CHAPTER 268

DEPARTMENT OF ECONOMIC SECURITY

268.0111 DEFINITIONS.

[For text of subds 1 and 2, see M.S.1996]

Subd. 3a. **Department.** "Department" means the department of economic security.

[For text of subds 4 and 4a, see M.S.1996]

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 reemployment insurance, aid to families with dependent children, Minnesota family investment program-statewide, general 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.

[For text of subds 5a and 6, see M.S.1996]

Subd. 7. **Public assistance.** "Public assistance" means aid to families with dependent children, Minnesota family investment program-statewide, and general assistance.

[For text of subds 8 and 9, see M.S.1996]

History: *1997 c 66 s 1; 1997 c 85 art 4 s 24,25*

268.0122 POWERS AND DUTIES.

[For text of subds 1 and 2, see M.S.1996]

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, Minnesota family investment program-statewide, general assistance, 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; and

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

[For text of subd 4, see M.S.1996]

Subd. 5. **Rulemaking.** (a) The commissioner may make rules to carry out this chapter.

(b) Effective July 1, 1997, the commissioner may make rules to carry out section 256J.51.

[For text of subds 6 and 7, see M.S.1996]

History: *1997 c 7 art 5 s 34; 1997 c 85 art 4 s 26; 1997 c 245 art 4 s 6*

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 economic security must be understandable to a person of average intelligence and education.

(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 economic security 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.

History: *1997 c 7 art 1 s 104*

268.022 WORKFORCE INVESTMENT 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 is liable for a special assessment levied at the rate of one–tenth of one percent per year on all taxable wages, as defined in section 268.04, subdivision 25b. The assessment shall become due and be paid by each employer to the department on the same schedule and in the same manner as other contributions.

(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.

(c) Notwithstanding any provision to the contrary, if on June 30 of any year the unobligated balance of the special assessment fund under this section is greater than $30,000,000, the special assessment for the following year only shall be levied at a rate of 1/20th of one percent on all taxable wages.

[For text of subd 2, see M.S.1996]

History: *1997 c 66 s 2*

268.026 [Repealed, 1997 c 66 s 81]

268.03 DECLARATION OF PUBLIC POLICY.

As a guide to the interpretation and application of sections 268.03 to 268.30, 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 ap-

propriate 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. In recognition of its focus on returning the worker to gainful employment, this program will be known in Minnesota as "reemployment insurance."

History: *1997 c 7 art 1 s 105*

268.04 DEFINITIONS.

[For text of subds 1 to 4, see M.S.1996]

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.

[For text of subds 5a to 7, see M.S.1996]

Subd. 8. [Repealed, 1997 c 66 s 81]

[For text of subd 9, see M.S.1996]

Subd. 10. **Employer.** "Employer" means: (1) Any employing unit which, after December 31, 1995, has one or more individuals performing services in employment for which there were wages paid, within either the current or preceding calendar year, except as provided in clause (17);

(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) 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);

(5) 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 (17);

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

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

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

(9) Any employing unit which, having become an employer under the preceding clauses or clause (14), (15), or (16), has not, under section 268.042, ceased to be an employer subject to these sections;

(10) For the effective period of its election pursuant to section 268.042, subdivision 3, any other employing unit which has elected to become subject to sections 268.03 to 268.23;

(11) Notwithstanding any inconsistent provisions of sections 268.03 to 268.23, 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;

(12) Except as provided in clause (11), and notwithstanding any other provisions of sections 268.03 to 268.23, 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;

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

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

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

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

(17) (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 (5), 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), (8) or (16), 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).

[For text of subd 11, see M.S.1996]

Subd. 12. **Employment.** "Employment" means:

(1) Any service performed, including service in interstate commerce, by;

(a) any officer of any corporation;

(b) any member of a limited liability company who is a servant under the law of master and servant;

(c) 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

(d) 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)(c), 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 268.042, 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 268.23, 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 reemployment insurance 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 economic security, 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 268.23;

(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 268.23, 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 a reemployment insurance fund under a state reemployment insurance 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 268.057, subdivision 7, with respect to contributions erroneously collected;

(f) Service with respect to which reemployment insurance 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;

(s) Notwithstanding clauses (1)(a) and (15)(m), services performed as an officer of a township mutual insurance company or farmer's mutual insurance company operating pursuant to chapter 67A.

(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. 12a. **Independent contractor/construction.** A worker doing commercial or residential building construction or improvement, in the public or private sector, performing services in the course of the trade, business, profession, or occupation of the employing unit, shall be considered an employee under the law of master and servant and not an "independent contractor" under subdivision 12, clause (1)(d) unless the worker meets all the following conditions:

(1) maintains a separate business with the independent contractor's own office, equipment, materials, and other facilities;

(2) holds or has applied for a federal employer identification number;

(3) operates under contracts to perform specific services or work for specific amounts of money under which the independent contractor controls the means of performing the services or work;

(4) incurs the main expenses related to the service or work that the independent contractor performs under contract;

(5) is responsible for the satisfactory completion of work or services that the independent contractor contracts to perform and is liable for a failure to complete the work or service;

(6) receives compensation for work or service performed under a contract on a commission or per job or competitive bid basis and not on any other basis;

(7) may realize a profit or suffer a loss under contracts to perform work or service;

(8) has continuing or recurring business liabilities or obligations; and

(9) the success or failure of the independent contractor's business depends on the relationship of business receipts to expenditures.

Subd. 13. [Repealed, 1997 c 66 s 81]

Subd. 14. [Repealed, 1997 c 66 s 81]

Subd. 15. **Filing; filed.** "Filing" or "filed" means the delivery of any document to the commissioner or any of the commissioner's agents, or the depositing of the document in the United States mail properly addressed to the department with postage prepaid, in which case the document shall be considered filed on the day indicated by the cancellation mark of the United States Postal Service.

If, where allowed, an application, protest, appeal, or other required action is made by telephone or electronic transmission, it shall be considered filed on the day received by the department.

[For text of subd 16, see M.S.1996]

Subd. 17. **Insured work.** "Insured work" means employment for employers as defined in this section, except that for the purposes of satisfying of disqualifications, the term "insured work" shall include insured work under a similar law of any other state or employment covered under the Railroad Unemployment Compensation Act, and United States Code, title 5, chapter 85. Periods for which an individual receives back pay are periods of insured work for benefit purposes, except for the satisfying of disqualifications.

[For text of subd 19, see M.S.1996]

Subd. 20. [Repealed, 1997 c 66 s 81]

Subd. 21. [Repealed, 1997 c 66 s 81]

[For text of subd 22, see M.S.1996]

Subd. 22a. **State's average annual and average weekly wage.** (a) On or before June 30 of each year, the commissioner shall calculate the state's average annual wage and the state's average weekly wage in the following manner:

(1) The sum of the total monthly employment reported by all employers subject to this law for the previous calendar year shall be divided by 12 to calculate the average monthly employment.

(2) The sum of the total wages reported by all employers subject to this law for the previous calendar year shall be divided by the average monthly employment to calculate the state's average annual wage.

(3) The state's average annual wage shall be divided by 52 to calculate the state's average weekly wage.

(b) For purposes of contributions under section 268.06, subdivision 1, the state's average annual wage shall apply to the calendar year succeeding the calculation.

(c) For purposes of calculating the maximum weekly benefit amount payable on any reemployment insurance account under section 268.07, subdivision 2, paragraph (c), the state's average weekly wage shall apply to the 12–month period beginning July 1 of the calendar year of the calculation.

[For text of subd 23, see M.S.1996]

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 the term shall not include:

(a) The amount of any payment made to, or on behalf of, an employee under a plan or system established by an employer that 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 a 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 a death benefit, any part of the payment, or if the death benefit is insured, any part of the insurance premium paid by the employer and has no right, under the provisions of the plan or system or policy of insurance to assign the benefit, or to receive cash in lieu of a benefit either upon withdrawal from the plan or system or upon termination of the plan or system or policy of insurance or of employment with the employer;

(b) 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 reemployment insurance law, with respect to remuneration paid to an employee for domestic service in a private home of the employer or for agricultural labor;

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

(d) 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 that is exempt from tax under section 501(a) of the code at the time of the payment unless the 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 that, at the time of the payment is a plan described in section 403(a) of the federal Internal Revenue Code;

(e) 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;

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

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

(h) 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 that provides for the employer's employees generally or for a class or classes of employees;

(i) Nothing in this subdivision 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.

[For text of subd 25a, see M.S.1996]

Subd. 25b. **Taxable wages.** (a) "Taxable wages" means those wages paid to an employee each calendar year up to an amount equal to 60 percent of the state's average annual wage, rounded to the nearest $100.

(b) Taxable wages includes the amount of wages paid by the employer's predecessor in this state or under the reemployment insurance law of any other state. Any credit given for amounts reported under the reemployment insurance law of another state shall be limited to that state's taxable wage base.

[For text of subds 26 to 31, see M.S.1996]

Subd. 32. [Repealed, 1997 c 66 s 81]

[For text of subds 33 and 34, see M.S.1996]

Subd. 35. [Repealed, 1997 c 66 s 81]

[For text of subd 36, see M.S.1996]

History: *1997 c 66 s 3–9,79*

268.041 MS 1996 [Renumbered 268.043]

268.042 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 268.23 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

268.23 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 defined as an employer under this chapter, that files with the commissioner a written election to become an employer, shall, with the written approval of the commissioner, become an employer for not less than two calendar years to the same extent as all other employers, as of the date stated in the approval. The employing unit shall cease to be an employer as of the first day of January of any calendar year, only, if at least 30 calendar days prior to the first day of January, the employing unit has filed with the commissioner a written notice to that effect.

(2) Any employing unit that has services performed for it that do not constitute employment, may file with the commissioner a written election that all such service, in one or more distinct establishments or places of business, shall be deemed to constitute employment for purposes of this chapter for not less than two calendar years. Upon the written approval of the commissioner, the services shall be deemed to constitute employment from and after the date stated in the approval. The services shall cease to be deemed employment as of the first day of January of any calendar year only if at least 30 calendar days prior to the first day of January the 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 calendar days notice to the employing unit, if the employing unit fails to pay all contributions due or payments in lieu of contributions due the reemployment insurance fund.

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; 1996 c 417 s 31; 1997 c 66 s 61,79*

268.043 DETERMINATIONS OF COVERAGE.

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, or whether the remuneration for services constitutes wages as defined in section 268.04, subdivision 25, 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. Proceedings on the appeal shall be conducted in accordance with section 268.105. The commissioner may at any time upon the commissioner's own motion correct any error of the department resulting in an erroneous determination under this section, except for those matters that have been appealed to the court of appeals and heard on the merits. The commissioner shall issue a redetermination which shall be final unless the employing unit, within 30 days after the mailing of notice of the redetermination to the employing unit's last known address, files a written appeal from it. Proceedings on the appeal shall be conducted in accordance with section 268.105.

History: *1995 c 54 s 2; 1996 c 417 s 4; 1997 c 66 s 79*

268.044 WAGE REPORTING.

Subdivision 1. **Wage detail report.** (a) Each employer shall provide the commissioner with a quarterly wage detail report that shall include for each employee the employee's name, social security number, the total wages paid to the employee, and total number of paid hours worked. For employees exempt from the definition of employee in section 177.23, subdivision 7, clause (6), the employer shall report 40 hours worked for each week any duties were performed by a full–time employee and shall report a reasonable estimate of the hours worked for each week duties were performed by a part–time employee. The report is due and must be filed on or before the last day of the month following the end of the calendar quarter.

(b) An employer need not include the name of the employee or other required information on the wage detail report if disclosure is specifically exempted by federal law.

Subd. 2. **Failure to file report.** Any employer who fails to file the wage detail report shall pay to the department, for each month the report is delinquent, a penalty of one–half of one percent of total wages paid that quarter. The penalty shall not be assessed if the wage detail report is properly made and filed within 30 calendar 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.

Subd. 3. **Missing or erroneous information.** Any employer who files the wage detail report, 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 employee for whom the information is missing or erroneous.

Subd. 4. **Penalties.** The penalties provided for in subdivisions 2 and 3 are in addition to interest and other penalties imposed by this chapter and shall be collected in the same manner as delinquent contributions and shall be credited to the contingent account.

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; 1997 c 66 s 79; 1997 c 74 s 1; 1Sp1997 c 5 s 7*

NOTE: Subdivision 1 of this section that was also amended by Laws 1997, chapter 66, section 64, to read as follows:

"Subdivision 1. **Wage detail report.** (a) Each employer subject to this chapter shall provide the commissioner with a quarterly report known as the wage detail report, that shall include, for each employee covered by this chapter, the employee's name, social security number, and the total wages paid to the employee. The report is due and must be filed on or before the last day of the month following the end of the calendar quarter.

(b) An employer need not include the name of the employee or other required information on the wage detail report if disclosure is specifically exempted by federal law."

268.045 EMPLOYER ACCOUNTS.

(a) The commissioner shall maintain a separate account for each employer, except as provided in this section, and shall charge the account for any benefits determined chargeable to the employer under section 268.047 and shall credit the account with all the contributions paid, or if the employer is liable for payments in lieu of contributions, the payments made.

(b) Two or more related corporations concurrently employing the same employees and compensating those employees through a common paymaster which is one of the corporations may apply to the commissioner to establish a common paymaster account that shall be the account of the common paymaster corporation. If approved, the separate accounts shall be maintained, but the employees compensated through the common paymaster shall be reported as employees of the common paymaster corporation. The corporations using the common paymaster account shall be jointly and severally liable for any unpaid contributions, penalties, and interest owing from the common paymaster account. The commissioner may prescribe rules for the establishment, maintenance and termination of common paymaster accounts.

(c) Two or more employing units having 50 percent or more common ownership and compensating employees through a single payee that is one of the employing units may apply to the commissioner for a merging of the experience rating records of the employing units into a single joint account.

If approved, the joint account shall be effective on that date assigned by the commissioner and shall remain in effect for not less than two calendar years, and continuing unless

written notice terminating the joint account is filed with the commissioner. The termination shall be effective on January 1 next following the filing of the written notice of termination.

The employing units in the joint account shall be jointly and severally liable for any unpaid contributions, penalties, and interest owing from the joint account.

(d) Two or more employers that are liable for payments in lieu of contributions may apply to the commissioner for the establishment of a group account for the purpose of sharing the cost of benefits charged based upon wage credits from all employers in the group. The application shall identify and authorize a group representative to act as the group's agent for the purposes of the account. If approved, the commissioner shall establish a group account for the employers effective as of the beginning of the calendar year that the application is received. The account shall remain in effect for not less than two calendar years and thereafter until terminated at the discretion of the commissioner or upon application by the group at least 30 calendar days prior to the end of the two year period or 30 calendar days prior to January 1 of any calendar year subsequent. Each employer in the group shall be jointly and severally liable for payments in lieu of contributions for all benefits paid based upon wage credits from all employers in the group during the period the group account was in effect. The commissioner may prescribe rules for the establishment, maintenance and termination of group accounts.

History: *(4337–24) Ex1936 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; 1994 c 483 s 1; 1994 c 488 s 8; 1995 c 54 s 3–7; 1996 c 417 s 5–7,31; 1997 c 66 s 19,26,79*

268.047 BENEFITS CHARGED TO EMPLOYER.

Subdivision 1. **General rule.** Benefits paid to a claimant pursuant to a reemployment insurance account, including extended, additional, and shared work benefits, shall be charged to the account of the claimant's base period employer as and when paid except as provided in subdivisions 2 and 3. The amount of benefits chargeable to each base period employer's account shall bear the same ratio to the total benefits paid to a claimant as the wage credits the claimant was paid by the employer bear to the total amount of wage credits the claimant was paid by all the claimant's base period employers.

