

Economic Security

CHAPTER 268

DEPARTMENT OF JOBS AND TRAINING

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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

268.01 [Repealed, 1965 c 45 s 73]

268.011 [Repealed, 1Sp1985 c 14 art 9 s 78 subd 1]

268.0111 DEFINITIONS.

Subdivision 1. **Applicability.** The definitions in this section apply to this chapter.

Subd. 2. **Commissioner.** “Commissioner” means the commissioner of jobs and training.

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 [Repealed, 1987 c 403 art 2 s 164]

Subd. 4. **Employment and training services.** “Employment and training services” means programs, activities, and services related to job training, job placement, and job creation including job service programs, job training partnership act programs, wage subsidies, work readiness programs, job search, counseling, case management, community work experience programs, displaced homemaker programs, disadvantaged job training programs, grant diversion, employment experience programs, youth employment programs, conservation corps, apprenticeship programs, community investment programs, community development corporations, economic development programs, and opportunities industrialization centers.

Subd. 4a. **Homeless individual.** “Homeless individual,” or “homeless person” means:

(1) an individual who lacks a fixed, regular, and adequate nighttime residence; and

(2) an individual who has a primary nighttime residence that is:

(i) a supervised publicly or privately operated shelter or dwelling designed to provide temporary living accommodations,

(ii) an institution that provides a temporary residence for individuals intended to be institutionalized, or

(iii) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for humans.

The term “homeless individual” does not include any individual imprisoned or otherwise detained pursuant to federal or state law.

Subd. 5. **Income maintenance and support services.** “Income maintenance and support services” means programs through which the state or its subdivisions provide direct financial or in-kind support to unemployed or underemployed persons, including unemployment compensation, aid to families with dependent children, general assistance, work readiness assistance, food stamps, energy assistance, disability determinations, and child care. Income maintenance and support services do not include medical assistance, aging services, social services, community social services, mental health services, or services for the emotionally disturbed, the mentally retarded, or residents of nursing homes.

Subd. 5a. **Indian tribe.** For purposes of employment and training services, “Indian tribe” means a tribe, band, nation, or other organized group or community of Indians

that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, and for which a reservation exists as is consistent with Public Law Number 100-485, as amended.

Subd. 6. **Local service unit.** "Local service unit" means a county, counties operating under a joint powers agreement, one or more counties and one or more cities of the first class operating under a joint powers agreement, or a city of the first class.

Subd. 7. **Public assistance.** "Public assistance" means aid to families with dependent children, general assistance, and work readiness.

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

Subd. 9. **Wage subsidies.** "Wage subsidies" means issuing of payments to employers to offset the costs of wages, fringe benefits, and training for eligible employees under the limitations established in sections 268.672 to 268.682, and may be referred to as Minnesota employment and economic development (MEED) wage subsidies.

History: 1Sp1985 c 14 art 9 s 38; 1987 c 403 art 2 s 128; 1988 c 689 art 2 s 219; 1989 c 282 art 5 s 121,122; 1990 c 568 art 4 s 61

268.012 [Repealed, 1Sp1985 c 14 art 9 s 78 subd 1]

268.0121 CREATION.

Subdivision 1. **Purpose.** The department of jobs and training has broad responsibility to increase the economic independence of Minnesotans with special effort toward those who are currently unemployed or who face special disadvantages in the labor market. The department shall develop employment policies and link training and employment-related services with temporary income replacement and income maintenance programs, veterans' programs, workers' compensation, vocational and post-secondary education, federal income insurance programs, and economic development programs.

Subd. 2. **Commissioner.** The governor shall appoint the commissioner of jobs and training with the advice and consent of the senate.

Subd. 3. **Unclassified positions.** The commissioner may establish positions in the unclassified service in accordance with section 43A.08. The commissioner may appoint and define the duties of other subordinate officers and employees as the commissioner deems necessary to discharge the functions of the department.

The commissioner may establish the position of director of the state job training office in the unclassified service.

Subd. 4. **Delegation of powers.** The commissioner may delegate, in written orders filed with the secretary of state, any powers or duties subject to the commissioner's control to officers and employees in the department. Notwithstanding any other law, the commissioner may delegate the execution of specific contracts or specific types of contracts to the commissioner's deputies, an assistant commissioner, or a program director if the delegation has been approved by the commissioner of administration and filed with the secretary of state.

Subd. 5. **Receipt of gifts, money.** The commissioner may accept gifts, bequests, grants, payments for services, and other public and private money to help finance the activities of the department.

History: 1Sp1985 c 14 art 9 s 39; 1990 c 571 s 42; 1990 c 589 art 1 s 2

268.0122 POWERS AND DUTIES.

Subdivision 1. **State agency.** The commissioner of jobs and training is designated the "state agency" as defined by United States Code, title 29, section 49c, the Wagner-Peyser Act, as amended through December 31, 1984.

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;
- (8) obtain reports from local service units and service providers for the purpose of evaluating the performance of employment and training services; and
- (9) review and comment on plans for Indian tribe employment and training services and approve or disapprove the plans.

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 and plans for Indian tribe employment and training services;
- (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;
- (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; and

(15) enter into agreements with Indian tribes as necessary to provide employment and training services as funds become available.

Subd. 4. Demonstration projects. The commissioner may conduct and administer demonstration projects to test methods and procedures for providing employment and training services. The demonstration must provide new methods and procedures of administration and must not conflict with the basic purposes, coverage, or benefits provided by law. No demonstration project authorized by this section is effective until the following conditions are met:

(a) a comprehensive plan, including the estimated project costs, is filed with the secretary of the senate and the chief clerk of the house of representatives at least 60 days before its effective date;

(b) any required approval by a federal agency is obtained; and

(c) the comprehensive plan, including the estimated project costs, is approved by the legislative advisory commission and filed with the commissioner of administration.

Subd. 5. Rulemaking. The commissioner may make emergency and permanent rules to carry out this chapter.

History: *1Sp1985 c 14 art 9 s 40; 1987 c 403 art 2 s 129,130; art 3 s 50; 1989 c 282 art 5 s 123,124*

268.0124 PLAIN LANGUAGE IN WRITTEN MATERIALS.

(a) To the extent reasonable and consistent with the goals of providing easily understandable and readable materials and complying with federal and state laws governing the programs, all written materials relating to services and determinations of eligibility for or amounts of benefits that will be given to applicants for or recipients of assistance under a program administered or supervised by the commissioner of jobs and training must be understandable to a person who reads at the seventh-grade level, using the Flesch scale analysis readability score as determined under section 72C.09.

(b) All written materials relating to determinations of eligibility for or amounts of benefits that will be given to applicants for or recipients of assistance under programs administered or supervised by the commissioner of jobs and training must be developed to satisfy the plain language requirements of the plain language contract act under sections 325G.29 to 325G.36. Materials may be submitted to the attorney general for review and certification. Notwithstanding section 325G.35, subdivision 1, the attorney general shall review submitted materials to determine whether they comply with the requirements of section 325G.31. The remedies available pursuant to sections 8.31 and 325G.33 to 325G.36 do not apply to these materials. Failure to comply with this section does not provide a basis for suspending the implementation or operation of other laws governing programs administered by the commissioner.

(c) The requirements of this section apply to all materials modified or developed by the commissioner on or after July 1, 1988. The requirements of this section do not apply to materials that must be submitted to a federal agency for approval, to the extent that application of the requirements prevents federal approval.

(d) Nothing in this section may be construed to prohibit a lawsuit brought to require the commissioner to comply with this section or to affect individual appeal rights granted pursuant to section 268.10.

(e) The commissioner shall report annually to the chairs of the health and human services divisions of the senate finance committee and the house of representatives appropriations committee on the number and outcome of cases that raise the issue of the commissioner's compliance with this section.

History: 1988 c 689 art 2 s 220

268.013 [Repealed, 1Sp1985 c 14 art 9 s 78 subd 1]

268.014 COOPERATION WITH OTHER STATE AGENCIES.

To effectively coordinate job training and placement services with future job needs of the state the commissioner shall maintain close liaison, coordination and cooperation with the commissioner of trade and economic development and any other state agency involved in employment issues affecting the state.

History: 1977 c 430 s 13; 1981 c 356 s 186; 1983 c 289 s 115 subd 1; 1987 c 312 art 1 s 26 subd 2

268.02 [Repealed, 1965 c 45 s 73]

268.021 RULES.

The commissioner of the department of jobs and training is authorized to adopt rules, including emergency rules, in accordance with chapter 14, with respect to programs the commissioner administers under this chapter and other programs for which the commissioner is responsible under federal or state law.

History: 1983 c 268 s 1; 1984 c 640 s 32; 1Sp1985 c 14 art 9 s 75

268.022 DISLOCATED WORKER FUND.

Subdivision 1. Determination and collection of special assessment. (a) In addition to all other contributions, assessments, and payment obligations under chapter 268, each employer, except an employer making payments in lieu of contributions under section 268.06, subdivision 25, 26, 27, or 28, is liable for a special assessment levied at the rate of one-tenth of one percent per year on all wages for purposes of the contribution payable under section 268.06, subdivision 2, as defined in section 268.04, subdivision 25. Such assessment shall become due and be paid by each employer to the department of jobs and training on the same schedule and in the same manner as other contributions required by section 268.06.

(b) The special assessment levied under this section shall not affect the computation of any other contributions, assessments, or payment obligations due under this chapter.

Subd. 2. Disbursement of special assessment funds. (a) The money collected under this section shall be deposited in the state treasury and credited to a dedicated fund to provide for the dislocated worker programs established under sections 268.975 to 268.98; including vocational guidance, training, placement, and job development.

(b) All money in the dedicated fund is appropriated to the commissioner who must act as the fiscal agent for the money and must disburse the money for the purposes of this section, not allowing the money to be used for any other obligation of the state. All money in the dedicated fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as are provided by law for the other dedicated funds in the state treasury, except that all interest or net income resulting from the investment or deposit of money in the fund shall accrue to the fund for the purposes of the fund.

(c) No more than five percent of the dedicated funds collected in each fiscal year may be used by the department of jobs and training for its administrative costs.

(d) The dedicated funds, less amounts under paragraph (c), must be allocated as follows:

(1) 50 percent to be allocated according to paragraph (e) to the substate grantees under subchapter III of the Job Training Partnership Act, United States Code, title 29, section 1661a in proportion to each substate area's share of the federal allocated funds, to be used to assist dislocated workers under the standards in section 268.98;

(2) 50 percent to fund specific programs proposed under the state plan request for proposal process and recommended by the governor's job training council. This fund shall be used for state plan request for proposal programs addressing plant closings or layoffs regardless of size; and

(3) in fiscal years 1991, 1992, and 1993, any amounts transferred to the general fund or obligated before July 1, 1991, shall be excluded from the calculation under this paragraph.

(e) In the event that a substate grantee has obligated 100 percent of its formula allocated federal funds under subchapter III of the Job Training Partnership Act, United States Code, title 29, section 1651 et seq., and has demonstrated appropriate use of the funds to the governor's job training council, the substate grantee may request and the commissioner shall provide additional funds to the substate area in an amount equal to the federal formula allocated funds. When a substate grantee has obligated 100 percent of the additional funds provided under this section, and has demonstrated appropriate use of the funds to the governor's job training council, the substate grantee may request and the commissioner shall provide further additional funds in amounts equal to the federal formula allocated funds until the substate area receives its proportionate share of funds under paragraph (d), clause (1).

(f) By December 31 of each fiscal year each substate grantee and the governor's job training council shall report to the commissioner on the extent to which funds under this section are committed and the anticipated demand for funds for the remainder of the fiscal year. The commissioner shall reallocate those funds that the substate grantees and the council do not anticipate expending for the remainder of the fiscal year to be available for requests from other substate grantees or other dislocated worker projects proposed to the governor's job training council which demonstrate a need for additional funding.

(g) Due to the anticipated quarterly variations in the amounts collected under this section, the amounts allocated under paragraph (d) must be based on collections for each quarter. Any amount collected in the final two quarters of the fiscal year, but not allocated, obligated or expended in the fiscal year, shall be available for allocation, obligation and expenditure in the following fiscal year.

History: 1990 c 568 art 6 s 1,4; 1990 c 612 s 17; 1991 c 292 art 3 s 33,41

268.025 [Repealed, 1965 c 45 s 73]

268.026 BUILDING; LEASE OF SPACE.

Subdivision 1. Form. The commissioner of the Minnesota department of jobs and training, with the approval of the commissioner of the department of administration, may lease portions of the state owned building known as the economic security building located at 309-311 Second Avenue South, Minneapolis, Minnesota, to any department or agency of the state and charge rent therefor on the basis of space occupied. Any lease made pursuant to this section shall be in such form as the attorney general shall prescribe.

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

History: 1961 c 516 s 1,2; 1969 c 567 s 3; 1973 c 254 s 3; 1977 c 430 s 25 subd 1; 1983 c 216 art 1 s 87; 1Sp1985 c 14 art 9 s 75

268.027 DEPARTMENT OF JOBS AND TRAINING; MINNEAPOLIS LOCATION; RIGHT OF EMINENT DOMAIN.

Notwithstanding sections 16B.24 and 268.026 or chapter 94, the commissioner of administration, in consultation with the commissioner of jobs and training, is authorized to buy and sell real property in Minneapolis and the greater Minneapolis area for the purpose of relocating department offices to locations more accessible to the residents of Minneapolis and colocating with other social service agencies.

Property acquired under authority of this section may be acquired by gift, purchase, or condemnation proceedings. Condemnation proceedings must be done under chapter 117. Condemnation proceedings authorized by this section may be used to acquire property at only one proposed office site.

History: 1988 c 641 s 5; 1989 c 300 art 1 s 32

268.03 DECLARATION OF PUBLIC POLICY.

As a guide to the interpretation and application of sections 268.03 to 268.31, the public policy of this state is declared to be as follows: Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burdens. This can be provided by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. The legislature, therefore, declares that in its considered judgment the public good and the general welfare of the citizens of this state will be promoted by providing, under the police powers of the state for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own.

History: (4337-21) Ex1936 c 2 s 1; 1989 c 209 art 2 s 1

268.04 DEFINITIONS.

Subdivision 1. Scope. Unless the language or context clearly indicates that a different meaning is intended, the following words, terms and phrases, for the purposes of sections 268.03 to 268.231, shall be given the meanings subjoined to them.

Subd. 2. Base period. "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.

Subd. 3. Benefits. "Benefits" means the money payments payable to an individual, as provided in sections 268.03 to 268.231, with respect to the individual's unemployment.

Subd. 4. Benefit year. "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.

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

Subd. 6. Contributions. "Contributions" means the money payments required by sections 268.03 to 268.231 to be made by any employing unit on account of having individuals in its employ.

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

Subd. 8. Commissioner. "Commissioner" means the commissioner of jobs and training.

Subd. 9. Employing unit. "Employing unit" means any individual or type of organization, including any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor of any of the foregoing, or the legal representative of a deceased person, which has or subsequent to January 1, 1936, had in its employ one or more individuals performing services for it. All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state shall be deemed to be employed by a single employing unit. 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 homemaker, 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.

Subd. 10. Employer. "Employer" means: (1) Any employing unit which, for some portion of a day, in each of 20 different weeks, whether or not such weeks are or were consecutive, and whether or not all of such weeks of employment are or were within the state within either the current or preceding calendar year, has or had in employment one or more individuals (irrespective of whether the same individual or individuals were employed in each such day) or in any calendar quarter in either the current or preceding calendar year paid \$1,500 or more for services in employment, except as provided in clause (18) of this subdivision;

(2) Any employing unit (whether or not an employing unit at the time of acquisition) which acquired the organization, trade, or business, or substantially all of the assets thereof, of another employing unit which at the time of such acquisition was an employer subject to this law; or which acquired a part of the organization, trade, or business of another employing unit which at the time of such acquisition was an employer subject to this law;

(3) For purposes of clause (1), employment shall include service which would constitute employment but for the fact that such service is deemed to be performed entirely within another state pursuant to an election under an arrangement entered into (in accordance with section 268.13, subdivision 1) by the commissioner and an agency charged with the administration of any other state or federal unemployment compensation law;

(4) For purposes of clause (1), if any week includes both December 31 and January 1, the days of that week up to January 1 shall be deemed one calendar week and the days beginning January 1 another such week;

(5) Any employing unit which acquired the organization, trade, or business, or substantially all the assets thereof, of another employing unit, and which, if treated as a single unit with such other employing unit, would be an employer under clause (1);

(6) Any employing unit which, together with one or more other employing units, is owned or controlled (by legally enforceable means or otherwise) directly or indirectly by the same interests, or which owns or controls one or more other employing units (by legally enforceable means or otherwise) and which, if treated as a single unit with such other employing units or interests or both, would be an employer under clause (1), except as provided in clause (18);

(7) Any joint venture composed of one or more employers as otherwise defined herein;

(8) Any nonresident employing unit which employs within this state one or more employees for one or more weeks;

(9) Any employing unit for which service in employment, as defined in subdivision 12, clause (9), is performed;

(10) Any employing unit which, having become an employer under the preceding clauses or clause (15), (16) or (17), has not, under section 268.11, ceased to be an employer subject to these sections;

(11) For the effective period of its election pursuant to section 268.11, subdivision 3, any other employing unit which has elected to become subject to sections 268.03 to 268.231;

(12) Notwithstanding any inconsistent provisions of sections 268.03 to 268.231, any employing unit not an employer by reason of any other clause of this subdivision for which service is performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund or which, as a condition for the approval of this law for full tax credit against the tax imposed by the federal unemployment tax act, is required pursuant to such act, to be an "employer" under the law;

(13) Except as provided in clause (12), and notwithstanding any other provisions of sections 268.03 to 268.231, no employing unit shall be initially determined a subject employer on the basis of covered employment performed more than four years prior to the year in which such determination is made, unless the commissioner finds that the records of such employment experience were fraudulently concealed or withheld for the purpose of escaping liability under said sections;

(14) Any employing unit for which service in employment, as defined in subdivision 12, clause (7), is performed;

(15) Any employing unit for which service in employment as defined in subdivision 12, clause (8) is performed;

(16) Any employing unit for which agricultural labor as defined in subdivision 12, clause (13) is performed;

(17) Any employing unit for which domestic service in employment as defined in subdivision 12, clause (14) is performed;

(18) (a) In determining whether or not an employing unit for which domestic service and other than domestic service is performed is an employer under clause (1) or (6), the wages earned or the employment of an employee performing domestic service shall not be taken into account.

(b) In determining whether or not an employing unit for which agricultural labor and other than agricultural labor is performed is an employer under clause (1), (9) or (17), the wages earned or the employment of an employee performing service in agricultural labor after December 31, 1977 shall not be taken into account. If an employing unit is an employer of agricultural labor the determination of whether it is an "employer" shall be governed by clause (1).

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

Subd. 12. Employment. "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, 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 268.231, 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).

(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 or in day training and habilitation programs licensed by the department of human services, and is limited to the effective period of the certificate or license; 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 Migrant and Seasonal Agricultural Worker Protection Act; 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 268.231;

(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 268.231, 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 an intern in the employ of a hospital by an individual who has completed a four years' course in a medical school chartered and approved pursuant to state law;

(m) Service performed by an individual other than a corporate officer, 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 other than a corporate officer, 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 a calendar month 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 postgraduate or postdoctoral 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.

Subd. 13. **Economic security administration fund.** "Economic security administration fund" means the economic security administration fund established by sections 268.03 to 268.231, from which administrative expenses under these sections shall be paid.

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

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

Subd. 16. **Fund.** "Fund" means the unemployment compensation fund established by sections 268.03 to 268.231.

Subd. 17. **Insured work.** "Insured work" means employment for employers as defined in this section, except that for the purposes of interstate reciprocal benefit payment arrangements and the clearing of disqualifications under this law, the term "insured work" shall mean employment in insured work under this law or a similar law of any other state. Periods for which an individual receives back pay are periods of insured work for benefit purposes, except for the clearing of disqualifications under this chapter.

Subd. 18. **Interested party.** "Interested party" includes the claimant, the claimant's base period employers, and most recent employer prior to the filing of a valid claim for benefits and registered successors to those employers as defined in section 268.06, subdivision 22.

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

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

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

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

Subd. 23. **Unemployment.** An individual shall be deemed "unemployed" in any week during which the individual performs no service and with respect to which no wages are payable to the individual, or in any week of less than full-time work if the wages payable with respect to such week are less than the individual's weekly benefit amount. Any individual unemployed as a result of a uniform vacation shutdown shall not be deemed to be voluntarily unemployed. The commissioner may, prescribe rules relating to the payment of benefits to such unemployed individuals.

Subd. 24. **Valid claim.** "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 268.231 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 268.231 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, 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.

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

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

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

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

Subd. 31. **Family farm corporation.** "Family farm corporation" has the meaning given to it in section 500.24, subdivision 2.

Subd. 32. **Nonpublic school.** "Nonpublic school" means any school within the state, other than a public school, where an individual is provided instruction in compliance with sections 120.101 and 120.102, or any school (1) which operates on a non-profit basis, (2) which admits kindergarten children, (3) which has as its primary purpose the education of its students as determined by the commissioner, and (4) which operates on a regular basis for at least eight months and no more than nine months a year.

Subd. 33. **Back pay.** "Back pay" means a retroactive payment of money by an employer to an employee or former employee for lost wages because of the employer's noncompliance with a state or federal law or a collective bargaining agreement as determined in an arbitration award, administrative or judicial decision, or negotiated settlement. The period to which the payment shall be applied shall commence immediately following the last day of work or as specified in the arbitration award, administrative or judicial decision, or negotiated settlement.

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 broken down by business locations, when required by the commissioner, is part of the contribution report. The auxiliary report shall contain the number of employees for each month, and the quarterly total wages, excess wages, taxable wages, and tax for each location.

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: (4337-22) *Ex*1936 c 2 s 2; 1937 c 43 s 1; 1937 c 306; 1939 c 443 s 1; 1941 c 554 s 1; 1943 c 650 s 1; 1945 c 376 s 1; 1947 c 432 s 1,2; 1947 c 574 s 1; 1949 c 605 s 1; 1951 c 442 s 1; 1953 c 97 s 1,2; 1953 c 603 s 1; 1955 c 380 s 1; 1957 c 467 s 1; 1957 c 873 s 1; 1957 c 883 s 1; 1959 c 595 s 1,2; 1959 c 702 s 1; 1963 c 562 s 1; 1963 c 588 s 1; 1965 c 45 s 39; 1965 c 741 s 1-5; 1967 c 439 s 1,2; 1967 c 573 s 1,2; 1969 c 567 s 3; 1969 c 585 s 1; 1969 c 854 s 1-5; 1969 c 1129 art 10 s 2; 1971 c 942 s 1,2; 1973 c 65 s 1; 1973 c 123 art 5 s 7; 1973 c 254 s 3; 1973 c 431 s 1; 1973 c 599 s 1; 1973 c 725 s 51; 1975 c 143 s 1; 1975 c 336 s 1-5; 1976 c 2 s 90; 1976 c 43 s 1,2; 1977 c 4 s 1-3; 1977 c 297 s 1-5; 1977 c 430 s 24; 1978 c 688 s 1; 1978 c 722 s 3; 1979 c 181 s 1-3; 1979 c 212 s 1; 1980 c 508 s 1; 1Sp1982 c 1 s 1-3; 1983 c 216 art 1 s 87; 1983 c 372 s 1-7; 1984 c 654 art 5 s 58; 1984 c 655 art 1 s 44; 1985 c 248 s 43,70; 1Sp1985 c 14 art 9 s 75; 1986 c 444; 1987 c 333 s 22; 1987 c 362 s 1-8; 1987 c 385 s 1-6,8,9; 1989 c 65 s 1,2; 1989 c 209 art 2 s 1,30; 1990 c 426 art 2 s 1; 1991 c 199 art 2 s 1; 1992 c 484 s 1-3

268.05 UNEMPLOYMENT COMPENSATION FUND.

Subdivision 1. **Establishment; how constituted.** There is hereby established as a special fund, separate and apart from all public moneys or funds of this state, an unemployment compensation fund, which shall be administered by the commissioner exclusively for the purpose of sections 268.03 to 268.231. This fund shall consist of:

- (1) All contributions collected under those sections;
- (2) Interest earned upon any moneys in the fund;
- (3) Any property or securities acquired through the use of moneys belonging to the fund;
- (4) All earnings of such property or securities;
- (5) Any moneys received from the Federal Unemployment Account in the unemployment trust fund in accordance with Title XII of the Social Security Act, as amended, and any other moneys made available to the fund and received pursuant to

an agreement, between this state and any agency of the federal government or any other state, for the payment of unemployment benefits;

(6) All money recovered on losses sustained by the fund;

(7) All money credited to the account of this state in the unemployment trust fund pursuant to section 903 of the Social Security Act, as amended; and

(8) All money received for the fund from any other source.

All moneys in the fund shall be mingled and undivided.

