to 50 percent of the average weekly wage of such individual, computed to the nearest even dollar, subject to a maximum of \$57 per week.

(2) Benefits shall be paid weekly for a period not to exceed 70 percent of the number of credit weeks earned by such individual computed to the nearest even week, subject to a maximum of 26 weeks.

(3) An individual who has exhausted his entitlement to benefits as determined by sections 268.02 through 268.25 and cannot establish entitlement to unemployment compensation benefits under the law of any other state or the federal government may have his entitlement during his current benefit year extended by three weeks if during the 52 calendar week period immediately preceding his base period he earned 37 credit weeks in employment insured under this law and by three weeks for each such successive previous 52 calendar week period subject to a maximum of nine weeks. Such extended benefits shall be payable only if the commissioner finds that the individual is either enrolled in a course of training or retraining approved by the commissioner and for which training allowances are not payable under any other state or federal law or the individual has completed such a course of training or retraining. Benefits paid under such extension are not chargeable to any employer's experience rating account. The commissioner shall establish suitable procedures for verifying prior employment and for the determination of appropriate training.

(4) Each eligible individual who is unemployed in any week shall be paid with respect to such week a benefit in an amount equal to his weekly benefit amount less that part of his earnings, payable to him with respect to such week which is in excess of \$12. Such benefit, if not a multiple of \$1, shall be computed to the next higher multiple of \$1.

(5) The provisions of this subdivision shall apply to claims for benefits which establish a benefit year subsequent to June 28, 1969.

Subd. 3. **Wage credits.** (1) The wage credits and credit weeks of an individual earned in employment with base period employers during the period commencing with the end of the base period and ending on the date on which he filed a valid claim shall not be available for benefit purposes in a subsequent benefit year unless, in addition thereto, such individual has earned, in any part of the

third and fourth quarters of the base period upon which the benefits for such subsequent benefit year are based, an amount equivalent to at least four times his current weekly benefit amount, and in the same period has established five credit weeks. A claim filed sufficiently in advance of anticipated unemployment to make the limitations of this clause ineffective shall be invalid. It is the purpose of this clause to prevent any individual from receiving benefits in more than one benefit year as a result of one separation from work.

(2) No employer who provided 90 percent or more of the wage credits in a claimant's base period shall be charged for benefits paid based upon earnings of such claimant during the next four calendar quarters following such base period unless he has employed such claimant in any part of the third and fourth quarters of such subsequent period.

Subd. 4. [Repealed, 1951 c 442 s 3]

Subd. 5. **Seasonal employment.** (1) "Seasonal employment" means employment in any industry or any establishment or class of occupation in any industry which is engaged in activities relating to the first processing of seasonally produced agricultural products in which, because of the seasonal nature thereof, it is customary to operate only during a regularly recurring period or periods of less than 26 weeks in any calendar year. The commissioner shall, after investigation and hearing, determine and may thereafter from time to time redetermine such customary period or periods of seasonal operations. Until the effective date of such determination by the commissioner, no employment shall be deemed seasonal.

(2) Any employer who contends that employment in his industry or any establishment or occupation in such industry is seasonal shall file with the commissioner a written application for a hearing and determination of such matter. Upon receipt of such application, the commissioner shall fix a time and place for such hearing and shall give the employer written notice thereof of not less than 15 days prior to the time of such hearing. Within three days after receipt of such notice, the employer shall post in a conspicuous place in each department of each establishment of his industry, with respect to which such application was made, a written notice setting forth the time and place of such hearing and shall cause such notice to be published in the first next issue of the legal newspaper published nearest such place of business and shall furnish to the commissioner proof of such posting and publication.

(3) In order to insure the prompt disposition of all applications for seasonality determination, the commissioner shall designate one or more representatives, herein referred to as referees, to conduct hearings thereon, at which hearings the employer and his employees shall be entitled to appear, introduce evidence, and be heard in person, by counsel, or by any other representative of their own selection. After having heard the matter, the referee shall promptly make findings of fact and render a decision thereon. Notice of such decision, together with a copy of the findings of fact and the decision, shall be promptly given to the parties to the hearing, and unless the employer or any other party to such matter, within ten calendar days after the delivery of such notice or within 12 calendar days after such notice was mailed to his last known address, files an appeal with the commissioner from such decision, such decision shall be final and benefits shall be paid or denied in accordance therewith.

(4) The commissioner may on his own motion cause an investigation of any industry or class of occupation in any industry which he believes to be seasonal in nature and, after a hearing on such matter, the referee may make findings of fact and render his decision thereon based upon the facts disclosed by such investigation and hearing.

(5) Any employer, employee, or other party to the hearing may appeal from the decision of the referee in the same manner as appeals are provided for in sections 268.03 to 268.24 relative to decisions made by an appeal tribunal in regard to claims for benefits thereunder.

Subd. 6. [Repealed, 1947 c 32 s 9]

[*Ex 1936 c 2 s 5; 1937 c 306 s 3; 1939 c 443 s 4; 1941 c 554 s 4; 1943 c 650 s 3; 1945 c 376 s 4; 1947 c 432 s 6; 1949 c 605 s 7, 8; 1951 c 442 s 3; 1953 c 587 s 1; 1955 c 816 s 1; 1957 c 780 s 1; 1965 c 741 s 12, 13; 1967 c 573 s 4; 1969 c 854 s 7*] (4337-25)

**268.08 PERSONS ELIGIBLE TO RECEIVE BENEFITS.** Subdivision 1. **When eligible.** An individual shall be eligible to receive benefits with respect to any week of unemployment only if the commissioner finds that:



(1) He has registered for work at and thereafter has continued to report to an employment office, or agent of such office, in accordance with such regulations as the commissioner may prescribe; except that the commissioner may by regulation waive or alter either or both of the requirements of this clause as to types of cases or situations with respect to which he finds that compliance with such requirements would be oppressive or would be inconsistent with the purposes of sections 268.03 to 268.24;

(2) He has made a claim for benefits in accordance with such regulations as the commissioner may prescribe;

(3) He was able to work and was available for work, and was actively seeking work, provided that individual's weekly benefit amount shall be reduced one-fifth for each day such individual is unable to work or unavailable for work;

(4) He has been unemployed for a waiting period of one week during which he is otherwise eligible for benefits under sections 268.03 to 268.24. No individual shall be required to serve a waiting period of more than one week within the one year period subsequent to filing a valid claim and commencing with the week within which such valid claim was filed.

**Subd. 2. Week of unemployment.** No week shall be counted as a week of unemployment for the purposes of this section:

(1) Unless it occurs subsequent to the filing of a valid claim for benefits;

(2) Unless it occurs after benefits first could become payable to any individual under sections 268.03 to 268.24;

(3) With respect to which he is receiving, has received, or has filed a claim for unemployment compensation benefits under any other law of this state, or of any other state, or the federal government, including readjustment allowances under Title V, Servicemen's Readjustment Act, 1944, but not including benefits under the Veterans Readjustment Assistance Act of 1952 or any other federal or state benefits which are merely supplementary to those provided for under sections 268.03 to 268.24; provided that if the appropriate agency of such other state or the federal government finally determines that he is not entitled to such benefits, this provision shall not apply.

**Subd. 3. Not eligible.** An individual shall not be eligible to receive benefits for any week with respect to which he is receiving, has received, or has filed a claim for remuneration in an amount equal to or in excess of his weekly benefit amount in the form of

(1) termination, severance, or dismissal payment or wages in lieu of notice whether legally required or not; provided that if a termination, severance, or dismissal payment is made in a lump sum, the employer may allocate such lump sum payment over a period of weeks equal to the lump sum divided by the employee's regular pay while employed by such employer; provided any such payment shall be applied for a period of weeks immediately following the last day of work; or

(2) vacation allowance or holiday pay; or

(3) compensation for loss of wages under the workmen's compensation law of this state or any other state or under a similar law of the United States, or under other insurance or fund established and paid for by the employer; or

(4) a primary insurance benefit under Title II of the federal social security act, as amended, or similar old age benefits under any act of congress, or this state or any other state, or benefit payments from any fund, annuity, or insurance provided by or through the employer and to which the employer contributes 50 percent or more of the total of the entire premiums or contributions to the fund.

Provided, that if such remuneration is less than the benefits which would otherwise be due under sections 268.03 to 268.24, he shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration; provided, further, that if the appropriate agency of such other state or the federal government finally determines that he is not entitled to such benefits, this provision shall not apply.

**Subd. 4. Social security amount deducted from benefits.** Any claimant aged 62 or over shall be required to state in writing at the time of the filing of his claim whether he intends to seek Title II social security benefits for any week during which he will receive unemployment benefits, and if he so intends there shall be withheld from his weekly unemployment benefits an amount sufficient to cover the weekly equivalent of his social security benefit. Any claimant disclaim-

ing such intention but who nevertheless receives such social security benefits for weeks for which he previously received unemployment benefits shall be liable for repayment of such unemployment benefits and otherwise subject to the provisions of section 268.18.

[*Ex*1936 c 2 s 6; 1937 c 43 s 2; 1937 c 306 s 4; 1939 c 443 s 5; 1941 c 554 s 5; 1943 c 650 s 4; 1945 c 376 s 5; 1949 c 605 s 9; 1953 c 97 s 9; 1953 c 699 s 10; 1965 c 741 s 14-16; 1969 c 6 s 34] (4337-26)

**268.09 DISQUALIFIED FROM BENEFITS.** Subdivision 1. **When disqualified.** An individual shall be disqualified for benefits:

(1) If such individual voluntarily and without good cause attributable to the employer discontinued his employment with such employer or was discharged for misconduct, not amounting to gross misconduct, connected with his work or for misconduct which interferes with and adversely affects his employment, if so found by the commissioner, for not less than five nor more than eight weeks of unemployment in addition to and following the waiting period, or was discharged for gross misconduct connected with his work or gross misconduct which interferes with and adversely affects his employment, if so found by the commissioner, for 12 weeks of unemployment in addition to and following the waiting period, which disqualification shall not be removed by subsequent employment, and provided further that the commissioner is empowered to impose a total disqualification for the benefit year and to cancel part or all of the wage credits from the last employer from whom he was so separated, and the maximum benefit amount payable to such individual shall be reduced as follows:

(a) by an amount equal to the weekly benefit amount times the number of weeks for which such individual was disqualified, when the separation occurs as a result of discharge for misconduct;

(b) by an amount equal to two times the weekly benefit amount, when the separation occurs because of a voluntary separation as described in this clause;

(c) by an amount equal to 12 times his weekly benefit amount, when the separation occurs as a result of a discharge for gross misconduct.