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

Subd. 2. **Exceptions to charges for all employers.** Benefits paid to a claimant shall not be charged to the account of a contributing base period employer or to the account of a base period employer that is liable for payments in lieu of contributions under the following conditions:

(a) the claimant was discharged from the employment because of gross misconduct as determined under section 268.09, subdivision 10, clause (2). This paragraph shall apply only to benefits paid for weeks occurring subsequent to the claimant's discharge from employment;

(b) a claimant's discharge from that employment was required by a law mandating a background check, or the claimant's discharge from that employment was required by law because of a criminal conviction;

(c) the employer:

(1) provided regularly scheduled part–time employment to the claimant during the claimant's base period;

(2) during the claimant's benefit year, continues to provide the claimant 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 a volunteer ambulance service personnel on the same basis that employment was provided in the base period; and

(3) is an involved employer because of the claimant's loss of other employment. The exception to charges shall terminate effective the first week in the claimant's benefit year that the employer fails to meet the provisions of clause (2);

(d) the claimant's unemployment:

(1) was 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 claimant would have been eligible for disaster unemployment assistance with respect to that unemployment but for the claimant's receipt of reemployment insurance benefits; or

(2) was directly caused by the condemnation of property by a governmental agency, a fire, flood, or act of God where 70 percent or more of the employees employed in the affected location became unemployed as a result and the employer substantially reopens its operations in that same area within 18 months. Benefits shall be charged to the employer where the unemployment is caused by the willful act of the employer or a person acting on behalf of the employer;

(e) the benefits were paid by another state as a result of the transferring of wage credits under a federally combined wage agreement provided for in section 268.13;

(f) on a second reemployment insurance account established pursuant to section 268.07, subdivision 3, where the employer provided 90 percent or more of the wage credits in the claimant's preceding base period and the claimant did not perform services for the employer during the subsequent base period;

(g) the claimant left or partially or totally lost employment because of a strike or other labor dispute at the claimant's primary place of employment if the employer was not a party to the particular strike or labor dispute; or

(h) the benefits were determined overpaid benefits under section 268.18.

Subd. 3. **Exceptions to charges for contributing employers.** Benefits paid to a claimant shall not be charged to the account of a contributing base period employer under the following conditions:

(a) the claimant's wage credits from that employer are less than $500;

(b) the claimant quit the employment, unless it was determined under section 268.09, subdivisions 1a and 9, to have been because of a good reason caused by the employer. This paragraph shall apply only to benefits paid for periods occurring subsequent to the claimant's quitting the employment;

(c) the employer discharged the claimant from employment because of misconduct as determined pursuant to section 268.09, subdivisions 10 and 12. This paragraph shall apply only to benefits paid for periods occurring subsequent to the claimant's discharge from employment;

(d) the employer discharged the claimant from employment because of reasons resulting directly from the claimant's serious illness provided the employer made a reasonable effort to retain the claimant in employment in spite of the claimant's serious illness; or

(e) the claimant avoided or failed to accept an offer of suitable reemployment, or reemployment that offered substantially the same or better hourly wages or conditions of employment, or both, as were previously provided by that employer. This paragraph shall apply to benefits paid for weeks occurring after the claimant's refusal or avoidance.

Subd. 4. **Federal reimbursed benefits not charged.** Notwithstanding subdivision 1, no employer's account shall be charged for benefits for which the reemployment insurance fund is reimbursed by the federal government.

Subd. 5. **Notice of benefits charged.** (a) The commissioner shall mail to the last known address of each employer a quarterly notice of the benefits that have been charged to the em-

ployer's account. Unless a written protest is filed within 30 calendar days from the date of mailing of the notice, the charges set forth in the notice shall be final and shall not be subject to collateral attack by way of review of a contribution rate notice, application for adjustment or refund, or otherwise.

(b) Upon receipt of a protest, the commissioner shall review the charges on the notice and determine whether there has been an error in the charging of the employer's account. The commissioner shall either affirm or make a redetermination of the charges, and a notice of affirmation or redetermination shall be mailed to the employer.

(c) The affirmation or redetermination shall be final unless the employer files a written appeal within 30 calendar days after the date of mailing. Proceedings on the appeal shall be conducted in accordance with section 268.105.

(d) An employer may not collaterally attack, by way of a protest to a notice of benefits charged, any prior determination or decision holding that benefits shall be charged to the employer's account, that has become final.

(e) The commissioner may at any time upon the commissioner's own motion correct a clerical error that resulted in charges to an employer's account.

History: *1997 c 66 s 10,16,79*

268.048 BENEFITS NOT CHARGED IN WELFARE–TO–WORK.

(a) The commissioner shall, prior to computing a contribution rate, remove benefit charges from the account of a contributing employer if the claimant to whom those benefits were paid was:

(1) a primary wage earner who was a recipient of cash benefits under a Minnesota welfare program in the calendar quarter or immediately preceding calendar quarter that wages were first paid by that employer;

(2) paid wages by that employer in no more than two calendar quarters; and

(3) paid wages by that employer of less than $3,000.

(b) This section shall only apply to benefit charges accruing after July 1, 1997.

(c) If the commissioner finds that an employer discharged the claimant, or engaged in the employment practice of discharging workers, in order to meet the requirements of paragraph (a), clauses (2) and (3), this section shall not apply. In addition, the employer's action shall constitute employer misconduct and the penalties under section 268.184 shall be assessed.

History: *1997 c 66 s 79; 1997 c 80 s 1*

NOTE: This section, as added by Laws 1997, chapter 80, section 1, expires July 1, 1999. Laws 1997, chapter 80, section 3.

268.05 MS 1996 [Renumbered 268.194]

268.051 EMPLOYERS CONTRIBUTIONS.

Subdivision 1. **Payments.** (a) Contributions shall accrue and become payable by each employer for each calendar year that the employer is subject to this chapter, except for:

(1) nonprofit corporations as provided in section 268.053; and

(2) the state and political subdivisions as provided in section 268.052.

Each employer shall pay contributions quarterly, at the employer's assigned contribution rate, on the taxable wages paid to each employee. The contributions shall be paid to the Minnesota reemployment insurance fund on or before the last day of the month following the end of the calendar quarter.

(b) The contribution may be paid in an amount to the nearest whole dollar.

(c) When the contribution for any calendar quarter is less than $1, the contribution shall be disregarded.

Subd. 2. **Computation of contribution rates.** (a) For each calendar year the commissioner shall compute the contribution rate of each employer by adding the minimum contribution rate to the employer's experience rating.

(b) The minimum contribution rate shall be six–tenths of one percent if the amount in the reemployment insurance fund is less than $200,000,000 on June 30 of the preceding cal-

endar 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 contribution rate shall be 9.0 percent.

(d) For the purposes of this subdivision the reemployment insurance fund shall not include any money advanced from the federal unemployment trust fund.

Subd. 3. **Computation of each employer's experience rating.** The commissioner shall compute an experience rating for each employer who has been subject to this chapter for at least the 15 consecutive calendar months immediately preceding July 1 of the preceding calendar year. The experience rating shall be the ratio obtained by dividing 1–1/4 times the total benefits charged to the employer's account during the period the employer has been subject to this chapter but not less than the 15 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 on or before October 31 of the preceding calendar year. The experience rating shall be computed to the nearest one–tenth of a percent.

Subd. 4. **Experience rating 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 that at the time of the acquisition was an employer subject to this law, and continues the 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 computation of a contribution rate.

(b) When an employing unit succeeds to or acquires a distinct severable portion of the organization, trade, business, or assets that 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 that 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 of mailing the application to the successor the successor and predecessor jointly sign and file an application as prescribed by the commissioner that furnishes 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.

(c) If the successor employer under paragraphs (a) and (b) had an experience rating record at the time of the acquisition, the transferred record of the predecessor shall be combined with the successor's record for purposes of computation of a contribution rate.

(d) If there has been a transfer of an experience rating record under paragraph (a) or (b), 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.

(e) The commissioner, upon the commissioner'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 the 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 calendar days after mailing of determination. Proceedings on the appeal shall be conducted in accordance with section 268.105.

(f) The commissioner shall, as the result of any determination or decision regarding succession or nonsuccession, recompute the contribution 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 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).

(g) The experience rating record for purposes of this subdivision shall consist of those factors which make up an experience rating, without the 15–month minimum.

Subd. 5. **Rate for new employers.** (a) Each employer that does not qualify for an experience rating, except employers in the construction industry, shall be assigned a contribution rate the higher of (1) one percent, or (2) the state's benefit cost rate; to a maximum of 5–4/10 percent. For purposes of this paragraph, the state's benefit cost rate shall be computed annually and shall be derived by dividing the total dollar amount of benefits paid during the 60 consecutive calendar months immediately preceding July 1 of each year by the total taxable wages of all contributing employers during the same period. This rate shall be applicable for the calendar year next succeeding the computation date.

(b) Each employer in the construction industry that does not qualify for an experience rating shall be assigned a contribution rate, the higher of (1) one percent, or (2) the state's benefit cost rate for construction employers to a maximum of 9.0 percent. For purposes of this paragraph, the state's benefit cost rate shall be computed annually and shall be derived by dividing the total dollar amount of benefits paid to claimants of construction industry employers during the 60 consecutive calendar months immediately preceding July 1 of each year by the total taxable wages of construction industry employers during the same period. This rate shall be applicable for the calendar year next succeeding the computation date.

For purposes of this subdivision an employer is in the construction industry if the employer is within division C of the Standard Industrial Classification Manual issued by the United States Office of Management and Budget, except as excluded by rules adopted by the commissioner.

Subd. 6. **Notice of contribution rate.** (a) 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. The notice shall contain the contribution rate and the factors used in determining the employer's experience rating. Unless a protest of the rate is made, the assigned rate shall be final except for fraud and shall be the rate upon which contributions shall be paid for the calendar year for which the rate was assigned. The contribution rate shall not be subject to collateral attack by way of claim for adjustment or refund, or otherwise.

(b) If the legislature, subsequent to the mailing of the contribution rate, changes any of the factors used to determine the rate, the earlier notice shall be void. A new contribution rate based on the new factors shall be computed and mailed to the employer.

(c) A review of an employer's contribution rate may be obtained by the employer filing with the commissioner a written protest within 30 calendar days from the date of the mailing of the contribution rate notice to the employer. Upon receipt of the protest, the commissioner shall review the contribution rate to determine whether or not there has been any clerical error or error in computation. The commissioner shall either affirm or make a redetermination of the rate and a notice of the affirmation or redetermination shall be mailed to the employer. The affirmation or redetermination shall be final unless the employer files a written appeal within 30 calendar days after the date of mailing. Proceedings on the appeal shall be conducted in accordance with section 268.105.

(d) The commissioner may at any time upon the commissioner's own motion correct any error in the computation or the assignment of an employer's contribution rate.

Subd. 7. **Contribution rate buydown.** (a) Any employer who has been assigned a contribution rate based upon an experience rating may, upon the voluntary payment of an amount equivalent to any portion or all of the benefits charged to the employer's account, plus a surcharge of 25 percent, obtain a cancellation of benefits charged to the account equal to the payment made, less the surcharge. Upon the payment, the commissioner shall compute a new experience rating for the employer, and determine a new contribution rate.

(b) Voluntary payments may be made only during the 30 calendar day period immediately following the date of mailing of the notice of contribution rate. This period may be extended, upon a showing of good cause, but in no event shall a voluntary payment be allowed after 120 calendar days immediately following the beginning of the calendar year for which the contribution rate is effective.

(c) Voluntary payments made within the time required will not be refunded unless a request is made in writing within 30 calendar days after mailing of the notice of the new contribution rate.

Subd. 8. **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 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 contribution rate, 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, 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 contribution rate, by multiplying the quarterly taxable payroll by the assigned contribution rate multiplied by 1.15 rounded to the nearest one–hundredth of a percent.

History: *(4337–24) Ex1936 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; 1994 c 483 s 1; 1994 c 488 s 8; 1995 c 54 s 3–7; 1996 c 417 s 5–7,31; 1997 c 66 s 11–15,17,18,20,21,79*

268.0511 ANNUAL PAYMENT OF SMALL LIABILITIES.

(a) An employer may file contribution reports and pay contributions and assessments for any calendar year on an annual basis if the employer:

(1) has an experience rating of zero for that calendar year;

(2) had total taxable wages paid in the 12–month period ending the prior June 30 of less than five times the state's taxable wage base; and

(3) has no outstanding contribution or assessment liability, including penalties and interest.

(b) Contribution reports and contributions and assessments due under this section for any calendar year shall be paid on or before the following January 31.

History: *1997 c 80 s 2*

NOTE: This section, as added by Laws 1997, chapter 80, section 2, is effective January 1, 1999. Laws 1997, chapter 80, section 4.

268.052 PAYMENT TO FUND BY STATE AND POLITICAL SUBDIVISIONS.

Subdivision 1. **Payments to fund by state and political subdivisions.** In lieu of contributions, the state of Minnesota or its political subdivisions shall pay into the reemployment insurance fund the amount of benefits charged to its account. Payments in the amount of benefits charged to the account during a calendar quarter shall be made on or before 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 shall be subject to the same interest charges and collection procedures that apply to past due contributions.

Subd. 2. **Election by state or political subdivision to be a contributing employer.** (a) The state or political subdivision may elect to be a contributing employer for any calendar

year if a written notice of election is filed with the commissioner within 30 calendar days following January 1 of that calendar year.

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

(b) The method of payments to the reemployment insurance fund shall apply to all contributions paid by or due from the state or political subdivision that elects to be contributing employers under this subdivision.

Subd. 3. **Method of payment by state to fund.** To discharge its obligations, the state and its wholly owned instrumentalities shall pay the reemployment insurance fund as follows:

(a) Every self–sustaining department, institution and wholly owned instrumentality of the state shall pay into the fund the amounts the commissioner shall certify has been paid from the fund that were charged to its account. 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.

(b) Every partially self–sustaining department, institution and wholly owned instrumentality of the state shall pay into the fund the proportion of the sum that the commissioner certifies has been paid from the fund as the total of its income and revenue bears to its annual cost of operation.

(c) Every department, institution or wholly owned instrumentality of the state which is not self–sustaining shall pay to the fund the amount the commissioner certifies has been paid from the fund which were charged to their accounts to the extent funds are available from appropriated funds.

(d) The departments, institutions and wholly owned instrumentalities of the state, including the University of Minnesota, which have money available shall immediately pay the fund for benefits paid which were charged to their accounts upon receiving notification from the commissioner of the charges. If a claimant was paid by a department, institution or wholly owned instrumentality during the claimant's base period from a special or administrative account or fund provided by law, the payment into the fund shall be made from the special or administrative account or fund with the approval of the department of administration and the amounts are hereby appropriated.

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

Subd. 4. **Method of payment by political subdivision to fund.** A political subdivision or instrumentality thereof is authorized and directed to pay its obligations under this chapter by moneys collected from taxes or other revenues. Every political subdivision authorized to levy taxes may include in its tax levy the amount necessary to pay its obligations. If the taxes authorized to be levied under this subdivision cause the total amount of taxes levied to exceed any limitation upon the power of a political subdivision to levy taxes, the political subdivision may levy taxes in excess of the limitations in the amounts necessary to meet its obligation under this chapter. The expenditures authorized shall not be included in computing the cost of government as defined in any home rule charter of any city. The governing body of a municipality, for the purpose of meeting its liabilities under this chapter, in the event of a deficit, may issue its obligations payable in not more than two years, in an amount that may

cause its indebtedness to exceed any statutory or charter limitations, without an election, and may levy taxes in the manner provided in section 475.61.

History: *(4337–24) Ex1936 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; 1994 c 483 s 1; 1994 c 488 s 8; 1995 c 54 s 3–7; 1996 c 417 s 5–7,31; 1997 c 66 s 22–24,27,79*

268.053 PAYMENT TO FUND BY NONPROFIT CORPORATIONS.

(a) Any nonprofit organization that is determined to be an employer shall pay contributions unless it elects to make payments in lieu of contributions to the reemployment insurance fund the amount of benefits charged to the employer's account.

(1) Any nonprofit organization 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 that the organization was determined to be an employer by filing a written notice of election with the commissioner not later than 30 calendar days immediately following the date of the determination.

(2) Any nonprofit organization that makes an election 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 calendar days prior to the beginning of the calendar year for which the termination shall first be effective.

(3) Any nonprofit organization that has been paying contributions may change to making payments in lieu of contributions by filing with the commissioner not later than 30 calendar days prior to January 1 of any calendar year a written notice of election to become liable for payments in lieu of contributions. The election shall not be terminable by the organization for that and the next calendar year.

(4) The commissioner may for good cause extend the period that a notice of election, or a notice of termination, must be filed and may permit an election to be retroactive.

(5) The commissioner shall notify each nonprofit organization of any determination of its status as an employer and of the effective date of any election or termination of election. The determinations shall be final unless a written appeal is filed within 30 calendar days after mailing of the determination. Proceedings on the appeal shall be conducted in accordance with section 268.105.

(b) Payments in lieu of contributions, in the amount of benefits charged to the employer's account, during a calendar quarter, shall be made on or before the last day of the month next following the month in which the notice of benefits charged is mailed to the employer.

(c) Past due payments in lieu of contributions shall be subject to the same interest charges and collection procedures that apply to past due contributions.

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

(e) For purposes of this subdivision, a nonprofit organization is an organization, or group of organizations, described in section 501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a) of the code.