Subd. 2. Commissioner of finance to be custodian; separate accounts; bonds. The commissioner of finance shall be ex officio the treasurer and custodian of the fund, administer the fund in accordance with the directions of the commissioner, and issue warrants upon it in accordance with such rules as the commissioner shall prescribe. The commissioner of finance shall maintain within the fund three separate accounts:

(1) a clearing account;

(2) an unemployment trust fund account; and

(3) a benefit account.

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

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

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

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

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

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

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

(c) Limits the amount which may be obligated during any 12-month period beginning on July 1 and ending on the next June 30 to an amount which does not exceed the amount by which (i) the aggregate of the amounts credited to the account of this state pursuant to section 903 of the Social Security Act, as amended, during the same 12-month period and the 34 preceding 12-month periods, exceeds (ii) the aggregate of the amounts used pursuant to this subdivision and charged against the amounts credited to the account of this state during any of such 35 12-month periods. For the purposes of this subdivision, amounts used during any such 12-month period shall be charged against equivalent amounts which were first credited and which are not already so charged; except that no amount obligated for administration during any such 12-month period may be charged against any amount credited during such a 12-month period earlier than the 24th preceding such period.

(2) Money credited to the account of this state pursuant to section 903 of the Social Security Act, as amended, may not be withdrawn or used except for the payment of benefits and for the payment of expenses for the administration of Laws 1957, chapter 883 and of public employment offices pursuant to this subdivision. Any moneys used for the payment of benefits may be restored for appropriation and use for administrative expenses upon request of the governor, under section 903(c) of the Social Security Act.

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

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

(2) Any amount transferred to the Minnesota unemployment compensation fund by the secretary of the treasury of the United States under the terms of any application made pursuant to this subdivision shall be repayable in the manner provided in sections 901(d) 1, 903(b) 2 and 1202 of the Social Security Act, as amended.

History: (4337-23) *Ex*1936 c 2 s 3; 1937 c 452 s 1; 1939 c 443 s 2; 1941 c 554 s 2; 1945 c 376 s 2; 1949 c 605 s 2; 1953 c 97 s 3,4; 1957 c 883 s 2-5; 1961 c 517 s 1; 1969 c 310 s 1; 1969 c 567 s 3; 1975 c 302 s 1; *ISp*1982 c 1 s 4; 1983 c 216 art 1 s 87; 1983 c 372 s 8; 1985 c 248 s 70; *ISp*1985 c 13 s 300; 1986 c 444; 1989 c 209 art 2 s 1

268.06 EMPLOYERS CONTRIBUTIONS.

Subdivision 1. Payments. (1) Contributions shall accrue and become payable by each employer for each calendar year in which the employer is subject to sections 268.03 to 268.231 with respect to wages paid (as defined in section 268.04, subdivision 25a) for employment. Such contributions shall become due and be paid by each employer to the department of jobs and training for the fund in accordance with such rules as the commissioner may prescribe, and shall not be deducted, in whole or in part, from the wages of individuals in such employer's employ. No rule of the commissioner shall be put in force which will permit the payment of such contributions at a time or under conditions which will not allow the employer to take credit for such contribution against the tax imposed by section 3301 of the Internal Revenue Code.

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

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

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

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.

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

Subd. 5. Benefits charged as and when paid. 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. 7. [Repealed, 1949 c 605 s 15]

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 rounded to the nearest one-hundredth of a percent.

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

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

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

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

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

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

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

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

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

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

Subd. 19. Notice of rate. The commissioner shall mail to the last known address of each employer notice of the employer's contribution rate 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.

Subd. 21. Separate account for each employer. (1) The commissioner shall maintain a separate account for each employer, except as provided in clause (2), and shall credit an account with all the contributions paid by an employer. Nothing in sections 268.03 to 268.231 shall be construed to grant any employer or individuals in the employer's service prior claims or rights to the amounts paid by the employer into the fund.

(2) Two or more related corporations concurrently employing the same individual and compensating the individual through a common paymaster which is one of the corporations may apply to the commissioner to establish a joint account or to merge their several individual accounts into a joint account. Upon approval of the application, a joint account shall be maintained as if it constituted a single employer's account. The commissioner may prescribe rules as to the establishment, maintenance and termination of joint accounts.

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 last known address of 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 mail notice of such determination to the last known address of the employing unit. The determination shall be final unless a written appeal is filed by the employing unit within 30 days after mailing of the notice of determination. 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. 23. [Repealed, 1955 c 380 s 5]

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.

Subd. 25. Payments to fund by state and political subdivisions in lieu of contributions. In lieu of contributions required of employers under this law, the state of Minnesota or its political subdivisions governed by this law shall pay into the unemployment compensation fund an amount equivalent to the amount of benefits charged, and as to weeks of unemployment beginning after January 1, 1979, all of the extended benefits paid based on wages paid by the state of Minnesota or such political subdivisions. If benefits paid an individual are based on wages paid by both the state of Minnesota or such political subdivisions and one or more other employers, the amount payable by the state of Minnesota or such political subdivisions to the fund shall bear the same ratio to total benefits paid to the individual as the base-period wages paid to the individual by the state of Minnesota or such political subdivisions bear to the total amount of base-period wages paid to the individual by all base-period employers. The amount of payment required under this subdivision shall be ascertained by the commissioner at least four times per year. Payments shall be made and become due on the last day of the month next following the month in which the notice of benefits charged is mailed to the employer. Past due payments of amounts determined due under this subdivision shall be subject to the same interest charges and collection procedures that apply to past due contributions under sections 268.16 and 268.161.

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

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

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

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

(4) The departments, institutions and wholly owned instrumentalities of the state,

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

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

Subd. 27. Method of payment by political subdivision to fund. Effective January 1, 1974, a political subdivision or instrumentality thereof is hereby authorized and directed to pay its obligations under subdivision 25 by moneys collected from taxes or other revenues. Each and every political subdivision authorized to levy taxes may include in its tax levy the amount necessary to pay such obligations. If the taxes authorized to be levied under this subdivision cause the total amount of taxes levied to exceed any limitation whatsoever upon the power of a political subdivision to levy taxes, such political subdivision may levy taxes in excess of the limitations in such amounts as is necessary to meet its obligation under subdivision 25. The expenditures authorized to be made under subdivision 25 shall not be included in computing the cost of government as defined in any home rule charter of any city affected thereby. The governing body of a municipality, for the purpose of meeting its liabilities under subdivision 25, in the event of a deficit, may issue its obligations payable in not more than two years, in an amount which may cause its indebtedness to exceed any statutory or charter limitations, without an election, and may levy taxes to pay therefor in the manner provided in section 475.61.

Subd. 28. Payment to fund by nonprofit corporation and allocation of benefit costs by base period reimbursers. (1) Benefits paid to employees of nonprofit organizations shall be financed in accordance with the provisions of this subdivision. For the purpose of this subdivision, a nonprofit organization is an organization (or group of organizations) described in section 501(c)(3) of the United States Internal Revenue Code which is exempt from income tax under section 501(a) of such code. Any nonprofit organization which, pursuant to section 268.04, subdivision 10, clause (9) is, or becomes, subject to this law on or after January 1, 1972, shall pay contributions under the provisions of subdivision 1, unless it elects, in accordance with this paragraph, to pay to the commissioner for the unemployment fund an amount equal to the amount of regular benefits and the state share of the extended benefits charged, that is attributable to service in the employ of such nonprofit organization, to individuals for weeks of unemployment which begin during the effective period of such election.

(a) Any nonprofit organization which becomes subject to this law after January 1, 1972, may elect to become liable for payments in lieu of contributions for a period of not less than two calendar years beginning with the date on which such subjectivity begins by filing a written notice of its election with the commissioner not later than 30 days immediately following the date of the determination of such subjectivity.

(b) Any nonprofit organization which makes an election in accordance with clause (a) will continue to be liable for payments in lieu of contributions until it files with the commissioner a written notice terminating its election not later than 30 days prior to the beginning of the calendar year for which such termination shall first be effective.

(c) Any nonprofit organization which has been paying contributions under this law for a period subsequent to January 1, 1972, may change to a reimbursable basis by filing

with the commissioner not later than 30 days prior to the beginning of any calendar year a written notice of election to become liable for payments in lieu of contributions. Such election shall not be terminable by the organization for that and the next year.

(d) The commissioner may for good cause extend the period within which a notice of election, or a notice of termination, must be filed and may permit an election to be retroactive but not any earlier than with respect to benefits paid after December 31, 1971.

(e) The commissioner, in accordance with such rules as the commissioner may prescribe, shall notify each nonprofit organization of any determination which the commissioner may make of its status as an employer and of the effective date of any election which it makes and of any termination of such election. Such determinations shall be final unless reviewed in accordance with the provisions of section 268.12, subdivision 13.

(2) Payments in lieu of contributions shall be made at the end of each calendar quarter, or at the end of any other period as determined by the commissioner and become due on the last day of the month next following the month in which the notice of benefits charged is mailed to the employer. The commissioner shall bill each nonprofit organization (or group of such organizations) which has elected to make payments in lieu of contributions for an amount equal to the full amount of regular benefits plus one-half of the amount of extended benefits charged during such quarter or other prescribed period that is attributable to service in the employ of such organization.

(3) Past due payments of amounts in lieu of contributions shall be subject to the same interest charges and collection procedures that apply to past due contributions under sections 268.16 and 268.161.

(4) If any nonprofit organization is delinquent in making payments in lieu of contributions as required under this subdivision, the commissioner may terminate such organization's election to make payments in lieu of contributions as of the beginning of the next taxable year, and such termination shall be effective for that and the following taxable year.

Subd. 29. Group accounts. Two or more employers that have become liable for payments in lieu of contributions may file a joint application to the commissioner for the establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of such employers. Each such application shall identify and authorize a group representative to act as the group's agent for the purposes of this subdivision. Upon the commissioner's approval of the application, the commissioner shall establish a group account for such employers effective as of the beginning of the calendar year in which the application is received by the commissioner and shall notify the group's representative of the effective date of the account. Such account shall remain in effect for not less than two years and thereafter until terminated at the discretion of the commissioner or upon application by the group at least 30 days prior to the end of such two year period or 30 days prior to January 1 of any calendar year subsequent to such two calendar years. Each member of the group shall be jointly and severally liable for payments in lieu of contributions for all benefits paid based upon wage credits earned with a group member during the period the group account was in effect. The commissioner shall prescribe such rules as the commissioner deems necessary with respect to applications for establishment, maintenance and termination of group accounts that are authorized by this subdivision, for addition of new members to, and withdrawal of active members from, such account, and for the determination of the amounts that are payable under this subdivision by members of the group and the time and manner of such payments.

Subd. 30. Payments reimbursed by federal government. Notwithstanding the provisions of subdivisions 25, 26 and 28, clause (1), no employer shall be liable for payments in lieu of contributions with respect to extended benefit payments which are wholly reimbursed to this department by the federal government.

Subd. 31. Election by state or political subdivision to be a contributing employer.
(1) Notwithstanding the provisions of section 268.06, subdivisions 25 and 26, after

December 31, 1977 an employer as defined in section 268.04, subdivision 10, clauses (14) and (15) may:

(a) Elect to be a contributing employer subject to the provisions of subdivisions 1, 2, 3a, 4, 5, 6, 8, 18, 19, 20 and 24 and section 268.16 beginning with January 1, 1978 if it files with the commissioner a written notice of its election within 30 days immediately following January 1, 1978; or

(b) Elect for a subsequent calendar year, not having elected to be a contributing employer beginning with January 1, 1978, to be a contributing employer subject to the provisions of subdivisions 1, 2, 3a, 4, 5, 6, 8, 18, 19, 20 and 24 and section 268.16 if it files with the commissioner a written notice of its election within 30 days immediately following the first day of the subsequent calendar year.

An election shall continue for a minimum period of two calendar years immediately following the effective date of the election and thereafter unless a written notice terminating the election is filed with the commissioner not later than 30 days prior to the beginning of the calendar year for which the termination shall first be effective.

(2) The provisions of subdivisions 25, 26, and 27 as to the method of payments to the unemployment compensation fund shall apply to all contributions paid by or due from employers electing to be contributing employers under clause (1) of this subdivision.

Subd. 32. [Repealed, 1983 c 372 s 48]

Subd. 33. **Noncharging provisions not applicable to reimbursing employers.** The noncharging of benefits provisions of section 268.09 do not apply to employers making payments in lieu of contributions in accordance with subdivisions 25, 26, 28 and 29.

Subd. 34. **Indian tribal governments; wholly tribally controlled subsidiaries and subdivisions.** To the extent permissible under the laws of the United States, an Indian tribe defined in section 268.0111, subdivision 5a, and any wholly tribally controlled subsidiaries and subdivisions shall, if elected by the tribe, be treated as a self-sustaining state and political subdivision employer for the purposes of subdivisions 25, 30, 31, and 33 or as a nonprofit corporation employer for purposes of subdivisions 28, 29, 30, and 33, or as an employer providing employment excluded under section 268.04, subdivision 12, clause (15). Any tribal election must be in writing to the commissioner and must be binding for a minimum of two years. To the extent permissible under the laws of the United States, a tribe may make separate elections for itself and each of its wholly tribally controlled subsidiaries and subdivisions.

History: (4337-24) *Ex*1936 c 2 s 4; 1937 c 306 s 2; 1939 c 443 s 3; 1941 c 554 s 3; 1943 c 650 s 2; 1945 c 376 s 3; 1947 c 32 s 1-8; 1947 c 432 s 3-5, 11; 1947 c 600 s 7; 1949 c 526 s 1; 1949 c 605 s 3-6, 17, 18; 1951 c 442 s 2; 1953 c 97 s 5, 6, 8; 1953 c 288 s 1; 1955 c 380 s 2-4, 6; 1957 c 25 s 1; 1957 c 873 s 2; 1959 c 702 s 2-4; 1965 c 45 s 40; 1965 c 741 s 6-11; 1967 c 573 s 3; 1967 c 617 s 1; 1967 c 856 s 1; 1969 c 3 s 1; 1969 c 567 s 3; 1969 c 854 s 6; 1971 c 860 s 1; 1971 c 942 s 3-6; 1973 c 254 s 3; 1973 c 599 s 2-4; 1975 c 336 s 6-10; 1977 c 4 s 4, 5; 1977 c 297 s 6-11; 1977 c 430 s 25 subd 1; 1977 c 455 s 82; 1978 c 674 s 60; 1979 c 181 s 4-8; 1980 c 508 s 2-7; 1Sp1982 c 1 s 5-12; 1983 c 216 art 1 s 87; 1983 c 247 s 112; 1983 c 372 s 9-15; 1985 c 248 s 70; 1Sp1985 c 14 art 9 s 75; 1986 c 444; 1986 c 451 s 1; 1987 c 242 s 1; 1987 c 362 s 9-12; 1987 c 385 s 10-18; 1989 c 65 s 3-5; 1989 c 209 art 2 s 1; 1992 c 484 s 4-7

NOTE: Subdivision 34, as added by Laws 1992, chapter 484, section 7, is effective August 1, 1993. See Laws 1992, chapter 484, section 19.

268.061 [Repealed, 1988 c 689 art 2 s 269]

268.07 BENEFITS PAYABLE.

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

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) performed work 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 268.231 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 \$50 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 wages paid for those services must equal not less than ten times the weekly benefit amount of the second benefit year. A claim filed sufficiently in advance of anticipated unemployment to make the limitations of this clause ineffective shall be invalid. It is the purpose of this provision that an individual cannot establish more than one benefit year as a result of one separation from employment.

(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.

Subd. 4. MS 1949 [Repealed, 1951 c 442 s 3]

Subd. 4. MS 1980 [Repealed, 1Sp1982 c 1 s 43]

Subd. 5. [Repealed, 1975 c 336 s 25]

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

History: (4337-25) *Ex*1936 c 2 s 5; 1937 c 306 s 3; 1939 c 443 s 4; 1941 c 554 s 4; 1943 c 650 s 3; 1945 c 376 s 4; 1947 c 432 s 6; 1949 c 605 s 7,8; 1951 c 442 s 3; 1953 c 587 s 1; 1955 c 816 s 1; 1957 c 780 s 1; 1965 c 741 s 12,13; 1967 c 573 s 4; 1969 c 854 s 7; 1971 c 408 s 1; 1971 c 942 s 7,8; *Ex*1971 c 10 s 1; 1973 c 599 s 5; 1975 c 104 s 1; 1975 c 336 s 11; 1977 c 4 s 6; 1977 c 297 s 12; 1979 c 284 s 1; 1Sp1982 c 1 s 13-15; 1983 c 372 s 17,18; 1985 c 248 s 70; 1986 c 444; 1987 c 242 s 2; 1987 c 362 s 13-15; 1987 c 385 s 19; 1989 c 65 s 6,7; 1989 c 209 art 2 s 1; 1990 c 516 s 3; 1992 c 484 s 8

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.

Subd. 2. Effect of state law provisions relating to regular benefits on claims for, and the payment of, extended benefits. Except when the result would be inconsistent with the other provisions of this section, as provided in the rules of the commissioner, the provisions of this chapter which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits.

Subd. 3. Eligibility requirements for extended benefits. An individual shall be eligible to receive extended benefits with respect to any week of unemployment in the individual's eligibility period only if the commissioner finds that with respect to such week the individual:

(1) is an "exhaustee" as defined in subdivision 1, clause (9);

(2) has satisfied the requirements of this law for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits, except that an individual disqualified for benefits pursuant to section 268.09, subdivision 1, clause (6) is not eligible for extended benefits unless the individual has, subsequent to the disciplinary suspension, earned at least four times the individual's weekly extended benefit amount; and

(3) has, during the individual's base period earned wage credits available for benefit purposes of not less than 40 times the individual's weekly benefit amount as determined pursuant to section 268.07, subdivision 2.

Subd. 4. Weekly extended benefit amount. The weekly extended benefit amount payable to an individual for a week of total unemployment in the individual's eligibility period shall be an amount equal to the weekly benefit amount payable during the individual's applicable benefit year.

Subd. 5. Total extended benefit amount. The total extended benefit amount payable to any eligible individual with respect to the individual's applicable benefit year shall be 50 percent of the total amount of regular benefits which were payable under this law in the applicable benefit year, provided that at the expiration of the benefit year, the individual's remaining balance of extended benefits shall be reduced, but not below zero, by the product arrived at by multiplying the individual's weekly extended benefit amount by the number of weeks in the individual's expired benefit year for which any trade readjustment allowance was paid pursuant to sections 231 to 234 of the trade act of 1974, as amended.

Subd. 6. Beginning and termination of extended benefit period. (1) Whenever an extended benefit period is to become effective in this state as a result of a state "on" indicator, or an extended benefit period is to be terminated in this state as a result of a state "off" indicator the commissioner shall make an appropriate public announcement.

(2) Computations required by the provisions of subdivision 1, clause (4) shall be made by the commissioner, in accordance with regulations prescribed by the United States Secretary of Labor.

(3) Except as otherwise provided, the state share of the benefits paid to an individual under this section shall be charged to the employment experience record of the base period employer of the individual to the extent regular benefits were charged to the base period employer under sections 268.06, subdivision 5, and 268.09, subdivision 1, clause (e).

(4) With respect to an employer which has elected to be a contributing employer under the provisions of section 268.06, subdivision 31, all benefits paid under this section which are based upon services for such contributing employer shall be charged to such contributing employer's account as to weeks of unemployment beginning after January 1, 1979.

Subd. 7. Effect of federal law. If the Federal-State Extended Unemployment Compensation Act of 1970 is amended so as to authorize this state to pay benefits for an extended benefit period in a manner other than that currently provided by this section, then, and in such case, all the terms and conditions contained in the amended provisions of such federal law shall become a part of this section to the extent necessary to authorize the payment of benefits to eligible individuals as permitted under such amended provision, provided that the federal share continues to be at least 50 percent of the extended benefits paid to individuals under the extended benefit program. The commissioner shall also pay benefits at the earliest possible date in the manner allowed by the Federal-State Unemployment Compensation Act of 1970, as amended through January 1, 1975, the provisions of which shall become a part of this section to the extent necessary to authorize the payment of benefits to eligible individuals.

Subd. 8. Interstate claims. An individual shall not be eligible for extended benefits for any week if:

(a) Extended benefits are payable for that week pursuant to an interstate claim filed in any state under the interstate benefit payment plan; and

(b) No extended benefit period is in effect for the week in that state. This subdivision shall not apply to the first two weeks for which extended benefits are payable pursuant to an interstate claim filed under the interstate benefit payment plan to the individual from the extended benefit account established for the individual with respect to the benefit year.

Subd. 9. Eligibility requirements. Notwithstanding the provisions of subdivision 2, an individual shall be ineligible for the payment of extended benefits for any week of unemployment in the individual's eligibility period if the commissioner finds that during that week the individual failed to accept any offer of suitable work, failed to apply for any suitable work to which referred by the commissioner or failed to actively engage in seeking work.

Any individual who has been found ineligible for extended benefits for any week by reason of this subdivision shall also be denied benefits for the week following the week in which the failure occurred and until the individual has been employed in each of four subsequent weeks, whether or not consecutive, and has earned remuneration of not less than four times the individual's extended weekly benefit amount.

For the purpose of this subdivision "suitable work" means, with respect to any individual, any work which is within that individual's capabilities and which has a gross average weekly remuneration payable which exceeds the sum of the individual's weekly benefit amount as determined under subdivision 4 plus the amount, if any, of supplemental unemployment benefits, as defined in section 501(c)(17)(D) of the Inter-

nal Revenue Code of 1954, as amended, payable to the individual for that week. The work must pay wages not less than the higher of the minimum wage provided by section 6(a) (1) of the Fair Labor Standards Act of 1938, as amended, without regard to any exemption, or the applicable state or local minimum wage.

No individual shall be denied extended benefits for failure to accept an offer of or apply for any suitable work if: (a) the position was not offered to the individual in writing or was not listed with employment service; (b) the failure could not result in a denial of benefits under the definition of suitable work for regular benefit claimants in section 268.09, subdivision 2 to the extent that the criteria of suitability therein are not inconsistent with this subdivision; or (c) the individual furnishes satisfactory evidence to the commissioner that prospects for obtaining work in the individual's customary occupation within a reasonably short period are good. If the evidence furnished is found to be satisfactory for this purpose, the determination of whether any work is suitable for the individual shall be made in accordance with the definition of suitable work for regular benefit claimants in section 268.09, subdivision 2, clause (a) without regard to the definition or special disqualification specified in this subdivision.

No work shall be found to be suitable work for an individual which does not accord with the labor standard provisions required by section 3304(a) (5) of the Internal Revenue Code of 1954, as amended, and set forth in section 268.09, subdivision 2, clauses (b) (1) (2) and (3).

For the purpose of this subdivision an individual is "actively seeking work" during any week if the individual has engaged in a systematic and sustained effort to obtain work during the week, and the individual furnishes tangible evidence of engaging in that effort during the week.

The employment service shall refer any claimant entitled to extended benefits under this section to any work which is suitable work for that individual under this subdivision.

History: 1971 c 61 s 1; 1974 c 355 s 58; 1975 c 1 s 1; 1975 c 336 s 12; 1977 c 297 s 13,14; 1Sp1982 c 1 s 16-21; 1983 c 372 s 19; 1985 c 248 s 70; 1986 c 444; 1987 c 362 s 16; 1992 c 484 s 9

268.072 CHILD SUPPORT INTERCEPT OF UNEMPLOYMENT BENEFITS.

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

(a) "Unemployment compensation" means any compensation payable under this chapter including amounts payable by the commissioner pursuant to an agreement under any federal law providing for compensation, assistance, or allowance with respect to unemployment;

(b) "Child support obligations" means obligations which are being enforced by the public agency responsible for child support enforcement pursuant to a plan described in section 454 of the Social Security Act which has been approved by the secretary of health and human services under part D of title IV of the Social Security Act;

(c) "Child support agency" means the public agency responsible for child support enforcement pursuant to a plan described in section 454 of the Social Security Act.

Subd. 2. Notice of claim. An individual filing a new claim for unemployment compensation shall, at the time of filing the claim, disclose whether or not the individual owes child support obligations. If any individual discloses that the individual owes child support obligations, and is determined to be eligible for unemployment compensation, the commissioner shall notify the child support agency that the individual has been determined to be eligible for unemployment compensation.

Subd. 3. Withholding of benefits. The commissioner shall deduct and withhold from any unemployment compensation payable to an individual that owes child support obligations:

(a) The amount specified by the individual to the commissioner to be deducted and withheld under this section, if neither clause (b) or (c) is applicable; or

(b) The amount determined pursuant to an agreement submitted to the commissioner under section 454 (20) (B) (i) of the Social Security Act by the child support agency, unless (c) is applicable; or

(c) Any amount otherwise required to be so deducted and withheld from the unemployment compensation pursuant to "legal process" as defined in section 462(e) of the Social Security Act, properly served upon the commissioner.

Subd. 4. Payment by the commissioner. Any amount deducted and withheld under subdivision 3 shall be paid by the commissioner to the public agency responsible for child support enforcement.

Subd. 5. Effect of payments. Any amount deducted and withheld under subdivision 3 shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by the individual to the public agency responsible for child support enforcement in satisfaction of the individual's child support obligations.

