

**SENATE
STATE OF MINNESOTA
NINETIETH SESSION**

S.F. No. 1549

(SENATE AUTHORS: DRAHEIM)

DATE	D-PG	OFFICIAL STATUS
02/27/2017	802	Introduction and first reading
		Referred to Jobs and Economic Growth Finance and Policy
03/09/2017		Comm report: To pass as amended
		Second reading

1.1 A bill for an act

1.2 relating to unemployment insurance; adopting recommendations of the

1.3 Unemployment Insurance Advisory Council; amending Minnesota Statutes 2016,

1.4 sections 268.031, subdivision 1; 268.035, subdivisions 15, 20, 21d, 23, 30; 268.042,

1.5 subdivision 1; 268.046, subdivision 3; 268.051, subdivisions 1, 9; 268.065,

1.6 subdivision 2; 268.07, subdivisions 2, 3a, 3b; 268.085, subdivisions 1, 6, 7, 12,

1.7 13, 13a; 268.0865, subdivision 5; 268.095, subdivisions 1, 2, 5; 268.101,

1.8 subdivision 2; 268.105, subdivision 2; 268.131; 268.18, subdivisions 2, 2b, 5;

1.9 268.182; 268.184; 268.194, subdivisions 1, 4; repealing Laws 2005, chapter 112,

1.10 article 1, section 14.

1.11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.12 **ARTICLE 1**

1.13 **UNEMPLOYMENT INSURANCE ADVISORY COUNCIL**

1.14 **POLICY**

1.15 Section 1. Minnesota Statutes 2016, section 268.046, subdivision 3, is amended to read:

1.16 Subd. 3. **Penalties; application.** (a) Any person that violates the requirements of this

1.17 section and any taxpaying employer that violates subdivision 1, paragraph (b), or any

1.18 nonprofit or government employer that violates subdivision 2, paragraph (b), is subject to

1.19 the penalties under section 268.184, subdivision 1a. Penalties are credited to the trust fund.

1.20 (b) Section 268.051, subdivision 4, does not apply to contracts under this section. This

1.21 section does not limit or prevent the application of section 268.051, subdivision 4, to any

1.22 other transactions or acquisitions involving the taxpaying employer. This section does not

1.23 limit or prevent the application of section 268.051, subdivision 4a.

1.24 (c) An assignment of an account upon the execution of a contract under this section and

1.25 a termination of a contract with the corresponding assignment of the account is not ~~considered~~

a separation from employment of any worker covered by the contract. Nothing under this subdivision causes the person to be liable for any amounts past due under this chapter from the taxpaying employer or the nonprofit or government employer.

~~(d) This section applies to, but is not limited to, persons registered under section 79.255, but does not apply to persons that obtain~~ An exemption from registration under section 79.255, subdivision 9, does not determine the application of this section.

Sec. 2. Minnesota Statutes 2016, section 268.065, subdivision 2, is amended to read:

Subd. 2. Employee leasing company, professional employer organization, or similar person. (a) A person whose work force consists of 50 percent or more of workers provided by an employee leasing company, professional employer organization, or similar person for a fee, is jointly and severally liable for the unpaid amounts that are due under this chapter or section 116L.20 on the wages paid on the contract with the employee leasing company, professional employer organization, or similar person.

~~(b) This subdivision applies to, but is not limited to, persons registered under section 79.255, but does not apply to agreements with persons that obtain~~ An exemption from registration under section 79.255, subdivision 9, does not determine the application of this section.

Sec. 3. Minnesota Statutes 2016, section 268.085, subdivision 13, is amended to read:

Subd. 13. Suspension from employment. (a) An applicant who has been suspended from employment without pay for 30 calendar days or less, as a result of employment misconduct or aggravated employment misconduct as defined under section 268.095, ~~subdivision 6,~~ is ineligible for unemployment benefits beginning the Sunday of the week that the applicant was suspended and continuing for the duration of the suspension.

(b) A suspension from employment without pay that is of indefinite duration or is for more than 30 calendar days is considered, at the time the suspension begins, a discharge from employment ~~under subject to~~ section 268.095, ~~subdivision 5.~~

(c) A suspension from employment with pay, regardless of duration, is not ~~considered~~ a separation from employment and the applicant is ineligible for unemployment benefits for the duration of the suspension with pay.

Sec. 4. Minnesota Statutes 2016, section 268.095, subdivision 5, is amended to read:

Subd. 5. **Discharge defined.** (a) A discharge from employment occurs when any words or actions by an employer would lead a reasonable employee to believe that the employer will no longer allow the employee to work for the employer in any capacity. A layoff because of lack of work is a discharge.

(b) A suspension from employment without pay that is of an indefinite duration or is for more than 30 calendar days is considered a discharge at the time the suspension begins.

~~(b)~~ (c) When determining if an applicant was discharged, the theory of a constructive discharge does not apply.

~~(e)~~ (d) An employee who gives notice of intention to quit the employment and is not allowed by the employer to work the entire notice period is discharged from the employment as of the date the employer will no longer allow the employee to work. If the discharge occurs within 30 calendar days before the intended date of quitting, then, as of the intended date of quitting, the separation from employment is a quit from employment subject to subdivision 1.

~~(d)~~ (e) The end of a job assignment with the client of a staffing service is a discharge from employment with the staffing service unless subdivision 2, paragraph (e), applies.

