

CHAPTER 268

DEPARTMENT OF ECONOMIC SECURITY

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268.0111 DEFINITIONS.

[For text of subds 1 to 4a, see M.S.2002]

Subd. 5. **Income maintenance and support services.** "Income maintenance and support services" means programs through which the state or its subdivisions provide direct financial or in-kind support to unemployed or underemployed persons, including unemployment benefits, the Minnesota family investment program, general assistance, food stamps or food support, 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 to 8, see M.S.2002]

History: 1Sp2003 c 14 art 1 s 106

268.0122 POWERS AND DUTIES.

[For text of subds 1 and 2, see M.S.2002]

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

- (1) administer the unemployment insurance program and related programs;
- (2) administer the aspects of the Minnesota family investment program, general assistance, and food stamps or food support that relate to employment and training services, subject to the contract under section 268.86, subdivision 2;
- (3) 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;

(4) 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;

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

(6) as requested, certify employment and training services, and decertify services that fail to comply with performance criteria according to standards established by the commissioner;

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

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

(9) develop standards for the contents and structure of the local service unit plans and plans for Indian tribe employment and training services;

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

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

(12) consult with the Council for the Blind on matters pertaining to programs and services for the blind and visually impaired; and

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

[For text of subds 4 to 7, see M.S.2002]

History: *1Sp2003 c 14 art 1 s 106*

268.014 COOPERATION WITH OTHER STATE AGENCIES.

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

History: *1Sp2003 c 4 s 1*

268.022 WORKFORCE DEVELOPMENT FUND.

Subdivision 1. **Determination and collection of special assessment.** (a) In addition to all other taxes, assessments, and payment obligations under chapter 268, each employer, except an employer making reimbursements is liable for a special assessment levied at the rate of one-tenth of one percent per year until June 30, 2000, and seven-hundredths of one percent per year on and after July 1, 2000, on all taxable wages, as defined in section 268.035, subdivision 24. 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 taxes.

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

[For text of subd 2, see M.S.2002]

History: *1Sp2003 c 3 art 2 s 20*

268.029 CITATION; MINNESOTA UNEMPLOYMENT INSURANCE LAW.

Sections 268.029 to 268.23 shall be known and may be cited as the "Minnesota Unemployment Insurance Law."

History: *1Sp2003 c 3 art 2 s 20*

268.03 PUBLIC PURPOSE OF THE MINNESOTA UNEMPLOYMENT INSURANCE PROGRAM.*[For text of subd 1, see M.S.2002]*

Subd. 2. Standard of proof. All issues of fact under the Minnesota Unemployment Insurance Law shall be determined by a preponderance of the evidence. Preponderance of the evidence means evidence in substantiation of a fact that, when weighed against the evidence opposing the fact, is more convincing and has a greater probability of truth.

History: *1Sp2003 c 3 art 2 s 20*

268.035 DEFINITIONS.

Subdivision 1. Scope. Unless the language or context clearly indicates that a different meaning is intended, the words, terms, and phrases in this section shall, for the purposes of the Minnesota Unemployment Insurance Law, have the meaning stated.

[For text of subds 2 to 13, see M.S.2002]

Subd. 14. Employer. "Employer" means any of the following which has had one or more employees during the current or the prior calendar year:

(1) any individual or type of organization, resident or nonresident, for profit or nonprofit, religious, charitable, or educational, including any partnership, limited liability company, trust, estate, or corporation, domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor of any of the foregoing, or the legal representative of a deceased person;

(2) any government entity, state or federal, foreign or domestic, Indian tribe, including any subdivision thereof and any instrumentality thereof owned wholly or in part;

(3) any organization or person that has elected, under section 268.042, to be subject to the Minnesota Unemployment Insurance Law;

(4) a joint venture composed of one or more employers;

(5) any nonprofit organization or government agency providing or authorizing the hiring of homeworkers, personal care attendants, or other individuals performing similar services in a private home is the employer of the homemaker, attendant, or similar worker whether the organization or agency pays the employee directly or provides funds to the recipient of the services to pay for the services. This clause does not apply to the state of Minnesota or any county that provides federal, state, or local funds to a child care provider either directly or indirectly through a parent who is a child care assistance recipient; or

(6) each individual employed to perform or assist in performing the work of any agent or employee shall be considered to be employed by that employer whether the individual was hired or paid directly by that employer or by the agent or employee, provided the employer had actual or constructive knowledge of the work.

Subd. 15. Employment. "Employment" means service performed by:

(1) an individual who is considered an employee under the common law of employer-employee and not considered an independent contractor;

(2) an officer of a corporation;

(3) a member of a limited liability company who has less than a 25 percent ownership share and is considered an employee under the common law of employer-employee; or

(4) an individual who performs services for a person for compensation, as:

(i) an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, beverages, or laundry or dry cleaning services; or

(ii) a traveling or city salesperson, other than as an agent-driver or commission-driver, engaged full-time in the solicitation on behalf of the 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.

This clause shall apply only if the contract of service provides that substantially all of the services are to be performed personally by the individual, and the services are part of a continuing relationship with the person for whom the services are performed, and the individual does not have a substantial investment in facilities used in connection with the performance of the services, other than facilities for transportation.

[For text of subds 16 and 17 see M.S.2002]

Subd. 18. [Renumbered subd 25a]

[For text of subds 19 to 22, see M.S.2002]

Subd. 23. **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 covered employment reported by all employers for the prior calendar year shall be divided by 12 to calculate the average monthly covered employment.

(2) The sum of the total wages paid for all covered employment reported by all employers for the prior calendar year shall be divided by the average monthly covered 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 calculating the amount of taxable wages, the state's average annual wage shall apply to the calendar year following the calculation.

(c) For purposes of calculating the state's maximum weekly unemployment benefit amount available on any benefit account under section 268.07, subdivision 2, the state's average weekly wage shall apply to the one-year period beginning the first Sunday in August of the calendar year of the calculation.

[For text of subd 23a, see M.S.2002]

Subd. 24. **Taxable wages.** (a) "Taxable wages" means those wages paid to an employee in covered employment each calendar year up to an amount equal to 60 percent of the state's average annual wage, rounded to the nearest \$1,000.

(b) Taxable wages includes the amount of wages paid for covered employment by the employer's predecessor when there has been an experience rating transfer under section 268.051, subdivision 4.

Subd. 25. **Taxes.** "Taxes" means the money payments required by the Minnesota Unemployment Insurance Law to be paid into the trust fund by an employer on account of paying wages to employees in covered employment.

Subd. 25a. **Trust fund.** "Trust fund" means the Minnesota unemployment insurance trust fund established by section 268.194.

[For text of subds 26 to 28, see M.S.2002]

Subd. 29. **Wages.** "Wages" means all compensation for services, including commissions; bonuses; severance payments; vacation and holiday pay; 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 compensation in any medium other than cash, except:

(1) the amount of any payment made to, or on behalf of, an employee under a plan 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 plan, to provide for a payment, on account of (i) retirement or (ii) medical and hospitalization expenses in connection with sickness or accident disability, or (iii) death;

(2) the payment by an employer of the tax imposed upon an employee under United States Code, title 26, section 3101 of the Federal Insurance Contribution Act, with respect to compensation paid to an employee for domestic employment in a private household of the employer or for agricultural employment;

(3) any payment made to, or on behalf of, an employee or beneficiary (i) from or to a trust described in United States Code, title 26, section 401(a) of the federal Internal Revenue Code, that is exempt from tax under section 501(a) at the time of the payment unless the payment is made to an employee of the trust as compensation for services as an employee and not as a beneficiary of the trust, or (ii) under or to an annuity plan that, at the time of the payment, is a plan described in section 403(a);

(4) sickness or accident disability payments made by the employer after the expiration of six calendar months following the last calendar month that the individual worked for the employer;

(5) disability payments made under the provisions of any workers' compensation law;

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

(7) payments made into a trust 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; or

(8) 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 United States Code, title 26, sections 401(k) and 125 of the federal Internal Revenue Code, to the extent that the employee has the option to receive the payment in cash.

[For text of subds 30 to 32, see M.S.2002]

History: 1Sp2003 c 3 art 2 s 1,2,20

268.042 EMPLOYERS COVERAGE.

Subdivision 1. **Employer for part of year.** Except as provided in subdivision 3, any organization or person that is or becomes an employer subject to the Minnesota Unemployment Insurance Law within any calendar year shall be considered to be subject to these sections the entire calendar year.

Subd. 3. **Election agreements; termination.** (a) Any employer that has employment performed for it that does not constitute covered employment, may file with the commissioner a written election that all such employment, in one or more distinct establishments or places of business, shall be considered covered employment for not less than two calendar years. Upon the written approval of the commissioner, the employment shall constitute covered employment from and after the date stated in the approval. The employment shall cease to be considered covered 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 employer has filed with the commissioner a written notice to that effect.

(b) The commissioner must terminate any election agreement under this subdivision upon 30 calendar days' notice, if the employer fails to pay all taxes due or reimbursements due the trust fund.

[For text of subd 4, see M.S.2002]

History: 1Sp2003 c 3 art 2 s 20

268.044 WAGE REPORTING.

Subdivision 1. **Wage detail report.** (a) Each employer that has employees in covered employment shall file a quarterly wage detail report in a manner and format prescribed by the commissioner. The report shall include for each employee in covered employment, 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. If the information required is not filed in a manner and format prescribed by the commissioner, it shall not be considered a wage detail report. 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) The employer may report the wages paid to the nearest whole dollar amount.

(c) 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. 1a. **Electronic transmission of report required.** Each employer that has 50 or more employees to report for a calendar quarter under subdivision 1 must file the quarterly wage detail report by electronic transmission in a format prescribed by the commissioner. The commissioner shall have the discretion to accept wage detail reports by magnetic media in a format prescribed by the commissioner. Wage detail reports from an employer with 50 or more employees to report for a calendar quarter that are filed by any other means may be returned to the employer, and reports returned shall be considered as not filed and the penalties under subdivision 2 may be imposed.

[For text of subds 2 to 4, see M.S.2002]

History: 1Sp2003 c 3 art 2 s 3,4

268.045 EMPLOYER TAX OR REIMBURSABLE ACCOUNTS.

(a) The commissioner shall maintain a tax account for each taxpaying employer and a reimbursable account for each nonprofit or government employer that has elected to be liable for reimbursements if that employer has employees in covered employment in the current or the prior calendar year, except as provided in this section. The commissioner shall assess the tax account of a taxpaying employer for all the taxes due under section 268.051 and credit the tax account with all taxes paid. The commissioner shall charge the reimbursable account of a nonprofit or government employer that elects to make reimbursements for any unemployment benefits determined chargeable to the employer under section 268.047 and shall credit the reimbursable account with the payments made.

(b) Two or more related taxpaying corporations concurrently employing the same employees and compensating those employees through a common paymaster that is one of the corporations may apply to the commissioner to establish a common paymaster tax account that shall be the tax account of the common paymaster corporation. If approved, the separate tax 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 tax account shall be jointly and severally liable for any unpaid taxes, penalties, and interest owing from the common paymaster tax account.

(c) Two or more taxpaying employers having 50 percent or more common ownership and compensating employees through a single payer that is one of the employers may apply to the commissioner for a merging of the experience ratings of the employers into a single experience rating and joint tax account.

If approved, the joint tax 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 tax 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 employers in the joint tax account shall be jointly and severally liable for any unpaid taxes, penalties, and interest owing from the joint tax account.

(d) Two or more nonprofit or government employers that have elected to be liable for reimbursements may apply to the commissioner for the establishment of a group reimbursable account for the purpose of sharing the cost of unemployment 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 reimbursable account. If approved, the commissioner shall establish a group reimbursable account for the employers effective as of the beginning of the calendar year that the application is received. The reimbursable 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 following calendar year. Each nonprofit or government employer in the group shall be jointly and severally liable for reimbursements for all unemployment benefits paid based upon wage credits from all employers in the group during the period the group reimbursable account was in effect.

History: 1Sp2003 c 3 art 2 s 20

268.047 EFFECT ON AN EMPLOYER OF UNEMPLOYMENT BENEFITS PAID.

Subdivision 1. General rule. Unemployment benefits paid to an applicant, including extended, additional, and shared work benefits, shall be used in computing the future tax rate of a taxpaying base period employer or charged to the reimbursable account of a base period nonprofit or government employer that has elected to be liable for reimbursements except as provided in subdivisions 2 and 3. The amount of unemployment benefits used in computing the future tax rate of taxpaying employers or charged to the reimbursable account of a nonprofit or government employer that has elected to be liable for reimbursements shall be the same percentage of the total amount of unemployment benefits paid as the percentage of wage credits from the employer is of the total amount of wage credits from all the applicant's base period employers.

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

Subd. 2. Exceptions for all employers. Unemployment benefits paid shall not be used in computing the future tax rate of a taxpaying base period employer or charged to the reimbursable account of a base period nonprofit or government employer that has elected to be liable for reimbursements when:

(1) the applicant was discharged from the employment because of aggravated employment misconduct as determined under section 268.095. This exception shall apply only to unemployment benefits paid for periods after the applicant's discharge from employment;

(2) an applicant's discharge from that employment occurred because a law required removal of the applicant from the position the applicant held;

(3) the employer provided regularly scheduled part-time employment to the applicant during the applicant's base period and continues to provide the applicant with regularly scheduled part-time employment during the benefit year of at least 90 percent of the part-time employment provided in the base period, and is an involved employer because of the applicant's loss of other employment. This exception shall terminate effective the first week that the employer fails to meet the benefit year employment requirements. This exception shall apply to educational institutions without consideration of the period between academic years or terms;

(4) the employer is a fire department or firefighting corporation or operator of a life-support transportation service, and continues to provide employment for the applicant as a volunteer firefighter or a volunteer ambulance service personnel during

the benefit year on the same basis that employment was provided in the base period. This exception shall terminate effective the first week that the employer fails to meet the benefit year employment requirements;

(5) the applicant's unemployment from this employer was a direct result of the condemnation of property by a governmental agency, a fire, flood, or act of nature, where 25 percent or more of the employees employed at the affected location, including the applicant, became unemployed as a result. This exception shall not apply where the unemployment was a direct result of the intentional act of the employer or a person acting on behalf of the employer;

(6) the unemployment benefits were paid by another state as a result of the transferring of wage credits under a combined wage arrangement provided for in section 268.131;

(7) the applicant stopped working because of a labor dispute at the applicant's primary place of employment if the employer was not a party to the labor dispute;

(8) the unemployment benefits were determined overpaid unemployment benefits under section 268.18; or

(9) the trust fund was reimbursed for the unemployment benefits by the federal government.