For the purpose of this clause "gross misconduct" shall be defined as misconduct involving assault and battery, or an immoral act, or the malicious destruction of property or the theft of money or property of a value of \$50, or more.

This provision shall not apply to any individual who left his employment to accept work offering substantially better conditions of work or substantially higher wages or both, or whose separation from such employment was due to serious illness of such individual.

(2) If such individual is separated from her employment because of pregnancy or voluntarily discontinues her employment for the purpose of visiting or living with her husband, or assuming the duties of a housewife; provided that such disqualification shall be removed by subsequent employment in insured work for a period of not less than six weeks.

(3) Benefits paid to any individual whose separation occurs under any of the conditions of the foregoing clauses of this subdivision shall not be used as a factor in determining the future contribution rate of the employer from whose employment such individual so separated.

(4) If the commissioner finds that he has failed, without good cause, either to apply for available, suitable work when so directed by the employment office, or the commissioner or to accept suitable work when offered him, or to return to his customary self-employment (if any) when so directed by the commissioner, or to actively seek employment. Such disqualification shall continue for the week in which such refusal or failure occurred and for a period of seven weeks of unemployment immediately following such refusal or failure.

(a) In determining whether or not any work is suitable for an individual, the commissioner shall consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience, his length of unemployment and prospects of securing local work in his customary occupation, and the distance of the available work from his residence.

(b) Notwithstanding any other provisions of sections 268.03 to 268.24, no work shall be deemed suitable, and benefits shall not be denied thereunder to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) if the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(2) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(3) if as a condition of being employed the individual would be required to join a union or to resign from or refrain from joining any bona fide labor organization.

(5) If such individual has left or partially or totally lost his employment with an employer because of a strike or other labor dispute. Such disqualification shall prevail for each week during which such strike or other labor dispute is in progress at the establishment in which he is or was employed, except that this disqualification shall not act to deny any individual the right to benefits based on employment subsequent to his separation because of a strike or other labor dispute if such individual has in writing notified the employer involved in such strike or other labor dispute of his resignation and acceptance of his resignation and acceptance of other bona fide employment and provided further that such resignation is accepted by all parties to the strike or other labor dispute so that such individual is no longer considered an employee of such employer. For the purpose of this section the term "labor dispute" shall have the same definition as provided in the Minnesota labor relations act. Nothing in this subdivision shall be deemed to deny benefits to any employee who becomes unemployed because of a lockout or by dismissal during the period of negotiation in any labor dispute and prior to the commencement of a strike.

(6) If such individual has, during his benefit year, refused suitable reemployment offered by a base period employer. The wage credits of such individual earned from such base period employer shall be canceled; provided that this clause shall not apply if:

(a) prior to the date designated by such employer for the reemployment of such individual, such individual has been offered and accepted work with another employing unit, and on the date such individual was to have been reemployed by such base period employer, he was actually engaged in bona fide work with another employing unit, or

(b) on the date designated for the reemployment of such individual by such base period employer, he was unable to accept such reemployment because of his own serious illness, except that such serious illness shall not include pregnancy or any illness resulting therefrom, or

(c) on the date designated for the reemployment of such individual by such base period employer, he was unable to accept such reemployment because either he has moved his residence or the base period employer has removed the place of employment so as to render unreasonable the distance which such individual would be required to travel in order to accept the offer of reemployment.

For the purpose of this clause, reemployment offering substantially the same or better hourly wages and conditions of work previously provided to such individual by such base period employer during the base period shall be deemed to be "suitable reemployment."

**Subd. 2. Disqualification.** Except with respect to subdivision 1, clause (2), any week of disqualification imposed under the provisions of this section shall be satisfied by wages earned, in employment in insured work in an amount equal to the weekly benefit amount subsequent to the week in which the disqualifying separation occurred.

**Subd. 3. When concurrent.** Weeks of disqualification imposed under the provisions of this section shall be concurrent where two or more disqualifying periods overlap.

**Subd. 4. Defined.** A week of unemployment, as used in this section, shall mean a week during which such individual would be otherwise eligible for benefits.

[Ex1936 c 2 s 7; 1937 c 401 s 1; 1939 c 443 s 6; 1941 c 554 s 6; 1943 c 650 s 5; 1945 c 376 s 6; 1947 c 432 s 7; 1965 c 741 s 17; 1967 c 342 s 1; 1967 c 573 s 5; 1969 c 42 s 1] (4337-27)

**268.10 DETERMINATION OF CLAIMS FOR BENEFITS; APPEALS.** Subdivision 1. **Filing.** Claims for benefits shall be made in accordance with such regulations as the commissioner may prescribe. Each employer shall post and maintain printed statements of such regulations in places readily accessible to individuals in

his service and shall make available to each such individual at the time he becomes unemployed, a printed statement of such regulations. Such printed statements shall be supplied by the commissioner to each employer without cost to him.

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

(2) Upon the filing, by an individual, of a claim for benefits, the commissioner shall give notice to all such base period employers of the filing of such claim and request each such base period employer, within seven days after the mailing of such notice, to furnish the following information:

- (a) The total wage credits earned in the base period;
- (b) The number of credit weeks which end within the base period;
- (c) The week ending dates for each calendar week within the base period in which the individual earned less than the amount required to make a credit week and the amount of earnings in each such week;
- (d) The reason for the separation or separations of such individual from the employ of the employer in the base period; and
- (e) Such employer's protest, if any, relating to the ineligibility or disqualification of such individual.

(3) If any base period employer, after the notice of filing of a claim and the request for wage and separation information has been duly mailed to his last known address, fails to file information as provided by items (a) through (e) of clause 2 of this subdivision within seven days, the commissioner shall determine an individual's benefit rights based on the claimant's statements or any other available information. Any employer shall be liable for a late filing fee of not less than \$5 nor more than \$25, as the commissioner may determine, to be paid to the department of manpower services and credited to the contingent fund if he has failed without good cause to submit the wage and separation information as required in clause 2 of this subdivision within seven days after the request has been duly mailed to his last known address. In the absence of fraud, if a redetermination of benefit rights based on an employer's late report subsequently cancels or reduces the amount of benefits to which a claimant was entitled under the initial determination, the claimant shall not be required to make repayment to the fund of any benefits paid to him prior to such redetermination.

**Subd. 2. Determination of validity; redetermination; issues of eligibility and disqualification.** (1) An official, designated by the commissioner, shall promptly examine each claim for benefits filed to establish a benefit year pursuant to this section, and, on the basis of the facts found, shall determine whether or not such claims are valid, and if valid, the weekly benefit amount payable, the maximum benefit amount payable during the benefit year, and the date the benefit year terminates, and such determination shall be known as the determination of validity. Notice of any such determination of validity or any redetermination as provided for in clause (2) of this subdivision shall be promptly given the claimant and all other interested parties. Unless the claimant or such other interested party or parties within seven calendar days after the delivery of such notification, or within seven calendar days after such notification was mailed to his last known address, files an appeal from such determination of validity such determination shall be final and benefits shall be paid or denied in accordance therewith. If within the time specified for the filing of wage and separation information as provided in section 268.10, subdivision 1, clause (2), the employer makes an allegation of disqualification or raises an issue of the chargeability to his account of benefits that may be paid on such claim, if such claim is valid, the issue thereby raised shall be promptly determined by said official and a notification of such determination delivered or mailed to the claimant and the employer. Such determination shall become final unless any interested party or parties appeals therefrom within seven calendar

days after the delivery of such notification or within seven calendar days after such notification was mailed to his last known address; provided that such determinations shall not become final until ten calendar days after the delivery or 12 calendar days after the mailing of the determination notice if the commissioner finds that the failure to file such appeal timely was due to a compelling good cause. If benefits are paid to a claimant which would not have been paid to him except for a base period employer's failure to file such appeal within the specified seven calendar day period required herein, then any benefits so paid prior to the receipt of a notice filed late with good cause shall remain charged to the account of such base period employer; subsequent benefits paid shall be charged or not charged to such employer's account in accordance with the provisions of section 268.09. If an appeal is filed, benefits may be paid on the uncontested portion of the claim; benefits on the contested portion of the claim, if any, shall be paid after the final determination of the appeal. Except in respect to cases arising under section 268.09, subdivision 1, clause (7), if an appeal tribunal affirms an initial determination or the commissioner affirms a decision of the appeal tribunal, allowing benefits, such benefits shall be paid regardless of any appeal which may thereafter be taken, but if such decision is finally reversed, such benefits so paid shall not be considered in determining any individual employer's future contribution rate under section 268.06.

(2) At any time within one year from the date of the filing of a claim for benefits by an individual, the commissioner on his own motion may reconsider a determination made thereon and make a redetermination thereof if he finds that an error in computation or identity or the crediting of wage credits has occurred in connection therewith or if such determination was made as a result of a non-disclosure or misrepresentation of a material fact.

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

(4) If within the benefit year an official of the department or any interested party or parties raises an issue of claimant's eligibility for benefits for any week or weeks in accordance with the requirements of the provisions of sections 268.03 to 268.24 or any official of the department or any interested party or parties or benefit year employer raises an issue of disqualification in accordance with the regulations of the commissioner, a determination shall be made thereon and a written notice thereof shall be given to the claimant and such other interested party or parties or benefit year employer. Unless the claimant or such other interested party or parties or benefit year employer shall within seven calendar days after the delivery of such notice, or within seven days after such notice was mailed to his last known address, files an appeal from such determination, such determination shall be final and benefits shall be paid or denied in accordance therewith.

