CHAPTER 268

DEPARTMENT OF JOBS AND TRAINING

268.001 CITATION; JOBS AND TRAINING LAW.

This chapter shall be known and may be cited as the "Minnesota Jobs and Training Law."

History: *1987 c 385 s 47*

268.0111 DEFINITIONS.

[For text of subds 1 and 2, see M.S.1986]

Subd. 3. [Repealed, 1987 c 403 art 2 s 164]

[For text of subds 4 to 7, see M.S.1986]

Subd. 8. **Service provider.** "Service provider" means a public, private, or nonprofit agency that is capable of providing or administrating one or more of the employment and training services or income maintenance and support services.

[For text of subd 9, see M.S.1986]

History: *1987 c 403 art 2 s 128*

268.0122 POWERS AND DUTIES.

[For text of subd 1, see M.S.1986]

Subd. 2. **Specific powers.** The commissioner of jobs and training shall:

(1) administer and supervise all forms of unemployment insurance provided for under federal and state laws that are vested in the commissioner;

(2) administer and supervise all employment and training services assigned to the department of jobs and training under federal or state law;

(3) review and comment on local service unit plans and community investment program plans and approve or disapprove the plans;

(4) establish and maintain administrative units necessary to perform administrative functions common to all divisions of the department;

(5) supervise the county boards of commissioners, local service units, and any other units of government designated in federal or state law as responsible for employment and training programs;

(6) establish administrative standards and payment conditions for providers of employment and training services;

(7) act as the agent of, and cooperate with, the federal government in matters of mutual concern, including the administration of any federal funds granted to the state to aid in the performance of functions of the commissioner; and

(8) obtain reports from local service units and service providers for the purpose of evaluating the performance of employment and training services.

Subd. 3. **Duties as a state agency.** The commissioner shall:

(1) administer the unemployment insurance laws and related programs;

(2) administer the aspects of aid to families with dependent children, general assistance, work readiness, and food stamps that relate to employment and training services, subject to the contract under section 268.86, subdivision 2;

(3) administer wage subsidies and the discretionary employment and training fund;

(4) administer a national system of public employment offices as prescribed by United States Code, title 29, chapter 4B, the Wagner-Peyser Act, and other federal employment and training programs;

(5) cooperate with the federal government and its employment and training agencies in any reasonable manner as necessary to qualify for federal aid for employment and training services and money;

(6) enter into agreements with other departments of the state and local units of government as necessary;

(7) certify employment and training service providers and decertify service providers that fail to comply with performance criteria according to standards established by the commissioner;

(8) provide consistent, integrated employment and training services across the state;

(9) establish the standards for all employment and training services administered under this chapter;

(10) develop standards for the contents and structure of the local service unit plans;

(11) provide current state and substate labor market information and forecasts, in cooperation with other agencies;

(12) identify underserved populations, unmet service needs, and funding requirements;

(13) consult with the council for the blind on matters pertaining to programs and services for the blind and visually impaired; and

(14) submit to the governor, the commissioners of human services and finance, and the chairs of the senate finance and house appropriations committees a semiannual report that:

(a) reports, by client classification, an unduplicated count of the kinds and number of services furnished through each program administered or supervised by the department or coordinated with it;

(b) reports on the number of job openings listed, developed, available, and obtained by clients;

(c) identifies the number of cooperative agreements in place, the number of individuals being served, and the kinds of service provided them;

(d) evaluates the performance of services, such as wage subsidies, community investments, work readiness, and grant diversions; and

(e) explains the effects of current employment levels, unemployment rates, and program performance on the unemployment insurance fund and general assistance, work readiness, and aid to families with dependent children caseloads and program expenditures.

[For text of subds 4 and 5, see M.S.1986]

History: *1987 c 403 art 2 s 129,130; art 3 s 50*

268.04 DEFINITIONS.

[For text of subd 1, see M.S.1986]

Subd. 2. "Base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year; except: (a) if during the base period an individual received workers' compensation for temporary disability under chapter 176 or a similar law of the United States, or if an individual whose own serious illness caused a loss of work for which the individual received compensation due to the illness from some other source or under a law of this state other than chapter 176 or a similar law of the United States, the individual's base period shall be lengthened to the extent stated as follows:

(1) if an individual was compensated, as described above, for a loss of work of seven to 13 weeks, the original base period shall be extended to include one calendar quarter preceding the original base period; or

(2) if an individual was compensated, as described above, for a loss of work of 14 to 26 weeks, the original base period shall be extended to include two calendar quarters preceding the original base period; or

(3) if an individual was compensated, as described above, for a loss of work of 27 to 39 weeks, the original base period shall be extended to include the first three calendar quarters preceding the original base period; or

(4) if an individual was compensated, as described above, for a loss of work of 40 to 52 weeks, the original base period shall be extended to include the first four quarters preceding the original base period; or

(b) if the commissioner finds that, during the base period described above, the individual subject to clause (a) has insufficient wage credits to establish a valid claim, the individual may request a determination of validity using an alternate base period of the last four completed calendar quarters preceding the first day of an individual's benefit year. This alternate base period may be used by an individual only once during any five calendar year period to establish a valid claim.

In no instance shall the base period be extended to include more than four additional calendar quarters.

No base period, extended base period, or alternate base period under paragraph (b) shall include wage credits upon which a claim was established and benefits were paid with respect to that valid claim.

[For text of subd 3, see M.S.1986]

Subd. 4. "Benefit year" with respect to any individual means the period of 52 calendar weeks beginning with the first day of the first week with respect to which the individual files a valid claim for benefits. For individuals with a claim effective January 1, April 1, July 1, or October 1, the benefit year will be a period of 53 weeks beginning with the first week with respect to which the individual files a valid claim for benefits.

[For text of subds 5 to 8, see M.S.1986]

Subd. 9. "Employing unit" means any individual or type of organization, includ-

ing 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. 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 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. Any private or nonprofit organization or government agency providing or authorizing the hiring of homeworkers, personal care attendants, or other individuals performing similar services in the private home of an individual is the employing unit of the homeworker, attendant or similar worker whether the agency pays the employee directly or provides funds to the recipient of the services to pay for the services.

[For text of subds 10 and 11, see M.S.1986]

Subd. 12. "Employment" means: (1) Any service performed, including service in interstate commerce, by;

(a) any officer of any corporation;

(b) any individual who performs services for remuneration for any person as an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or dry-cleaning services, for a principal, or as a traveling or city salesperson, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, a principal (except for sideline sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations; or

(c) any 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 an independent contractor.

Provided, that for purposes of clause (1)(b), the term "employment" shall include services described above only if the contract of service contemplates that substantially all of the services are to be performed personally by such individual, the individual does not have a substantial investment in facilities used in connection with the performance of the services (other than in facilities for transportation), and the services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed.

(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; or (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) The term "employment" shall include an individual's service wherever performed within the United States or Canada, if

(a) such service is not covered under the unemployment compensation law of any other state or Canada, and

(b) the place from which the service is directed or controlled is in this state.

(5) (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.

(6) 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 or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act is required to be covered under this law.

(7) Service performed by an individual in the employ of the state of Minnesota or any instrumentality which is wholly owned by the state of Minnesota or in the employ of this state and one or more other states or an instrumentality of this state and one or more of its political subdivisions or an instrumentality of this state and another state or an instrumentality of this state and one or more political subdivisions of another state if such service is excluded from "employment" as defined by section 3306(c)(7) of the Federal Unemployment Tax Act and is not excluded from "employment" under clause (10).

(8) Service performed by an individual in the employ of any political subdivision of the state of Minnesota or instrumentality thereof or an instrumentality of two or more political subdivisions of this state or any instrumentality of a political subdivision of this state and another state or political subdivisions of another state if such service is excluded from "employment" as defined by section 3306(c)(7) of the Federal Unemployment Tax Act and is not excluded from "employment" under clause (10).

(a) The provisions of section 268.08, subdivision 6, shall apply to service covered by this section.

(b) The amounts required to be paid in lieu of contributions by any political subdivision shall be billed and payment made as provided in section 268.06, subdivision 28, clause (2), with respect to similar payments by nonprofit organizations.

(9) Service performed by an individual in the employ of a religious, charitable, educational or other organization but only if the following conditions are met:

(a) the service is excluded from "employment" as defined in the Federal Unemployment Tax Act solely by reason of section 3306(c)(8) of that act; and

(b) the organization had one or more individuals in employment for some portion of a day in each of 20 different weeks, whether or not such weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time.

(10) For the purposes of clauses (7), (8), and (9), the term "employment" does not apply to service performed

(a) in the employ of a church or convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches; or

(b) by a duly ordained, commissioned, or licensed minister of a church in the exercise of a ministry or by a member of a religious order in the exercise of duties required by such order; or

(c) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or a program providing remunerative work for individuals who because of an impaired physical or mental capacity cannot be readily absorbed in the competitive labor market, by an individual receiving the rehabilitation or remunerative work. This exclusion applies only to services performed in a facility which is certified by the Minnesota department of jobs and training, division of rehabilitative services, and is limited to the effective period of the certificate; or

(d) as part of an unemployment work relief or work training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training. This exclusion shall not apply to programs that provide for and require unemployment insurance coverage for the participants; or

(e) by an inmate of a custodial or penal institution; or

(f) in the employ of governmental entities referred to in clauses (7) and (8) if such service is performed by an individual in the exercise of duties

(i) as an elected official,

(ii) as a member of a legislative body, or a member of the judiciary,

(iii) as a member of the Minnesota national guard or air national guard,

(iv) as an employee serving only on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency,

(v)(a) in a position with the state of Minnesota which is a major nontenured policy making or advisory position in the unclassified service, or

(b) a policy making position with the state of Minnesota or a political subdivision the performance of the duties of which ordinarily does not require more than eight hours per week; or

(c) in a position with a political subdivision which is a major nontenured policy making or advisory position.

(11) The term "employment" shall include the service of an individual who is a citizen of the United States, performed outside the United States, except in Canada, in the employ of an American employer (other than service which is deemed "employment" under the provisions of clause (2), (3), or (4) or the parallel provisions of another state's law) if:

(a) The employer's principal place of business in the United States is located in this state; or

(b) The employer has no place of business in the United States, but the employer is an individual who is a resident of this state, or the employer is a corporation which is organized under the laws of this state, or the employer is a partnership or a trust and the number of partners or trustees who are residents of this state is greater than the number who are residents of any one other state; or

(c) None of the criteria of clauses (a) and (b) is met but the employer has elected coverage in this state, or the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this state.

(d) An "American employer," for the purposes of this subdivision, means a person who is an individual who is a resident of the United States, or a partnership if two-thirds or more of the partners are residents of the United States, or a trust, if all of the trustees are residents of the United States, or a corporation organized under the laws of the United States or of any state;

(e) As used in this subdivision, the term "United States" includes the states, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

(12) Notwithstanding clause (2), all service performed by an officer or member of the crew of an American vessel on or in connection with such vessel, if the operating office, from which the operations of such vessel operating on navigable waters within,

or within and without, the United States are ordinarily and regularly supervised, managed, directed, and controlled is within this state.

(13) Service performed by an individual in agricultural labor as defined in clause (15)(a) when:

(a) Such service is performed for a person who:

(i) during any calendar quarter in either the current or the preceding calendar year paid wages of $20,000 or more to individuals employed in agricultural labor, or

(ii) for some portion of a day in each of 20 different calendar weeks, whether or not such weeks were consecutive, in either the current or preceding calendar year employed in agricultural labor four or more individuals regardless of whether they were employed at the same time.

(b) For the purpose of this clause (13) any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of the crew leader:

(i) if the crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963, as amended; or substantially all of the members of the crew operate or maintain tractors, mechanized harvesting or crop dusting equipment, or any other mechanized equipment, which is provided by the crew leader; and

(ii) if the individual is not an employee of another person as determined by clause (1).

(c) For the purpose of this clause (13) in the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of the crew leader under subclause (13)(b):

(i) such other person and not the crew leader shall be treated as the employer of such individual; and

(ii) such other person shall be treated as having paid wages to such individual in an amount equal to the amount of wages paid to such individual by the crew leader (either on the crew leader's behalf or on behalf of such other person) for the service in agricultural labor performed for such other person.

(d) For the purposes of this clause (13) the term "crew leader" means an individual who:

(i) furnishes individuals to perform service in agricultural labor for any other person,

(ii) pays (either on the crew leader's own behalf or on behalf of such other person) the individuals so furnished by the crew leader for the service in agricultural labor performed by them, and

(iii) has not entered into a written agreement with such other person under which such furnished individual is designated as an employee of such other person.

(e) For the purposes of this clause (13) services performed by an officer or shareholder of a family farm corporation shall be excluded from agricultural labor and employment unless said corporation is an employer as defined in section 3306(a)(2) of the Federal Unemployment Tax Act.

(f) For the purposes of this clause (13), services performed by an individual 16 years of age or under shall be excluded from agricultural labor and employment unless the employer is an employer as defined in section 3306(a)(2) of the Federal Unemployment Tax Act.

(14) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority performed for a person who paid wages of $1,000 or more in any calendar quarter in either the current or preceding calendar year to individuals employed in domestic service.

"Domestic service" includes all service for an individual in the operation and maintenance of a private household, for a local college club, or local chapter of a college fraternity or sorority as distinguished from service as an employee in the pursuit of an employer's trade, occupation, profession, enterprise, or vocation.

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

(a) Agricultural labor. Service performed by an individual in agricultural labor, except as provided in clause (13). The term "agricultural labor" includes all services performed:

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

(2) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, 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 tornadic-like storm, if the major part of such service is performed on a farm;

(3) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15(g) of the Agricultural Marketing Act, as amended (46 Statutes 1550, section 3; United States Code, title 12, section 1141j) or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(4) In the employ of the operator of a farm 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, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half of the commodity with respect to which such service is performed, or in the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described herein, but only if such operators produced more than one-half of the commodity with respect to which such service is performed; however, 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; or

(5) On a farm operated for profit if such service is not in the course of the employer's trade or business.

As used herein, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, 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) Casual labor not in the course of the employing unit's trade or business;

(c) 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;

(d) Service performed by an individual in the employ of a son, daughter, or spouse, and service performed by a child under the age of 18 in the employ of the child's father or mother;

(e) 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 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;

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

(g)(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; or

(3) Service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this paragraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

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

(i) 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.

(j) 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;

(k) Service performed in the employ of a hospital, if such service is performed by a patient of the hospital, as defined in clause (17);

(l) Service performed 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 a medical or dental intern, or resident in training in the employ of a hospital, clinic, or medical or dental office by an individual who has completed a four years' course in a medical or dental school chartered and approved pursuant to state law;

(m) Service performed 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);

(n) 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;

(o) Service performed by an individual for a person as a real estate salesperson, if all such service performed by such individual for such person is performed for remuneration solely by way of commission;

(p) If the service performed during one-half or more of any pay period by an individual for the person employing the individual 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 the individual 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 the individual.

(q) Services performed for a state, other than the state of Minnesota, or an instrumentality wholly owned by such other state or political subdivision of such other state;

(r) Services performed as a direct seller as defined in United States Code, title 26, section 3508.

(16) "Institution of higher education," for the purposes of this chapter, means an educational institution which:

(a) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(b) Is legally authorized in this state to provide a program of education beyond high school;

(c) Provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for credit toward such a degree, a program of post-graduate or post-doctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(d) Is a public or other nonprofit institution.

(e) Notwithstanding any of the foregoing provisions of this clause, all colleges and universities in this state are institutions of higher education for purposes of this section.

(17) "Hospital" means an institution which has been licensed, certified or approved by the department of health as a hospital.

[For text of subds 13 to 23, see M.S.1986]

Subd. 24. "Valid claim" with respect to any individual means a claim filed by an individual who has registered for work and who has wages paid during the individual's base period sufficient to entitle the individual to benefits under section 268.07, subdivision 2.