[For text of subds 3 and 4, see M.S.2002]

Subd. 5. Notice of unemployment benefits paid. (a) The commissioner shall notify each employer at least quarterly by mail or electronic transmission of the unemployment benefits paid that will be used in computing the future tax rate of a taxpaying employer, or that have been charged to the reimbursable account of a nonprofit or government employer that has elected to be liable for reimbursements. Unless a protest is filed within 30 calendar days from the date of sending of the notice, the notice shall be final and shall not be subject to collateral attack by way of review of a tax rate notice or application for a credit adjustment or refund.

(b) Upon receipt of a protest, the commissioner shall review unemployment benefits to be used in computing the future tax rate of a taxpaying employer or charged to the reimbursable account of a nonprofit or government employer that has elected to be liable for reimbursements and determine whether there has been an error made. The commissioner shall either affirm or make a redetermination of the unemployment benefits paid to be used in computing the future tax rate of a taxpaying employer or charged to the reimbursable account of a nonprofit or government employer that has elected to be liable for reimbursements, and a notice of affirmation or redetermination shall be sent to the employer by mail or electronic transmission.

(c) The affirmation or redetermination shall be final unless the employer files an appeal within 30 calendar days after the date the affirmation or redetermination was sent. 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 unemployment benefits paid, any prior determination or decision holding that unemployment benefits paid shall be used in computing the future tax rate of a taxpaying employer or charged to the reimbursable account of a nonprofit or government employer that has elected to be liable for reimbursements which determination or decision has become final.

(e) The commissioner may at any time upon the commissioner's own motion correct a clerical error that resulted in an incorrect notice under paragraph (a).

History: 1Sp2003 c 3 art 2 s 20

268.051 EMPLOYERS TAXES.

Subdivision 1. Payments. (a) Taxes and any additional assessments, fees, or surcharges shall accrue and become payable by each employer for each calendar year that the employer paid wages to employees in covered employment, except for:

(1) nonprofit organizations that elect to make reimbursements as provided in section 268.053; and

(2) the state of Minnesota and political subdivisions that make reimbursements, unless they elect to pay taxes as provided in section 268.052.

Each employer shall pay taxes quarterly, at the employer's assigned tax rate, on the taxable wages paid to each employee. The taxes and any additional assessments, fees, or surcharges shall be paid to the trust fund on or before the last day of the month following the end of the calendar quarter.

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

(c) When the total payment due for any calendar quarter is less than \$1, it shall be disregarded.

Subd. 1a. **Tax reports.** (a) Every employer, except those nonprofit and government employers that have elected to make reimbursements, shall submit a tax report on a form, or in a manner, prescribed by the commissioner on or before the last day of the month following the end of the calendar quarter, unless the employer meets the requirements for submitting tax reports annually under section 268.0511. An employer that fails to submit a tax report when due, or submits an incorrect tax report, shall be subject to section 268.057, subdivision 1.

(b) Each tax report shall include the total wages paid and the taxable wages paid that quarter, the amount of tax due, and any other information required by the commissioner.

(c) A tax report must be submitted for each calendar quarter even though no wages were paid or no tax is due.

Subd. 2. **Computation of tax rates; additional assessments.** (a) For each calendar year the commissioner shall compute the tax rate of each taxpaying employer that qualifies for an experience rating by adding the base tax rate to the employer's experience rating.

(b) The base tax rate for the calendar year and any additional assessments under this subdivision shall be determined based upon the amount in the trust fund on March 31 of the prior year as a percentage of total wages paid in covered employment. The base tax rate shall be:

(1) one-tenth of one percent if the trust fund is equal to or more than 0.75 percent;

(2) two-tenths of one percent if the trust fund is less than 0.75 percent but equal to or more than 0.65 percent;

(3) three-tenths of one percent if the trust fund is less than 0.65 percent but equal to or more than 0.55 percent; or

(4) four-tenths of one percent if the trust fund is less than 0.55 percent.

(c) There shall be a "falling trust fund adjustment" to the base tax rate for the calendar year if the amount in the trust fund on March 31 of the prior year is less than 0.75 percent of total wages paid in covered employment and:

(1) the amount in the trust fund on March 31 of the prior year is ten percent or more below the amount in the trust fund on March 31 of the year prior to that; or

(2) the amount in the trust fund on March 31 of the prior year is greater than the amount in the trust fund on June 30 of that same year.

If a "falling trust fund adjustment" is applicable, then the base tax rate shall be 0.1 percent greater than otherwise provided for under paragraph (b).

(d) In addition to the base tax rate under paragraph (b), there shall be an additional assessment for the calendar year on all quarterly unemployment taxes due from every taxpaying employer if the amount in the trust fund on March 31 of the prior year is less than .55 percent of total wages paid in covered employment. The assessment shall be as follows:

(1) a five percent assessment if the trust fund is less than 0.55 percent but equal to or more than 0.45 percent;

(2) a ten percent assessment if the trust fund is less than 0.45 percent but equal to or more than 0.35 percent; or

(3) a 14 percent assessment if the trust fund is less than 0.35 percent.

(e) For the purposes of this subdivision, the trust fund shall not include any money borrowed from the federal unemployment trust fund pursuant to section 268.194, subdivision 6.

(f) For the purposes of this subdivision, total wages paid in covered employment shall be those wages paid to all employees in covered employment during the calendar year prior to the March 31 date used in paragraph (b).

(g) The commissioner may compute any assessment under this subdivision, and any assessment under subdivision 8, as a percentage of the employer's experience rating and the base tax rate, rounded to the nearest hundredth of a percent.

On tax rate notices sent under subdivision 6, any assessments under this subdivision may be combined with any special assessments for interest on federal loans provided for in subdivision 8 into a single combined assessment.

Subd. 3. Computation of a taxpaying employer's experience rating. (a) For each calendar year, the commissioner shall compute an experience rating for each taxpaying employer who has been subject to paying unemployment taxes for at least the 12 calendar months prior to July 1 of the prior calendar year.

(b) The experience rating shall be the ratio obtained by dividing 125 percent of the total unemployment benefits required under section 268.047 to be used in computing the employer's tax rate during the 48 calendar months ending on June 30 of the prior calendar year, by the employer's total taxable payroll for that same period.

(c) For purposes of paragraph (b), only that taxable payroll upon which taxes have been paid on or before September 30 of the prior calendar year may be used in computing an employer's experience rating.

(d) The experience rating shall be computed to the nearest one-tenth of a percent, to a maximum of 8.9 percent.

[For text of subd 4, see M.S.2002]

Subd. 5. Tax rate for new employers. (a) Each new taxpaying employer that does not qualify for an experience rating under subdivision 3, except new employers in a high experience rating industry, shall be assigned, for a calendar year, a tax rate the higher of (1) one percent, or (2) the tax rate computed by dividing the total amount of unemployment benefits paid all applicants during the 48 calendar months ending on June 30 of the prior calendar year by the total taxable wages of all taxpaying employers during the same period, plus the applicable base tax rate.

(b) Each new taxpaying employer in a high experience rating industry that does not qualify for an experience rating under subdivision 3, shall be assigned, for a calendar year, a tax rate of 8.0 percent, plus the applicable base tax rate.

An employer is considered to be in a high experience rating industry if:

(1) the employer is engaged in residential, commercial, or industrial construction, including general contractors;

(2) the employer is engaged in sand, gravel, or limestone mining;

(3) the employer is engaged in the manufacturing of concrete, concrete products, or asphalt; or

(4) the employer is engaged in road building, repair, or resurfacing, including bridge and tunnels and residential and commercial driveways and parking lots.

Subd. 6. Notice of tax rate. (a) The commissioner shall notify each employer by mail or electronic transmission of the employer's tax rate, along with any additional assessments, fees, or surcharges, as determined for any calendar year. The notice shall contain the tax 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 at which taxes shall be paid. The tax rate shall not be subject to collateral attack by way of claim for a credit adjustment or refund, or otherwise.

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

(c) A review of an employer's tax rate may be obtained by the employer filing, in a manner prescribed by the commissioner, a protest within 30 calendar days from the date the tax rate notice was sent to the employer. Upon receipt of the protest, the commissioner shall review the tax 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 sent to the employer by mail or electronic transmission. The affirmation or redetermination shall be final unless the employer files an appeal within 30 calendar days after the date the affirmation or redetermination was sent. 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 tax rate.

[For text of subd 7, see M.S.2002]

Subd. 8. Special assessment for interest on federal loan. (a) If on October 31 of any year, the commissioner, in consultation with the commissioner of finance, determines that an interest payment will be due during the following calendar year on any loan from the federal unemployment trust fund under section 268.194, subdivision 6, a special assessment on taxpaying employers will be in effect for the following calendar year. The legislature authorizes the commissioner, in consultation with the commissioner of finance, to determine the appropriate level of the assessment, from two percent to eight percent of the quarterly unemployment taxes due, that will be necessary to pay the interest due on the loan.

(b) The special assessment shall be placed into a special account from which the commissioner shall pay any interest that has accrued on any loan from the federal unemployment trust fund provided for under section 268.194, subdivision 6. If, at the end of each calendar quarter, the commissioner, in consultation with the commissioner of finance, determines that the balance in this special account, including interest earned on the special account, is more than is necessary to pay the interest which has accrued on any loan as of that date, or will accrue over the following calendar quarter, the commissioner shall immediately pay to the trust fund the amount in excess of that necessary to pay the interest on any loan.

Subd. 9. Assessments, fees, and surcharges; treatment. Any assessment, fee, or surcharge imposed under the Minnesota Unemployment Insurance Law shall be treated the same as, and considered as, a tax. Any assessment, fee, or surcharge shall be subject to the same collection procedures that apply to past due taxes.

History: *1Sp2003 c 3 art 1 s 1-6; art 2 s 20*

NOTE: Subdivision 2, paragraph (c), as added by Laws 2003, First Special Session chapter 3, article 1, section 2, is effective January 1, 2005. Laws 2003, First Special Session chapter 3, article 1, section 2, the effective date.

268.052 PAYMENT TO TRUST FUND BY STATE AND POLITICAL SUBDIVISIONS.

Subdivision 1. Payments. In lieu of taxes payable on a quarterly basis, the state of Minnesota or its political subdivisions shall reimburse the trust fund the amount of unemployment benefits charged to its reimbursable account under section 268.047. Reimbursements in the amount of unemployment benefits charged to the reimbursable account during a calendar quarter shall be made on or before the last day of the month following the month that the notice of unemployment benefits paid is sent pursuant to

section 268.047, subdivision 5. Past due reimbursements shall be subject to the same interest charges and collection procedures that apply to past due taxes.

Subd. 2. Election by state or political subdivision to be a taxpaying employer. (a) The state or political subdivision excluding a school district may elect to be a taxpaying employer for any calendar year if a notice of election is filed within 30 calendar days following January 1 of that calendar year. Upon election, the state or political subdivision shall be assigned the new employer tax rate under section 268.051, subdivision 5, for the calendar year of the election and until it qualifies for an experience rating under section 268.051, subdivision 3.

(b) An election shall be for a minimum period of two calendar years following the effective date of the election and continue unless a notice terminating the election is filed not later than 30 calendar days before the beginning of the calendar year. The termination shall be effective at the beginning of the next calendar year. Upon election, the commissioner shall establish a reimbursable account for the state or political subdivision. A termination of election shall be allowed only if the state or political subdivision has, since the beginning of the experience rating period under section 268.051, subdivision 3, paid taxes and made voluntary payments under section 268.051, subdivision 7, equal to or more than 125 percent of the unemployment benefits used in computing the experience rating. In addition, any unemployment benefits paid after the experience rating period shall be transferred to the new reimbursable account of the state or political subdivision. If the amount of taxes and voluntary payments paid since the beginning of the experience rating period exceeds 125 percent of the amount of unemployment benefits paid during the experience rating period, that amount in excess shall be applied against any unemployment benefits paid after the experience rating period.

(c) The method of payments to the trust fund under subdivisions 3 and 4 shall apply to all taxes paid by or due from the state or political subdivision that elects to be taxpaying employers under this subdivision.

(d) The commissioner may allow a notice of election or a notice terminating election to be filed by mail or electronic transmission.

Subd. 3. Method of payment by state. To discharge its liability, the state and its wholly owned instrumentalities shall pay the trust fund as follows:

(1) Every self-sustaining department, institution and wholly owned instrumentality shall pay the trust fund in accordance with subdivision 1. For the purposes of this clause a "self-sustaining department, institution or wholly owned instrumentality" is one where the dedicated income and revenue substantially offsets its cost of operation.

(2) Every partially self-sustaining department, institution and wholly owned instrumentality shall pay the trust fund that same proportion of the amount that has been charged to its employer account as the proportion of the total of its income and revenue is to its annual cost of operation.

(3) Every department, institution or wholly owned instrumentality that is not self-sustaining shall pay the trust fund to the extent funds are available from appropriated funds.

(4) The departments, institutions and wholly owned instrumentalities, including the University of Minnesota, that have money available shall pay the trust fund in accordance with subdivision 1. If an applicant was paid during the base period from a special account provided by law, the payment to the trust fund shall be made from the special account with the approval of the Department of Administration and the amounts are hereby appropriated.

(5) For those departments, institutions and wholly owned instrumentalities that cannot pay the trust fund, the commissioner shall certify on November 1 of each calendar year to the commissioner of finance the unpaid balances. Upon receipt of the certification, the commissioner of finance shall include the unpaid balances in the biennial budget submitted to the legislature.

Subd. 4. Method of payment by political subdivision. A political subdivision or instrumentality thereof is authorized and directed to pay its liabilities by money

collected from taxes or other revenues. Every political subdivision authorized to levy taxes except school districts may include in its tax levy the amount necessary to pay its liabilities. School districts may levy according to section 126C.43, subdivision 2. If the taxes authorized to be levied 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 liability. The expenditures authorized shall not be included in computing the cost of government as defined in any home rule charter. The governing body of a municipality, for the purpose of meeting its liabilities, 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.

Subd. 5. **Considered an election.** If the state of Minnesota or its political subdivisions choose not to be a taxpaying employer under subdivision 2, the state or its political subdivision shall be considered, for purposes of the Minnesota unemployment insurance program, to have elected to be liable for reimbursements under subdivision 1.