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: *1Sp1982 c 1 s 22; 1986 c 444; 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 layoff 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 268.231;

(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, is a dislocated worker as defined in section 268.975, subdivision 3, who is in training approved by 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 individual's wages paid during the 52 weeks preceding the claim date 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 268.231. 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 quali-

fied 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.

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

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

(2) Unless it occurs after benefits first could become payable to any individual under sections 268.03 to 268.231;

(3) With respect to which the individual is receiving, has received, or has filed a claim for unemployment compensation benefits under any other law of this state, or of any other state, or the federal government, including readjustment allowances under Title V, Servicemen's Readjustment Act, 1944, but not including benefits under the Veterans Readjustment Assistance Act of 1952 or any other federal or state benefits which are merely supplementary to those provided for under sections 268.03 to 268.231; provided 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.

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.

Provided, that if such remuneration is less than the benefits which would otherwise be due under sections 268.03 to 268.231, 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 pro-

vision 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.

Subd. 4. Social security amount deducted from benefits. Any claimant aged 62 or over who has not established a valid claim based on employment subsequent to the first receipt of primary insurance benefits under Title II of the federal social security act, as amended, or similar old age benefits under any act of congress or this state or any other state shall be required to state in writing at the time of the filing of a claim whether the claimant intends to seek Title II social security benefits for any week during which the claimant will receive unemployment benefits, and if the claimant so intends there shall be withheld from the claimant's weekly unemployment benefits an amount sufficient to cover the weekly equivalent of the social security benefit. Any claimant disclaiming such intention but who nevertheless receives such social security benefits for weeks for which the claimant previously received unemployment benefits shall be liable for repayment of such unemployment benefits and otherwise subject to the provisions of section 268.18.

Subd. 5. [Repealed, 1977 c 297 s 22]

Subd. 6. Services performed for state, municipalities, or charitable corporation. Benefits based on service in employment defined in section 268.04, subdivision 12, clauses (7), (8) and (9), are payable in the same amount, on the same terms and subject to the same conditions as benefits payable on the basis of other service subject to this chapter; except that

(a) Benefits based upon service performed in an instructional, research, or principal administrative capacity for an institution of higher education or a public school, or a nonpublic school, or the Minnesota state academy for the deaf or Minnesota state academy for the blind, or the Minnesota center for arts education, or in a public or nonpublic school for an educational cooperative service unit established under section 123.58, or any other educational service agency as defined in section 3304(a)(6)(A)(IV) of the Federal Unemployment Tax Act, shall not be paid for any week of unemployment commencing during the period between two successive academic years or terms, or during a similar period between two regular but not successive terms, or during a period of paid sabbatical leave provided for in the individual's contract, to any individual if the individual performs the services in the first of the academic years or terms and if there is a contract or a reasonable assurance that the individual will perform services in any such capacity for any institution of higher education, public school, nonpublic school, Minnesota state academies for the deaf and blind, the Minnesota center for arts education, an educational cooperative service unit, or other educational service agency, in the second of the academic years or terms, and

(b) With respect to service performed in any capacity other than those capacities described in clause (a) of this subdivision, for an institution of higher education, or a public school or nonpublic school, or the Minnesota state academy for the deaf or Minnesota state academy for the blind, or the Minnesota center for arts education, or in a public or nonpublic school or for an educational cooperative service unit established under section 123.58, or any other educational service agency as defined in section 3304(a)(6)(A)(IV) of the Federal Unemployment Tax Act, benefits shall not be paid on the basis of these services to any individual for any week which commences during a period between two successive academic years or terms if the individual performs the services in the first of the academic years or terms and there is a reasonable assurance that the individual will perform the services in the second of the academic years or terms. If benefits are denied to any individual under this clause and the individual was not offered an opportunity to perform the services in the second of the academic years or term, the individual shall be entitled to a retroactive payment of benefits for each week in which the individual filed a timely claim for benefits, but the claim was denied solely because of this clause; and

(c) With respect to services described in clauses (a) or (b), benefits payable on the basis of the services shall not be paid to any individual for any week which commences during an established and customary vacation period or holiday recess if the individual performs the services in the period immediately before the vacation period or holiday recess, and there is a reasonable assurance that the individual will perform the services in the period immediately following the vacation period or holiday recess.

Subd. 7. Professional athletes. Benefits shall not be paid to an individual on the basis of any service substantially all of which consist of participating in sports or athletic events or training or preparing to so participate for any week which commences during the period between two successive sport seasons (or similar periods) if such individual performed such service in the first of such seasons (or similar period) and there is a reasonable assurance that such individual will perform such service in the later of such seasons (or similar periods).

Subd. 8. Illegal aliens. (a) Benefits shall not be paid on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for the purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed (including an alien who was lawfully present in the United States as a result of the application of the provision of section 203(a)(7) or section 212(d)(5) of the Immigration and Nationality Act).

(b) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

(c) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of alien status shall be made except upon a preponderance of the evidence.

Subd. 9. Services for certain contractors. Benefits based upon services performed for an employer are subject to subdivision 6, clauses (b) and (c) if:

(a) the employment was provided pursuant to a contract between the employer and a public or private school;

(b) the contract was for services which the public or private school could have had performed by its employees;

(c) the employment was not as defined in section 268.04, subdivision 12, clauses (7), (8), and (9); and

(d) the individual is notified in writing of the provisions of this subdivision while employed in 1983 or prior to or at the time of commencing the employment.

History: (4337-26) Ex1936 c 2 s 6; 1937 c 43 s 2; 1937 c 306 s 4; 1939 c 443 s 5; 1941 c 554 s 5; 1943 c 650 s 4; 1945 c 376 s 5; 1949 c 605 s 9; 1953 c 97 s 9; 1953 c 699 s 10; 1965 c 741 s 14-16; 1969 c 6 s 34; 1971 c 942 s 9,10; 1973 c 599 s 6-8; 1975 c 104 s 2;

1975 c 336 s 13-15; 1975 c 359 s 23; 1976 c 163 s 59; 1976 c 271 s 78; 1977 c 4 s 7; 1977 c 297 s 15-18; 1978 c 612 s 1; 1979 c 24 s 1; 1979 c 181 s 9,10,19; 1980 c 508 s 8; 1Sp1982 c 1 s 23-25; 1983 c 290 s 168; 1983 c 372 s 20-24; 1985 c 248 s 44; 1986 c 444; 1987 c 362 s 18; 1987 c 384 art 1 s 55; 1987 c 385 s 20-22; 1989 c 209 art 2 s 1; 1989 c 282 art 2 s 169; 1990 c 516 s 4; 1991 c 265 art 11 s 22; 1992 c 484 s 10

268.081 SHARED WORK PLAN.

The commissioner shall prepare a report on the implementation of a shared work benefit program. The report shall be given to the senate committee on employment and the house committee on governmental operations no later than January 15, 1984. The report shall evaluate existing state laws establishing shared work programs and shall contain recommendations for statutory changes to implement a program in Minnesota.

History: 1983 c 372 s 25

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 employment offering substantially better conditions 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;

(9) 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 reemployment shall not be used as a factor in determining the future contribution rate of the employer whose offer of reemployment was not accepted or whose offer of reemployment 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 or 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 reemployment. 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 accept a base period employer's offer of reemployment offering substantially the same or better hourly wages and conditions of work as were previously provided by that employer in the most recent period of employment.

(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 268.231, 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 reemployment 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.

Subd. 4. Insured work. "Insured work" as used in this section means insured work as defined in section 268.04, subdivision 17, and employment which is covered by the provisions of the Railroad Unemployment Compensation Act or United States Code, title 5, chapter 85.

Subd. 5. Concurrent weeks. Weeks of disqualification imposed under the provisions of this section shall be concurrent where two or more disqualifying periods overlap.

Subd. 6. Week of unemployment defined. A week of unemployment, as used in this section, shall mean a week during which such individual would be otherwise eligible for benefits.

Subd. 7. Application. This section shall apply to any separation from employment or refusal of a job referral or job offer occurring in this or any other state if such employment is insured under this law, a similar law of another state, the Railroad Unemployment Act or United States Code, title 5, chapter 85.

Subd. 8. Training approved under Trade Act of 1974. An individual shall not be disqualified for benefits under subdivision 1, clause (1) if the individual left work which was not suitable employment to enter approved training or disqualified under subdivision 2, if the individual is in approved training. For the purposes of this subdivision "suitable employment" is defined in and the criteria for approval of training are set forth in section 236 of the Trade Act of 1974, as amended.

History: (4337-27) *Ex*1936 c 2 s 7; 1937 c 401 s 1; 1939 c 443 s 6; 1941 c 554 s 6; 1943 c 650 s 5; 1945 c 376 s 6; 1947 c 432 s 7; 1965 c 741 s 17; 1967 c 342 s 1; 1967 c 573 s 5; 1969 c 42 s 1; 1971 c 942 s 11; 1973 c 23 s 1; 1973 c 599 s 9; 1974 c 477 s 1; 1975 c 336 s 16; 1977 c 4 s 8; 1977 c 242 s 1; 1977 c 297 s 19; 1978 c 618 s 1; 1979 c 181 s 11-13; 1980 c 508 s 9; 1982 c 619 s 1; *ISp*1982 c 1 s 26-28; 1983 c 372 s 26,27; 1986 c 444; 1987 c 362 s 19,20; 1987 c 385 s 23,24; 1989 c 65 s 8; 1989 c 209 art 2 s 1; 1992 c 484 s 11,12

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 and registered successors to those employers as defined in section 268.06, subdivision 22. 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, paragraph (e), 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 a referee's 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 a referee's 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 referee's 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 268.231 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 determina-

tion 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 a referee's 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.

Subd. 3. Appeal; hearing. Unless an appeal is withdrawn, the date for hearing before a referee shall be set and notice of the hearing shall be mailed to the last known address of all interested parties at least ten days prior to the date set for the hearing. The hearing may be conducted by means of a conference telephone call except that the appellant may request that the hearing be conducted in person. The hearing shall be a trial de novo, and, upon the evidence presented, the referee shall affirm, modify, or set aside the initial determination. Where the same or substantially similar evidence is relevant and material to the issues in appeals by more than one individual or in appeals by one individual with respect to two or more weeks of unemployment, the appeals may be consolidated into one hearing. The referee shall exclude from any consolidated hearing the appeal of an individual who may be prejudiced because of the consolidation. A referee shall not hear any appeal in which the referee has a direct interest. The parties shall be notified of the referee's decision and the reason for it. The referee's decision is deemed to be the final decision unless a further appeal is initiated pursuant to subdivision 5.

Subd. 4. Referees. In order to assure the prompt disposition of all claims for benefits, the commissioner shall appoint one or more impartial referees. The commissioner shall by rule adopt a procedure by which referees hear and decide disputed claims, subject to appeal to the commissioner. No person shall participate on behalf of the commissioner in any case in which that person is an interested party. The commissioner may designate alternates to serve in the absence or disqualification of a referee. There shall be no charges, fees, transcript costs, or other cost imposed upon the employee in prosecuting an appeal. All decisions of referees shall be made available to the public in accor-

dance with rules the commissioner may prescribe, except that names of interested parties may be deleted.

Subd. 5. Review by commissioner. Within 30 days after mailing or personal delivery of the notice of a referee's decision to the claimant or employer at the last known address, a party may appeal from the decision and obtain a review of it by the commissioner or an authorized representative. The commissioner within the same period of time may on the commissioner's own motion order a review of a decision. Upon review, the commissioner or authorized representative may affirm, modify, or set aside any finding of fact or decision, or both, of the referee on the basis of the evidence previously submitted in the case, or remand the matter back to the referee for the taking of additional evidence and new findings and decision based on all of the evidence before the referee. Notice of all hearings on review shall be given to all interested parties in the same manner as provided for by subdivision 3. The commissioner or authorized representative may personally hear or transfer to another referee the proceedings on any claim pending before a referee. Any proceedings removed to the commissioner or authorized representative shall be heard upon notice in accordance with the requirements of subdivision 3. The department of jobs and training shall mail to all interested parties a notice of the filing of and a copy of the findings and decision of the commissioner or representative.

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

Subd. 7. Subpoenaed. Witnesses, other than an interested party or officers and employees of an interested party, subpoenaed pursuant to this section shall be allowed fees the same as witness fees in a civil action in district court. These fees shall be deemed a part of the expense of administering sections 268.03 to 268.231.

Subd. 8. Certiorari. Any decision of the commissioner may be reviewed on certiorari by the court of appeals provided a petition for the writ is filed and served upon the adverse party or parties within 30 days after the date of mailing notice of any decision to the party at the last known address.

Any party in interest, except a claimant for benefits, upon the service of the writ shall furnish a cost bond to be approved by the commissioner and pay to the department of jobs and training the fee prescribed by rule 103.01 of the rules of civil appellate procedure which shall be disposed of in the manner provided by that rule.

Subd. 9. Representation. In any proceeding under these sections, a party may be represented by any agent. Except for services provided by an attorney-at-law, a claimant for benefits shall not be charged fees of any kind in a proceeding before a referee, the commissioner, commissioner's representatives, or by any court or any officers thereof.

Subd. 10. Attorney for commissioner. The commissioner shall be deemed to be a party to any judicial action involving any decision and shall be represented therein by any qualified attorney who is a regular salaried employee of the department of jobs and training and has been designated by the commissioner for that purpose or, at the commissioner's request, by the attorney general.

History: (4337-28) *Ex1936 c 2 s 8; 1937 c 306 s 5; 1939 c 443 s 7; 1941 c 554 s 7; 1943 c 650 s 6; 1945 c 376 s 7; 1947 c 600 s 1; 1951 c 442 s 4,5; 1953 c 97 s 10-12; 1957 c 307 s 1; 1957 c 883 s 6; 1967 c 439 s 4,5; 1969 c 567 s 3; 1969 c 854 s 8; 1971 c 686 s 2; Ex1971 c 28 s 1; 1973 c 254 s 3; 1975 c 336 s 17-19; 1976 c 239 s 39; 1977 c 4 s 9; 1977 c 430 s 25 subd 1; 1979 c 181 s 14; 1980 c 508 s 10; 1Sp1982 c 1 s 29,30; 1983 c 247 s 113; 1983 c 372 s 28-34; 1985 c 248 s 70; 1Sp1985 c 14 art 9 s 75; 1986 c 444; 1987*

c 362 s 21,22; 1989 c 65 s 9,10; 1989 c 209 art 1 s 28; art 2 s 1; 1990 c 516 s 5; 1992 c 484 s 13

268.11 EMPLOYERS COVERAGE.

Subdivision 1. Employer for part of year. Except as provided in subdivisions 2 and 3, any employing unit which is or becomes an employer subject to sections 268.03 to 268.231 within any calendar year shall be deemed to be an employer during the whole of such calendar year.

Subd. 2. Application for termination of coverage. Except as otherwise provided in subdivision 3, any employing unit shall cease to be an employer subject to sections 268.03 to 268.231 as of the last day of the calendar quarter in which the employing unit files with the commissioner a written application for termination of coverage, if the commissioner finds the employment in the preceding calendar year and during the current calendar year, up to the last day of the calendar quarter in which the application was received, was not sufficient to make the employing unit liable under the provisions of section 268.04, subdivision 10. For the purpose of this subdivision the two or more employing units mentioned in section 268.04, subdivision 10, clause (2), (3), (5), or (6), shall be treated as a single employing unit.

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

The commissioner at the commissioner's discretion may make a motion to terminate the coverage of any employer who no longer meets the definition of employer under section 268.04, subdivision 10.

Subd. 3. Election agreements; termination powers of commissioner. (1) An employing unit, not otherwise subject to sections 268.03 to 268.231 as an employer, which files with the commissioner its written election to become an employer subject thereto for not less than two calendar years, shall, with the written approval of such election by the commissioner, become an employer subject hereto to the same extent as all other employers, as of the date stated in such approval and cease to be subject hereto as of the first day of January of any calendar year subsequent to such two calendar years, only, if at least 30 days prior to such first day of January, it has filed with the commissioner a written notice to that effect.

(2) Any employing unit for which services that do not constitute employment are performed, may file with the commissioner a written election that all such service performed by individuals in its employ in one or more distinct establishments or places of business shall be deemed to constitute employment for all the purposes of sections 268.03 to 268.231 for not less than two calendar years. Upon the written approval of such election by the commissioner, such services shall be deemed to constitute employment subject to these sections from and after the date stated in such approval. Such services shall cease to be deemed employment subject hereto as of the first day of January of any calendar year subsequent to such two calendar years only if at least 30 days prior to such first day of January such employing unit has filed with the commissioner a written notice to that effect.

(3) The commissioner must terminate any election agreement under this subdivision upon 30 days notice to the employer, if the employer fails to pay all contributions due under section 268.06, subdivision 1, or reimburse the unemployment fund in accordance with section 268.06, subdivisions 25, 26, 27, and 28.

History: (4337-29) *Ex1936 c 2 s 9; 1937 c 306 s 6; 1941 c 554 s 8; 1945 c 376 s 8; 1947 c 600 s 2; 1949 c 605 s 10; 1953 c 97 s 13,14; 1965 c 45 s 41; 1969 c 854 s 9,10; 1983 c 372 s 35,36; 1986 c 444; 1989 c 209 art 2 s 1*

268.115 [Expired]

268.12 CREATION.

Subdivision 1. [Repealed, 1Sp1985 c 14 art 9 s 78 subd 1]

Subd. 1a. [Repealed, 1Sp1985 c 14 art 9 s 78 subd 1]

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

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

Subd. 3. [Repealed, 1983 c 268 s 2]

Subd. 4. **Printing and publication.** The commissioner shall cause to be printed for distribution to the public the text of sections 268.03 to 268.231, the commissioner's general rules, annual reports to the governor, and any other material the commissioner deems relevant and suitable, provided such printing methods and means are not inconsistent with present statutes.

Subd. 5. **Assistance.** (1) Subject to the provisions of the state civil service act and to the other provisions of sections 268.03 to 268.231 the commissioner is authorized to appoint, and prescribe the duties and powers of, such officers, accountants, experts, and other persons as may be necessary in the performance of duties thereunder. The commissioner may delegate to any such person so appointed such power and authority as the commissioner deems reasonable and proper for the effective administration of those sections and may, bond any person handling money or signing checks thereunder. The commissioner is authorized to adopt such personnel and fiscal rules as the commissioner deems necessary to satisfy fiscal and personnel standards required by the secretary of labor pursuant to the Social Security Act, as amended, and the act of Congress entitled "An act to provide for the establishment of a national employment system and to cooperate with the states in the promotion of such system and for other purposes," approved June 6, 1933, as amended. The commissioner may, subject to the approval of the commissioner of administration, also adopt rules relating to reimbursement to department employees for travel expenses incurred while traveling on official business including allowances on a per diem basis in lieu of actual subsistence expenses incurred. The commissioner is also hereby authorized to purchase liability and property damage automobile insurance to cover any automobiles owned by the Minnesota department of jobs and training for the protection of its employees who may be required to operate the same in pursuit of their duties for the department.

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

Subd. 6. [Repealed, 1989 c 343 s 7]

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

Subd. 8. **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.

Subd. 9. **Testimonial powers.** (1) In the discharge of the duties imposed by sections 268.03 to 268.231, the commissioner, appeal referee, or any duly authorized representative of the commissioner, shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim or the administration of these sections;

(2) Witnesses, other than interested parties or officers and employees of an

employing unit which is an interested party, subpoenaed pursuant to this subdivision or sections 268.03 to 268.231, shall be allowed fees the same as witness fees in civil actions in district court, which fees need not be paid in advance of the time of giving of testimony, and such fees of witnesses so subpoenaed shall be deemed part of the expense of administering these sections;

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

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

Subd. 11. Cooperation with the secretary of labor. (1) In the administration of this law, the commissioner shall cooperate with the United States department of labor to the fullest extent consistent with the provisions of this law, and shall take such action, through the adoption of appropriate rules, administrative methods and standards, as may be necessary to secure to this state and its citizens all advantages available under the provisions of the Social Security Act that relate to unemployment compensation, the Federal Unemployment Tax Act, the Wagner-Peyser Act, and the Federal-State Extended Unemployment Compensation Act of 1970.

In the administration of the provisions in section 268.071, which are enacted to conform with the requirements of the Federal-State Extended Unemployment Compensation Act of 1970, the commissioner shall take such action as may be necessary to ensure that the provisions are so interpreted and applied as to meet the requirements of such federal act as interpreted by the United States department of labor, and to secure to this state the full reimbursement of the federal share of extended and regular benefits paid under this law that are reimbursable under the federal act.

(2) If section 303(a) (5) of Title III of the Social Security Act and section 3304(a) (4) of the Internal Revenue Code are amended to permit a state agency to use, in financing administrative expenditures incurred in carrying out its employment services functions, some part of the money collected or to be collected under the state unemployment compensation law, in partial or complete substitution for grants under said Title III, in that event sections 268.03 to 268.231 shall, by the commissioner's proclamation and rules to be issued with the governor's approval, be modified in the manner and to the extent and within the limits necessary to permit such use by the commissioner under these sections; and such modifications shall become effective on the same date as such use becomes permissible under such federal amendments.

(3) The commissioner is also authorized and directed to apply for an advance to the state unemployment fund and to do any and all acts necessary and lawfully required for the repayment of such advance in accordance with the conditions specified in Title

XII of the Social Security Act, as amended, in order to secure to this state and its citizens the advantages available under the provisions of such title.

Subd. 12. **Information.** Except as hereinafter otherwise provided, data gathered from any employing unit or individual pursuant to the administration of sections 268.03 to 268.231, and from any determination as to the benefit rights of any individual are private data on individuals or nonpublic data not on individuals as defined in section 13.02, subdivisions 9 and 12, and may not be disclosed except pursuant to this subdivision or a 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 department of revenue shall have access to department of jobs and training private data on individuals and nonpublic data not on individuals only to the extent necessary for enforcement of Minnesota tax laws;

(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 on an interchangeable basis with the department of jobs and training subject to the following limitations and notwithstanding any law to the contrary:

(1) the department of jobs and training shall have access to private data on individuals and nonpublic data not on individuals for uses consistent with the administration of its duties under sections 268.03 to 268.231; and

(2) the department of labor and industry shall have access to private data on individuals and nonpublic data not on individuals for uses consistent with the administration of its duties under state law;

(g) the department of trade and economic development may have access to private data on individual employing units and nonpublic data not on individual employing units for its internal use only; when received by the department of trade and economic development, the data remain private data on individuals or 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;

(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; and

(j) the department of health may have access to private data on individuals and nonpublic data not on individuals solely for the purposes of epidemiologic investigations.

Data on individuals 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 not on individuals as defined in section 13.02, subdivisions 3 and 13, and shall not be disclosed except pursuant to statute or court order or to a party named in a criminal proceeding, administrative or judicial, for preparation of a defense.

Tape recordings and transcripts of recordings of proceedings before a referee of the department and exhibits offered by parties other than the department and received into evidence at those proceedings are private data on individuals and nonpublic data not on individuals and shall be disclosed only pursuant to the administration of section 268.10, subdivisions 3 to 8, or pursuant to a court order.

Aggregate data about employers compiled from individual job orders placed with the department of jobs and training are private data on individuals and nonpublic data not on individuals as defined in section 13.02, subdivisions 9 and 12, 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 private data on individuals or 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 268.231 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.

Subd. 13. Determinations. (1) An official, designated by the commissioner, upon the commissioner's own motion or upon application of an employing unit, shall determine if an employing unit is an employer within the meaning of this chapter or as to whether services performed for it constitute employment within the meaning of this chapter, and shall notify the employing unit of the determination. The determination shall be final unless the employing unit, within 30 days after the mailing of notice of the determination to the employing unit's last known address, files a written appeal from it.

(2) The commissioner shall designate one or more referees to conduct hearings on appeals. The employing unit and any claimant whose filed claim for benefits may be affected by a determination issued under clause (1) shall be interested parties to an appeal. The referee shall fix a time and place within this state for the hearing and give interested parties written notice of it, by mail, not less than ten days prior to the time of the hearing. In the discharge of the duties imposed by this subdivision, the referee may administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with the subject matter of the hearing. The written report of any employee of the department of jobs and training, made in the regular course of the performance of the employee's duties, shall be competent evidence of the facts contained in it and shall be prima facie correct, unless refuted by other credible evidence.

(3) Upon the conclusion of the hearing, the referee shall serve upon the interested parties by mail findings of fact and decision. The decision of the referee, together with the findings of fact and reasons in support of them, is final unless an interested party, within 30 days after the mailing of a copy of it to the interested parties' last known addresses, files an appeal with the commissioner, or unless the commissioner, within 30 days after mailing of the decision, on the commissioner's own motion orders the matter certified to the commissioner for review. Appeal from and review by the commissioner of the decision of the referee shall be in the manner provided by rule. The commissioner may without further hearing affirm, modify, or set aside the findings of fact or decision, or both, of the referee on the basis of the evidence previously submitted in the case, or direct the taking of additional evidence. The commissioner may disregard the findings of fact of the referee and examine the testimony taken and make any findings of fact as the evidence taken before the referee may, in the judgment of the commissioner, require, and make any decision as the facts found by the commissioner require. The commissioner shall notify the employing unit of the commissioner's findings and decision by mail, mailed to the interested parties' last known addresses. The decision of the commissioner is final unless judicial review of it is sought as provided by this subdivision.