Subd. 25. **Wages.** "Wages" means all remuneration for services, including commissions; bonuses; back pay as of the date of payment; tips and gratuities paid to an employee by a customer of an employer and accounted for by the employee to the employer; sickness and accident disability payments, except as otherwise provided in this subdivision; and the cash value of all remuneration in any medium other than cash, except that such term shall not include:

(a) For the purpose of determining contributions payable under section 268.06, subdivision 2, that part of the remuneration which exceeds, for each calendar year, the greater of $7,000 or that part of the remuneration which exceeds 60 percent of the average annual wage rounded to the nearest $100 computed in accordance with the provisions of clause (j), paid to an individual by an employer or the employer's predecessor with respect to covered employment in this state or under the unemployment compensation law of any other state. Credit for remuneration reported under the unemployment compensation law of another state is limited to that state's taxable wage base. If the term "wages" as contained in the Federal Unemployment Tax Act is amended to include remuneration in excess of the amount required to be paid hereunder 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;

(b) 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 employees generally or for a class or classes of 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 (1) retirement or (2) medical and hospitalization expenses in connection with sickness or accident disability, or (3) death, provided the employee 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 the employer and 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 withdrawal from the plan or system providing for such benefit or upon termination of such plan or system or policy of insurance or of employment with such employer;

(c) The payment by an employer (without deduction from the remuneration of the employee) (1) of the tax imposed upon an employee under section 3101 of the federal Internal Revenue Code, or (2) of any payment required from an employee under a state unemployment compensation law, with respect to remuneration paid to an employee for domestic service in a private home of the employer or for agricultural labor;

(d) 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;

(e) Any payment made to, or on behalf of, an employee or beneficiary (1) 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 (2) 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;

(f) Sickness or accident disability payments made by the employer after the expiration of six calendar months following the last calendar month in which the individual worked for the employer;

(g) Disability payments made under the provisions of any workers' compensation law;

(h) Sickness or accident disability payments made by a third party payer such as an insurance company;

(i) Payments made into a fund, or for the purchase of insurance or an annuity, to provide for sickness or accident disability payments to employees pursuant to a plan or system established by the employer which provides for the employer's employees generally or for a class or classes of employees;

(j) On or before July 1 of each year the commissioner shall determine the average annual wage paid by employers subject to sections 268.03 to 268.24 in the following manner:

(1) The sum of the total monthly employment reported for the previous calendar year shall be divided by 12 to determine the average monthly employment;

(2) The sum of the total wages reported for the previous calendar year shall be divided by the average monthly employment to determine the average annual wage.

The average annual wage determined shall be effective for the calendar year next succeeding the determination;

(k) Nothing in this subdivision, other than clause (a), shall exclude from the term "wages" any payment made under any type of salary reduction agreement, including

payments made under a cash or deferred arrangement and cafeteria plan, as defined in sections 401(k) and 125(d), respectively, of the federal Internal Revenue Code, to the extent that the employee has the option to receive the payment in cash.

Subd. 25a. **Wages paid.** "Wages paid" means the amount of wages which have been actually paid or which have been credited to or set apart for the employee so that payment and disposition is under the control of the employee. Wage payments delayed beyond their regularly scheduled pay date are considered "actually paid" on the missed pay date. Any wages earned but not paid with no scheduled date of payment shall be considered "actually paid" on the last day services are performed in employment before separation.

Wages paid shall not include wages earned but not paid except as provided for in this subdivision.

Subd. 26. **Wage credits.** "Wage credits" mean the amount of wages paid within the base period for insured work.

[For text of subds 27 and 28, see M.S.1986]

Subd. 29. [Repealed, 1987 c 362 s 27]

Subd. 30. [Repealed, 1987 c 362 s 27]

[For text of subds 31 to 33, see M.S.1986]

Subd. 34. **Contribution report.** "Contribution report" means the summary report of wages paid and employment used to determine the amount of contributions due by employers on a calendar quarter basis. An auxiliary report of wages paid and employment broken down by business locations, when required, is part of the contribution report.

Subd. 35. **Wage detail report.** "Wage detail report" means the itemized report used to record the information required by section 268.121.

Subd. 36. **High quarter.** "High quarter" means the calendar quarter in an individual's base period for which the individual's total wage credits during that quarter are equal to or greater than the individual's total wage credits during any other calendar quarter in the individual's base period.

History: *1987 c 362 s 1-8; 1987 c 385 s 1-6,8,9*

NOTE: Subdivision 29 was also amended by Laws 1987, chapter 385, section 7, to read as follows:

"Subd. 29. **Credit week.** "Credit week" is any week for which wage credits equal or exceed 30 percent of the average weekly wage computed to the nearest whole dollar. On or before June 30 of each year the commissioner shall determine the average weekly wage paid by employers subject to sections 268.03 to 268.24 in the following manner:

(a) The sum of the total monthly employment reported for the previous calendar year shall be divided by 12 to determine the average monthly employment;

(b) The sum of the total wages reported for the previous calendar year shall be divided by the average monthly employment to determine the average annual wage; and

(c) The average annual wage shall be divided by 52 to determine the average weekly wage.

The average weekly wage as so determined computed to the nearest whole dollar shall apply to claims for benefits which establish a benefit year which begins subsequent to December 31 of the year of the computation."

268.06 EMPLOYERS CONTRIBUTIONS.

[For text of subd 1, see M.S.1986]

Subd. 2. **Rates.** Each employer shall pay contributions equal to 2-7/10 percent for each calendar year prior to 1985 and 5-4/10 percent for 1985 and each subsequent calendar year of wages paid from the employer with respect to employment occurring during each calendar year, except as may be otherwise prescribed in subdivisions 3a and 4.

Subd. 3a. **Rate for new employers.** Notwithstanding the provisions of subdivision 2, each employer, who becomes subject to this law, shall pay contributions at a rate:

(a) Not exceeding 5-4/10 percent, that is the higher of (1) one percent and (2) the

state's five-year benefit cost rate for the 60 consecutive month period immediately preceding July 1 of each year for each employer, except employers in the construction industry. For purposes of this clause, the state's five-year benefit cost rate shall be computed annually and shall be derived by dividing the total dollar amount of benefits paid to claimants under this law during the 60 consecutive calendar months immediately preceding July 1 of each year by the total dollar amount of wages subject to contributions under this law during the same period. The rate so determined shall be applicable for the calendar year next succeeding each computation date.

(b) Each employer in the construction industry who becomes subject to this chapter shall pay contributions at a rate, not exceeding the maximum contribution rate for all employers as provided under subdivision 8, that is the higher of (1) one percent, or (2) the state's five-year benefit cost rate for construction employers for the 60 consecutive month period immediately preceding July 1 of each year. For purposes of this clause, the state's five-year benefit cost rate shall be computed annually and shall be derived by dividing the total dollar amount of benefits paid to claimants of construction employers during the 60 consecutive calendar months immediately preceding July 1 of each year by the total dollar amount of wages of construction employers subject to contributions during the same period. The rate so determined shall be applicable for the calendar year next succeeding each computation date.

For purposes of this subdivision an employer is in the construction industry if assigned an industrial classification within division C of the Standard Industrial Classification Manual issued by the United States Office of Management and Budget as determined by the tax branch of the department.

[For text of subd 4, see M.S.1986]

Subd. 5. **Benefits charged as and when paid.** Benefits paid to an individual pursuant to a valid claim shall be charged against the account of the individual's employer as and when paid, except that benefits paid to an individual who earned base period wages for part-time employment shall not be charged to an employer that is liable for payments in lieu of contributions or to the experience rating account of an employer if the employer: (1) provided regularly scheduled part-time employment to the individual during the individual's base period; (2) during the individual's benefit year, continues to provide the individual with regularly scheduled employment approximating 90 percent of the employment provided the claimant by that employer in the base period, or, for a fire department or firefighting corporation or operator of a life support transportation service, continues to provide employment for a volunteer firefighter or volunteer ambulance service personnel on the same basis that employment was provided in the base period; and (3) is an interested party because of the individual's loss of other employment. The relief of charges shall terminate effective the first week in the claimant's benefit year that the employer fails to meet the provisions of clause (2). 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 the individual's base period employers.

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.

Benefits shall not be charged to an employer that is liable for payments in lieu of contributions or to the experience rating account of an employer for unemployment (1) that is directly caused by a major natural disaster declared by the president pursuant to section 102(2) of the Disaster Relief Act of 1974 (United States Code, title 42, section 5122(2)), if the unemployed individual would have been eligible for disaster unemployment assistance with respect to that unemployment but for the individual's receipt of unemployment insurance benefits, or (2) that is directly caused by a fire, flood, or act of God where 70 percent or more of the employees employed in the affected location become unemployed as a result and the employer substantially reopens its operations

in that same area within 360 days of the fire, flood, or act of God. Benefits shall be charged to the employer's account where the unemployment is caused by the willful act of the employer or a person acting on behalf of the employer.

Subd. 6. **Computation of each employer's experience ratio.** The commissioner shall compute an experience ratio for each employer whose account has been chargeable with benefits during the 60 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 economic security law for a period of time sufficient to meet the 60 consecutive months requirement, the commissioner shall compute an experience ratio if the employer's 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 1-1/4 times the total benefits charged to the employer's account during the period the account has been chargeable but not less than the 12 or more than the 60 consecutive calendar months ending on June 30 of the preceding calendar year by the employer's total taxable payroll for the same period on which all contributions due have been paid to the department of jobs and training on or before October 31 of the preceding calendar year. Such experience ratio shall be computed to the nearest one-tenth of a percent.

Subd. 8. **Determination of contribution rates.** (a) For each calendar year the commissioner shall determine the contribution rate of each employer by adding the minimum rate to the experience ratio.

(b) The minimum rate for all employers shall be eight-tenths of one percent for 1988; seven-tenths of one percent for 1989; and six-tenths of one percent for 1990. The minimum rate for all employers in 1991 and thereafter shall be six-tenths of one percent if the amount in the unemployment compensation fund is less than $200,000,000 on June 30 of the preceding calendar year; or five-tenths of one percent if the fund is more than $200,000,000 but less than $225,000,000; or four-tenths of one percent if the fund is more than $225,000,000 but less than $250,000,000; or three-tenths of one percent if the fund is more than $250,000,000 but less than $275,000,000; or two-tenths of one percent if the fund is $275,000,000 but less than $300,000,000; or one-tenth of one percent if the fund is $300,000,000 or more.

(c) The maximum rate for all employers shall be 8.0 percent in 1988; 8.5 percent in 1989; 9.0 percent in 1990 and thereafter.

(d) For the purposes of this section the unemployment compensation fund shall not include any money advanced from the Federal Unemployment Account in the unemployment trust fund in accordance with Title XII of the Social Security Act, as amended.

Subd. 8a. **Solvency assessment.** (a) If the fund balance is greater than $75,000,000 but less than $150,000,000 on June 30 of any year, a solvency assessment will be in effect for the following calendar year. Each employer, except those making payments in lieu of contributions under subdivisions 25, 26, 27, and 28, shall pay a quarterly solvency assessment of ten percent multiplied by the contributions paid or due and payable for each calendar quarter in that year. Quarterly contributions and the solvency assessment payments shall be combined and will be computed notwithstanding the maximum rate established in subdivision 3a or 8, by multiplying the quarterly taxable payroll by the assigned contribution rate multiplied by 1.10.

(b) If the fund balance is less than $75,000,000 on June 30 of any year, a solvency assessment will be in effect for the following calendar year. Each employer, except those making payments in lieu of contributions under subdivisions 25, 26, 27, and 28, shall pay a quarterly solvency assessment of 15 percent multiplied by the contributions paid or due and payable for each calendar quarter in that year. Quarterly contributions and the solvency assessment payments shall be combined and will be computed notwithstanding the maximum rate established in subdivision 3a or 8, by multiplying the quarterly taxable payroll by the assigned contribution rate multiplied by 1.15.

[For text of subd 18, see M.S.1986]

Subd. 19. **Notice of rate.** The commissioner shall mail to each employer notice of the employer's 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 changed by the procedure provided in this subdivision, the assigned rate as initially determined or as changed by a redetermination by the tax branch of this department, a decision of a referee, or the commissioner shall be final except for fraud and shall be the rate upon which contributions shall be computed for the calendar year for which such rate was assigned, and shall not be subject to collateral attack for any errors, clerical or otherwise, whether by way of claim for adjustment or refund, or otherwise. If the legislature changes any of the factors used to determine the contribution rate of any employer for any year subsequent to the original mailing of such notice for the year, the earlier notice shall be void. The notice based on the new factors shall be deemed to be the only notice of rate of contributions for that year and shall be subject to the same finality, redetermination, and review procedures as provided above.

Subd. 20. **Protest, review, redetermination, appeal.** A review of the charges made to an employer's account as set forth in the notice of charges referred to in subdivision 18 and a review of an employer's contribution rate as set forth in the notice of the employer's rate for any calendar year as provided in subdivision 19, may be had by the employer by filing with the commissioner a written protest setting forth reasons therefor within 30 days from the date of the mailing of the notice of charges or contribution rate to the employer. The date shall appear on the notice. Upon receipt of the protest, the commissioner shall refer the matter to an official designated by the commissioner to review the charges appearing on the notice appealed from or the computations of the protesting employer's rate, as the case may be, to determine whether or not there has been any clerical error or error in computation in either case. The official shall either affirm or make a redetermination rectifying the charges or rate as the case may be, and a notice of the affirmation or redetermination shall immediately be mailed to the employer. If the employer is not satisfied with the affirmation or redetermination, the employer may appeal by filing a notice with the department within ten days after the date of mailing appearing upon the redetermination. Upon the receipt of the appeal, the commissioner shall refer the matter to a referee for a hearing and after opportunity for a fair hearing, the referee shall affirm, modify, or set aside the original determination with its affirmation or the redetermination, as appears just and proper. The commissioner may at any time upon the commissioner's own motion correct any clerical error of the department resulting in charges against an employer's account or any error in the computation or the assignment of an employer's contribution rate. The referee may order the consolidation of two or more appeals whenever, in the referee's judgment, consolidation will not be prejudicial to any interested party. At any hearing a written report of any employee of the department which has been authenticated shall be admissible in evidence. Appeals from the decision of the referee shall be provided by section 268.10, subdivision 5.

[For text of subd 21, see M.S.1986]

Subd. 22. **Employment experience record transfer.** (a) When an employing unit succeeds to or acquires the organization, trade or business or substantially all the assets of another employing unit which at the time of the acquisition was an employer subject to this law, and continues such organization, trade or business, the experience rating record of the predecessor employer shall be transferred as of the date of acquisition to the successor employer for the purpose of rate determination.

(b) When an employing unit succeeds to or acquires a distinct severable portion of the organization, trade, business, or assets which is less than substantially all of the employing enterprises of another employing unit, the successor employing unit shall acquire the experience rating record attributable to the portion to which it has succeeded, and the predecessor employing unit shall retain the experience rating record

attributable to the portion which it has retained, if (1) the successor continues the organization, trade, or business of the portion acquired, (2) the successor makes a written request to file an application for the transfer of the experience rating record for the severable portion acquired from the predecessor (3) and within 90 days from the date the application is mailed to the successor the successor and predecessor employing units jointly sign and file a properly completed, written application as prescribed by the commissioner that furnishes the commissioner with sufficient information to substantiate the severable portion and to assign the appropriate total and taxable wages and benefit charges to the successor for experience rating purposes. Previously assigned contribution rates that have become final in accordance with subdivision 19 prior to the filing of the written request to file an application shall not be affected by the transfer.

(c) Employment with a predecessor employer shall not be deemed to have been terminated if similar employment is offered by the successor employer and accepted by the employee.

(d) An official, designated by the commissioner, upon the official's own motion or upon application of an employing unit shall determine if an employing unit is a successor within the meaning of this subdivision and shall notify the employing unit of the determination. The determination shall be final unless the employing unit shall within 30 days after mailing of notice of determination to the employing unit's last known address file a written appeal. Proceedings on the appeal shall be in accordance with section 268.12, subdivision 13.

(e) Notwithstanding subdivision 19, the commissioner may, as the result of any determination or decision regarding succession or nonsuccession, recompute the rate of all employers affected by the determination or decision for any year, including the year of the acquisition or succession and subsequent years, that is affected by the transfer or nontransfer of part or all of the experience rating record under this subdivision. This paragraph does not apply to rates that have become final in accordance with subdivision 19 prior to the filing of a written request to file an application for the transfer of a severable portion of the experience rating record as provided in paragraph (b).

Subd. 24. **Voluntary contributions.** Notwithstanding any inconsistent provisions of law any employer who has been assigned a contribution rate pursuant to subdivisions 4, 6, and 8 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 the employer's 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 the 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 the 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 contribution rate as prescribed in this section; provided that the commissioner may extend this period if the commissioner 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 a contribution rate be reduced as a result of any such voluntary payment which is made after the expiration of the 120-day period commencing with the first day of the calendar year for which such rate is effective. Voluntary contributions made within the required time limits will not be refunded unless a request is made in writing at the time of payment that the department refund the voluntary contribution if it does not result in a lower rate.

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.

[For text of subds 25 to 33, see M.S.1986]

History: *1987 c 242 s 1; 1987 c 362 s 9-12; 1987 c 385 s 10-18*

268.07 BENEFITS PAYABLE.

[For text of subd 1, see M.S.1986]

Subd. 2. **Weekly benefit amount and duration.** (a) To establish a benefit year for unemployment insurance benefits, effective after January 1, 1988, and thereafter, an individual must have:

(1) wage credits in two or more calendar quarters of the individual's base period;

(2) minimum total base period wage credits equal to the high quarter wages multiplied by 1.25;

(3) high quarter wage credits of not less than $1,000; and

(4) wage credits in 15 or more calendar weeks in the base period.

(b) If the commissioner finds that an individual has sufficient wage credits and weeks worked within the base period to establish a valid claim, the weekly benefit amount payable to the individual during the individual's benefit year shall be equal to 1/26 of the individual's high quarter wage credits, rounded to the next lower whole dollar.

(c) Notwithstanding paragraph (b), the maximum weekly benefit amount of claims for benefits which establish a benefit year subsequent to July 1, 1979, shall be a percentage of the average weekly wage as determined under paragraphs (d) and (e).