History: *1Sp2003 c 3 art 2 s 5,20; 1Sp2003 c 9 art 5 s 27,28*

268.0525 INDIAN TRIBES.

(a) An Indian tribe, as defined under United States Code, title 25, section 450b(e) of the Indian Self-Determination and Education Assistance Act, and any subdivision, subsidiary, or business enterprise owned by the Indian tribe, shall be treated the same as the state of Minnesota, or a political subdivision of the state, for all purposes of the Minnesota Unemployment Insurance Law.

(b) The Indian tribe may make separate elections under section 268.052, subdivision 2, for itself and each subdivision, subsidiary, or business enterprise wholly owned by the Indian tribe.

(c) If an Indian tribe, subdivision, subsidiary, or business enterprise wholly owned by the tribe, which has elected to be liable for reimbursements, fails to make the required payments within 90 days of the notice of delinquency, the commissioner shall terminate the election to make reimbursements as of the beginning of the next calendar year, unless all past due reimbursements, and any interest and penalties, have been paid before the beginning of the next calendar year.

An Indian tribe, subdivision, subsidiary, or business enterprise wholly owned by the tribe that has its election terminated under this paragraph shall become a taxpaying employer and assigned the new employer tax rate under section 268.051, subdivision 5, until the tribe, subdivision, subsidiary, or business enterprise wholly owned by the Indian tribe qualifies for an experience rating under section 268.051, subdivision 3.

History: *1Sp2003 c 3 art 2 s 20*

268.053 PAYMENT TO TRUST FUND BY NONPROFIT ORGANIZATIONS.

Subdivision 1. **Election.** (a) Any nonprofit organization that has employees in covered employment shall pay taxes on a quarterly basis pursuant to section 268.051 unless it elects to make reimbursements to the trust fund the amount of unemployment benefits charged to its reimbursable account under section 268.047.

The organization may elect to make reimbursements for a period of not less than two calendar years beginning with the date that the organization was determined to be an employer with covered employment by filing a notice of election not later than 30 calendar days after the date of the determination.

(b) Any nonprofit organization that makes an election will continue to be liable for reimbursements until it files a notice terminating its election not later than 30 calendar days before the beginning of the calendar year the termination is to be effective.

(c) A nonprofit organization that has been making reimbursements that files a notice of termination of election shall be assigned the new employer tax rate under

section 268.051, subdivision 5, for the calendar year of the termination of election and until it qualifies for an experience rating under section 268.051, subdivision 3.

(d) Any nonprofit organization that has been paying taxes may elect to make reimbursements by filing no less than 30 calendar days before January 1 of any calendar year a notice of election. Upon election, the commissioner shall establish a reimbursable account for the nonprofit organization. An election shall be allowed only if the nonprofit organization has, since the beginning of the experience rating period under section 268.051, subdivision 3, paid taxes and made voluntary payments under section 268.051, subdivision 7, equal to or more than 125 percent of the unemployment benefits used in computing the experience rating. In addition, any unemployment benefits paid after the experience rating period shall be transferred to the new reimbursable account of the nonprofit organization. If the amount of taxes and voluntary payments paid since the beginning of the experience rating period exceeds 125 percent of the amount of unemployment benefits paid during the experience rating period, that amount in excess shall be applied against any unemployment benefits paid after the experience rating period. The election shall not be terminable by the organization for that and the next calendar year.

(e) 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.

(f) The commissioner may allow a notice of election or notice terminating election to be filed by mail or electronic transmission.

[For text of subd 2, see M.S.2002]

Subd. 3. Payments. (a) Reimbursements, in the amount of unemployment benefits charged to the reimbursable account, during a calendar quarter, shall be made on or before the last day of the month following the month that the notice of unemployment benefits paid is sent pursuant to section 268.047, subdivision 5.

(b) Past due reimbursements shall be subject to the same interest charges and collection procedures that apply to past due taxes.

(c) If any nonprofit organization is delinquent in making reimbursements, the commissioner may terminate the organization's election to make reimbursements as of the beginning of the next calendar year, and the termination shall be effective for that and the following calendar year. A nonprofit organization that has its election terminated under this paragraph shall be assigned the new employer tax rate under section 268.051, subdivision 5, until the organization qualifies for an experience rating under section 268.051, subdivision 3.

[For text of subs 4 and 5, see M.S.2002]

History: 1Sp2003 c 3 art 2 s 20

268.057 COLLECTION OF TAXES.

Subdivision 1. Reports; delinquencies; penalties. (a) Any employer who knowingly fails to submit to the commissioner any tax report at the time the report is required under section 268.051, subdivision 1a, or 268.0511 shall pay to the department a penalty of up to \$25 or an amount of 1-1/2 percent of taxes accrued for each month from and after the due date until the tax report is properly submitted, whichever is greater.

(b) If any employer required to submit tax reports fails to do so, or submits, willfully or otherwise, an incorrect or false tax report, the employer shall, on the demand of the commissioner sent by mail or electronic transmission, submit the tax report, or corrected report, within ten days and at the same time pay the tax due. If the employer fails within that time to submit the tax report or corrected report and pay any tax due, the commissioner shall make an estimated tax report from the commissioner's own knowledge and from information the commissioner may obtain and assess a tax on that basis. That assessed tax, plus any penalties and interest, shall be paid within ten days after notice of the amount due has been sent by mail or electronic transmission.

Any assessed tax because of the failure of the employer to submit a tax report or corrected tax 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 tax report or corrected tax report, the commissioner may, on finding it substantially correct, accept that report.

(c) If the commissioner finds that any part of any employer's tax deficiency is due to fraud with intent to avoid payment of taxes to the trust 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) The penalties provided for in paragraphs (a) and (c) are in addition to interest and any other penalties and shall be paid to the department and credited to the contingent account.

(e) An employer or officer or agent of an employer is guilty of a gross misdemeanor, unless the tax 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 tax 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 pay any taxes or other payment at the time required.

[For text of subd 2, see M.S.2002]

Subd. 3. Confession of judgment. (a) Any tax report or other form that is required to be filed with the commissioner concerning taxes or reimbursements 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 tax or reimbursements 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, regardless of 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 tax or payment in lieu of tax has not been paid.

Subd. 4. Costs. Any person that fails to pay any taxes, reimbursements, or unemployment benefit overpayment, including interest and penalties, when due is liable for any filing fees, recording fees, sheriff fees, costs incurred by referral to any public or private collection agency, or litigation costs incurred in the collection of the amounts due.

If any check or money order, in payment of any amount due, is not honored when presented for payment, a fee of \$25 shall be assessed.

Costs collected shall be credited to the administration account.

Subd. 5. Interest on past due taxes. If any taxes, reimbursements, fees, assessments, surcharges, or any penalties under section 268.184, are not paid on the date due the unpaid balance shall bear interest at the rate of one and one-half percent per month or any part thereof. Any payments received by mail postmarked on a day following the date due shall be considered to have been paid on the due date if there is substantial evidence that the payment was actually deposited in the United States mail properly addressed to the department with postage prepaid thereon on or before the due date. Interest collected shall be credited to the contingent account. Interest may be waived under section 268.067.

Subd. 6. Interest on judgments. Regardless of section 549.09, if judgment is entered upon any past due tax or reimbursements, the unpaid judgment shall bear interest at the rate specified in subdivision 5 until the date of payment.

[For text of subds 7 to 10, see M.S.2002]

History: *1Sp2003 c 3 art 2 s 6,20*

268.058 LIEN, LEVY, SETOFF, AND CIVIL ACTION.

Subdivision 1. **Lien.** (a) Any taxes, unemployment benefit overpayments, or reimbursements due including interest, penalties, and costs shall become a lien upon all the property, within this state, both real and personal, of the person liable, from the date of assessment. The term "date of assessment" means the date the obligation was due.

(b) The lien 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 with the county recorder of the county where the property is situated, or in the case of personal property belonging to a nonresident person in the Office of the Secretary of State. When the notice of lien is filed with the county recorder, the fee for filing and indexing shall be as provided in sections 272.483 and 272.484.

(c) Notices of liens, lien renewals, and lien releases, in a form prescribed by the commissioner, may be filed with the county recorder or the secretary of state by mail, personal delivery, or by electronic transmission into the computerized filing system of the secretary of state. The secretary of state shall, on any notice filed with that office, transmit the notice electronically to the appropriate county recorder. The filing officer, whether the county recorder or the secretary of state, shall endorse and index a printout of the notice as if the notice had been mailed or delivered.

(d) County recorders and the secretary of state shall enter information on lien notices, renewals, and releases 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 into the central database before the close of the working day following the day of the original data entry by the commissioner.

(e) The lien imposed on personal property, even though properly filed, is not enforceable against a purchaser of tangible personal property purchased at retail or personal property listed as exempt in sections 550.37, 550.38, and 550.39.

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

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

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

(g) The lien 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 before expiration for an additional ten years.

(h) The lien shall be enforceable by levy under subdivision 2 or by judgment lien foreclosure under chapter 550.

(i) The lien may be imposed upon property defined as homestead property in chapter 510 but may be enforced only upon the sale, transfer, or conveyance of the homestead property.

(j) The commissioner may sell and assign to a third party the commissioner's right of redemption in specific real property for liens filed under this subdivision. The assignee shall be limited to the same rights of redemption as the commissioner, except that in a bankruptcy proceeding, the assignee does not obtain the commissioner's priority. Any proceeds from the sale of the right of redemption shall be credited to the contingent account. Any sale shall be by written agreement signed by an attorney who

is a classified employee of the department designated by the commissioner for that purpose.

Subd. 2. **Levy.** (a) If any tax, reimbursements, or unemployment benefit overpayment, including interest, penalties, and costs, is not paid when due, the amount may be collected by the commissioner by direct levy upon all property and rights of property of the person liable for the amount due except that exempt from execution under section 550.37. The term "levy" includes the power of distraint and seizure by any means.

(b) In addition to a direct levy, the commissioner may issue a warrant to the sheriff of any county who shall proceed within 60 calendar days to levy upon the property or rights to property of the delinquent person within the county, except that exempt under section 550.37. The sheriff shall sell that property necessary to satisfy the total amount due, together with the commissioner's and sheriff's costs. The sales shall be governed by the law applicable to sales of like property on execution of a judgment.

(c) Notice and demand for payment of the total amount due shall be mailed to the delinquent person at least ten calendar days prior to action being taken under paragraphs (a) and (b).

(d) If the commissioner has reason to believe that collection of the amount due is in jeopardy, notice and demand for immediate payment may be made. If the total amount due is not paid, the commissioner may proceed to collect by direct levy or issue a warrant without regard to the ten calendar day period.

(e) In executing the levy, the commissioner shall have all of the powers provided in chapter 550 or any other law that provides for execution against property in this state. The sale of property levied upon and the time and manner of redemption shall be as provided in chapter 550. The seal of the court shall not be required. The levy may be made whether or not the commissioner has commenced a legal action for collection.

(f) Where any assessment has been made by the commissioner, the property seized for collection of the total amount due shall not be sold until any determination of liability has become final. No sale shall be made unless a portion of the amount due remains unpaid for a period of more than 30 calendar days after the determination of liability becomes final. Seized property may be sold at any time if:

(1) the delinquent person 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.

(g) Where a levy has been made to collect the amount due 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 orders.

(h) The property seized shall be returned if the owner:

(1) gives a surety bond equal to the appraised value of the owner's interest in the property, as determined by the commissioner, or

(2) deposits with the commissioner security in a form and amount the commissioner considers necessary to insure payment of the liability.

(i) If a levy or sale would irreparably injure rights in property that the court determines superior to rights of the state, the court may grant an injunction to prohibit the enforcement of the levy or to prohibit the sale.

(j) Any person who fails or refuses to surrender without reasonable cause any property or rights to property subject to levy shall be personally liable in an amount equal to the value of the property or rights not so surrendered, but not exceeding the amount due.

(k) If the commissioner has seized the property of any individual, that individual 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 upon terms and conditions the court considers equitable.

(l) Any person in control or possession of property or rights to property upon which a levy has been made who surrenders the property or rights to property, or who pays the amount due shall be discharged from any obligation or liability to the person liable for the amount due with respect to the property or rights to property.

(m) The notice of any levy may be served personally or by mail.

(n) The commissioner may 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 prevent any subsequent levy. If the commissioner determines that property has been wrongfully levied upon, the commissioner shall 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) Regardless of section 52.12, a levy upon a person'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 person to the financial institution. A claim by the financial institution that it exercised its right to setoff prior to the levy must be substantiated by evidence of the date of the setoff, and verified by an affidavit from a corporate officer of the financial institution. For purposes of determining the priority of any levy under this subdivision, the levy shall be treated as if it were an execution under chapter 550.

[For text of subd 3, see M.S.2002]

Subd. 4. Collection by civil action. (a) Any delinquent taxes, reimbursements, or unemployment benefit overpayment, including interest, penalties, or costs, may be collected by civil action in the name of the state of Minnesota. Civil actions brought under this subdivision shall be heard as provided under section 16D.14. In any action, judgment shall be entered 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 person that is not a resident of this state and any resident person removed from this state, shall be considered to appoint the secretary of state as its agent for the acceptance of process in any civil action. 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 and shall have the same force and validity as if served personally within this state. Notice of the service of process, together with a copy of the process, shall be sent by certified mail to the person's last known address. An affidavit of compliance with this subdivision, 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. 5. Injunction forbidden. No injunction or other legal action to prevent the assessment or collection of any tax, reimbursements, or unemployment benefit overpayment, including interest, penalties, and costs shall be allowed.

History: 1Sp2003 c 3 art 2 s 20

268.059 GARNISHMENT FOR DELINQUENT TAXES AND UNEMPLOYMENT BENEFIT OVERPAYMENTS.

Subdivision 1. Notice. The commissioner may give notice to any employer that an employee owes delinquent taxes, reimbursements, or overpaid unemployment benefits, including penalties, interest, and costs, and that the obligation to the trust fund should be withheld from the employee's wages. The commissioner may proceed only if the tax, reimbursements, or unemployment benefit overpayment is uncontested or if the time for any appeal has expired. The commissioner shall not proceed until 30 calendar days after mailing to the debtor employee, at the debtor's last known address, a written notice of intent to garnish wages and exemption notice. That notice shall list:

- (1) the amount of taxes, reimbursements, overpaid unemployment benefits, interest, penalties, or costs due from the debtor;
- (2) demand for immediate payment; and
- (3) the intention to serve a garnishment notice on the debtor's employer.