**Subd. 3. Appeal; hearing.** Unless such appeal is withdrawn, the date for hearing before an appeal tribunal shall be set and notice of such hearing shall be mailed to the last known address of all interested parties at least ten days prior to the date set for such hearing. Such hearing shall be a trial de novo, and, upon the evidence presented, the appeal tribunal shall affirm, modify, or set aside the initial determination. The commissioner may, by regulation, provide for the taking of evidence or for the admission of sworn statements in case any interested party is unable to be present at the hearing. The parties shall be duly notified of such tribunal's decision, together with its reason therefor, which shall be deemed to be the final decision unless further appeal is initiated pursuant to subdivision 5.

**Subd. 4. Appeal tribunals.** In order to assure the prompt disposition of all claims for benefits, the commissioner shall establish one or more impartial appeal tribunals consisting of a salaried examiner who shall serve as chairman, and two additional members, one of whom shall be a representative of employers and the other of whom shall be a representative of employees; each of the latter two members shall serve at the pleasure of the commissioner and be paid a fee of not more than \$25 per day of active service on such tribunal plus necessary expense. The commissioner shall by regulation prescribe the procedure by which such appeal tribunals shall hear and decide disputed claims, subject to appeal to the commissioner. No person shall participate on behalf of the commissioner in any case in which he is

an interested party. The commissioner may designate alternates to serve in the absence or disqualification of any member of any appeal tribunal. The chairman shall act alone in the absence or disqualification of any other member and his alternates. In no case shall a hearing before an appeal tribunal proceed unless the chairman of such tribunal is present. There shall be no charges, fees, transcript costs, or other cost imposed upon the employee in prosecuting his appeal. All decisions of such tribunal, complete as to the names of members of such tribunal, shall be made available to the public in accordance with such regulations as the commissioner may prescribe, except that names of interested parties may be deleted.

**Subd. 5. Review by commissioner.** Within ten calendar days after the delivery of or within 12 days after the mailing to an interested party at his last known address notice of the filing of an appeal tribunal decision, together with a copy of such decision, any such party may appeal from such decision and obtain a review thereof by the commissioner or his duly authorized representative, and the commissioner within the same period of time may on his own motion order a review of any such decision. Upon review, the commissioner or his duly authorized representative may affirm, modify, or set aside any finding of fact or decision, or both, of the appeal tribunal on the basis of the evidence previously submitted in such case, or remand such matter back to the appeal tribunal for the taking of additional evidence and new findings and decision based on all of the evidence before it. Notice of all hearings on review shall be given to all interested parties in the same manner as provided for by subdivision 3. The commissioner or his representative may affirm, modify, or set aside any finding of fact or decision, proceedings on any claim pending before an appeal tribunal. Any proceedings so removed to the commissioner or his representative shall be heard upon notice in accordance with the requirements of subdivision 3. The department of manpower services shall mail to all interested parties a notice of the filing of and a copy of the findings and decision of the commissioner or his representative.

**Subd. 6. Commissioner.** The manner in which disputed claims shall be presented, the reports thereon required from the claimant and from employers, and the conduct of hearings and appeals shall be in accordance with the regulations prescribed by the commissioner for determining the rights of the parties, whether or not such regulations conform to common law or statutory rules of evidence and other technical rules of procedure. A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing shall be reduced to writing, but need not be transcribed unless the disputed claim is further appealed.

**Subd. 7. Subpoenaed.** Witnesses subpoenaed pursuant to this section shall be allowed fees at a rate fixed by the commissioner. Such fees shall be deemed a part of the expense of administering sections 268.03 to 268.24.

**Subd. 8. Certiorari.** Any such decision of the commissioner may be reviewed on certiorari by the supreme court provided such writ is issued and served upon the adverse party or parties within 30 days after the date of mailing notice of any decision to him at his last known address.

Any party in interest except a claimant for benefits upon the service of such writ shall furnish a cost bond to be approved by the commissioner and pay to the department of manpower services a fee of \$15, \$5 of which shall be retained by the department and deposited in its administration fund, and \$10 of which shall be forwarded to the clerk of the Supreme Court.

**Subd. 9. Representation by attorney.** In any proceeding under these sections before an appeal tribunal or the commissioner, a party may be represented by an agent or attorney, but no individual claiming benefits shall be charged fees of any kind in any proceeding thereunder by the appeal tribunal, the commissioner, or his representatives, or by any court or any officers thereof. Any individual claiming benefits in any proceedings before the commissioner or his representatives or a court may be represented by counsel or other duly authorized agent, except that said agent in any court proceedings under these sections, must be an attorney at law; but no such counsel shall either charge or receive for such services more than an amount approved by the commissioner and no fees shall be collected from an individual claiming benefits by any agent unless he is an attorney at law.

**Subd. 10. Attorney for commissioner.** The commissioner shall be deemed to be a party to any judicial action involving any decision and shall be represented therein

# MINNESOTA STATUTES 1969

## ERRATA

Subd. 5. is corrected to read:

Subd. 5. **Review by commissioner.** Within ten calendar days after the delivery of or within 12 days after the mailing to an interested party at his last known address notice of the filing of an appeal tribunal decision, together with a copy of such decision, any such party may appeal from such decision and obtain a review thereof by the commissioner or his duly authorized representative, and the commissioner within the same period of time may on his own motion order a review of any such decision. Upon review, the commissioner or his duly authorized representative may affirm, modify, or set aside any finding of fact or decision, or both, of the appeal tribunal on the basis of the evidence previously submitted in such case, or remand such matter back to the appeal tribunal for the taking of additional evidence and new findings and decision based on all of the evidence before it. Notice of all hearings on review shall be given to all interested parties in the same manner as provided for by subdivision 3. The commissioner or his representative may remove to himself or transfer to another appeal tribunal the proceedings on any claim pending before an appeal tribunal. Any proceedings so removed to the commissioner or his representative shall be heard upon notice in accordance with the requirements of subdivision 3. The department of manpower services shall mail to all interested parties a notice of the filing of and a copy of the findings and decision of the commissioner or his representative.

# MINNESOTA STATUTES 1969

2831

## DEPARTMENT OF MANPOWER SERVICES 268.12

by any qualified attorney who is a regular salaried employee of the department of manpower services and has been designated by the commissioner for that purpose or, at the commissioner's request, by the attorney general.

[*Ex*1936 c 2 s 8; 1937 c 306 s 5; 1939 c 443 s 7; 1941 c 554 s 7; 1943 c 650 s 6; 1945 c 376 s 7; 1947 c 600 s 1; 1951 c 442 s 4, 5; 1953 c 97 s 10-12; 1957 c 307 s 1; 1957 c 883 s 6; 1967 c 439 s 4, 5; 1969 c 567 s 3; 1969 c 854 s 8] (4337-28)

**268.11 EMPLOYERS COVERAGE.** Subdivision 1. **Employer for part of year.** Except as provided in subdivisions 2 and 3, any employing unit which is or becomes an employer subject to sections 268.03 to 268.24 within any calendar year shall be deemed to be an employer during the whole of such calendar year.

Subd. 2. **Application for termination of coverage.** Except as otherwise provided in subdivision 3, any employing unit shall cease to be an employer subject to sections 268.03 to 268.24 as of the last day of the calendar quarter in which the employing unit files with the commissioner a written application for termination of coverage, if the commissioner finds the employment in the preceding calendar year and during the current calendar year, up to the last day of the calendar quarter in which the application was received, was not sufficient to make the employing unit liable under the provisions of section 268.04, subdivision 10. For the purpose of this subdivision the two or more employing units mentioned in section 268.04, subdivision 10, clause (2), (3), (4), or (5), shall be treated as a single employing unit.

The commissioner shall waive the requirement for an application for termination of coverage whenever it shall appear that the employer was unable to comply with such requirement for the reason that, at the time when he had qualified for release from liability under the provisions of this chapter, he was in good faith not aware of the fact that he was an employer subject to the provisions of this chapter.

Subd. 3. **Election agreements; termination powers of commissioner.** (1) An employing unit, not otherwise subject to sections 268.03 to 268.24 as an employer, which files with the commissioner its written election to become an employer subject thereto for not less than two calendar years, shall, with the written approval of such election by the commissioner, become an employer subject hereto to the same extent as all other employers, as of the date stated in such approval and cease to be subject hereto as of the first day of January of any calendar year subsequent to such two calendar years, only, if at least 30 days prior to such first day of January, it has filed with the commissioner a written notice to that effect;

(2) Any employing unit for which services that do not constitute employment are performed, may file with the commissioner a written election that all such service performed by individuals in its employ in one or more distinct establishments or places of business shall be deemed to constitute employment for all the purposes of sections 268.03 to 268.24 for not less than two calendar years. Upon the written approval of such election by the commissioner, such services shall be deemed to constitute employment subject to these sections from and after the date stated in such approval. Such services shall cease to be deemed employment subject hereto as of the first day of January of any calendar year subsequent to such two calendar years only if at least 30 days prior to such first day of January such employing unit has filed with the commissioner a written notice to that effect.

(3) The commissioner in his discretion may on his own motion terminate any election agreement under this subdivision upon 30 days notice to the employer, and he may also in his discretion and on his own motion terminate the coverage of any employer who has had less than 20 weeks of employment in a calendar year.

[*Ex*1936 c 2 s 9; 1937 c 306 s 6; 1941 c 554 s 8; 1945 c 376 s 8; 1947 c 600 s 2; 1949 c 605 s 10; 1953 c 97 s 13, 14; 1965 c 45 s 41; 1969 c 854 s 9, 10] (4337-29)

**268.12 CREATION.** Subdivision 1. **Department of employment security; commissioner; succession to division of employment and security.** (1) There is hereby created and established a department of employment security which shall be the successor to the division of employment and security, which said division is hereby abolished as a division of the department of social security as established by Laws 1939, Article VII, Section 1.