History: *(4337–24) Ex1936 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; 1994 c 483 s 1; 1994 c 488 s 8; 1995 c 54 s 3–7; 1996 c 417 s 5–7,31; 1997 c 66 s 25,79*

268.054 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 section 268.052, subdivisions 1 and 2, or as a nonprofit corporation employer for purposes of sections 268.045, paragraph (d), and 268.053, 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) Ex1936 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; 1994 c 483 s 1; 1994 c 488 s 8; 1995 c 54 s 3–7; 1996 c 417 s 5–7,31; 1997 c 66 s 79*

268.057 COLLECTION OF CONTRIBUTIONS.

Subdivision 1. **Reports; delinquencies; penalties.** (a) Any employer who knowingly fails to make and submit to the commissioner any contribution report at the time the report is required shall pay to the department a penalty of up to $25 or an amount of 1–1/2 percent of contributions accrued for each month from and after the due date until the report is properly made and submitted, whichever is greater.

(b) If any employer required to make and submit contribution reports fails to do so within the time required, or makes, willfully or otherwise, an incorrect, false, or fraudulent contribution report, the employer shall, on the written demand of the commissioner, make the contribution report, or corrected report, within ten days after the mailing of the written demand and at the same time pay the whole contribution, or any additional contribution, due. If the employer fails within that time to make the report, or corrected report, the commissioner shall make a report, or corrected report, from the commissioner's own knowledge and from information the commissioner may obtain and assess a contribution on that basis, which contribution, plus any penalties and interest shall be paid within ten days after the commissioner

has mailed to the employer a written notice of the amount due and demand for payment. Any 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 subsequent action or proceeding. Whenever the delinquent employer files a report or corrected report, the commissioner may, on finding it substantially correct, substitute it for the commissioner's report.

(c) 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.

(d) Any employing unit that 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 of $50.

(e) The penalties provided for in paragraphs (a), (c), and (d) are in addition to interest and any other penalties and shall be paid to the department and credited to the contingent account.

(f) An employer or officer or agent of an employer is guilty of a gross misdemeanor, unless the contribution or other payment involved exceeds $500, in which case the person is guilty of a felony, if the individual:

(1) in order to avoid becoming or remaining a subject employer or to avoid or reduce any contribution or other payment required under this chapter:

(i) makes a false statement or representation knowing it to be false; or

(ii) knowingly fails to disclose a material fact; or

(2) willfully fails or refuses to make any contributions or other payment at the time required.

Subd. 2. **Contribution or payment in lieu of contribution presumed valid.** The contribution and payment in lieu of contribution, 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. A statement by the commissioner of the amount of the contribution, payment in lieu of contribution, interest and penalties as determined or assessed by the commissioner, shall be admissible in evidence in any court or administrative proceeding and shall be prima facie evidence of the facts in the statement.

Subd. 3. **Confession of judgment.** (a) Any contribution report or other form that is required to be filed with the commissioner concerning contributions or payments in lieu of contributions due, shall contain a written declaration that it is made under the penalties for willfully making a false report and shall contain a confession of judgment for the amount of the contribution or payments in lieu of contributions 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 the report or other form is filed, notwithstanding section 541.09, enter judgment on any confession of judgment after 20 calendar days' notice served upon the employer by mail. The judgment shall be entered by the court administrator of any county upon the filing of a photocopy of the confession of judgment along with a statement of the commissioner that the contribution or payment in lieu of contribution has not been paid.

Subd. 4. **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, costs incurred by referral to any public or private agency outside the department, 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. 5. **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. 6. **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. 7. **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 conducted in accordance with section 268.105.

Subd. 8. **Limitation.** Nothing in sections 268.03 to 268.23, 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. 9. **Prior decisions.** In the event a final decision on an appeal under section 268.105 determines the amount of contributions due under sections 268.03 to 268.23, then, if the amount, together with interest and penalties, is not paid within 30 days after the decision, the provisions of section 268.058 apply. The commissioner shall proceed thereunder, substituting a certified copy of the final decision in place of the contribution report. A final decision on an appeal under section 268.105 is conclusive for all the purposes of sections 268.03 to 268.23 except as otherwise provided, and, together with the records therein made, shall be admissible in any subsequent judicial proceeding involving liability for contributions.

Subd. 10. **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.

History: *(4337–34) Ex1936 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; 1993 c 67 s 11; 1994 c 483 s 1; 1995 c 54 s 13–15; 1996 c 417 s 24,31; 1997 c 66 s 66–69,79*

268.058 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 economic security, 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 database 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 database before the close of the working day following the day of the original data entry by the department of economic security.

(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. 2. **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. 3. **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 mail or by delivery by an employee or agent of the department of economic security.

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

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

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

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

Subd. 4. **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. 5. **Collection by civil action.** (a) In addition to all other collection methods authorized, if any employer is delinquent on any payment of contributions or interest due thereon or penalties for failure to file a contribution report and other reports as required by this chapter 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 delinquent shall pay the costs of the action. Civil actions brought under this subdivision shall be heard as provided under section 16D.14. No action for the collection of contributions, interest thereon, or penalties 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 employer in default for the relief demanded in the complaint without proof, together with costs and disbursements, upon the filing of an affidavit of default.

(b) Any employer that is not a resident of this state and any resident employer removed from this state, shall be deemed 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 employer, the commissioner shall file process with the secretary of state, together with a payment of a fee of $15 and that service shall be considered sufficient service upon the employer, and shall have the same force and validity as if served upon the employer personally within this state. The commissioner shall send notice of the service of process, together with a copy of the process, by certified mail, to the employer at its last known address. 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 and filed in the court.

(c) No court filing fees, docketing fees, or release of judgment fees may be assessed against the state for actions pursuant to this subdivision.

Subd. 6. **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.

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; 1993 c 67 s 12; 1993 c 137 s 8; 1994 c 483 s 1; 1994 c 488 s 7; 1995 c 54 s 16,17; 1996 c 417 s 25,31; 1997 c 66 s 67,79*

268.059 GARNISHMENT FOR DELINQUENT TAXES AND BENEFIT OVERPAYMENTS.

(a) The commissioner or a delegated representative may, within six years after the date of assessment of the tax, or payment in lieu of contribution, or determination of benefit overpayment, or if a lien has been filed, within the statutory period for enforcement of the lien, give notice to any employer that an employee of that employer owes delinquent reemployment insurance taxes or payments in lieu of contributions including penalties, interest, and costs, or has an unpaid benefit overpayment. The commissioner can proceed under this section only if the tax, payment in lieu of contributions, or benefit overpayment is uncontested or if the time for any appeal has expired. The commissioner shall not proceed under this section until the expiration of 30 calendar days after mailing to the debtor employee, at the debtor's last known address, a written notice of garnishment. The notice shall list:

(1) the amount of taxes, payments in lieu of contributions, interest, penalties, costs, or benefit overpayment due from the debtor;

(2) demand for immediate payment; and

(3) the commissioner's intention to serve a garnishment on the debtor's employer pursuant to this section.

The effect of the notice shall expire 180 calendar days after it has been mailed to the debtor provided that the notice may be renewed by mailing a new notice which is in accordance with this section. The renewed notice shall have the effect of reinstating the priority of the original claim. The notice to the debtor shall be in substantially the same form as that provided in section 571.72. The notice shall further inform the debtor of the wage exemptions contained in section 550.37, subdivision 14. If no statement of exemption is received by the commissioner within 30 calendar days from the mailing of the notice, the commissioner may proceed under this section. The notice to the debtor's employer may be served by mail or by delivery by an employee of the commissioner and shall be in substantially the same form as provided in section 571.75. Upon receipt of the notice, the employer shall retain the earnings due or to become due to the employee, the total amount shown by the notice, subject to the provisions of section 571.922. The employer shall continue to retain each pay period until the notice is released by the commissioner. Upon receipt of notice by the employer, the claim of the commissioner shall have priority over any subsequent garnishments or wage assignments. The commissioner may arrange between the employer and employee for retaining a portion of the total amount due the employee each pay period, until the total amount shown by the notice plus accrued interest has been retained.

The "earnings due" any employee is defined in accordance with section 571.921. The maximum garnishment allowed under this section for any one pay period shall be decreased by any amounts payable pursuant to a garnishment action with respect to which the employer was served prior to being served with the notice of delinquency, and any amounts covered by any irrevocable and previously effective assignment of wages; the employer shall give notice to the commissioner of the amounts and the facts relating to the assignment within ten days after the service of the notice of delinquency on the form provided by the commissioner as noted in this section.

(b) If the employee ceases to be employed by the employer before the full amount set forth in a notice of garnishment plus accrued interest has been retained, the employer shall immediately notify the commissioner in writing of the termination date of the employee and the total amount retained. No employer may discharge or otherwise discipline any employee by the reason of the fact that the commissioner has proceeded under this section. If an employer discharges an employee in violation of this provision, the employee shall have the same remedy as provided in section 571.927, subdivision 2.

(c) Within ten calendar days after the expiration of the pay period, the employer shall remit to the commissioner, on a form and in the manner prescribed by the commissioner, the amount retained during each pay period under this section.

(d) Paragraphs (a) to (c), except provisions imposing a liability on the employer for failure to retain or remit, shall apply to cases in which the employer is the United States or any instrumentality thereof or this state or any political subdivision thereof.

(e) The commissioner shall refund to the employee excess amounts retained from the employee under this section. If any excess results from payments by the employer because of willful failure to retain or remit as prescribed in paragraph (c), the excess attributable to the employer's payment shall be refunded to the employer.

(f) Employers required to retain delinquent amounts under this section shall not be required to compute any additional interest, costs, or other charges to be retained.

(g) An employer that fails or refuses to comply with the requirements of this section shall be liable as provided in section 268.058, subdivision 3, paragraph (i).

History: *1996 c 417 s 28; 1997 c 66 s 70,79*

268.06 Subdivision 1. MS 1996 [Renumbered 268.051, subd 1]

Subd. 2. MS 1996 [Repealed, 1997 c 66 s 81]

Subd. 3. MS 1967 [Repealed, 1969 c 854 s 14]

Subd. 3a. MS 1996 [Renumbered 268.051, subd 5]
Subd. 4. MS 1996 [Repealed, 1997 c 66 s 81]
Subd. 5. MS 1996 [Repealed, 1997 c 66 s 81]
Subd. 6. MS 1996 [Renumbered 268.051, subd 3]
Subd. 7. MS 1947 [Repealed, 1949 c 605 s 15]
Subd. 8. MS 1996 [Renumbered 268.051, subd 2]
Subd. 8a. MS 1996 [Renumbered 268.051, subd 8]
Subd. 9. MS 1947 [Repealed, 1949 c 605 s 15]
Subd. 10. MS 1947 [Repealed, 1949 c 605 s 15]
Subd. 11. MS 1951 [Repealed, 1953 c 97 s 7]
Subd. 12. MS 1951 [Repealed, 1953 c 97 s 7]
Subd. 13. MS 1951 [Repealed, 1953 c 97 s 7]
Subd. 14. MS 1951 [Repealed, 1953 c 97 s 7]
Subd. 15. MS 1951 [Repealed, 1953 c 97 s 7]
Subd. 16. MS 1951 [Repealed, 1953 c 97 s 7]
Subd. 17. MS 1947 [Repealed, 1949 c 605 s 15]
Subd. 18. MS 1996 [Renumbered 268.047, subd 5]
Subd. 19. MS 1996 [Renumbered 268.051, subd 6]
Subd. 20. MS 1996 [Renumbered 268.051, subd 6, paragraphs (c) and (d)]
Subd. 21. MS 1996 [Renumbered 268.045]
Subd. 22. MS 1996 [Renumbered 268.051, subd 4]
Subd. 23. MS 1953 [Repealed, 1955 c 380 s 5]
Subd. 24. MS 1996 [Renumbered 268.051, subd 7]
Subd. 25. MS 1996 [Renumbered 268.052, subd 1]
Subd. 26. MS 1996 [Renumbered 268.052, subd 3]
Subd. 27. MS 1996 [Renumbered 268.052, subd 4]
Subd. 28. MS 1996 [Renumbered 268.053]
Subd. 29. MS 1996 [Renumbered 268.045, paragraph (d)]
Subd. 30. MS 1996 [Repealed, 1997 c 66 s 81]
Subd. 31. MS 1996 [Renumbered 268.052, subd 2]
Subd. 32. MS 1982 [Repealed, 1983 c 372 s 48]
Subd. 33. MS 1996 [Repealed, 1997 c 66 s 81]
Subd. 34. MS 1996 [Renumbered 268.054]

268.062 MS 1996 [Renumbered 268.068]

268.0625 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, and must revoke 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 reemployment insurance fund. A licensing authority that has received a notice from the commissioner may issue, transfer, renew, or not revoke 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, limited liability company, or partnership if the license is issued to or in the name of a corporation, limited liability company, or partnership; or (b) an officer of a corporation, manager of a limited liability company, or a member of a partnership, or an individual who is liable for the delinquent contributions, reimbursements, or benefit overpayments, either for the entity for which the license is at issue or for another entity for which the liability was incurred, or personally as a licensee. In the case of a license transfer, "applicant" means both the transferor and the transferee of the license. "Applicant" also means any holder of a license.

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 accordance with section 268.105.

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 268.19, 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; 1994 c 488 s 8; 1995 c 54 s 20; 1996 c 417 s 26,27; 1997 c 66 s 79*

268.063 PERSONAL LIABILITY.

Any officer, director, or employee of a corporation or any manager, governor, member, or employee of a limited liability company which is an employer under sections 268.03 to 268.23, who

(1) either individually or jointly with others, have or should have had control of, supervision over, or responsibility for the filing of the tax reports or the making of payments under this chapter, and

(2) 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 employer does not pay to the department those amounts for which the employer is liable.

For purposes of this subdivision, "willfulness" means that the facts demonstrate that the responsible party used or allowed the use of corporate or company assets to pay other creditors knowing that the payments required under this chapter were unpaid. An evil motive or intent to defraud is not necessary to satisfy the willfulness requirement.

Any partner of a limited liability partnership, or professional limited liability partnership, shall be jointly and severally liable for contributions or reimbursement, including interest, penalties, and costs in the event the employer 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, receivership, or assignment for the benefit of creditors. For the purposes of this subdivision, all wages paid by the employer 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 protest. Upon receipt of the protest, the official shall reexamine the personal liability determination and either affirm or redetermine the assessment of personal liability and a notice of the affirmation or redetermination shall be mailed to the person's last known address. The affirmation or redetermination shall become final unless a written appeal is filed within 30 days of the date of mailing. Proceedings on the appeal shall be conducted in accordance with section 268.105.

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; 1993 c 67 s 12; 1993 c 137 s 8; 1994 c 483 s 1; 1994 c 488 s 7; 1995 c 54 s 16,17; 1996 c 417 s 25,31; 1997 c 66 s 79*

268.064 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. Proceedings on the appeal shall be conducted in accordance with section 268.105.

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; 1995 c 54 s 18; 1997 c 66 s 79*

268.065 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 accordance with section 268.105.

History: *1987 c 385 s 36; 1989 c 65 s 14; 1995 c 54 s 19; 1997 C 66 S 79*

268.066 CANCELLATION OF DELINQUENT CONTRIBUTIONS.

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; 1996 c 305 art 1 s 58; 1997 c 66 s 79*

268.067 COMPROMISE AGREEMENTS.

(a) The commissioner, or an authorized representative, may compromise in whole or in part any action, determination, or decision which affects an employer and which has become final during the preceding 24 months.

(b) The commissioner, or an authorized representative, may at any time compromise delinquent employer contributions, reimbursements, interest, penalties, and costs under this section.

(c) Any compromise under paragraphs (a) and (b) shall be by written agreement signed by the employing unit and the commissioner or authorized representative.

The department shall enter into a compromise agreement only if it is in the best interest of the state of Minnesota. The written agreement must set forth the reason and all the terms of the agreement. Any agreements under this section must be approved by an attorney who is a regularly salaried employee of the department and who has been designated by the commissioner for that purpose.

History: *(4337–34) Ex1936 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; 1993 c 67 s 11; 1994 c 483 s 1; 1995 c 54 s 13–15; 1996 c 417 s 24,31; 1997 c 66 s 79*

268.068 NOTICE TO WORKERS.

Each employer shall post and maintain printed statements of an individual's right to apply for reemployment insurance benefits in places readily accessible to individuals in the employer's service. Such printed statements must be supplied by the commissioner at no cost to an employer.