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 that is in accordance with this section. The renewed notice shall have the effect of reinstating the priority of the original notice. The exemption notice shall be in substantially the same form as in section 571.72. The notice shall inform the debtor of the right to claim exemptions contained in section 550.37, subdivision 14. If no written claim of exemption is received by the commissioner within 30 calendar days after mailing of the notice, the commissioner may proceed with the garnishment. The notice to the debtor's employer may be served by mail and shall be in substantially the same form as in section 571.75.

[For text of subds 2 and 3, see M.S.2002]

History: 1Sp2003 c 3 art 2 s 20

268.0625 REVOCATIONS OF BUSINESS LICENSES.

Subdivision 1. Notice of debt to licensing authority. The state of Minnesota or a political subdivision 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 licensee owes delinquent taxes, reimbursements, or unemployment benefit overpayments, including interest, penalties, and costs, of \$500 or more. A licensing authority that has received such a notice may issue, transfer, renew, or not revoke the license only if the licensing authority has received a copy of the debt clearance certificate issued by the commissioner.

Subd. 2. Debt clearance certificate. The commissioner may issue a debt clearance certificate only if:

- (1) the licensee has fully paid any delinquent taxes, reimbursements, or unemployment benefit overpayments, including interest, penalties, and costs; or
- (2) the licensee has entered into an agreement to pay the total amount due and is current with all the terms of that agreement.

Subd. 3. Definition. For the purposes of this section, "licensee" means:

- (1) 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
- (2) 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 taxes, reimbursements, or unemployment benefit overpayments, either for the entity that the license is at issue or for another entity that the liability was incurred, or personally as a licensee. "Licensee" includes both the transferor and the transferee of the license and any holder of a license.

[For text of subds 4 and 5, see M.S.2002]

History: 1Sp2003 c 3 art 2 s 20

268.063 PERSONAL LIABILITY.

(a) Any officer, director, or employee of a corporation or any manager, governor, member, or employee of a limited liability company 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 paying the amounts due under this chapter, and
- (2) willfully fails to file the tax reports or pay the amounts due, shall be personally liable for taxes or reimbursements, including interest, penalties, and costs in the event the employer does not pay.

For purposes of this section, "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 amounts due under this chapter were unpaid. An evil motive or intent to defraud is not necessary.

(b) Any partner of a limited liability partnership, or professional limited liability partnership, shall be jointly and severally liable for taxes or reimbursements, including interest, penalties, and costs in the event the employer does not pay.

(c) Any personal representative of the estate of a decedent or fiduciary who voluntarily distributes the assets without reserving a sufficient amount to pay the taxes, reimbursements, interest, and penalties due shall be personally liable for the deficiency.

(d) The personal liability of any individual shall survive dissolution, reorganization, receivership, or assignment for the benefit of creditors. For the purposes of this section, all wages paid by the employer shall be considered earned from the individual determined to be personally liable.

(e) The commissioner shall make an initial determination as to personal liability. The determination shall be final unless the individual found to be personally liable within 30 calendar days after mailing of notice of determination to the individual's last known address files a protest. Upon receipt of the protest, the commissioner 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 individual's last known address. The affirmation or redetermination shall become final unless an appeal is filed within 30 calendar days after the date of mailing. Proceedings on the appeal shall be conducted in accordance with section 268.105.

History: *1Sp2003 c 3 art 2 s 20*

268.066 CANCELLATION OF DELINQUENT TAXES.

(a) The commissioner shall cancel as uncollectible any taxes, reimbursements, penalties, or the interest or costs thereon, which remain unpaid six years after the amounts have been first determined due and payable, except where the delinquent amounts are secured by a notice of lien, a judgment, are in the process of garnishment, or are under a payment plan.

(b) The commissioner may cancel at any time as uncollectible any taxes, reimbursements, penalties, or the interest or costs thereon, that the commissioner determines are uncollectible due to death or bankruptcy.

History: *1Sp2003 c 3 art 2 s 20*

268.067 COMPROMISE.

(a) The commissioner may compromise in whole or in part any action, determination, or decision that affects only an employer and not an applicant, and that has occurred during the prior 24 months. This paragraph may apply if it is determined by a court of law, or a confession of judgment, that an applicant, while employed, wrongfully took from the employer \$500 or more in money or property.

(b) The commissioner may at any time compromise delinquent employer taxes, reimbursements, interest, penalties, and costs.

(c) Any compromise shall be by written order signed by an attorney who is a classified employee of the department designated by the commissioner for that purpose.

(d) Any compromise order must set out all the terms and the reason for the order and must be in the best interest of the state of Minnesota.

History: *1Sp2003 c 3 art 2 s 7*

268.0675 NO ELECTION OF REMEDY.

Use of any remedy under this chapter for the collection of any delinquent taxes, reimbursements, or unemployment benefit overpayment, including penalties, interest,

and costs, shall not constitute an election of remedy to the exclusion of any other available remedy.

History: *1Sp2003 c 3 art 2 s 20*

268.069 PAYMENT OF UNEMPLOYMENT BENEFITS.

Subdivision 1. Requirements. The commissioner shall pay unemployment benefits from the trust fund to an applicant who has met each of the following requirements:

(1) the applicant has filed an application for unemployment benefits and established a benefit account in accordance with section 268.07;

(2) the applicant is not subject to a disqualification from unemployment benefits under section 268.095;

(3) the applicant has met all of the ongoing weekly eligibility requirements under sections 268.085 and 268.086;

(4) the applicant does not have an outstanding overpayment of unemployment benefits, including any penalties or interest, under section 268.18; and

(5) the applicant is not subject to a denial of unemployment benefits under section 268.182.

Subd. 2. Unemployment benefits paid from state funds. Unemployment benefits are paid from state funds and shall not be considered paid from any special insurance plan, nor as paid by an employer. An application for unemployment benefits shall not be considered a claim against an employer but shall be considered a request for unemployment benefits from the trust fund. The commissioner has the responsibility for the proper payment of unemployment benefits regardless of the level of interest or participation by an applicant or an employer in any determination or appeal. An applicant's entitlement to unemployment benefits shall be determined based upon that information available without regard to any common law burden of proof, and any agreement between an applicant and an employer shall not be binding on the commissioner in determining an applicant's entitlement. There shall be no presumption of entitlement or nonentitlement to unemployment benefits.

[For text of subd 3, see M.S.2002]

History: *1Sp2003 c 3 art 2 s 20*

268.07 BENEFIT ACCOUNT.

[For text of subd 1, see M.S.2002]

Subd. 2. Benefit account requirements and weekly unemployment benefit amount and maximum amount of unemployment benefits. (a) To establish a benefit account, an applicant must have:

(1) high quarter wage credits of at least \$1,000; and

(2) wage credits, in other than the high quarter, of at least \$250.

(b) If an applicant has established a benefit account, the weekly unemployment benefit amount available during the benefit year shall be the higher of:

(1) 50 percent of the applicant's average weekly wage during the base period, to a maximum of 66-2/3 percent of the state's average weekly wage; or

(2) 50 percent of the applicant's average weekly wage during the high quarter, to a maximum of 45 percent of the state's average weekly wage.

The applicant's average weekly wage under clause (1) shall be computed by dividing the total wage credits by 52. The applicant's average weekly wage under clause (2) shall be computed by dividing the high quarter wage credits by 13.

(c) The state's maximum weekly unemployment benefit amount and an applicant's weekly unemployment benefit amount and maximum amount of unemployment benefits available shall be rounded down to the next lowest whole dollar. The state's maximum weekly benefit amount, computed in accordance with section 268.035, subdivision 23, shall apply to a benefit account established effective on or after the first

Sunday in August. Once established, an applicant's weekly unemployment benefit amount shall not be affected by the first Sunday in August change in the state's maximum weekly unemployment benefit amount.

(d) The maximum amount of unemployment benefits available on any benefit account shall be the lower of:

- (1) 33-1/3 percent of the applicant's total wage credits; or
- (2) 26 times the applicant's weekly unemployment benefit amount.

[For text of subds 3 and 3a, see M.S.2002]

Subd. 3b. Limitations. (a) A benefit account shall be established effective the Sunday of the calendar week that the application for unemployment benefits was filed. Upon specific request of an applicant, an application for unemployment benefits may be backdated one calendar week prior to the Sunday of the week the application was actually filed. An application shall be backdated only if the applicant was unemployed throughout the period of the backdating. If an individual attempted to file an application for unemployment benefits, but was prevented from filing an application by the department, the benefit account shall be effective the Sunday of the calendar week the individual first attempted to file an application.

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

- (1) a new application for unemployment benefits is filed and a new benefit account is established at the time of the withdrawal; and
- (2) the applicant has not served a waiting week under section 268.085, subdivision 1, clause (3).

A determination or amended determination pursuant to section 268.101, that was issued before the withdrawal of the benefit account, shall remain in effect and shall not be voided by the withdrawal of the benefit account. A determination of disqualification requiring subsequent earnings to satisfy the disqualification under section 268.095, subdivision 10, shall apply to the weekly unemployment benefit amount on the new benefit account.

(c) An application for unemployment benefits shall not be allowed prior to the Sunday following the expiration of the benefit year on a prior benefit account. Except as allowed under paragraph (b), a applicant may establish only one benefit account each 52 calendar weeks.

(d) All unemployment benefits shall be available from the trust fund only for weeks occurring during the applicant's benefit year.

History: *1Sp2003 c 3 art 1 s 7; art 2 s 8,20*

268.084 PERSONAL IDENTIFICATION NUMBER; PRESUMPTION.

(a) Each applicant shall be issued a personal identification number (PIN) for the purpose of filing continued biweekly requests for unemployment benefits, accessing information, and engaging in other transactions with the department.

(b) If a PIN assigned to an applicant is used in the filing of a continued biweekly request for unemployment benefits under section 268.086 or any other type of transaction, the applicant shall be presumed to have been the individual using that PIN and presumed to have received any unemployment benefit payment issued. This presumption may be rebutted by a preponderance of the evidence showing that the applicant assigned the PIN was not the individual who used that PIN in the transaction.

(c) The commissioner shall notify each applicant of this section.

History: *1Sp2003 c 3 art 2 s 9*

268.085 ELIGIBILITY REQUIREMENTS.

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

(1) the applicant has an active benefit account and has filed a continued biweekly request for unemployment benefits for that week pursuant to section 268.086;

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

This clause shall not apply to an applicant who is in reemployment assistance training.

This clause shall not apply each day the applicant is on jury duty;

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

(4) the applicant has been participating in reemployment assistance services, such as job search and resume writing classes, if the applicant has been determined in need of reemployment assistance services by the commissioner, unless there is good cause for the applicant's failure to participate.

[For text of subd 2, see M.S.2002]

Subd. 3. Payments that delay unemployment benefits. (a) An applicant shall not be eligible to receive unemployment benefits for any week with respect to which the applicant is receiving, has received, or has filed for payment in the form of:

(1) severance pay, bonus pay, vacation pay, sick pay, and any other money payments, except earnings under subdivision 5, and back pay under subdivision 6, paid by an employer because of, upon, or after separation from employment, but only if the money payment is considered wages at the time of payment under section 268.035, subdivision 29, or United States Code, title 26, section 3121, clause (2), of the Federal Insurance Contribution Act. This clause shall apply to all the weeks of payment and 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 applicant'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 applicant's last level of regular weekly pay from the employer. This clause shall not apply to vacation pay paid by an employer upon permanent separation from employment;

(2) pension, retirement, or annuity payments from any plan contributed to by a base period employer including the United States government, except social security benefits which are provided for in subdivision 4. The base period employer contributed to the plan if the contribution is excluded from the definition of wages under section 268.035, subdivision 29, clause (1), or United States Code, title 26, section 3121, clause (2), of the Federal Insurance Contribution Act.

If the applicant receives a lump sum pension payment, that sum shall be divided by the applicant's last level of regular weekly pay to determine the number of weeks of payment. The number of weeks of payment shall be applied to the period immediately following the last day of employment. An applicant shall not be considered to have received the lump sum payment if the applicant immediately deposits that payment in a qualified pension plan or account; or

(3) holiday pay.

(b) If the payment is less than the applicant's weekly unemployment benefit amount, unemployment benefits shall be reduced by the amount of the payment. If the computation of reduced unemployment benefits is not a whole dollar, it shall be rounded down to the next lowest dollar.

Subd. 3a. **Workers' compensation and disability insurance offset.** (a) An applicant is not eligible to receive unemployment benefits for any week in which the applicant is receiving or has received compensation for loss of wages equal to or in excess of the applicant's weekly unemployment benefit amount under:

- (1) the workers' compensation law of this state;
- (2) the workers' compensation law of any other state or similar federal law; or
- (3) any insurance or trust fund paid in whole or in part by an employer.

(b) This subdivision shall not apply to an applicant who has a claim pending for loss of wages under paragraph (a); however, before unemployment benefits may be paid when a claim is pending, the issue of the applicant being able to work, as required under subdivision 1, clause (2), shall be determined under section 268.101, subdivision 3. If the applicant later receives compensation as a result of the pending claim, the applicant is subject to the provisions of paragraph (a) and the unemployment benefits paid shall be subject to recoupment by the commissioner to the extent that the compensation constitutes overpaid unemployment benefits.

(c) If the amount of compensation described under paragraph (a) for any week is less than the applicant's weekly unemployment benefit amount, unemployment benefits requested for that week shall be reduced by the amount of that compensation payment.

Subd. 4. **Social security benefits.** (a) Any applicant aged 62 or over shall be required to state when filing an application for unemployment benefits and when filing continued biweekly requests for unemployment benefits whether the applicant is receiving, has filed for, or intends to file for, primary social security old age or disability benefits for any week during the benefit year.

(b) There shall be deducted from an applicant's weekly unemployment benefit amount 50 percent of the weekly equivalent of the primary social security old age or disability benefit the applicant has received, has filed for, or intends to file for, with respect to that week.

(c) Regardless of paragraph (b), an applicant shall be ineligible for unemployment benefits for any week with respect to which the applicant is receiving, has received, or has filed for primary social security disability benefits.

This paragraph shall not apply if the Social Security Administration approved the collecting of primary social security disability benefits each month the applicant was employed during the base period.

(d) Information from the Social Security Administration shall be considered conclusive, absent specific evidence showing that the information was erroneous.