(4) The court of appeals may, by writ of certiorari to the commissioner, review all questions of law and fact presented by the record in accordance with chapter 14, and

section 268.10, subdivision 8. The commissioner shall prepare and certify to the court a true and correct typewritten copy of all matters contained in the record.

(5) A final decision of the commissioner or referee, in the absence of appeal, is conclusive for all the purposes of sections 268.03 to 268.231 except as otherwise provided, and, together with the records therein made, shall be admissible in any subsequent judicial proceeding involving liability for contributions. The final decision on an appeal may be introduced in any proceeding involving a claim for benefits.

(6) In the event a final decision on an appeal determines the amount of contributions due under sections 268.03 to 268.231, then, if the amount, together with interest and penalties, is not paid within 30 days after the decision, the provisions of section 268.161 shall apply. The commissioner shall proceed thereunder, substituting a certified copy of the final decision in place of the contribution report.

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

History: (4337-30) *Ex*1936 c 2 s 10; 1937 c 306 s 7; 1939 c 441 s 42; 1939 c 443 s 8,10; 1941 c 554 s 9; 1943 c 650 s 7; 1945 c 376 s 9; 1947 c 600 s 3-6; 1949 c 605 s 15; 1949 c 739 s 8; 1951 c 442 s 6-10; 1951 c 713 s 29; 1953 c 97 s 15; 1953 c 603 s 1; 1953 c 612 s 1; 1955 c 847 s 22; 1957 c 883 s 7; 1965 c 45 s 42-44; 1965 c 741 s 18; 1967 c 770 s 1; 1969 c 9 s 63; 1969 c 310 s 2; 1969 c 567 s 1,3; 1969 c 854 s 11,12; 1969 c 1129 art 8 s 7; 1971 c 942 s 12; 1973 c 254 s 1,3; 1973 c 492 s 14; 1974 c 241 s 1; 1975 c 315 s 19; 1975 c 336 s 20,21; 1977 c 172 s 2; 1977 c 237 s 1; 1977 c 297 s 20; 1977 c 305 s 31; 1977 c 430 s 25 subd 1; 1978 c 674 s 60; 1979 c 181 s 15; 1980 c 615 s 37; 1981 c 311 s 39; 1982 c 424 s 130; 1982 c 545 s 23,24; 1Sp1982 c 1 s 31,32; 1983 c 216 art 1 s 87; 1983 c 247 s 114; 1983 c 260 s 58; 1983 c 312 art 8 s 2; 1983 c 372 s 37,38; 1984 c 544 s 89; 1985 c 248 s 70; 1Sp1985 c 14 art 9 s 75; 1986 c 444; 1987 c 165 s 1; 1987 c 312 art 1 s 26 subd 2; 1987 c 362 s 23; 1987 c 385 s 25; 1989 c 65 s 11; 1989 c 209 art 2 s 1; 1990 c 516 s 6,7; 1991 c 202 s 16

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: 1Sp1982 c 1 s 42; 1986 c 444; 1987 c 362 s 24; 1987 c 370 art 2 s 16; 1987 c 385 s 26

268.13 RECIPROCAL BENEFIT ARRANGEMENTS.

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

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

(a) in which any part of any such individual's service is performed, or

(b) in which any such individual has a residence, or

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

(2) The commissioner shall participate in any arrangements for the payment of

compensation on the basis of combining an individual's wages and employment covered under this law with wages and employment covered under the unemployment compensation laws of other states which are approved by the United States Secretary of Labor in consultation with the state unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of compensation in such situations and which include provisions for applying the base period of a single state law to a claim involving the combining of an individual's wages and employment covered under two or more state unemployment compensation laws, and avoiding the duplicate use of wages and employment by reason of such combining;

(3) Wages or services, upon the basis of which an individual may become entitled to benefits under an employment security law of another state or of the federal government, shall be deemed to be wages for insured work for the purpose of determining the individual's rights to benefits under sections 268.03 to 268.231, and wages for insured work, on the basis of which an individual may become entitled to benefits thereunder shall be deemed to be wages or services on the basis of which unemployment compensation under such law of another state or of the federal government is payable, but no such arrangement shall be entered into unless it contains provisions for reimbursements to the fund for such of the benefits paid thereunder upon the basis of such wages or service, and provisions for reimbursements from the fund for such of the compensation paid under such other law upon the basis of wages for insured work;

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

Subd. 2. Reimbursements. Reimbursements paid from the fund pursuant to subdivision 1 shall be deemed to be benefits for the purposes of sections 268.05 to 268.09. The commissioner is authorized to make to other state or federal agencies and to receive from such other state or federal agencies, reimbursements from or to the fund, in accordance with arrangements entered into pursuant to subdivision 1.

Subd. 3. Cooperation. The administration of sections 268.03 to 268.231 and of other state and federal employment security and public employment service laws will be promoted by cooperation between this state and such other states and the appropriate federal agencies in exchanging services, and making available facilities and information. The commissioner is therefore authorized to make such investigation and audits, secure and transmit such information, make available such services and facilities and exercise such of the other powers provided herein with respect to the administration of these sections as the commissioner deems necessary or appropriate to facilitate the administration of any such employment security or public employment service law, and in like manner, to accept and utilize information, services and facilities made available to this state by the agency charged with the administration of any such other employment security or public employment service law.

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

Subd. 4. Utilization of federal benefits. To the extent permissible under the laws and Constitution of the United States, the commissioner is authorized to enter into or cooperate in arrangements whereby facilities and services provided under sections 268.03 to 268.231 and facilities and services provided under the employment security law of any foreign government, may be utilized for the taking of claims and the payment of benefits under the employment security law of this state or under a similar law of such government.

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

History: (4337-31) *Ex1936 c 2 s 11; 1937 c 306 s 8; 1939 c 443 s 9; 1941 c 554 s 10; 1943 c 650 s 8; 1945 c 376 s 10; 1947 c 432 s 8-10; 1965 c 45 s 45; 1969 c 9 s 64; 1971 c 942 s 13; 1979 c 181 s 16; 1986 c 444; 1989 c 209 art 2 s 1*

268.14 FREE EMPLOYMENT OFFICES.

Subdivision 1. Acceptance of federal act. A state employment service is hereby established in the department of jobs and training. The commissioner in the conduct of such service shall establish and maintain free public employment offices, in such number and in such places as may be necessary for the proper administration of sections 268.03 to 268.231 and for the purpose of performing such functions as are within the purview of the act of Congress entitled "An act to provide for the establishment of a national employment system for the cooperation with the states in the promotion of such system and for other purposes," approved June 6, 1933, as amended. The provisions of such act of Congress are hereby accepted by this state and the department of jobs and training is hereby designated and constituted the agency of this state for the purposes of such act. The commissioner, pending the return of the employment service, its facilities, property, and personnel, to state control after the war emergency, may loan to the United States employment service facilities, property and personnel.

Subd. 2. Financing. All moneys received by this state under such act of Congress referred to in subdivision 1 shall be paid into the economic security administration fund, and expended solely for the maintenance of state public employment offices. For the purpose of establishing and maintaining free public employment offices and promoting the use of their facilities, the commissioner is authorized to enter into agreements with the railroad retirement board or any other agency of the United States or of this or any other state charged with the administration of any law whose purposes are reasonably related to the purposes of sections 268.03 to 268.231.

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

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

Subd. 5. Veterans representatives. As may be determined by the commissioner, based on a demonstrated need for the service, there shall be assigned by the commissioner to the staff of each full functioning employment service office a veterans employment representative whose activities shall be devoted to discharging the duties prescribed of a veterans employment representative. The position of veterans employment representative shall be filled by one or more employees of the department of jobs and training who are veterans as defined in section 197.447.

Subd. 6. MS 1980 [Expired]

History: (4337-32) *Ex1936 c 2 s 12; 1937 c 306 s 9; 1939 c 443 s 11; 1941 c 554 s*

11; 1945 c 376 s 11; 1949 c 605 s 11; 1969 c 567 s 3; 1973 c 254 s 3; 1977 c 151 s 1; 1977 c 430 s 25 subd 1; 1980 c 350 s 1; 1983 c 216 art 1 s 87; 1Sp1985 c 14 art 9 s 75; 1989 c 209 art 2 s 1

268.15 ECONOMIC SECURITY ADMINISTRATION FUND.

Subdivision 1. Administration fund. There is hereby created in the state treasury a special fund to be known as the economic security administration fund. All moneys which are deposited or paid into this fund shall be continuously available to the commissioner for expenditure in accordance with the provisions of sections 268.03 to 268.231, and shall not lapse at any time. The fund shall consist of all moneys received from the United States or any agency thereof, including the United States department of labor, and include any moneys received from any agency of the United States or any other state as compensation for services or facilities supplied to such agency, any amounts received pursuant to any surety bond or insurance policy or from other sources for losses sustained by the economic security administration fund or by reason of damage to equipment or supplies purchased from moneys in such fund, and any proceeds realized from the sale or disposition of any such equipment or supplies which may no longer be necessary for the proper administration of those sections. Notwithstanding any provision of this section, all money requisitioned and deposited in this fund pursuant to section 268.05, subdivision 5, shall remain part of the unemployment fund and shall be used only in accordance with the conditions specified in section 268.05, subdivision 5. All moneys in this fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as are provided by law for the other special funds in the state treasury. The state treasurer shall be liable on the treasurer's official bond for the faithful performance of duties in connection with the economic security administration fund provided for under these sections. Such liability on the official bond shall be effective immediately upon the enactment of this provision, and such liability shall exist in addition to any liability upon any separate bond existent on the effective date of this provision, or which may be given in the future. All sums recovered on any surety bond for losses sustained by the economic security administration fund shall be deposited in this fund. All money in this fund, except money received pursuant to section 268.05, subdivision 5, clause (3) shall be expended solely for the purposes and in the amounts found necessary by the secretary of labor for the proper and efficient administration of the economic security program.

Subd. 2. State to replace moneys wrongfully used. If any moneys received after June 30, 1941, under Title III of the Federal Social Security Act, or any unencumbered balances in the economic security administration fund as of that date, or any moneys granted after that date to the state pursuant to the provisions of the Wagner-Peyser Act, are found by the secretary of labor, because of any action or contingency, to have been lost or been expended for purposes other than, or in amounts in excess of, those found necessary by the secretary of labor for the proper administration of these sections, the commissioner may, with the approval of the commissioner of administration, replace such moneys from the economic security contingent fund hereinafter established. If such moneys are not thus replaced, it is the policy of this state that such moneys shall be replaced by moneys appropriated for such purpose from the general funds of this state to the economic security administration fund for expenditure as provided in subdivision 1. Upon receipt of notice of such a finding by the secretary of labor, the commissioner shall promptly report the amount required for such replacement to the governor and the governor shall, at the earliest opportunity, submit to the legislature a request for the appropriation of such amount. This subdivision shall not be construed to relieve this state of its obligation with respect to funds received prior to July 1, 1941, pursuant to the provisions of Title III of the Social Security Act.

Subd. 3. Contingent 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 268.231. 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 moneys 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.

Subd. 4. [Repealed, 2Sp1981 c 1 s 8]

History: (4337-33) *Ex*1936 c 2 s 13; 1941 c 554 s 12; 1945 c 376 s 12; 1953 c 97 s 16; 1957 c 883 s 8-10; 1963 c 721 s 1; 1965 c 45 s 46; 1969 c 399 s 1; 1969 c 567 s 3; 1973 c 254 s 3; 1973 c 492 s 14; 1973 c 720 s 73 subd 1; 1974 c 497 s 1; 1975 c 302 s 2; 1Sp1982 c 1 s 33; 1983 c 216 art 1 s 87; 1986 c 444; 1987 c 362 s 25; 1987 c 385 s 27; 1989 c 209 art 2 s 1

268.16 COLLECTION OF CONTRIBUTIONS.

Subdivision 1. Interest on past due contributions. If contributions or reimbursements to the unemployment fund are not paid on the date on which they are due the unpaid balance thereof shall bear interest at the rate of one and one-half percent per month or any part thereof. Contributions or reimbursements received by mail postmarked on a day following the date on which the law requires contributions to be paid shall be deemed to have been paid on the due date if there is substantial evidence tending to prove that the contribution was actually deposited in the United States mails properly addressed to the department with postage prepaid thereon on or before the due date. Interest collected pursuant to this subdivision shall be paid into the contingent account. Interest on contributions due under this subdivision may be waived in accordance with rules as the commissioner may adopt.

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 268.231 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 268.231 and shall be collected as provided by section 268.161 and shall be credited to the contingent account.

Subd. 3. [Repealed, 1Sp1982 c 1 s 43]

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.

Subd. 4. **Compromise agreements.** The commissioner, or any officer or employee of the state department of jobs and training authorized in writing by the commissioner, is authorized to enter into an agreement in writing with any employer relating to the

liability of such employer in respect to delinquent contributions, reimbursements, interest, penalties, and costs; provided that such agreement shall not be made in respect to liability for the principal sum of delinquent contributions or reimbursements unless the same has been delinquent for a period of at least four years prior to the making of such agreement. The commissioner may also enter into an agreement, with respect to liability for delinquent contributions, interest, penalties and costs, with any employer who has never paid any contributions to the fund and such failure to pay contributions was, in the opinion of the commissioner, due to an honest belief on the part of such employer that the employer was not covered by sections 268.03 to 268.231. Any agreements made under this subdivision shall be subject to the approval of the attorney general.

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

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

Subd. 6. Adjustments, refunds. If an employer makes an application for an adjustment of any amount paid as contributions or interest thereon, to be applied against subsequent contribution payments, or for a refund thereof because such adjustment cannot be made, and the payment was made within four years prior to the year in which the application is made, and if the commissioner shall determine that payment of such contributions or interest or any portion thereof was erroneous, the commissioner shall allow such employer to make an adjustment thereof, without interest, in connection with subsequent contribution payments by the employer, or if such adjustment cannot be made, the commissioner shall refund from the fund to which such payment has been credited, without interest, the amount erroneously paid. For like cause and within the same period, adjustment or refund may be so made on the commissioner's own initiative.

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

Subd. 7. Limitation. Nothing in sections 268.03 to 268.231, or any part thereof, shall be construed to authorize any refund of moneys due and payable under the law and rules in effect at the time such moneys were paid.

Subd. 8. Compromise by attorney general. The attorney general may compromise contributions, penalties, and interest in any case referred to the attorney general, whether reduced to judgment or not, when, in the attorney general's opinion, it shall be in the best interests of the state to do so. A compromise made hereunder shall be in the form the attorney general prescribes and in writing signed by the attorney general, the taxpayer or representative, and the commissioner or authorized representative. No

compromise is authorized under this subdivision when the amount of contributions, interest, and penalties exceeds \$5,000.

History: (4337-34) *Ex*1936 c 2 s 14; 1941 c 554 s 13; 1943 c 650 s 9; 1945 c 376 s 13; 1949 c 605 s 12,13; 1951 c 55 s 1; 1953 c 97 s 17; 1969 c 9 s 65; 1969 c 567 s 3; 1969 c 854 s 13; 1973 c 254 s 3; 1973 c 720 s 73 subds 2,3; 1975 c 108 s 1; 1975 c 302 s 3,4; 1975 c 336 s 22,23; 1977 c 430 s 25 subd 1; 1978 c 618 s 2; 1978 c 674 s 60; 1980 c 508 s 11-13; 3Sp1981 c 2 art 1 s 33; 1Sp1982 c 1 s 34,35; 1983 c 372 s 39; 1985 c 248 s 70; 1Sp1985 c 14 art 9 s 75; 1986 c 444; 1987 c 362 s 26; 1987 c 385 s 28-30; 1989 c 65 s 12; 1989 c 209 art 2 s 1

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)(1) 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.

(2) Notices of liens, lien renewals, and lien releases, in a form prescribed by the commissioner of jobs and training, may be filed with the county recorder or the secretary of state by mail, personal delivery, or by electronic transmission by the commissioner or a delegate into the computerized filing system of the secretary of state authorized under section 336.9-411. The secretary of state shall transmit the notice electronically to the office of the county recorder, if that is the place of filing, in the county or counties shown on the computer entry. The filing officer, whether the county recorder or the secretary of state, shall endorse and index a printout of the notice in the same manner as if the notice had been mailed or delivered.

(3) County recorders and the secretary of state shall enter information relative to lien notices, renewals, and releases filed in their offices into the central data base of the secretary of state. For notices filed electronically with the county recorders, the date and time of receipt of the notice and county recorder's file number, and for notices filed electronically with the secretary of state, the secretary of state's recording information, must be entered by the filing officer into the central data base before the close of the working day following the day of the original data entry by the department of jobs and training.

(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.

Subd. 2. Injunction forbidden. No suit shall lie to enjoin the assessment or collection of any contribution or reimbursement imposed by this chapter, or the interest and penalties imposed thereby.

Subd. 3. Legal action. If after due notice any employer defaults in any payment of contributions, reimbursements, and interest due thereon or penalties for failure to file returns and other reports as required by the provisions of sections 268.03 to 268.231 or by any rule of the commissioner, the commissioner shall, unless proceeding under one of the other subdivisions of this section, bring against the person liable for payment thereof an action at law, in the name of the state, for the recovery of the contribution, reimbursement, interest and penalties due in respect thereof under this chapter. The action shall be brought in the district court of the county of the residence or principal place of business within this state of the employer, or, in the case of an estate or trust, of the place of its principal administration, and for this purpose the place named in the report, if any, made by the employer shall be conclusive against the employer. If no place is named in the report, the action may be commenced in Ramsey county. The action shall be commenced by filing with the court administrator a statement showing the name and address of the employer, if known, an itemized summary of the taxable wages on the basis of which the contribution has been computed, the contribution due and unpaid thereon, and the interest and penalties due with respect thereto under this chapter, and shall contain a prayer that the court adjudge the employer to be indebted on account of the contribution, interest, and penalties in the amount thereof specified in the statement. The court administrator shall mail a copy of the statement by certified mail to the employer at the address given in the report, if any, and, if no address is given, then at the employer's last known address, within five days after the same is filed, except that, if the employer's address is not known, notice shall be made by posting a copy of the statement for ten days in the place in the courthouse where public notices are regularly posted. The employer shall, if desiring to litigate the claim, or any part thereof, file a verified answer with the court administrator setting forth objections to the claim, or any part thereof. The answer shall be filed on or before the lapse of the 20th day after the date of mailing the statement. If notice has been given by posting, the answer shall be filed on or before the 20th day after the expiration of the period during which the notice was required to be posted. If no answer is filed within the specified time, the court administrator, upon the filing of an affidavit of default, shall enter judgment for the state in the amount prayed for, plus costs of \$10. If an answer be filed, the issues raised shall stand for trial as soon as possible after the filing of the answer, and the court shall determine the issues and direct judgment accordingly and, if the contribution, interest, or penalties are sustained to any extent over the amount rendered by the employer, shall assess \$10 costs against the employer. The court shall disregard all technicalities and matters of form not affecting the substantial merits. The commissioner may call upon a county attorney or the attorney general to conduct the proceedings on behalf of the state. Execution shall be issued upon the judgment at the request of the commissioner, and the execution shall, in all other respects, be governed by the laws applicable to executions issued on judgments. Only the homestead and household goods of the judgment debtor shall be exempt from seizure and sale upon the execution.

Subd. 4. Collection by civil action. (1) In addition to all other collection methods authorized, if, after due notice, any employer defaults in any payment of contributions

or interest due thereon or penalties for failure to file returns and other reports as required by sections 268.03 to 268.231 or by any rule of the commissioner, the amount due may be collected by civil action in the name of the state of Minnesota, and any money recovered shall be credited to the funds provided for under those sections. Any employer adjudged in default shall pay the costs of the action. Civil actions brought under this section to collect contributions, interest due thereon, or penalties from an employer shall be heard by the court at the earliest possible date. No action for the collection of contributions or interest thereon shall be commenced more than six years after the contributions have been reported by the employer or determined by the commissioner to be due and payable. In any action, judgment shall be entered against any defendant in default for the relief demanded in the complaint without proof, together with costs and disbursements, upon the filing of an affidavit of default.

(2) Any employing unit which is not a resident of this state and which exercises the privilege of having one or more individuals perform service for it within this state, and any resident employing unit which exercises that privilege and thereafter removes from this state, shall be deemed thereby to appoint the secretary of state as its agent and attorney for the acceptance of process in any civil action under this subdivision. In instituting an action against any employing unit, the commissioner shall cause process or notice to be filed with the secretary of state, together with a payment of a fee of \$15 and that service shall be sufficient service upon the employing unit, and shall be of the same force and validity as if served upon it personally within this state. The commissioner shall forthwith send notice of the service of process or notice, together with a copy thereof, by certified mail, return receipt requested, to the employing unit at its last known address. The return receipt, the commissioner's affidavit of compliance with the provisions of this section, and a copy of the notice of service shall be appended to the original of the process filed in the court in which the civil action is pending.

Subd. 5. Right of setoff. Upon certification by the commissioner to the commissioner of finance or to any state agency which disburses its own funds, that an employer has an uncontested delinquent contribution or reimbursement liability owed to the department, and that the state has purchased personal services, supplies, contract services, or property from said employer, the commissioner of finance or the state agency shall apply to the delinquent contribution or reimbursement liability funds sufficient to satisfy the unpaid liability from funds appropriated for payment of said obligation of the state or any of its agencies that are due and owing the employer. The credit shall not be made against any funds exempt under section 550.37 or those funds owed an individual employer who receives assistance under chapter 256.

All funds, whether general or dedicated, shall be subject to setoff in the manner provided in this subdivision. Transfer of funds in payment of the obligations of the state or any of its agencies to an employer and any actions for the funds shall be had against the commissioner on the issue of the contribution or reimbursement liability. Nothing in this section shall be construed to limit the previously existing right of the state or any of its agencies to setoff.

Notwithstanding any law to the contrary, the commissioner shall have first priority to setoff funds owed by the department to a delinquent employer.

Subd. 6. Contribution or reimbursement presumed valid. The contribution and reimbursement, as assessed by the commissioner, including any penalties, shall be presumed to be valid and correctly determined and assessed, and the burden shall be upon the employer to show its incorrectness or invalidity. The statement filed by the commissioner with the court administrator, as provided in subdivision 3, or any other certificate by the commissioner of the amount of the contribution, reimbursement, interest and penalties as determined or assessed by the commissioner, shall be admissible in evidence and shall establish prima facie the facts set forth therein.

Subd. 7. Confession of judgment. (a) Any contribution report or form that is required to be filed with the commissioner concerning contributions or reimbursements due, shall contain a written declaration that it is made under the penalties of sec-

tion 268.18, subdivision 3 for willfully making a false report and shall contain a confession of judgment for the amount of the contribution or reimbursement shown due thereon to the extent not timely paid together with any interest and penalty due under this chapter.

(b) The commissioner may, within six years after a report or form is filed, notwithstanding section 541.09, enter judgment on any confession of judgment contained in the contribution report or form after 20 days notice served upon the employer by mail at the address shown in the employer's report. The judgment shall be entered by the court administrator of any county upon the filing of a photocopy or similar reproduction of that part of the contribution report or form containing the confession of judgment along with a statement of the commissioner or agent that the contribution or reimbursement has not been paid.

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 insti-

tution 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 268.231 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 file 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: 1Sp1982 c 1 s 36; 1983 c 372 s 40-44; 1985 c 281 s 1; 1Sp1985 c 14 art 9 s 75; 1986 c 444; 1Sp1986 c 3 art 1 s 82; 1987 c 385 s 31-34; 1989 c 209 art 2 s 1; 1991 c 291 art 18 s 1; 1992 c 484 s 14

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. This subdivision does not apply to sales in the normal course of the employer's business.

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; 1989 c 65 s 13

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, shall guarantee 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 by:

(a) withholding sufficient money on the contract; or

(b) requiring 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 contractor may make a written request for verification that the subcontractor has paid the contributions due 60 days after the due date for filing the contribution report that includes the final wages paid for services performed under the contract. If department records show that the subcontractor has paid the contributions for the period covered by the contract, the department may release the contractor from its liability under this subdivision.

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 work force 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; 1989 c 65 s 14

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 which the individual has been determined liable to pay.

This subdivision is effective to the extent permitted by federal law.

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.

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

History: 1987 c 385 s 38; 1989 c 65 s 15,16

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

268.17 PROTECTION OF RIGHTS AND BENEFITS.

Subdivision 1. Waiver of rights void. Any agreement by an individual to waive, release, or commute rights to benefits or any other rights under sections 268.03 to 268.231 shall be void. Any agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contributions, required under these sections from such employer, shall be void. No employer shall directly or indirectly make or require or accept any deduction from wages to finance the employer's contributions, require or accept any waiver of any right hereunder by any employed

individual or in any manner obstruct or impede the filing of claims for benefits. Any employer or officer or agent of any employer who violates any provision of this subdivision shall, for each offense, be guilty of a misdemeanor.