History: *1996 c 417 s 8; 1997 c 66 s 79*

268.069 PAYMENT OF BENEFITS.

(a) The commissioner shall pay reemployment insurance benefits from the Minnesota reemployment insurance fund to a claimant who has met each of the following requirements:

(1) the claimant has established a reemployment insurance account in accordance with section 268.07;

(2) the claimant is not subject to a disqualification from benefits under section 268.09;

(3) the claimant has met all of the eligibility requirements under section 268.08; and

(4) the claimant does not have an outstanding overpayment of benefits under section 268.18.

(b) Benefits shall not be considered as paid by an employer. The commissioner shall determine a claimant's entitlement to benefits based upon that information available and any agreement between a claimant and an employer shall not be binding on the commissioner in determining a claimant's entitlement. Any obligation on an employer as a result of benefits charged to the employer is to the fund only.

History: *1997 c 66 s 28*

268.07 REEMPLOYMENT INSURANCE ACCOUNT.

Subdivision 1. **Application; determination.** (a) An application for reemployment insurance benefits may be made in person, by mail, by telephone, or by electronic transmission as the commissioner shall require. The commissioner may by rule adopt other requirements for an application.

(b) An official, designated by the commissioner, shall promptly examine each application for benefits to determine the base period, the benefit year, the weekly benefit amount payable, if any, and the maximum benefit amount payable, if any. The determination shall be known as the determination of reemployment insurance account. A written determination of reemployment insurance account must be promptly mailed to the claimant and all base period employers.

(c) If a base period employer failed to provide wage information for the claimant as required in section 268.044, the commissioner shall accept a claimant certification as to wage credits, based upon the claimant's records, and issue a determination of reemployment insurance account.

(d)(1) The commissioner may, at any time within 24 months from the establishment of a reemployment insurance account, reconsider any determination of reemployment insurance account and make a redetermination if the commissioner finds that the determination was incorrect for any reason. A written redetermination of reemployment insurance account shall be promptly mailed to the claimant and all base period employers.

(2) If a redetermination of reemployment insurance account reduces the weekly or maximum benefit amount payable, any benefits paid greater than the claimant was entitled is an overpayment of those benefits subject to section 268.18, except when, in the absence of fraud, a redetermination is due to an error or omission by an employer in providing wage information as required in section 268.044.

Subd. 2. **Weekly benefit amount and duration.** (a) To establish a reemployment insurance account, a claimant must have:

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

(2) minimum total wage credits equal to or greater than the high quarter wage credits multiplied by 1.25;

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

(b) If the commissioner finds that a claimant has established a reemployment insurance account, the weekly benefit amount payable to the claimant during the claimant's benefit year shall be equal to 1/26 of the claimant's high quarter wage credits, rounded to the next lower whole dollar.

(c) Notwithstanding paragraph (b), the maximum weekly benefit amount for any reemployment insurance account established during the 12–month period subsequent to June 30 of any year shall be determined on the basis of the reemployment insurance 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 state's average weekly wage; if the fund balance is more than $70,000,000 but less than $100,000,000, the maxi-

mum weekly benefit amount is 66 percent of the state's 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 state's 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 state's 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 state's 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 state's 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 state's 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 shall be computed to the nearest whole dollar.

(d) The maximum benefit amount payable on any reemployment insurance account shall equal one–third of the claimant's total wage credits rounded to the next lower dollar, not to exceed 26 times the claimant's weekly benefit amount.

Subd. 3. **Second account requirements.** To establish a second reemployment insurance account following the expiration of a benefit year on a preceding reemployment insurance account, a claimant must have sufficient wage credits to establish a reemployment insurance account under the provisions of subdivision 2 and must have performed services in covered employment after the establishment of the preceding reemployment insurance account. The wages paid for those services must equal not less than eight times the weekly benefit amount of the preceding reemployment insurance account. A reemployment insurance account established sufficiently in advance of anticipated unemployment to make the limitations of this paragraph ineffective shall not be allowed. It is the purpose of this provision to prevent a claimant from establishing more than one reemployment insurance account as a result of one separation from employment.

Subd. 3a. **Right of appeal.** (a) A determination or redetermination of a reemployment insurance account shall be final unless a claimant or base period employer within 15 calendar days after the mailing of the determination or redetermination to the last known address files a written appeal. Every determination or redetermination of a reemployment insurance account shall contain a prominent statement indicating in clear language the method of appealing, the time within which the appeal must be made, and the consequences of not appealing. Proceedings on the appeal shall be conducted in accordance with section 268.105.

(b) Any claimant or base period employer may appeal from a determination or redetermination of a reemployment insurance account on the issue of whether an employing unit is an employer within the meaning of this chapter or whether services performed constitute employment within the meaning of this chapter. Proceedings on the appeal shall be conducted in accordance with section 268.105.

Subd. 3b. **Limitations.** (a) A reemployment insurance account shall be established the Sunday of the calendar week in which the application for reemployment insurance benefits was made. If an individual attempted to make an application for a reemployment insurance account, but was prevented from making an application by the department, the reemployment insurance account shall be established the Sunday of the calendar week the individual first attempted to make an application.

(b) A reemployment insurance account, once established, may be withdrawn and a new account established only if the claimant has not been credited with a waiting week under section 268.08, subdivision 1, clause (3). A determination or amended determination pursuant to section 268.101, that was issued before the withdrawal of the reemployment insurance account, shall remain in effect and shall not be voided by the withdrawal of the reemployment insurance account. A determination of disqualification requiring subsequent earnings to satisfy the disqualification shall apply to the weekly benefit amount on the new account.

(c) A reemployment insurance account shall not be established prior to the Sunday following the expiration of the benefit year on a preceding reemployment insurance account.

(d) All benefits shall be payable from the Minnesota reemployment insurance fund only for weeks occurring during the benefit year.

History: *1997 c 66 s 29–32,79*

268.071 MS 1996 [Renumbered 268.115]

268.072 MS 1996 [Renumbered 268.155]

268.073 Subdivision 1. MS 1996 [Renumbered 268.125, subd 1]

Subd. 2. MS 1996 [Renumbered 268.125, subd 2]

Subd. 3. MS 1996 [Renumbered 268.125, subd 3]

Subd. 4. MS 1996 [Renumbered 268.125, subd 4]

Subd. 5. MS 1996 [Renumbered 268.125, subd 5]

Subd. 6. MS 1992 [Repealed, 1994 c 503 s 7]

Subd. 7. MS 1996 [Repealed, 1997 c 66 s 81]

268.074 MS 1996 [Renumbered 268.135]

268.075 MS 1996 [Renumbered 268.145]

268.08 PERSONS ELIGIBLE TO RECEIVE BENEFITS.

Subdivision 1. **Eligibility conditions.** A claimant shall be eligible to receive benefits for any week in the claimant's benefit year only if:

(1) the claimant has made a continued claim for benefits in person, by mail, by telephone, or by electronic transmission as the commissioner shall require. The commissioner may by rule adopt other requirements for a continued claim;

(2) the claimant was able to work and was available for employment, and was actively seeking employment. The claimant's weekly benefit amount shall be reduced one–fifth for each day the claimant is unable to work or is unavailable for employment.

Benefits shall not be denied by application of this clause to a claimant who is in training with the approval of the commissioner, is a dislocated worker as defined in section 268.975, subdivision 3, in training approved by the commissioner, or in training approved pursuant to section 236 of the Trade Act of 1974, as amended.

A claimant serving as a juror shall be considered as available for employment and actively seeking employment on each day the claimant is on jury duty;

(3) the claimant has been unemployed for a waiting period of one week during which the claimant is otherwise entitled to benefits; and

(4) the claimant has been participating in reemployment services, such as job search assistance services, if the claimant has been determined likely to exhaust benefits and in need of reemployment services pursuant to a profiling system established by the commissioner, unless there is justifiable cause for the claimant's failure to participate.

[For text of subd 1a, see M.S.1996]

Subd. 2. **Not eligible.** A claimant shall not be eligible to receive benefits for any week:

(1) unless it occurs subsequent to the establishment of a reemployment insurance account;

(2) which occurs in a period when the claimant is a full–time student in attendance at, or on vacation from an established school, college, or university unless a majority of the claimant's wages paid during the 52 weeks preceding the establishment of a reemployment insurance account were for services performed during weeks that the claimant was attending school as a full–time student;

(3) in which the claimant is incarcerated. The claimant's weekly benefit amount shall be reduced by one–fifth for each day the claimant is incarcerated;

(4) in which the claimant is on a voluntary leave of absence;

(5) in which the claimant is performing services on a full–time basis, in covered employment, noncovered employment, self–employment, or volunteer work regardless of the amount of any earnings; or

(6) with respect to which the claimant is receiving, has received, or has filed a claim for reemployment insurance benefits under any law of any other state, or the federal govern-

ment, but not including any federal or state benefits that are merely supplementary to those provided for under this chapter; provided that if the appropriate agency finally determines that the claimant is not entitled to the benefits, this clause shall not apply.

Subd. 2a. **Suspension from employment.** (a) A claimant who has been suspended from employment for 30 calendar days or less, as a result of misconduct as defined under section 268.09, subdivision 12, shall be ineligible for benefits commencing the Sunday of the week in which the claimant was suspended and continuing for the duration of the suspension.

(b) A suspension from employment for more than 30 calendar days shall be considered a discharge from employment under section 268.09, subdivision 11.

Subd. 3. **Deductible payments.** A claimant shall not be eligible to receive benefits for any week with respect to which the claimant is receiving, has received, or has filed a claim for payment in an amount equal to or in excess of the claimant'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. This clause shall apply to the first four weeks of payment and to one–half of the total number of any additional weeks of payment. This clause shall be applied to the period immediately following the last day of employment. The number of weeks of payment shall be determined as follows:

(i) if the payments are made periodically, the total of the payments to be received shall be divided by the claimant's last level of regular weekly pay from the employer; or

(ii) if the payment is made in a lump sum, that sum shall be divided by the claimant's last level of regular weekly pay from the employer;

(2) vacation allowance paid directly by the employer for a period of requested vacation, including vacation periods assigned by the employer under 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; 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 claimant contributed to the fund, annuity or insurance and all of the pension payments if the claimant 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 benefits under any act of Congress or this state or any other state.

Provided, that if the payment is less than the claimant's weekly benefit amount, the claimant shall be entitled to receive for that week, if otherwise eligible, benefits reduced by the amount of the payment; provided, further, that if the appropriate agency of this state or any other state or the federal government finally determines that the claimant is not entitled to payments, this subdivision shall not apply. If the computation of reduced benefits is not a whole dollar, it shall be rounded down to the next lower dollar.

Subd. 3a. **Deductible earnings.** (a) If the claimant has earnings, including holiday pay, with respect to any week, from covered employment, noncovered employment, self–employment, or volunteer work, equal to or in excess of the claimant's weekly benefit amount, the claimant shall be ineligible for benefits for that week.

(b) If the claimant has earnings, including holiday pay, with respect to any week, from covered employment, noncovered employment, self–employment, or volunteer work, that is less than the claimant's weekly benefit amount, the following shall be deducted from the claimant's weekly benefit amount:

(1) that amount in excess of $50 if the claimant's earnings were $200 or less, and that amount in excess of 25 percent of the claimant's earnings if those earnings were more than $200; and

(2) that amount in excess of $200 for earnings from service in the National Guard or a United States military reserve unit.

The resulting benefit, if not a whole dollar, shall be rounded to the next lower dollar.

(c) No deduction shall be made from a claimant's weekly benefit amount for earnings from service as a volunteer firefighter or volunteer ambulance service personnel. No deduction shall be made for jury duty pay.

Subd. 3b. **Receipt of back pay.** Back pay received by a claimant with respect to any weeks 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 that the claimant 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 claimant 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 claimant's maximum amount of benefits payable in a benefit year that includes the weeks 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 shall be considered as made by the claimant.

[For text of subds 4 to 9, see M.S.1996]

Subd. 10. **Seasonal employment.** (a) If a claimant has wage credits from seasonal employment, benefits shall be payable only if the claimant can establish a reemployment insurance account under section 268.07, subdivision 2, excluding the wage credits from seasonal employment. For purposes of this subdivision, "seasonal employment" means employment with a single employer in the recreation or tourist industry that is available with the employer for 15 consecutive weeks or less each calendar year.

(b) Wage credits from seasonal employment may not be used for benefit purposes during weeks outside the normal season.

[For text of subd 11, see M.S.1996]

History: *1997 c 66 s 36–42*

268.09 REEMPLOYMENT INSURANCE; DISQUALIFIED FROM BENEFITS.

Subdivision 1. MS 1996 [Repealed, 1997 c 66 s 81]

Subd. 1a. **Quit.** A claimant who quits employment shall be disqualified from benefits:

(1) unless the claimant quit the employment because of a good reason caused by the employer;

(2) unless the claimant quit the employment to accept other covered employment that provided substantially higher wages or substantially better conditions of employment or both, but the claimant did not work long enough at the other employment to have sufficient subsequent earnings to satisfy the disqualification that would otherwise be imposed;

(3) unless the claimant quit the employment within 30 calendar days of commencing the employment because the employment was unsuitable for the claimant;

(4) unless the employment was unsuitable for the claimant and the claimant quit to enter approved training;

(5) unless the employment was part time and the claimant had full–time employment in the base period, that the claimant separated from because of nondisqualifying reasons, sufficient to meet the minimum requirements to establish a reemployment insurance account under section 268.07, subdivision 2; or

(6) unless the claimant quit the employment because of the claimant's serious illness, provided that the claimant made reasonable efforts to retain that employment in spite of the serious illness.

A claimant who quit employment because of the claimant's serious illness of chemical dependency, has not made reasonable efforts to retain the employment if the claimant has

previously been professionally diagnosed as chemically dependent, or has previously voluntarily submitted to treatment for chemical dependency, and has failed to make consistent efforts to maintain the treatment the claimant knows or has been professionally advised is necessary to control the chemical dependency.

Subd. 2. MS 1996 [Repealed, 1997 c 66 s 81]

Subd. 2a. **Quit defined.** A quit from employment occurs when the decision to end the employment was, at the time the employment ended, the employee's. An employee who seeks to withdraw a previously submitted notice of quitting shall be considered to have quit the employment if the employer does not agree that the notice may be withdrawn.

Subd. 3. MS 1996 [Renumbered subd 18]

Subd. 4. MS 1996 [Repealed, 1997 c 66 s 81]

Subd. 5. MS 1996 [Repealed, 1997 c 66 s 81]

Subd. 6. MS 1996 [Repealed, 1997 c 66 s 81]

Subd. 7. MS 1996 [Repealed, 1997 c 66 s 81]

Subd. 8. MS 1996 [Repealed, 1997 c 66 s 81]

Subd. 9. **Good reason caused by the employer defined.** (a) A good reason caused by the employer for quitting is a reason:

(1) that is directly related to the employment and for which the employer is responsible; and

(2) that is significant and would compel an average, reasonable worker to quit.

(b) A claimant has a good reason caused by the employer for quitting if it results from 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 claimant's submission to the conduct or communication is made a term or condition of the employment;

(2) the claimant's submission to or rejection of the conduct or communication is the basis for decisions affecting employment; or

(3) the conduct or communication has the purpose or effect of substantially interfering with a claimant'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.

Subd. 10. **Discharge.** A claimant who is discharged from employment by an employer shall not be disqualified from benefits:

(1) unless the claimant was discharged because of misconduct that interfered with and adversely affected that employment. This clause shall not apply if:

(i) the misconduct was a direct result of the claimant's serious illness provided that the claimant made reasonable efforts to retain the employment in spite of the serious illness. If the misconduct was a direct result of the claimant's chemical dependency, the claimant has not made reasonable efforts to retain employment if the claimant has previously been professionally diagnosed chemically dependent or the claimant has previously voluntarily submitted to treatment for chemical dependency and has failed to make consistent efforts to maintain the treatment the claimant knows or has been professionally advised is necessary to control the chemical dependency; or

(ii) the employment was part time and the claimant had full–time employment in the base period, that the claimant separated from because of nondisqualifying reasons, sufficient to meet the minimum requirements to establish a reemployment insurance account under section 268.07, subdivision 2;

(2) unless the claimant was discharged because of gross misconduct that interfered with and adversely affected that employment. For the purpose of this clause, "gross misconduct" means:

(i) the commission of any act that amounts to a gross misdemeanor or felony; or

(ii) for an employee of a facility as defined in section 626.5572, gross misconduct includes an act of patient or resident abuse, financial exploitation, or recurring or serious neglect, as defined in section 626.5572 and applicable rules.