(e) Any applicant who receives primary social security old age or disability benefits for periods that the applicant has been paid unemployment benefits shall be considered overpaid those unemployment benefits under section 268.18, subdivision 1.

Subd. 5. **Deductible earnings.** (a) If the applicant has earnings with respect to any week, from employment, covered employment, noncovered employment, self-employment, or volunteer work, equal to or in excess of the applicant's weekly unemployment benefit amount, the applicant shall be ineligible for unemployment benefits for that week.

(b) If the applicant has earnings, with respect to any week, that is less than the applicant's weekly unemployment benefit amount, from employment, covered employment, noncovered employment, self-employment, or volunteer work, that amount over the following shall be deducted from the weekly unemployment benefit amount:

- (1) 25 percent of earnings or \$50, whichever is higher; and
- (2) \$200 for earnings from service in the National Guard or a United States military reserve unit.

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

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

(d) The applicant may report deductible earnings on continued biweekly requests for unemployment benefits at the nearest whole dollar amount.

(e) Earnings shall not include any money considered a deductible payment under subdivision 3, but shall include all other money considered wages and any other money considered earned income under state and federal law for income tax purposes.

Subd. 6. Receipt of back pay. (a) Back pay received by an applicant with respect to any week occurring in the 104 weeks prior to the payment of the back pay shall be deducted from unemployment benefits paid for that week.

If an arbitration award, administrative or judicial decision, or negotiated settlement that provides for back pay does not specify the period with respect to which it is paid, the back pay shall be applied to the period immediately following the last day of employment.

(b) If the back pay is reduced by the amount of unemployment benefits that have been paid, the amount of back pay withheld shall be:

(1) paid by the employer to the trust fund within 30 calendar days and subject to the same collection procedures that apply to past due taxes;

(2) applied to unemployment benefit overpayments resulting from the payment of the back pay; and

(3) credited to the maximum amount of unemployment benefits available to the applicant in a benefit year that includes the weeks for which back pay was deducted.

(c) Unemployment benefits paid the applicant shall be removed from the computation of the tax rate for taxpaying employers and removed from the reimbursable account for nonprofit and government employers that have elected to be liable for reimbursements in the calendar quarter the trust fund receives payment.

(d) Payments to the trust fund under this subdivision shall be considered as made by the applicant.

Subd. 7. School employees. (a) No wage credits in any amount from any employment with any educational institution or institutions earned in any capacity may be used for unemployment benefit purposes for any week during the period between two successive academic years or terms if:

(1) the applicant had employment for any educational institution or institutions in the prior academic year or term; and

(2) there is a reasonable assurance that the applicant will have employment for any educational institution or institutions in the following academic year or term, unless that subsequent employment is substantially less favorable than the employment of the prior academic year or term.

(b) Paragraph (a) shall not apply to an applicant who, at the end of the prior academic year or term, had an agreement for a definite period of employment between academic years or terms in other than an instructional, research, or principal administrative capacity and the educational institution or institutions failed to provide that employment.

(c) If unemployment benefits are denied to any applicant under paragraph (a) who was employed in the prior academic year or term in other than an instructional, research, or principal administrative capacity and who was not offered an opportunity to perform the employment in the following academic year or term, the applicant shall be entitled to retroactive unemployment benefits for each week during the period between academic years or terms that the applicant filed a timely continued biweekly request for unemployment benefits, but unemployment benefits were denied solely because of paragraph (a).

(d) An educational assistant shall not be considered to be in an instructional, research, or principal administrative capacity.

(e) Paragraph (a) shall apply to any vacation period or holiday recess if the applicant was employed immediately before the vacation period or holiday recess, and there is a reasonable assurance that the applicant will be employed immediately following the vacation period or holiday recess.

(f) This subdivision shall apply to employment with an educational service agency if the applicant performed the services at an educational institution or institutions. "Educational service agency" means a governmental agency or entity established and operated exclusively for the purpose of providing services to one or more educational institutions. This subdivision shall also apply to employment with Minnesota or a political subdivision, or a nonprofit organization, if the services are provided to or on behalf of an educational institution or institutions.

(g) Paragraphs (a) and (e) shall apply beginning the Sunday of the week that there is a reasonable assurance of employment.

(h) Employment with multiple education institutions shall be aggregated for purposes of application of this subdivision.

(i) If all of the applicant's employment with any educational institution or institutions during the prior academic year or term consisted of on-call employment, and the applicant has a reasonable assurance of any on-call employment with any educational institution or institutions for the following academic year or term, it shall not be considered substantially less favorable employment.

(j) Paragraph (a) shall also apply to the period between two regular but not successive terms.

(k) A "reasonable assurance" may be written, oral, implied, or established by custom or practice.

(l) An "educational institution" is an educational entity operated by Minnesota or a political subdivision or an instrumentality thereof, or an educational organization described in United States Code, title 26, section 501(c)(3) of the federal Internal Revenue Code, and exempt from income tax under section 501(a).

[For text of subds 8 to 13a, see M.S.2002]

Subd. 13b. Labor dispute. (a) An applicant who has stopped working because of a labor dispute at the establishment where the applicant is employed shall be ineligible for unemployment benefits:

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

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

Participation includes any failure or refusal by an applicant, voluntarily or involuntarily, to accept and perform available and customary work at the establishment.

(b) An applicant who has stopped working because of a jurisdictional controversy between two or more labor organizations at the establishment where the applicant is employed shall be ineligible for unemployment benefits until the end of the calendar week that the jurisdictional controversy was in progress.

(c) An applicant shall not be ineligible for unemployment benefits under this subdivision if:

(1) the applicant stops working because of an employer's intentional 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 or state laws involving occupational safety and health;

(2) the applicant stops working because of a lockout; or

(3) the applicant is discharged prior to the beginning of a labor dispute.

(d) A quit from employment by the applicant during the time that the labor dispute is in active progress at the establishment shall not terminate the applicant's participation in or direct interest in the 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.

[For text of subds 14 to 16, see M.S.2002]

History: *1Sp2003 c.3 art 1 s 8; art 2 s 20*

268.086 CONTINUED BIWEEKLY REQUEST FOR UNEMPLOYMENT BENEFITS ON AN ACTIVE BENEFIT ACCOUNT.

Subdivision 1. Active benefit account. (a) A benefit account shall be considered active only when an applicant files continued biweekly requests for unemployment benefits in the manner and within the time periods prescribed. A benefit account shall be considered inactive if an applicant stops filing a continued biweekly request or fails to file a continued biweekly request within the time period required. The benefit account shall be considered inactive as of the Sunday following the last week or biweekly period for which a continued biweekly request has been timely filed.

(b) A benefit account that is inactive shall be reactivated the Sunday of the week that the applicant makes a contact with the department to do so, in the manner prescribed by the commissioner for reactivating that applicant's benefit account. Upon specific request of an applicant, a benefit account may be reactivated effective up to two weeks prior to the week the applicant made contact with the department to reactivate.

Subd. 2. Continued biweekly request for unemployment benefits defined. A continued biweekly request for unemployment benefits is a certification by an applicant, done on a biweekly basis, that the applicant is unemployed and meets the ongoing eligibility requirements for unemployment benefits under section 268.085 for a specific week or two-week period. A continued biweekly request shall include information on possible issues of disqualification in accordance with section 268.101, subdivision 1, paragraph (c).

Subd. 3. Methods for filing continued biweekly requests for unemployment benefits. (a) The commissioner shall designate to each applicant one of the following methods for filing a continued biweekly request:

- (1) by telephone under subdivision 4;
- (2) by electronic transmission under subdivision 5;
- (3) by mail under subdivision 6; or
- (4) by in-person interview under subdivision 7.

(b) The method designated by the commissioner shall be the only method allowed for filing a continued biweekly request by that applicant. An applicant may ask that one of the other allowed methods be designated and the commissioner shall consider inconvenience to the applicant as well as administrative capacity in determining whether to allow an applicant to change the designated method for filing a continued biweekly request for unemployment benefits.

Subd. 4. Continued biweekly request for unemployment benefits by telephone. (a) A continued biweekly request by telephone shall be made to a telephone number required by the commissioner for that applicant. In order to constitute a continued biweekly request, all information asked for, including information authenticating that the caller is the applicant, must be provided. If all of the information asked for is not provided, the communication shall not constitute a continued biweekly request for unemployment benefits.

The telephone communication must be made on the date required for the applicant for filing a continued biweekly request for unemployment benefits by telephone.

(b) If the telephone continued biweekly request for unemployment benefits is not filed on the date required, a continued biweekly request by telephone shall be accepted if the applicant files the continued biweekly request by telephone within 14 days following the week in which the date required occurred. If the continued biweekly

request by telephone is not filed within 14 days following the week in which the date required occurred, the telephone continued biweekly request shall not be accepted and the applicant shall be ineligible for unemployment benefits for the period covered by the continued biweekly request and the benefit account shall be considered inactive, unless the applicant shows good cause for failing to file the continued biweekly request by telephone within the time period requested.

Subd. 5. Continued biweekly request for unemployment benefits by electronic transmission. (a) A continued biweekly request for unemployment benefits by electronic transmission shall be filed to that electronic mail address or Internet address prescribed by the commissioner for that applicant. In order to constitute a continued biweekly request, all information asked for, including information authenticating that the applicant is sending the transmission, must be provided in the format required. If all of the information asked for is not provided, the communication shall not constitute a continued biweekly request for unemployment benefits.

The electronic transmission communication must be filed on the date required for the applicant for filing a continued biweekly request by electronic transmission.

(b) If the electronic transmission continued biweekly request is not filed on the date required, a continued biweekly request by electronic transmission shall be accepted if the applicant files the continued biweekly request by electronic transmission within 14 days following the week in which the date required occurred. If the continued biweekly request by electronic transmission is not filed within 14 days following the week in which the date required occurred, the electronic continued biweekly request shall not be accepted and the applicant shall be ineligible for unemployment benefits for the period covered by the continued biweekly request and the benefit account shall be considered inactive, unless the applicant shows good cause for failing to file the continued biweekly request by electronic transmission within the time period required.

Subd. 6. Continued biweekly request for unemployment benefits by mail. (a) A continued biweekly request for unemployment benefits by mail shall be on a form prescribed by the commissioner. The form, in order to constitute a continued biweekly request, must be totally completed and signed by the applicant.

The form must be filed on the date required for the applicant for filing a continued biweekly request by mail, in an envelope with postage prepaid thereon, and sent to the address required by the commissioner for that applicant.

(b) If the mail continued biweekly request for unemployment benefits is not filed on the date required, a continued biweekly request shall be accepted if the form is filed by mail within 14 days following the week in which the date required occurred. If the form is not filed within 14 days following the week in which the date required occurred, the form shall not be accepted and the applicant shall be ineligible for unemployment benefits for the period covered by the continued biweekly request for unemployment benefits and the benefit account shall be considered inactive, unless the applicant shows good cause for failing to file the form by mail within the time period required.

(c) If the applicant has been designated to file a continued biweekly request for unemployment benefits by mail, an applicant may submit the form by facsimile transmission on the day otherwise required for mailing, or within 14 days following the week in which the date required occurred. A form submitted by facsimile transmission shall be sent only to the telephone number assigned for that purpose.

(d) An applicant who has been designated to file a continued biweekly request by mail may personally deliver a continued biweekly request form only to the location to which the form was otherwise required to be mailed.

Subd. 7. In-person continued biweekly request for unemployment benefits. The commissioner may require any applicant who has been designated to make a continued biweekly request for unemployment benefits by telephone, by electronic transmission, or by mail to appear for a personal interview at a place, time, and date designated, during which a written continued biweekly request for unemployment benefits form shall be completed and submitted by the applicant.

An applicant shall be ineligible for unemployment benefits for the week or biweekly period covered by a continued biweekly request and the benefit account shall be considered inactive if the applicant fails, without good cause, to comply with the requirement that the applicant appear for a personal interview and at that time complete and submit a written continued biweekly request form.

Subd. 8. Good cause. A continued biweekly request for unemployment benefits that is not filed within the time periods required by this section shall be accepted only for those weeks that the applicant has "good cause" for not filing within the time periods required.

Subd. 9. Good cause defined. "Good cause" for purposes of this section is a compelling substantial reason that would have prevented a reasonable person acting with due diligence from filing a continued biweekly request for unemployment benefits within the time periods required.

"Good cause" shall not include forgetfulness, loss of the continued biweekly request form, having returned to work, or inability to file a continued biweekly request for unemployment benefits by the method designated if the applicant was aware of the inability and did not make diligent effort to have the method of filing a continued biweekly request changed by the commissioner. "Good cause" shall not include having previously made an attempt to file a continued biweekly request for unemployment benefits but where the communication was not considered a continued biweekly request because the applicant failed to submit all required information.

History: 1Sp2003 c 3 art 2 s 10,20

268.095 DISQUALIFICATION PROVISIONS.

Subdivision 1. Quit. An applicant who quit employment shall be ineligible for all unemployment benefits except when:

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

(2) the applicant quit the employment to accept other covered employment that provided substantially better terms and conditions of employment, but the applicant did not work long enough at the other employment to have sufficient subsequent earnings to satisfy the disqualification that would otherwise be imposed;

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

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

(5) the employment was part time and the applicant had full-time employment in the base period, that the applicant separated from because of nondisqualifying reasons, sufficient to meet the minimum requirements to establish a benefit account under section 268.07;

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

(7) the applicant quit the employment because the applicant's serious illness or injury made it medically necessary that the applicant quit, provided that the applicant inform the employer of the serious illness or injury and request accommodation and no reasonable accommodation is made available.

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

(8) domestic abuse of the applicant or the applicant's minor child, necessitated the applicant's quitting the employment. Domestic abuse shall be shown by one or more of the following:

(i) a court order for protection or other documentation of equitable relief issued by a court;

(ii) a police record documenting the domestic abuse;

(iii) documentation that the perpetrator of the domestic abuse has been convicted of the offense of domestic abuse;

(iv) medical documentation of domestic abuse; or

(v) written statement that the applicant or the applicant's minor child is a victim of domestic abuse, provided by a social worker, member of the clergy, shelter worker, attorney at law, or other professional who has assisted the applicant in dealing with the domestic abuse.

Domestic abuse for purposes of this clause shall be defined under section 518B.01.

Subd. 2. **Quit defined.** (a) A quit from employment occurs when the decision to end the employment was, at the time the employment ended, the employee's.