Subd. 2. No assignment of benefits; exemptions. Any assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under sections 268.03 to 268.231 shall be void; and such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy provided for the collection of debt; and benefits received by any individual so long as they are not mingled with other funds of the recipient shall be exempt from any remedy for the collection of all debts, except debts incurred for necessities furnished to such individual or a spouse or dependents during the time when such individual was unemployed. Any waiver of any exemption provided for in this subdivision shall be void.

History: (4337-35) *Ex1936 c 2 s 15; 1941 c 554 s 14; 1986 c 444; 1989 c 209 art 2 s 1*

268.18 RETURN OF BENEFITS; OFFENSES.

Subdivision 1. Erroneous payments. (a) 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 268.231 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 those benefits in cash to the nearest office of the Minnesota department of jobs and training. If the claimant fails to return the benefits, the department of jobs and training shall, as soon as it discovers the erroneous payment, determine the amount due and notify the individual to return it.

(b) 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 above 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.

(c) The commissioner of the department of jobs and training is 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.

(d) Notwithstanding paragraph (a), the commissioner shall waive recovery of an overpayment if a referee or the commissioner's representative determines the overpayment resulted from an administrative failure to identify that a claimant's wage credits were not earned in covered employment.

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 268.231 is guilty of fraud. After the discovery of facts by the commissioner indicating fraud in claiming or obtaining benefits under sec-

tions 268.03 to 268.231, 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)(a) and (c), (4), and (5). 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 268.231; 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.

Subd. 6. Employer misconduct; penalty. If the commissioner finds that any employing unit or any employee, officer, or agent of any employing unit, is in collusion with any employee for the purpose of assisting the claimant to receive benefits illegally, the employing unit shall be penalized \$500 or an amount equal to the amount of benefits determined to be overpaid, whichever is greater.

If the commissioner finds that any part of any employer's contribution deficiency is due to fraud with intent to avoid payment of contributions to the fund, 50 percent of the total amount of the deficiency or \$500, whichever is greater, shall be assessed as a penalty against the employer and collected in addition to the deficiency.

Penalties assessed under this section shall be in addition to any other penalties provided for by sections 268.03 to 268.231 and be subject to the same collection procedures that apply to past due contributions under this chapter. Penalties under this section shall be paid to the department and credited to the contingent fund.

The assessment of the penalty shall be final unless the employer files a written appeal with the department within 15 days after the notice of determination to the employer's last known address. If the employer shall appeal from the determination within the time above specified, the matter shall be referred for a hearing as set forth in section 268.10.

History: (4337-36) *Ex1936 c 2 s 16; 1941 c 554 s 15; 1951 c 442 s 11; 1953 c 97 s 18; 1969 c 567 s 3; 1973 c 254 s 3; 1975 c 336 s 24; 1977 c 4 s 10; 1977 c 430 s 25 subd 1; 1979 c 181 s 17,18; 1Sp1982 c 1 s 37-40; 1983 c 216 art 1 s 42,87; 1983 c 372 s 45,46; 1985 c 248 s 70; 1Sp1985 c 14 art 9 s 75; 1986 c 444; 1987 c 385 s 40-45; 1988 c 712 s 3; 1989 c 209 art 2 s 1; 1990 c 566 s 8; 1992 c 484 s 15*

268.20 REPRESENTATION IN COURT.

In any civil action to enforce the provisions of sections 268.03 to 268.231, the commissioner shall be represented by the attorney general.

History: (4337-37) *Ex1936 c 2 s 17; 1941 c 554 s 16; 1989 c 209 art 2 s 1*

268.21 NONLIABILITY OF STATE.

Benefits shall be deemed to be due and payable under sections 268.03 to 268.231 only to the extent provided therein and to the extent that moneys are available therefor to the credit of the unemployment compensation fund and neither the state nor the commissioner shall be liable for any amount in excess of such sums.

History: (4337-38) *Ex1936 c 2 s 18; 1941 c 554 s 17; 1989 c 209 art 2 s 1*

268.22 SAVING CLAUSE.

The legislature reserves the right to amend or repeal all or any part of sections 268.03 to 268.231 at any time; and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred thereby, or by acts done pursuant thereto, shall exist subject to the power of the legislature to amend or repeal these sections at any time.

History: (4337-39) *Ex1936 c 2 s 19; 1941 c 554 s 18; 1991 c 199 art 2 s 1*

268.23 SEVERABLE.

In the event that the United States department of labor shall determine that any provision of sections 268.03 to 268.231 is not in conformity with various provisions of the Federal Internal Revenue Code or the Social Security Act then such provision shall have no force or effect for any purpose but if any provision of sections 268.03 to 268.231, or the application thereof to any person or circumstances, is held invalid, the remainder of said sections and the application of such provision to other persons or circumstances shall not be affected thereby.

History: (4337-40) *Ex1936 c 2 s 20; 1941 c 554 s 19; 1949 c 605 s 14; 1965 c 45 s 47; 1991 c 199 art 2 s 1*

268.231 EFFECTIVE RATE; SUBSEQUENT YEARS.

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

History: 1949 c 605 s 16

268.24 [Repealed, 1987 c 385 s 50]**268.25 EFFECTIVE DATES.**

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

History: 1945 c 376 s 15

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 super-

visory 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

268.31 DEVELOPMENT OF YOUTH EMPLOYMENT OPPORTUNITIES.

(a) To the extent of available funding, the commissioner of jobs and training shall establish a program to employ individuals from the ages of 14 years up to 22 years. Available money may be used to operate this program on a full calendar year basis, to provide transitional services, link basic skills training and remedial education to job training and school completion, and for support services. The amount spent on support services in any one fiscal year may not exceed 15 percent of the total annual appropriation for this program. Individuals employed in this program will be placed in service with departments, agencies, and instrumentalities of the state, county, local governments, school districts, with nonprofit organizations, and private sector employers. The maximum number of hours that an individual may be employed in a position supported under this program is 480 hours. Program funds may not be used for private sector placements. Program operators must use the targeted jobs tax credit, other federal, state, and local government resources, as well as private sector resources to fund private sector placements. The commissioner shall cooperate with the commissioner of human services in determining and implementing the most effective means of disregarding a youth's earnings from family income for purposes of the aid to families with dependent children program, to the extent permitted by the federal government.

(b) Upon request of the commissioner of the department of natural resources, the commissioner will contract for or provide available services for remedial skills, life skills, and career counseling activities to youth in the Minnesota conservation corps program.

(c) The commissioner shall evaluate the services provided under this section. The evaluation shall include information on the effectiveness of program services in promoting the employability of young people. In order to measure the long-term effectiveness of the program, the evaluation shall include follow-up information on each participant.

History: 1977 c 254 s 1; 1977 c 430 s 25 subd 1; 1Sp1985 c 14 art 9 s 41; 1988 c 641 s 1; 1989 c 282 art 2 s 170

268.315 WORKER DISPLACEMENT PROHIBITED.

Subdivision 1. **Layoffs; work reductions.** An employer may not terminate, lay off, or reduce the working hours of an existing employee for the purpose of hiring a person with funds available under section 268.31.

Subd. 2. **Hiring during layoffs.** An employer may not hire a person with funds available under section 268.31 if any other person is on layoff from the same or a substantially equivalent job.

History: 1988 c 641 s 2

268.32 RATE OF PAY.

Persons employed pursuant to sections 268.31 to 268.36 shall be compensated at the higher of the state or federal minimum wage rate. Persons hired in a supervisory capacity shall be compensated according to criteria established by the commissioner by rule.

History: 1977 c 254 s 2; 1Sp1985 c 14 art 9 s 42; 1988 c 641 s 3

268.33 ELIGIBILITY FOR EMPLOYMENT AND PLACEMENT.

Subdivision 1. **Rules.** The commissioner of jobs and training shall make rules determining the priority and eligibility for employment and placement pursuant to sections 268.31 to 268.36. The commissioner has emergency and permanent rulemaking authority to implement sections 268.31 to 268.36.

Subd. 2. **Exemption.** The commissioner of jobs and training shall, for the purposes of sections 268.31 to 268.36, be exempt from complying with any law relating to hiring by departments, agencies or instrumentalities of the state.

History: 1977 c 254 s 3; 1977 c 430 s 25 subd 1; 1Sp1985 c 14 art 9 s 43

268.34 EMPLOYMENT CONTRACTS.

The commissioner may enter into arrangements with existing public and private nonprofit organizations and agencies with experience in administering youth employment programs for the purpose of providing employment opportunities in furtherance of sections 268.31 to 268.36 and to advance up to 20 percent of a youth employment contract to any participating organization or agency. The department of jobs and training shall retain ultimate responsibility for the administration of this employment program.

History: 1977 c 254 s 4; 1977 c 430 s 25 subd 1; 1981 c 82 s 1; 1983 c 339 s 2; 1Sp1985 c 14 art 9 s 44; 1988 c 641 s 4

268.35 ALLOCATION OF FUNDS.

The commissioner shall allocate funds to recipient organizations and agencies throughout the state taking into account in making such allocations the youth population of the county adjusted to eliminate the influence of post secondary educational institutions located in the county, the county unemployment rate and the number of families living below the poverty level in the county in which the recipient organization or agency is located.

History: 1977 c 254 s 5

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: 1977 c 254 s 6; 1Sp1985 c 14 art 9 s 45; 1987 c 403 art 2 s 131

PLANNING FOR YOUTH EMPLOYMENT

268.361 DEFINITIONS.

Subdivision 1. **Terms.** For the purposes of sections 268.361 to 268.367, the following terms have the meanings given them.

Subd. 2. **Advisory committee.** "Advisory committee" means the committee established in section 268.363.

Subd. 3. **Commissioner.** "Commissioner" means the commissioner of jobs and training.

Subd. 4. **Eligible organization.** "Eligible organization" means a public agency or a nonprofit organization that can demonstrate an ability to implement a program for education and training services provided to targeted youth. Eligible organizations may include local jurisdictions, public school districts, private nonsectarian schools, post-secondary educational institutes, alternative schools, community groups, and labor organizations.

Subd. 4a. **Program.** "Program" means the services and activities performed or contracted for by an eligible organization for which a grant has been received or for which a grant application has been submitted to the commissioner.

Subd. 5. **Homeless individual.** "Homeless individual" or "homeless person" means:

- (1) an individual who lacks a fixed, regular, and adequate nighttime residence; and
- (2) an individual who has a primary nighttime residence that is:
 - (i) a supervised publicly or privately operated shelter or dwelling designed to provide temporary living accommodations;
 - (ii) an institution that provides a temporary residence for individuals intended to be institutionalized; or
 - (iii) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for humans.

The term "homeless individual" does not include any individual imprisoned or otherwise detained under federal or state law.

Subd. 6. **Targeted youth.** "Targeted youth" means persons that are at least 16 years of age but not older than 21 years of age and are part of one of the following groups:

- (1) persons who are not attending any school and have not received a secondary school diploma or its equivalent; or
- (2) persons currently enrolled in a traditional or alternative school setting or a GED program and who, in the opinion of an official of the school, are in danger of dropping out of the school.

Subd. 7. **Very low income.** "Very low income" means incomes that are at or less than 30 percent of the median income for the Minneapolis-St. Paul metropolitan area.

History: 1988 c 686 art 3 s 1; 1989 c 328 art 7 s 1,2; 1991 c 345 art 2 s 47

268.362 GRANTS.

Subdivision 1. **Generally.** The commissioner shall make grants to eligible organizations for programs to provide education and training services to targeted youth. The purpose of these programs is to provide specialized training and work experience to at-risk targeted youth who have not been served effectively by the current educational system. The programs are to include a work experience component with work projects that result in the rehabilitation or construction of residential units for the homeless. Two or more eligible organizations may jointly apply for a grant. The commissioner shall administer the grant program.

Subd. 2. **Grant applications; awards.** Interested eligible organizations must apply to the commissioner for the grants. The advisory committee must review the applications and provide to the commissioner a list of recommended eligible organizations

that the advisory committee determines meet the requirements for receiving a grant. The total grant award for any program may not exceed \$50,000 per year. In awarding grants, the commissioner must give priority to (1) organizations that are operating or have operated successfully a program; and (2) distributing programs throughout the state. To receive a grant under this section, the eligible organization must match the grant money with at least an equal amount of nonstate money. The commissioner must verify that the eligible organization has matched the grant money.

History: 1988 c 686 art 3 s 2; 1989 c 328 art 7 s 3; 1992 c 376 art 5 s 1

268.363 ADVISORY COMMITTEE.

A 13-member advisory committee is established as provided under section 15.059 to assist the commissioner in selecting eligible organizations to receive planning grants, evaluating the final reports of each organization, and providing recommendations to the legislature. Members of the committee may be reimbursed for expenses but may not receive any other compensation for service on the committee. The advisory committee consists of representatives of the commissioners of education, human services, and jobs and training; a representative of the chancellor of vocational education; a representative of the commissioner of the housing finance agency; the director of the office of jobs policy; and seven public members appointed by the governor. Each of the following groups must be represented by a public member: labor organizations, local educators, community groups, consumers, local housing developers, youth between the ages of 16 and 21, and homeless persons. At least three of the public members must be from outside of the metropolitan area as defined in section 473.121, subdivision 2. The commissioner may provide staff to the advisory committee to assist it in carrying out its purpose.

History: 1988 c 686 art 3 s 3; 1990 c 375 s 3

268.364 PROGRAM PURPOSE AND DESIGN.

Subdivision 1. Program purpose. The grants awarded under section 268.362 are for a youth employment and training program directed at targeted youth who are likely to be at risk of not completing their high school education. Each program must include education, work experience, and job skills components.

Subd. 2. Education component. A program must contain an education component that requires program participants to complete their secondary education in a traditional public or private secondary school, a suitable alternative school setting, or a GED program. Program participants must be working toward the completion of their secondary education or literacy advancement.

Subd. 3. Work experience component. A work experience component must be included in each program. The work experience component must provide vocational skills training in an industry where there is a viable expectation of job opportunities and a training subsidy or stipend may be provided to program participants. The wage or stipend must be provided to participants who are recipients of public assistance in a manner or amount which will not reduce public assistance benefits. The work experience component must be designed so that work projects result in the expansion or improvement of residential units for homeless persons and very low income families, and must include direct supervision by individuals skilled in each specific vocation. Program participants may earn credits toward the completion of their secondary education from their participation in the work experience component.

Subd. 4. Job readiness skills component. A job readiness skills component must comprise at least 20 percent of each program. The component must provide program participants with job search skills, placement assistance, and other job readiness skills to ensure that participants will have an understanding of the building trades, unions, self-employment, and other employment opportunities and be able to compete in the employment market.

Subd 5. [Repealed by amendment, 1989 c 328 art 7 s 4]

History: 1988 c 686 art 3 s 4; 1989 c 328 art 7 s 4; 1992 c 376 art 5 s 2

268.365 HOUSING FOR HOMELESS.

Subdivision 1. Work project requirement. The work experience component of the youth employment and training program described in section 268.364 must include work projects that provide residential units through construction, rehabilitation, or improvement for the homeless and families with very low incomes.

Subd. 2. Priority for housing. Any residential units that become available through the program must be allocated in the following order:

- (1) homeless individuals who have participated in constructing, rehabilitating, or improving the unit;
- (2) homeless families with at least one dependent;
- (3) other homeless individuals;
- (4) other very low income families and individuals; and
- (5) families or individuals that receive public assistance and that do not qualify in any other priority group.

Subd. 3. Acquisition of housing units. The eligible organization receiving a grant under section 268.362 shall acquire property or buildings for the construction or rehabilitation of residential units at the lowest possible cost. Possible sources of property and funding include the federal Department of Housing and Urban Development, Farmers Home Administration, Minnesota housing finance agency, and the local housing authority.

Subd. 4. Management of residential units. The program must address how to manage these residential units, including the source of financing for the maintenance costs of the buildings. Any management plan must include the participation of the residents and local established neighborhood groups.

History: 1988 c 686 art 3 s 5; 1989 c 328 art 7 s 5; 1992 c 376 art 5 s 3

268.366 REQUIREMENTS OF ORGANIZATIONS RECEIVING GRANTS.

An organization that is awarded a grant shall prepare and submit an annual report to the commissioner by September 1 of each year. The report must include a discussion of the following:

- (1) the process used for encouraging the participation of the targeted youth in the geographic area surrounding the organization receiving the grant;
- (2) the support services and social services that targeted youth received under the program. Services may include client needs assessment, preemployment skills such as basic job skills and behavior, and intermediate needs such as education and chemical dependency treatment;
- (3) the type and degree of work experience that program participants received, including real work experience in both vocational and nonvocational settings;
- (4) the amount of training subsidy or stipend that each participant received while participating in the work experience component. The subsidy or stipend must reflect prevailing wage and benefits standards appropriate for preapprenticeship training unless a participant's receipt of public assistance is affected. The subsidy or stipend should be structured to include incentives for progress toward increasing job skills and completing secondary education;
- (5) the means of providing the necessary job readiness skills to program participants who have completed the work experience and educational components of the program so they have the ability to compete in the job market. These job search skills may include skills assessment, job search and selection, application preparation and assistance in preparing for job interviews;
- (6) the methods used to assist in placing program participants in suitable employment. The methods should include means of involving state government, businesses, labor organizations, community groups, and local jurisdictions in assisting in the placement;
- (7) the process used for evaluating the program, including the necessary data ele-

ments collected from program participants after they have completed the program for monitoring the success of the program;

(8) the method used to maximize parental involvement in the program;

(9) the existing public and private programs that were utilized by the program to avoid duplication of services;

(10) the regional characteristics that affected the operation of the program in the specific region where the organization is located;

(11) the means of addressing the special needs of priority groups of targeted youth, including:

(i) persons who are responsible for at least one dependent;

(ii) persons who are pregnant;

(iii) persons who are or have been subject to any stage of the criminal justice system and who may benefit from receiving employment and training services in overcoming barriers to employment resulting from a record of arrest or conviction;

(iv) persons receiving income maintenance services and social services, including chemical dependency treatment, vocational rehabilitation services, and protection services;

(v) persons who reside on a farm who personally derive or whose family derives a substantial portion of their income from farming, lack nonfarm work skills, or have limited access to vocational education or work experience opportunities;

(vi) homeless youth; and

(vii) minors who are not financially dependent on a parent or a guardian;

(12) costs for each of the components of the program; and

(13) the identification of the funding sources other than state appropriations that were used to support the program.

History: 1988 c 686 art 3 s 6; 1989 c 328 art 7 s 6

268.367 REPORT.

The commissioner shall prepare and submit an annual report to the legislature and the governor by January 15 of each year, that summarizes the annual reports submitted by the organizations that received grants. The report may also include recommendations on improving the program to better meet the needs of targeted youth. The advisory committee must participate in the preparation of this report and in the formulation of any recommendations.

History: 1988 c 686 art 3 s 7; 1989 c 328 art 7 s 7

268.37 COORDINATION OF FEDERAL AND STATE RESIDENTIAL WEATHERIZATION PROGRAMS.

Subdivision 1. Agency designation. The department of jobs and training is the state agency to apply for, receive, and disburse money made available to the state by federal law for the purpose of weatherizing the residences of low-income persons. The commissioner of jobs and training shall coordinate available federal money with state money appropriated for this purpose.

Subd. 2. Grants. The commissioner shall make grants of federal and state money to community action agencies and other public or private nonprofit agencies for the purpose of weatherizing the residences of low-income persons. Grant applications shall be submitted in accordance with rules promulgated by the commissioner.

Subd. 2a. Benefits of weatherization. In the case of any grant made to an owner of a rental dwelling unit for weatherization, the commissioner shall require that (1) the benefits of weatherization assistance in connection with the dwelling unit accrue primarily to the low-income family that resides in the unit; (2) the rents on the dwelling unit will not be raised because of any increase in value due solely to the weatherization assistance; and (3) no undue or excessive enhancement will occur to the value of the dwelling unit.

Subd. 3. Rules; report. 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.

Subd. 4. Grant allocation. The commissioner shall distribute supplementary state grants in a manner consistent with the goal of producing the maximum number of weatherized units. Supplementary state grants are provided primarily for the payment of additional labor costs for the federal weatherization program, and as an incentive for the increased production of weatherized units.

Criteria for the allocation of state grants to local agencies include: (a) existing local agency production levels, (b) emergency needs, and (c) the potential for maintaining or increasing acceptable levels of production in the area.

An eligible local agency may receive advance funding for 90 days' production, but thereafter shall receive grants solely on the basis of program criteria.

Subd. 5. Reports. The commissioner shall submit reports to the legislature by July 31 of each year, evaluating the weatherization program. The reports shall describe: (a) the number of households weatherized, (b) the average cost per household, (c) any change in energy consumption after weatherization, and (d) any other information the commissioner feels is relevant, including information routinely submitted to the federal government.

Subd. 6. Eligibility criteria. To the extent allowed by federal regulations, the commissioner shall ensure that the same income eligibility criteria apply to both the weatherization program and the energy assistance program.

History: *Ex 1979 c 2 s 37; 1980 c 579 s 19; 1983 c 339 s 3-5; 1984 c 640 s 32; 1Sp1985 c 14 art 9 s 75; 1987 c 403 art 2 s 132; 1989 c 282 art 1 s 18; 1989 c 338 s 7*

268.371 EMERGENCY ENERGY ASSISTANCE; FUEL FUNDS.

Subdivision 1. Definitions. The definitions in this section apply to this section.

(a) "Commissioner" means the commissioner of the department of jobs and training.

(b) "Energy provider" means a person who provides heating fuel, including natural gas, electricity, fuel oil, propane, wood, or other form of heating fuel, to residences at retail.

(c) "Fuel fund" means a fund established by an energy provider, the state, or any other entity that collects and distributes money for low-income emergency energy assistance and meets the minimum criteria, including income eligibility criteria, for receiving money from the federal Low-Income Home Energy Assistance Program and the program's Incentive Fund for Leveraging Non-Federal Resources.

Subd. 2. Energy providers; requirement. Each energy provider may solicit contributions from its energy customers for deposit in a fuel fund established by the energy provider, a fuel fund established by another energy provider or other entity, or the statewide fuel account established in subdivision 3, for the purpose of providing emergency energy assistance to low-income households that qualify under the federal eligibility criteria of the federal Low-Income Home Energy Assistance Program. Solicitation of contributions from customers may be made at least annually and may

provide each customer an opportunity to contribute as part of payment of bills for provision of service or provide an alternate, convenient way for customers to contribute.

Subd. 3. Statewide fuel account; appropriation. The commissioner shall establish a statewide fuel account. The commissioner may develop and implement a program to solicit contributions, manage the receipts, and distribute emergency energy assistance to low-income households, as defined in the federal Low-Income Home Energy Assistance Program, on a statewide basis. All money remitted to the commissioner for deposit in the statewide fuel account is appropriated to the commissioner for the purpose of developing and implementing the program. No more than ten percent of the money received in the first two years of the program may be used for the administrative expenses of the commissioner to implement the program and no more than five percent of the money received in any subsequent year may be used for administration of the program.

Subd. 4. Emergency energy assistance advisory council. The commissioner shall appoint an advisory council to advise the commissioner on implementation of this section. At least one-third of the advisory council must be composed of persons from households that are eligible for emergency energy assistance under the federal Low-Income Home Energy Assistance Program. The remaining two-thirds of the advisory council must be composed of persons representing energy providers, customers, local energy assistance providers, existing fuel fund delivery agencies, and community action agencies. Members of the advisory council may receive expenses, but no other compensation, as provided in section 15.059, subdivision 3. Appointment and removal of members is governed by section 15.059.

History: 1992 c 597 s 13

268.38 TRANSITIONAL HOUSING PROGRAMS.

Subdivision 1. Definitions. For the purpose of this section the following terms have the meanings given:

(a) "Transitional housing" means housing designed for independent living and provided to a homeless person or family at a rental rate of at least 25 percent of the family income for a period of up to 24 months. If a transitional housing program is associated with a licensed facility or shelter, it must be located in a separate facility or a specified section of the main facility where residents can be responsible for their own meals and other daily needs.

(b) "Support services" means an assessment service that identifies the needs of individuals for independent living and arranges or provides for the appropriate educational, social, legal, advocacy, child care, employment, financial, health care, or information and referral services to meet these needs.

(c) "Commissioner" means the commissioner of jobs and training.

Subd. 2. Establishment and administration. A transitional housing program is established to be administered by the commissioner. The commissioner may make grants to eligible recipients or enter into agreements with community action agencies or other public or private nonprofit agencies to make grants to eligible recipients to initiate, maintain, or expand programs to provide transitional housing and support services for persons in need of transitional housing. The commissioner shall ensure that money appropriated to implement this section is distributed as soon as practicable. The commissioner may make grants directly to eligible recipients.

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 317A.