(2) A commissioner of employment security shall be appointed by the governor with the advice and consent of the senate for a four year term which shall coincide with the term of the governor and until his successor is duly appointed and has qualified, to administer this chapter as the same may hereafter from time to time be



amended. The commissioner, who shall be in unclassified service, may be removed by the governor at any time for cause after notice and hearing. The commissioner shall be selected on the basis of ability and experience and without regard to political affiliations. In case of a vacancy, the governor may appoint a commissioner, who shall immediately take office and shall carry on all of the duties of the office until the next session of the legislature, when his appointment shall be submitted to the senate for approval. On January 4, 1971, the term of the incumbent commissioner shall expire. Subject to the provisions of sections 268.03 to 268.24 and other applicable laws now or hereafter enacted, the commissioner shall have the power to organize his department in such manner as he may deem necessary. Appointments to exercise delegated powers shall be written orders filed with the secretary of state. The salary of the commissioner shall be prescribed by the legislature and he shall give bond in the sum of \$10,000.

(3) All proceedings, court actions, prosecutions or other business undertaken or commenced prior to April 21, 1953, by the division of employment and security and any other matters of the division of employment and security pending at the time of the passage of this act may be conducted and completed by the new department of employment security in the same manner and under the same terms and conditions and with the same effect as though it were undertaken, commenced or conducted or completed by said division of employment and security prior to such change. All functions, powers and duties of such division of employment and security are by this act assigned and transferred to the department of employment security.

(4) All the powers and duties now vested in or imposed upon the director of the division of employment and security as a division of the department of social security are hereby vested in and imposed upon the commissioner of employment security.

All of the employees of said division of employment and security are hereby transferred to the department of employment security created by this section, and said commissioner shall take charge of said employees and shall employ them in the exercise of the respective functions, powers and duties transferred as aforesaid without reduction of compensation or civil service status enjoyed by said employees at the time of such transfer, subject, however, to change or termination of employment, compensation or civil service status as may be otherwise provided by law.

(5) All other acts or parts of acts now in effect inconsistent with the provisions of this section are hereby repealed, superseded, modified or amended so far as necessary to conform to and give full force and effect to the provisions of this section.

(6) Laws 1953, Chapter 603, shall take effect and be in force from and after its passage; provided, that no transfer of functions, rights, powers, duties, or funds made thereby shall take effect until the commissioner of the department to whom the same are transferred shall have been appointed; taken his oath of office and filed oath and bond in the office of the secretary of state; and until then the former division or agency vested therewith shall continue to exercise and perform such functions, rights, powers, and duties, and to have charge of such funds.

Subd. 1a. **Change of name.** The name of the department of employment security is changed to the department of manpower services. The name of the commissioner of employment security is changed to the commissioner of manpower services.

Subd. 2. **Report; recommendations; studies.** (1) Not later than the first day of August each year, the commissioner shall submit to the governor a report covering the administration and operation of these sections during the preceding calendar year and make such recommendations for amendments thereto as the commissioner deems proper. When the commissioner believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, he shall promptly so inform the governor and the legislature and make recommendations with respect thereto.

(2) For the purpose of ascertaining the point at which the unemployment compensation fund should be stabilized in order to both avoid possible insolvency and the building up of unnecessary reserves and for the further purpose of ascertaining what might be a stabilized average annual rate of contributions over a period of years thereby eliminating great fluctuations in contribution rates from year to year, the commissioner is hereby authorized and directed to make a study thereof. For such study he is hereby authorized to utilize such funds as may be available to him to contract for the services of specialists in this field, or utilize such public personnel as may be furnished to assist him in making such study. Such study shall

be made with the advice and counsel of the state advisory council to the department of manpower services, and a report of such study shall be made to the governor and the legislature from time to time.

**Subd. 3. Rules, regulations.** Notwithstanding any inconsistent provision of law the commissioner is hereby authorized to adopt, amend, or rescind regulations as may be necessary for the administration of sections 268.03 to 268.24. Each proposed regulation, excepting those relating solely to the internal operation of the department, shall be published in one or more newspapers of general circulation in this state and be filed with the secretary of state prior to the time of publication. Any person or association desiring a copy of any proposed regulations shall file with the commissioner a written request therefor, containing his or its name and address. For a period of two years after the filing of such request the commissioner, at or prior to the time of any publication, shall mail to such person or association a copy of such proposed regulations. Each such proposed regulation, if theretofore approved by the attorney general as to form and legality, shall become final and effective 30 days after the publication thereof. Any employer, employee, or other person whose interest is or may be affected thereby may object to any such proposed regulation within ten days after publication thereof by filing with the commissioner a petition setting forth the grounds of objection to the proposed regulation and request a hearing thereon, whereupon a hearing shall thereafter be had before the commissioner or his duly authorized representative at a time and place designated by the commissioner or such representative after due notice of said hearing has been served by registered mail, upon the objecting party or parties not less than ten days before said hearing. In the event that the commissioner elects to amend such regulation after such hearing, then such amended regulation shall be filed with the secretary of state and a copy thereof mailed to each of the persons and associations who have filed a request for copies of proposed regulations as provided herein, and such amended regulation shall become effective five days after such filing and mailing. Judicial notice of any rule, regulation or order duly filed or published under the provisions of this subdivision shall be taken.

**Subd. 4. Printing and publication.** The commissioner shall cause to be printed for distribution to the public the text of sections 268.03 to 268.24, the commissioner's regulations and general rules, his annual reports to the governor, and any other material the commissioner deems relevant and suitable, provided such printing methods and means are not inconsistent with present statutes.

**Subd. 5. Assistance.** (1) Subject to the provisions of the state civil service act and to the other provisions of sections 268.03 to 268.24 the commissioner is authorized to appoint, and prescribe the duties and powers of, such officers, accountants, attorneys, experts, and other persons as may be necessary in the performance of his duties thereunder. The commissioner may delegate to any such person so appointed such power and authority as he deems reasonable and proper for the effective administration of those sections and may, in his discretion, bond any person handling moneys or signing checks thereunder. The commissioner is authorized to adopt such personnel and fiscal regulations as he deems necessary to satisfy fiscal and personnel standards required by the secretary of labor pursuant to the Social Security Act, as amended, and the act of Congress entitled "An act to provide for the establishment of a national employment system and to cooperate with the states in the promotion of such system and for other purposes," approved June 6, 1933, as amended. The commissioner may, subject to the approval of the commissioner of administration, also adopt regulations relating to reimbursement to department employees for travel expenses incurred while traveling on official business including allowances on a per diem basis in lieu of actual subsistence expenses incurred. The commissioner is also hereby authorized to purchase liability and property damage automobile insurance to cover any automobiles owned by the Minnesota department of manpower services for the protection of its employees who may be required to operate the same in pursuit of their duties for the department.

The attorney general shall appoint an assistant attorney general and two special assistant attorneys general, to be in addition to the number now authorized by law. The assistant attorney general shall be the attorney and the chief counsel for the department of manpower services. Such assistant and special assistant attorneys general shall receive the same salary as the other assistant and special assistant

attorneys general, but devote their entire time to this department. Such assistant and special assistant attorneys general shall have the power to act for and represent the attorney general in all matters in which the attorney general is authorized to act for the commissioner by these sections. The compensation and all expenses and disbursements of such assistant and special assistant attorneys general shall be paid from the moneys appropriated to and for the use of the commissioner.

(2) (a) No officer or employee engaged in the administration of these sections shall use his official authority to influence for the purpose of interfering with an election or affecting the results thereof. No person engaged in the administration of these sections who holds a position in the state classified service pursuant to provisions contained in the state civil service act, while retaining the right to vote as he pleases and to express privately his opinion on all political subjects, shall take an active part in political management or campaigns;

(b) No officer or employee engaged in the administration of these sections shall solicit or receive or be in any manner concerned in soliciting or receiving any assessment, subscription, or contribution for any political purpose for any person;

(c) No officer or employee engaged in the administration of these sections shall, for political purposes, furnish or disclose, or aid or assist in furnishing or disclosing, any list or names of persons obtained in the administration of these sections, to a political candidate, committee, campaign manager, or to any person for delivery to a political candidate, committee, or campaign manager, and it shall be unlawful for any person to receive any such list or names for political purposes.

**Subd. 6. Advisory councils.** The governor shall appoint a state advisory council and may appoint such local advisory councils as he deems advisable, composed in each case of an equal number of employer and employee representatives who shall be selected because of their vocation, employment, or affiliation, and of such members representing the general public as he may designate. The governor may also appoint an agricultural employment advisory council and such other advisory councils as may be found necessary for proper administration. Such councils shall aid the commissioner in formulating policies and discussing problems relating to the administration of sections 268.03 to 268.24 and in assuring impartiality and freedom from political influence in the solution of such problems. The members of such advisory councils shall serve at the pleasure of the governor and may be paid a fee of not more than \$25 per day for active service on such councils in lieu of remuneration for such service and subsistence and shall be reimbursed for any necessary traveling expenses at the same rate per mile as state employees are reimbursed.

**Subd. 7. Employment stabilization.** The commissioner is authorized to take all appropriate steps to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining, and vocational guidance; to investigate, recommend, advise, and assist in the establishment and operation, by municipalities, counties, school districts, and the state, of reserves for public works to be used in times of business depression and unemployment; to promote the reemployment of unemployed workers throughout the state in every other way that may be feasible; and to these ends to carry on and publish the results of investigations and research studies.