(b) An employee who has been notified that the employee will be discharged in the future, who chooses to end the employment while employment in any capacity is still available, shall be considered to have quit the employment.

(c) 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.

(d) An applicant who, within five calendar days after completion of a suitable temporary job assignment from a staffing service employer, (1) fails without good cause to affirmatively request an additional job assignment, or (2) refuses without good cause an additional suitable job assignment offered, shall be considered to have quit employment.

This paragraph shall apply only if, at the time of beginning of employment with the staffing service employer, the applicant signed and was provided a copy of a separate document written in clear and concise language that informed the applicant of this paragraph and that unemployment benefits may be affected.

For purposes of this paragraph, "good cause" shall be a reason that is significant and would compel an average, reasonable worker, who would otherwise want an additional temporary job assignment with the staffing service employer, (1) to fail to contact the staffing service employer, or (2) to refuse an offered assignment.

For purposes of this paragraph, a "staffing service employer" is an employer whose business involves employing individuals directly for the purpose of furnishing temporary job assignment workers to clients of the staffing service.

Subd. 3. **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 and become unemployed rather than remaining in the employment.

(b) If an applicant was subjected to adverse working conditions by the employer, the applicant must complain to the employer and give the employer a reasonable opportunity to correct the adverse working conditions before that may be considered a good reason caused by the employer for quitting.

(c) A substantial adverse change in the wages, hours, or other terms of employment by the employer shall be considered a good reason caused by the employer for quitting unless the change occurred because of the applicant's employment misconduct.

(d) Notification of discharge in the future, including a layoff due to lack of work, shall not be considered a good reason caused by the employer for quitting.

(e) An applicant has a good reason caused by the employer for quitting if it results from sexual harassment of which the employer was aware, or should have been aware, and the employer failed to take timely and appropriate action. 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 applicant's submission to the conduct or communication is made a term or condition of the employment;
- (2) the applicant'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 an applicant's work performance or creating an intimidating, hostile, or offensive working environment.

(f) The definition of a good reason caused by the employer for quitting employment provided by this subdivision shall be exclusive and no other definition shall apply.

Subd. 4. **Discharge.** An applicant who was discharged from employment by an employer shall not be ineligible for any unemployment benefits except when:

- (1) the applicant was discharged because of employment misconduct; or
- (2) the applicant was discharged because of aggravated employment misconduct.

[For text of subd 5, see M.S.2002]

Subd. 6. **Employment misconduct defined.** (a) Employment misconduct means any intentional, negligent, or indifferent conduct, on the job or off the job (1) that evinces a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee, or (2) that demonstrates a substantial lack of concern for the employment.

Inefficiency, inadvertence, simple unsatisfactory conduct, a single incident that does not have a significant adverse impact on the employer, conduct an average reasonable employee would have engaged in under the circumstances, poor performance because of inability or incapacity, good faith errors in judgment if judgment was required, or absence because of illness or injury with proper notice to the employer, are not employment misconduct.

(b) Conduct that was a direct result of the applicant's chemical dependency is not employment misconduct unless the applicant was previously diagnosed chemically dependent or had treatment for chemical dependency, and since that diagnosis or treatment has failed to make consistent efforts to control the chemical dependency.

(c) Conduct that was a result of the applicant, or the applicant's minor child, being a victim of domestic abuse as defined under section 518B.01, is not employment misconduct. Domestic abuse shall be shown as provided for in section 268.095, subdivision 1, clause (8).

(d) A driving offense in violation of sections 169A.20, 169A.31, or 169A.50 to 169A.53 that interferes with or adversely affects the employment is employment misconduct.

(e) The definition of employment misconduct provided by this subdivision shall be exclusive and no other definition shall apply.

[For text of subd 6a, see M.S.2002]

Subd. 7. **Act or omissions after separation.** Except as provided for under subdivision 8, an applicant shall not be ineligible for unemployment benefits under this section for any acts or omissions occurring after the applicant's separation from employment with the employer. A layoff due to lack of work is considered a separation from employment.

Subd. 8. **Offers of employment.** (a) An applicant shall be ineligible for all unemployment benefits if the applicant, without good cause:

- (1) failed to apply for available, suitable employment of which the applicant 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) "Good cause" is a reason that would cause a reasonable individual who wants suitable employment to fail to apply for, accept, or avoid suitable employment. Good cause includes:

(1) the applicant is employed in other suitable employment;

(2) the applicant is in reemployment assistance training;

(3) the applicant formerly worked for the employer and the loss of employment occurred prior to the commencement of a labor dispute, was permanent or for an indefinite period, and the applicant failed to apply for or accept the employment because a labor dispute was in progress at the establishment; or

(4) the applicant formerly worked for the employer and quit that employment because of a good reason caused by the employer.

(c) This subdivision only applies to offers of employment with a new or a former employer and does not apply to any type of job transfers, position reassignments, or changes in job duties or responsibilities during the course of employment with an employer.

[For text of subd 10, see M.S.2002]

Subd. 11. Application. (a) This section shall apply to all covered employment, full time or part time, temporary or of limited duration, permanent or of indefinite duration, that occurred in Minnesota during the base period, the period between the end of the base period and the effective date of the benefit account, or the benefit year, except as provided for in subdivision 1, clause (5). Subdivision 8 shall only apply to offers of suitable employment made during the applicant's benefit year.

(b) Paragraph (a) shall also apply to employment covered under an unemployment insurance program of any other state or established by an act of Congress.

Subd. 12. [Renumbered 268.085, subd 13b]

History: *1Sp2003 c 3 art 2 s 11-14, 20*

268.101 DETERMINATIONS ON DISQUALIFICATION AND ELIGIBILITY.

Subdivision 1. Notification. (a) In an application for unemployment benefits, each applicant shall report the name and the reason for no longer working for the applicant's most recent employer, as well as the names of all employers and the reasons for no longer working for all employers during the six calendar months prior to the date of the application. If the reason reported for no longer working for any of those employers is other than a layoff due to lack of work, that shall raise an issue of disqualification that the department shall determine. An applicant's failure to report the name of an employer, or giving an incorrect reason for no longer working for an employer, shall be considered a violation of section 268.182, paragraph (b).

In an application, the applicant shall provide all information necessary to determine the applicant's eligibility for unemployment benefits under section 268.085. If the applicant fails or refuses to provide information necessary to determine the applicant's eligibility for unemployment benefits under section 268.085, the applicant shall be ineligible for unemployment benefits under section 268.085, subdivision 2, until the applicant provides this required information.

(b) Upon establishment of a benefit account, the commissioner shall notify, by mail or electronic transmission, all employers the applicant was required to report on the application and all base period employers and determined successors to those employers under section 268.051, subdivision 4 in order to provide the employer an opportunity to raise, in a manner prescribed by the commissioner, any issue of disqualification or any issue of eligibility. An employer shall be informed of the effect that failure to raise an issue of disqualification within ten calendar days after sending of the notice, as provided for under subdivision 2, paragraph (b), may have on the employer under section 268.047.

(c) Each applicant shall report any employment, loss of employment, and offers of employment received, during those weeks the applicant filed continued biweekly requests for unemployment benefits pursuant to section 268.086. Each applicant who stops filing continued biweekly requests during the benefit year and later begins filing continued biweekly requests during that same benefit year shall report the name of any employer the applicant worked for during the period between the filing of continued biweekly requests and the reason the applicant stopped working for the employer. The applicant shall report any offers of employment during the period between the filing of continued biweekly requests for unemployment benefits. Those employers from which the applicant has reported a loss of employment or an offer of employment pursuant to this paragraph shall be notified by mail or electronic transmission and provided an opportunity to raise, in a manner prescribed by the commissioner, any issue of disqualification or any issue of eligibility. An employer shall be informed of the effect that failure to raise an issue may have on the employer under section 268.047.

(d) The purpose for requiring the applicant to report the name of employers and the reason for no longer working for those employers under paragraphs (a) and (c) is for the commissioner to obtain information from an applicant raising all issues that may have the potential of disqualifying the applicant from unemployment benefits under section 268.095. If the reason given by the applicant for no longer working for an employer is other than a layoff due to lack of work, that shall raise an issue of disqualification and the applicant shall be required, as part of the determination process under subdivision 2, paragraph (a), to state all the facts about the cause for no longer working for the employer, if known. If the applicant fails or refuses to provide this information, the applicant shall be ineligible for unemployment benefits under section 268.085, subdivision 2, until the applicant provides this required information.

[For text of subd 2, see M.S.2002]

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

(b) The commissioner shall determine any issue of eligibility raised by information obtained from an applicant and mail to the applicant at the last known address a determination of eligibility or a determination of ineligibility, as is appropriate. A determination shall be made pursuant to this paragraph even if a notified employer has not raised the issue of eligibility.

(c) If any time within 24 months from the establishment of a benefit account the commissioner finds the applicant failed to provide, on an application for unemployment benefits or on a continued biweekly request for unemployment benefits, requested information on an issue of eligibility, the commissioner shall determine the issue of eligibility and mail to the applicant at the last known address a determination of eligibility or a determination of ineligibility, as is appropriate.

This paragraph shall not prevent the imposition of a penalty under section 268.18, subdivision 2, or 268.182.

(d) A determination of eligibility or determination of ineligibility shall be final unless an appeal is filed by the applicant or notified employer within 30 calendar days after mailing. The determination shall contain a prominent statement indicating the consequences of not appealing. Proceedings on the appeal shall be conducted in accordance with section 268.105.

(e) An issue of eligibility for purposes of this section shall include any question regarding the denial or allowing of unemployment benefits under sections 268.085, 268.086, 268.115, 268.125, 268.135, and 268.155.

(f) Only if an employer raised the issue of eligibility shall the employer be: (1) mailed the determination of eligibility or a determination of ineligibility, or (2) considered an involved employer for purposes of an appeal under section 268.105.

Subd. 3a. **Direct hearing.** Regardless of any provision of the Minnesota Unemployment Insurance Law, the commissioner or an unemployment law judge may refer any issue of disqualification, any issue of eligibility, or any other issue under sections 268.035 to 268.23, 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.

[For text of subds 4 to 6, see M.S.2002]

History: 1Sp2003 c 3 art 2 s 20

268.105 HEARINGS; APPEALS.

[For text of subds 1 to 6, see M.S.2002]

Subd. 7. **Judicial review.** (a) The Minnesota Court of Appeals shall, by writ of certiorari to the commissioner, review the decision of the commissioner provided a petition for the writ is filed with the court and a copy is served upon the commissioner and any other involved party within 30 calendar days of the mailing of the commissioner's decision.

(b) Any employer petitioning for a writ of certiorari shall pay to the court the required filing fee and upon the service of the writ shall furnish a cost bond to the commissioner in accordance with the rules of civil appellate procedure. If the employer requests a written transcript of the testimony received at the evidentiary hearing conducted pursuant to subdivision 1, the employer shall pay to the commissioner the cost of preparing the transcript.

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

(d) The commissioner shall be considered the primary responding party to any judicial action involving the commissioner's decision. The commissioner may be represented by an attorney who is an employee of the department designated by the commissioner for that purpose.

History: 1Sp2003 c 3 art 2 s 15

268.115 EXTENDED UNEMPLOYMENT BENEFITS.

Subdivision 1. **Definitions.** The terms used in this section shall have the following meaning:

(1) "Extended unemployment benefit period" means a period that lasts for a minimum of 13 weeks and that:

- (i) Begins with the third week after there is a state "on" indicator; and
- (ii) Ends with the third week after there is a state "off" indicator.

No extended unemployment benefit period may begin before the 14th week following the end of a prior extended unemployment benefit period.

(2) There is a "state 'on' indicator" for a week if:

(i) for that week and the prior 12 weeks, the rate of insured unemployment:

(a) equaled or exceeded 120 percent of the average of the rates for the corresponding 13-week period ending in each of the prior two calendar years, and was five percent or more; or

(b) equaled or exceeded six percent; or

(ii) The United States Secretary of Labor determines that the average rate of seasonally adjusted total unemployment in Minnesota for the most recent three months for which data is published equals or exceeds 6.5 percent and this rate equals or

exceeds 110 percent of the rate of the corresponding three-month period in either of the prior two calendar years.

(3) There is a "state 'off' indicator" for a week if:

(i) under clause (2)(i), for that week and the prior 12 weeks, the requirements for a "state 'on' indicator" are not satisfied; or

(ii) under clause (2)(ii) the requirements for a "state 'on' indicator" are not satisfied.

(4) "Rate of insured unemployment," means the percentage derived by dividing the average weekly number of applicants filing continued biweekly requests for regular unemployment benefits in the most recent 13-week period by the average monthly covered employment for the first four of the last six completed calendar quarters before the end of that 13-week period.

(5) "Regular unemployment benefits" means unemployment benefits available to an applicant other than extended unemployment benefits and additional unemployment benefits.

(6) "Eligibility period" for an applicant means the period consisting of the weeks remaining in the applicant's benefit year within the extended unemployment benefit period and, if the benefit year ends within the extended unemployment benefit period, any weeks in the extended unemployment benefit period.

(7) "Exhaustee" means an applicant who, in the eligibility period:

(a) the benefit year having not expired has received the maximum amount of regular unemployment benefits that were available under section 268.07;

(b) the benefit year having expired, has insufficient wage credits to establish a new benefit account; and

(c) has no right to any type of unemployment benefits under the law of any other state or under federal laws and is not receiving unemployment benefits under the law of Canada.

Subd. 3. Requirements for extended unemployment benefits. If an extended unemployment benefit period is in effect, an applicant shall be paid extended unemployment benefits from the trust fund for any week in the applicant's eligibility period if the applicant:

(1) is an "exhaustee";

(2) has satisfied the same requirements as those for regular unemployment benefits under section 268.069;

(3) has wage credits of not less than 40 times the weekly unemployment benefit amount; and

(4) is not subject to a denial of extended unemployment benefits under subdivision 9.

[For text of subds 4 to 9, see M.S.2002]

Subd. 10. Job service referral. The job service shall refer any applicant who is filing continued biweekly requests for extended unemployment benefits to any employment that is suitable under subdivision 9.

History: 1Sp2003 c 3 art 2 s 20

268.125 ADDITIONAL UNEMPLOYMENT BENEFITS.

[For text of subd 1, see M.S.2002]

Subd. 2. Payment of unemployment benefits. Additional unemployment benefits are payable from the trust fund.