Subd. 4. Applications. An eligible recipient may apply to the commissioner, or to a nonprofit agency designated by the commissioner, for a grant to initiate, maintain, or expand a program providing transitional housing and support services for persons in need of transitional housing. The application must include:

(1) a proposal for the provision of transitional housing and support services, including program objectives, availability of adequate funding, appropriateness of the proposed program for the population to be served, and how the program will help individuals to move into permanent housing;

(2) a proposed budget;

(3) a plan for collection of required data and the method to be used for program evaluation; and

(4) evidence of the participation in the development of the application of any agency or governmental body that will provide essential services or assistance to the program.

Subd. 5. Criteria for grant awards. Criteria for the award of grants must include:

(1) evidence that the application meets all program requirements;

(2) evidence of the need of the applicant for state assistance and of the need for the particular program;

(3) indication of long-range plans for future funding if the need continues to exist for the service; and

(4) assurance that grants are awarded to as wide a variety of programs as possible, with emphasis on programs that concentrate on long-term solutions to individual housing problems.

Subd. 6. Programs designated. At least two programs funded must be located in the seven-county metropolitan area and at least one program must be located outside of the metropolitan area. The commissioner may fund programs designed primarily to serve families with children, single persons, and persons leaving a shelter for family abuse.

Subd. 7. Funding coordination. Grant recipients shall combine funds awarded under this section with other funds from public and private sources. Programs receiving funds under this section are also eligible for assistance under section 462A.05, subdivision 20.

Subd. 8. Program information. In order to collect uniform data to better measure the nature and extent of the need for transitional housing, grant recipients shall collect and make available to the commissioner the following information:

(1) number of requests received for transitional housing, including the number of persons requiring assistance;

(2) number of persons for whom services are provided, listed by age;

(3) reasons for seeking assistance;

(4) length of stay;

(5) reasons for leaving the housing program;

(6) demand for support services;

(7) follow-up information on status of persons assisted, including source of income and whether living independently, employed, or in treatment, unless the information is not available; and

(8) source of income on entering the program, prior residence, race, and sex of persons assisted.

Subd. 9. Private data. Personal history information and other information collected, used, or maintained by a grant recipient from which the identity of any individual receiving services may be determined is private data on individuals, as defined in section 13.02, subdivision 12, and the grant recipient shall maintain the data in accordance with the provisions of chapter 13.

Subd. 10. Rules. The commissioner may adopt emergency rules, in accordance with chapter 14, as necessary to implement this section. Notwithstanding section 14.35, emergency rules adopted under this section shall remain in effect until June 30, 1985.

Subd. 11. Report to the legislature. The commissioner of jobs and training shall report to the legislature annually by March 15. The report must include:

- (1) the number of programs funded;
- (2) the results of evaluations of those programs;
- (3) an evaluation of the data collected on the programs funded and additional data available to the commissioner to further identify the need for transitional housing and available resources; and
- (4) recommendations for future action by the legislature.

Subd. 12. Licensing requirements not applicable. The requirements of sections 245A.01 to 245A.16 do not apply to transitional housing and support services funded under this section unless the commissioner of human services determines that the program is primarily a residential program within the meaning of section 245A.02, subdivision 14.

History: 1984 c 640 s 32; 1984 c 654 art 5 s 42,58; 1Sp1985 c 13 s 301-305; 1Sp1985 c 14 art 9 s 75; 1987 c 291 s 204; 1989 c 47 s 1-6; 1989 c 209 art 2 s 1; 1989 c 304 s 137; 1991 c 199 art 2 s 18

268.39 LIFE SKILLS AND EMPLOYMENT GRANTS.

The commissioner may provide grants to organizations for the development and administration of life skills and employment plans for homeless individuals that reside in residential units constructed or rehabilitated under section 462A.05, subdivision 20. Grants awarded under this section may also be used for the management of these residential units. The organizations that receive grants under this section must coordinate their efforts with organizations that receive grants under section 462A.05, subdivision 20.

A life skills and employment plan must be developed for each tenant residing in a dwelling that receives funding under section 462A.05, subdivision 20. The plan may include preapprentice and apprenticeship training in the area of housing rehabilitation. If preapprentice and apprenticeship training is part of a plan, the organization must consult with labor organizations experienced in working with apprenticeship programs. The completion or compliance with the individual life skills and employment plan must be required for a tenant to remain in a unit constructed or rehabilitated under section 462A.05, subdivision 20.

The application for a grant under this section must include a plan that must provide for:

- (1) training for tenants in areas such as cleaning and maintenance, payment of rent, and roommate skills, and
- (2) tenant selection and rental policies that ensure rental of units to people who are homeless if applicable.

The applicant must provide a proposed occupancy contract if applicable, the name and address of the rental agent if applicable, and other information the commissioner considers necessary with the application.

The commissioner may adopt permanent rules to administer this grant program.

History: 1988 c 689 art 2 s 221; 1991 c 292 art 9 s 14

268.40	MS 1980	[Expired]
268.41	MS 1980	[Expired]
268.42	MS 1980	[Expired]
268.43	MS 1980	[Expired]

COMMUNITY ACTION AGENCIES

268.52 FINANCIAL ASSISTANCE FOR COMMUNITY ACTION AGENCIES.

Subdivision 1. **Authorization.** The commissioner of jobs and training may provide financial assistance for community action agencies, Indian reservations and the state-wide migrant seasonal farmworker organization known as the Minnesota migrant council to carry out community action programs as described in section 268.54 in accordance with the omnibus reconciliation act of 1981, Public Law Number 97-35, as amended in 1984, Public Law Number 98-558, state law, and federal law and regulation.

Subd. 2. **Allocation of money.** (a) State money appropriated and community service block grant money allotted to the state and all money transferred to the community service block grant from other block grants shall be allocated annually to community action agencies and Indian reservation governments under clauses (b) and (c), and to the Minnesota migrant council under clause (d).

(b) The available annual money will provide base funding to all community action agencies and the Indian reservations. Base funding amounts per agency are as follows: for agencies with low income populations up to 3,999, \$25,000; 4,000 to 23,999, \$50,000; and 24,000 or more, \$100,000.

(c) All remaining money of the annual money available after the base funding has been determined must be allocated to each agency and reservation in proportion to the size of the poverty level population in the agency's service area compared to the size of the poverty level population in the state.

(d) Allocation of money to the Minnesota migrant council must not exceed three percent of the total annual money available. Base funding allocations must be made for all community action agencies and Indian reservations that received money under this subdivision, in fiscal year 1984, and for community action agencies designated under this section with a service area population of 35,000 or greater.

Subd. 3. **Reports.** Each community action agency receiving funds under this section shall report annually to the commissioner concerning the use of the funds.

Subd. 4. **Definition.** For the purposes of sections 268.52 to 268.54, "poverty level population" means the number of people whose household income is at or below the poverty line established by the United States office of management and budget in accordance with the most recent state population figures established by the United States Department of Commerce, Bureau of the Census.

History: 1981 c 367 s 2; 1982 c 571 s 1-3; 1983 c 339 s 6; 1985 c 282 s 1,2; 1Sp1985 c 14 art 9 s 75

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 non-profit 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.

Subd. 1a. **Designation and recognition.** To obtain recognition by the governor a community action agency must be designated by a political subdivision having jurisdiction over the entire area to be served by the agency. To designate a community action agency, the political subdivision must hold a public hearing, pass a resolution to designate, and file a "notice of intent to designate" and eligibility documents with the state office of economic opportunity for final review and authorization for a new community action agency.

Subd. 2. Administering board. Each community action agency shall administer its community action programs through a community action board consisting of 15 to 51 members.

(a) One-third of the members of the board shall be elected public officials, currently holding office, or their representatives.

(b) At least one-third of the members shall be persons chosen in accordance with democratic selection procedures adequate to assure that they are representative of the poor in the area served.

(c) The other members shall be officials or members of business, industry, labor, religious, welfare, education, or other major groups and interests in the community. Each member of the board selected to represent a specific geographic area within a community must reside in the area represented.

(d) The public community action agency shall have an administering board which meets the requirements of this subdivision.

(e) The statewide migrant seasonal farmworker organization known as the Minnesota migrant council and Indian reservations carrying out community action programs are exempt from the board composition requirements of this subdivision.

Subd. 3. Delegation of powers. If a community action agency places responsibility for major policy determinations with respect to the character, funding, extent, and administration of and budgeting for programs to be carried on in a particular geographic area within the community in a subsidiary board, council, or similar agency, that board, council, or agency shall be broadly representative of the area.

Subd. 4. Local participation. Each community action agency shall consult neighborhood based organizations composed of residents of the area or members of the groups served to assist the agency in the planning, conduct, and evaluation of components of the community action program.

Subd. 5. Functions; powers. A community action agency shall:

(a) Plan systematically for an effective community action program; develop information as to the problems and causes of poverty in the community; determine how much and how effectively assistance is being provided to deal with those problems and causes; and establish priorities among projects, activities and areas as needed for the best and most efficient use of resources;

(b) Encourage agencies engaged in activities related to the community action program to plan for, secure, and administer assistance available under section 268.52 or from other sources on a common or cooperative basis; provide planning or technical assistance to those agencies; and generally, in cooperation with community agencies and officials, undertake actions to improve existing efforts to reduce poverty, such as improving day-to-day communications, closing service gaps, focusing resources on the most needy, and providing additional opportunities to low-income individuals for regular employment or participation in the programs or activities for which those community agencies and officials are responsible;

(c) Initiate and sponsor projects responsive to needs of the poor which are not otherwise being met, with particular emphasis on providing central or common services that can be drawn upon by a variety of related programs, developing new approaches or new types of services that can be incorporated into other programs, and filling gaps pending the expansion or modification of those programs;

(d) Establish effective procedures by which the poor and area residents concerned will be enabled to influence the character of programs affecting their interests, provide for their regular participation in the implementation of those programs, and provide technical and other support needed to enable the poor and neighborhood groups to secure on their own behalf available assistance from public and private sources;

(e) Join with and encourage business, labor and other private groups and organizations to undertake, together with public officials and agencies, activities in support of the community action program which will result in the additional use of private resources and capabilities, with a view to developing new employment opportunities,

stimulating investment that will have a measurable impact on reducing poverty among residents of areas of concentrated poverty, and providing methods by which residents of those areas can work with private groups, firms, and institutions in seeking solutions to problems of common concern.

Community action agencies, the Minnesota migrant council, and the Indian reservations, may enter into cooperative purchasing agreements and self-insurance programs with local units of government.

Subd. 6. Agencies as local providers. Agencies defined by this section shall be considered among local providers of outreach services and activities for all antipoverty efforts.

Subd. 7. Categorical funds. Federal antipoverty categorical funds consolidated into block grants to the state of Minnesota shall be designated by the state for antipoverty purposes.

History: 1981 c 367 s 3; 1982 c 571 s 4-8; 1985 c 282 s 3; 1986 c 411 s 1,2; 1987 c 403 art 2 s 133

268.54 COMMUNITY ACTION PROGRAMS.

Subdivision 1. In general. A community action program is a community based and operated program which:

(a) Includes or is designed to include a sufficient number of projects or components to provide, in sum, a range of services and activities having a measurable and potentially major impact on causes of poverty in the community or those areas of the community where poverty is a particularly acute problem;

(b) Has been developed, and which organizes and combines its component projects and activities, in a manner appropriate to carry out all the purposes of sections 268.52 to 268.54; and

(c) Conforms to any other supplementary criteria as the governor may prescribe consistent with the purposes and provisions of sections 268.52 to 268.54.

Subd. 2. Components. The components of a community action program shall be designed to assist participants, including the elderly poor to achieve increased self-sufficiency and greater participation in the affairs of the community by providing services and programs not sufficiently provided in the community by any governmental unit, any public institution, or any other publicly funded agency or corporation. Community action agencies, governmental units, public institutions or other publicly funded agencies or corporations shall consult on whether or not a program or service is sufficiently provided in the community.

Subd. 3. Administration. Components of a community action program may be administered by the community action agency when consistent with sound and efficient management and applicable law, or by other agencies. They may be projects eligible for assistance under section 268.52, or projects assisted from other public or private sources; and they may be either specially designed to meet local needs, or designed pursuant to the eligibility standards of a state or federal program providing assistance to a particular kind of activity which will help in meeting those needs.

History: 1981 c 367 s 4; 1982 c 571 s 9

FOOD BANK PROGRAM

268.55 FOOD BANK PROGRAM.

Subdivision 1. Distribution of appropriation. The economic opportunity office of the department of jobs and training shall distribute funds appropriated to it by law for that purpose to food banks, as defined in section 31.50, subdivision 1, paragraph (b). A food bank qualifies under this section if it is a nonprofit corporation, or is affiliated with a nonprofit corporation, as defined under section 501(c)(3) of the Internal Revenue Code of 1986, and distributes food to qualifying foodshelves. A foodshelf qualifies under this section if:

(1) it is a nonprofit corporation, or is affiliated with a nonprofit corporation, as defined in section 501(c)(3) of the Internal Revenue Code of 1986;

(2) it distributes standard food orders without charge to needy individuals. The standard food order must consist of at least a two-day supply or six pounds per person of nutritionally balanced food items;

(3) it does not limit food distributions to individuals of a particular religious affiliation, race, or other criteria unrelated to need or to requirements necessary to administration of a fair and orderly distribution system;

(4) it does not use the money received or the food distribution program to foster or advance religious or political views; and

(5) it has a stable address and directly serves individuals.

Subd. 2. Application. In order to receive money appropriated for food banks under this section, a food bank must apply to the economic opportunity office. The application must be in a form prescribed by the economic opportunity office and must contain information required by the economic opportunity office to verify that the applicant is a qualifying food bank, and the amount the applicant is entitled to receive under subdivision 3. Applications must be filed at the times and for the periods determined by the economic opportunity office.

Subd. 3. Distribution formula. The economic opportunity office shall distribute money appropriated to it for foodshelf programs to qualifying food banks in proportion to the number of individuals served by the foodshelf programs supplied by the food bank. The economic opportunity office shall gather data from applications or other appropriate sources to determine the proportionate amount each qualifying program is entitled to receive. The economic opportunity office may increase or decrease the qualifying food bank's proportionate amount if it determines the increase or decrease is necessary or appropriate to meet changing needs or demands.

Subd. 4. Use of money. At least 95 percent of the money distributed to food banks under this section must be used to purchase nutritious food for distribution without charge to qualifying foodshelves serving needy individuals and families. No more than five percent of the money may be expended for other expenses, such as rent, salaries, and other administrative expenses of the food banks.

Subd. 5. Enforcement. Recipient food banks must retain records documenting expenditure of the money and comply with any additional requirements imposed by the economic opportunity office. The economic opportunity office may require a food bank receiving funds under this section to report on its use of the funds. The economic opportunity office may require that the report contain an independent audit. If ineligible expenditures are made by a food bank, the ineligible amount must be repaid to the economic opportunity office and deposited in the general fund.

History: 1991 c 291 art 21 s 5

WAGE SUBSIDY PROGRAM

268.551 DEFINITIONS.

Subdivision 1. Terms. For the purposes of this section and section 268.552, the terms defined in this section have the meanings given them.

Subd. 2. Commissioner. "Commissioner" means the commissioner of jobs and training.

Subd. 3. Eligible applicant. "Eligible applicant" means a person who:

(1) has been a resident of this state for at least one month;

(2) is unemployed;

(3) is not receiving and is not eligible to receive unemployment compensation; and

(4) is a targeted young person as defined in Laws 1990, chapter 562, article 4, section 12, between the ages of 14 and 21, who, because of a lack of personal resources and skills, needs assistance in setting and realizing education goals and in becoming a contributing member of the community.

Subd. 4. **Employer.** "Employer" means a private or public employer.

History: 1991 c 345 art 1 s 81

268.552 WAGE SUBSIDY PROGRAM.

Subdivision 1. **Creation.** A grant program is established to provide adolescents with opportunities for gaining a high school diploma, exploring occupations, evaluating vocational options, receiving career and life skills counseling, developing and pursuing personal goals, and participating in community-based projects and summer youth employment.

Subd. 2. **Amount and duration of subsidy.** The maximum subsidy is \$4 per hour for wages and \$1 per hour for fringe benefits. The subsidy for an eligible applicant may be paid 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.

Subd. 3. **Contracts to administer.** The commissioner may contract with local service units or certified local service providers to deliver the wage subsidies. The contract must require that no more than five percent of the contract amount be expended for administration.

Subd. 4. **Area allocation of subsidies.** Wage subsidy money must be allocated to local service units based on the number of eligible applicants in that area compared to the state total of eligible applicants. Money may be reallocated if it otherwise would not be used.

Subd. 5. **Allocation to applicants.** Priority for subsidies shall be in the following order:

- (1) applicants living in households with no other income source;
- (2) applicants whose incomes and resources are less than the standard for eligibility for general assistance or work readiness; and
- (3) applicants who are eligible for aid to families with dependent children.

Subd. 6. **Outreach.** A local service unit shall publicize the availability of wage subsidies within its area.

Subd. 7. **Reports.** Each entity delivering wage subsidies shall report to the commissioner 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;
- (3) the number and type of employers employing persons under the program;
- (4) the amount of money spent in each 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.

Subd. 8. **Part-time employment.** Subsidies under this section may be paid for part-time jobs.

Subd. 9. **Layoffs; work reductions.** An employer may not lay off, terminate, or reduce the working hours of an employee for the purpose of hiring an individual with funds provided by this section. An employer may not hire an individual with funds available under this section if any other person is on layoff from the same or a substantially equivalent job.

Subd. 10. **Rules.** The commissioner may adopt rules to implement this section.

History: 1991 c 345 art 1 s 82

JOB TRAINING

268.60 PURPOSE.

It is the purpose of sections 268.60 to 268.64 to provide financial assistance for comprehensive job training and related services for economically disadvantaged, unemployed, and underemployed individuals through opportunities industrialization centers.

History: 1983 c 312 art 6 s 1

268.61 DEFINITIONS.

Subdivision 1. **Scope.** When used in sections 268.60 to 268.64 the terms in this section have the meanings given them.

Subd. 2. **Commissioner.** "Commissioner" means the commissioner of jobs and training.

Subd. 3. **Council.** "Council" means the Minnesota state council of the opportunities industrialization centers of America.

Subd. 4. **Economically disadvantaged.** "Economically disadvantaged" means an individual who meets the criteria for an economically disadvantaged person established by rule by the commissioner.

Subd. 5. **Underemployed.** "Underemployed" means an individual:

(a) Working part time but seeking full-time work; or

(b) Working full time but receiving wages below the greater of:

(1) the poverty level determined in accordance with criteria established by the department of jobs and training; or

(2) 70 percent of the lower living standard income level as determined by the United States Bureau of Labor Statistics.

Subd. 6. **Unemployed.** "Unemployed" means an individual who is without a job, and who wants and is available for work.

History: 1983 c 312 art 6 s 2; 1Sp1985 c 14 art 9 s 75

268.62 DISTRIBUTION AND USE OF STATE MONEY.

The commissioner shall distribute the money appropriated for:

(a) comprehensive job training and related services or job opportunities programs for economically disadvantaged, unemployed, and underemployed individuals, including persons of limited English speaking ability, through opportunities industrialization centers; and

(b) the establishment and operation in Minnesota of these centers.

Comprehensive job training and related services include: recruitment, counseling, remediation, motivational prejob training, vocational training, job development, job placement, and other appropriate services enabling individuals to secure and retain employment at their maximum capacity.

History: 1983 c 312 art 6 s 3

268.63 CRITERIA FOR DISTRIBUTION OF MONEY.

The commissioner, with the advice of the council, shall establish criteria for the distribution of state money for the purpose of section 268.62. The criteria shall include requirements that:

- (a) the program receiving state assistance:
 - (1) involve residents in the area to be served by the program in the planning and operation of the program; and
 - (2) involve the business community in the area to be served by the program in its development and operation;
- (b) the distribution of assistance among areas within the state be equitable, with priority being given to areas with high unemployment or underemployment;
- (c) financial assistance under sections 268.60 to 268.64 to any program may not exceed 25 percent of the cost of the program including costs of administration; and
- (d) a program receiving financial assistance has adequate internal administrative controls, accounting procedures, personnel standards, evaluation procedures, availability of in-service training and technical assistance programs, and other policies necessary to promote the effective use of state money.

The commissioner may make a distribution in excess of the limit prescribed in clause (c) if the commissioner determines that the excess distribution is necessary to further the objectives of sections 268.60 and 268.62.

History: 1983 c 312 art 6 s 4

268.64 MONEY DISTRIBUTION.

The commissioner may make a distribution of money directly to a program, or make a distribution subject to conditions that ensure use consistent with the distribution and utilization of money under federal legislation regarding job training and related services.

History: 1983 c 312 art 6 s 5

268.65 APPROVED TRAINING.

Subdivision 1. Creation. The commissioner of jobs and training shall establish a training program for structurally unemployed workers under which individuals may be enrolled in an on-the-job training program, and an additional 1,000 individuals may be enrolled in classroom training, in accordance with this section. Nothing in this section limits or adversely affects the approved training provisions applicable to an individual under section 268.08, subdivision 1, clause (3). An individual approved under this section is eligible for tuition aid under the provisions of chapter 136A. The commissioner shall report to the legislature annually regarding the status of the training program.

Subd. 2. Approval of training. An individual's enrollment in a training course must be approved for the purposes of this subdivision if the commissioner finds that:

- (1) the individual is not unemployed due to the seasonal nature of the work or a temporary work shortage;
- (2) the individual's separation or notice of layoff from most recent employment was caused by job obsolescence, plant shutdown, regional decline in the individual's customary occupation, or industry slowdown, and the individual is unlikely to return to work for that employer or in that occupation within 12 months following separation from employment;
- (3) reasonable and suitable work opportunities for which the individual is fitted by training, experience, and physical capabilities do not exist within the local labor market;
- (4) the training course is designed to provide preparation for available employment within the local labor market or in an area to which the individual is willing to relocate;

(5) the training is conducted by an agency, educational institution, or employing unit that is approved by the commissioner of education or state board for vocational technical education or higher education coordinating board to conduct training programs; except that an agency, educational institution, or employing unit that is not subject to regulation and approval by one of the agencies in this clause may be approved by the commissioner if it is determined that the institution's curriculum, facilities, staff, and other essentials are adequate to achieve the training objective; and

(6) the training consists of a full course load, as defined by the training provider, necessary to achieve the approved training objective, and the individual is making satisfactory progress in the course. The department may require the training provider to periodically certify to the individual's attendance and progress.

Subd. 3. On-the-job training. An individual who meets the criteria in subdivision 2 is eligible for participation in a full-time on-the-job training program if:

(1) the on-the-job training position is in an occupation for which the commissioner has determined a demand exists or will exist; in making this determination, the commissioner shall consider labor market information as contained in state and national occupational outlook publications, as well as other generally accepted authoritative sources with verifiable validity;

(2) the employer pays an hourly wage during training of at least the state minimum wage;

(3) the employer guarantees to provide at least 12 consecutive months of employment to the trainee after the completion of training at the prevailing area labor market wage for a trained individual in that occupation;

(4) the employer will not terminate the trainee during the period of training or guaranteed employment except for misconduct or demonstrated substandard performance; and

(5) the employer will not terminate, lay off, or reduce the hours of any employee for the purpose of hiring an individual with money available, and will not hire an individual if another person is on layoff from the same or a substantially equivalent job.

Subd. 4. Training allowance. During participation in an approved on-the-job training program, the trainee shall maintain satisfactory progress and attendance. During the period of training specified in the agreement between the commissioner and the employer, individuals participating in an approved on-the-job training program must be paid a training allowance for each week claimed during the benefit year, until benefits are exhausted, equal to the weekly benefit amount calculated under section 268.07, subdivision 2, less the part of the earnings, including holiday pay, in excess of \$100. The training allowance is computed by rounding down to the nearest dollar amount. Notwithstanding any other provision, an individual participating in on-the-job training on a full-time basis is not employed for purposes of benefit eligibility.

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: *1Sp1985 c 14 art 9 s 46; 1987 c 385 s 46*

268.66 FIRST SOURCE AGREEMENTS.

Subdivision 1. **List of vacancies.** A business or private enterprise receiving grants or loans from the state in amounts over \$200,000 a year shall as part of the grant or loan agree to list any vacant or new positions with the job services of the commissioner of jobs and training or the local service units.

Subd. 2. **Grant and loan agreements.** The commissioner of trade and economic development shall incorporate the provisions of this section into grant and loan agreements and assist the commissioner of jobs and training and the local service units to promote private sector listings with job services and to evaluate their effect on employers and individuals who are referred.

History: 1Sp1985 c 14 art 9 s 47; 1987 c 312 art 1 s 26 subd 2

EMERGENCY JOBS PROGRAM

268.671 [Repealed, 1Sp1985 c 14 art 9 s 78 subd 1]

268.672 DEFINITIONS.

Subdivision 1. **Terms.** For the purposes of sections 268.672 to 268.682, the following terms have the meanings given them.

Subd. 2. [Repealed, 1Sp1985 c 14 art 9 s 78 subd 2]

Subd. 3. **Eligible business.** "Eligible business" means a for-profit business.