If a claimant is convicted of a gross misdemeanor or felony for the same act or acts for which the claimant was discharged, it is conclusively presumed to be gross misconduct; or

(3) if the claimant was discharged because the claimant gave notice of intention to quit the employment within 30 calendar days. This clause shall be effective only through the end of the calendar week that includes the intended date of quitting. Thereafter the separation from employment shall be considered a quit of employment by the claimant, and a disqualification, if any, shall commence with the Sunday of the week following the week that includes the intended date of quitting.

Subd. 11. **Discharge defined.** A discharge from employment occurs when any words or actions by an employer would lead a reasonable employee to believe that the employee's services are no longer desired by the employer. A layoff due to lack of work shall be considered a discharge. A suspension from employment of more than 30 calendar days shall be considered a discharge.

Subd. 12. **Misconduct defined.** Misconduct is intentional conduct showing a disregard of:

(1) the employer's interest;

(2) the standards of behavior that an employer has the right to expect of the employee; or

(3) the employee's duties and obligations to the employer. Misconduct also includes negligent conduct by an employee demonstrating a substantial lack of concern for the employment. Inefficiency, inadvertence, simple unsatisfactory conduct, or poor performance as a result of inability or incapacity are not misconduct.

Subd. 13. **Act or omissions after separation.** Except as provided for under subdivision 14, a claimant shall not be disqualified from benefits for any acts or omissions occurring after the claimant's separation from employment with the employer.

Subd. 14. **Offers of employment.** (a) A claimant shall be disqualified from benefits if the claimant, without good cause:

(1) failed to apply for available, suitable employment of which the claimant was advised by the commissioner or an employer;

(2) failed to accept suitable employment when offered; or

(3) avoided an offer of suitable employment.

(b) The claimant shall not be disqualified from benefits under paragraph (a) if the claimant:

(1) was in approved training; or

(2) formerly worked for the employer and the claimant's last separation from employment with the employer occurred prior to the commencement of a strike or other labor dispute, was permanent or for an indefinite period, and the claimant failed to apply for or accept reemployment because a strike or other labor dispute was in progress at the establishment where the claimant was previously employed by that employer.

Subd. 15. **Suitable employment defined.** (a) Suitable employment is employment in the claimant's labor market area that is reasonably related to the claimant's qualifications. In determining whether any employment is suitable for a claimant, the degree of risk involved to the health and safety, physical fitness, prior training, experience, length of unemployment, prospects for securing local employment in the claimant's customary occupation, and the distance of the employment from the claimant's residence shall be considered.

(b) No employment shall be considered suitable if:

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

(2) the wages, hours, or other conditions of employment are substantially less favorable than those prevailing for similar employment in the locality; or

(3) as a condition of becoming employed, the claimant would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

Subd. 16. **Disqualification duration.** (a) A disqualification from the payment of benefits under subdivisions 1a, 10, and 14 shall be for the duration of the claimant's unemployment and until the end of the calendar week in which the claimant had total earnings in subsequent covered employment of eight times the claimant's weekly benefit amount.

(b) Any disqualification imposed under subdivisions 1a and 10 shall commence on the Sunday of the week in which the claimant became separated from employment. Any disqualification imposed under subdivision 14 shall commence on the Sunday of the week the claimant failed to apply for, accept, or avoided employment.

(c) Notwithstanding paragraph (a), if the claimant was discharged from employment because of gross misconduct that interfered with and adversely affected that employment, the disqualification shall be for the duration of the claimant's unemployment and until the end of the calendar week in which the claimant had total earnings in subsequent covered employment of 12 times the claimant's weekly benefit amount. In addition, wage credits from that employment shall be canceled and the claimant's reemployment insurance account redetermined pursuant to section 268.07, subdivision 1, paragraph (d).

Subd. 17. **Application.** This section shall apply to:

(1) all covered employment, full time or part time, temporary or limited duration, permanent or indefinite duration, that occurred during the base period, the period between the end of the base period and the effective date of the reemployment insurance account, or the benefit year, except as provided for in subdivisions 1a, clause (5); and 10, clause (1)(ii); or

(2) all covered employment occurring in this state, any other state, federal employment, or employment covered under the Railroad Unemployment Compensation Act.

Subd. 18. **Labor dispute.** (a) A claimant who has left or partially or totally lost employment with an employer because of a strike or other labor dispute at the establishment where the claimant is or was employed shall be disqualified from benefits:

(1) until the end of the calendar week that the strike or labor dispute was in active progress if the claimant is participating in or directly interested in the strike or labor dispute; or

(2) until the end of the calendar week that the strike or labor dispute commenced if the claimant is not participating in or directly interested in the strike or labor dispute.

Participation includes the failure or refusal by a claimant to accept and perform available and customary work at the establishment.

(b) A claimant 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 where the claimant is or was employed shall be disqualified for benefits until the end of the calendar week that the jurisdictional controversy was in progress.

(c) A claimant shall not be disqualified from benefits under this subdivision if:

(1) the claimant becomes unemployed because of a strike 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;

(2) the claimant becomes unemployed because of a lockout; or

(3) the claimant is discharged during the period of negotiation and prior to the commencement of a strike or other labor dispute.

(d) A quit from employment by the claimant during the time that the strike or other labor dispute is in active progress at the establishment shall not be deemed to terminate the claimant's participation in or direct interest in the strike or other labor dispute for purposes of this subdivision.

(e) For the purpose of this subdivision, the term "labor dispute" shall have the same definition as provided in section 179.01, subdivision 7.

History: *1997 c 66 s 43–54,79*

268.101 DETERMINATIONS ON DISQUALIFICATION AND ELIGIBILITY.

Subdivision 1. **Notification.** (a) Upon application for a reemployment insurance account, each claimant shall report the names of all employers and the reasons for no longer working for all employers during the claimant's last 30 days of employment.

(b) Upon establishment of a reemployment insurance account, the commissioner shall notify all employers the claimant was employed by during the claimant's last 30 days of employment prior to making an application and all base period employers and determined suc-

cessors to those employers under section 268.051, subdivision 4. An employer so notified shall have ten days after the mailing of the notice to make a protest in a manner prescribed by the commissioner raising any issue of disqualification or any issue of eligibility. An employer so notified shall be informed of the effect that failure to timely protest may have on the employer charges. A protest made more than ten days after mailing of the notice shall be considered untimely.

(c) Each claimant shall report any employment, loss of employment, and offers of employment received, for those weeks the claimant made continued claims for benefits. Each claimant who stops making continued claims during the benefit year and later commences making continued claims during that same benefit year shall report the name of any employer the claimant worked for during the period between the making of continued claims, up to a period of the last 30 days of employment, and the reason the claimant stopped working for the employer. The claimant shall report any offers of employment during the period between the making of continued claims. Those employers from which the claimant has reported a loss of employment or an offer of employment pursuant to this paragraph shall be notified. An employer so notified shall have ten days after the mailing of the notice to make a protest in a manner prescribed by the commissioner raising any issue of disqualification or any issue of eligibility. An employer so notified shall be informed of the effect that failure to timely protest may have on the employer charges. A protest made more than ten days after mailing of the notice shall be considered untimely.

Subd. 2. **Disqualification determination.** (a) The commissioner shall promptly determine any issue of disqualification raised by a timely protest made by an employer, and mail to the claimant and that employer at the last known address a determination of disqualification or a determination of nondisqualification, as is appropriate. The determination shall set forth the effect on employer charges.

(b) The commissioner shall promptly determine any issue of disqualification raised by information obtained from a claimant pursuant to subdivision 1, paragraph (a) or (c), and mail to the claimant and employer at the last known address a determination of disqualification or a determination of nondisqualification, as is appropriate.

(c) The commissioner shall promptly determine any issue of disqualification raised by an untimely protest made by an employer and mail to the claimant and that employer at the last known address a determination of disqualification or a determination of nondisqualification as is appropriate. Notwithstanding section 268.09, any disqualification imposed as a result of determination issued pursuant to this paragraph shall commence the Sunday two weeks following the week in which the untimely protest was made. Notwithstanding any provisions to the contrary, any relief of employer charges as a result of a determination issued pursuant to this paragraph shall commence the Sunday two weeks following the week in which the untimely protest was made.

(d) If any time within 24 months from the establishment of a reemployment insurance account the commissioner finds that a claimant failed to report any employment, loss of employment, or offers of employment that were required to be provided by the claimant under this section, the commissioner shall promptly determine any issue of disqualification on that loss of employment or offer of employment and mail to the claimant and involved employer at the last known address a determination of disqualification or a determination of nondisqualification, as is appropriate. The determination shall set forth the effect on employer charges.

This paragraph shall not apply if the involved employer was notified and given the opportunity to protest pursuant to subdivision 1, paragraph (b) or (c).

(e) A determination of disqualification or a determination of nondisqualification shall be final unless an appeal is filed by the claimant or notified employer within 15 calendar days after mailing of the determination to the last known address. The determination shall contain a prominent statement indicating in clear language the method of appealing, the time within which an appeal must be made, and the consequences of not appealing. Proceedings on the appeal shall be conducted in accordance with section 268.105.

(f) An issue of disqualification for purposes of this section shall include any question of denial of benefits under section 268.09, any question of an exception to disqualification un-

der section 268.09, any question of benefit charge to an employer, and any question of an otherwise imposed disqualification for which a claimant has had subsequent earnings sufficient to satisfy the disqualification.

(g) Notwithstanding the requirements of this subdivision, the commissioner is not required to mail to a claimant a determination of nondisqualification where the claimant has had subsequent earnings sufficient to satisfy any otherwise potential disqualification.

Subd. 3. **Eligibility determination.** (a) The commissioner shall promptly determine any issue of eligibility raised by a timely protest made by an employer and mail to the claimant and that employer at the last known address a determination of eligibility or a determination of ineligibility, as is appropriate.

(b) The commissioner shall promptly determine any issue of eligibility raised by information obtained from a claimant and mail to the claimant and any involved employer at the last known address a determination of eligibility or a determination of ineligibility, as is appropriate.

(c) The commissioner shall promptly determine any issue of eligibility raised by an untimely protest made by an employer and mail to the claimant and that employer at the last known address a determination of eligibility or a determination of ineligibility, as is appropriate. Any denial of benefits imposed as a result of determination issued pursuant to this paragraph shall commence the Sunday two weeks following the week in which the untimely protest was made.

(d) If any time within 24 months from the establishment of a reemployment insurance account the commissioner finds the claimant failed to provide requested information regarding the claimant's eligibility for benefits, the commissioner shall determine the issue of eligibility and mail to the claimant and any involved employer at the last known address a determination of eligibility or a determination of ineligibility, as is appropriate.

This paragraph shall not apply if the involved employer was notified, was aware, or should have been aware of the issue of eligibility at the time of notification, and was given the opportunity to protest pursuant to subdivision 1, paragraph (b) or (c).

(e) A determination of eligibility or determination of ineligibility shall be final unless an appeal is filed by the claimant or notified employer within 15 calendar days after mailing of the determination to the last known address. The determination shall contain a prominent statement indicating in clear language the method of appealing, the time within which an appeal must be made, and the consequences of not appealing. Proceedings on the appeal shall be conducted in accordance with section 268.105.

(f) An issue of eligibility for purposes of this section shall include any question of denial of benefits under sections 268.08, 268.115, 268.125, 268.135, and 268.155.

Subd. 3a. **Direct hearing.** Notwithstanding subdivision 2 or 3, the commissioner may refer any issue of disqualification or any issue of eligibility directly for hearing in accordance with section 268.105, subdivision 1. The status of the issue shall be the same as if a determination had been made and an appeal filed.

Subd. 4. **Amended determination.** Unless an appeal has been filed, the commissioner, on the commissioner's own motion, upon finding that an error has occurred in the issuing of a determination of disqualification or nondisqualification or a determination of eligibility or ineligibility, may issue an amended determination. Any amended determination shall be mailed to the claimant and any involved employer at the last known address. Any amended determination shall be final unless an appeal is filed by the claimant or notified employer within 15 calendar days after mailing of the amended determination to the last known address. Proceedings on the appeal shall be conducted in accordance with section 268.105.

[For text of subds 5 and 6, see M.S.1996]

History: *1997 c 66 s 55–58,79*

268.103 APPEALS BY TELEPHONE; ELECTRONIC TRANSMISSION.

Subdivision 1. **In commissioner's discretion.** (a) Unless the statutory provision providing for an appeal requires that the appeal be in writing, the commissioner shall have the

discretion to allow an appeal to be made by telephone or by electronic transmission. If the commissioner allows an appeal to be made by telephone or by electronic transmission, that shall be clearly set out on the determination or decision subject to appeal.

(b) The commissioner may restrict the conditions under which an appeal by telephone or electronic transmission may be made. Any restrictions as to days, hours, telephone number, electronic transmission address, or other conditions, shall be clearly set out on the determination or decision subject to appeal.

(c) All information requested by the commissioner when an appeal is made by telephone or by electronic transmission must be supplied or the communication will not constitute an appeal.

Subd. 2. **Appeal in writing.** An appeal may be made in writing even if an appeal by telephone or by electronic transmission is allowed.

Subd. 3. **Exclusive means of appeal.** A written appeal, or if allowed an appeal by telephone or electronic transmission, shall be the only manner of appeal.

History: *1997 c 66 s 59*

268.105 REEMPLOYMENT INSURANCE HEARINGS; APPEALS.

Subdivision 1. **Hearing.** (a) Upon appeal the department shall set a time and place for a de novo hearing and give any involved claimant and any involved employer written notice, by mail, not less than ten calendar days prior to the date of the hearing.

(b) The commissioner shall by rule adopt a procedure by which reemployment insurance judges hear and decide appeals, subject to further appeal to the commissioner. The rules need not conform to common law or statutory rules of evidence and other technical rules of procedure. The written report of any employee of the department, except a determination, made in the regular course of the performance of the employee's duties, shall be competent evidence of the facts contained in it.

(c) After the conclusion of the hearing, upon the evidence presented, the reemployment insurance judge shall mail findings of fact and decision to all involved parties. The reemployment insurance judge's decision is final unless a further appeal is filed pursuant to subdivision 3.

Subd. 2. **Reemployment insurance judges.** The commissioner shall designate regular salaried employees of the department as impartial reemployment insurance judges to conduct hearings on appeals. The commissioner or authorized representative may personally hear or transfer to another reemployment insurance judge any proceedings pending before a reemployment insurance judge. Any proceedings removed to the commissioner or authorized representative shall be heard in accordance with subdivision 1.

Subd. 3. **Commissioner review.** (a) Within 30 calendar days after mailing of the reemployment insurance judge's decision, any involved party may appeal and obtain a review 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.

(b) Upon review, the commissioner shall, on the basis of the evidence submitted at the hearing before the reemployment insurance judge, make findings of fact and decision, or remand the matter back to a reemployment insurance judge for the taking of additional evidence and new findings and decision based on all the evidence. The commissioner may disregard the findings of fact of the reemployment insurance judge and examine the evidence and make any findings of fact as the evidence may, in the judgment of the commissioner require, and make any decision as the facts found by the commissioner require.

(c) The commissioner shall mail to any involved party the findings of fact and decision. The decision of the commissioner is final unless judicial review is sought as provided by subdivision 7.

Subd. 3a. **Decisions.** (a) If a reemployment insurance judge's decision or the commissioner's decision awards benefits, the benefits shall be promptly paid regardless of any appeal period or any appeal having been filed.

(b) If a reemployment insurance judge's decision modifies or reverses a determination awarding benefits, any benefits paid pursuant to the determination is an overpayment of those benefits subject to section 268.18.

(c) Except as provided in paragraph (d), if a commissioner's decision modifies or reverses a reemployment insurance judge's decision awarding benefits, any benefits paid pursuant to the reemployment insurance judge's decision is an overpayment of those benefits subject to section 268.18.

(d) If a reemployment insurance judge's decision affirms a determination on an issue of disqualification awarding benefits or the commissioner affirms a reemployment insurance judge's decision on an issue of disqualification awarding benefits, the decision, if finally reversed, shall result in a disqualification from benefits only for weeks following the week in which the decision reversing the award of benefits was issued and benefits paid for that week and previous weeks shall not be deemed overpaid and the benefits paid shall not be charged to a contributing employer's account.

(e) If the commissioner, pursuant to subdivision 3, remands a matter to a reemployment insurance judge for the taking of additional evidence, the prior reemployment insurance judge's decision shall continue to be enforced until new findings of fact and decision are made by a reemployment insurance judge.

Subd. 4. **Testimonial powers.** In the discharge of the duties imposed by this section, the reemployment insurance judge, the commissioner, or authorized representative, 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 subpoenas shall be enforceable through the district court in the district in which the subpoena is issued. Witnesses, other than an involved claimant or involved employer or officers and employees of an involved employer, 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 this chapter.