Sec. 5. Minnesota Statutes 2016, section 268.101, subdivision 2, is amended to read:

Subd. 2. **Determination.** (a) The commissioner must determine any issue of ineligibility raised by information required from an applicant under subdivision 1, paragraph (a) or (c), and send to the applicant and any involved employer, by mail or electronic transmission, a document titled a determination of eligibility or a determination of ineligibility, as is appropriate. The determination on an issue of ineligibility as a result of a quit or a discharge of the applicant must state the effect on the employer under section 268.047. A determination must be made in accordance with this paragraph even if a notified employer has not raised the issue of ineligibility.

(b) The commissioner must determine any issue of ineligibility raised by an employer and send to the applicant and that employer, by mail or electronic transmission, a document titled a determination of eligibility or a determination of ineligibility as is appropriate. The determination on an issue of ineligibility as a result of a quit or discharge of the applicant must state the effect on the employer under section 268.047.

If a base period employer:

(1) was not the applicant's most recent employer before the application for unemployment benefits;

(2) did not employ the applicant during the six calendar months before the application for unemployment benefits; and

(3) did not raise an issue of ineligibility as a result of a quit or discharge of the applicant within ten calendar days of notification under subdivision 1, paragraph (b);

then any exception under section 268.047, subdivisions 2 and 3, begins the Sunday two weeks following the week that the issue of ineligibility as a result of a quit or discharge of the applicant was raised by the employer.

A communication from an employer must specifically set out why the applicant should be determined ineligible for unemployment benefits for that communication to be considered to have raised an issue of ineligibility for purposes of this section. A statement of "protest" or a similar term without more information does not constitute raising an issue of ineligibility for purposes of this section.

(c) Subject to section 268.031, an issue of ineligibility is determined based upon that information required of an applicant, any information that may be obtained from an applicant or employer, and information from any other source.

(d) Regardless of the requirements of this subdivision, the commissioner is not required to send to an applicant a copy of the determination where the applicant has satisfied a period of ineligibility because of a quit or a discharge under section 268.095, subdivision 10.

(e) ~~The commissioner may~~ the department is authorized to issue a determination on an issue of ineligibility within 24 months from the establishment of a benefit account based upon information from any source, even if the issue of ineligibility was not raised by the applicant or an employer.

If an applicant obtained unemployment benefits through ~~fraud~~ misrepresentation under section 268.18, subdivision 2, the department is authorized to issue a determination of ineligibility ~~may be issued~~ within 48 months of the establishment of the benefit account.

If the department has filed an intervention in a worker's compensation matter under section 176.361, the department is authorized to issue a determination of ineligibility within 48 months of the establishment of the benefit account.

(f) A determination of eligibility or determination of ineligibility is final unless an appeal is filed by the applicant or employer within 20 calendar days after sending. The determination

must contain a prominent statement indicating the consequences of not appealing.

Proceedings on the appeal are conducted in accordance with section 268.105.

(g) An issue of ineligibility required to be determined under this section includes any question regarding the denial or allowing of unemployment benefits under this chapter except for issues under section 268.07. An issue of ineligibility for purposes of this section includes any question of effect on an employer under section 268.047.

ARTICLE 2

UNEMPLOYMENT INSURANCE ADVISORY COUNCIL HOUSEKEEPING

Section 1. Minnesota Statutes 2016, section 268.035, subdivision 20, is amended to read:

Subd. 20. **Noncovered employment.** "Noncovered employment" means:

(1) employment for the United States government or an instrumentality thereof, including military service;

(2) employment for a state, other than Minnesota, or a political subdivision or instrumentality thereof;

(3) employment for a foreign government;

(4) employment covered under the federal Railroad Unemployment Insurance Act;

(5) employment for a church or convention or association of churches, or a nonprofit organization operated primarily for religious purposes that is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

(6) employment for an elementary or secondary school with a curriculum that includes religious education that is operated by a church, a convention or association of churches, or a nonprofit organization that is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

~~(6)~~ (7) employment for Minnesota or a political subdivision, or a nonprofit organization, of a duly ordained or licensed minister of a church in the exercise of a ministry or by a member of a religious order in the exercise of duties required by the order;

~~(7)~~ (8) employment for Minnesota or a political subdivision, or a nonprofit organization, of an individual receiving rehabilitation of "sheltered" work in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or a program providing "sheltered" work for individuals who because of an impaired physical or mental capacity

cannot be readily absorbed in the competitive labor market. This clause applies only to services performed in a facility certified by the Rehabilitation Services Branch of the department or in a day training or habilitation program licensed by the Department of Human Services;

~~(8)~~ (9) employment for Minnesota or a political subdivision, or a nonprofit organization, of an individual receiving work relief or work training as part of an unemployment work relief or work training program ~~assisted or~~ financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof. This clause does not apply to programs that require unemployment benefit coverage for the participants;

~~(9)~~ (10) employment for Minnesota or a political subdivision, as an elected official, a member of a legislative body, or a member of the judiciary;

~~(10)~~ (11) employment as a member of the Minnesota National Guard or Air National Guard;

~~(11)~~ (12) employment for Minnesota or a political subdivision, or instrumentality thereof, of an individual serving on a temporary basis in case of fire, flood, tornado, or similar emergency;

~~(12)~~ (13) employment as an election official or election worker for Minnesota or a political subdivision, if the compensation for that employment was less than \$1,000 in a calendar year;

~~(13)~~ (14) employment for Minnesota that is a major policy-making or advisory position in the unclassified service;

~~(14)~~ (15) employment for Minnesota in an unclassified position established under section 43A.08, subdivision 1a;

~~(15)~~ (16) employment for a political subdivision of Minnesota that is a nontenured major policy making or advisory position;

~~(16)~~ (17) domestic employment in a private household, local college club, or local chapter of a college fraternity or sorority, if the wages paid in any calendar quarter in either the current or prior calendar year to all individuals in domestic employment totaled less than \$1,000.