(d) On or before June 30 of each year the commissioner shall determine the average weekly wage for purposes of paragraph (c) paid by employers subject to sections 268.03 to 268.24 in the following manner:

(1) The sum of the total monthly employment reported for the previous calendar year shall be divided by 12 to determine the average monthly employment.

(2) The sum of the total wages reported for the previous calendar year shall be divided by the average monthly employment to determine the average annual wage.

(3) The average annual wage shall be divided by 52 to determine the average weekly wage.

(e) The maximum weekly benefit amount for any claim filed during the 12-month period subsequent to June 30 of any year shall be determined on the basis of the unemployment fund balance on December 31 of the preceding year. If the fund balance is less than $70,000,000 on that date, the maximum weekly benefit amount shall be 66-2/3 percent of the average weekly wage; if the fund balance is more than $70,000,000 but less than $100,000,000, the maximum weekly benefit amount is 66 percent of the average weekly wage; if the fund balance is more than $100,000,000 but less than $150,000,000, the maximum weekly benefit amount is 65 percent of the average weekly wage; if the fund balance is more than $150,000,000 but less than $200,000,000, the maximum weekly benefit amount is 64 percent of the average weekly wage; if the fund balance is more than $200,000,000 but less than $250,000,000, the maximum weekly benefit amount is 63 percent of the average weekly wage; if the fund balance is more than $250,000,000 but less than $300,000,000, the maximum weekly benefit amount is 62 percent of the average weekly wage; if the fund balance is more than $300,000,000 but less than $350,000,000, the maximum weekly benefit amount is 61 percent of the average weekly wage; if the fund balance is more than $350,000,000, the maximum

weekly benefit amount is 60 percent. The maximum weekly benefit amount as determined under this paragraph computed to the nearest whole dollar shall apply to claims for benefits which establish a benefit year which begins subsequent to June 30 of each year.

(f) Any eligible individual shall be entitled during any benefit year to a total amount of benefits equal to one-third of the individual's total base period wage credits rounded to the next lower dollar, not to exceed 26 times the individual's weekly benefit amount.

(g) Each eligible individual who is unemployed in any week shall be paid with respect to such week a benefit in an amount equal to the individual's weekly benefit amount less that part of the individual's earnings, including holiday pay, payable to the individual with respect to such week which is in excess of $200 for earnings from service in the national guard or a United States military reserve unit and the greater of $25 or 25 percent of the earnings in other work; provided that no deduction may be made from the weekly benefit amount for earnings from service as a volunteer firefighter or volunteer ambulance service personnel. Jury duty pay is not considered as earnings and shall not be deducted from benefits paid. Such benefit, if not a whole dollar amount shall be rounded down to the next lower dollar amount.

Subd. 2a. **Exception.** Notwithstanding the provisions of subdivision 2, if the commissioner finds that an individual has earned wage credits in seasonal employment, benefits shall be payable only if the commissioner finds that the individual has earned wage credits in 15 or more calendar weeks equal to or in excess of 30 times the individual's weekly benefit amount, in employment which is not seasonal, in addition to any wage credits in seasonal employment. For the purposes of this subdivision, "seasonal employment" means employment with a single employer in the recreation or tourist industry which is available with the employer for 15 consecutive weeks or less each calendar year.

Subd. 3. **When wage credits are not available.** (1) To establish a second benefit year following the expiration of an immediately preceding benefit year, an individual must have sufficient wage credits and weeks of employment to establish a claim under the provisions of subdivision 2 and must have performed services after the establishment of the expired benefit year. The services performed must have been in insured work and the wage credits from the services must equal not less than ten times the weekly benefit amount of the second benefit year.

(2) No employer who provided 90 percent or more of the wage credits in a claimant's base period shall be charged for benefits based upon earnings of the claimant during a subsequent base period unless the employer has employed the claimant in any part of the subsequent base period.

(3) Wages paid by an employing unit may not be used for benefit purposes by any claimant who (a) individually, jointly, or in combination with the claimant's spouse, parent, or child owns or controls directly or indirectly 25 percent or more interest in the employing unit; or (b) is the spouse, parent, or minor child of any individual who owns or controls directly or indirectly 25 percent or more interest in the employing unit; and (c) is not permanently separated from employment.

This clause is effective when the individual has been paid four times the individual's weekly benefit amount in the current benefit year.

(4) Wages paid in seasonal employment, as defined in subdivision 2a, are not available for benefit purposes during weeks in which there is no seasonal employment available with the employer.

(5) No employer shall be charged for benefits if the employer is a base period employer on a second claim solely because of the transition from a base period consisting of the 52-week period preceding the claim date to a base period as defined in section 268.04, subdivision 2.

History: *1987 c 242 s 2; 1987 c 362 s 13-15; 1987 c 385 s 19*

NOTE: The amendment to subdivision 2, paragraph (a), clause (4), by Laws 1987, chapter 362, section 13, is effective July 1, 1989. See Laws 1987, chapter 362, section 28.

268.071 EXTENDED BENEFITS.

Subdivision 1. **Definitions.** As used in this section, unless the context clearly requires otherwise:

(1) **Extended benefit period.** "Extended benefit period" means a period which

(a) Begins with the third week after a week for which there is a state "on" indicator; and

(b) Ends with either of the following weeks, whichever occurs later: The third week after the first week for which there is a state "off" indicator; or the 13th consecutive week of the period;

Provided, that no extended benefit period may begin before the 14th week following the end of a prior extended benefit period which was in effect with respect to this state.

(2) **State "on" indicator.** There is a "state 'on' indicator" for this state for a week if the commissioner determines, in accordance with the regulations of the United States Secretary of Labor, that for the period consisting of such week and the immediately preceding 12 weeks, the rate of insured unemployment (not seasonally adjusted) under this law

(a) equaled or exceeded 120 percent of the average of such rates for the corresponding 13-week period ending in each of the preceding two calendar years, and

(b) equaled or exceeded five percent.

The determination of whether there has been a state "on" indicator beginning any extended benefit period may be made as provided in clauses (a) and (b) above or a "state 'on' indicator" shall exist if the rate described in clause (b) equaled or exceeded six percent irrespective of whether the percentage requirement provided by clause (a) is met or exceeded.

(3) **State "off" indicator.** There is a "state 'off' indicator" for this state for a week if, for the period consisting of such week and the immediately preceding 12 weeks, the rate of insured unemployment is less than six percent and the requirements for a "state 'on' indicator" under clause (2) are not satisfied.

(4) **Rate of insured unemployment.** "Rate of insured unemployment," for purposes of clauses (2) and (3), means the percentage derived by dividing the average weekly number of individuals filing claims for regular benefits in this state for weeks of unemployment with respect to the most recent 13 consecutive week period, as determined by the commissioner on the basis of the commissioner's reports to the United States Secretary of Labor, by the average monthly employment covered under this law for the first four of the most recent six completed calendar quarters ending before the end of such 13-week period.

(5) **Regular benefits.** "Regular benefits" means benefits payable to an individual under this law or under any other state law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to United States Code, title 5, chapter 85) other than extended benefits and additional benefits.

(6) **Extended benefits.** "Extended benefits" means benefits (including benefits payable to federal civilian employees and to ex-servicemen pursuant to United States Code, title 5, chapter 85) payable to an individual under the provisions of this section for weeks of unemployment in the individual's eligibility period.

(7) **Additional benefits.** "Additional benefits" means benefits payable to exhaustees by reason of conditions of high unemployment or by reason of other special factors under the provisions of any state law.

(8) **Eligibility period.** "Eligibility period" of an individual means the period consisting of the weeks in the individual's benefit year which begin in an extended benefit period and, if the benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

(9) **Exhaustee.** "Exhaustee" means an individual who, with respect to any week of unemployment in the individual's eligibility period:

(a) Has received, prior to such week, all of the regular benefits that were available under this law or any other state law (including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under United States Code, title 5, chapter 85) in the individual's current benefit year that includes such week;

Provided, that, for the purposes of this paragraph, an individual shall be deemed to have received all of the regular benefits that were available to the individual although as a result of a pending appeal with respect to wage credits that were not considered in the original monetary determination in the individual's benefit year, the individual may subsequently be determined to be entitled to added regular benefits; or

(b) The individual's benefit year having expired prior to such week, has no, or insufficient, wages and/or employment on the basis of which the individual could establish a new benefit year that would include such week or having established a benefit year that includes such week, the individual is precluded from receiving regular compensation by reason of: (i) a state law provision which meets the requirements of section 3304 (a) (7) of the Internal Revenue Code of 1954, or (ii) a disqualification determination which canceled wage credits or totally reduced benefit rights, or (iii) benefits are not payable by reason of a seasonal limitation in a state unemployment insurance law; and

(c) Has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Automotive Products Act of 1965 and such other federal laws as are specified in regulations issued by the United States Secretary of Labor; and has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada; but if the individual is seeking such benefits and the appropriate agency finally determines that the individual is not entitled to benefits under such law the individual is considered an exhaustee.

(10) **State law.** "State law" means the unemployment insurance law of any state, approved by the United States Secretary of Labor under section 3304 of the Internal Revenue Code of 1954.

[For text of subds 2 to 9, see M.S.1986]

History: *1987 c 362 s 16*

268.072 CHILD SUPPORT INTERCEPT OF UNEMPLOYMENT BENEFITS.

[For text of subds 1 to 5, see M.S.1986]

Subd. 6. **Reimbursement of costs.** Appropriate arrangements shall be made for reimbursement by the child support agency for the administrative costs incurred by the commissioner under this subdivision and sections 518.551 and 518.611 which are attributable to child support obligations being enforced by the public agency responsible for child support enforcement.

History: *1987 c 384 art 2 s 67*

268.073 ADDITIONAL UNEMPLOYMENT COMPENSATION BENEFITS.

Subdivision 1. **Additional benefits; when available.** Additional unemployment compensation benefits are authorized under this section only if the commissioner determines that:

(1) an employer has reduced operations at a facility employing 100 or more individuals for at least six months during the preceding year resulting in the reduction of at least 50 percent of the employer's work force and the lay-off of at least 50 employees at that facility;

(2) the employer does not intend to resume operations which would lead to the reemployment of those employees at any time in the future; and

(3) the unemployment rate for the county in which the facility is located was ten percent during the month of the reduction or any of the three months preceding or succeeding the reduction.

Subd. 2. **Payment of benefits.** All benefits payable under this section are payable from the fund.

Subd. 3. **Eligibility conditions.** An individual is eligible to receive additional benefits under this section for any week during the individual's benefit year if the commissioner finds that:

(1) the individual's unemployment is the result of a reduction in operations as provided under subdivision 1;

(2) the individual is unemployed and meets the eligibility requirements for the receipt of unemployment benefits under section 268.08;

(3) the individual is not subject to a disqualification for benefits under section 268.09; for the purpose of this subdivision, the disqualifying conditions set forth in section 268.09, and the requalifying requirements thereunder, apply to the receipt of additional benefits under this section;

(4) the individual has exhausted all rights to regular benefits payable under section 268.07, is not entitled to receive extended benefits under section 268.071, and is not entitled to receive unemployment compensation benefits under any other state or federal law for the week in which the individual is claiming additional benefits;

(5) the individual has made a claim for additional benefits with respect to any week the individual is claiming benefits in accordance with the regulations as the commissioner may prescribe with respect to claims for regular benefits; and

(6) the individual has worked at least 26 weeks during the individual's base period in employment with an employer for whom the commissioner has determined there was a reduction in operations under subdivision 1.

Subd. 4. **Weekly benefit amount.** A claimant's weekly benefit amount under this section shall be the same as the individual's weekly benefit amount payable during the individual's current benefit year under section 268.08.

Subd. 5. **Maximum benefits payable.** A claimant's maximum amount of additional benefits payable in the individual's benefit year shall be six times the individual's weekly benefit amount. Unemployment compensation benefits paid to an individual under any state or federal law other than regular benefits payable under section 268.07 shall be deducted from that individual's maximum amount of additional benefits.

Subd. 6. **Retroactivity.** The additional benefits provided under this section are payable to any claimant who meets the eligibility conditions under subdivision 3 whose unemployment occurred on July 1, 1985, or thereafter, provided the claimant has filed a claim for additional benefits which is effective January 1, 1987, or thereafter.

History: *1987 c 362 s 17*

268.08 PERSONS ELIGIBLE TO RECEIVE BENEFITS.

Subdivision 1. **Eligibility conditions.** An individual shall be eligible to receive benefits with respect to any week of unemployment only if the commissioner finds that the individual:

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

(2) has made a claim for benefits in accordance with rules as the commissioner may adopt;

(3) was able to work and was available for work, and was actively seeking work. The individual's weekly benefit amount shall be reduced one-fifth for each day the individual is unable to work or is unavailable for work. Benefits shall not be denied by application of this clause to an individual who is in training with the approval of the commissioner or in training approved pursuant to section 236 of the Trade Act of 1974, as amended.

An individual is deemed unavailable for work with respect to any week which occurs in a period when the individual is a full-time student in attendance at, or on vacation from an established school, college, or university unless a majority of the wage credits earned in the base period were for services performed during weeks in which the student was attending school as a full-time student.

An individual serving as a juror shall be considered as available for work and actively seeking work on each day the individual is on jury duty; and

(4) has been unemployed for a waiting period of one week during which the individual is otherwise eligible for benefits under sections 268.03 to 268.24. However, payment for the waiting week, not to exceed $20, shall be made to the individual after the individual has qualified for and been paid benefits for four weeks of unemployment in a benefit year which period of unemployment is terminated because of the individual's return to employment. No individual is 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 the valid claim was filed.

Subd. 1a. **Benefits due deceased persons.** Upon the death of any claimant for benefits, and in the event it is found by the commissioner that benefits have accrued and are due and payable to that claimant and remain wholly or partially unpaid at the time of the claimant's death, or in the event there have been issued and unpaid one or more benefit checks, those checks may, upon application therefor, be paid to the duly qualified administrator or executor of the estate of the deceased claimant. In the event that no administrator or executor is appointed to administer the estate of the deceased, if any, the benefits may, upon the order and direction of the commissioner be paid to any person designated by the commissioner in the following order: (1) the surviving spouse, (2) the surviving child or children, or (3) the surviving parent or parents.

A person seeking payment under this subdivision shall complete an affidavit on a form prescribed by the department and the payment of benefits to a person pursuant to an affidavit under this subdivision shall discharge the obligations of the department to the claimant to the extent of the payment, and no other person shall claim or assert any right with respect thereto.

[For text of subd 2, see M.S.1986]

Subd. 3. **Not eligible.** An individual shall not be eligible to receive benefits for any week with respect to which the individual is receiving, has received, or has filed a claim for remuneration in an amount equal to or in excess of the individual's 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 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 immediately following the last day of work but not to exceed 28 calendar days; or

(2) vacation allowance paid directly by the employer for a period of requested vacation, including vacation periods assigned by the employer under the provisions of a collective bargaining agreement, or uniform vacation shutdown; or

(3) compensation for loss of wages under the workers' 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 except that this does not apply to an individual who is receiving temporary partial compensation pursuant to section 176.101, subdivision 3k; or

(4) 50 percent of the pension payments from any fund, annuity or insurance maintained or contributed to by a base period employer including the armed forces of the United States if the employee contributed to the fund, annuity or insurance and all of the pension payments if the employee did not contribute to the fund, annuity or insurance; or

(5) 50 percent of a primary insurance benefit under title II of the Social Security Act as amended, or similar old age benefits under any act of congress or this state or any other state; or

(6) holiday pay, in excess of $25.

Provided, that if such remuneration is less than the benefits which would otherwise be due under sections 268.03 to 268.24, the individual 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 the individual is not entitled to such benefits, this provision shall not apply. If the computation of reduced benefits, required by this subdivision, is not a whole dollar amount, it shall be rounded down to the next lower dollar amount.

Subd. 3a. **Receipt of back pay.** Back pay received by an individual with respect to any weeks of unemployment occurring in the 104 weeks immediately preceding the payment of the back pay shall be deducted from benefits paid for those weeks.

The amount deducted shall not reduce the benefits for which the individual is otherwise eligible for that week below zero. If the amount of benefits after the deduction of back pay is not a whole dollar amount, it shall be rounded to the next lower dollar.

If the back pay awarded the individual is reduced by benefits paid, the amounts withheld shall be: (a) paid by the employer into the fund within 30 days of the award and are subject to the same collection procedures that apply to past due contributions under this chapter; (b) applied to benefit overpayments resulting from the payment of the back pay; (c) credited to the individual's maximum amount of benefits payable in a benefit year which includes the weeks of unemployment for which back pay was deducted. Benefit charges for those weeks shall be removed from the employer's account as of the calendar quarter in which the fund receives payment.

Payments to the fund under this subdivision are made by the employer on behalf of the individual and are not voluntary contributions under section 268.06, subdivision 24.

[For text of subds 4 to 9, see M.S.1986]

History: *1987 c 362 s 18; 1987 c 385 s 20-22*

268.09 UNEMPLOYMENT COMPENSATION; DISQUALIFIED FROM BENEFITS.

Subdivision 1. **Disqualifying conditions.** An individual separated from any employment under paragraph (a), (b), or (d) shall be disqualified for waiting week credit and benefits. For separations under paragraphs (a) and (b), the disqualification shall continue until four calendar weeks have elapsed following the individual's separation and the individual has earned eight times the individual's weekly benefit amount in insured work.