**Subd. 8. Work records; report.** (1) Each employing unit shall keep true and accurate work records for such periods of time and containing such information as the commissioner may prescribe. Such records shall be open to inspection, audit, and verification, and be subject to being copied by any authorized representative of the commissioner at any reasonable time and as often as may be necessary. The commissioner, appeal referee, chairman of an appeal tribunal, or any other duly authorized representative of the commissioner, may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which the commissioner, appeal referee, chairman of an appeal tribunal, or any other duly authorized representative of the commissioner deems necessary for the effective administration of sections 268.03 to 268.24, provided that quarterly contribution and wage report forms shall be made to correspond wherever possible with the reports required from employers under the federal insurance contributions act, so that such state forms may be prepared as duplicates of such federal forms, except that no employer shall be permitted to submit a duplicate report which is not thoroughly legible.

(2) The commissioner may cause to be made such summaries, compilations, pho-

tographs, duplications, or reproductions of any records, reports, or transcripts thereof as he may deem advisable for the effective and economical preservation of the information contained therein, and such summaries, compilations, photographs, duplications or reproductions, duly authenticated, shall be admissible in any proceeding under sections 268.03 to 268.24, if the original record or records would have been admissible therein. Notwithstanding any restrictions contained in section 16.02, except restrictions as to quantity, the commissioner is hereby authorized to duplicate, on equipment furnished by the federal government or purchased with funds furnished for that purpose by the federal government, records, reports, summaries, compilations, instructions, determinations, or any other written matter pertaining to the administration of the Minnesota Manpower Services Law.

(3) Notwithstanding any inconsistent provisions elsewhere, the commissioner may provide for the destruction or disposition of any records, reports, transcripts, or reproductions thereof, or other papers in his custody, which are more than four years old, the preservation of which is no longer necessary for the establishment of contribution liability or benefit rights or for any purpose necessary to the proper administration of sections 268.03 to 268.24, including any required audit thereof, provided, that the commissioner may provide for the destruction or disposition of any record, report, or transcript, or other paper in his custody which has been photographed, duplicated, or reproduced in the manner provided in clause (2).

(4) Notwithstanding the provisions of the Minnesota State Archives Act the commissioner shall with the approval of the public examiner destroy all benefit checks and benefit check authorization cards that are more than four years old and no person shall make any demand, bring any suit or other proceeding to recover from the State of Minnesota any sum alleged to be due him on any claim for benefits after the expiration of four years from the date of filing such claim.

**Subd. 9. Testimonial powers.** (1) In the discharge of the duties imposed by sections 268.03 to 268.24, the commissioner, the chairman of the appeal tribunal, appeal referee, or any duly authorized representative of the commissioner, shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim or the administration of these sections;

(2) Witnesses subpoenaed pursuant to this subdivision or sections 268.03 to 268.24, shall be allowed fees at a fixed rate prescribed by regulation by the commissioner, which fees need not be paid in advance of the time of giving of testimony, and such fees of witnesses so subpoenaed shall be deemed part of the expense of administering these sections;

(3) In case of contumacy by, or refusal to obey, a subpoena issued to any person, any court of this state within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which such person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the commissioner, chairman of an appeal tribunal, or referee, or any duly authorized representative of the commissioner, shall have jurisdiction to issue to such person an order requiring such person to appear before the commissioner, the chairman of an appeal tribunal, referee, or any duly authorized representative of the commissioner, there to produce evidence if so ordered or there to give testimony relative to the matter under investigation or in question; and any failure to obey such order of the court may be punished by the court as a contempt thereof.

**Subd. 10. Self-incrimination.** No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the commissioner, the chairman of an appeal tribunal, referee, or any duly authorized representative of the commissioner, or in obedience to the subpoena of any of them in any cause or proceeding before the commissioner, an appeal tribunal, referee, or any duly authorized representative of the commissioner on the grounds that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

Subd. 11. **Cooperation.** (1) In the administration of sections 268.03 to 268.24, the commissioner shall cooperate to the fullest extent consistent with the provisions thereof, with the social security administration, created by the act of Congress, entitled "the Social Security Act," as amended; shall make such reports in such form and containing such information as the social security administration may from time to time require, and shall comply with such provisions as the social security administration may from time to time find necessary to assure the correctness and verification of such reports; and shall comply with regulations prescribed by the social security administration governing the expenditures of sums as may be allotted and paid to this state under Title III of the Social Security Act for the purpose of assisting in the administration of these sections.

(2) If section 303 (a) (5) of Title III of the Social Security Act and section 3304 (a) (4) of the Internal Revenue Code are amended to permit a state agency to use, in financing administrative expenditures incurred in carrying out its manpower services functions, some part of the moneys collected or to be collected under the state unemployment compensation law, in partial or complete substitution for grants under said Title III, in that event sections 268.03 to 268.24 shall, by the commissioner's proclamation and rules to be issued with the governor's approval, be modified in the manner and to the extent and within the limits necessary to permit such use by the commissioner under these sections; and such modifications shall become effective on the same date as such use becomes permissible under such federal amendments.

(3) The commissioner is also authorized and directed to apply for an advance to the state unemployment fund and to do any and all acts necessary and lawfully required for the repayment of such advance in accordance with the conditions specified in Title XII of the Social Security Act, as amended, in order to secure to this state and its citizens the advantages available under the provisions of such title.

Subd. 12. **Information.** Except as hereinafter otherwise provided, information obtained from any employing unit or individual pursuant to the administration of sections 268.03 to 268.24, and from any determination as to the benefit rights of any individual shall be held confidential and shall not be disclosed or be open to public inspection in any manner revealing the individual's or employing unit's identity. Any claimant or other interested party (or his legal representative) shall be supplied with information from the records of the department of manpower services, to the extent necessary for the proper presentation of his claim, contention or refutation of any claim in which he is an interested party in any proceeding under these sections with respect thereto. Subject to such restrictions as the commissioner may by regulation prescribe, such information may be made available to any agency of this or any other state, or any federal agency charged with the administration of an employment and security law or the maintenance of a system of public employment offices, or the Bureau of Internal Revenue of the United States Department of the Treasury, and information obtained in connection with administration of the employment service may be made available to persons or agencies for purposes appropriate to the operation of a public employment service. Upon request therefor, the commissioner shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, and may furnish to any state agency similarly charged, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under these sections. The commissioner may request the Comptroller of the Currency of the United States to cause an examination of the correctness of any return or report of any national banking association rendered pursuant to the provisions of these sections, and may in connection with such request, transmit any such report or return to the Comptroller of the Currency of the United States as provided in section 3305 (c) of the federal internal revenue code.

All letters, reports, communications, or any other matters, either oral or written, from an employer or his workers to each other or to the commissioner or any of his agents, representatives, or employees, which shall have been written or made in connection with the requirements and administration of sections 268.03 to 268.24 or the regulations thereunder, shall be absolutely privileged and shall not be made subject matter or basis for any suit for slander or libel in any court of this state.

Subd. 13. **Determinations.** (1) An official, designated by the commissioner, upon his own motion or upon application of an employing unit shall determine if an

employing unit is an employer within the meaning of this chapter or as to whether services performed for it constitute employment within the meaning of this chapter, and shall notify the employing unit of such determination. Such determination shall be final unless the employing unit, within 30 days after the mailing of notice of the determination, files a request in writing that the commissioner grant a hearing for the purpose of reconsidering the facts submitted and to consider any additional information.

(2) The commissioner shall designate one or more representatives, herein referred to as referees, to conduct such hearing. Any person who can show that he has a real interest in the outcome of such determination shall be entitled to appear in person by counsel or representative, at such hearing and present evidence and be heard. The referee shall fix a time and place within this state for such hearing and shall give the employing unit written notice thereof, by registered mail, not less than ten days prior to the time of such hearing. In the discharge of the duties imposed by this subdivision, the referee shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with the subject matter of such hearing. The written report of any employee of the department of manpower services, made in the regular course of the performance of such employee's duties, shall be competent evidence of the facts therein contained and shall be prima facie correct, unless refuted by other credible evidence.

(3) Upon the conclusion of such hearing, the referee shall serve upon the employing unit by registered mail findings of fact and decision in respect thereto. The decision of the referee, together with his findings of fact and reasons in support thereof, shall become final unless, within ten days after the mailing by registered mail of a copy thereof to the employing unit, an appeal is filed with the commissioner, or unless the commissioner, within 12 days after the mailing of such decision, on his own motion orders the matter certified to him for review. Appeal from and review by the commissioner of the decision of the referee shall be had in the manner provided by regulation. The commissioner may without further hearing affirm, modify, or set aside the findings of fact or decision, or both, of the referee on the basis of the evidence previously submitted in the case, or direct the taking of additional evidence. The commissioner may disregard the findings of fact of the referee and examine the testimony taken and make such findings of fact as the evidence taken before the referee may, in the judgment of the commissioner, require, and make such decision as the facts so found by him may require. The commissioner shall notify the employing unit of his findings and decision by registered mail and notice of such decision shall contain a statement setting forth the cost of certification of the record in the matter. The decision of the commissioner shall become final unless judicial review thereof is sought as provided by this subdivision. Any interested party to a proceeding before a referee or the commissioner may obtain a transcript of the testimony taken before the referee upon payment to the commissioner of the cost of such transcript to be computed at the rate of ten cents per 100 words.

(4) The district court of the county wherein the hearing before the referee was held shall, by writ of certiorari to the commissioner, have power to review all questions of law and fact presented by the record. Such action shall be commenced within 20 days of the service by registered mail of notice of the decision of the commissioner upon the employing unit affected thereby. Such proceedings before the courts shall be given precedence over all other civil cases. The commissioner shall not be required to certify the record to the district court unless the party commencing such proceedings for review, as provided above, shall pay to the commissioner the cost of certification of the record computed at the rate of ten cents per 100 words less such amount as may have been previously paid by such party for a transcript. It shall be the duty of the commissioner upon receipt of such payment to prepare and certify to the court a true and correct typewritten copy of all matters contained in such record. The costs so collected by the commissioner shall be deposited by him in the manpower services administration fund provided for in section 268.15. The court may confirm or set aside the decision and determination of the commissioner. If the decision and determination is set aside and the facts found in the proceedings before the referee are sufficient, the court may enter such decision as is justified by law, or may remand the cause to the commissioner for further proceedings and may

state the questions requiring further hearing, and give such other instructions as may be proper.