"Domestic employment" includes all service in the operation and maintenance of a private household, for a local college club, or local chapter of a college fraternity or sorority as distinguished from service as an employee in the pursuit of an employer's trade or business;

7.1 ~~(17)~~ (18) employment of an individual by a son, daughter, or spouse, and employment
7.2 of a child under the age of 18 by the child's father or mother;

7.3 ~~(18)~~ (19) employment of an inmate of a custodial or penal institution;

7.4 ~~(19)~~ (20) employment for a school, college, or university, by a student who is enrolled
7.5 and whose primary relation to the school, college, or university is as a student. This does
7.6 not include an individual whose primary relation to the school, college, or university is as
7.7 an employee who also takes courses;

7.8 ~~(20)~~ (21) employment of an individual who is enrolled as a student in a full-time program
7.9 at a nonprofit or public educational institution that maintains a regular faculty and curriculum
7.10 and has a regularly organized body of students in attendance at the place where its educational
7.11 activities are carried on, taken for credit at the institution, that combines academic instruction
7.12 with work experience, if the employment is an integral part of the program, and the institution
7.13 has so certified to the employer, except that this clause does not apply to employment in a
7.14 program established for or on behalf of an employer or group of employers;

7.15 ~~(21)~~ (22) employment of university, college, or professional school students in an
7.16 internship or other training program with the city of St. Paul or the city of Minneapolis
7.17 under Laws 1990, chapter 570, article 6, section 3;

7.18 ~~(22)~~ (23) employment for a hospital by a patient of the hospital. "Hospital" means an
7.19 institution that has been licensed by the Department of Health as a hospital;

7.20 ~~(23)~~ (24) employment as a student nurse for a hospital or a nurses' training school by
7.21 an individual who is enrolled and is regularly attending classes in an accredited nurses'
7.22 training school;

7.23 ~~(24)~~ (25) employment as an intern for a hospital by an individual who has completed a
7.24 four-year course in an accredited medical school;

7.25 ~~(25)~~ (26) employment as an insurance salesperson, by other than a corporate officer, if
7.26 all the wages from the employment is solely by way of commission. The word "insurance"
7.27 includes an annuity and an optional annuity;

7.28 ~~(26)~~ (27) employment as an officer of a township mutual insurance company or farmer's
7.29 mutual insurance company under chapter 67A;

7.30 ~~(27)~~ (28) employment of a corporate officer, if the officer directly or indirectly, including
7.31 through a subsidiary or holding company, owns 25 percent or more of the employer
7.32 corporation, and employment of a member of a limited liability company, if the member

directly or indirectly, including through a subsidiary or holding company, owns 25 percent or more of the employer limited liability company;

~~(28)~~ (29) employment as a real estate salesperson, other than a corporate officer, if all the wages from the employment is solely by way of commission;

~~(29)~~ (30) employment as a direct seller as defined in United States Code, title 26, section 3508;

~~(30)~~ (31) employment of an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

~~(31)~~ (32) casual employment performed for an individual, other than domestic employment under clause ~~(16)~~ (17), that does not promote or advance that employer's trade or business;

~~(32)~~ (33) employment in "agricultural employment" unless it is "covered agricultural employment" under subdivision 11; or

~~(33)~~ (34) if employment during one-half or more of any pay period was covered employment, all the employment for the pay period is covered employment; but if during more than one-half of any pay period the employment was noncovered employment, then all of the employment for the pay period is noncovered employment. "Pay period" means a period of not more than a calendar month for which a payment or compensation is ordinarily made to the employee by the employer.

Sec. 2. Minnesota Statutes 2016, section 268.035, subdivision 21d, is amended to read:

Subd. 21d. **Staffing service.** A "staffing service" is an employer whose business involves employing individuals directly for the purpose of furnishing temporary assignment workers to ~~clients~~ support or supplement the workforce of the business that is a client of the staffing service.

Sec. 3. Minnesota Statutes 2016, section 268.051, subdivision 9, is amended to read:

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

9.1 Sec. 4. Minnesota Statutes 2016, section 268.07, subdivision 3b, is amended to read:

9.2 Subd. 3b. **Limitations on applications and benefit accounts.** (a) An application for
9.3 unemployment benefits is effective the Sunday of the calendar week that the application
9.4 was filed. An application for unemployment benefits may be backdated one calendar week
9.5 before the Sunday of the week the application was actually filed if the applicant requests
9.6 the backdating within seven calendar days of the date the application is filed. An application
9.7 may be backdated only if the applicant was unemployed during the period of the backdating.
9.8 If an individual attempted to file an application for unemployment benefits, but was prevented
9.9 from filing an application by the department, the application is effective the Sunday of the
9.10 calendar week the individual first attempted to file an application.

9.11 (b) A benefit account established under subdivision 2 is effective the date the application
9.12 for unemployment benefits was effective.