Subd. 4. **Eligible employer.** "Eligible employer" means an eligible government agency, an eligible nonprofit agency, or an eligible business.

Subd. 5. **Eligible government agency.** "Eligible government agency" means a county, municipality, school district, or other local governmental subdivision, a state agency, or a federal agency office in Minnesota.

Subd. 6. **Eligible job applicant.** "Eligible job applicant" means a person who: (1) has been a resident of this state for at least one month, (2) is unemployed, (3) is not receiving and is not qualified to receive unemployment compensation or workers' compensation, and (4) is determined to be likely to be available for employment by an eligible employer for the duration of the job.

For the purposes of this subdivision, a farmer or any member of a farm family household who can demonstrate severe household financial need must be considered unemployed.

Subd. 7. **Eligible nonprofit agency.** "Eligible nonprofit agency" means an organization exempt from taxation under the Internal Revenue Code of 1954, section 501(c)(3), as amended through December 31, 1982.

Subd. 8. [Repealed, 1Sp1985 c 14 art 9 s 78 subd 2]

Subd. 9. **Household.** "Household" means a group of persons living at the same residence consisting of, at a maximum, spouses and the minor children of each.

Subd. 10. [Repealed, 1Sp1985 c 14 art 9 s 78 subd 2]

Subd. 11. [Repealed, 1Sp1985 c 14 art 9 s 78 subd 2]

Subd. 12. [Repealed, 1990 c 568 art 4 s 85]

History: 1983 c 312 art 7 s 2; 1984 c 654 art 5 s 43; 1Sp1985 c 9 art 2 s 78, 79, 105; 1Sp1985 c 14 art 9 s 48, 49; 1987 c 384 art 2 s 1; 1991 c 199 art 2 s 1

268.673 EMERGENCY JOBS PROGRAM; COMMISSIONER'S DUTIES.

Subdivision 1. [Repealed, 1Sp1985 c 14 art 9 s 78 subd 2]

Subd. 2. [Repealed, 1Sp1985 c 14 art 9 s 78 subd 2]

Subd. 3. **Department of jobs and training.** The commissioner shall supervise wage subsidies and shall provide technical assistance to the local service units for the purpose of delivering wage subsidies.

Subd. 4. **Enforcement.** (a) The commissioner shall ensure compliance with sections 268.672 to 268.682.

(b) The commissioner may:

(1) make public or private investigations within or without this state necessary to determine whether any person has violated or is about to violate sections 268.672 to 268.682, a contract entered into under them, or any rule or order adopted under them, or to aid in the enforcement of sections 268.672 to 268.682 or in rules and forms adopted under them;

(2) require or permit any person to file a written statement under oath or otherwise, as the commissioner determines, as to all the facts and circumstances concerning the matter being investigated; and

(3) hold hearings, upon reasonable notice, on any matter arising out of the administration of sections 268.672 to 268.682.

(c) The attorney general shall assign one or more assistant attorneys general to the commissioner and shall conduct all proceedings involving the violation of sections 268.672 to 268.682 and all other enforcement proceedings.

(d) Whenever it appears to the commissioner that any person has violated a provision of sections 268.672 to 268.682, a contract entered into under them, or a rule or order adopted under them:

(1) The commissioner may issue and cause to be served upon the person an order requiring the person to cease and desist from the violation. The order must be calculated to give reasonable notice of the right of the person to request a hearing on it and must state the reasons for the entry of the order. A hearing must be held not later than seven days after a request for the hearing is received by the commissioner, after which and within 20 days of the date of the hearing the commissioner shall issue a further order vacating the cease and desist order or making it permanent as the facts require. If no hearing is requested within 30 days of service of the order, the order becomes final and remains in effect until it is modified or vacated by the commissioner. If the person to whom a cease and desist order is issued fails to appear at the hearing after being duly notified, the person shall be deemed in default, and the proceeding may be determined upon consideration of the cease and desist order, the allegations of which may be deemed to be true;

(2) The commissioner may bring an action in the district court of the appropriate county to enjoin the violation and to enforce compliance with the provisions of sections 268.672 to 268.682, a contract entered into under them, or any rule or order adopted under them, and the commissioner may refer the matter to the attorney general. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted. The court may not require the commissioner to post a bond.

Any injunction proceeding under the provisions of sections 268.672 to 268.682 may be brought on for hearing and disposition upon an order to show cause returnable upon not more than eight days notice to the defendant. The case has precedence over other cases upon the court calendar and may not be continued without the consent of the state, except upon good cause shown to the court, and then only for a reasonable length of time necessary in the opinion of the court to protect the rights of the defendant.

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 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 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.

Subd. 6. Rules. The commissioner may adopt rules necessary to implement sections 268.672 to 268.682.

History: 1983 c 312 art 7 s 3; 1984 c 654 art 5 s 44; 1Sp1985 c 9 art 2 s 80,103,105; 1Sp1985 c 14 art 9 s 50-53; 1986 c 444; 1987 c 403 art 2 s 134,135; 1990 c 568 art 4 s 62,63

268.674 [Repealed, 1Sp1985 c 14 art 9 s 78 subd 2]

NOTE: Subdivision 1 was also amended by Laws 1985, First Special Session chapter 9, article 2, section 81, to read as follows:

"Subdivision 1. **Creation.** There is created a Minnesota employment and economic development task force to advise the coordinator in the administration of sections 268.671 to 268.686."

268.675 [Repealed, 1Sp1985 c 14 art 9 s 78 subd 2]

NOTE: Section 268.675 was also amended by Laws 1985, First Special Session chapter 9, article 2, section 82, to read as follows:

"268.675 **Allocation of funds among service delivery areas.**

Subdivision 1. Service delivery area portion. (a) Seventy percent of the funds available for allocation to employment administrators for the program must be allocated among service delivery areas as follows: (1) each service delivery area shall be eligible to receive that proportion of the funds available which equals the number of unemployed persons in the service delivery area divided by the total number of unemployed persons in the state for the 12-month period ending the most recent March 31; (2) however, 15 percent of the amount which would be allocated under paragraph (1) to each service delivery area in which the unemployment rate, for the 12-month period ending the most recent March 31, is less than the statewide unemployment rate on that date shall not be allocated according to paragraph (1). This amount shall be pooled and distributed at the discretion of the coordinator only to employment administrators in service delivery areas with lower than average unemployment rates who have demonstrated outstanding performance in placement of applicants whose income and resources are less than the standard of assistance established under section 256D.05, subdivision 1, or who would otherwise be eligible to receive aid to families with dependent children, as shown by:

(i) the proportion of the applicants who have been placed in permanent private sector jobs under the program, relative to the total number of the applicants placed under the program; or

(ii) the proportion of the applicants placed in all jobs under the program, relative to total job placements under the program.

(b) Five percent of the funds available for allocation to employment administrators under the program must be allocated at the discretion of the coordinator to employment administrators:

(1) who will maximize the use of the funds through coordination with other programs and state, local, and federal agencies, through the use of matching funds or through the involvement of low-income constituent groups;

(2) who have demonstrated need beyond the allocation available under clause (1);

(3) who have demonstrated outstanding performance in job creation; or

(4) who have demonstrated that the unemployed persons in the service delivery area incur unusual costs related to employment under sections 268.671 to 268.686.

(c) Five percent of the funds available to employment administrators under the program must be allocated for necessary costs of relocation.

Subd. 2. High unemployment regions. (a) Twenty percent of the funds available for allocation to employment administrators under the program must be allocated by the coordinator to employment administrators for use in distressed counties. A county is distressed if it has an average unemployment rate of ten percent or more for the one-year period ending on April 30 of the year in which the designation is made.

(b) The commissioner shall designate a contiguous portion of a county containing a city of the first class located outside of the metropolitan area as a distressed county if:

(1) that portion of the county has an unemployment rate of ten percent or more for the one-year period ending on April 30 of the year in which the designation is made; and

(2) that portion of the county has a population of at least 50,000 as determined by the 1980 federal census."

268.6751 ALLOCATION OF WAGE SUBSIDY MONEY.

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

(a) The commissioner shall allocate 87.5 percent of the funds available for allocation to local service units for wage subsidy programs as follows: the proportion of the wage subsidy money available to each local service unit must be based on the number of unemployed persons in the 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 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: 1Sp1985 c 14 art 9 s 54; 1987 c 403 art 2 s 136; 1990 c 568 art 4 s 64

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 a 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.

Subd. 3. [Repealed, 1Sp1985 c 14 art 9 s 78 subd 2]

History: 1983 c 312 art 7 s 6; 1984 c 654 art 5 s 46,47; 1Sp1985 c 9 art 2 s 83,84,105; 1Sp1985 c 14 art 9 s 55; 1987 c 403 art 2 s 137; 1990 c 568 art 4 s 65

268.677 USE OF FUNDS.

Subdivision 1. Wage subsidy money. 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.

Subd. 2. Administrative costs. Reimbursement to the commissioner for the costs of administering wage subsidies must not exceed one-half percent of the money appropriated. Reimbursements must be deposited in the general fund. Reimbursement to a local service unit for the costs of administering wage subsidies must not exceed five percent and for the purchase of supplies and materials necessary to create permanent improvements to public property must not exceed one percent of the money allocated to that local service unit. The commissioner and the local service units shall reallocate money from other sources to cover the costs of administering wage subsidies whenever possible.

Subd. 3. Local service units. Local service units may use up to 25 percent of their wage subsidy allocations to provide eligible applicants with job search assistance, labor market orientation, job seeking skills, necessary child care services, relocation, and transportation, and to subsidize fringe benefits.

History: 1983 c 312 art 7 s 7; 1984 c 654 art 5 s 48; 1Sp1985 c 9 art 2 s 85,105; 1Sp1985 c 14 art 9 s 56; 1987 c 403 art 2 s 138; 1990 c 568 art 4 s 66,67; 1990 c 594 art 3 s 10

268.678 LOCAL SERVICE UNITS; POWERS AND DUTIES.

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

Subd. 2. [Repealed, 1Sp1985 c 14 art 9 s 78 subd 2]

Subd. 3. Outreach. Each local service unit shall publicize the availability of wage

subsidies within its area to seek maximum participation by eligible job applicants and employers.

Subd. 4. Contracts. Each 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.

Subd. 5. Screening and coordination. Each local service unit shall provide for the screening of job applicants and employers to achieve the best possible placement of eligible job applicants with eligible employers.

Subd. 6. Eligible job applicant priority lists. Each local service unit shall provide for the maintenance of a list of eligible job applicants unable to secure employment under the program at the time of application. The list shall prioritize eligible job applicants and shall be used to fill jobs with eligible employers as they become available.

Subd. 7. [Repealed, 1Sp1985 c 14 art 9 s 78 subd 2]

Subd. 8. [Repealed, 1Sp1985 c 14 art 9 s 78 subd 2]

History: 1983 c 312 art 7 s 8; 1Sp1985 c 9 art 2 s 86,105; 1Sp1985 c 14 art 9 s 57-61; 1987 c 403 art 2 s 139,140; 1990 c 568 art 4 s 68

268.679 DUTIES OF COMMISSIONER OF HUMAN SERVICES.

Subdivision 1. [Repealed, 1Sp1985 c 14 art 9 s 78 subd 2]

Subd. 2. [Repealed, 1Sp1985 c 14 art 9 s 78 subd 2]

Subd. 3. Department of human services. The commissioner of human services shall provide to each local service unit lists of currently licensed local day care facilities, updated quarterly, to be available to all persons who receive wage subsidies.

History: 1983 c 312 art 7 s 9; 1984 c 654 art 5 s 58; 1Sp1985 c 9 art 2 s 87,105; 1Sp1985 c 14 art 9 s 62

268.68 [Repealed, 1Sp1985 c 14 art 9 s 78 subd 2]

NOTE: Section 268.68 was also amended by Laws 1985, First Special Session chapter 9, article 2, section 8, to read as follows:

"268.68 Eligible government and nonprofit agency employment.

A government or nonprofit agency is an eligible employer with respect to temporary work relief projects that are determined by the employment administrator to have long-term benefit to or are needed by the community including, but not limited to, jobs in permanent public improvement projects, residential or public building weatherization projects, reforestation projects, mineland reclamation projects, planting or tree trimming projects, soil conservation projects, natural resource development projects, and community social service programs such as child care and home health care. Employment administrators to the greatest extent practicable shall place only those applicants deemed hard to employ by the administrator in temporary nonprofit jobs."

268.681 BUSINESS EMPLOYMENT.

Subdivision 1. Eligible businesses. A business employer is an eligible employer if it enters into a written contract, signed and subscribed to under oath, with a local service unit or its contractor, containing assurances that:

(a) funds received by a business shall be used only as permitted under sections 268.672 to 268.682;

(b) the business has submitted information to the local service unit or its contractor (1) describing the duties and proposed compensation of each employee proposed to be hired under the program; and (2) demonstrating that, with the funds provided under sections 268.672 to 268.682, the business is likely to succeed and continue to employ persons hired using wage subsidies;

(c) the business will use funds exclusively for compensation and fringe benefits of eligible job applicants and will provide employees hired with these funds with fringe benefits and other terms and conditions of employment comparable to those provided to other employees of the business who do comparable work;

(d) the funds are necessary to allow the business to begin, or to employ additional people, but not to fill positions which would be filled even in the absence of wage subsidies;

(e) the business will cooperate with the local service unit and the commissioner in collecting data to assess the result of wage subsidies; and

(f) the business is in compliance with all applicable affirmative action, fair labor, health, safety, and environmental standards.

Subd. 2. **Priorities.** (a) In allocating funds among eligible businesses, the 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), a 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 local service unit or its contractor to employ and train another person referred by the 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 local service unit and the business prior to the disbursement of the funds and is subject to renegotiation. The 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 general fund.

Subd. 4. [Repealed, 1990 c 594 art 3 s 15]

History: 1983 c 312 art 7 s 11; 1Sp1985 c 14 art 9 s 63; 1987 c 403 art 2 s 141,142; 1990 c 568 art 4 s 69-71; 1990 c 594 art 3 s 11

268.682 WORKER DISPLACEMENT PROHIBITED.

Subdivision 1. **Layoffs; work reductions.** An eligible employer may not terminate, lay off, or reduce the working hours of an employee for the purpose of hiring an individual with funds available under sections 268.672 to 268.682.

Subd. 2. **Hiring during layoffs.** An eligible employer may not hire an individual with funds available under sections 268.672 to 268.682 if any other person is on layoff from the same or a substantially equivalent job.

Subd. 3. Employer certification. In order to qualify as an eligible employer, a government or nonprofit agency or business must certify to the eligible local service unit that each job created and funded under sections 268.672 to 268.682:

(a) will result in an increase in employment opportunities over those which would otherwise be available;

(b) will not result in the displacement of currently employed workers, including partial displacement such as reduction in hours of nonovertime work, wages, or employment benefits; and

(c) will not impair existing contracts for service or result in the substitution of wage subsidy funds for other funds in connection with work that would otherwise be performed.

History: 1983 c 312 art 7 s 12; 1Sp1985 c 14 art 9 s 64

268.683 [Repealed, 1Sp1985 c 14 art 9 s 78 subd 2]

268.684 [Repealed, 1Sp1985 c 14 art 9 s 78 subd 2]

268.685 [Repealed, 1Sp1985 c 14 art 9 s 78 subd 1]

268.686 [Repealed, 1Sp1985 c 9 art 2 s 104; 1Sp1985 c 14 art 9 s 78 subd 2]

268.80 [Repealed, 1983 c 312 art 8 s 18; 1Sp1985 c 14 art 9 s 78 subd 1]

268.81 [Repealed, 1983 c 312 art 8 s 18; 1Sp1985 c 14 art 9 s 78 subd 1]

268.82 [Repealed, 1983 c 312 art 8 s 18; 1Sp1985 c 14 art 9 s 78 subd 1]

268.83 [Repealed, 1983 c 312 art 8 s 18; 1Sp1985 c 14 art 9 s 78 subd 1]

268.84 [Repealed, 1Sp1985 c 14 art 9 s 78 subd 1]

268.85 SERVICE PRIORITIES.

Subdivision 1. Groups with severe disadvantages. To the extent that the state has the authority to establish priority groups to be served through employment and training services, greatest consideration must be given to client groups identified as experiencing the most severe disadvantages to employment. Individuals volunteering for employment, regardless of whether they are required to register, must also be given preference to avoid the effects of long-term unemployment or dependence on public assistance.

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: 1Sp1985 c 14 art 9 s 65; 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, and general assistance or work readiness grant diversion. The contract 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, Indian tribes, 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]

Subd. 6. **Coordination.** In developing employment and training services, the commissioner shall identify and incorporate, to the extent possible, money from both federal and state income maintenance, employment and training, and educational programs.

Subd. 7. [Repealed, 1989 c 282 art 5 s 133]

Subd. 8. **Grant diversion.** The commissioner shall develop grant diversion processes for recipients of general assistance and work readiness assistance payments and shall supervise the counties in the administration of the employment and training services to meet the needs and circumstances of these recipients. A grant diversion program that places general assistance and work readiness recipients in public sector employment must operate as a community investment program under section 268.90.

Subd. 9. [Repealed, 1990 c 568 art 4 s 85]

Subd. 10. **Inventory, referral, and intake services.** The commissioner of jobs and training, in cooperation with the commissioner of human services, shall develop an inventory, referral, and intake system. The system must provide for coordinated delivery of employment and training and income maintenance support services, efficient client referral among programs and services, reduction of duplicate data collection, coordinated program intake by local agencies, and effective evaluation of employment and training services. The system must, at a minimum, include the following:

- (1) a listing of all available public and private employment and training services, income maintenance and support services, and vocationally directed education and training programs;
- (2) the capability to assess client needs and match those needs with employment opportunities, education and training programs, and employment and training and income maintenance and support services, and to refer the client to the appropriate employer, educational institution, or service provider;
- (3) a coordinated intake procedure for employment and training services, and income maintenance and support services;
- (4) access to a statewide data base for client tracking and program evaluation; and
- (5) internal security measures to protect private data from unauthorized access.

In developing the system, the commissioner shall consult with the public post-secondary educational systems, local agencies, employment and training service providers, and client and employer representatives. The system must be available in each local agency or service provider delivering programs administered by the commissioner of jobs and training or the commissioner of human services. Access by intake workers, state agency personnel, clients, and any other system users to information contained in the system must conform with all applicable federal and state data privacy requirements.

History: *1Sp1985 c 14 art 9 s 66; 1987 c 403 art 3 s 53; 1988 c 689 art 2 s 222; 1989 c 282 art 5 s 125; 1990 c 568 art 4 s 72,73*

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. (a) 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.

(b) The local service unit's employment and training service provider must meet the certification standards in this subdivision in order to be certified to deliver any of the following employment and training services and programs: wage subsidies; work readiness; work readiness and general assistance grant diversion; food stamp employment and training programs; community work experience programs; AFDC job search; AFDC grant diversion; AFDC on-the-job training; and AFDC case management.

(c) The commissioner shall certify a local service unit's service provider to provide these employment and training services and programs if the commissioner determines that the provider has:

- (1) past experience in direct delivery of the programs specified in paragraph (b);
- (2) staff capabilities and qualifications, including adequate staff to provide timely and effective services to clients, and proven staff experience in providing specific services such as assessments, career planning, job development, job placement, support services, and knowledge of community services and educational resources;
- (3) demonstrated effectiveness in providing services to public assistance recipients and other economically disadvantaged clients; and
- (4) demonstrated administrative capabilities, including adequate fiscal and accounting procedures, financial management systems, participant data systems, and record retention procedures.

(d) When the only service provider that meets the criterion in paragraph (c), clause (1), has been decertified, pursuant to subdivision 1a, in that local service unit, the following criteria shall be substituted: past experience in direct delivery of multiple, coordinated, nonduplicative services, including outreach, assessments, identification of client barriers, employability development plans, and provision or referral to support services.

Employment and training service providers shall be certified by the commissioner for two fiscal years beginning July 1, 1991, and every second year thereafter.

Subd. 1a. Decertification. (a) The department, on its own initiative, or at the

request of the local service unit, shall begin decertification processes for employment and training service providers who:

- (1) no longer meet one or more of the certification standards;
 - (2) are delivering services in a manner that does not comply with the Family Support Act of 1988, Public Law Number 100-485 or relevant state law after corrective actions have been cited, technical assistance has been provided, and a reasonable period of time for remedial action has been provided; or
 - (3) are not complying with other state and federal laws or policy which are necessary for effective delivery of services.
- (b) The initiating of decertification processes shall not result in decertification of the service provider unless and until adequate fact-finding and investigation has been performed by the department.

Subd. 2. Contracting responsibility. A local service unit must contract with 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 achieve effective results in serving public assistance clients as well as other unemployed people.

Subd. 3. Enforcement. The local service units shall provide for the enforcement of employment and training requirements for appropriate recipients of public assistance, and must include provisions for enforcing the requirements in any contracts with providers under subdivisions 1 and 2.

Subd. 4. Location of staff. (a) In establishing a contract, the county shall agree to co-locate, where feasible, income maintenance and social service staff as necessary to accept applications and determine eligibility, monitor ongoing client eligibility, and authorize services and grants available under programs administered by the county or local service unit that are related to employment and training or the client's successful participation in employment and training activities.

(b) The commissioner shall co-locate, where feasible, sufficient staff to make the services provided through the department of jobs and training and the programs it administers or supervises available to clients being served by the local service unit or the contract agency.

(c) The commissioner has emergency and permanent rulemaking authority to implement this section and shall establish the circumstances under which the requirements for co-location may be waived.

Subd. 5. Reports. Each employment and training service provider under contract with a local service unit or an Indian tribe to deliver employment and training services must submit an annual report by March 1 to the local service unit or the Indian tribe. 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: *1Sp1985 c 9 art 2 s 103; 1Sp1985 c 14 art 9 s 67; 1987 c 403 art 3 s 55-57; 1987 c 403 art 2 s 143; 1989 c 282 art 5 s 126; 1990 c 568 art 4 s 74-76*

268.872 STATE FUNDING OF EMPLOYMENT AND TRAINING PROGRAMS.

Subdivision 1. Available money. The commissioner and local service units are not required to provide employment and training services that exceed the levels permitted by available federal, state, and local funds subject to the requirements or limitations of each program.

Subd. 2. Maintenance of effort. A local service unit shall certify to the commis-

sioner that it has not reduced funds from other federal, state, and county sources which would, in the absence of this section, have been available for employment and training services and child care services and related administrative costs.

Subd. 3. [Repealed, 1990 c 568 art 4 s 85]

History: *1Sp1985 c 14 art 9 s 68*

268.88 LOCAL SERVICE UNIT PLANS.

(a) By April 15, 1991, and by April 15 of each second year thereafter, local service units shall prepare and submit to the commissioner a plan that covers the next two state fiscal years. The commissioner shall notify each local service unit within 60 days of receipt of its plan that the 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 the two work programs required by section 256.736, subdivision 10, paragraph (a), clause (13), what services will be provided, number of clients served, per service expenditures, type of clients served, and projected outcomes;

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

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

(9) 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; and

(10) a copy of any other agreements between educational institutions, family support services, and child care providers.

(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. In counties in which a federally recognized Indian tribe is operating an employment and training program under an agreement with the commissioner of human services, the plan must provide that the county will coordinate its employment and training programs, including developing a system for referrals, sanctions, and the provision of supporting services such as access to child care funds and transportation with programs operated by the Indian tribe. The plan may not be given final approval by the commissioner until the tribal unit and county have submitted written agreement on these provisions in the plan. If the county and Indian tribe cannot agree on these provisions, the local service unit shall notify the commissioner of jobs and training and the commissioners of jobs and training and human services shall resolve the 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) Beginning April 15, 1992, and by April 15 of each second year thereafter, local service units must prepare and submit to the commissioner an interim year plan update that deals with performance in that state fiscal year and changes anticipated for the second year of the biennium. The update must include information about employment and training programs addressed in the local service unit's two-year plan and shall be completed in accordance with criteria established by the commissioner.

History: *1Sp1985 c 14 art 9 s 69; 1987 c 403 art 2 s 144; art 3 s 58; 1989 c 282 art 5 s 127; 1990 c 568 art 4 s 77*

268.881 INDIAN TRIBE PLANS.

(a) The commissioner, in consultation with the commissioner of human services, shall review and comment on Indian tribe plans submitted to the commissioner for provision of employment and training services. Beginning April 15, 1991, and by April 15 of each second year thereafter, the Indian tribe shall prepare and submit to the commissioner a plan that covers the next two state fiscal years. Beginning April 15, 1992, and by April 15 of each second year thereafter, the Indian tribe shall prepare and submit to the commissioner an interim year plan update that deals with performance during the past state fiscal year and that covers changes anticipated for the second year of the biennium. The commissioner shall notify the Indian tribe of approval or disapproval of the plans and updates for existing programs within 60 days of submission.

(b) A plan for a new tribal program must be submitted at least 45 days before the program is to commence. The commissioner shall approve or disapprove the plan for new programs within 30 days of receipt.

(c) The tribal plan and update must contain information that has been established by the commissioner and the commissioner of human services for the tribal employment and training service program.