(5) A final decision of the commissioner or referee, in the absence of appeal therefrom, shall be conclusive for all the purposes of sections 268.03 to 268.24 except as herein otherwise provided, and, together with the records therein made, shall be admissible in any subsequent judicial proceeding involving liability for contributions. A final decision of the commissioner or referee may be introduced in any proceeding involving a claim for benefits.

(6) In the event a final decision of the commissioner or referee determines the amount of contributions due under sections 268.03 to 268.24, then, if such amount, together with interest and penalties, is not paid within 30 days after such decision, the provisions of section 268.16, subdivision 3, shall apply; and the commissioner shall proceed thereunder, substituting a certified copy of the final decision in place of the contribution report therein provided.

Subd. 14. [Repealed, 1949 c 605 s 15]

[*Ex*1936 c 2 s 10; 1937 c 306 s 7; 1939 c 441 s 42; 1939 c 443 s 8, 10; 1941 c 554 s 9; 1943 c 650 s 7; 1945 c 376 s 9; 1947 c 600 s 3-6; 1949 c 605 s 15; 1949 c 739 s 8; 1951 c 442 s 6-10; 1951 c 713 s 29; 1953 c 97 s 15; 1953 c 603 s 1; 1953 c 612 s 1; 1955 c 847 s 22; 1957 c 883 s 7; 1965 c 45 s 42-44; 1965 c 741 s 18; 1967 c 770 s 1; 1969 c 9 s 63; 1969 c 310 s 2; 1969 c 567 s 1, 3; 1969 c 854 s 11, 12; 1969 c 1129 art 8 s 7] (4337-30)

**268.13 RECIPROCAL BENEFIT ARRANGEMENTS.** Subdivision 1. **Authorization.** The commissioner is hereby authorized to enter into reciprocal arrangements with the appropriate and duly authorized agencies of other states and of the federal government, or both, whereby:

(1) Service performed by an individual or individuals for a single employing unit for which service is customarily performed in more than one state shall be deemed to be service performed entirely within any one of the states:

- (a) in which any part of any such individual's service is performed, or
- (b) in which any such individual has his residence, or

(c) in which the employing unit maintains a place of business; provided, there is in effect, as to such service, an election, approved by the agency charged with the administration of such state's employment security law, pursuant to which all the service performed by such individual or individuals for such employing unit is deemed to be performed entirely within such state;

(2) Potential rights to benefits accumulated under the employment security laws of one or more states or under one or more such laws of the federal government, or both, may constitute the basis for the payment of benefits through a single appropriate agency under terms which the commissioner finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund;

(3) Wages or services, upon the basis of which an individual may become entitled to benefits under an employment security law of another state or of the federal government, shall be deemed to be wages for insured work for the purpose of determining his rights to benefits under sections 268.03 to 268.24, and wages for insured work, on the basis of which an individual may become entitled to benefits thereunder shall be deemed to be wages or services on the basis of which unemployment compensation under such law of another state or of the federal government is payable, but no such arrangement shall be entered into unless it contains provisions for reimbursements to the fund for such of the benefits paid thereunder upon the basis of such wages or service, and provisions for reimbursements from the fund for such of the compensation paid under such other law upon the basis of wages for insured work, as the commissioner finds will be fair and reasonable as to all affected interests;

(4) Contributions due thereunder with respect to wages for insured work shall for the purpose of section 268.16 be deemed to have been paid to the fund as of the date payment was made as contributions therefor under another state or federal employment security law, but no such arrangement shall be entered into unless it contains provisions for such reimbursement to the fund of such contributions and the actual earnings thereon as the commissioner finds will be fair and reasonable as to all affected interests.

# MINNESOTA STATUTES 1969

2839

## DEPARTMENT OF MANPOWER SERVICES 268.14

**Subd. 2. Reimbursements.** Reimbursements paid from the fund pursuant to subdivision 1 shall be deemed to be benefits for the purposes of sections 268.05 to 268.09, except that no charges with respect thereto shall be made to employers' accounts unless so required by standards prescribed by the secretary of labor but in no event shall such charges be in excess of the benefits payable under section 268.07. The commissioner is authorized to make to other state or federal agencies and to receive from such other state or federal agencies, reimbursements from or to the fund, in accordance with arrangements entered into pursuant to subdivision 1.

**Subd. 3. Cooperation.** The administration of sections 268.03 to 268.24 and of other state and federal employment security and public employment service laws will be promoted by cooperation between this state and such other states and the appropriate federal agencies in exchanging services, and making available facilities and information. The commissioner is therefore authorized to make such investigation and audits, secure and transmit such information, make available such services and facilities and exercise such of the other powers provided herein with respect to the administration of these sections as he deems necessary or appropriate to facilitate the administration of any such employment security or public employment service law, and in like manner, to accept and utilize information, services and facilities made available to this state by the agency charged with the administration of any such other employment security or public employment service law.

If after entering into an arrangement under subdivision 1, clauses (2) or (3), the commissioner finds that the unemployment compensation law of any state or of the federal government participating in such arrangement has been changed in a material respect, the commissioner may make new findings and a determination as to whether such arrangement shall be continued with such state or states or with the federal government.

**Subd. 4. Utilization of federal benefits.** To the extent permissible under the laws and Constitution of the United States, the commissioner is authorized to enter into or cooperate in arrangements whereby facilities and services provided under sections 268.03 to 268.24 and facilities and services provided under the employment security law of any foreign government, may be utilized for the taking of claims and the payment of benefits under the employment security law of this state or under a similar law of such government.

**Subd. 5. Cooperate with other states.** The commissioner shall fully cooperate with the agencies of other states, and shall make every proper effort within his means to oppose and prevent any further action which would in his judgment tend to effect complete or substantial federalization of state unemployment compensation funds or state employment security programs.

[*Ex 1936 c 2 s 11; 1937 c 306 s 8; 1939 c 443 s 9; 1941 c 554 s 10; 1943 c 650 s 8; 1945 c 376 s 10; 1947 c 432 s 8, 9, 10; 1965 c 45 s 45; 1969 c 9 s 64*] (4337-31)

**268.14 FREE EMPLOYMENT OFFICES.** **Subdivision 1. Acceptance of federal act.** A state employment service is hereby established in the department of manpower services. The commissioner in the conduct of such service shall establish and maintain free public employment offices, in such number and in such places as may be necessary for the proper administration of sections 268.03 to 268.24 and for the purpose of performing such functions as are within the purview of the act of Congress entitled "An act to provide for the establishment of a national employment system for the cooperation with the states in the promotion of such system and for other purposes," approved June 6, 1933, as amended. The provisions of such act of Congress are hereby accepted by this state and the department of manpower services is hereby designated and constituted the agency of this state for the purposes of such act. The commissioner, pending the return of the employment service, its facilities, property, and personnel, to state control after the war emergency, may loan to the United States employment service facilities, property and personnel.

**Subd. 2. Financing.** All moneys received by this state under such act of Congress referred to in subdivision 1 shall be paid into the manpower services administration fund, and expended solely for the maintenance of state public employment offices. For the purpose of establishing and maintaining free public



employment offices and promoting the use of their facilities, the commissioner is authorized to enter into agreements with the railroad retirement board or any other agency of the United States or of this or any other state charged with the administration of any law whose purposes are reasonably related to the purposes of sections 268.03 to 268.24.

**Subd. 3. Reciprocal agreements.** The commissioner may enter into agreements with any political subdivision of this state or with any private organization or person, and as a part of any such agreements, may accept moneys, services, or quarters as a contribution to the maintenance of the state system of public employment offices or as reimbursement for services performed. All moneys received for such purposes shall be paid into the manpower services contingent fund provided for in section 268.15, subdivision 3.

**Subd. 4. Auxiliary offices.** The commissioner may establish auxiliary employment offices and may, notwithstanding any other law to the contrary, employ individuals as agents or as manpower services representatives on a part time or temporary basis to perform services in such offices and for related purposes, compensate such individuals for such services, and reimburse such individuals for necessary expenses incurred by them in the performance of such services. Such individuals shall serve at the pleasure of the commissioner. The employment of such individuals, however, shall not be subject to the various provisions of the Minnesota civil service law nor shall such individuals by reason of such employment become members of the state employees retirement association.

*[Ex 1936 c 2 s 12; 1937 c 306 s 9; 1939 c 443 s 11; 1941 c 554 s 11; 1945 c 376 s 11; 1949 c 605 s 11; 1969 c 567 s 3] (4337-32)*

**268.15 UNEMPLOYMENT COMPENSATION FUND.** Subdivision 1. **Administration fund.** There is hereby created in the state treasury a special fund to be known as the manpower services administration fund. All moneys which are deposited or paid into this fund shall be continuously available to the commissioner for expenditure in accordance with the provisions of sections 268.03 to 268.24, and shall not lapse at any time or be transferred to any other fund. The fund shall consist of all moneys received from the United States or any agency thereof, including the United States department of labor, and include any moneys received from any agency of the United States or any other state as compensation for services or facilities supplied to such agency, any amounts received pursuant to any surety bond or insurance policy or from other sources for losses sustained by the manpower services administration fund or by reason of damage to equipment or supplies purchased from moneys in such fund, and any proceeds realized from the sale or disposition of any such equipment or supplies which may no longer be necessary for the proper administration of those sections. Notwithstanding any provision of this section, all money requisitioned and deposited in this fund pursuant to section 268.05, subdivision 5, shall remain part of the unemployment fund and shall be used only in accordance with the conditions specified in section 268.05, subdivision 5. All moneys in this fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as are provided by law for the other special funds in the state treasury except that moneys in this fund shall not be commingled with other state funds but maintained in a separate account on the books of a depository bank. Such moneys shall be secured by the depository in which they are held to the same extent and in the same manner as required by the general depository law of the state and collateral pledged shall be maintained in a separate custody account. The state treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the manpower services administration fund provided for under these sections. Such liability on the official bond shall be effective immediately upon the enactment of this provision, and such liability shall exist in addition to any liability upon any separate bond existent on the effective date of this provision, or which may be given in the future. All sums recovered on any surety bond for losses sustained by the manpower services administration fund shall be deposited in this fund. All money in this fund, except money received pursuant to section 268.05, subdivision 5(3) shall be expended solely for the purposes and in the amounts found necessary by the secretary of labor for the proper and efficient administration of the manpower services program.