[For text of subds 3 to 5, see M.S.2002]

History: 1Sp2003 c 3 art 2 s 20

268.131 RECIPROCAL UNEMPLOYMENT BENEFIT ARRANGEMENTS.

Subdivision 1. **Cooperation with other state and federal government.** (a) The commissioner shall participate in reciprocal arrangements with other states and the federal government, or both, for the payment of unemployment benefits on the basis of combining an applicant's wages and employment covered under this law with wages and employment covered under the unemployment insurance programs of other states or the federal government that include provisions for applying the base period of a single state law to an account involving the combining of an applicant's wages and employment and avoiding the duplicate use of wages by reason of such combining. No reciprocal arrangement shall be entered into unless it contains provisions for reimbursements to the trust fund, by the other state or the federal government, for unemployment benefits paid from the trust fund to applicants based upon wages and employment covered under the laws of the other state or the federal government.

(b) On any reciprocal arrangement, the wages paid an applicant from employment covered under an unemployment insurance program of another state or of the federal government, shall be considered wages from covered employment for the purpose of determining the applicant's rights to unemployment benefits under the Minnesota Unemployment Insurance Law.

Subd. 2. **Cooperation with foreign governments.** The commissioner is authorized to enter into or cooperate in arrangements whereby facilities and services provided under the Minnesota Unemployment Insurance Law and facilities and services provided under the unemployment insurance program of any foreign government, may be used for the taking of applications for unemployment benefits and continued biweekly requests and the payment of unemployment benefits under this law or under a similar law of a foreign government.

History: 1Sp2003 c 3 art 2 s 20

268.145 INCOME TAX WITHHOLDING.

[For text of subd. 1, see M.S.2002]

Subd. 2. **Transfer of funds.** The amount of any unemployment benefits deducted under this section shall remain in the trust fund until transferred to the federal Internal Revenue Service, or the Department of Revenue, as an income tax payment on behalf of the applicant.

[For text of subds 3 to 5, see M.S.2002]

History: 1Sp2003 c 3 art 2 s 20

268.18 UNEMPLOYMENT BENEFIT OVERPAYMENTS.

Subdivision 1. **Nonfraud overpayment.** (a) Any applicant who (1) by reason of the applicant's own mistake, or (2) because of an error by any employee of the department, or (3) because of a determination, redetermination, or amended determination issued pursuant to section 268.07 or 268.101, or (4) because of an appeal decision under section 268.105, has received any unemployment benefits that the applicant was not entitled to, shall promptly repay the unemployment benefits to the trust fund. The commissioner shall, as soon as the overpayment is discovered, determine the amount due and notify the applicant in writing to repay the unemployment benefits.

(b) Unless the applicant files an appeal within 30 calendar days after the mailing of the determination of overpayment to the applicant's last known address, the determination shall become final. Proceedings on the appeal shall be conducted in accordance with section 268.105. An applicant 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 applicant fails to repay the unemployment benefits determined overpaid under this subdivision, the commissioner may offset from any future unemployment

benefits otherwise payable the amount of the overpayment. Except when the overpayment resulted because the applicant failed to report deductible earnings or deductible or benefit delaying payments, no single offset shall exceed 50 percent of the amount of the payment from which the offset is made. The overpayment may also be collected by the same methods as delinquent taxes. A determination of overpayment shall state the methods of collection the commissioner may use to recover the overpayment.

(d) If an applicant has been overpaid unemployment benefits under the law of another state, due to a reason other than fraud, and that state certifies that the applicant is liable under its law to repay the unemployment benefits and requests the commissioner to recover the overpayment, the commissioner may offset from future unemployment benefits otherwise payable the amount of overpayment, except that no single offset shall exceed 50 percent of the amount of the payment from which the offset is made.

(e) Unemployment benefits paid for weeks more than three years prior to the discovery of overpayment under this subdivision are not overpaid unemployment benefits.

Subd. 2. Overpayment due to fraud. (a) Any applicant who receives unemployment benefits by intentionally misrepresenting, misstating, or failing to disclose any material fact has committed fraud. After the discovery of facts indicating fraud, the commissioner shall make a written determination that the applicant obtained unemployment benefits by fraud and that the applicant must promptly repay the unemployment benefits to the trust fund. In addition, the commissioner shall assess a penalty equal to 25 percent of the amount fraudulently obtained. If the applicant had a prior overpayment due to fraud, the commissioner shall, on the present overpayment, assess a penalty equal to 50 percent of the amount fraudulently obtained.

(b) Unless the applicant files an appeal within 30 calendar days after the mailing of the determination of overpayment by fraud to the applicant'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 applicant fails to repay the unemployment benefits, penalty, and interest assessed, the commissioner shall offset from future unemployment benefits otherwise payable the amount of overpayment. The total due may also be collected by the same methods as delinquent taxes. A determination of overpayment by fraud shall state the methods of collection the commissioner may use to recover the overpayment. Money received in repayment of fraudulently obtained unemployment benefits, penalties, and interest shall first be applied to the unemployment benefits overpaid, then to the penalty amount due, then to any interest due. Payments made toward penalty and interest shall be credited to the contingent account.

(d) If an applicant has been overpaid unemployment benefits under the law of another state because of fraud and that state certifies that the applicant is liable to repay the unemployment benefits and requests the commissioner to recover the overpayment, the commissioner may offset from future unemployment benefits otherwise payable the amount of overpayment.

(e) A determination of overpayment by fraud may be made at any time.

[For text of subd 2b, see M.S.2002]

Subd. 3a. Offset of federal unemployment benefits. The commissioner is authorized to enter into reciprocal agreements with the United States Secretary of Labor, whereby, overpayments of unemployment benefits as determined under federal law, may be recovered by offset from unemployment benefits otherwise payable and unemployment benefit overpayments under subdivisions 1 and 2 may be recovered by offset from unemployment benefits otherwise payable under a federal program.

Subd. 4. Cancellation of overpayments. (a) If unemployment benefits determined overpaid under subdivision 1 are not repaid or offset from subsequent unemployment benefits 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 unemployment benefits determined overpaid under subdivision 2 including penalties and interest are not repaid or offset from subsequent unemployment 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 penalties and 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 any overpayment, including penalties and interest, that the commissioner determines is uncollectible due to death or bankruptcy.

[For text of subds 4a to 6, see M.S.2002]

History: 1Sp2003 c 3 art 2 s 16,17,20

268.186 RECORDS.

(a) Each employer shall keep true and accurate records for the periods of time and containing the information the commissioner may require. For the purpose of administering this chapter, the commissioner has the power to examine, or cause to be supplied or copied, any books, correspondence, papers, records, or memoranda that are relevant, whether the books, correspondence, papers, records, or memoranda are the property of or in the possession of the employer or any other person at any reasonable time and as often as may be necessary.

(b) The commissioner may make summaries, compilations, photographs, duplications, or reproductions of any records, or reports that the commissioner considers advisable for the preservation of the information contained therein. Any summaries, compilations, photographs, duplications, or reproductions shall be admissible in any proceeding under this chapter. The commissioner may duplicate records, reports, summaries, compilations, instructions, determinations, or any other written or recorded matter pertaining to the administration of this chapter.

(c) Regardless of any law to the contrary, the commissioner may provide for the destruction of any records, reports, or reproductions thereof, or other papers, that are more than two years old, and that are no longer necessary for determining employer liability or an applicant's unemployment benefit rights or for the administration of this chapter, including any required audit. The commissioner may provide for the destruction or disposition of any record, report, or other paper that has been photographed, duplicated, or reproduced.

History: 1Sp2003 c 1 art 2 s 77

268.19 DATA PRIVACY.

Subdivision 1. Use of data. (a) Except as otherwise provided by this section, data gathered from any employer or individual pursuant to the administration of the Minnesota Unemployment Insurance Law 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:

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

(2) any agency of Minnesota 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;

(3) human rights agencies within Minnesota that have enforcement powers;

(4) the Department of Revenue must have access to department private data on individuals and nonpublic data not on individuals only to the extent necessary for enforcement of Minnesota tax laws;

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

(6) the Department of Labor and Industry on an interchangeable basis with the department subject to the following limitations and regardless of any law to the contrary:

(i) the department must have access to private data on individuals and nonpublic data not on individuals for uses consistent with the administration of its duties under the Minnesota Unemployment Insurance Law; and

(ii) the Department of Labor and Industry must have access to private data on individuals and nonpublic data not on individuals for uses consistent with the administration of its duties under Minnesota law;

(7) the Department of Employment and Economic Development may have access to private data on individual employers and nonpublic data not on individual employers for its internal use only; when received by the Department of Employment and Economic Development, the data remain private data on individuals or nonpublic data;

(8) 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 or to monitor and evaluate the statewide Minnesota family investment program by providing data on recipients and former recipients of food stamps or food support, cash assistance under chapter 256, 256D, 256J, or 256K, child care assistance under chapter 119B, or medical programs under chapter 256B, 256D, or 256L;

(9) 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;

(10) the federal Immigration and Naturalization Service shall have access to data on specific individuals and specific employers provided the specific individual or specific employer is the subject of an investigation by that agency; and

(11) 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.

(b) Data on individuals and employers that 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 must 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.

(c) 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 must be disclosed only pursuant to the administration of section 268.105, or pursuant to a court order.

(d) The department may disseminate an employer's name, address, industry code, occupations employed, and the number of employees by ranges of not less than 100 for the purpose of assisting individuals using the Minnesota Workforce Center system in obtaining employment.

(e) The general aptitude test battery and the nonverbal aptitude test battery as administered by the department are private data on individuals or nonpublic data.

(f) Data gathered by the department pursuant to the administration of the Minnesota unemployment insurance program and the job service must not be made the

subject or the basis for any suit in any civil proceedings, administrative or judicial, unless the action is initiated by the department.

Subd. 1a. **Wage detail data.** (a) Wage and employment data gathered pursuant to section 268.044 may be disseminated to and used, without the consent of the subject of the data, by an agency of another state that is designated as the performance accountability and consumer information agency for that state pursuant to Code of Federal Regulations, volume 20, part 663.510(c), in order to carry out the requirements of the Workforce Investment Act of 1998, United States Code, title 29, sections 2842 and 2871.

(b) The commissioner may enter into a data exchange agreement with an employment and training service provider under section 116L.17, or the Workforce Investment Act of 1998, United States Code, title 29, section 2864, under which the commissioner, with the consent of the subject of the data, may furnish data on the quarterly wages paid and number of hours worked on those individuals who have received employment and training services from the provider. With the initial consent of the subject of the data, this data may be shared for up to three years after termination of the employment and training services provided to the individual without execution of an additional consent. This data shall be furnished solely for the purpose of evaluating the employment and training services provided. The data subject's ability to receive service is not affected by a refusal to give consent under this paragraph. The consent form must state this fact.

Subd. 2. **Employer information; absolute privilege.** (a) Regardless of any provision of law to the contrary, an employer may provide the commissioner with information on an applicant so that the commissioner can determine an applicant's entitlement to unemployment benefits under the Minnesota Unemployment Insurance Law.

(b) Information obtained pursuant to the Minnesota Unemployment Insurance Law, in order to determine an applicant's entitlement to unemployment benefits, shall be absolutely privileged and shall not be made the subject matter or the basis for any civil proceeding, administrative, or judicial.

History: *1Sp2003 c 3 art 2 s 20; 1Sp2003 c 4 s 1; 1Sp2003 c 8 art 2 s 16; 1Sp2003 c 14 art 1 s 106*

268.192 PROTECTION OF RIGHTS.

Subdivision 1. **Waiver of rights void.** Any agreement by an individual to waive, release, or commute rights to unemployment benefits or any other rights under the Minnesota Unemployment Insurance Law shall be void. Any agreement by an employee to pay all or any portion of an employer's taxes, shall be void. No employer shall directly or indirectly make or require or accept any deduction from wages to pay the employer's taxes, require or accept any waiver of any right or in any manner obstruct or impede an application or continued biweekly request for unemployment benefits. Any employer or officer or agent of any employer who violates any portion of this subdivision shall, for each offense, be guilty of a misdemeanor.

[For text of subd 2, see M.S.2002]

History: *1Sp2003 c 3 art 2 s 20*

268.194 UNEMPLOYMENT INSURANCE TRUST FUND.

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

- (1) all taxes collected;
- (2) interest earned upon any money in the trust fund;
- (3) reimbursements paid by nonprofit organizations and the state and political subdivisions;

- (4) voluntary payments under section 268.051, subdivision 7;
- (5) any money received as a loan from the federal unemployment trust fund in accordance with United States Code, title 42, section 1321, of the Social Security Act;
- (6) any other money received pursuant to a reciprocal unemployment benefit arrangement with the federal government or any other state;
- (7) all money recovered on overpaid unemployment benefits;
- (8) all money recovered on losses sustained by the trust fund;
- (9) all money received from the contingent account under section 268.196, subdivision 3;
- (10) all money credited to the account of Minnesota in the federal unemployment trust fund pursuant to United States Code, title 42, section 1103, of the Social Security Act, also known as the Reed Act; and
- (11) all money received for the trust fund from any other source.

Subd. 2. **Commissioner of finance to be custodian; separate accounts.** (a) The commissioner of finance shall be the treasurer and custodian of the trust fund, administer the trust fund in accordance with the directions of the commissioner, and issue warrants upon it. The commissioner of finance shall maintain within the trust fund three separate accounts:

- (1) a clearing account;
- (2) an unemployment trust fund account; and
- (3) an unemployment benefit payment account.

All money payable to the trust fund, upon receipt by the commissioner, shall be forwarded to the commissioner of finance who shall immediately deposit the money in the clearing account. All money in the clearing account, after clearance, shall be deposited to the credit of Minnesota's account in the federal unemployment trust fund. Tax refunds payable pursuant to section 268.057 may be paid from the clearing account or the unemployment benefit payment account.

(b) The unemployment benefit payment account shall consist of all money requisitioned from Minnesota's account in the federal unemployment trust fund for the payment of unemployment benefits. Money in the clearing and unemployment benefit payment accounts may be deposited by the commissioner of finance, under the direction of the commissioner, in any depository bank that general funds of Minnesota may be deposited, but no public deposit insurance charge or premium shall be paid out of the trust fund. Money in the clearing and unemployment benefit payment accounts shall be maintained in separate accounts on the books of the depository bank. This 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 Minnesota.

[For text of subd 3, see M.S.2002]

Subd. 4. **Reimbursements.** The commissioner is authorized to make to other state or federal agencies and to receive from other state or federal agencies, reimbursements from or to the trust fund, in accordance with reciprocal arrangements entered into pursuant to section 268.131.