Subd. 5. **Use of information.** (a) All testimony at any hearing conducted pursuant to subdivision 1 shall be recorded. A copy of any recorded testimony and exhibits received into evidence at the hearing shall, upon request, or upon directive of the commissioner, be furnished to a party at no cost. If requested, the representative of a commissioner shall make available a device for listening to the recording.

(b) Testimony obtained under subdivision 1, may not be used or considered in any civil, administrative, or contractual proceeding, except by a local, state, or federal human rights agency with enforcement powers, unless the proceeding is initiated by the department.

(c) No findings of fact or decision issued by a reemployment insurance judge or the commissioner may be held conclusive or binding or used as evidence in any separate or subsequent action in any other forum, except proceedings provided for under this chapter, regardless of whether the action involves the same or related parties or involves the same facts.

Subd. 6. **Representation; fees.** 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 shall not be charged fees or costs of any kind in a proceeding before a reemployment insurance judge, the commissioner, or by any court or any of its officers.

Subd. 7. **Court of appeals; attorney for commissioner.** (a) The court of appeals may, by writ of certiorari to the commissioner, review any decision of the commissioner provided a petition for the writ is filed and served upon the commissioner and any other involved party within 30 calendar days of the mailing of the commissioner's decision.

(b) Any involved employer, upon the service of the writ shall furnish a cost bond to the commissioner in accordance with the rules of civil appellate procedure. Upon review before the court of appeals, the commissioner shall, if requested, furnish to the claimant at no cost a written transcript of the testimony received at the hearing conducted pursuant to subdivision 1.

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

History: *1997 c 66 s 60*

268.11 MS 1996 [Renumbered 268.042]

268.115 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.** A claimant shall be eligible to receive extended benefits with respect to any week in the claimant's eligibility period only if with respect to that week the claimant:

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

(2) has satisfied the requirements of this law for the receipt of regular benefits that are applicable to claimants claiming extended benefits, including not being subject to a disqualification for the receipt of benefits; and

(3) has, during the claimant's base period earned wage credits available for benefit purposes of not less than 40 times the claimant'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.** (a) 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.

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

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, a claimant shall be ineligible for the payment of extended benefits for any week in the claimant's eligibility period if during that week the claimant failed to accept any offer of suitable employment, failed to apply for any suitable employment to which referred by the commissioner or failed to actively seek employment.

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

For the purpose of this subdivision "suitable employment" means any employment which is within the claimant's capabilities and which has a gross average weekly remuneration payable which exceeds the sum of the claimant's weekly benefit amount as determined under subdivision 4 plus the amount, if any, of supplemental reemployment insurance benefits, as defined in section 501(c) (17) (D) of the Internal Revenue Code of 1954, as amended, payable to the claimant for that week. The employment must pay wages not less than the higher of the federal minimum wage without regard to any exemption, or the applicable state minimum wage.

No claimant shall be denied extended benefits for failure to accept an offer of or apply for any suitable employment if:

(a) the position was not offered to the claimant 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 employment for regular benefit claimants in section 268.09 to the extent that the criteria of suitability is not inconsistent with this subdivision; or

(c) the claimant furnishes satisfactory evidence to the commissioner that prospects for obtaining employment in the claimant'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 employment is suitable for the claimant shall be made in accordance with the definition of suitable employment in section 268.09, subdivision 15, paragraph (a), without regard to the definition or special disqualification specified in this subdivision.

No employment shall be found to be suitable employment for a claimant which would not be suitable employment under section 268.09, subdivision 15, paragraph (b).

For the purpose of this subdivision a claimant is "actively seeking employment" during any week if the claimant has engaged in a systematic and sustained effort to obtain employment during the week, and the claimant 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 employment which is suitable employment for that claimant 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; 1993 c 13 art 1 s 33; 1997 c 66 s 33–35,79*

268.12 Subdivision 1. MS 1984 [Repealed, 1Sp1985 c 14 art 9 s 78 subd 1]

Subd. 1a. MS 1984 [Repealed, 1Sp1985 c 14 art 9 s 78 subd 1]

Subd. 2. MS 1996 [Repealed, 1997 c 66 s 81]

Subd. 3. MS 1982 [Repealed, 1983 c 268 s 2]

Subd. 4. MS 1996 [Repealed, 1997 c 66 s 81]

Subd. 5. MS 1996 [Repealed, 1997 c 66 s 81]

Subd. 6. MS 1988 [Repealed, 1989 c 343 s 7]

Subd. 7. MS 1996 [Repealed, 1997 c 66 s 81]

Subd. 8. MS 1996 [Renumbered 268.186]

Subd. 9. MS 1994 [Repealed, 1995 c 54 s 29]

Subd. 9a. MS 1996 [Renumbered 268.188]

Subd. 10. MS 1994 [Repealed, 1995 c 54 s 29]

Subd. 11. MS 1996 [Repealed, 1997 c 66 s 81]

Subd. 12. MS 1996 [Renumbered 268.19]

Subd. 13. MS 1994 [Repealed, 1995 c 54 s 29]

Subd. 14. MS 1947 [Repealed, 1949 c 605 s 15]

268.121 MS 1996 [Renumbered 268.044]

268.125 ADDITIONAL REEMPLOYMENT INSURANCE BENEFITS.

Subdivision 1. **Additional benefits; when available.** Additional reemployment insurance 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, including reductions caused as a result of a major natural disaster declared by the President;

(2) the employer has no expressed plan to resume operations which would lead to the reemployment of those employees at any time in the immediate 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.** A claimant is eligible to receive additional benefits under this section for any week during the claimant's benefit year if the commissioner finds that:

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

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

(3) the claimant 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 claimant has exhausted all rights to regular benefits payable under section 268.07, is not entitled to receive extended benefits under section 268.115, and is not entitled to receive reemployment insurance benefits under any other state or federal law for the week in which the claimant is claiming additional benefits;

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

(6) a majority of the claimant's wage credits were earned 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 268.07.

Subd. 5. **Maximum benefits payable.** A claimant's maximum amount of additional benefits payable in the individual's benefit year shall be 13 times the individual's weekly benefit amount. Reemployment insurance 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.

History: *1987 c 362 s 17; 1994 c 488 s 8; 1994 c 503 s 1–3; 1996 c 417 s 13–15; 1997 c 66 s 79; 2Sp1997 c 2 s 18,19*

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 268.23, 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 268.057 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 268.045 to 268.194. 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.

[For text of subds 3 to 5, see M.S.1996]

History: *1997 c 66 s 79*

268.135 SHARED WORK PLAN.

Subdivision 1. **Shared work plan; definitions.** For purposes of this section, the following terms have the meanings given:

(a) "Affected employee" means an individual who was continuously employed as a member of the affected group, by the shared work employer, for at least six months prior to application, on a full–time basis.

(b) "Affected group" means five or more employees designated by the employer to participate in a shared work plan.

(c) "Shared work employer" means an employer with a shared work plan in effect.

(d) "Shared work plan" or "plan" means an employer's voluntary, written plan for reducing unemployment, under which a specified group of employees shares the work remaining after their normal weekly hours of work are reduced.

(e) "Approved shared work plan" or "approved plan" means an employer's shared work plan which meets the requirement of this section.

(f) "Normal weekly hours of work" means the number of hours in a week that the employee normally would work for the shared work employer or 40 hours, whichever is less.

Subd. 2. **Participation.** (a) An employer wishing to participate in the shared work unemployment benefit program shall submit a signed, written shared work plan to the commissioner for approval. The commissioner may give written approval of a shared work plan only if it:

(1) specifies the employees in the affected group;

(2) applies to only one affected group;

(3) includes a certified statement by the employer that each individual specified in the affected group is an affected employee;

(4) includes a certified statement by the employer that for the duration of the plan the reduction in normal weekly hours of work of the employees in the affected group is instead of layoffs which otherwise would result in at least at large a reduction in the total normal weekly hours of work;

(5) specifies an expiration date which is no more than one year from the date the employer submits the plan for approval;

(6) specifies that fringe benefits, such as health and retirement, available to the employees in the affected group are not reduced beyond the percentage of reduction in hours of work; and

(7) is approved in writing by the collective bargaining agent for each collective bargaining agreement which covers any employee in the affected group.

(b) The commissioner shall establish the beginning and ending dates of an approved shared work plan.

(c) The commissioner shall approve or disapprove the plan within 15 days of its receipt. The commissioner shall notify the employer of the reasons for disapproval of a shared work plan within ten days of the determination. Determinations of the commissioner are final.

(d) Disapproval of a plan may be reconsidered upon application of the employer or at the discretion of the commissioner. Approval of a shared work plan may be revoked by the commissioner when it is established that the approval was based, in whole or in part, upon information in the plan which is either false or substantially misleading.

Subd. 3. **Eligibility.** (a) Notwithstanding any other provision of this chapter, an individual is unemployed and eligible to receive shared work benefits with respect to any week if the commissioner finds that:

(1) during the week the individual is employed as a member of an affected group in an approved plan which was approved prior to the week and is in effect for the week; and

(2) during the week the individual's normal weekly hours of work were reduced, in accordance with an approved plan, at least 20 percent but not more than 40 percent, with a corresponding reduction in wages.

(b) Shared work benefits shall not be paid to an eligible individual beyond one benefit year under an approved plan or modification of an approved plan.

(c) The total amount of regular benefits and shared work benefits paid to an individual in a benefit year shall not exceed the maximum benefit amount established.

(d) An otherwise eligible individual shall not be denied benefits under this section because of the application of any provision of this chapter relating to availability for work, active search for work, or refusal to apply for or accept work from other than the individual's shared work employer.

Subd. 4. **Weekly benefit amount.** (a) An individual who is eligible for shared work benefits under this section shall be paid, with respect to any week of unemployment, a weekly shared work unemployment insurance benefit amount. The amount shall be equal to the individual's regular weekly benefit amount multiplied by the nearest full percentage of reduction of the individual's regular weekly hours of work as set forth in the employer's plan. The benefit payment, if not a multiple of $1 shall be rounded to the next lower dollar.

(b) The provisions of section 268.08, subdivision 3a, shall not apply to earnings from the shared work employer of an individual eligible for payments under this section unless the resulting payment would be less than the regular benefit payment for which the individual would otherwise be eligible without regard to shared work unemployment insurance benefits.

(c) An individual shall not be eligible for benefits payable under this section for any week in which paid work is performed for the shared work employer in excess of the reduced hours set forth in the approved plan.

History: *1994 c 503 s 4; 1996 c 417 s 16; 1997 c 66 s 79*

268.14 Subdivision 1. MS 1996 [Renumbered 268.198, subd 1]

Subd. 2. MS 1996 [Renumbered 268.198, subd 2]

Subd. 3. MS 1996 [Repealed, 1997 c 66 s 81]

Subd. 4. MS 1996 [Repealed, 1997 c 66 s 81]

Subd. 5. MS 1996 [Renumbered 268.198, subd 3]

Subd. 6. MS 1980 [Expired]

268.145 INCOME TAX WITHHOLDING.

Subdivision 1. **Notification.** (a) Upon application for a reemployment insurance account, the claimant shall be informed that:

(1) reemployment insurance benefits are subject to federal and state income tax;

(2) there are requirements for filing estimated tax payments;

(3) the claimant may elect to have federal income tax withheld from benefits;

(4) if the claimant elects to have federal income tax withheld, the claimant may, in addition, elect to have Minnesota state income tax withheld; and

(5) at any time during the benefit year the claimant may change a prior election.

(b) If a claimant elects to have federal income tax withheld, the commissioner shall deduct that percentage required by the Internal Revenue Code. If a claimant, in addition to fed-

eral income tax withholding, elects to have Minnesota state income tax withheld, the commissioner shall make an additional five percent deduction for Minnesota state income tax. Any amounts deducted pursuant to sections 268.155, 268.165, 268.18, 268.182, and 268.184 have priority over any amounts deducted under this section. Federal income tax withholding has priority over Minnesota state income tax withholding.

(c) An election to have federal income tax, or federal and Minnesota state income tax, withheld shall not be retroactive and shall only apply to benefits paid after the election.

Subd. 2. **Transfer of funds.** The amount of any benefits deducted under this section shall remain in the Minnesota reemployment insurance fund until transferred to the federal Internal Revenue Service, or the Minnesota department of revenue, as an income tax payment on behalf of the claimant.

Subd. 3. **Correction of errors.** Any error which resulted in underwithholding under this section shall not be corrected retroactively.

Subd. 4. **Federal requirement.** The commissioner shall follow all federal requirements for the deduction and withholding of federal and Minnesota state income tax from reemployment insurance benefits.

Subd. 5. **Application.** This section applies to any payments under federal or state law as compensation, assistance, or allowance with respect to unemployment.

History: *1996 c 417 s 17; 1997 c 66 s 79*

268.15 Subdivision 1. MS 1996 [Renumbered 268.196, subd 1]

Subd. 2. MS 1996 [Renumbered 268.196, subd 2]

Subd. 3. MS 1996 [Renumbered 268.196, subd 3]

Subd. 4. MS 1980 [Repealed, 2Sp1981 c 1 s 8]

268.155 CHILD SUPPORT INTERCEPT OF UNEMPLOYMENT BENEFITS.

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

(a) "Reemployment insurance" 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.** Upon application for a reemployment insurance account, the claimant shall disclose whether or not the claimant owes child support obligations. If the claimant discloses that the claimant owes child support obligations, and establishes a reemployment insurance account, the commissioner shall notify the child support agency that the claimant has established a reemployment insurance account.

Subd. 3. **Withholding of benefits.** The commissioner shall deduct and withhold from any reemployment insurance payable to a claimant that owes child support obligations:

(a) The amount specified by the claimant 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 claimant as reemployment insurance and paid by the claimant to the public agency responsible for child support enforcement in satisfaction of the claimant'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 518.6111 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; 1994 c 488 s 8; 1996 c 417 s 10–12; 1997 c 66 s 79; 1997 c 203 art 6 s 92*

268.16 Subdivision 1. MS 1996 [Renumbered 268.057, subd 5]
Subd. 1a. MS 1996 [Renumbered 268.057, subd 6]
Subd. 2. MS 1996 [Renumbered 268.057, subd 1]
Subd. 3. MS 1981 Supp [Repealed, 1Sp1982 c 1 s 43]
Subd. 3a. MS 1996 [Renumbered 268.057, subd 4]
Subd. 4. MS 1996 [Renumbered 268.067]
Subd. 5. MS 1996 [Renumbered 268.057, subd 10]
Subd. 6. MS 1996 [Renumbered 268.057, subd 7]
Subd. 7. MS 1996 [Renumbered 268.057, subd 8]
Subd. 8. MS 1996 [Repealed, 1997 c 66 s 81]
Subd. 9. MS 1996 [Renumbered 268.057, subd 9]

268.161 Subdivision 1. MS 1996 [Renumbered 268.058, subd 1]
Subd. 1a. MS 1996 [Renumbered 268.058, subd 2]
Subd. 2. MS 1996 [Renumbered 268.058 subd 6]
Subd. 3. MS 1996 [Repealed, 1997 c 66 s 81]
Subd. 4. MS 1996 [Renumbered 268.058, subd 5]
Subd. 5. MS 1996 [Renumbered 268.058, subd 4]
Subd. 6. MS 1996 [Renumbered 268.507, subd 2]
Subd. 7. MS 1996 [Renumbered 268.057, subd 3]
Subd. 8. MS 1996 [Renumbered 268.058, subd 3]
Subd. 9. MS 1996 [Renumbered 268.063]

268.162 MS 1996 [Renumbered 268.064]

268.163 MS 1996 [Renumbered 268.065]

268.164 MS 1996 [Renumbered 268.0625]

268.165 [Repealed, 1997 c 66 s 81]

268.166 MS 1996 [Renumbered 268.066]

268.167 MS 1996 [Renumbered 268.059]

268.17 [Renumbered 268.192]

268.18 RETURN OF BENEFITS; OFFENSES.

Subdivision 1. **Erroneous payments.** (a) Any claimant who, by reason of the claimant's own mistake or through the error of any individual engaged in the administration of this chapter or because of a determination, redetermination, or amended determination issued pursuant to section 268.07 or 268.101, has received any benefits that the claimant was not entitled to, shall promptly repay the benefits to the department. If the claimant fails to repay the benefits, the department shall, as soon as the erroneous payment is discovered, determine the amount due and notify the claimant in writing to repay the benefits.

(b) Unless the claimant files an appeal within 15 calendar days after the mailing of the determination of overpayment to the claimant's last known address, the determination shall become final. Proceedings on the appeal shall be conducted in accordance with section 268.105. A claimant may not collaterally attack, by way of an appeal to an overpayment determination, any prior determination issued pursuant to section 268.07 or 268.101, or decision issued pursuant to section 268.105, that has become final.