**Subd. 2. State to replace moneys wrongfully used.** If any moneys received after June 30, 1941, under Title III of the Federal Social Security Act, or any unen-

cumbered balances in the manpower services administration fund as of that date, or any moneys granted after that date to the state pursuant to the provisions of the Wagner-Peyser Act, are found by the secretary of labor, because of any action or contingency, to have been lost or been expended for purposes other than, or in amounts in excess of, those found necessary by the secretary of labor for the proper administration of these sections, the commissioner may, with the approval of the commissioner of administration, replace such moneys from the manpower services contingent fund hereinafter established. If such moneys are not thus replaced, it is the policy of this state that such moneys shall be replaced by moneys appropriated for such purpose from the general funds of this state to the manpower services administration fund for expenditure as provided in subdivision 1. Upon receipt of notice of such a finding by the secretary of labor, the commissioner shall promptly report the amount required for such replacement to the governor and the governor shall, at the earliest opportunity, submit to the legislature a request for the appropriation of such amount. This subdivision shall not be construed to relieve this state of its obligation with respect to funds received prior to July 1, 1941, pursuant to the provisions of Title III of the Social Security Act.

**Subd. 3. Contingent fund.** There is hereby created in the state treasury a special fund, to be known as the manpower services contingent fund, which shall not lapse nor revert to any other fund. Such fund shall consist of all moneys appropriated therefor by the legislature, all moneys in the form of interest and penalties collected pursuant to section 268.16 and all moneys received in the form of voluntary contributions to this fund. All moneys in such fund shall be supplemental to all federal moneys that would be available to the commissioner but for the existence of this fund. Such fund shall be available to the commissioner for such expenditures as he may deem necessary in connection with the administration of sections 268.03 to 268.24. Whenever the commissioner expends moneys from said contingent fund for the proper and efficient administration of the Minnesota manpower services law for which funds have not yet been made available by the federal government, such moneys so withdrawn from the contingent fund shall be replaced as hereinafter provided. Upon the deposit in the manpower services administration fund of moneys which are received in reimbursement of payments made as above provided from said contingent fund, the commissioner shall certify to the state treasurer the amount of such reimbursement and thereupon the state treasurer shall transfer such amount from the manpower services administration fund to said contingent fund. All moneys in this fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for the other special funds in the state treasury except that moneys in this fund shall not be commingled with other state funds, but shall be maintained in a separate account on the books of a depository bank. The state treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the manpower services contingent fund provided for herein.

**Subd. 4. Unpaid warrants, cancellation.** Notwithstanding the provisions of Minnesota Statutes 6.10, any state auditor's warrant payable from the administration fund remaining unpaid for a period of six years shall be canceled into the manpower services administration fund and not into the general fund.

[*Ex 1936 c 2 s 13; 1941 c 554 s 12; 1945 c 376 s 12; 1953 c 97 s 16; 1957 c 883 s 8-10; 1963 c 721 s 1; 1965 c 45 s 46; 1969 c 399 s 1; 1969 c 567 s 3*] (4337-33)

**268.16 COLLECTION OF CONTRIBUTIONS.** Subdivision 1. **Interest on past due contributions.** If contributions are not paid on the date on which they are due and payable, as prescribed by the commissioner, the whole or part thereafter remaining unpaid shall bear interest at the rate of one percent per month from and after such date until the first day of the calendar month during which payment is made to the department of manpower services; provided, however, that during the first month of delinquency interest shall be computed on the basis of one-thirtieth of one percent per month for each and every day of such delinquency. After any contribution has become delinquent for a period of 12 months thereafter interest thereon shall be computed at the rate of six percent per annum. Contributions, if mailed, shall be deemed to have been paid on the date of mailing as indicated by the postmark on the cover thereof; provided, however, that after January 1, 1949, contributions received by mail postmarked on a day following the date on which the law requires such contributions to be paid shall be deemed to have been paid on the due date if there is substantial evidence by affidavit or otherwise reasonably tending to prove that said

report or contribution was actually deposited in the United States mails properly addressed to the department with postage prepaid thereon on or before the due date. Interest collected pursuant to this subdivision shall be paid into the contingent fund.

**Subd. 2. Reports; delinquencies; penalties.** (1) Any employer who knowingly fails to make and submit to the department of manpower services any report of wages paid by or due from him for insured work in the manner and at the time such report is required by regulations prescribed by the commissioner shall pay to the department of manpower services for the contingent fund an amount equal to one percent of contributions accrued during the period for which such report is required, for each month from and after such date until such report is properly made and submitted to the department of manpower services. In no case shall the amount of the penalty imposed hereby be less than \$5 except that in cases where the contribution is less than \$10 and the commissioner finds that the employer does not habitually fail to report on time the penalty shall be \$1. Any employing unit which fails to make and submit to the commissioner any report, other than one of wages paid or payable for insured work, as and when required by the regulations of the commissioner, shall be subject to a penalty in the sum of \$10 payable to the department of manpower services for the contingent fund. All such penalties shall be in addition to interest and any other penalties provided for by sections 268.03 to 268.24 and shall be collected by civil action as hereinafter provided.

(2) If any employing unit required by sections 268.03 to 268.24 to make and submit contribution reports shall fail to do so within the time prescribed by these sections or by regulations under the authority thereof, or shall make, wilfully or otherwise, an incorrect, false or fraudulent contribution report, he shall, on the written demand of the commissioner, make such contribution report, or corrected report, within ten days after the mailing of such written demand and at the same time pay the whole contribution, or additional contribution, due on the basis thereof. If such employer shall fail within that time to make such report, or corrected report, the commissioner shall make for him a report, or corrected report, from his own knowledge and from such information as he can obtain through testimony, or otherwise, and assess a contribution on the basis thereof, which contribution, plus penalties and interest which thereafter accrued (less any payments theretofore made) shall be paid within ten days after the commissioner has mailed to such employer a written notice of the amount thereof and demand for its payment. Any such contribution report or assessment made by the commissioner on account of the failure of the employer to make a report or corrected report shall be prima facie correct and valid, and the employer shall have the burden of establishing its incorrectness or invalidity in any action or proceeding in respect thereto. Whenever such delinquent employer shall file a report or corrected report, the commissioner may, if he finds it substantially correct, substitute it for the commissioner's report. If an employer has failed to submit any report of wages paid, or has filed an incorrect report, and the commissioner finds that such noncompliance with the terms of sections 268.03 to 268.24 was not wilful and that such employer was free from fraudulent intent, the commissioner shall limit the charge against such employer to the period of the year in which such condition has been found to exist and for the preceding calendar year.

**Subd. 3. Collection.** (1) If, after due notice, any employer defaults in any payment of contributions or interest due thereon or penalties for failure to file returns and other reports as and when required by the provisions of sections 268.03 to 268.24 or by any rule or regulation of the commissioner, the amount due shall be collected by civil action in the name of the State of Minnesota, and any money recovered on account thereof shall be credited to the funds provided for under the provisions of these sections. This remedy shall be in addition to such other remedies as may be herein provided or otherwise provided by law, and the employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect contributions, interest due thereon, or penalties from an employer shall be heard by the court at the earliest possible date. No action for the collection of contributions or interest thereon shall be commenced more than four years after the contributions have been reported by the employer or determined by the commissioner to be due and payable. In any action herein provided for, judgment shall be entered against any defendant in default for want of answer or demurrer, for the

# MINNESOTA STATUTES 1969

2843

DEPARTMENT OF MANPOWER SERVICES 268.16

relief demanded in the complaint without proof, together with costs and disbursements, upon the filing of an affidavit of default.

No action shall be commenced for the collection of contributions with respect to wages paid for services performed prior to the effective date of a subsequent provision of law enacted prior to July 1, 1941, excluding such service from coverage under sections 268.03 to 268.24.

(2) Any employing unit which is not a resident of this state and which exercises the privilege of having one or more individuals perform service for it within this state, and any resident employing unit which exercises that privilege and thereafter removes from this state, shall be deemed thereby to appoint the secretary of state as its agent and attorney for the acceptance of process in any civil action under this subdivision. In instituting such an action against any such employing unit the commissioner shall cause such process or notice to be filed with the secretary of state and such service shall be sufficient service upon such employing unit, and shall be of the same force and validity as if served upon it personally within this state: Provided, that the commissioner shall forthwith send notice of the service of such process or notice, together with a copy thereof, by registered mail, return receipt requested, to such employing unit at its last known address and such return receipt, the commissioner's affidavit of compliance with the provisions of this section, and a copy of the notice of service, shall be appended to the original of the process filed in the court in which such civil action is pending.

**Subd. 4. Compromise agreements.** The commissioner, or any officer or employee of the state department of manpower services authorized in writing by the commissioner, is authorized to enter into an agreement in writing with any employer relating to the liability of such employer in respect to delinquent contributions, interest, penalties, and costs; provided that such agreement shall not be made in respect to liability for the principal sum of delinquent contributions unless the same has been delinquent for a period of at least four years prior to the making of such agreement. The commissioner may also enter into an agreement, with respect to liability for delinquent contributions, interest, penalties and costs, with any employer who has never paid any contributions to the fund and such failure to pay contributions was, in the opinion of the commissioner, due to an honest belief on the part of such employer that he was not covered by sections 268.03 to 268.24. Any agreements made under this subdivision shall be subject to the approval of the attorney general and a summary of any such agreements shall be published in the next succeeding annual report of the commissioner to the governor.