(a) **Voluntary leave.** The individual voluntarily and without good cause attributable to the employer discontinued employment with such employer. For the purpose of this paragraph, a separation from employment by reason of its temporary nature or for inability to pass a test or for inability to meet performance standards necessary for continuation of employment shall not be deemed voluntary.

A separation shall be for good cause attributable to the employer if it occurs as a consequence of sexual harassment. Sexual harassment means unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact or other conduct or communication of a sexual nature when: (1) the employee's submission to such conduct or communication is made a term or condition of the employment, (2) the employee's submission to or rejection of such conduct or communication is the basis for decisions affecting employment, or (3) such conduct or communication has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment and the employer

knows or should know of the existence of the harassment and fails to take timely and appropriate action.

(b) **Discharge for misconduct.** The individual was discharged for misconduct, not amounting to gross misconduct connected with work or for misconduct which interferes with and adversely affects employment.

(c) **Exceptions to disqualification.** An individual shall not be disqualified under paragraphs (a) and (b) under any of the following conditions:

(1) the individual voluntarily discontinued employment to accept work offering substantially better conditions of work or substantially higher wages or both;

(2) the individual is separated from employment due to personal, serious illness provided that such individual has made reasonable efforts to retain employment.

An individual who is separated from employment due to the individual's illness of chemical dependency which has been professionally diagnosed or for which the individual has voluntarily submitted to treatment and who fails to make consistent efforts to maintain the treatment the individual knows or has been professionally advised is necessary to control that illness has not made reasonable efforts to retain employment.

(3) the individual accepts work from a base period employer which involves a change in location of work so that said work would not have been deemed to be suitable work under the provisions of subdivision 2 and within a period of 13 weeks from the commencement of said work voluntarily discontinues employment due to reasons which would have caused the work to be unsuitable under the provision of said subdivision 2;

(4) the individual left employment because of reaching mandatory retirement age and was 65 years of age or older;

(5) the individual is terminated by the employer because the individual gave notice of intention to terminate employment within 30 days. This exception shall be effective only through the calendar week which includes the date of intended termination, provided that this exception shall not result in the payment of benefits for any week for which the individual receives the individual's normal wage or salary which is equal to or greater than the weekly benefit amount;

(6) the individual is separated from employment due to the completion of an apprenticeship program, or segment thereof, approved pursuant to chapter 178;

(7) the individual voluntarily leaves part-time employment with a base period employer while continuing full-time employment if the individual attempted to return to part-time employment after being separated from the full-time employment, and if substantially the same part-time employment with the base period employer was not available for the individual;

(8) the individual is separated from employment based solely on a provision in a collective bargaining agreement by which an individual has vested discretionary authority in another to act on behalf of the individual. Except as provided in paragraph (d), separations from part-time employment will not be disqualifying when the claim is based on sufficient full-time employment to establish a valid claim from which the claimant has been separated for nondisqualifying reasons.

(d) **Discharge for gross misconduct.** The individual was discharged for gross misconduct connected with work or gross misconduct which interferes with and adversely affects the individual's employment. For a separation under this clause, the commissioner shall impose a total disqualification for the benefit year and cancel all of the wage credits from the last employer from whom the individual was discharged for gross misconduct connected with work.

For the purpose of this paragraph "gross misconduct" is defined as misconduct involving assault and battery or the malicious destruction of property or arson or sabotage or embezzlement or any other act, including theft, the commission of which amounts to a felony or gross misdemeanor. For an employee of a health care facility, gross misconduct also includes misconduct involving an act of patient or resident abuse as defined in section 626.557, subdivision 2, clause (d).

If an individual is convicted of a felony or gross misdemeanor for the same act or acts of misconduct for which the individual was discharged, the misconduct is conclusively presumed to be gross misconduct if it was connected with the individual's work.

(e) **Limited or no charge of benefits.** Benefits paid subsequent to an individual's separation under any of the foregoing paragraphs, excepting paragraphs (c)(3), (c)(5), and (c)(8), shall not be used as a factor in determining the future contribution rate of the employer from whose employment such individual separated.

Benefits paid subsequent to an individual's failure, without good cause, to accept an offer of suitable re-employment shall not be used as a factor in determining the future contribution rate of the employer whose offer of re-employment was not accepted or whose offer of re-employment was refused solely due to the distance of the available work from the individual's residence, the individual's own serious illness, the individual's other employment at the time of the offer, or if the individual is in training with the approval of the commissioner.

(f) **Acts of omissions.** An individual who was employed by an employer shall not be disqualified for benefits under this subdivision for any acts or omissions occurring after separation from employment with the employer.

(g) **Disciplinary suspensions.** An individual shall be disqualified for waiting week credit and benefits for the duration of any disciplinary suspension of 30 days or less resulting from the individual's own misconduct. Disciplinary suspensions of more than 30 days shall constitute a discharge from employment.

Subd. 2. **Failure to apply for or accept suitable work or re-employment.** An individual shall be disqualified for waiting week credit and benefits during the week of occurrence and until four calendar weeks have elapsed following the refusal or failure and the individual has earned eight times the individual's weekly benefit amount in insured work if the commissioner finds that the individual has failed, without good cause, either to apply for available, suitable work of which advised by the employment office, or the commissioner or to accept suitable work when offered, or to return to customary self-employment (if any) when so directed by the commissioner, or to accept a base period employer's offer of re-employment offering substantially the same or better hourly wages and conditions of work as were previously provided by that employer in the base period.

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

(4) if the individual is in training with the approval of the commissioner.

Subd. 3. **Labor dispute.** (a) An individual who has left or partially or totally lost employment with an employer because of a strike or other labor dispute at the establishment in which the individual is or was employed shall be disqualified for benefits:

(1) for each week during which the strike or labor dispute is in progress; or

(2) for one week following the commencement of the strike or labor dispute if the individual is not participating in or directly interested in the strike or labor dispute.

Participation includes the failure or refusal of an individual to accept and perform available and customary work at the establishment.

(b) An individual who has left or partially or totally lost employment with an employer because of a jurisdictional controversy between two or more labor organizations at the establishment in which the individual is or was employed shall be disqualified for benefits for each week during which the jurisdictional controversy is in progress.

(c) For the purpose of this subdivision 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:

(1) who becomes unemployed because of a strike or lockout caused by an employer's willful failure to observe the terms of the safety and health section of a union contract or failure to comply with an official citation for a violation of federal and state laws involving occupational safety and health; provided, however, that benefits paid in accordance with this provision shall not be charged to the employer's experience rating account if, following official appeal proceedings, it is held that there was no willful failure on the part of the employer; or

(2) who becomes unemployed because of a lockout; or

(3) who is dismissed during the period of negotiation in any labor dispute and prior to the commencement of a strike.

(d) A voluntary separation during the time that the strike or other labor dispute is in progress at the establishment shall not be deemed to terminate the individual's participation in or direct interest in such strike or other labor dispute for purposes of this subdivision.

(e) Benefits paid to an employee who has left or partially or totally lost employment because of a strike or other labor dispute at the employee's primary place of employment shall not be charged to the employer's account unless the employer was a party to the particular strike or labor dispute.

(f) Notwithstanding any other provision of this section, an individual whose last separation from employment with an employer occurred prior to the commencement of the strike or other labor dispute and was permanent or for an indefinite period, shall not be denied benefits or waiting week credit solely by reason of failure to apply for or to accept recall to work or re-employment with the employer during any week in which the strike or other labor dispute is in progress at the establishment in which the individual was employed.

[For text of subds 4 to 8, see M.S.1986]

History: *1987 c 362 s 19,20; 1987 c 385 s 23,24*

268.10 DETERMINATION OF CLAIMS FOR BENEFITS; APPEALS.

Subdivision 1. **Filing.** (a) Claims for benefits shall be made in accordance with such rules as the commissioner may prescribe. Each employer shall post and maintain printed statements of such rules in places readily accessible to individuals in the employer's service and shall make available to each such individual at the time of becoming unemployed, a printed statement of such rules. Such printed statements shall be supplied by the commissioner to each employer without cost to the employer.

(b) Any employer upon separation of an employee from 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 employment, and the reason for the separation. A copy of such separation notice shall be filed with the commissioner within seven days of such separation. The commissioner shall require each individual filing a claim for benefits to establish a benefit year to furnish the reason for separation from all employers in the individual's base period.

(c) For the purpose of complying with section 268.04, subdivision 2, the commissioner may require all base period employers to provide such information as the commissioner may prescribe, including, but not limited to, wages paid during any part of the base period, whether or not such information was previously provided.

(d) Upon establishment of a benefit year, the commissioner shall give notice to the last employer for whom the individual worked and all base period employers. The employer so notified shall have seven days after the mailing of the notice to file a protest to monetary entitlement or a protest raising an issue of ineligibility or disqualification.

(e) If, upon review of the wage information on file with the department, it is found that an employer failed to provide wage information for the claimant, the commissioner shall accept a claimant certification as to the wage credits earned, based upon the claimant's records, and issue a monetary determination of validity certification. This determination may be modified based upon corrected information subsequently received from the employer or other sources. The employer who failed to report the individual's wages or filed an erroneous report may be penalized in accordance with section 268.16 or 268.18. In the absence of fraud, if a redetermination of validity of claim based on an employer's late corrected or erroneous 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 prior to such redetermination; and

(f) The commissioner shall determine any issue raised under paragraph (d) or by an employer's late report. If an employer fails to file a separation notice within the time limits prescribed in paragraph (b), any relief from benefit charges provided by section 268.09, subdivision 1, clause (4), shall apply to weeks of unemployment beginning after the filing of the late report or protest.

Subd. 2. **Examination of claims; determination; appeal.** (1) An official, designated by the commissioner, shall promptly examine each claim for benefits filed to establish a benefit year pursuant to this section, and, on the basis of the facts found, shall determine whether or not such claims are valid, and if valid, the weekly benefit amount payable, the maximum benefit amount payable during the benefit year, and the date the benefit year terminates, and this determination shall be known as the determination of validity. Notice of the determination of validity or any redetermination as provided for in clause (4) shall be promptly given the claimant and all other interested parties. If within the time specified for the filing of a protest as provided in subdivision 1, the employer makes an allegation of disqualification or raises an issue of the chargeability to the employer's account of benefits that may be paid on such claim, if the claim is valid, the issue thereby raised shall be promptly determined by said official and a notification of the determination delivered or mailed to the claimant and the employer. If an initial determination or an appeal tribunal decision or the commissioner's decision awards benefits, the benefits shall be paid promptly regardless of the pendency of any appeal period or any appeal or other proceeding which may thereafter be taken. Except as provided in clause (6), if an appeal tribunal decision modifies or reverses an initial determination awarding benefits, or if a commissioner's decision modifies or reverses an appeal decision awarding benefits, any benefits paid under the award of such initial determination or appeal tribunal decision shall be deemed erroneous payments.

(2) At any time within 24 months from the date of the filing of a valid claim for benefits by an individual, an official of the department or any interested party or parties raises an issue of claimant's eligibility for benefits for any week or weeks in accordance with the requirements of the provisions of sections 268.03 to 268.24 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 rules of the commissioner, a determination shall be made thereon and a written notice thereof shall be given to the claimant and such other interested party or parties or benefit year employer. A determination issued under this clause which denies benefits for weeks for which the claimant has previously been paid benefits is an overpayment of those benefits subject to section 268.18.

(3) A determination issued pursuant to clauses (1) and (2) shall be final unless an appeal therefrom is filed by a claimant or employer within 15 days after the mailing of the notice of the determination to the last known address or personal delivery of the notice. Every notice of determination shall contain a prominent statement indicating in clear language the method of appealing the determination, the time within which such an appeal must be made, and the consequences of not appealing the determination. A timely appeal from a determination of validity in which the issue is whether an employing unit is an employer within the meaning of this chapter or whether services performed for an employer constitute employment within the meaning of this chapter shall be subject to the provisions of section 268.12, subdivision 13.

(4) At any time within 24 months from the date of the filing of a valid claim for benefits by an individual, the commissioner on the commissioner's own motion may reconsider a determination of validity made thereon and make a redetermination thereof on finding that an error in computation or identity or the crediting of wage credits has occurred in connection therewith or if the determination was made as a result of a nondisclosure or misrepresentation of a material fact. A determination or redetermination issued under this clause which denies benefits for weeks for which the claimant has previously been paid benefits is an overpayment of those benefits subject to section 268.18.

(5) However, the commissioner may refer any disputed claims directly to a referee for hearing and determination in accordance with the procedure outlined in subdivision 3 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 the tribunal from an initial determination.

(6) If a referee's decision affirms an initial determination awarding benefits or the commissioner affirms an appeal tribunal decision awarding benefits, the decision, if finally reversed, shall not result in a disqualification and benefits paid shall neither be deemed overpaid nor shall they be considered in determining any individual employer's future contribution rate under section 268.06.

[For text of subds 3 to 10, see M.S.1986]

History: *1987 c 362 s 21,22*

268.12 CREATION.

[For text of subds 2 to 7, see M.S.1986]

Subd. 8. **Records; reports.** (1) Each employing unit shall keep true and accurate records for such periods of time and containing such information as the commissioner may prescribe. For the purpose of determining compliance with this chapter, or for the purpose of collection of any amounts due under this chapter, the commissioner or any authorized representative of the commissioner has the power to examine, or cause to be examined or copied, any books, correspondence, papers, records, or memoranda which are relevant to making these determinations, whether the books, correspondence, papers, records, or memoranda are the property of or in the possession of the employing unit or any other person or corporation at any reasonable time and as often as may be necessary.

(2) The commissioner or any other duly authorized representative of the commissioner may cause to be made such summaries, compilations, photographs, duplications, or reproductions of any records, reports, or transcripts thereof as the commissioner 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 this chapter, if the original record or records would have been admissible therein. Notwithstanding any restrictions contained in section 16B.50, 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 economic security 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 the commissioner's custody, which are more than two 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 this chapter, 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 the commissioner's custody which has been photographed, duplicated, or reproduced.

(4) Notwithstanding the provisions of the Minnesota State Archives Act the commissioner shall with the approval of the legislative auditor destroy all benefit checks and benefit check authorization cards that are more than two 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 on any claim for benefits after the expiration of two years from the date of filing such claim.

[For text of subds 9 to 11, see M.S.1986]

Subd. 12. **Information.** Except as hereinafter otherwise provided, data gathered from any employing unit, employer 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 are private data on individuals or nonpublic data as defined in section 13.02, subdivisions 9 and 12 and may not be disclosed except pursuant to this subdivision or a valid court order. These data may be disseminated to and used by the following agencies without the consent of the subject of the data:

(a) State and federal agencies specifically authorized access to the data by state or federal law;

(b) Any agency of this or any other state; or any federal agency charged with the administration of an employment security law or the maintenance of a system of public employment offices;

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

(d) The Minnesota department of revenue on an interchangeable basis with the department of jobs and training subject to the following restrictions and notwithstanding any law to the contrary:

(1) The department of revenue may have access to department of jobs and training data on individuals and employing units only to the extent necessary for proper enforcement of tax laws; and

(2) The department of jobs and training may have access to department of revenue data pertaining only to individuals who have claimed benefits under sections 268.03 to 268.24 and only if the individuals are the subject of investigations based on other information available to the department of jobs and training. The data provided by the department of revenue shall be limited to the amount of gross income earned by an individual, the total amount of earnings from each employer and the employers' names. Upon receipt of the data, the department of jobs and training may not disseminate the data to any individual or agency except in connection with a prosecution for violation of the provisions of sections 268.03 to 268.24. This clause shall not be construed to be a restriction on the exchange of information pertaining to corporations or other employing units to the extent necessary for the proper enforcement of this chapter;

(e) Public and private agencies responsible for administering publicly financed assistance programs for the purpose of monitoring the eligibility of the program's recipients;

(f) The department of labor and industry for the purpose of determining the eligibility of the data subject;

(g) The department of energy and economic development may have access to nonpublic data as defined in section 13.02, subdivision 9, for its internal use only; when received by the department of energy and economic development, the data remain nonpublic data;

(h) Local and state welfare agencies for monitoring the eligibility of the data subject for assistance programs, or for any employment or training program administered by those agencies, whether alone, in combination with another welfare agency, or in conjunction with the department of jobs and training; and

(i) Local, state and federal law enforcement agencies for the sole purpose of ascertaining the last known address and employment location of the data subject, provided the data subject is the subject of a criminal investigation.

Data on individuals, employers, and employing units which are collected, maintained, or used by the department in an investigation pursuant to section 268.18, subdivision 3, are confidential as to data on individuals and protected nonpublic data as defined in section 13.02, subdivisions 3 and 13, as to nonindividual employers and employing units, and shall not be disclosed except pursuant to statute or valid court order or to a party named in a criminal proceeding, administrative or judicial, for preparation of a defense.