(c) If the claimant fails to repay the benefits, the commissioner may deduct from any future benefits payable to the claimant in either the current or any subsequent benefit year an amount equivalent to the overpayment determined, except that no single deduction under this subdivision 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 delinquent contributions. A determination of overpayment shall state the methods of collection the commissioner will use to recover the overpayment. If a claimant has been overpaid benefits under the law of another state because of an error and that state certifies to the department that the claimant is liable under its law to repay the benefits and requests the department to recover the overpayment, the commissioner may 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 under this subdivision shall exceed 50 percent of the amount of the payment from which the deduction is made.

(d) Benefits paid for weeks more than three years prior to the discovery of error are not erroneous payments.

(e) Notwithstanding paragraph (a), the commissioner shall waive recovery of an overpayment if the commissioner's authorized representative under section 268.105, subdivision 3, determines the overpayment resulted from an administrative failure to identify that a claimant's wage credits were not earned in covered employment. This paragraph shall not apply to misidentification of an employee–employer relationship.

Subd. 2. **Fraud.** (a) Any claimant who receives benefits by knowingly and willfully misrepresenting, misstating, or failing to disclose any material fact that would have made the claimant not entitled to those benefits has committed fraud. After the discovery of facts indicating fraud, the commissioner shall make a written determination that the claimant was not entitled to benefits that were obtained by fraud and that the claimant must promptly repay the benefits to the department. In addition, the commissioner may deny benefits to a claimant for one to 52 weeks for which the claimant is otherwise entitled to benefits following the week in which the fraud was determined. A denial imposed for fraud shall not apply to any week more than 104 weeks after the week in which the fraud was determined.

(b) Unless the claimant files an appeal within 15 calendar days after the mailing of the determination of overpayment by fraud to the claimant's last known address, the determination shall become final. Proceedings on the appeal shall be conducted in accordance with section 268.105.

(c) If the claimant fails to repay the benefits, the commissioner may 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 or the overpayment may be collected the same as delinquent contributions. A determination of overpayment by fraud shall state the methods of collection the commissioner may use to recover the overpayment. If a claimant has been overpaid benefits under the law of another state because of fraud and that state certifies to the department that the claimant is liable to repay the benefits and requests the department to recover the overpayment, the commissioner may 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.

(d) A determination of fraud may be made at any time.

[For text of subd 2a, see M.S.1996]

Subd. 2b. **Interest.** (a) On any benefits fraudulently obtained, as determined under subdivision 2, the commissioner shall have the discretion to assess interest at the rate of 1–1/2 percent per month on any overpaid amount which remains unpaid 30 calendar days after the

date of the determination of overpayment by fraud. A determination of overpayment by fraud shall state that interest may be assessed.

(b) Any money received in repayment of fraudulently obtained benefits and interest thereon shall be first applied to the overpayment balance.

(c) Unpaid interest may be collected the same as delinquent contributions.

Subd. 3. MS 1996 [Renumbered 268.182]

Subd. 4. **Cancellation of benefits paid through error or fraud.** (a) If benefits paid through error are not repaid or deducted from subsequent benefit amounts as provided for in subdivision 1 within six years after the date of the determination of overpayment, the commissioner shall cancel the overpayment balance, and no administrative or legal proceedings shall be used to enforce collection of those amounts.

(b) If benefits paid as a result of fraud are not repaid or deducted from subsequent benefits as provided for in subdivision 2 within ten years after the date of the determination of overpayment by fraud, the commissioner shall cancel the overpayment balance and any interest due, and no administrative or legal proceeding shall be used to enforce collection of those amounts.

(c) The commissioner may cancel at any time benefits paid through error or fraud that the commissioner determines are uncollectible due to death or bankruptcy.

Subd. 5. MS 1996 [Repealed, 1997 c 66 s 81]

Subd. 6. MS 1996 [Renumbered 268.184]

History: *1997 c 66 s 71--73,79*

268.182 FALSE REPRESENTATIONS; CONCEALMENT OF FACTS; PENALTY.

(a) Whoever obtains, or attempts to obtain, or aids or abets any person to obtain by means of an intentional false statement or representation, by intentional concealment of a material fact, or by impersonation or other fraudulent means, benefits that the person is not entitled or benefits greater than the person is entitled under this chapter, or under the law of any state or of the federal government, either personally or for any other person, is guilty of theft and shall be sentenced pursuant to section 609.52. The amount of the benefits incorrectly paid shall be the difference between the amount of benefits paid and the amount that the claimant 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 claimant, is guilty of a gross misdemeanor unless the benefit underpayment exceeds $500, in that case the person is guilty of a felony.

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; 1994 c 483 s 1; 1995 c 54 s 21–24; 1996 c 417 s 29,31; 1997 c 66 s 74,79*

268.184 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 claimant 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.

Penalties assessed under this section shall be in addition to any other penalties provided for 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 employing unit files a written appeal within 30 calendar days after the mailing of the notice of penalty to the employer's last

known address. Proceedings on the appeal shall be conducted in accordance with section 268.105.

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; 1994 c 483 s 1; 1995 c 54 s 21–24; 1996 c 417 s 29,31; 1997 c 66 s 76,79*

268.186 RECORDS.

(a) Each employing unit shall keep true and accurate records for the periods of time and containing the information the commissioner may require. 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 delegated representative 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.

(b) The commissioner or any delegated representative may make summaries, compilations, photographs, duplications, or reproductions of any records, or reports that the commissioner considers advisable for the effective and economical preservation of the information contained therein, and any summaries, compilations, photographs, duplications, or reproductions shall be admissible in any proceeding under this chapter, if the original record or records would have been admissible. Notwithstanding any restrictions contained in section 16B.50, the commissioner is hereby authorized to duplicate records, reports, summaries, compilations, instructions, determinations, or any other written matter pertaining to the administration of the Minnesota economic security law.

(c) Notwithstanding any inconsistent provisions elsewhere, the commissioner may provide for the destruction or disposition of any records, reports, or reproductions thereof, or other papers in the commissioner's custody, that are more than two years old, the preservation of which is no longer necessary for determining employer liability or a claimant's benefit rights or for any purpose necessary to the proper administration of this chapter, including any required audit, provided that the commissioner may provide for the destruction or disposition of any record, report, or other paper in the commissioner's custody which has been photographed, duplicated, or reproduced.

History: *(4337–30) Ex1936 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; 1993 c 67 s 10; 1994 c 483 s 1; 1994 c 488 s 8; 1995 c 54 s 12; 1996 c 417 s 23,31; 1996 c 440 art 1 s 47; 1997 c 66 s 62,79*

268.188 SUBPOENAS; OATHS.

(a) In the discharge of the duties imposed by sections 268.03 to 268.23, the commissioner or any delegated representative, shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of persons and the production of books, papers, correspondence, memoranda, and other records necessary in connection with the administration of these sections.

(b) Persons, other than claimants or officers and employees of an employing unit that is the subject of the inquiry, subpoenaed pursuant to this subdivision, shall be allowed fees the same as witness fees in civil actions in district court. The fees need not be paid in advance.

(c) The subpoena shall be enforceable through the district court in the district in which the subpoena is issued.

History: *(4337–30) Ex1936 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; 1993 c 67 s 10; 1994 c 483 s 1; 1994 c 488 s 8; 1995 c 54 s 12; 1996 c 417 s 23,31; 1996 c 440 art 1 s 47; 1997 c 66 s 63,79*

268.19 INFORMATION.

Except as hereinafter otherwise provided, data gathered from any employing unit or individual pursuant to the administration of sections 268.03 to 268.23, 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 a court order or section 13.05. 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 economic security 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 economic security subject to the following limitations and notwithstanding any law to the contrary:

(1) the department of economic security 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 268.23; 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 economic security;

(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 268.182 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 conducted in accordance with section 268.105 and exhibits 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 268.105, or pursuant to a court order.

Aggregate data about employers compiled from individual job orders placed with the department of economic security 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 economic security 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 268.23 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.

History: *(4337–30) Ex1936 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; 1993 c 67 s 10; 1994 c 483 s 1; 1994 c 488 s 8; 1995 c 54 s 12; 1996 c 417 s 23,31; 1996 c 440 art 1 s 47; 1997 c 66 s 79*

268.192 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 268.23 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 268.23 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 re-

ceived 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 necessaries 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; 1996 c 417 s 31; 1997 c 66 s 79*

268.194 REEMPLOYMENT INSURANCE 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, a reemployment insurance fund, which shall be administered by the commissioner exclusively for the purpose of sections 268.03 to 268.23. 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 268.04, subdivision 12, clause (8) (f), and 268.057, subdivision 7, 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 268.04, subdivision 12, clause (8) (f), and 268.057, subdivision 7, 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 reemployment insurance 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 bene-

fits 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 reemployment insurance 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) Ex1936 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; 1Sp1982 c 1 s 4; 1983 c 216 art 1 s 87; 1983 c 372 s 8; 1985 c 248 s 70; 1Sp1985 c 13 s 300; 1986 c 444; 1989 c 209 art 2 s 1; 1994 c 488 s 8; 1996 c 417 s 31; 1997 c 66 s 79*

268.196 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 268.23, 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 268.194, subdivision 5, shall remain part of the unemployment fund and shall be used only in accordance with the conditions specified in section 268.194, 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 April 29, 1941, 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 268.194, 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 secre-

tary 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 268.057 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 268.23. 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 reemployment insurance fund established under section 268.194 and administered in accordance with the provisions set forth therein.

History: *(4337–33) Ex1936 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; 1994 c 488 s 8; 1996 c 417 s 31; 1997 c 7 art 1 s 106; 1997 c 66 s 79*

268.198 FREE EMPLOYMENT OFFICES.

Subdivision 1. **Acceptance of federal act.** A state employment service is hereby established in the department. The commissioner shall establish and maintain free public employment offices, in that number and in those places as may be necessary for the purpose of performing the functions within the purview of the Wagner–Peyser Act, United States Code, title 29, chapter 4B.

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 retire-

ment 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 268.23.

Subd. 3. **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 economic security who are veterans as defined in section 197.447.

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; 1994 c 483 s 1; 1996 c 417 s 31; 1997 c 66 s 65,79*

268.21 NONLIABILITY OF STATE.

(a) Benefits shall be deemed to be due and payable only to the extent provided in this chapter and to the extent that money is available in the reemployment insurance fund and neither the state nor the commissioner shall be liable for any amount in excess of such sums.

(b) No person shall make any demand, bring any suit, or other proceeding to recover from the state any sum alleged to be due on a reemployment insurance account after the expiration of two years from the effective date of the reemployment insurance account.

History: *1997 c 66 s 77*

268.361 DEFINITIONS.

Subdivision 1. **Terms.** For the purposes of sections 268.361 to 268.366, the following terms have the meanings given them.

[For text of subds 2 to 7, see M.S.1996]

History: *1997 c 7 art 1 s 107*

268.3625 ADMINISTRATIVE COSTS.

The commissioner may use up to five percent of the biennial appropriation for Youthbuild from the general fund to pay costs incurred by the department in administering Youthbuild during the biennium.

History: *1997 c 200 art 1 s 65*

268.38 TRANSITIONAL HOUSING PROGRAMS.

[For text of subds 1 to 6, see M.S.1996]

Subd. 7. **Funding coordination.** Grant recipients shall combine funds awarded under this section with other funds from public and private sources.

[For text of subds 8 to 12, see M.S.1996]

History: *1997 c 200 art 4 s 2*

268.39 [Repealed, 1997 c 200 art 4 s 23]

268.53 COMMUNITY ACTION AGENCIES.

[For text of subds 1 to 4, see M.S.1996]

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. Nothing in this section expands or limits the current private or public nature of a local community action agency.

(f) Adopt policies that require the agencies to refer area residents and community action program constituents to education programs that increase literacy, improve parenting skills, and address the needs of children from families in poverty. These programs include, but are not limited to, early childhood family education programs, adult basic education programs, and other life–long learning opportunities. The agencies and agency programs, including Head Start, shall collaborate with child care and other early childhood education programs to ensure smooth transitions to work for parents.

[For text of subds 6 and 7, see M.S.1996]

History: *1997 c 162 art 2 s 25*

268.552 WAGE SUBSIDY PROGRAM.

[For text of subds 1 to 4, see M.S.1996]

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; and

(3) applicants who are eligible for aid to families with dependent children or Minnesota family investment program–statewide.

[For text of subds 6 to 10, see M.S.1996]

History: *1997 c 85 art 4 s 27*

268.665 WORKFORCE DEVELOPMENT COUNCIL.

[For text of subd 1, see M.S.1996]

Subd. 2. **Membership.** The governor's workforce development council is composed of 33 members appointed by the governor. The members may be removed pursuant to section 15.059. In selecting the representatives of the council, the governor shall ensure that 50 percent of the members come from nominations provided by local workforce councils. Local education representatives shall come from nominations provided by local education to employment partnerships. The 32 members shall represent the following sectors:

(a) State agencies: the following individuals shall serve on the council:

(1) commissioner of the Minnesota department of economic security;

(2) commissioner of the Minnesota department of children, families, and learning;

(3) commissioner of the Minnesota department of human services; and

(4) commissioner of the Minnesota department of trade and economic development.

(b) Business and industry: six individuals shall represent the business and industry sectors of Minnesota.

(c) Organized labor: six individuals shall represent labor organizations of Minnesota.

(d) Community–based organizations: four individuals shall represent community–based organizations of Minnesota. Community–based organizations are defined by the Job Training Partnership Act as private nonprofit organizations that are representative of communities or significant segments of communities and that provide job training services, agencies serving youth, agencies serving individuals with disabilities, agencies serving displaced homemakers, union–related organizations, and employer–related nonprofit organizations and organizations serving nonreservation Indians and tribal governments.

(e) Education: six individuals shall represent the education sector of Minnesota as follows:

(1) one individual shall represent local public secondary education;

(2) one individual shall have expertise in design and implementation of school–based service–learning;

(3) one individual shall represent post–secondary education;

(4) one individual shall represent secondary/post–secondary vocational institutions;

(5) the chancellor of the board of trustees of the Minnesota state colleges and universities; and

(6) one individual shall have expertise in agricultural education.

(f) Other: two individuals shall represent other constituencies including:

(1) units of local government; and

(2) applicable state or local programs.

The speaker and the minority leader of the house of representatives shall each appoint a representative to serve as an ex officio member of the council. The majority and minority leaders of the senate shall each appoint a senator to serve as an ex officio member of the council. After January 1, 1997, the Minnesota director of the corporation for national service shall also serve as an ex officio member.

(g) Appointment: each member shall be appointed for a term of three years from the first day of January or July immediately following their appointment. Elected officials shall forfeit their appointment if they cease to serve in elected office.

(h) Members of the council are compensated as provided in section 15.059, subdivision 3.

[For text of subds 3 to 6, see M.S.1996]

History: *1Sp1997 c 4 art 3 s 19*

268.666 WORKFORCE SERVICE AREAS.

Subdivision 1. **Designation of workforce service areas.** For the purpose of administering federal, state, and local employment and training services, the commissioner shall designate the geographic boundaries for workforce service areas in Minnesota.

The commissioner shall approve a request to be a workforce service area from:

(1) a home rule charter or statutory city with a population of 200,000 or more or a county with a population of 200,000 or more; or

(2) a consortium of contiguous home rule charter or statutory cities or counties with an aggregate population of 200,000 or more that serves a substantial part of one or more labor markets.

The commissioner may approve a request to be a workforce service area from a home rule charter or statutory city or a county or a consortium of contiguous home rule charter or statutory cities or counties, without regard to population, that serves a substantial portion of a labor market area.

The commissioner shall make a final designation of workforce service areas within the state after consulting with local elected officials and the governor's workforce development council. Existing service delivery areas designated under the federal Job Training Partnership Act shall be initially designated as workforce service areas providing that no other petitions are submitted by local elected officials.

The commissioner may redesignate workforce service areas no more frequently than every two years. These redesignations must be made not later than four months before the beginning of a program year.

Subd. 2. **Creation of local workforce councils.** A local workforce council must be established in each workforce service area, designated according to subdivision 1.

Subd. 3. **Membership on local workforce councils.** In workforce service areas representing only one home rule charter or statutory city or a county, the chief elected official must appoint members to the council. In workforce service areas representing two or more home rule charter or statutory cities or counties, the chief elected officials of the home rule charter or statutory cities or counties must appoint members to the council, in accordance with an agreement entered into by such units of general local government.