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

9.14 (1) the applicant has not been paid any unemployment benefits on that benefit account;
9.15 and

9.16 (2) a new application for unemployment benefits is filed and a new benefit account is
9.17 established at the time of the withdrawal.

9.18 A benefit account may be withdrawn after the expiration of the benefit year, and the
9.19 new work requirements of subdivision 2, paragraph (b), do not apply if the applicant was
9.20 not paid any unemployment benefits on the benefit account that is being withdrawn.

9.21 A determination or amended determination of eligibility or ineligibility issued under
9.22 section 268.101, that was sent before the withdrawal of the benefit account, remains in
9.23 effect and is not voided by the withdrawal of the benefit account.

9.24 (d) An application for unemployment benefits is not allowed before the Sunday following
9.25 the expiration of the benefit year on a prior benefit account. Except as allowed under
9.26 paragraph (c), an applicant may establish only one benefit account each 52 calendar weeks.
9.27 This paragraph applies to benefit accounts established under any federal law or the law of
9.28 any other state.

9.29 Sec. 5. Minnesota Statutes 2016, section 268.085, subdivision 1, is amended to read:

9.30 Subdivision 1. **Eligibility conditions.** An applicant may be eligible to receive
9.31 unemployment benefits for any week if:

10.1 (1) the applicant has filed a continued request for unemployment benefits for that week
10.2 under section 268.0865;

10.3 (2) the week for which unemployment benefits are requested is in the applicant's benefit
10.4 year;

10.5 (3) the applicant was unemployed as defined in section 268.035, subdivision 26;

10.6 (4) the applicant was available for suitable employment as defined in subdivision 15.

10.7 The applicant's weekly unemployment benefit amount is reduced one-fifth for each day the
10.8 applicant is unavailable for suitable employment. This clause does not apply to an applicant
10.9 who is in reemployment assistance training, or each day the applicant is on jury duty or
10.10 serving as an election judge;

10.11 (5) the applicant was actively seeking suitable employment as defined in subdivision
10.12 16. This clause does not apply to an applicant who is in reemployment assistance training
10.13 or who was on jury duty throughout the week;

10.14 (6) the applicant has served a nonpayable period of one week that the applicant is
10.15 otherwise eligible for some amount of unemployment benefits. This clause does not apply
10.16 if the applicant would have been eligible for federal disaster unemployment assistance
10.17 because of a disaster in Minnesota, but for the applicant's establishment of a benefit account
10.18 under section 268.07; and

10.19 (7) the applicant has been participating in reemployment assistance services, such as
10.20 development of, and adherence to, a work search plan, if the applicant has been directed to
10.21 participate by the commissioner. This clause does not apply if the applicant has good cause
10.22 for failing to participate. "Good cause" is a reason that would have prevented a reasonable
10.23 person acting with due diligence from participating.

10.24 Sec. 6. Minnesota Statutes 2016, section 268.085, subdivision 13a, is amended to read:

10.25 Subd. 13a. **Leave of absence.** (a) An applicant on a voluntary leave of absence is
10.26 ineligible for unemployment benefits for the duration of the leave of absence. An applicant
10.27 on an involuntary leave of absence is not ineligible under this subdivision.

10.28 A leave of absence is voluntary when work that the applicant can then perform is available
10.29 with the applicant's employer but the applicant chooses not to work. A medical leave of
10.30 absence is not presumed to be voluntary.

10.31 (b) A period of vacation requested by the applicant, paid or unpaid, is ~~considered~~ a
10.32 voluntary leave of absence. A vacation period assigned by an employer under: (1) a uniform

11.1 vacation shutdown; (2) a collective bargaining agreement; or (3) an established employer
11.2 policy, is ~~considered~~ an involuntary leave of absence.

11.3 (c) A leave of absence is a temporary stopping of work that has been approved by the
11.4 employer. A voluntary leave of absence is not ~~considered~~ a quit and an involuntary leave
11.5 of absence is not ~~considered~~ a discharge from employment for purposes of section 268.095.

11.6 (d) An applicant who is on a paid leave of absence, whether the leave of absence is
11.7 voluntary or involuntary, is ineligible for unemployment benefits for the duration of the
11.8 leave.

11.9 (e) This subdivision applies to a leave of absence from a base period employer, an
11.10 employer during the period between the end of the base period and the effective date of the
11.11 benefit account, or an employer during the benefit year.

11.12 Sec. 7. Minnesota Statutes 2016, section 268.105, subdivision 2, is amended to read:

11.13 Subd. 2. **Request for reconsideration.** (a) Any party, or the commissioner, may within
11.14 20 calendar days of the sending of the unemployment law judge's decision under subdivision
11.15 1a, file a request for reconsideration asking the judge to reconsider that decision.

11.16 (b) Upon a request for reconsideration having been filed, the chief unemployment law
11.17 judge must send a notice, by mail or electronic transmission, to all parties that a request for
11.18 reconsideration has been filed. The notice must inform the parties:

11.19 (1) that reconsideration is the procedure for the unemployment law judge to correct any
11.20 factual or legal mistake in the decision, or to order an additional hearing when appropriate;

11.21 (2) of the opportunity to provide comment on the request for reconsideration, and the
11.22 right under subdivision 5 to obtain a copy of any recorded testimony and exhibits offered
11.23 or received into evidence at the hearing;

11.24 (3) that providing specific comments as to a perceived factual or legal mistake in the
11.25 decision, or a perceived mistake in procedure during the hearing, will assist the
11.26 unemployment law judge in deciding the request for reconsideration;

11.27 (4) of the right to obtain any comments and submissions provided by any other party
11.28 regarding the request for reconsideration; and

11.29 (5) of the provisions of paragraph (c) regarding additional evidence.