Data on individuals, employers, and employing units which are collected, maintained, or used by the department in the adjudication of a separation or eligibility issue pursuant to the administration of section 268.10, subdivision 2, are confidential as to data on individuals and protected nonpublic data as to nonindividual employers and employing units as defined in section 13.02, subdivisions 3 and 13, and shall not be disclosed except pursuant to the administration of section 268.10, subdivisions 3 to 8, or pursuant to a valid court order.

Aggregate data about employers compiled from individual job orders placed with the department of jobs and training are nonpublic data as defined in section 13.02, subdivision 9, if the commissioner determines that divulging the data would result in disclosure of the identity of the employer. The general aptitude test battery and the nonverbal aptitude test battery as administered by the department are also classified as nonpublic data.

Data on individuals collected, maintained or created because an individual applies for benefits or services provided by the energy assistance and weatherization programs administered by the department of jobs and training is private data on individuals and shall not be disseminated except pursuant to section 13.05, subdivisions 3 and 4.

Data gathered by the department pursuant to the administration of sections 268.03 to 268.24 shall not be made the subject or the basis for any suit in any civil proceedings, administrative or judicial, unless the action is initiated by the department.

[For text of subd 13, see M.S.1986]

History: *1987 c 165 s 1; 1987 c 362 s 23; 1987 c 385 s 25*

268.121 WAGE REPORTING.

Beginning on April 1, 1984, each employer subject to this chapter shall provide the commissioner with a quarterly report of the wages paid to each employee of that employer covered by this chapter. The report must include the employee's name, social security number, the total wages paid to the employee, and the number of weeks in which work was performed. The report is due and must be filed at the same time as the contribution report in accordance with rules established by the commissioner for filing of quarterly contribution reports. For the purpose of this section, "wages paid" includes wages actually or constructively paid and wages overdue and delayed beyond the usual time of payment.

History: *1987 c 362 s 24; 1987 c 370 art 2 s 16; 1987 c 385 s 26*

268.15 ECONOMIC SECURITY ADMINISTRATION FUND.

[For text of subds 1 and 2, see M.S.1986]

Subd. 3. **Contingent account.** There is hereby created in the state treasury a special account, to be known as the economic security contingent account, which shall not lapse nor revert to any other fund. Such account shall consist of all money appropriated therefor by the legislature, all money in the form of interest and penalties collected pursuant to sections 268.16 and 268.18, and all money received in the form of voluntary contributions to this account and interest thereon. All money in such account shall be supplemental to all federal money that would be available to the commissioner but for the existence of this account. Moneys in this account are hereby appropriated to the commissioner and shall be available to the commissioner for such expenditures as the commissioner may deem necessary in connection with the administration of sections 268.04 to 268.24. Whenever the commissioner expends money from said contingent account for the proper and efficient administration of the Minnesota economic security law for which funds have not yet been made available by the federal government, such money so withdrawn from the contingent account shall be replaced as hereinafter provided. Upon the deposit in the economic security administration fund of money which are received in reimbursement of payments made as above provided for said contingent account, the commissioner shall certify to the state treasurer the amount of such reimbursement and thereupon the state treasurer shall transfer such amount from the economic security administration fund to said contingent account. All money in this account 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 accounts in the state treasury. The state treasurer shall be liable on the treasurer's official bond for the faithful performance of duties in connection with the economic security contingent account provided for herein. Notwithstanding anything to the contrary contained herein, on June 30 of each year, except 1982, all amounts in excess of $300,000 in this account shall be paid over to the unemployment compensation fund established under section 268.05 and administered in accordance with the provisions set forth therein.

History: *1987 c 362 s 25; 1987 c 385 s 27*

268.16 COLLECTION OF CONTRIBUTIONS.

[For text of subd 1, see M.S.1986]

Subd. 1a. **Interest on judgments.** Notwithstanding section 549.09, if judgment is or has been entered upon any past due contribution or reimbursement which has not been paid within the time specified by law for payment, the unpaid judgment shall bear interest at the rate specified in subdivision 1 until the date of payment. The rate will be effective after July 1, 1987, on any unpaid judgment balances and all new judgments docketed after that date.

Subd. 2. **Reports; delinquencies; penalties.** (a) Any employer who knowingly fails to make and submit to the department any contribution report at the time the report is required by rules prescribed by the commissioner shall pay to the department a penalty in the amount of 1-1/2 percent of contributions accrued during the period for which the report is required, for each month from and after the due date until the report is properly made and submitted to the department. In no case shall the amount of the penalty imposed hereby be less than $5 per month. The maximum penalty imposed hereby shall be $25 or the amount determined at the rate of 1-1/2 percent per month, whichever is greater.

(b) 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 rules under the authority thereof, or shall make, willfully or otherwise, an incorrect, false or fraudulent contribution report, it 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 a report, or corrected report, from the commissioner's own knowledge and from such information as the commissioner 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, on finding it substantially correct, substitute it for the commissioner's report.

(c) Any employer who fails to file the wage detail report required by section 268.121 shall pay to the department for the contingent account for each month the report is delinquent a penalty of one-half of one percent of total wages paid and wages due but not paid during the period for each month the report is delinquent. The penalty shall not be assessed if the wage detail report is properly made and filed within 30 days after a demand for the report is mailed to the employer's address of record. In no case shall the amount of the penalty, if assessed, be less than $25. Penalties due under this subdivision may be waived where good cause for late filing is found by the commissioner.

(d) Any employer who files the wage detail report required by section 268.121, but knowingly fails to include any of the required information or knowingly enters erroneous information, shall be subject to a penalty of $25 for each individual for whom the information is missing or erroneous.

(e) Any employing unit which fails to make and submit to the commissioner any report, other than a contribution report or wage detail report, as and when required by rule, shall be subject to a penalty in the sum of $50 payable to the department for the contingent account.

(f) The penalties provided for in paragraphs (a), (c), (d), and (e) are in addition to interest and any other penalties imposed by sections 268.03 to 268.24 and shall be collected as provided by section 268.161 and shall be credited to the contingent account.

Subd. 3a. **Costs.** Any employing unit which fails to make and submit reports or pay any contributions or reimbursement when due is liable to the department for any recording fees, sheriff fees, or litigation costs incurred in the collection of the amounts due or obtaining the reports.

If any check or money order, in payment of any amount due under this chapter, is not honored when presented for payment, the employing unit will be assessed a fee of $20 which is in addition to any other fees provided by this chapter. The fee shall be assessed regardless of the amount of the check or money order or the reason for nonpayment with the exception of processing errors made by a financial institution.

Costs due under this subdivision shall be paid to the department and credited to the administration fund.

[For text of subds 4 to 8, see M.S.1986]

History: *1987 c 362 s 26; 1987 c 385 s 28-30*

268.161 CONTRIBUTION AND REIMBURSEMENT LIEN.

Subdivision 1. **Lien.** (a) Any contributions, benefit overpayments, or reimbursements due under this chapter and interest and penalties imposed with respect thereto, shall become a lien upon all the property, within this state, both real and personal, of

the person liable therefor, from the date of assessment of the contribution, benefit overpayment, or reimbursement. The term "date of assessment" means the date a report was due or the payment due date of the notice of benefits charged to a reimbursable account.

(b) The lien imposed by this section is not enforceable against any purchaser, mortgagee, pledgee, holder of a uniform commercial code security interest, mechanic's lien, or judgment lien creditor, until a notice of lien has been filed by the commissioner in the office of the county recorder of the county in which the property is situated, or in the case of personal property belonging to an individual who is not a resident of the state, or which is a corporation, partnership, or other organization, in the office of the secretary of state. When the filing of the notice of lien is made in the office of the county recorder, the fee for filing and indexing shall be as prescribed in sections 272.483 and 272.484.

(c) The lien imposed on personal property by this section, even though properly filed, is not enforceable against a purchaser with respect to tangible personal property purchased at retail or as against the personal property listed as exempt in sections 550.37, 550.38 and 550.39.

(d) A notice of tax lien filed pursuant to this section has priority over any security interest arising under chapter 336, article 9, which is perfected prior in time to the lien imposed by this section, but only if:

(1) the perfected security interest secures property not in existence at the time the notice of tax lien is filed; and

(2) the property comes into existence after the 45th day following the day on which the notice of tax lien is filed, or after the secured party has actual notice or knowledge of the tax lien filing, whichever is earlier.

(e) The lien imposed by this section shall be enforceable from the time the lien arises and for ten years from the date of filing the notice of lien. A notice of lien may be renewed by the commissioner before the expiration of the ten-year period for an additional ten years. The delinquent employer must receive notice of the renewal.

(f) The lien imposed by this section shall be enforceable by levy as authorized in subdivision 8 or by judgment lien foreclosure as authorized in chapter 550.

Subd. 1a. **Limitation for homestead property.** The lien imposed by this section is a lien upon property defined as homestead property in chapter 510. The lien may be enforced only upon the sale, transfer, or conveyance of the homestead property.

[For text of subds 2 to 7, see M.S.1986]

Subd. 8. **Levy.** (a) If any contribution or reimbursement payable to the department is not paid when due, the amount may be collected by the commissioner, a duly authorized representative, or by the sheriff of any county to whom the commissioner has issued a warrant, who may levy upon all property and rights of property of the person liable for the contribution or reimbursement, (except that which is exempt from execution pursuant to section 550.37), or property on which there is a lien provided by subdivision 1. The terms "contribution or reimbursement" shall include any penalty, interest, and costs. The term "levy" includes the power of distraint and seizure by any means. Before a levy is made or warrant issued, notice and demand for payment of the amount due shall be given to the person liable for the contribution or reimbursement at least ten days prior to the levy or issuing of a warrant.

(b) Upon the commissioner issuing a warrant, the sheriff shall proceed within 60 days to levy upon the rights to property of the employer within the employer's county, except the homestead and household goods of the employer and property of the employer not liable to attachment, garnishment, or sale on any final process issued from any court under the provisions of section 550.37, and shall sell so much thereof as is required to satisfy the contribution, reimbursement, interest, and penalties, together with the commissioner's costs. The sales shall, as to their manner, be governed by the law applicable to sales of like property on execution issued against property upon a

judgment of a court of record. The proceeds of the sales, less the sheriff's costs, shall be turned over to the commissioner, who shall retain a part thereof as is required to satisfy the contribution, reimbursement, interest, penalties, and costs, and pay over any balance to the employer.

(c) If the commissioner has reason to believe that collection of the contribution or reimbursement is in jeopardy, notice and demand for immediate payment of the amount may be made by the commissioner. If the contribution or reimbursement is not paid, the commissioner may proceed to collect by levy or issue a warrant without regard to the ten-day period provided herein.

(d) In making the execution of the levy and in collecting the contribution or reimbursement due, the commissioner shall have all of the powers provided in chapter 550 and in any other law for purposes of effecting an execution against property in this state. The sale of property levied upon and the time and manner of redemption therefrom shall be as provided in chapter 550. The seal of the court, subscribed by the court administrator, as provided in section 550.04, shall not be required. The levy for collection of contributions or reimbursements may be made whether or not the commissioner has commenced a legal action for collection of the amount.

(e) Where a jeopardy assessment or any other assessment has been made by the commissioner, the property seized for collection of the contribution or reimbursement shall not be sold until any determination of liability, rate, or benefit charges has become final. No sale shall be made unless the contribution or reimbursement remain unpaid for a period of more than 30 days after the determination becomes final. Seized property may be sold at any time if:

(1) the employer consents in writing to the sale; or

(2) the commissioner determines that the property is perishable or may become greatly reduced in price or value by keeping, or that the property cannot be kept without great expense.

(f) Where a levy has been made to collect contributions or reimbursements pursuant to this subdivision and the property seized is properly included in a formal proceeding commenced under sections 524.3-401 to 524.3-505 and maintained under full supervision of the court, the property shall not be sold until the probate proceedings are completed or until the court so orders.

(g) The property seized shall be returned by the commissioner if the owner gives a surety bond equal to the appraised value of the owner's interest in the property, as determined by the commissioner, or deposits with the commissioner security in a form and amount as the commissioner deems necessary to insure payment of the liability, but not more than twice the liability.

(h) Notwithstanding any other law to the contrary, if a levy or sale pursuant to this section would irreparably injure rights in property which the court determines to be superior to rights of the state in the property, the district court may grant an injunction to prohibit the enforcement of the levy or to prohibit the sale.

(i) Any person who fails or refuses to surrender without reasonable cause any property or rights to property subject to levy upon demand by the commissioner shall be personally liable to the department in an amount equal to the value of the property or rights not so surrendered, but not exceeding the amount of contribution or reimbursement for the collection of which the levy has been made. Any amount recovered under this subdivision shall be credited against the contribution or reimbursement liability for the collection of which the levy was made. The term "person" includes an officer or employee of a corporation or a member or employee of a partnership who, as an officer, employee, or member is under a duty to surrender the property or rights to property or to discharge the obligation.

(j) Any action taken by the commissioner pursuant to this subdivision shall not constitute an election by the department to pursue a remedy to the exclusion of any other remedy.

(k) After the commissioner has seized the property of any person, that person may,

upon giving 48 hours notice to the commissioner and to the court, bring a claim for equitable relief before the district court for the release of the property to the employer upon terms and conditions as the court may deem equitable.

(l) Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made who, upon demand by the commissioner, surrenders the property or rights to property or who pays a liability under this subdivision shall be discharged from any obligation or liability to the person liable for the payment of the delinquent contribution or reimbursement with respect to the property or rights to property so surrendered or paid.

(m) Notwithstanding any other provisions of law to the contrary, the notice of any levy authorized by this section may be served by certified or registered mail or by delivery by an employee or agent of the department of jobs and training.

(n) It shall be lawful for the commissioner to release the levy upon all or part of the property or rights to property levied upon if the commissioner determines that the release will facilitate the collection of the liability, but the release shall not operate to prevent any subsequent levy. If the commissioner determines that property has been wrongfully levied upon, it shall be lawful for the commissioner to return:

(1) the specific property levied upon, at any time; or

(2) an amount of money equal to the amount of money levied upon, at any time before the expiration of nine months from the date of levy.

(o) Notwithstanding section 52.12, a levy by the commissioner made pursuant to the provisions of this section upon an employer's funds on deposit in a financial institution located in this state, shall have priority over any unexercised right of setoff of the financial institution to apply the levied funds toward the balance of an outstanding loan or loans owed by the employer to the financial institution. A claim by the financial institution that it exercised its right to setoff prior to the levy by the commissioner must be substantiated by evidence of the date of the setoff, and shall be verified by the sworn statement of a responsible corporate officer of the financial institution. Furthermore, for purposes of determining the priority of any levy made under this section, the levy shall be treated as if it were an execution made pursuant to chapter 550.

Subd. 9. **Personal liability.** Any officer, director, or any employee having 20 percent ownership interest of a corporation which is an employer under sections 268.03 to 268.24 who has control of or supervision over the filing of and responsibility for filing contribution reports or of making payment of contributions under these sections, and who willfully fails to file the reports or to make payments as required, shall be personally liable for contributions or reimbursement, including interest, penalties, and costs in the event the corporation does not pay to the department those amounts for which the employer is liable.

Any personal representative of the estate of a decedent or fiduciary who voluntarily distributes the assets filed therein without reserving a sufficient amount to pay the contributions, interest, and penalties due pursuant to this chapter shall be personally liable for the deficiency.

The personal liability of any person as provided herein shall survive dissolution, reorganization, bankruptcy, receivership, or assignment for the benefit of creditors. For the purposes of this subdivision, all wages paid by the corporation shall be considered earned from the person determined to be personally liable.

An official designated by the commissioner shall make an initial determination as to the personal liability under this section. The determination shall be final unless the person found to be personally liable shall within 30 days after mailing of notice of determination to the person's last known address files a written appeal. Proceedings on the appeal shall be conducted in the same manner as an appeal from a determination of employer liability under section 268.12, subdivision 13.

History: *1987 c 385 s 31-34*

268.162 LIABILITY OF SUCCESSOR.

Subdivision 1. **Acquisition of organization, trade, or business.** Any individual or organization, whether or not an employing unit, which acquires all or part of the organization, trade, or business or all or part of the assets thereof from an employer, is jointly and severally liable, in an amount not to exceed the reasonable value of that part of the organization, trade, or business or assets acquired, for the contributions due and unpaid by the employer, and the amount of liability shall, in addition, be a lien against the property or assets so acquired which shall be prior to all other unrecorded liens.

Subd. 2. **Reasonable value.** An official, designated by the commissioner, upon the official's own motion or upon application of the potential successor, shall determine the reasonable value of the organization, trade, or business or assets acquired by the successor based on available information. The determination shall be final unless the successor, within 30 days after the mailing of notice of the determination to the successor's last known address, files a written appeal from it. Any appeals of a determination under this subdivision shall be conducted in the same manner as an appeal under section 268.12, subdivision 13.

Subd. 3. **Statement of amount due.** Prior to the date of acquisition, the commissioner shall furnish the potential successor with a written statement of the predecessor's contributions due and unpaid, on record as of the date of issuance, only upon the written request of the potential successor and the written release of the predecessor. No release is required after the date of acquisition.