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

**Subd. 5. Priorities under legal dissolutions or distributions.** In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this state, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceeding, contributions then or thereafter due shall be paid in full prior to all other claims except claims for wages of not more than \$250 to each claimant, earned within six months of the commencement of the proceedings. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the federal bankruptcy act of 1898, as amended, contributions then or thereafter due shall be entitled to such priority as is provided in that act for taxes due any state of the United States.

**Subd. 6. Adjustments, refunds.** If, not later than three years after the date of payment of any amount as contributions or interest thereon, an employer who has made such payment shall make application for an adjustment thereof in connection with subsequent contribution payments, or for a refund thereof because such adjustment cannot be made, and if the commissioner shall determine that payment of such contributions or interest or any portion thereof was erroneous, the commissioner shall allow such employer to make an adjustment thereof, without interest, in connection with subsequent contribution payments by him, or if such adjustment cannot

be made, the commissioner shall refund from the fund to which such payment has been credited, without interest, the amount erroneously paid. For like cause and within the same period, adjustment or refund may be so made on the commissioner's own initiative.

In the event that any application for adjustment or refund is denied in whole or in part, a written notice of such denial shall be mailed to the applicant. Within 30 days after the mailing of such notice of denial to the applicant's last known address, the applicant may request, in writing, that the commissioner grant a hearing for the purpose of reconsidering the facts submitted and to consider any additional information. Proceedings on the appeal shall be had in accordance with section 268.12, subdivision 13.

**Subd. 7. Limitation.** Nothing in sections 268.03 to 268.24, or any part thereof, shall be construed to authorize any refund of moneys due and payable under the law and regulations in effect at the time such moneys were paid.

[*Ex 1936 c 2 s 14; 1941 c 554 s 13; 1943 c 650 s 9; 1945 c 376 s 13; 1949 c 605 s 12, 13; 1951 c 55 s 1; 1953 c 97 s 17; 1969 c 9 s 65; 1969 c 567 s 3; 1969 c 854 s 13*] (4337-34)

**268.17 PROTECTION OF RIGHTS AND BENEFITS.** Subdivision 1. **Waiver of rights void.** Any agreement by an individual to waive, release, or commute his rights to benefits or any other rights under sections 268.03 to 268.24 shall be void. Any agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contributions, required under these sections from such employer, shall be void. No employer shall directly or indirectly make or require or accept any deduction from wages to finance the employer's contributions required from him, require or accept any waiver of any right hereunder by any individual in his employ or in any manner obstruct or impede the filing of claims for benefits. Any employer or officer or agent of any employer who violates any provision of this subdivision shall, for each offense, be guilty of a misdemeanor.

**Subd. 2. No assignment of benefits; exemptions.** Any assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under sections 268.03 to 268.24 shall be void; and such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy provided for the collection of debt; and benefits received by any individual so long as they are not mingled with other funds of the recipient shall be exempt from any remedy for the collection of all debts, except debts incurred for necessities furnished to such individual or his spouse or dependents during the time when such individual was unemployed. Any waiver of any exemption provided for in this subdivision shall be void.

[*Ex. 1936 c. 2 s. 15; 1941 c. 554 s. 14*] (4337-35)

**268.18 RETURN OF BENEFITS; OFFENSES.** Subdivision 1. **Erroneous payments.** Any claimant for benefits who, by reason of his own mistake or through the error of any individual engaged in the administration of sections 268.03 to 268.24, has received any sum as benefits to which he was not entitled under these sections, shall promptly return such benefits in cash to the nearest office of the Minnesota department of manpower services. If such claimant fails to return such benefits, the department of manpower services shall, as soon as it discovers such erroneous payment, determine the amount thereof and notify said individual to return the same, within a period of 20 days from the date of such notification. Unless such claimant files a written protest with the department of manpower services within ten days after the delivery of such notice or within 12 days after the date of the mailing thereof, such determination shall become final. If such claimant files a protest with the department in writing within the time aforesaid the matter shall be set for hearing before an appeal tribunal of the department and heard as other benefit matters are heard in accordance with section 268.10 with the same rights of review as outlined for benefit cases in that section. In the event that the claimant fails to return to the department within 20 days after such notification to do so, the benefits he received unlawfully, the commissioner of the department of manpower services is hereby authorized to deduct from any future benefits payable to such claimant under these sections in the current or any subsequent benefit year an amount equivalent to such erroneous payment.

**Subd. 2. Fraud.** Any claimant who files a claim for or receives benefits by knowingly and wilfully misrepresenting or misstating any material fact or by knowingly and wilfully failing to disclose any material fact which would make him ineligible for benefits under sections 268.03 to 268.24 and as specifically set

forth in Minnesota Statutes, Section 268.08, in force at the time of filing such claim for benefits, shall be deemed guilty of fraud. Notwithstanding the provisions of Minnesota Statutes 1949, Section 268.09, Subdivision 1, Clause (7), after the discovery of facts by the commissioner indicating such fraud in claiming or obtaining benefits under sections 268.03 to 268.24, he is hereby authorized to make a determination that such claimant was ineligible for each week with reference to which benefits were claimed or obtained by such fraud for such amount as was in excess of what such claimant would have been entitled to had he not made such fraudulent statements or failed to disclose any material facts, and at the discretion of the commissioner, disqualifying such claimant from receiving any unemployment benefits under the Minnesota law for any part or all of the remainder of the current or next subsequent benefit year following the week when such fraud was committed, and that said claimant shall within 20 days from the date of mailing the notice of said determination to him repay in cash to the department of manpower services any benefits so fraudulently obtained. Unless such claimant files a written protest with the department of manpower services within ten days after the delivery of such notice or within 12 days after the date of mailing thereof, such determination shall become final. If such claimant shall appeal from such determination within the time above specified said matter shall be referred to an appeal tribunal for a hearing as in other benefit cases and thereafter the procedure for review shall be the same as set forth in section 268.10. If such benefits so fraudulently obtained are not repaid to the department in cash within 20 days from the date of mailing the notice to such claimant of such determination, the commissioner is hereby authorized to deduct from future benefits payable to such claimant in either the current or any subsequent benefit year an amount equivalent to the amount of overpayment determined.

**Subd. 3. False representations; concealment of facts.** Whoever makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact to obtain or increase any benefit or other payment under sections 268.03 to 268.24, or under the employment security law of any state or of the federal government or of a foreign government, either for himself or any other person, shall be guilty of a misdemeanor.

Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining a subject employer or to avoid or reduce any contribution or other payment required from an employing unit under those sections or under the employment security law of any state or of the federal government, or who wilfully fails or refuses to make any such contributions or other payment or to furnish any reports at the time when required hereunder or to produce or permit the inspection or copying of records as required hereunder, shall be guilty of a misdemeanor.

[*Ex. 1936 c 2 s 16; 1941 c 554 s 15; 1951 c 442 s 11; 1953 c 97 s 18; 1969 c 567 s 3*] (4337-36)

**268.20 REPRESENTATION IN COURT.** In any civil action to enforce the provisions of sections 268.03 to 268.24, the commissioner shall be represented by the attorney general.

[*Ex. 1936 c. 2 s. 17; 1941 c. 554 s. 16*] (4337-37)

**268.21 NON-LIABILITY OF STATE.** Benefits shall be deemed to be due and payable under sections 268.03 to 268.24 only to the extent provided therein and to the extent that moneys are available therefor to the credit of the unemployment compensation fund and neither the state nor the commissioner shall be liable for any amount in excess of such sums.

[*Ex. 1936 c. 2 s. 18; 1941 c. 554 s. 17*] (4337-38)

**268.22 SAVING CLAUSE.** The legislature reserves the right to amend or repeal all or any part of sections 268.03 to 268.24 at any time; and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred thereby, or by acts done pursuant thereto, shall exist subject to the power of the legislature to amend or repeal these sections at any time.

[*Ex. 1936 c. 2 s. 19; 1941 c. 554 s. 18*] (4337-39)

**268.23 SEVERABLE.** In the event that the United States department of labor shall determine that any provision of sections 268.03 to 268.24 is not in conformity

# MINNESOTA STATUTES 1969

with various provisions of the Federal Internal Revenue Code or the Social Security Act then such provision shall have no force or effect for any purpose but if any provision of sections 268.03 to 268.24, or the application thereof to any person or circumstances, is held invalid, the remainder of said sections and the application of such provision to other persons or circumstances shall not be affected thereby.

[*Ex*1936 c 2 s 20; 1941 c 554 s 19; 1949 c 605 s 14; 1965 c 45 s 47] (4337-40)

**268.231 EFFECTIVE RATE; SUBSEQUENT YEARS.** The rate schedule set forth in section 268.06 shall be effective for the year 1949 and subsequent years. The benefit schedule set forth in section 268.07 and the one week waiting period requirement set forth in section 268.08 shall apply to claims filed for benefits which establish a benefit year after June 30, 1949.

[1949 c 605 s 16]

**268.24 CITATION, MANPOWER SERVICES LAW.** Sections 268.03 to 268.24 shall be known and may be cited as the Minnesota manpower services law.

[*Ex*1936 c 2 s 21; 1941 c 554 s 20; 1945 c 376 s 14; 1953 c 603 s 1; 1969 c 567 s 2] (4337-41)

**268.25 EFFECTIVE DATES.** Laws 1945, Chapter 376, shall take effect and be in force from and after its passage, unless otherwise specifically provided therein, except that sections 268.04, 268.06, 268.07, 268.08, 268.09, and 268.16, Minnesota Statutes 1941, as amended by Laws 1943, Chapter 650, and as amended by Laws 1945, Chapter 376, shall take effect and be in force from and after July 1, 1945; provided that sections 268.04, 268.07 and 268.08, Minnesota Statutes 1941, as amended by Laws 1943, Chapter 650, and as amended by Laws 1945, Chapter 376, shall not affect the determination of or rights to claims filed prior to July 1, 1945.

[1945 c. 376 s. 15]