A council shall include as members:

(1) representatives of the private sector, who must constitute a majority of the membership of the council and who are owners of business concerns, chief executives or chief operating officers of nongovernmental employers, or other private sector executives who have substantial management or policy responsibility;

(2) at least two representatives of organized labor;

(3) representatives of the area workforce and community–based organizations, who shall constitute not less than 15 percent of the membership of the council; and

(4) representatives of each of the following:

(i) educational agencies that are representative of all educational agencies within the workforce service area;

(ii) vocational rehabilitation agencies;

(iii) public assistance agencies;

(iv) economic development agencies; and

(v) public employment service agencies.

The chair of each local workforce council shall be selected from among the members of the council who are representatives of the private sector.

Private sector representatives on the local workforce council shall be selected from among individuals nominated by general purpose business organizations, such as local chambers of commerce, in the workforce service area.

Education representatives on the local workforce council shall be selected from among individuals nominated by secondary and post–secondary educational institutions within the workforce service area.

Organized labor representatives on the local workforce council shall be selected from individuals recommended by recognized state and local labor federations, organizations, or councils. If the state or local labor federations, organizations, or councils fail to nominate a sufficient number of individuals to meet the labor representation requirements, individual workers may be included on the local workforce council to complete the labor representation.

The commissioner must certify a local workforce council if the commissioner determines that its composition and appointments are consistent with this subdivision.

Subd. 4. **Purpose; duties of local workforce council.** The local workforce council is responsible for providing policy guidance for, and exercising oversight with respect to, activities conducted by local workforce centers in partnership with the local unit or units of general local government within the workforce service area and with the commissioner.

A local workforce center is a location where federal, state, and local employment and training services are provided to job seekers and employers.

A local workforce council, in accordance with an agreement or agreements with the appropriate chief elected official or officials and the commissioner, shall:

(1) determine procedures for the development of the local workforce service area plan. The procedures may provide for the preparation of all or any part of the plan:

(i) by the council;

(ii) by any unit of general local or state government in the workforce service area, or by an agency of that unit; or

(iii) by any other methods or institutions as may be provided in the agreement;

(2) select the recipients for local grants and an administrator of the local workforce service area plan. These may be the same entity or separate entities and must be chosen from among the following:

(i) the council;

(ii) a unit of general local or state government in its workforce service area, or an agency of that unit;

(iii) a nonprofit organization or corporation; or

(iv) any other agreed upon entity;

(3) jointly plan for local collaborative activities including the transition of public assistance recipients to employment in the public or private sectors;

(4) provide on–site review and oversight of program performance;

(5) establish local priorities for service and target populations;

(6) ensure nonduplication of services and a unified service delivery system within the workforce service area; and

(7) nominate individuals to the governor to consider for membership on the governor's workforce development council.

History: *1997 c 118 s 1*

268.6715 1997 MINNESOTA EMPLOYMENT AND ECONOMIC DEVELOPMENT PROGRAM.

The 1997 Minnesota employment and economic development program is established to assist businesses and communities to create jobs that provide the wages, benefits, and on–the–job training opportunities necessary to help low–wage workers and people transitioning from public assistance to get and retain jobs, and to help their families to move out of poverty. Employment obtained under this program is not excluded from the definition of "employment" by section 268.04, subdivision 12, clause (10), paragraph (d).

History: *1997 c 200 art 3 s 1*

268.672 DEFINITIONS.

[For text of subds 1 and 3, see M.S.1996]

Subd. 4. [Repealed, 1997 c 200 art 3 s 19]

[For text of subd 5, see M.S.1996]

Subd. 6. **Eligible job applicant.** "Eligible job applicant" means a person who:

(1) has attempted to secure a nonsubsidized job by completing comprehensive job readiness and is:

(i) a temporary assistance for needy families (TANF) recipient who is making good faith efforts to comply with the family support agreement as defined under section 256.032, subdivision 7a, but has failed to find suitable employment; or

(ii) a family general assistance recipient;

(2) is a member of a household supported only by:

(i) a low–income worker; or

(ii) a person who is underemployed as that term is defined in section 268.61, subdivision 5; or

(3) is a member of a family that is eligible for, but not receiving public assistance.

[For text of subds 7 and 9, see M.S.1996]

Subd. 13. **Comprehensive job readiness.** "Comprehensive job readiness" means a job search program administered by a county, its designee, or workforce service area that teaches self–esteem, marketable work habits, job–seeking skills, and life–management skills, and may include job retention services.

Subd. 14. **Eligible program participant.** "Eligible program participant" means an eligible job applicant who is participating in comprehensive job readiness, subsidized employment, or job retention services. An individual who has been dismissed for cause or quit subsidized employment without good cause is not eligible for subsidized employment under the program.

Subd. 15. **Employer.** "Employer" means a private or public employer that:

(1) agrees to create a job that is long term and full time, except a private nonprofit or public employer may provide a temporary job;

(2) pays a wage of at least $2 per hour higher than the minimum wage; and

(3) agrees to retain a participant at the same wage and benefit level of the wage subsidy period after satisfactory completion of the subsidy period.

Subd. 16. **Full time.** "Full time" means 40 hours of work per week or any other schedule considered full time by the employer. In the case of a temporary assistance to needy families recipient, "full time" means 40 hours comprised of the number of hours of work needed to meet the recipient's work requirement plus the number of hours spent in a training or education program. The employer is required to pay and is eligible to receive the subsidy only for hours worked by the participant for the employer.

Subd. 17. **Job retention services.** "Job retention services" means assistance that would not otherwise be provided to an eligible job applicant with child care, transportation, job coaching, employer–employee mediation, and other forms of support services to help an applicant to transition to employment and retain a job.

Subd. 18. **Low–income worker.** "Low–income worker" means a worker who earns no more than $1 per hour more than the minimum wage.

Subd. 19. **Minimum wage.** "Minimum wage" means the greater of (1) the federal minimum wage in effect on or after September 1, 1997, and (2) the state minimum wage under section 177.24.

Subd. 20. **Program.** "Program" means the 1997 Minnesota employment and economic development program.

Subd. 21. **Workforce service area.** "Workforce service area" means a service delivery area designated by the governor under the Job Training Partnership Act, United States Code, title 29, section 1501, et seq.

History: *1997 c 200 art 3 s 2–11*

268.673 EMERGENCY JOBS PROGRAM; COMMISSIONER'S DUTIES.

Subd. 3. **Department of economic security.** The commissioner shall supervise wage subsidies, comprehensive job readiness, and job retention services and shall provide technical assistance to counties in their delivery.

[For text of subd 4, see M.S.1996]

Subd. 4a. **Contracts with counties.** The commissioner shall contract directly with counties, their designees, or workforce service areas to deliver wage subsidies, comprehensive job readiness, and job retention services if (1) each county served by the designee or workforce service area agrees to the contract and knows the amount of wage subsidy money, comprehensive job readiness money, and job retention services money allocated to the county under section 268.6751, and (2) the designee or workforce service area agrees to meet regularly with each county being served. The contracts must require that no more than ten percent of the contract amount be expended for administration.

Counties and workforce service areas are encouraged to designate community–based providers of comprehensive job readiness and job retention services.

Subd. 5. **Report.** Each county delivering wage subsidies, comprehensive job readiness, and job retention services 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 county for wages, comprehensive job readiness, and job retention services 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; and

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

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. [Repealed, 1997 c 200 art 3 s 19]

History: *1997 c 200 art 3 s 12–14*

268.6751 ALLOCATION OF WAGE SUBSIDY MONEY.

Subdivision 1. **Allocation.** Wage subsidy money, comprehensive job readiness money, and job retention services money must be allocated to counties in proportion to the number of persons living at or below the federal poverty threshold in each county. By December 31 of each fiscal year, counties, designees, and workforce service areas receiving wage subsidy money, comprehensive job readiness money, and job retention services 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 this subdivision.

[For text of subd 2, see M.S.1996]

History: *1997 c 200 art 3 s 15*

NOTE: Subdivision 1 was also amended by Laws 1997, chapter 85, article 4, section 28, to read as follows:

"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 aid to families with dependent children and Minnesota family investment program–statewide 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)."

268.676 [Repealed, 1997 c 200 art 3 s 19]

NOTE: Subdivision 1 was also amended by Laws 1997, chapter 85, article 4, section 29, to read as follows:

"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;

(3) applicants who are eligible for aid to families with dependent children or Minnesota family investment program–statewide; and

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

268.677 USE OF FUNDS.

Subdivision 1. **Wage subsidy, comprehensive job readiness, and job retention services money.** To the extent allowable under federal and state law, wage subsidy money, comprehensive job readiness money, and job retention services money must be pooled and used in combination with money from other employment and training services or income maintenance and support services.

(a) The wage subsidy is $2.50 per hour for wages and up to $1 per hour for reimbursement of employer–paid benefits for health care, child care, or transportation expenses for employers paying an eligible program participant an hourly wage that is $2 to $2.99 per hour higher than the minimum wage.

(b) The wage subsidy is $4 per hour for wages and up to $1 per hour for reimbursement of employer paid benefits for health care, child care, or transportation expenses for employers paying an eligible program participant an hourly wage that is $3 or more per hour higher than the minimum wage.

(c) The wage subsidy for an eligible job 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. Job retention services may be provided to an eligible program participant over a period of 78 weeks.

(d) An employer of more than four full–time employees shall receive wage subsidies for no more than 25 percent of the employer's full–time workforce.

Subd. 2. [Repealed, 1997 c 200 art 3 s 19]

Subd. 3. [Repealed, 1997 c 200 art 3 s 19]

History: *1997 c 200 art 3 s 16*

268.678 [Repealed, 1997 c 200 art 3 s 19]

268.679 DUTIES OF COMMISSIONER OF HUMAN SERVICES.

Subd. 3. [Repealed, 1997 c 200 art 3 s 19]

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 county or its designee, 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 county, its designee, or workforce service area (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 benefits of eligible job applicants and will provide employees hired with these funds with 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, expand, or to fill other open positions but not to fill positions which would be filled in the absence of wage subsidies;

(e) the business will cooperate with the county and the commissioner in collecting data to assess the result of wage subsidies and the effectiveness of comprehensive job readiness and job retention services; and

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

Subd. 1a. **Ineligible businesses.** A business employer is ineligible to participate in the program and is ineligible to receive wage subsidy money if:

(1) the business is a temporary employment agency; or

(2) the business is a restaurant.

For purposes of this subdivision, "temporary employment agency" means a business that hires people to work in temporary positions for employers who are clients of that business.

For purposes of this subdivision, "restaurant" includes, but is not limited to, fast food restaurants.

Subd. 1b. **Discharge of program participant.** A program participant discharged from employment may challenge the discharge as a violation of subdivision 1.

Subd. 2. **Priorities.** (a) In allocating funds among eligible businesses, the county or its designee shall give priority to:

(1) businesses that will provide applicants with on–the–job training and marketable job skills;

(2) businesses engaged in manufacturing;

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

(4) businesses that export products outside the state.

(b) In addition to paragraph (a), a county 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) 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.

(b) 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 county, its designee, or workforce service area, the payback formula shall apply as if the original person had continued in employment.

(c) If a business receiving funds under the program reduces the hourly wage after the six–month subsidy, the business must repay a portion of the subsidy in direct proportion to the amount that the hourly wage is reduced.

(d) A repayment schedule shall be negotiated and agreed to by the county and the business prior to the disbursement of the funds and is subject to renegotiation. The county shall retain payments received under this subdivision for any administrative costs associated with the collection of the funds under this subdivision and for entering into new wage subsidy agreements.

(e) If an employer is more than 60 days late in repaying a subsidy as required in this subdivision, the county may engage a licensed collection agency or refer the matter to the department for collection under chapter 16D.

Subd. 4. **Successorship.** A contract entered into by an owner, employer, or manager under the wage subsidy program is legally binding on any successor owner, employer, or manager.

History: *1997 c 200 art 3 s 17*

268.6811 FUND COMBINATIONS.

To the extent allowable under federal law, money for job training under Title II–A of the Job Training Partnership Act, United States Code, title 29, section 1501 et seq., and money from other employment and training services or income maintenance and support services, except services administered under chapter 116L, may be pooled and used in combination with money to provide subsidized employment, comprehensive job readiness and job retention services under sections 268.6715 to 268.682.

History: *1997 c 200 art 3 s 18*

268.86 EMPLOYMENT AND TRAINING PROGRAMS.

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, aid to families with dependent children or Minnesota family investment program–statewide, including AFDC and MFIP–S employment and training programs and general assistance. 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.

[For text of subds 6 to 10, see M.S.1996]

History: *1997 c 85 art 4 s 30*

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; general assistance grant diversion; food stamp employment and training programs; community work experience programs; AFDC or MFIP–S job search; AFDC or MFIP–S grant diversion; AFDC or MFIP–S on–the–job training; and AFDC or MFIP–S 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, according 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.

(e) The commissioner shall certify providers of the Minnesota family investment plan case management services as defined in section 256.032, subdivision 3. Providers must meet the standards defined in paragraph (c), except that past experience under paragraph (c), clause (1), must be in services and programs similar to those specified in section 256.032, subdivision 3.

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

[For text of subds 1a to 5, see M.S.1996]

History: *1997 c 85 art 4 s 31*

268.90 COMMUNITY INVESTMENT PROGRAMS.

[For text of subd 1, see M.S.1996]

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 or Minnesota family investment program–statewide 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, Minnesota family investment program–statewide, or general assistance is voluntary.

Subd. 3. **Commissioner of economic security.** The commissioner shall:

(1) make 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.

[For text of subds 4 and 5, see M.S.1996]

History: *1997 c 7 art 5 s 35; 1997 c 85 art 4 s 32*

268.912 HEAD START PROGRAM.

The department of children, families, and learning is the state agency responsible for administering the Head Start program. The commissioner of children, families, and learning may make grants to public or private nonprofit agencies for the purpose of providing supplemental funds for the federal Head Start program.

History: *1997 c 162 art 1 s 8*

268.913 DEFINITIONS.

[For text of subd 1, see M.S.1996]

Subd. 2. **Program account 20.** "Program account 20" means the federally designated and funded account for training and technical assistance activities.

[For text of subd 3, see M.S.1996]

Subd. 4. **Program account 25.** "Program account 25" means the federally designated and funded account for parent child centers.

Subd. 5. [Repealed, 1997 c 162 art 1 s 19]

[For text of subd 6, see M.S.1996]

History: *1997 c 162 art 1 s 9,10*

268.914 DISTRIBUTION OF APPROPRIATION.

Subdivision 1. **State supplement for federal grantees.** (a) The commissioner of children, families, and learning must distribute money appropriated for that purpose to Head Start program grantees to expand services and to serve 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, 22, and 25 at the start of the fiscal year. In allocating funds under this paragraph, the commissioner must assure that each Head Start grantee is allocated no less funding in any fiscal year than was allocated to that grantee in fiscal year 1993. 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 must 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 low–income children it will be able to serve. For any grantee that cannot utilize its full allocation, the commissioner must 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 must award funds for innovative programs under this paragraph on a competitive basis.

History: *1997 c 162 art 1 s 11*

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 committee of the house of representatives and the family services committee of the senate 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 and MFIP–S recipients.

History: *1997 c 85 art 4 s 33*

268.917 EARLY CHILDHOOD LEARNING AND CHILD PROTECTION FACILITIES.

The commissioner may make grants to state agencies and political subdivisions to construct or rehabilitate facilities for Head Start, early childhood and family education programs, other early childhood intervention programs, or demonstration family service centers housing multiagency collaboratives, with priority to centers in counties or municipalities with the highest number of children living in poverty. The commissioner may also make grants to state agencies and political subdivisions to construct or rehabilitate facilities for crisis nurseries or child visitation centers. The facilities must be owned by the state or a political subdivision, but may be leased under section 16A.695 to organizations that operate the programs. The commissioner shall prescribe the terms and conditions of the leases. A grant for an individual facility must not exceed $200,000 for each program that is housed in the facility, up to a maximum of $500,000 for a facility that houses three programs or more. The commissioner shall give priority to grants that involve collaboration among sponsors of programs under this section. At least 25 percent of the amounts appropriated for these grants must be used in conjunction with the youth employment and training programs operated by the commissioner. Eligible programs must consult with appropriate labor organizations to deliver education and training.

History: *1997 c 200 art 5 s 1*

268.95 INDIVIDUAL ENTERPRISE.

[For text of subds 1 to 3, see M.S.1996]

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 or Minnesota family investment program–statewide to participate and retain eligibility while establishing a business.

[For text of subd 5, see M.S.1996]

History: *1997 c 85 art 4 s 34*