Subd. 4. **Additional remedy.** The remedy provided by this section is in addition to all other existing remedies against the employer or a successor and is not an election by the department to pursue this remedy to the exclusion of any other remedy.

History: *1987 c 385 s 35*

268.163 LIABILITY OF THIRD PARTIES TO ASSURE PAYMENT OF AMOUNTS DUE FROM CONTRACTORS, SUBCONTRACTORS, AND EMPLOYEE LEASING FIRMS.

Subdivision 1. **Contractors.** A contractor, who is or becomes an employer under this chapter, who contracts with any subcontractor, who is or becomes an employer under this chapter, is directly liable for the payment of all the contributions, interest, penalties, and collection costs which are due or become due from the subcontractor with respect to wages paid for employment on the contract, unless the contractor requires the subcontractor to provide a good and sufficient bond guaranteeing the payment of all contributions, interest, penalties, and collection costs which may become due. The words "contractor" and "subcontractor" include individuals, partnerships, firms, or corporations, or other association of persons engaged in the construction industry.

Subd. 2. **Employee leasing firms.** A person whose workforce consists of 50 percent or more of workers provided by employee leasing firms, is directly liable for the payment of all the contributions, penalties, interest, and collection costs which are due or become due from wages paid for employment on the contract, unless the contract requires the employee leasing firm to provide a good and sufficient bond guaranteeing the payment of all contributions, penalties, interest, and collection costs which may become due. "Employee leasing firm" means an employing unit that provides its employees to other firms, persons, and employing units without severing its employer-employee relationship with the worker for the services performed for the lessee.

Subd. 3. **Determination of liability.** An official designated by the commissioner shall make an initial determination as to the liability under this section. The determination shall be final unless the contractor or person found to be liable files a written appeal within 30 days after mailing of notice of determination to the person's last known address. Proceedings on the appeal shall be conducted in the same manner as an appeal from a determination of employer liability under section 268.12, subdivision 13.

History: *1987 c 385 s 36*

268.164 UNEMPLOYMENT TAX CLEARANCES; ISSUANCES OF LICENSES.

Subdivision 1. **Unemployment clearance required.** The state or a political subdivision of the state may not issue, transfer, or renew a license for the conduct of any profession, trade, or business, if the commissioner notifies the licensing authority that the applicant owes the state delinquent contributions, reimbursements, or benefit overpayments. The commissioner may not notify the licensing authority unless the applicant owes $500 or more to the unemployment compensation fund. A licensing authority that has received a notice from the commissioner may issue, transfer, or renew the applicant's license only if (a) the commissioner issues an unemployment tax clearance certificate; and (b) the commissioner or the applicant forwards a copy of the clearance to the licensing authority.

Subd. 2. **Issuance of clearance.** The commissioner may issue an unemployment tax clearance certificate only if (a) the applicant does not owe the state any delinquent contributions, reimbursements, or benefit overpayments; or (b) the applicant has entered into a payment agreement to liquidate the delinquent contributions, reimbursements, or benefit overpayments and is current with all the terms of that payment agreement.

For the purposes of this section, "applicant" means: (a) an individual if the license is issued to or in the name of an individual or the corporation or partnership if the license is issued to or in the name of a corporation or partnership; or (b) an officer of a corporation or a member of a partnership who is liable for the delinquent contributions, reimbursements, or benefit overpayments.

Subd. 3. **Notice and right to hearing.** At least 30 days before the commissioner notifies a licensing authority pursuant to subdivision 1, a notice and demand for payment of the amount due shall be given to the applicant. If the applicant disputes the amount due, the applicant must request a hearing in writing within 30 days after the mailing of the notice and demand for payment to the applicant's last known address. Proceedings on the appeal of the amount due shall be conducted in the same manner as an appeal from a determination of employer liability under section 268.12, subdivision 13.

Subd. 4. **Licensing authority; duties.** Upon request of the commissioner, the licensing authority must provide the commissioner with a list of all applicants, including the name, address, business name and address, social security number, and business identification number of each applicant. The commissioner may request from a licensing authority a list of the applicants no more than once each calendar year. Notwithstanding section 268.12, the commissioner may release information necessary to accomplish the purpose of this section.

Subd. 5. **Other remedies.** Any action taken by the commissioner pursuant to this section is not an election by the commissioner to pursue a remedy to the exclusion of any other remedy.

History: *1987 c 385 s 37*

268.165 WITHHOLDING OF BENEFITS FOR UNPAID CONTRIBUTIONS.

Subdivision 1. **Withholding of unemployment benefits.** Notwithstanding section 268.17, the commissioner may deduct and withhold up to 50 percent of each unemployment compensation payment payable to an individual under this chapter for unpaid contributions, interest, penalties, and costs which the individual has been determined liable to pay.

Subd. 2. **Effect of payments.** Any amounts deducted and withheld under this section shall be treated as if paid to the individual as benefits and paid by the individual to the department in satisfaction of the individual's delinquent contributions, interest, penalties, and costs.

Subd. 3. **Priority of withholding.** Any amounts deducted and withheld under this section have priority over any other levy, garnishment, attachment, execution, or setoff, except for the recoupment of benefit overpayments allowed under section 268.18.

History: *1987 c 385 s 38*

268.166 CANCELLATION OF DELINQUENT CONTRIBUTIONS.

Notwithstanding section 10.12, the commissioner may cancel as uncollectible any contributions, reimbursements, penalties, or the interest or costs thereon, which remain unpaid six years after the amounts have been determined by the commissioner to be due and payable. This section does not prohibit the commissioner from collecting any amounts secured by a notice of lien or a judgment which are older than six years.

History: *1987 c 385 s 39*

268.18 RETURN OF BENEFITS; OFFENSES.

Subdivision 1. **Erroneous payments.** Any claimant for benefits who, by reason of the claimant's own mistake or through the error of any individual engaged in the administration of sections 268.03 to 268.24 or because of a determination or redetermination issued pursuant to section 268.10, subdivision 2, has received any sum as benefits to which the claimant was not entitled under these sections, shall promptly return such benefits in cash to the nearest office of the Minnesota department of jobs and training. If such claimant fails to return such benefits, the department of jobs and training shall, as soon as it discovers such erroneous payment, determine the amount thereof and notify said individual to return the same. Unless the claimant files a written appeal with the department of jobs and training within 15 days after the mailing of the notice of determination to the claimant's last known address or personal delivery of the notice, the determination shall become final. If the claimant files an appeal with the department in writing within the time aforesaid the matter shall be set for hearing before a referee of the department and heard as other benefit matters are heard in accordance with section 268.10 with the same rights of review as outlined for benefit cases in that section. The commissioner of the department of jobs and training is hereby authorized to deduct from any future benefits payable to the claimant under these sections in either the current or any subsequent benefit year an amount equivalent to the overpayment determined, except that no single deduction shall exceed 50 percent of the amount of the payment from which the deduction is made, or the overpayment may be collected the same as contributions or reimbursements under section 268.161. If a claimant has been overpaid benefits under the law of another state due to error and that state certifies to the department the facts involved and that the individual is liable under its law to repay the benefits and requests the department to recover the overpayment, the commissioner is authorized to deduct from future benefits payable to the claimant in either the current or any subsequent benefit year an amount equivalent to the amount of overpayment determined by that state, except that no single deduction shall exceed 50 percent of the amount of the payment from which the deduction is made. Benefits paid for weeks more than three years prior to the discovery of error are not erroneous payments.

Subd. 2. **Fraud.** Any claimant who files a claim for or receives benefits by knowingly and willfully misrepresenting or misstating any material fact or by knowingly and willfully failing to disclose any material fact which would make the claimant ineligible for benefits under sections 268.03 to 268.24 is guilty of fraud. After the discovery of facts by the commissioner indicating fraud in claiming or obtaining benefits under sections 268.03 to 268.24, the commissioner is hereby authorized to make a determination that the claimant was ineligible for each week with reference to which benefits were claimed or obtained by fraud for the amount as was in excess of what the claimant would have been entitled to had the claimant not made the fraudulent statements or failed to disclose any material facts. The commissioner also may disqualify an individual from benefits for one to 52 weeks in which the claimant is otherwise eligible for benefits following the week in which the fraud was determined. A disqualification imposed for fraud shall not be removed by subsequent insured work or the expiration of a benefit year but shall not apply to any week more than 104 weeks after the week in which the fraud was determined. The claimant shall promptly repay in cash to the department of jobs and training any benefits fraudulently obtained. Unless the claimant files a written appeal with the department of jobs and training

within 15 days after the mailing of the notice of determination to the claimant's last known address or personal delivery of the notice, the determination shall become final. If the claimant appeals from the determination within the time above specified the matter shall be referred to a referee for a hearing as in other benefit cases and thereafter the procedure for review shall be the same as set forth in section 268.10. The commissioner is hereby authorized to deduct from future benefits payable to the claimant in either the current or any subsequent benefit year an amount equivalent to the amount of overpayment determined disregarding the 50 percent limitation provided for in subdivision 1 or the overpayment may be collected the same as contributions or reimbursements under section 268.161. If a claimant has been overpaid benefits under the law of another state due to fraud and that state certifies to the department the facts involved and that the individual is liable to repay the benefits and requests the department to recover the overpayment, the commissioner is authorized to deduct from future benefits payable to the claimant in either the current or any subsequent benefit year an amount equivalent to the amount of overpayment determined by that state disregarding the 50 percent limitation provided for in subdivision 1. A determination of fraud may be made at any time.

Subd. 2a. **Offset of state and federal unemployment 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 or reciprocal agreements with the United States Secretary of Labor, whereby, overpayments of unemployment benefits as determined under applicable federal law, with respect to benefits or allowances for unemployment provided under a federal program administered by this state under an agreement with the United States Secretary of Labor, may be recovered by offset from unemployment benefits otherwise payable under this chapter or any such federal program. As provided by reciprocal agreement, benefit overpayments as determined under subdivisions 1 and 2 may be recovered by offset from benefits or allowances for unemployment otherwise payable under a federal program administered by this state.

Subd. 3. **False representations; concealment of facts; penalty.** (a) Whoever obtains, or attempts to obtain, or aids or abets any person to obtain by means of a willfully false statement or representation, by intentional concealment of a material fact, or by impersonation or other fraudulent device, benefits to which the person is not entitled or benefits greater than that to which the person is entitled under this chapter, or under the employment security law of any state or of the federal government or of a foreign government, either personally or for any other person, shall be guilty of theft and shall be sentenced pursuant to section 609.52, subdivision 3, clauses (2), (3), and (7). The amount of the benefits incorrectly paid shall be the difference between the amount of benefits actually received and the amount which the person would have been entitled under state and federal law had the department been informed of all material facts.

(b) Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining a subject employer or to avoid or reduce any contribution or other payment required from an employing unit under this chapter or under the employment security law of any state or of the federal government, or who willfully fails or refuses to make any such contributions or other payment at the time required shall be guilty of a gross misdemeanor unless the benefit underpayment, contribution, or other payment involved exceeds $250, in which event the person is guilty of a felony.

(c) Any person who willfully fails to produce or permit the inspection or copying of books, papers, records, or memoranda as required or when requested under section 268.12, subdivision 8, or to furnish any required reports other than contribution reports shall be guilty of a gross misdemeanor.

Subd. 4. **Cancellation of benefits paid through error or fraud.** When benefits paid through error or fraud are not repaid or deducted from subsequent benefit amounts as provided for in subdivisions 1 and 2 within six years after the date of the determination

that benefits were paid through error or fraud irrespective of subsequent partial recovery dates, the commissioner shall cancel the overpayment balance, and no administrative or legal proceedings shall be instituted under the Minnesota economic security law to enforce collection of those amounts. The commissioner may cancel at any time benefits paid through error or fraud which the commissioner determines are uncollectible due to death or bankruptcy.

Subd. 5. **Erroneous payments; charging.** The amount of benefits paid and subsequently determined to have been paid: (a) erroneously by the claimant's own mistake; (b) through error by any individual engaged in the administration of sections 268.03 to 268.24; or (c) based upon the claimant's fraudulent statements or failure to disclose any material facts, shall not be charged to or will be removed from an employer's experience rating account for all subsequent rate computations which have not become final under section 268.06, and shall not be charged to employers electing to reimburse the unemployment fund in accordance with section 268.06.

[For text of subd 6, see M.S.1986]

History: *1987 c 385 s 40-45*

268.24 [Repealed, 1987 c 385 s 50]

JUVENILE JUSTICE AND YOUTH INTERVENTION

268.29 JUVENILE JUSTICE PROGRAM.

The governor shall designate the department of jobs and training as the sole agency responsible for supervising the preparation and administration of the state plan for juvenile justice required by the Juvenile Justice and Delinquency Prevention Act of 1974, as amended.

The governor shall designate the juvenile justice advisory committee as the supervisory board for the department of jobs and training with respect to preparation and administration of the state plan and award of grants.

The governor shall appoint members to the juvenile justice advisory committee in accordance with the membership requirements of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended.

History: *1987 c 312 art 1 s 22*

268.30 GRANTS-IN-AID TO YOUTH INTERVENTION PROGRAMS.

Subdivision 1. **Grants.** The commissioner may make grants to nonprofit agencies administering youth intervention programs in communities where the programs are or may be established.

"Youth intervention program" means a nonresidential community-based program providing advocacy, education, counseling, and referral services to youth and their families experiencing personal, familial, school, legal, or chemical problems with the goal of resolving the present problems and preventing the occurrence of the problems in the future.

Subd. 2. **Applications.** Applications for a grant-in-aid shall be made by the administering agency to the commissioner. The grant-in-aid is contingent upon the agency having obtained from the community in which the youth intervention program is established local matching money two times the amount of the grant that is sought.

The commissioner shall provide by rule the application form, procedures for making application form, criteria for review of the application, and kinds of contributions in addition to cash that qualify as local matching money. No grant to any agency shall exceed $25,000.

History: *1987 c 312 art 1 s 23*

268.36 REPORT TO THE LEGISLATURE.

The commissioner, after consultation with the local service units and providers of employment and training services, shall evaluate the effectiveness of youth employment programs, taking into account the extent of all programs which are providing summer employment opportunities for youth, and shall report to the legislature no later than January 15 of each even-numbered year with an evaluation of this and other programs and any recommendations for improvements.

History: *1987 c 403 art 2 s 131*

268.37 COORDINATION OF FEDERAL AND STATE RESIDENTIAL WEATHERIZATION PROGRAMS.

[For text of subds 1 and 2, see M.S.1986]

Subd. 3. The commissioner shall promulgate emergency rules as necessary to administer the grants program and shall promulgate permanent rules by July 1, 1980. The rules shall describe: (a) procedures for the administration of grants, (b) data to be reported by grant recipients, and (c) other matters the commissioner finds necessary for the proper administration of the grant program including compliance with relevant federal regulations. The commissioner must require that a rental unit weatherized under this section be rented to a household meeting the income limits of the program for 24 of the 36 months after weatherization is complete. In applying this restriction to multiunit buildings weatherized under this section, the commissioner shall require that occupancy continue to reflect the proportion of eligible households in the building at the time of weatherization. The commissioner shall report by February 1, 1988, to the chair of the health and human services divisions of the house appropriations and senate finance committees all steps taken to implement the requirement restricting rental of weatherized units to eligible households.

[For text of subds 4 and 5, see M.S.1986]

History: *1987 c 403 art 2 s 132*

268.38 TEMPORARY HOUSING DEMONSTRATION PROGRAM.

[For text of subds 1 and 2, see M.S.1986]

Subd. 3. **Eligible recipients.** A housing and redevelopment authority established under section 469.003 or a community action agency recognized under section 268.53 is eligible for assistance under the program. In addition, a partnership, joint venture, corporation, or association that meets the following requirements is also eligible:

(1) it is established for a purpose not involving pecuniary gain to its members, partners, or shareholders;

(2) it does not pay dividends or other pecuniary remuneration, directly or indirectly, to its members, partners, or shareholders; and

(3) in the case of a private, nonprofit corporation, it is established under and in compliance with chapter 317.

[For text of subds 4 to 12, see M.S.1986]

History: *1987 c 291 s 204*

268.53 COMMUNITY ACTION AGENCIES.

Subdivision 1. **In general.** A community action agency is a political subdivision of the state, a combination of political subdivisions, a public agency, or a private nonprofit agency which has the authority under its applicable charter or laws to receive funds under section 268.52 to support community action programs as described in section 268.54 and which was designated as an eligible entity under the Community Services Block Grant Act, Public Law Number 97-35, section 673(1), 95 Stat. 357, 512

(1981), as amended by, Act of October 30, 1984, Public Law Number 98-558, section 202, 98 Stat. 2878, 2884 (1984). For purposes of this subdivision, "eligible entity" also means any community action agency which qualified under all federal and state regulations applicable during the period from 1981 to September 30, 1984.