11.30 This paragraph does not apply if paragraph (d) is applicable. Sending the notice does not
11.31 mean the unemployment law judge has decided the request for reconsideration was timely
11.32 filed.

12.1 (c) In deciding a request for reconsideration, the unemployment law judge must not
12.2 consider any evidence that was not submitted at the hearing, except for purposes of
12.3 determining whether to order an additional hearing.

12.4 The unemployment law judge must order an additional hearing if a party shows that
12.5 evidence which was not submitted at the hearing:

12.6 (1) would likely change the outcome of the decision and there was good cause for not
12.7 having previously submitted that evidence; or

12.8 (2) would show that the evidence that was submitted at the hearing was likely false and
12.9 that the likely false evidence had an effect on the outcome of the decision.

12.10 "Good cause" for purposes of this paragraph is a reason that would have prevented a
12.11 reasonable person acting with due diligence from submitting the evidence.

12.12 (d) If the party who filed the request for reconsideration failed to participate in the
12.13 hearing, the unemployment law judge must issue an order setting aside the decision and
12.14 ordering an additional hearing if the party who failed to participate had good cause for
12.15 failing to do so. The party who failed to participate in the hearing must be informed of the
12.16 requirement to show good cause for failing to participate. If the unemployment law judge
12.17 determines that good cause for failure to participate has not been shown, the judge must
12.18 state that in the decision issued under paragraph (f).

12.19 Submission of a written statement at the hearing does not constitute participation for
12.20 purposes of this paragraph.

12.21 "Good cause" for purposes of this paragraph is a reason that would have prevented a
12.22 reasonable person acting with due diligence from participating in the hearing.

12.23 (e) A request for reconsideration must be decided by the unemployment law judge who
12.24 issued the decision under subdivision 1a unless that judge:

12.25 (1) is no longer employed by the department;

12.26 (2) is on an extended or indefinite leave; or

12.27 (3) has been removed from the proceedings by the chief unemployment law judge.

12.28 (f) If a request for reconsideration is timely filed, the unemployment law judge must
12.29 issue:

12.30 (1) a decision affirming the findings of fact, reasons for decision, and decision issued
12.31 under subdivision 1a;

13.1 (2) a decision modifying the findings of fact, reasons for decision, and decision under
 13.2 subdivision 1a; or

13.3 (3) an order setting aside the findings of fact, reasons for decision, and decision issued
 13.4 under subdivision 1a, and ordering an additional hearing.

13.5 The unemployment law judge must issue a decision dismissing the request for
 13.6 reconsideration as untimely if the judge decides the request for reconsideration was not
 13.7 filed within 20 calendar days after the sending of the decision under subdivision 1a.

13.8 The unemployment law judge must send to all parties, by mail or electronic transmission,
 13.9 the decision or order issued under this subdivision. A decision affirming or modifying the
 13.10 previously issued findings of fact, reasons for decision, and decision, or a decision dismissing
 13.11 the request for reconsideration as untimely, is the final decision on the matter and is binding
 13.12 on the parties unless judicial review is sought under subdivision 7.

13.13 ARTICLE 3

13.14 UNEMPLOYMENT INSURANCE ADVISORY COUNCIL 13.15 TECHNICAL

13.16 Section 1. Minnesota Statutes 2016, section 268.031, subdivision 1, is amended to read:

13.17 Subdivision 1. **Standard of proof.** All issues of fact under the Minnesota Unemployment
 13.18 Insurance Law are determined by a preponderance of the evidence.

13.19 Sec. 2. Minnesota Statutes 2016, section 268.035, subdivision 15, is amended to read:

13.20 Subd. 15. **Employment.** (a) "Employment" means service performed by:

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

13.23 (2) an officer of a corporation;

13.24 (3) a member of a limited liability company who is ~~considered~~ an employee under the
 13.25 common law of employer-employee; or

13.26 (4) product demonstrators in retail stores or other locations to aid in the sale of products.
 13.27 The person that pays the wages is ~~considered~~ the employer; or

13.28 ~~(5) an individual who performs services for a person for compensation, as:~~

13.29 ~~(i) an agent-driver or commission-driver engaged in distributing meat products, vegetable~~
 13.30 ~~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 applies 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.~~

(b) Employment does not include service as a juror.

(c) Construction industry employment is defined in subdivision 9a. Trucking and messenger/courier industry employment is defined in subdivision 25b. Rules on determining worker employment status are described under Minnesota Rules, chapter 3315.

Sec. 3. Minnesota Statutes 2016, section 268.035, subdivision 23, is amended to read:

Subd. 23. **State's average annual and average weekly wage.** (a) On or before June 30 of each year, the commissioner must calculate, from wage detail reports under section 268.044, 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 is 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 is divided by the average monthly covered employment to calculate the state's average annual wage; and

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

(b) For purposes of calculating the amount of taxable wages under subdivision 24, the state's average annual wage applies to the calendar year following the calculation.

(c) For purposes of calculating ~~(1)~~ the state's maximum weekly unemployment benefit amount available on any benefit account under section 268.07, subdivision 2a, ~~and (2)~~ the state's average weekly wage applies to the one-year period beginning the last Sunday in October of the calendar year of the calculation.