(d) The commissioner may recommend to the commissioner of human services withholding the distribution of employment and training money from a tribe whose plan or update is disapproved by the commissioner or a tribe that does not submit a plan or update by the date established in this section.

History: *1989 c 282 art 5 s 128; 1990 c 568 art 4 s 78*

268.89 JOBS TRAINING PARTNERSHIP ACT; ADMINISTRATION.

Subdivision 1. Coordination of state and federal programs. The commissioner shall act as the governor's agent in administering the federal jobs training partnership act. To the extent permitted under federal regulation, this program must be administered in conjunction with a comprehensive state employment and training strategy and its resources used in coordination with state programs and to further state objectives.

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

Subd. 3. Other plans. Strong consideration for income maintenance recipients must be included in the goals, objectives, and criteria of the governor's coordination and special services plan under section 121 of the Jobs Training Partnership Act, United States Code, title 29, section 1531. Local service delivery area plans and job service plans must describe methods of complying with the coordination criteria under the governor's coordination and special services plan as required under United States Code, title 29, sections 49g and 1514.

History: *1Sp1985 c 14 art 9 s 70; 1987 c 403 art 2 s 145*

268.90 COMMUNITY INVESTMENT PROGRAMS.

Subdivision 1. Purpose; requirements. Community investment programs provide temporary employment to people who are experiencing prolonged unemployment and economic hardship. Community investment programs consist of one or more projects. Community investment programs must be beneficial to the state and the communities in which they are located and must provide program participants with training and

work experience that will enhance their employability. The projects must include activities that:

- (1) expand or improve services, including education, health, social services, recreation, and safety;
- (2) improve or maintain natural resources, including rivers, streams and lakes, forest lands and roads, and soil conservation;
- (3) make permanent improvements to lands and buildings; or
- (4) weatherize public buildings and private residential dwellings.

Community investment programs may not include job placements that replace work that was part or all of the duties or responsibilities of an authorized public employee position established as of January 1, 1985.

Community investment programs that include other sources of money or authorized programs may provide employment for the groups eligible for the included programs under the terms and conditions of those programs. These programs include the Minnesota conservation corps, Minnesota summer youth program, county emergency jobs program, and the jobs training partnership act.

Subd. 2. Employment conditions. (a) An eligible nonprofit or public employer may not terminate, lay off, or reduce the regular working hours of an employee for the purpose of hiring an individual with money available under this program. An eligible employer may not hire an individual with money available through this program if any other person is on layoff from the same or a substantially equivalent job.

(b) Community investment program participants are employees of the project employer within the meaning of workers' compensation laws, personal income tax, and the federal insurance contribution act, but not retirement or civil service laws.

(c) Each project and job must comply with all applicable affirmative action, fair labor, health, safety, and environmental standards.

(d) Individuals employed under the community investment program must be paid a wage at the same wage rates as work site or employees doing comparable work in that locality, unless otherwise specified in law.

(e) Recipients of aid to families with dependent children who are eligible on the basis of an unemployed parent may not have available more than 100 hours a month. All employees are limited to 32 hours or four days a week, so that they can continue to seek full-time private sector employment, unless otherwise specified in law.

(f) The commissioner shall establish, by rule, the terms and conditions governing the participation of appropriate public assistance recipients. The rules must, at a minimum, establish the procedures by which the minimum and maximum number of work hours and maximum allowable travel distances are determined, the amounts and methods by which work expenses will be paid, and the manner in which support services will be provided. The rules must also provide for periodic reviews of clients continuing employment in community investment programs.

(g) Participation in a community investment program by a recipient of aid to families with dependent children or general assistance is voluntary; however, work readiness registrants may be required to participate.

Subd. 3. Commissioner of jobs and training. The commissioner shall:

(1) make emergency or permanent rules governing plan content, criteria for approval, and administrative standards;

(2) refer community investment program administrators to the appropriate state agency for technical assistance in developing and administering community investment programs;

(3) establish the method by which community investment programs will be approved or disapproved through the community investment program plan and the annual update component of the county plan;

(4) review and comment on community investment program plans;

(5) institute ongoing methods to monitor and evaluate community investment programs; and

(6) consult with the commissioner of human services on the approval of county plans for community investment programs relating to the participation of public assistance recipients.

Subd. 4. County boards of commissioners. The county boards of commissioners shall:

(1) be encouraged to establish community investment programs that are administered jointly according to section 471.59, or through multicounty human service boards under chapter 402;

(2) develop community investment programs in consultation with the exclusive representatives of their employees;

(3) plan community investment programs by involving nonprofit organizations and other governmental units, community action agencies, community-based organizations, local union representatives, and representatives of client groups;

(4) submit to the commissioner a community investment program plan identifying the program funding source and amount, before the initiation of a community investment program, for approval according to standards established by the commissioner;

(5) plan community investment projects that, whenever possible, utilize existing programs that are administered under contract by nonprofit organizations and governmental units, including departments and agencies of cities, counties, towns, school districts, state and federal agencies, park reserve districts, and other special districts;

(6) include in their local service unit plans an annual update to their community investment program plans for approval according to standards established by the commissioner;

(7) submit reports and meet administrative standards established by the commissioner;

(8) monitor the performance of entities under contract to administer individual community investment projects;

(9) enter into contracts with other governmental and private bodies to jointly fund or jointly administer approvable projects when agreements expand the resources available, the scope of people employed, or further recognized public purposes; and

(10) be encouraged to enter into contracts with businesses or individuals for eligible projects under subdivision 1 and charge a fee for the completion of a project.

Subd. 5. State financial participation. The statutorily established state rates of financial participation or available state appropriations or grants are not affected by their incorporation into a community investment program.

History: *1Sp1985 c 14 art 9 s 71; 1990 c 568 art 4 s 79-81*

268.91 Subdivision 1. [Renumbered 256H.01]

Subd. 2. [Renumbered 256H.02]

Subd. 3. [Renumbered 256H.03]

Subd. 3a. [Renumbered 256H.04]

Subd. 3b. [Renumbered 256H.05]

Subd. 3c. [Renumbered 256H.06]

Subd. 3d. [Renumbered 256H.07]

Subd. 3e. [Renumbered 256H.08]

Subd. 3f. [Renumbered 256H.09]

Subd. 4. [Renumbered 256H.10]

Subd. 5. [Renumbered 256H.11]

Subd. 6. [Renumbered 256H.12]

- Subd. 6a. [Renumbered 256H.13]
- Subd. 7. [Renumbered 256H.14]
- Subd. 8. [Renumbered 256H.15]
- Subd. 9. [Renumbered 256H.16]
- Subd. 10. [Renumbered 256H.17]
- Subd. 11. [Renumbered 256H.18]
- Subd. 12. [Renumbered 256H.19]

268.911 [Renumbered 256H.20]

HEAD START PROGRAM

268.912 HEAD START PROGRAM.

The department of jobs and training is the state agency responsible for administering the head start program. The commissioner of jobs and training may make grants to public or private nonprofit agencies for the purpose of providing supplemental funds for the federal head start program.

History: 1989 c 282 art 2 s 171

268.913 DEFINITIONS.

Subdivision 1. **Scope.** As used in sections 268.914 to 268.916, the terms defined in this section have the meanings given them.

Subd. 2. **Program account 20.** "Program account 20" means the federally designated and funded account limited to training activities.

Subd. 3. **Program account 22.** "Program account 22" means the federally designated and funded account for basic services.

Subd. 4. **Program account 26.** "Program account 26" means the federally designated and funded account that can only be used to provide special services to handicapped diagnosed children.

Subd. 5. **Program account 23.** "Program account 23" means the federally designated and funded account for all day services.

Subd. 6. **Start-up costs.** "Start-up costs" means one-time costs incurred in expanding services to additional children.

History: 1989 c 282 art 2 s 172

268.914 DISTRIBUTION OF APPROPRIATION.

Subdivision 1. **State supplement for federal grantees.** (a) The commissioner of jobs and training shall distribute money appropriated for that purpose to head start program grantees to expand services to additional low-income children. Money must be allocated to each project head start grantee in existence on the effective date of Laws 1989, chapter 282. Migrant and Indian reservation grantees must be initially allocated money based on the grantees' share of federal funds. The remaining money must be initially allocated to the remaining local agencies based equally on the agencies' share of federal funds and on the proportion of eligible children in the agencies' service area who are not currently being served. A head start grantee must be funded at a per child rate equal to its contracted, federally funded base level for program accounts 20 to 26 at the start of the fiscal year. The commissioner may provide additional funding to grantees for start-up costs incurred by grantees due to the increased number of children to be served. Before paying money to the grantees, the commissioner shall notify each grantee of its initial allocation, how the money must be used, and the number of low-income children that must be served with the allocation. Each grantee must notify the commissioner of the number of additional low-income children it will be able to serve. For any grantee that cannot serve additional children to its full allocation, the commissioner shall reduce the allocation proportionately. Money available after the initial allocations are reduced must be redistributed to eligible grantees.

(b) Up to 11 percent of the funds appropriated annually may be used to provide grants to local head start agencies to provide funds for innovative programs designed either to target head start resources to particular at-risk groups of children or to provide services in addition to those currently allowable under federal head start regulations. The commissioner shall award funds for innovative programs under this paragraph on a competitive basis.

Subd. 2. Service expansion grants. One-third of any biennial increase in the state appropriations for head start programs shall be allocated by the commissioner of jobs and training, under a request for proposal system, to existing head start grantees for service expansion.

Priority for state-funded service expansion grants must be given to applicants who propose to:

- (1) coordinate or co-locate the services through an existing community-based, family-oriented program such as a family resource center;
- (2) minimize the amount of state funding that is needed for initial construction or remodeling costs by using an existing facility, by sharing a facility with a school or other program, or by obtaining contributions for these costs from private or local sources;
- (3) reduce the costs and time of transportation by enabling children to attend a program closer to their home communities;
- (4) increase services in an area where less than 15 percent of eligible children are enrolled; and
- (5) expand programs within a city where no center-based program exists.

The additional funds provided to a grantee under this subdivision shall be considered part of the grantees funding base for future formula allocations of state or federal funds.

History: 1989 c 282 art 2 s 173; 1991 c 292 art 3 s 34

268.915 FEDERAL REQUIREMENTS.

Grantees and the commissioner shall comply with federal regulations governing the federal head start program, except for innovative programs funded under section 268.914, paragraph (b), which may operate differently than federal head start regulations, and except that when a state statute or regulation conflicts with a federal statute or regulation, the state statute or regulation prevails.

History: 1989 c 282 art 2 s 174

268.916 REPORTS.

Each grantee shall submit an annual report to the commissioner on the format designated by the commissioner, including program information report data. By January 1 of each year, the commissioner shall prepare an annual report to the health and human services committees of the legislature concerning the uses and impact of head start supplemental funding, including a summary of innovative programs and the results of innovative programs and an evaluation of the coordination of head start programs with employment and training services provided to AFDC recipients.

History: 1989 c 282 art 2 s 175

268.95 INDIVIDUAL ENTERPRISE.

Subdivision 1. Coordination. The commissioner may coordinate state activities related to self-employment enterprises, including home-based businesses, individual self-employment initiatives, and collective and cooperative efforts involving individual entrepreneurs.

Subd. 2. Marketing. The commissioner may undertake activities to expand the marketing of goods or services produced by the state's independent entrepreneurs.

Subd. 3. Technical assistance. The commissioner may provide or arrange for the

provision of information, technical assistance, and support as necessary to help individuals determine whether they wish to become self-employed, to obtain needed training, to develop business plans and financing, and to sustain the initiatives.

Subd. 4. Pilot program. The commissioner shall develop a pilot program, in cooperation with the commissioners of trade and economic development and human services, to enable low-income persons to start or expand self-employment opportunities or home-based businesses that are designed to make the individual entrepreneurs economically independent. The commissioner of human services shall seek necessary waivers from federal regulations to allow recipients of aid to families with dependent children to participate and retain eligibility while establishing a business.

Subd. 5. Study. The commissioner shall study the needs of individual entrepreneurs and beginning businesses and recommend to the governor how state programs and resources can provide further assistance.

History: 1Sp1985 c 14 art 9 s 73; 1987 c 312 art 1 s 26 subd 2

268.96 DISPLACED HOMEMAKER PROGRAMS.

The commissioner of jobs and training may enter into arrangements with existing private or nonprofit organizations and agencies with experience in dealing with displaced homemakers to provide counseling and training services. The commissioner shall assist displaced homemakers in applying for appropriate welfare programs and shall take welfare allowances received into account in setting the stipend level. Income received as a stipend under these programs shall be totally disregarded for purposes of determining eligibility for and the amount of a general assistance grant.

History: 1973 c 254; 1977 c 428 s 8; 1977 c 430 s 25; 1Sp1985 c 14 art 9 s 75

HOSPITALITY HOST PROGRAM

268.971 HOSPITALITY HOST PROGRAM.

Subdivision 1. Establishment. A hospitality host older worker tourism program is established in the department of jobs and training to assist economically disadvantaged older workers to gain employment in the promotion of the tourism industry in Minnesota and to become self-sufficient. The objectives of the program are to:

- (1) assist in the diversification of industry in rural areas by stimulating and promoting tourism;
- (2) create full-time and part-time employment for low-income persons 55 years old or older;
- (3) raise the income of older persons living in poverty; and
- (4) promote tourism in selected local areas throughout the state, thereby improving local economies.

Subd. 2. Definitions. (a) **Scope.** As used in this section, the terms defined in this section have the meanings given them.

(b) **Commissioner.** "Commissioner" means the commissioner of the department of jobs and training.

(c) **Older worker.** "Older worker" means an economically disadvantaged person 55 years or older.

(d) **Economically disadvantaged.** "Economically disadvantaged" means a person having an income of 125 percent or less of the federal poverty income guidelines. In determining income, the federal Job Training Partnership Act definition of family and family income will prevail.

(e) **Program.** "Program" means the hospitality host older worker program created in subdivision 1.

(f) **Coordinating agency.** "Coordinating agency" means the Arrowhead economic opportunity agency.

Subd. 3. Distribution and use of state money. Money allocated to the coordinating agency by the commissioner must be used for activities consistent with the objectives of the program including, but not limited to: outreach, selection of eligible participants, program sites, individual work sites, classroom training, on-the-job training opportunities, and program marketing. Program funds shall be used to provide training-related costs to enrollees during orientation and classroom training segments. Program funds shall be used to subsidize up to 50 percent of enrollee wages during contracted on-the-job training periods with the employer being responsible for the remainder. Salaries upon employment shall be at least the state or federal minimum wage, whichever is higher.

Subd. 4. Responsibilities of coordinating agency. The commissioner shall enter into written agreement with the coordinating agency for the design, delivery, and general administration of the program. The commissioner shall set program goals and objectives and monitor the program.

Subd. 5. Reports. The coordinating agency shall submit an annual report to the commissioner one year from the effective date of Laws 1989, chapter 282, and annually thereafter. In addition, the coordinating agency shall submit to the commissioner such other reports as required to document the status and progress of the program. The annual report must include: information on the number and types of jobs created; status of program sites; wages paid program participants; types of services provided by programs; the retention of program participants; and other information to assess the progress and status of the program.

History: 1989 c 282 art 2 s 176

PLANT CLOSINGS AND DISLOCATED WORKERS

268.975 DEFINITIONS.

Subdivision 1. Terms. For the purposes of sections 268.975 to 268.98, the following terms have the meanings given them.

Subd. 2. Commissioner. "Commissioner" means the commissioner of jobs and training.

Subd. 3. Dislocated worker. "Dislocated worker" means an individual who:

(1) has been terminated or who has received a notice of termination from employment, is eligible for or has exhausted entitlement to unemployment compensation, and is unlikely to return to the previous industry or occupation;

(2) has been terminated or has received a notice of termination of employment as a result of any plant closing or any substantial layoff at a plant, facility, or enterprise;

(3) has been long-term unemployed and has limited opportunities for employment or reemployment in the same or a similar occupation in the area in which the individual resides, including older individuals who may have substantial barriers to employment by reason of age;

(4) has been self-employed, including farmers and ranchers, and is unemployed as a result of general economic conditions in the community in which the individual resides or because of natural disasters, subject to rules to be adopted by the commissioner; or

(5) has been terminated or who has received a notice of termination from employment with a public or nonprofit employer.

A dislocated worker must have been working in Minnesota at the time employment ceased.

Subd. 3a. Additional dislocated worker. "Additional dislocated worker" means an individual who was a full-time homemaker for a substantial number of years and derived the substantial share of support from:

(1) a spouse and no longer receives such support due to the death, divorce, permanent disability of, or permanent separation from the spouse; or

(2) public assistance on account of dependents in the home and no longer receives such support.

An additional dislocated worker must have resided in Minnesota at the time the support ceased.

Subd. 4. Eligible organization. "Eligible organization" means a local government unit, nonprofit organization, community action agency, business organization or association, or labor organization that has applied for a prefeasibility grant under section 268.978.

Subd. 5. Local government unit. "Local government unit" means a statutory or home rule charter city, county, or town.

Subd. 6. Plant closing. "Plant closing" means the announced or actual permanent or temporary shutdown of a single site of employment, or one or more facilities or operating units within a single site of employment, if the shutdown results in an employment loss at the single site of employment during any 30-day period for (a) 50 or more employees excluding employees who work less than 20 hours per week; or (b) at least 500 employees who in the aggregate work at least 20,000 hours per week, exclusive of hours of overtime.

Subd. 7. Prefeasibility study grant; grant. "Prefeasibility study grant" or "grant" means the grant awarded under section 268.978.

Subd. 8. Substantial layoff. "Substantial layoff" means a reduction in the work force, which is not a result of a plant closing, and which results in an employment loss at a single site of employment during any 30-day period for (a) at least 50 employees excluding those employees that work less than 20 hours a week; or (b) at least 500 employees who in the aggregate work at least 20,000 hours per week, exclusive of hours of overtime.

History: 1989 c 282 art 2 s 177; 1986 c 444; 1991 c 292 art 3 s 35,36

268.976 EARLY WARNING SYSTEM.

Subdivision 1. Early warning indicators. The commissioner, in cooperation with the commissioners of revenue and trade and economic development, shall establish and oversee an early warning system to identify industries and businesses likely to experience large losses in employment including a plant closing or a substantial layoff, by collecting and analyzing information which may include, but not be limited to, products and markets experiencing declining growth rates, companies and industries subject to competition from production in low wage counties, changes in ownership, layoff and employment patterns, payments of unemployment compensation contributions, and state tax payments. The commissioner may request the assistance of businesses, business organizations, and trade associations in identifying businesses, industries, and specific establishments that are likely to experience large losses in employment. The commissioner may request information and other assistance from other state agencies for the purposes of this subdivision.

Subd. 2. Notice. The commissioner shall encourage those business establishments considering a decision to effect a plant closing, substantial layoff, or relocation of operations located in this state to give notice of that decision as early as possible to the commissioner, the employees of the affected establishment, any employee organization representing the employees, and the local government unit in which the affected establishment is located. This notice shall be in addition to any notice required under the Worker Adjustment and Retraining Notification Act, United States Code, title 29, section 2101.

Subd. 3. Employer responsibility. An employer providing notice of a plant closing, substantial layoff, or relocation of operations under the Worker Adjustment and Retraining Notification Act, United States Code, title 29, section 2101, or under subdivision 2 must report to the commissioner the names, addresses, and occupations of the employees who will be or have been terminated.

History: 1989 c 282 art 2 s 178

268.977 RAPID RESPONSE PROGRAM.

Subdivision 1. **Program establishment.** (a) The commissioner shall establish a rapid response program to (1) assist employees, employers, business organizations or associations, labor organizations, local government units, and community organizations to quickly and effectively respond to announced or actual plant closings and substantial layoffs and (2) assist dislocated workers and additional dislocated workers. Grant recipients and substate grantees may, but shall not be required to, subcontract with the department for readjustment services.

(b) The program must include or address at least the following:

(1) within five working days after becoming aware of an announced or actual plant closing or substantial layoff, establish on-site contact with the employer, employees, labor organizations if there is one representing the employees, and leaders of the local government units and community organizations to provide coordination of efforts to formulate a communitywide response to the plant closing or substantial layoff, provide information on the public and private service and programs that might be available, inform the affected parties of the prefeasibility study grants under section 268.978, and collect any information required by the commissioner to assist in responding to the plant closing or substantial layoff;

(2) provide ongoing technical assistance to employers, employees, business organizations or associations, labor organizations, local government units, and community organizations to assist them in reacting to or developing responses to plant closings or substantial layoffs;

(3) establish and administer the prefeasibility study grant program under section 268.978 to provide an initial assessment of the feasibility of alternatives to plant closings or substantial layoffs;

(4) work with employment and training service providers, employers, business organizations or associations, labor organizations, local government units, dislocated workers, and community organizations in providing training, education, community support service, job search programs, job clubs, and other services to address the needs of potential or actual dislocated workers;

(5) coordinate with providers of economic development related financial and technical assistance services so that communities that are experiencing plant closings or substantial layoffs have immediate access to economic development related services;

(6) collect and make available information on programs that might assist dislocated workers and the communities affected by plant closings or substantial layoffs; and

(7) when they can be provided without adversely affecting delivery of services to all dislocated workers, the services under clause (4) shall be available to additional dislocated workers as defined in section 268.975, subdivision 3a.

Subd. 2. **Applicability.** A proposal for a program recommended for funding by the governor's job training council shall not be denied based upon the increased funding and resources of substate areas.

History: 1989 c 282 art 2 s 179; 1990 c 568 art 6 s 2; 1991 c 292 art 3 s 37

268.978 PREFEASIBILITY STUDIES.

Subdivision 1. **Prefeasibility study grants.** (a) The commissioner may make grants for up to \$10,000 to eligible organizations to provide an initial assessment of the feasibility of alternatives to plant closings or substantial layoffs. The alternatives may include employee ownership, other new ownership, new products or production processes, or public financial or technical assistance to keep a plant open. Two or more eligible organizations may jointly apply for a grant under this section.

(b) Interested organizations shall apply to the commissioner for the grants. As part of the application process, applicants must provide a statement of need for a grant, information relating to the work force at the plant, the area's unemployment rate, the community's and surrounding area's labor market characteristics, information of

efforts to coordinate the community's response to the plant closing or substantial layoff, a timetable of the prefeasibility study, a description of the organization applying for the grant, a description of the qualifications of persons conducting the study, and other information required by the commissioner.

(c) The commissioner shall respond to the applicant within five working days of receiving the organization's application. The commissioner shall inform each organization that applied for but did not receive a grant the reasons for the grant not being awarded. The commissioner may request further information from those organizations that did not receive a grant, and the organization may reapply for the grant.

Subd. 2. Prefeasibility study. (a) The prefeasibility study must explore the current and potential viability, profitability, and productivity of the plant that may close or experience a substantial layoff and alternative uses for the plant. The study is not intended to be a major examination of each possible alternative but rather is meant to quickly determine if further action or examination is feasible and should be fully explored.

(b) The prefeasibility study must contain:

(1) a description of the plant's present products, production techniques, management structure, and history;

(2) a brief discussion of the feasibility of the various alternatives for ownership, production technique, and products;

(3) an estimate of the financing required to keep the plant open and the potential sources of that financing;

(4) a description of the employer's, employees', and community's efforts to maintain the operation of the plant; and

(5) other information the commissioner may require.

Subd. 3. Reports. (a) The commissioner shall report monthly to the program subcommittee of the governor's job training council on the grants made and studies completed during the previous month.

(b) The commissioner shall provide an annual report to the governor, legislature, and the governor's job training council on the administration of the prefeasibility study grant program. The report must also include details of actions taken as a result of a grant.

History: 1989 c 282 art 2 s 180

268.979 DISLOCATED WORKER COORDINATION.

The commissioner shall coordinate the actions taken by state agencies and public post-secondary educational institutions to respond to or address the specific needs of dislocated workers and to provide services to dislocated workers including education and retraining. The commissioner shall also assist local government units, community groups, business associations or organizations, labor organizations, and others in coordinating their efforts in providing services to dislocated workers.

History: 1989 c 282 art 2 s 181

268.98 PERFORMANCE STANDARDS.

(a) The commissioner shall establish performance standards for the programs and activities administered or funded through the rapid response program under section 268.977. The commissioner may use existing federal performance standards or, if the commissioner determines that the federal standards are inadequate or not suitable, may formulate new performance standards to ensure that the programs and activities of the rapid response program are effectively administered.

(b) Not less than 20 percent of the funds expended under this section must be used to provide needs-related payments and other supportive services as those terms are used in subchapter III of the Job Training Partnership Act, United States Code, title 29, section 1661d(b). This requirement does not apply to the extent that a program pro-

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posal requests less than 20 percent of such funds. At the end of the fiscal year, each sub-state grantee and each grant recipient shall report to the commissioner on the types of services funded under this paragraph and the amounts expended for such services. By January 15 of each year, the commissioner shall provide a summary report to the legislature.

History: 1989 c 282 art 2 s 182; 1991 c 292 art 3 s 38