[For text of subds 1a to 7, see M.S.1986]

History: *1987 c 403 art 2 s 133*

268.65 APPROVED TRAINING.

[For text of subds 1 to 4, see M.S.1986]

Subd. 5. **Employer penalty.** An employer who enters into an on-the-job training agreement with the commissioner and who terminates the trainee in a manner other than provided in this subdivision shall repay 70 percent of the amount of unemployment insurance benefits paid to the individual while in the training program with that employer if the termination occurs during the training period. If the termination occurs during the 12-month period of guaranteed employment, the employer receives a proportional reduction in the amount it must repay. Penalties assessed under this subdivision are in addition to any other penalties provided for by this chapter and are subject to the same collection procedures that apply to past due contributions under this chapter. Penalties under this subdivision shall be paid to the commissioner and credited to the job search and relocation fund. When it is determined to be in the best interest of the state, the commissioner may waive all or part of the employer penalty. The commissioner shall use any money collected under this paragraph for job search and relocation expenses of structurally unemployed workers participating in the training program.

History: *1987 c 385 s 46*

268.673 MINNESOTA EMPLOYMENT AND ECONOMIC DEVELOPMENT COORDINATOR.

[For text of subds 3 and 4, see M.S.1986]

Subd. 4a. **Contracts with service providers.** The commissioner shall contract directly with a certified local service provider to deliver wage subsidies if (1) each county served by the provider agrees to the contract and knows the amount of wage subsidy money allocated to the county under section 268.6751, and (2) the provider agrees to meet regularly with each county being served.

Subd. 5. **Report.** Each entity delivering wage subsidies shall report to the commissioner and the coordinator on a quarterly basis:

(1) the number of persons placed in private sector jobs, in temporary public sector jobs, or in other services;

(2) the outcome for each participant placed in a private sector job, in a temporary public sector job, or in another service;

(3) the number and type of employers employing persons under the program;

(4) the amount of money spent in each eligible local service unit for wages for each type of employment and each type of other expense;

(5) the age, educational experience, family status, gender, priority group status, race, and work experience of each person in the program;

(6) the amount of wages received by persons while in the program and 60 days after completing the program;

(7) for each classification of persons described in clause (5), the outcome of the wage subsidy placement, including length of time employed; nature of employment, whether private sector, temporary public sector, or other service; and the hourly wages; and

(8) any other information requested by the commissioner. Each report must include cumulative information, as well as information for each quarter.

Data collected on individuals under this subdivision are private data on individuals as defined in section 13.02, subdivision 12, except that summary data may be provided under section 13.05, subdivision 7.

[For text of subd 6, see M.S.1986]

History: *1987 c 403 art 2 s 134,135*

268.6751 ALLOCATION OF WAGE SUBSIDY MONEY.

Subdivision 1. **Wage subsidies.** Wage subsidy money must be allocated to eligible local service units in the following manner:

(a) The commissioner shall allocate 87.5 percent of the funds available for allocation to eligible local service units for wage subsidy programs as follows: the proportion of the wage subsidy money available to each eligible local service unit must be based on the number of unemployed persons in the eligible local service unit for the most recent six-month period and the number of work readiness assistance cases and aid to families with dependent children cases in the eligible local service unit for the most recent six-month period.

(b) Five percent of the money available for wage subsidy programs must be allocated at the discretion of the commissioner.

(c) Seven and one-half percent of the money available for wage subsidy programs must be allocated at the discretion of the commissioner to provide jobs for residents of federally recognized Indian reservations.

(d) By December 31 of each fiscal year, providers and local service units receiving wage subsidy money shall report to the commissioner on the use of allocated funds. The commissioner shall reallocate uncommitted funds for each fiscal year according to the formula in paragraph (a).

Subd. 2. **Emergency wage subsidies.** (a) The commissioner shall monitor local and statewide unemployment rates. Upon determining that an economic emergency exists in one or more local service units, the commissioner may implement an emergency wage subsidy program and recommend to the governor to pursue ways to increase the wage subsidy money available to local service units in the affected area or areas from sources other than the appropriation allocated under subdivision 1.

(b) When the unemployment rate for the state of Minnesota equals or exceeds nine percent, the commissioner shall implement a statewide emergency wage subsidy program and shall recommend to the governor to pursue ways to increase money available for wage subsidies.

History: *1987 c 403 art 2 s 136*

268.676 ALLOCATION AMONG APPLICANTS; EMPLOYERS.

Subdivision 1. **Among job applicants.** At least 80 percent of funds allocated among eligible job applicants statewide must be allocated to:

(1) applicants living in households with no other income source;

(2) applicants whose incomes and resources are less than the standards for eligibility for general assistance or work readiness;

(3) applicants who are eligible for aid to families with dependent children; and

(4) applicants who live in a farm household who demonstrate severe household financial need.

Subd. 2. **Among employers.** Allocation of funds among eligible employers within an eligible local service unit shall give priority to funding private sector jobs to the extent that eligible businesses apply for funds. If possible, no more than 25 percent of the statewide funds available for wages may be allocated for temporary jobs with eligible government and nonprofit agencies, or for temporary community investment

program jobs with eligible government agencies during the biennium. This subdivision does not apply to jobs for residents of federally recognized Indian reservations.

History: *1987 c 403 art 2 s 137*

268.677 USE OF FUNDS.

Subdivision 1. To the extent allowable under federal and state law, wage subsidy money must be pooled and used in combination with money from other employment and training services or income maintenance and support services. At least 75 percent of the money appropriated for wage subsidies must be used to pay wages for eligible job applicants. For each eligible job applicant employed, the maximum state contribution from any combination of public assistance grant diversion and employment and training services governed under this chapter, including wage subsidies, is $4 per hour for wages and $1 per hour for fringe benefits. The use of wage subsidies is limited as follows:

(a) For each eligible job applicant placed in private or nonprofit employment, the state may subsidize wages for a maximum of 1,040 hours over a period of 26 weeks. Employers are encouraged to use money from other sources to provide increased wages to applicants they employ.

(b) For each eligible job applicant participating in a job training program and placed in private sector employment, the state may subsidize wages for a maximum of 1,040 hours over a period of 52 weeks.

(c) For each eligible job applicant placed in a community investment program job, the state may provide wage subsidies for a maximum of 780 hours over a maximum of 26 weeks. For an individual placed in a community investment program job, the county share of the wage subsidy shall be 25 percent. Counties may use money from sources other than public assistance and wage subsidies, including private grants, contributions from nonprofit corporations and other units of government, and other state money, to increase the wages or hours of persons employed in community investment programs.

(d) Notwithstanding the limitations of paragraphs (a) and (b), money may be used to provide a state contribution for wages and fringe benefits in private sector jobs for eligible applicants who had previously held temporary jobs with eligible government and nonprofit agencies or who had previously held community investment program jobs for which a state contribution had been made, and who are among the priority groups established in section 268.676, subdivision 1. The use of money under this paragraph shall be for a maximum of 1,040 hours over a maximum period of 26 weeks per job applicant.

[For text of subds 2 and 3, see M.S.1986]

History: *1987 c 403 art 2 s 138*

268.678 ELIGIBLE LOCAL SERVICE UNITS; POWERS AND DUTIES.

Subdivision 1. **General powers.** Eligible local service units have the powers and duties given in this section and any additional duties given by the commissioner.

[For text of subd 3, see M.S.1986]

Subd. 4. **Contracts.** Each eligible local service unit that has not agreed to a contract under section 268.673, subdivision 4a, may enter into contracts with certified service providers to deliver wage subsidies.

[For text of subds 5 and 6, see M.S.1986]

History: *1987 c 403 art 2 s 139,140*

268.681 BUSINESS EMPLOYMENT.

[For text of subd 1, see M.S.1986]

Subd. 2. **Priorities.** (a) In allocating funds among eligible businesses, the eligible local service unit or its contractor shall give priority to:

(1) businesses engaged in manufacturing;

(2) nonretail businesses that are small businesses as defined in section 645.445; and

(3) businesses that export products outside the state.

(b) In addition to paragraph (a), an eligible local service unit must give priority to businesses that:

(1) have a high potential for growth and long-term job creation;

(2) are labor intensive;

(3) make high use of local and Minnesota resources;

(4) are under ownership of women and minorities;

(5) make high use of new technology;

(6) produce energy conserving materials or services or are involved in development of renewable sources of energy; and

(7) have their primary place of business in Minnesota.

Subd. 3. **Payback.** A business receiving wage subsidies shall repay 70 percent of the amount initially received for each eligible job applicant employed, if the employee does not continue in the employment of the business beyond the six-month subsidized period. If the employee continues in the employment of the business for one year or longer after the six-month subsidized period, the business need not repay any of the funds received for that employee's wages. If the employee continues in the employment of the business for a period of less than one year after the expiration of the six-month subsidized period, the business shall receive a proportional reduction in the amount it must repay. If an employer dismisses an employee for good cause and works in good faith with the eligible local service unit or its contractor to employ and train another person referred by the eligible local service unit or its contractor, the payback formula shall apply as if the original person had continued in employment.

A repayment schedule shall be negotiated and agreed to by the eligible local service unit and the business prior to the disbursement of the funds and is subject to renegotiation. The eligible local service unit shall forward 25 percent of the payments received under this subdivision to the commissioner on a monthly basis and shall retain the remaining 75 percent for local program expenditures. Notwithstanding section 268.677, subdivision 2, the local service unit may use up to 20 percent of its share of the funds returned under this subdivision for any administrative costs associated with the collection of the funds under this subdivision. At least 80 percent of the local service unit's share of the funds returned under this subdivision must be used as provided in section 268.677. The commissioner shall deposit payments forwarded to the commissioner under this subdivision in the Minnesota wage subsidy account created by subdivision 4.

[For text of subd 4, see M.S.1986]

History: *1987 c 403 art 2 s 141,142*

268.85 SERVICE PRIORITIES.

[For text of subd 1, see M.S.1986]

Subd. 2. **Order of priority.** (a) The priority for services to be provided is:

(1) permanent, unsubsidized, full-time private or nonprofit sector employment and, where possible, in conjunction with targeted jobs tax credits as defined at United States Code, title 26, section 44B, as amended by Public Law Number 98-369, with highest priority to employment with paid medical benefits;

(2) permanent, subsidized, full-time private sector employment;

(3) permanent, subsidized, full-time nonprofit sector employment;

(4) training;

(5) relocation, except that relocation is considered only when a client can find affordable housing near the new location; and

(6) part-time, subsidized, nonprofit, or public employment with continued employment assistance.

(b) Individuals receiving any of the priority services in paragraph (a) must be provided with child care, transportation, or other support services as necessary and in relation to their eligibility and the availability of funds.

(c) In delivering employment and training services, local service units shall distribute their available resources in a manner that provides greater incentives to clients in permanent private or nonprofit sector employment than in public sector jobs.

History: *1987 c 403 art 3 s 51*

268.86 EMPLOYMENT AND TRAINING PROGRAMS.

Subdivision 1. [Repealed, 1987 c 403 art 3 s 98]

Subd. 2. **Interagency agreements.** By October 1, 1987, the commissioner and the commissioner of human services shall enter into a written contract for the design, delivery, and administration of employment and training services for applicants for or recipients of food stamps or aid to families with dependent children and work readiness, including AFDC employment and training programs, grant diversion, and supported work. The contract must be approved by the coordinator and must address:

(1) specific roles and responsibilities of each department;

(2) assignment and supervision of staff for interagency activities including any necessary interagency employee mobility agreements under the administrative procedures of the department of employee relations;

(3) mechanisms for determining the conditions under which individuals participate in services, their rights and responsibilities while participating, and the standards by which the services must be administered;

(4) procedures for providing technical assistance to local service units and employment and training service providers;

(5) access to appropriate staff for ongoing development and interpretation of policy, rules, and program standards;

(6) procedures for reimbursing appropriate agencies for administrative expenses; and

(7) procedures for accessing available federal funds.

Subd. 3. [Repealed, 1987 c 403 art 3 s 98]

Subd. 4. [Repealed, 1987 c 403 art 3 s 98]

Subd. 5. [Repealed, 1987 c 403 art 3 s 98]

[For text of subds 6 to 9, see M.S.1986]

History: *1987 c 403 art 3 s 53*

NOTE: Subdivisions 1 and 4 were also amended by Laws 1987, chapter 403, article 3, sections 52 and 54, respectively, to read as follows:

"Subdivision 1. **Discretionary programs.** The commissioner may develop discretionary employment and training programs to assist unemployed and underemployed persons to become economically independent. The programs may include on-the-job training, wage subsidies, classroom training, relocation expenses, temporary cash assistance for persons in training, and support services."

"Subd. 4. **Employability plans.** The commissioner shall require that a public assistance recipient's employment status is appraised within 30 days and that a written employability plan is prepared for appropriate public assistance recipients in consultation with the recipients. The plan must take into account the level of skill and education of the recipient, as measured against the existing market, the length of time the recipient has been absent from the work force, and the recipient's financial responsibility to a family, if any. The plan must be designed to help the recipient obtain suitable employment, or training and work skills necessary to secure suitable employment, and may include an arrangement with another service provider or agency for specialized employment, education, training, or support services. A copy of the plan must be given to the recipient at the time it is prepared; an additional copy must be given to the local agency for its files."

268.871 LOCAL DELIVERY.

Subdivision 1. **Responsibility and certification.** Unless prohibited by federal law or otherwise determined by state law, a local service unit is responsible for the delivery of employment and training services. After February 1, 1988, employment and training services must be delivered by certified employment and training service providers.

Subd. 2. **Contracting preference.** In contracting, a local service unit must give preference, whenever possible, to certified employment and training service providers that can effectively coordinate federal, state, and local employment and training services; that can maximize use of available federal and other nonstate funds; and that have demonstrated the ability to serve public assistance clients as well as other unemployed people.

[For text of subds 3 and 4, see M.S.1986]

Subd. 5. **Reports.** Each employment and training service provider under contract with a local service unit to deliver employment and training services must submit an annual report by March 1 to the local service unit. The report must specify:

(1) the types of services provided;

(2) the number of priority and nonpriority AFDC recipients served, the number of work readiness assistance recipients served, and the number of other clients served;

(3) how resources will be prioritized to serve priority and nonpriority public assistance recipients and other clients; and

(4) the manner in which state employment and training funds and programs are being coordinated with federal and local employment and training funds and programs.

History: *1987 c 403 art 3 s 55-57; 1987 c 403 art 2 s 143*

268.88 LOCAL SERVICE UNIT PLANS.

(a) Local service units shall prepare and submit to the commissioner by April 15 of each year an annual plan for the subsequent calendar year. The commissioner shall notify each local service unit by May 1 of each year if its plan has been approved or disapproved. The plan must include:

(1) a statement of objectives for the employment and training services the local service unit administers;

(2) the establishment of public assistance caseload reduction goals and the strategies and programs that will be used to achieve these goals;

(3) a statement of whether the goals from the preceding year were met and an explanation if the local service unit failed to meet the goals;

(4) the amount proposed to be allocated to each employment and training service;

(5) the proposed types of employment and training services the local service unit plans to utilize;

(6) a description of how the local service unit will use funds provided under section 256.736 to meet the requirements of that section. The description must include what services will be provided, number of clients served, per service expenditures, and projected outcomes;

(7) a report on the use of wage subsidies, grant diversions, community investment programs, sliding fee day care, and other services administered under this chapter;

(8) an annual update of the community investment program plan according to standards established by the commissioner;

(9) a performance review of the employment and training service providers delivering employment and training services for the local service unit; and

(10) a copy of any contract between the local service unit and an employment and training service provider including expected outcomes and service levels for public assistance clients.

(b) In counties with a city of the first class, the county and the city shall develop and submit a joint plan. The plan may not be submitted until agreed to by both the city and the county. The plan must provide for the direct allocation of employment and training money to the city and the county unless waived by either. If the county and the city cannot concur on a plan, the commissioner shall resolve their dispute.

(c) The commissioner may withhold the distribution of employment and training money from a local service unit that does not submit a plan to the commissioner by the date set by this section, and shall withhold the distribution of employment and training money from a local service unit whose plan has been disapproved by the commissioner until an acceptable amended plan has been submitted.

(d) For 1987, local service unit plans must be submitted by October 1, 1987. The plan must include the implementation plan for aid to families with dependent children employment and training services as required under Laws 1987, chapter 403, article 3, section 91.

History: *1987 c 403 art 2 s 144; art 3 s 58*

268.89 JOBS TRAINING PARTNERSHIP ACT; ADMINISTRATION.

[For text of subd 1, see M.S.1986]

Subd. 2. **Biennial plan.** The commissioner shall recommend to the governor the priorities, performance standards, and special projects.

[For text of subd 3, see M.S.1986]

History: *1987 c 403 art 2 s 145*

268.91 CHILD CARE FUND.

Subdivision 1. **Definitions.** For the purposes of this section the following terms have the meanings given.

(a) "Child care services" means child care provided in family day care homes, group day care homes, nursery schools, day nurseries, child day care centers, play groups, head start, and parent cooperatives, or in the child's home.

(b) "Child" means a person 12 years old or younger, or a person age 13 or 14 who is handicapped, as defined in section 120.03.

(c) "Commissioner" means the commissioner of human services.

(d) "Child care" means the care of a child by someone other than a parent or legal guardian in or outside the child's own home for gain or otherwise, on a regular basis, for any part of a 24-hour day.

(e) "County board" means the board of county commissioners in each county.