(d) For purposes of calculating the wage credits necessary to establish a benefit account under section 268.07, subdivision 2, the state's average weekly wage applies to the one-year period beginning the last Sunday in October of the calendar year of the calculation.

Sec. 4. Minnesota Statutes 2016, section 268.035, subdivision 30, is amended to read:

Subd. 30. **Wages paid.** (a) "Wages paid" means the amount of wages:

(1) that have been actually paid; or

(2) that have been credited to or set apart so that payment and disposition is under the control of the employee.

(b) Wage payments delayed beyond the regularly scheduled pay date are ~~considered~~ "wages paid" on the missed pay date. Back pay is ~~considered~~ "wages paid" on the date of actual payment. Any wages earned but not paid with no scheduled date of payment ~~is considered~~ are "wages paid" on the last day of employment.

(c) Wages paid does not include wages earned but not paid except as provided for in this subdivision.

Sec. 5. Minnesota Statutes 2016, section 268.042, subdivision 1, is amended to read:

Subdivision 1. **Employer registration.** (a) Each employer must, upon or before the submission of its first wage detail report under section 268.044, register with the commissioner for a tax account or a reimbursable account, by electronic transmission in a format prescribed by the commissioner. The employer must provide all required information for registration, including the actual physical street and city address of the employer.

(b) Within 30 calendar days, each employer must notify the commissioner by electronic transmission, in a format prescribed, of a change in legal entity, of the transfer, sale, or acquisition of a business conducted in Minnesota, in whole or in part, if the transaction results in the creation of a new or different employer or affects the establishment of employer accounts, the assignment of tax rates, or the transfer of experience rating history.

(c) Except as provided in subdivision 3, any person that is or becomes an employer ~~subject to the Minnesota Unemployment Insurance Law~~ with covered employment within any calendar year is ~~considered to be~~ subject to this chapter the entire calendar year.

(d) Within 30 calendar days of the termination of business, an employer that has been assigned a tax account or reimbursable account must notify the commissioner by electronic transmission, in a format prescribed by the commissioner, if that employer does not intend

or expect to pay wages to any employees in covered employment during the current or the next calendar year. Upon notification, the employer is no longer required to file wage detail reports under section 268.044, subdivision 1, paragraph (d), and the employer's account must be terminated.

(e) An employer that has its account terminated regains its previous tax account under section 268.045, with the experience rating history of that account, if the employer again commences business and again pays wages in covered employment if:

(1) less than 14 calendar quarters have elapsed in which no wages were paid for covered employment;

(2) the experience rating history regained contains taxable wages; and

(3) the experience rating history has not been transferred to a successor under section 268.051, subdivision 4.

Sec. 6. Minnesota Statutes 2016, section 268.051, subdivision 1, is amended to read:

Subdivision 1. **Payments.** (a) Unemployment insurance taxes ~~and any special assessments, fees, or surcharges~~ accrue and become payable by each employer for each calendar year on the taxable wages that the employer paid 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 must pay taxes quarterly, at the employer's assigned tax rate under subdivision 6, on the taxable wages paid to each employee. The commissioner must compute the tax due from the wage detail report required under section 268.044 and notify the employer of the tax due. The taxes ~~and any special assessments, fees, or surcharges~~ must be paid to the trust fund and must be received by the department on or before the last day of the month following the end of the calendar quarter.

(b) If for any reason the wages on the wage detail report under section 268.044 are adjusted for any quarter, the commissioner must recompute the taxes due for that quarter and assess the employer for any amount due or credit the employer as appropriate.

17.1 Sec. 7. Minnesota Statutes 2016, section 268.07, subdivision 2, is amended to read:

17.2 Subd. 2. **Benefit account requirements.** (a) Unless paragraph (b) applies, to establish
17.3 a benefit account an applicant must have ~~total~~ wage credits ~~in the applicant's four quarter~~
17.4 ~~base period~~ of at least 5.3 percent of the state's average annual wage rounded down to the
17.5 next lower \$100.

17.6 (b) To establish a new benefit account following the expiration of the benefit year on a
17.7 prior benefit account, an applicant must have performed actual work in subsequent covered
17.8 employment and have been paid wages in one or more completed calendar quarters that
17.9 started after the effective date of the prior benefit account. The wages paid for that
17.10 employment must be at least enough to meet the requirements of paragraph (a). A benefit
17.11 account under this paragraph may not be established effective earlier than the Sunday
17.12 following the end of the most recent completed calendar quarter in which the requirements
17.13 of paragraph (a) were met. An applicant may not establish a second benefit account as a
17.14 result of one loss of employment.

17.15 Sec. 8. Minnesota Statutes 2016, section 268.07, subdivision 3a, is amended to read:

17.16 Subd. 3a. **Right of appeal.** (a) A determination or amended determination of benefit
17.17 account is final unless an applicant or base period employer within 20 calendar days after
17.18 the sending of the determination or amended determination files an appeal. Every
17.19 determination or amended determination of benefit account must contain a prominent
17.20 statement indicating in clear language the consequences of not appealing. Proceedings on
17.21 the appeal are conducted in accordance with section 268.105.