Money received pursuant to a reciprocal agreement shall be placed directly in the unemployment benefit payment account of the trust fund.

Subd. 5. **Reed Act money.** (a) Money credited to the account of Minnesota in the federal unemployment trust fund pursuant to United States Code, title 42, section 1103, of the Social Security Act, also known as the Reed Act, may be requisitioned and used for (1) the payment of unemployment benefits, or (2) expenses incurred for the administration of the Minnesota unemployment insurance program and the job service pursuant to a specific appropriation by the legislature. Any money used for the payment of unemployment benefits may be restored for appropriation and use for administrative expenses upon request of the governor to the United States Secretary of Labor.

(b) Reed Act money may be used for expenses in the administration of the Minnesota unemployment insurance program and the job service provided that the expenses are incurred and the money is requisitioned after the enactment of an appropriation law that:

- (1) specifies the amounts and the purposes for which the money is appropriated;
- (2) limits the period within which the money may be obligated to a period ending not more than two years after the date of the enactment of the appropriation law; and
- (3) limits the amount that may be obligated to an amount that does not exceed the amount by which the aggregate of the amounts transferred to the account of Minnesota pursuant to the Reed Act exceeds the aggregate of the amounts used pursuant to this subdivision and charged against the amounts transferred to the account of Minnesota. For the purposes of this subdivision, amounts used for administration shall be chargeable against the transferred amounts at the time of the obligation.

(c) Reed Act money requisitioned for the payment of expenses of administration shall remain a part of the unemployment insurance trust fund. The commissioner shall account for the use of this money in accordance with the standards established by the United States Secretary of Labor. If any money is not spent for the purpose for which it was appropriated, or, if it remains unspent at the end of the period specified by the law appropriating the money, it shall be returned for credit to Minnesota's account in the federal unemployment trust fund.

Subd. 6. Borrowing federal funds. (a) The governor is hereby authorized, if necessary, to borrow funds from the federal unemployment trust fund in accordance with United States Code, title 42, section 1321 of the Social Security Act in order to pay unemployment benefits.

(b) Any amount transferred to the trust fund under the terms of any loan shall be repayable as provided in United States Code, title 42, sections 1101(d)(1), 1103(b)(2), and 1322 of the Social Security Act.

(c) Interest payable on any loan shall be paid in accordance with section 268.051, subdivision 8, paragraph (b).

History: *1Sp2003 c 3 art 2 s 20*

268.196 ADMINISTRATION ACCOUNT.

[For text of subs 1 and 2, see M.S.2002]

Subd. 3. Contingent account. (a) There is hereby created in the state treasury a special account, to be known as the contingent account, that shall not lapse nor revert to any other trust fund. This 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, 268.18, and 268.184, all money received in the form of voluntary contributions to this account, and any interest earned on the account. All money in this account shall be supplemental to all federal money available to the commissioner. Money in this account is hereby appropriated to the commissioner and shall be available to the commissioner for those expenditures the commissioner considers necessary in connection with the administration of the Minnesota unemployment insurance program and the job service.

(b) Whenever the commissioner spends money from the contingent account for the administration of the Minnesota unemployment insurance program and the job service for which money will later be made available by the federal government, the contingent account shall, when money is available, be reimbursed from the administration account. The commissioner shall certify to the commissioner of finance the amount of the reimbursement and the commissioner of finance shall transfer that amount from the administration account to the contingent account.

(c) 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. On June 30 of each year, all

amounts in excess of \$300,000 in this account shall be paid over to the unemployment insurance trust fund.

History: *1Sp2003 c 3 art 2 s 20*

268.20 REPRESENTATION IN COURT.

In any civil action to enforce the provisions of the Minnesota Unemployment Insurance Law, the commissioner shall be represented by the attorney general.

History: *1Sp2003 c 3 art 2 s 20*

268.21 NONLIABILITY OF STATE.

(a) Unemployment benefits shall be payable only to the extent provided in this chapter and to the extent that money is available in the trust fund and neither the state nor the commissioner shall be liable for any amount in excess of the money available in the trust fund.

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

History: *1Sp2003 c 3 art 2 s 20*

268.22 SAVING CLAUSE.

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

History: *1Sp2003 c 3 art 2 s 20*

268.23 SEVERABLE.

In the event that the United States Department of Labor determines that any provision of the Minnesota Unemployment Insurance Law, or any other provision of Minnesota Statutes relating to the unemployment insurance program, is not in conformity with the requirements of federal law, the provision shall have no force or effect; but if only a portion of the provision, or the application to any person or circumstances, is held not in conformity, the remainder of the provision and the application of the provision to other persons or circumstances shall not be affected.

History: *1Sp2003 c 3 art 2 s 20*

268.26 JOB SERVICE OFFICES.

Subdivision 1. **Establishment.** The commissioner shall establish and maintain free public job service offices, in that number and in those places as may be necessary for the purpose of providing reemployment assistance services to unemployment benefit applicants, as well as performing the functions under the Wagner-Peyser Act, United States Code, title 29, section 49.

[For text of subds 2 and 3, see M.S.2002]

History: *1Sp2003 c 3 art 2 s 20*

268.363 ADVISORY COMMITTEE.

A 13-member advisory committee is established as provided under section 15.059 to assist the commissioner in selecting eligible organizations to receive program grants and evaluating the final reports of each organization. Notwithstanding section 15.059, the advisory committee shall not expire before June 30, 1995. Members of the committee may be reimbursed for expenses but may not receive any other compensation for service on the committee. The advisory committee consists of representatives of the commissioners of education, human services, and economic security; a represen-

tative of the chancellor of the Minnesota State Colleges and Universities; a representative of the commissioner of the Housing Finance Agency; the director of the Office of Jobs Policy; and seven public members appointed by the governor. Each of the following groups must be represented by a public member experienced in working with targeted youth: labor organizations, local educators, community groups, consumers, local housing developers, youth between the ages of 16 and 24 who have a period of homelessness, and other homeless persons. At least three of the public members must be from outside of the metropolitan area as defined in section 473.121, subdivision 2. The commissioner may provide staff to the advisory committee to assist it in carrying out its purpose.

History: 2003 c 130 s 12

268.65 APPROVED TRAINING.

[For text of subd 1, see M.S.2002]

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

(1) the individual is not unemployed due to the seasonal nature of the work or a temporary work shortage;

(2) the individual's separation or notice of layoff from most recent employment was caused by job obsolescence, plant shutdown, regional decline in the individual's customary occupation, or industry slowdown, and the individual is unlikely to return to work for that employer or in that occupation within 12 months following separation from employment;

(3) reasonable and suitable work opportunities for which the individual is fitted by training, experience, and physical capabilities do not exist within the local labor market;

(4) the training course is designed to provide preparation for available employment within the local labor market or in an area to which the individual is willing to relocate;

(5) the training is conducted by an agency, educational institution, or employing unit that is approved by the commissioner of education or the Board of Trustees of the Minnesota State Colleges and Universities or Higher Education Services Office to conduct training programs; except that an agency, educational institution, or employing unit that is not subject to regulation and approval by one of the agencies in this clause may be approved by the commissioner if it is determined that the institution's curriculum, facilities, staff, and other essentials are adequate to achieve the training objective; and

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

[For text of subds 3 to 5, see M.S.2002]

History: 2003 c 130 s 12

268.66 FIRST SOURCE AGREEMENTS.

[For text of subd 1, see M.S.2002]

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

History: 1Sp2003 c 4 s 1

268.665 WORKFORCE DEVELOPMENT COUNCIL.*[For text of subd 1, see M.S.2002]*

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 33 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 Education;
 - (3) commissioner of the Minnesota Department of Human Services; and
 - (4) commissioner of the Minnesota Department of Employment 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 postsecondary education;
 - (4) one individual shall represent secondary/postsecondary 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.

Subd. 3. **Purpose; duties.** The governor's Workforce Development Council shall replace the governor's Job Training Council and assume all of its requirements, duties,

and responsibilities, under the Job Training Partnership Act, United States Code, title 29, section 1501, et seq. Additionally, the Workforce Development Council shall assume the following duties and responsibilities:

(a) Coordinate the development, implementation, and evaluation of the statewide education and employment transitions system under section 124D.46. Beginning January 1, 1997, the council shall also coordinate the development, implementation, and evaluation of the Minnesota youth services programs under sections 124D.39 to 124D.44, and the National and Community Services Act of 1993, United States Code, title 42, section 12501, et seq.

(b) Review the provision of services and the use of funds and resources under applicable federal human resource programs and advise the governor on methods of coordinating the provision of services and the use of funds and resources consistent with the laws and regulations governing the programs. For purposes of this section, applicable federal and state human resource programs mean the:

(1) Job Training Partnership Act, United States Code, title 29, section 1501, et seq.;

(2) Carl D. Perkins Vocational and Applied Technology Education Act, United States Code, title 20, section 2301, et seq.;

(3) National and Community Service Act of 1993, United States Code, title 42, section 12501, et seq.;

(4) Adult Education Act, United States Code, title 20, section 1201, et seq.;

(5) Wagner-Peyser Act, United States Code, title 29, section 49;

(6) Social Security Act, title IV, part F, (JOBS), United States Code, title 42, section 681, et seq.;

(7) Food Stamp Act of 1977, United States Code, title 7, section 6(d)(4), Food Stamp Employment and Training Program, United States Code, title 7, section 2015(d)(4);

(8) programs defined in section 268.0111, subdivision 5; and

(9) School to Work Opportunity Act of 1994, Public Law 103-239.

Additional federal and state programs and resources can be included within the scope of the council's duties if recommended by the governor after consultation with the council.

(c) Review federal, state, and local education, postsecondary, job skills training, and youth employment programs, and make recommendations to the governor and the legislature for establishing an integrated seamless system for providing education, service-learning, and work skills development services to learners and workers of all ages.

(d) Advise the governor on the development and implementation of statewide and local performance standards and measures relating to applicable federal human resource programs and the coordination of performance standards and measures among programs.

(e) Develop program guidelines and recommend grant approval procedures to the Department of Education for grants to local education and employment transition partnerships, including implementation grants under section 124D.46, grants for youth apprenticeship programs under section 124D.47, and youth employer grants; and

(1) coordinate implementation of the education and employment transitions system under section 124D.46;

(2) promote education and employment transitions programs and knowledge and skills of entrepreneurship among employers, workers, youth, and educators, and encourage employers to provide meaningful work-based learning opportunities;

(3) evaluate and identify exemplary education and employment transitions programs and provide technical assistance to local partnerships to replicate the programs throughout the state;

(4) establish a performance-based quality assurance system for consistent statewide evaluation of the performance of the education and employment transitions system at both the state and local level;

(5) conduct an annual review of each local education and employment transitions partnership to ensure it adequately meets the quality assurance standards established as part of the state quality assurance system;

(6) develop the methods to assess local partnership effectiveness;

(7) annually publish a report on the findings of the evaluations of each local education transitions partnership;

(8) promote knowledge and skills of entrepreneurship among students in kindergarten through grade 12 by sharing information about the ways new business development contributes to a strong economy.

(f) Advise the governor on methods to evaluate applicable federal human resource programs.

(g) Sponsor appropriate studies to identify human investment needs in Minnesota and recommend to the governor goals and methods for meeting those needs.

(h) Recommend to the governor goals and methods for the development and coordination of a human resource system in Minnesota.

(i) Examine federal and state laws, rules, and regulations to assess whether they present barriers to achieving the development of a coordinated human resource system.

(j) Recommend to the governor and to the federal government changes in state or federal laws, rules, or regulations concerning employment and training programs that present barriers to achieving the development of a coordinated human resource system.

(k) Recommend to the governor and to the federal government waivers of laws and regulations to promote coordinated service delivery.

(l) Sponsor appropriate studies and prepare and recommend to the governor a strategic plan which details methods for meeting Minnesota's human investment needs and for developing and coordinating a state human resource system.

[For text of subds 3a and 4, see M.S.2002]

Subd. 5. Staffing. The Department of Economic Security must provide staff support to the Minnesota Workforce Development Council. The Department of Economic Security and the Department of Education shall jointly staff the Education and Employment Transitions Subcommittee and its activity with the full council. The support includes professional, technical, and clerical staff necessary to perform the duties assigned to the Workforce Development Council. The council may ask for assistance from other units of state government as it requires in order to fulfill its duties and responsibilities.

[For text of subd 6, see M.S.2002]

History: 2003 c 130 s 12; 1Sp2003 c 4 s 1

268.9165 AUTHORITY TO WAIVE REQUIREMENTS DURING DISASTER PERIODS.

The commissioner of education may waive requirements under sections 119A.50 to 119A.53, for up to nine months after the disaster, for Head Start grantees in areas where a federal disaster has been declared under United States Code, title 42, section 5121, et seq., or the governor has exercised authority under chapter 12. The commissioner shall notify the chairs of the senate Family and Early Childhood Education Budget Division, the senate Education Finance Committee, the house Family and Early Childhood Education Finance Division, the house Education Committee, and the house Ways and Means Committee ten days before the effective date of any waiver granted under this section.

History: 2003 c 130 s 12

268.95 INDIVIDUAL ENTERPRISE.

[For text of subds 1 to 3, see M.S.2002]

Subd. 4. **Pilot program.** The commissioner shall develop a pilot program, in cooperation with the commissioners of employment 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 the Minnesota Family Investment Program assistance to participate and retain eligibility while establishing a business.

[For text of subd 5, see M.S.2002]

History: 1Sp2003 c 4 s 1

268.976 EARLY WARNING SYSTEM.

Subdivision 1. **Early warning indicators.** The commissioner, in cooperation with the commissioners of revenue and employment and economic development, shall establish and oversee an early warning system to identify industries and businesses likely to experience large losses in employment including a plant closing or a substantial layoff, by collecting and analyzing information which may include, but not be limited to, products and markets experiencing declining growth rates, companies and industries subject to competition from production in low wage counties, changes in ownership, layoff and employment patterns, payments of unemployment taxes, and state tax payments. The commissioner may request the assistance of businesses, business organizations, and trade associations in identifying businesses, industries, and specific establishments that are likely to experience large losses in employment. The commissioner may request information and other assistance from other state agencies for the purposes of this subdivision.

[For text of subds 2 and 3, see M.S.2002]

History: 1Sp2003 c 4 s 1