(f) "Education program" means remedial or basic education or English as a second language instruction, high school education, a program leading to a general equivalency diploma, and post-secondary education excluding post-baccalaureate programs.

(g) "Employment program" means employment of recipients financially eligible for the child care sliding fee program, vocational assessment, and job readiness and job search activities.

(h) "Human services board" means a board established under section 402.02, Laws 1974, chapter 293, or Laws 1976, chapter 340.

(i) "Provider" means the child care license holder or the legal nonlicensed caregiver who operates a family day care home, a group family day care home, a day care center, a nursery school, or a day nursery, or who functions in the child's home.

(j) "Post-secondary educational systems" means the University of Minnesota board of regents, the state university board, the state board for community colleges, and the state board of vocational technical education.

(k) "AFDC priority groups" means the recipients defined in section 256.736, subdivision 2a.

(l) "AFDC" means aid to families with dependent children.

Subd. 2. **Duties of commissioner.** The commissioner shall develop standards for county and human services boards, and post-secondary educational systems, to provide child care services to enable eligible families to participate in employment, training, or education programs. The commissioner shall distribute money to counties to reduce the costs of child care for eligible families. The commissioner shall adopt rules to govern the program in accordance with this section. The rules must establish a sliding schedule of fees for parents receiving child care services. The commissioner shall maximize the use of federal money under the AFDC employment special needs program in section 256.736, subdivision 8, for recipients of aid to families with dependent children who are in education, training, job search, or other activities allowed under that program. Money appropriated under this section must be coordinated with the AFDC employment special needs program to accomplish this purpose. Federal reimbursement obtained must be allocated to the county that spent money for child care that is federally reimbursable under the AFDC employment special needs program. The counties shall use the federal money to expand services to AFDC recipients under this section.

Subd. 3. **Allocation.** (a) By June 1 of each odd-numbered year, the commissioner shall notify all county and human services boards and post-secondary educational systems of their allocation. If the appropriation is insufficient to meet the needs in all counties, the amount must be prorated among the counties.

(b) Except for set-aside money allocated under subdivisions 3a, 3b, 3c, and 3d, the commissioner shall allocate money appropriated between the metropolitan area, comprising the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington, and the area outside the metropolitan area so that no more than 55 percent of the total appropriation goes to either area after excluding allocations for statewide administrative costs. The commissioner shall allocate 50 percent of the money among counties on the basis of the number of families below the poverty level, as determined from the most recent special census, and 50 percent on the basis of caseloads of aid to families with dependent children for the preceding fiscal year, as determined by the commissioner of human services.

(c) Once each quarter, the commissioner shall review the use of child care fund allocations by county. In accordance with the formula found in paragraph (b), the commissioner may reallocate unexpended or unencumbered money among those counties who have expended their full portion. Any unexpended money from the first year of the biennium may be carried forward to the second year of the biennium.

Subd. 3a. **Set-aside money.** (a) State money must be set aside by the commissioner for child care services for:

(1) AFDC priority groups;

(2) recipients of AFDC attending post-secondary education programs, excluding post-baccalaureate programs; and

(3) students attending post-secondary education programs, excluding post-baccalaureate programs, who meet sliding fee program eligibility standards.

(b) The set-aside amount must be determined by the commissioner and must not exceed 52 percent of the total funds appropriated. Of the set-aside amount, 44 percent must be allocated for persons described in paragraph (a), clause (1); 40 percent must be allocated for persons described in paragraph (a), clause (2); and 16 percent must be allocated for persons described in paragraph (a), clause (3).

Subd. 3b. **Set-aside money for AFDC priority groups.** (a) Set-aside money for AFDC priority groups must be allocated among the counties based on the average monthly number of caretakers receiving AFDC under the age of 21 and the average monthly number of AFDC cases open 24 or more consecutive months. For each fiscal year the average monthly caseload shall be based on the 12-month period ending March 31 of the previous fiscal year. The commissioner may reallocate quarterly unexpended or unencumbered set-aside money to counties that expend their full allocation. The county shall use the set-aside money for AFDC priority groups.

(b) The county shall develop cooperative agreements with the employment and training service provider for coordination of child care funding with employment, training, and education programs for aid to families with dependent children priority groups. The cooperative agreement shall specify that individuals receiving employment, training, and education services under an employability plan from the employment and training service provider shall, as resources permit, be guaranteed set-aside money for child care assistance from the county of their residence.

(c) Counties may contract for administration of the program or may arrange for or contract for child care funds to be used by other appropriate programs, in accordance with this section and as permitted by federal law and regulations.

(d) If the commissioner finds, on or after January 1 of a fiscal year, that set-aside money for AFDC priority groups is not being fully utilized, the commissioner may permit counties to use set-aside money for other eligible applicants, as long as priority for use of the money will continue to be given to the AFDC priority groups.

(e) A county may claim federal reimbursement under the AFDC special needs program for money spent for persons listed in subdivision 3a, clause (1). The commissioner shall allocate any federal earnings to the county. The county shall use the money to expand services to AFDC recipients under the child care sliding fee program.

Subd. 3c. **Set-aside money for AFDC post-secondary students.** (a) For the fiscal year ending June 30, 1988, set-aside money for persons listed in subdivision 3a, clause (2), shall be allocated to the counties based on caseloads of aid to families with dependent children for the preceding fiscal year, as determined by the commissioner. For succeeding fiscal years, the commissioner shall, in cooperation with the director of the higher education coordinating board, develop a formula for allocation of the funds to counties based on the number of AFDC caretakers in each county who are enrolled at post-secondary institutions.

(b) Money allocated in paragraph (a) must be used for child care expenses of AFDC recipients attending post-secondary educational programs, excluding post-baccalaureate programs, and making satisfactory progress towards completion of the program.

(c) Once each quarter the commissioner shall review the use of child care fund allocations under this subdivision by county. The commissioner may reallocate unexpended or unencumbered money among those counties that have expended their full portion for the purposes of this subdivision.

(d) A county may claim federal reimbursement under the AFDC special needs program for money spent for persons listed in subdivision 3a, clause (2). The commissioner shall allocate any federal earnings to the county. The county shall use the money to expand services to AFDC recipients under the child care sliding fee program.

(e) Recipients of AFDC who have completed their post-secondary education and had received child care funds during that education shall be assured, to the extent of available resources, of sliding fee money for employment programs after graduation if they meet sliding fee program eligibility standards.

Subd. 3d. **Set-aside money for post-secondary students.** (a) Each post-secondary educational system shall be allocated a portion of the set-aside money for persons listed in subdivision 3a, clause (3), based on the number of students with dependent children enrolled in each system in the preceding fiscal year. The post-secondary educational systems shall allocate their money among institutions under their authority based on the number of students with dependent children enrolled in each institution in the last fiscal year. For the purposes of this subdivision, "students with dependent children" means the sum of all Minnesota residents enrolled in public post-secondary institutions who report dependents on their applications to the state scholarship and grant program. The commissioner shall transfer the allocation for each post-secondary institution to the county board of the county in which the institution is located, to be held in an account for students found eligible for child care sliding fee assistance and attending the institution.

(b) Post-secondary educational institutions shall take applications for the child care sliding fee program from students and determine eligibility based on this section and rules promulgated by the commissioner. If a person is eligible for the child care sliding fee program, the post-secondary institution shall notify the county. The county shall process the person's application and make vendor payments to the person's child care provider from the institution's account. Set-aside money must be used to subsidize child care expenses for eligible students making satisfactory progress toward completion of a program. The post-secondary institution must provide the county with quarterly reports on students' progress. The post-secondary educational institution shall not approve applications for sliding fee assistance in excess of the set-aside money allocated to it under paragraph (a).

(c) The post-secondary educational systems may reallocate unexpended or unencumbered money among institutions under their authority. If by May 15 of any year set-aside money is unexpended or unencumbered, the commissioner may reallocate the money among post-secondary educational systems, or reallocate it to the counties. Any unexpended money from the first year of the biennium may be carried forward to the second year of the biennium.

(d) Ten percent of the amount allocated for persons described in subdivision 3a, paragraph (a), clause (3), shall be held by the commissioner for students attending a Minnesota nonprofit post-secondary education program. A nonprofit education program may take applications for the child care sliding fee program and determine eligibility based on this section and rules promulgated by the commissioner. If a person is eligible for the child care sliding fee program, the post-secondary institution shall notify the county in which the institution is located. The county shall process the person's application and, upon approval of the commissioner, make vendor payments to the person's child care provider. The commissioner shall reimburse counties out of the money held by the commissioner under this paragraph.

Subd. 3e. **Use of money.** Money for persons listed in subdivision 3a, clauses (2) and (3), shall be used to reduce the costs of child care for students, including the costs of child care for students while employed if enrolled in an eligible education program at the same time and making satisfactory progress towards completion of the program. The county may plan for and provided child care assistance to persons listed in subdivision 3a, clauses (2) and (3), from the regular sliding fee fund to supplement the set-aside funds. Students provided child care assistance for one academic year shall be provided child care assistance in the following academic year, providing they remain financially eligible.

Subd. 3f. **Reporting and payments.** (a) Counties and post-secondary educational systems shall submit on forms prescribed by the commissioner a quarterly financial and program activity report which is due 20 calendar days after the end of each quarter. The financial and program activity report must include:

(1) a detailed accounting of the expenditures and revenues for the program during the preceding quarter by funding source and by eligibility group;

(2) a description of activities and concomitant expenditures that are federally reimbursable under the AFDC employment special needs program;

(3) a description of activities and concomitant expenditures of set-aside money;

(4) information on money encumbered at the quarter's end but not yet reimbursable, for use in adjusting allocations as provided in subdivisions 3b, paragraph (d); 3c, paragraph (c); and 3d, paragraph (c); and

(5) other data the commissioner considers necessary to account for the program or to evaluate its effectiveness in preventing and reducing participants' dependence on public assistance and in providing other benefits, including improvement in the care provided to children.

(b) The commissioner shall make payments to each county in quarterly installments. The commissioner may certify an advance for the first quarter of the fiscal year. Later payments must be based on actual expenditures as reported in the quarterly financial and program activity report.

(c) The commissioner may withhold, reduce, or terminate the allocation of any county or post-secondary educational system that does not meet the reporting or other requirements of this program. The commissioner shall reallocate to other counties or post-secondary educational systems money so reduced or terminated.

Subd. 4. **Financial eligibility.** (a) Child care services must be available to families who need child care to find or keep employment or to obtain the training or education necessary to find employment and who:

(1) receive aid to families with dependent children;

(2) have household income below the eligibility levels for aid to families with dependent children; or

(3) have household income within a range established by the commissioner.

(b) Child care services for the families receiving aid to families with dependent children must be made available as in-kind services, to cover any difference between the actual cost and the amount disregarded under the aid to families with dependent children program. Child care services to families whose incomes are below the threshold of eligibility for aid to families with dependent children, but that are not receiving aid to families with dependent children, must be made available without cost to the families.

(c) Child care services to families with incomes in the commissioner's established range must be made available on a sliding fee basis. The lower limit of the sliding fee range must be the eligibility limit for aid to families with dependent children. The upper limit of the range must be neither less than 70 percent nor more than 90 percent of the state median income for a family of four, adjusted for family size.

(d) If a disproportionate amount of the available money is provided to any one of the groups described in subdivision 4, paragraph (a), the county board shall document to the commissioner the reason the group received a disproportionate share. If a county projects that its child care allocation is insufficient to meet the needs of all eligible groups, it may prioritize among the groups to be served. Counties shall assure that a person receiving child care assistance from the sliding fee program prior to July 1, 1987, continues to receive assistance, providing the person meets all other eligibility criteria. Set-aside money must be prioritized by the state, and counties do not have discretion over the use of this money.

Subd. 5. **Employment or training eligibility.** (a) Persons who are seeking employment and who are eligible for assistance under this section are eligible to receive the equivalent of one month of child care. Employed persons who work at least ten hours a week and receive at least a minimum wage for all hours worked are eligible for child care assistance.

(b) Persons participating in employment programs, training programs, or education programs are eligible for assistance from the child care sliding fee program, if they are financially eligible under the sliding fee scale set by the commissioner in subdivision 7. Counties shall assure that a person receiving child care assistance from the sliding fee program while attending a post-secondary institution prior to July 1, 1987, continues to receive assistance from the regular sliding fee program, or the set-asides in subdivision 3c or 3d, providing the person meets all other eligibility criteria.

Subd. 6. **County contribution.** (a) In addition to payments from parents, the program must be funded by county contributions. Except for set-aside money, counties shall contribute from county tax sources a minimum of 15 percent of the cost of the program. The commissioner shall recover from the county as necessary to bring county expenditures into compliance with this subdivision.

(b) The commissioner shall recover from counties any state or federal money found to be ineligible. If a federal audit exception is taken based on a percentage of federal earnings, all counties shall pay a share proportional to their respective federal earnings during the period in question.

(c) To receive money through this program, each county shall certify to the commissioner that the county has not reduced allocations from other federal, state, and

county sources, which, in the absence of child care sliding fee or wage subsidy money, would have been available for child care services.

Subd. 6a. **Post-secondary responsibility.** To receive money through this program, each post-secondary educational system shall certify to the commissioner that the system has not reduced allocations from other federal and state sources, which, in the absence of child care sliding fee money, would have been available for child care services.

[For text of subd 7, see M.S.1986]

Subd. 8. **Child care rates.** The county board may limit the subsidy allowed by setting a maximum on the provider child care rate that the county shall subsidize. The rate set by any county shall not be lower than 110 percent or higher than 125 percent of the median rate for like care arrangements in that county. In order to be reimbursed for more than 110 percent of the median rate, a provider with employees must pay wages for teachers, assistants, and aides that are more than 110 percent of the county average rate for child care workers.

[For text of subds 9 and 10, see M.S.1986]

Subd. 11. **Administrative expenses.** A county must not use more than seven percent of its allocation for its administrative expenses under this section, except a county may not use any of its allocation of the set-aside funds under subdivisions 3b and 3c for administrative expenses. A county may use up to four percent of the funds transferred to it under subdivision 3d for administrative expenses.

Subd. 12. **Fair hearing process.** (a) Applicants and recipients have the option to request the county to conduct a conciliation conference to attempt to resolve complaints arising from any of the following actions:

(1) a determination of ineligibility for child care assistance;

(2) unauthorized termination of child care assistance;

(3) determination of the factors considered in setting the family fee; and

(4) income redetermination resulting in change of a family fee.

(b) The county shall notify the applicant or the recipient, in writing, of any adverse action. The determination described in paragraph (a), clauses (1) and (3), must include written notice of the applicant's or recipient's right to the election described in paragraph (c), where and how to request the election, the time limit within which to make the request, and the reasons for the determination. Notice of the proposed actions described in paragraph (a), clauses (2) and (4), must be mailed to the applicant or recipient at least 15 calendar days before the effective date of the action. The notice must clearly state what action the county proposes to take, the effective date of the proposed action, the reasons for the proposed action, the necessary corrective measures, the option to request either a conciliation conference or an administrative hearing, where and how to make the request, the time limits within which a request must be made, and the consequence of the action.

(c) An applicant or recipient who receives a determination or notice of proposed action under paragraph (b) must mail or deliver either a written notice of request for a conciliation conference to the administering agency or a written notice of request for the hearing specified under paragraph (e) to the administering agency on or before the effective date of the proposed action or the date specified in the notice, or the action will be final.

(d) The county shall provide a conciliation conference within 30 days of receipt of a written request.

The county shall give the applicant or recipient ten calendar days' notice of the conference date. The applicant or recipient and the county's representative have the right to appear, to bring witnesses, and to submit documentation. The written request and the resolution, if any, of the conference shall be maintained as part of the official record. The county's representative shall issue a written resolution only if mutual

agreement is reached between the county's representative and the applicant or recipient. The resolution must be signed by both parties and issued the same day as the conciliation conference is held. Participating in a conciliation conference or signing a resolution does not constitute a waiver of the right to an administrative hearing.

An applicant or recipient may, within 15 calendar days of the conference, mail or deliver a written request to the administering agency for an administrative hearing. Unless an appeal is requested, a determination, proposed action, or resolution of a conciliation conference will be final after the 15-day period has passed.

(e) A fair hearing shall be conducted in the manner prescribed by section 268.10, subdivision 3. A right to review will be provided in accordance with section 268.10, subdivision 5. The proposed action will not take effect until the appeal is decided by the administrative hearing process.

History: *1987 c 290 s 1; 1987 c 403 art 2 s 146; art 3 s 59-73; 1Sp1987 c 4 art 2 s 5*

268.911 GRANTS FOR SCHOOL AGE CHILD CARE PROGRAMS AND CHILD CARE RESOURCE AND REFERRAL PROGRAMS.

Subdivision 1. **Authority.** The commissioner of human services may make grants to public or private nonprofit agencies for the planning, establishment, expansion, improvement, or operation of child care resource and referral programs and child care services according to the provisions of this section and may make grants to county boards to carry out the purposes of section 245.84.

[For text of subds 2 to 4, see M.S.1986]

History: *1987 c 403 art 3 s 74*