17.22 (b) Any applicant or base period employer may appeal from a determination or amended
17.23 determination of benefit account on the issue of whether services performed constitute
17.24 employment, whether the employment is ~~considered~~ covered employment, and whether
17.25 money paid constitutes wages. ~~Proceedings on the appeal are conducted in accordance with~~
17.26 ~~section 268.105.~~

17.27 Sec. 9. Minnesota Statutes 2016, section 268.085, subdivision 6, is amended to read:

17.28 Subd. 6. **Receipt of back pay.** (a) Back pay received by an applicant within 24 months
17.29 of the establishment of the benefit account with respect to any week must be deducted from
17.30 unemployment benefits paid for that week, and the applicant is ~~considered to have been~~
17.31 overpaid the unemployment benefits under section 268.18, subdivision 1.

18.1 If the back pay is not paid with respect to a specific period, the back pay must be applied
18.2 to the period immediately following the last day of employment.

18.3 (b) If the back pay is reduced by the amount of unemployment benefits that have been
18.4 paid, the amount of back pay withheld and not paid the applicant must be:

18.5 (1) paid by the taxpaying or reimbursing employer to the trust fund within 30 calendar
18.6 days and is subject to the same collection procedures that apply to past due taxes and
18.7 reimbursements; and

18.8 (2) when received by the trust fund:

18.9 (i) an overpayment of unemployment benefits must be created which, under section
18.10 268.047, subdivision 2, clause (8), clears the employer's tax or reimbursable account of any
18.11 effect; and

18.12 (ii) the back pay must then be applied to the unemployment benefit overpayment,
18.13 eliminating any effect on the applicant.

18.14 (c) The following must result when applying paragraph (b):

18.15 (1) an employer neither overpays nor underpays the employer's proper portion of the
18.16 unemployment benefit costs; and

18.17 (2) the applicant is placed in the same position as never having been paid the
18.18 unemployment benefits.

18.19 (d) This subdivision applies to payments labeled front pay, settlement pay, and other
18.20 terms describing or dealing with wage loss.

18.21 Sec. 10. Minnesota Statutes 2016, section 268.085, subdivision 7, is amended to read:

18.22 Subd. 7. **School employees; between terms denial.** (a) ~~No~~ Wage credits ~~in any amount~~
18.23 from ~~any~~ employment with ~~any~~ an educational institution or institutions ~~earned in any~~
18.24 ~~capacity~~ may not be used for unemployment benefit purposes for any week during the period
18.25 between two successive academic years or terms if:

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

18.28 (2) there is a reasonable assurance that the applicant will have employment for ~~any~~ an
18.29 educational institution or institutions in the following academic year or term, ~~unless that~~.

18.30 This paragraph applies to a vacation period or holiday recess if the applicant was
18.31 employed immediately before the vacation period or holiday recess, and there is a reasonable

19.1 assurance that the applicant will be employed immediately following the vacation period
 19.2 or holiday recess. This paragraph also applies to the period between two regular but not
 19.3 successive terms if there is an agreement for that schedule between the applicant and the
 19.4 educational institution.

19.5 This paragraph does not apply if the subsequent employment is substantially less
 19.6 favorable than the employment of the prior academic year or term, or the employment prior
 19.7 to the vacation period or holiday recess.

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

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

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

19.21 ~~(e) Paragraph (a) applies to any vacation period or holiday recess if the applicant was~~
 19.22 ~~employed immediately before the vacation period or holiday recess, and there is a reasonable~~
 19.23 ~~assurance that the applicant will be employed immediately following the vacation period~~
 19.24 ~~or holiday recess.~~

19.25 ~~(f)~~ (d) This subdivision applies to employment with an educational service agency if the
 19.26 applicant performed the services at an educational institution or institutions. "Educational
 19.27 service agency" means a governmental agency or entity established and operated exclusively
 19.28 for the purpose of providing services to one or more educational institutions.

19.29 (e) This subdivision also applies to employment with Minnesota or, a political
 19.30 subdivision, or a nonprofit organization, if the services are provided to or on behalf of an
 19.31 educational institution or institutions.

19.32 ~~(g) Paragraphs (a) and (c) apply~~ (f) Paragraph (a) applies beginning the Sunday of the
 19.33 week that there is a reasonable assurance of employment.

~~(h)~~ (g) Employment and a reasonable assurance with multiple education institutions must be aggregated for purposes of application of this subdivision.

~~(i)~~ (h) 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 is not considered substantially less favorable employment.

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

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

~~(l)~~ (j) An "educational institution" is ~~an~~ a school, college, university, or other educational entity operated by Minnesota ~~or~~ a political subdivision or ~~an~~ instrumentality thereof, or ~~an educational a nonprofit 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).~~

(k) An "instructional, research, or principal administrative capacity" does not include an educational assistant.

Sec. 11. Minnesota Statutes 2016, section 268.085, subdivision 12, is amended to read:

Subd. 12. **Aliens.** (a) An alien is ineligible for unemployment benefits for any week the alien is not authorized to work in the United States under federal law. Information from the Bureau of Citizenship and Immigration Services is ~~considered~~ conclusive, absent specific evidence that the information was erroneous. Under the existing agreement between the United States and Canada, this paragraph does not apply to an applicant who is a Canadian citizen and has returned to and is living in Canada each week unemployment benefits are requested.

(b) ~~Unemployment benefits must not be paid on the basis of~~ An alien's wage credits earned by an alien may not be used for unemployment benefit purposes unless the alien was:

(1) ~~was~~ lawfully admitted for permanent residence at the time of the employment;₂

(2) ~~was~~ lawfully present for the purposes of the employment;₂ or

(3) ~~was~~ permanently residing in the United States under color of law at the time of the employment.

21.1 (c) ~~Any~~ Information required of applicants applying for unemployment benefits to
21.2 determine eligibility because of their alien status must be required ~~from~~ of all applicants.

21.3 Sec. 12. Minnesota Statutes 2016, section 268.0865, subdivision 5, is amended to read:

21.4 Subd. 5. **Good cause defined.** (a) "Good cause" for purposes of this section is a
21.5 ~~compelling substantial~~ reason that would have prevented a reasonable person acting with
21.6 due diligence from filing a continued request for unemployment benefits within the time
21.7 periods required.

21.8 (b) "Good cause" does not include forgetfulness, loss of the continued request form if
21.9 filing by mail, having returned to work, having an appeal pending, or inability to file a
21.10 continued request for unemployment benefits by the method designated if the applicant was
21.11 aware of the inability and did not make diligent effort to have the method of filing a continued
21.12 request changed by the commissioner. "Good cause" does not include having previously
21.13 made an attempt to file a continued request for unemployment benefits but where the
21.14 communication was not considered a continued request because the applicant failed to
21.15 submit all required information.

21.16 Sec. 13. Minnesota Statutes 2016, section 268.095, subdivision 1, is amended to read:

21.17 Subdivision 1. **Quit.** An applicant who quit employment is ineligible for all
21.18 unemployment benefits according to subdivision 10 except when:

21.19 (1) the applicant quit the employment because of a good reason caused by the employer
21.20 as defined in subdivision 3;

21.21 (2) the applicant quit the employment to accept other covered employment that provided
21.22 equal to or better terms and conditions of employment, but the applicant did not work long
21.23 enough at the second employment to have sufficient subsequent wages paid to satisfy the
21.24 period of ineligibility that would otherwise be imposed under subdivision 10 for quitting
21.25 the first employment;

21.26 (3) the applicant quit the employment within 30 calendar days of beginning the
21.27 employment and the employment was unsuitable;

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

21.30 (5) the employment was part time and the applicant also had full-time employment in
21.31 the base period, from which full-time employment the applicant separated because of reasons
21.32 for which the applicant is would not be ineligible, and the wage credits from the full-time

22.1 employment are sufficient to meet the minimum requirements to establish a benefit account
22.2 under section 268.07;

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

22.8 (7) the applicant quit the employment (i) because the applicant's serious illness or injury
22.9 made it medically necessary that the applicant quit; or (ii) in order to provide necessary care
22.10 because of the illness, injury, or disability of an immediate family member of the applicant.
22.11 This exception only applies if the applicant informs the employer of the medical problem
22.12 and requests accommodation and no reasonable accommodation is made available.

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

22.17 This exception raises an issue of the applicant's being available for suitable employment
22.18 under section 268.085, subdivision 1, that the commissioner must determine;

22.19 (8) the applicant's loss of child care for the applicant's minor child caused the applicant
22.20 to quit the employment, provided the applicant made reasonable effort to obtain other child
22.21 care and requested time off or other accommodation from the employer and no reasonable
22.22 accommodation is available.

22.23 This exception raises an issue of the applicant's being available for suitable employment
22.24 under section 268.085, subdivision 1, that the commissioner must determine;

22.25 (9) the applicant quit because domestic abuse, sexual assault, or stalking of the applicant
22.26 or an immediate family member of the applicant, necessitated the applicant's quitting the
22.27 employment.

22.28 For purposes of this subdivision:

22.29 (i) "domestic abuse" has the meaning given in section 518B.01;

22.30 (ii) "sexual assault" means an act that would constitute a violation of sections 609.342
22.31 to 609.3453 or 609.352; and

22.32 (iii) "stalking" means an act that would constitute a violation of section 609.749; or

23.1 (10) the applicant quit in order to relocate to accompany a spouse:

23.2 (1) who is in the military; or

23.3 (2) whose job was transferred by the spouse's employer to a new location making it
23.4 impractical for the applicant to commute.

23.5 Sec. 14. Minnesota Statutes 2016, section 268.095, subdivision 2, is amended to read:

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

23.8 (b) When determining if an applicant quit, the theory of a constructive quit does not
23.9 apply.

23.10 (c) An employee who has been notified that the employee will be discharged in the
23.11 future, who chooses to end the employment while employment in any capacity is still
23.12 available, has quit the employment.

23.13 (d) A notice of quitting in the future does not constitute a quit at the time the notice is
23.14 given. An employee who seeks to withdraw a previously submitted notice of quitting in the
23.15 future has quit the employment, as of the intended date of quitting, if the employer does not
23.16 agree that the notice may be withdrawn.

23.17 (e) An applicant has quit employment with a staffing service if, within five calendar
23.18 days after completion of a suitable job assignment from a staffing service, the applicant:

23.19 (1) fails without good cause to affirmatively request an additional suitable job assignment;

23.20 (2) refuses without good cause an additional suitable job assignment offered; or

23.21 (3) accepts employment with the client of the staffing service. Accepting employment
23.22 with the client of the staffing service meets the requirements of the exception to ineligibility
23.23 under subdivision 1, clause (2).

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

23.28 For purposes of this paragraph, "good cause" is a reason that would compel an average,
23.29 reasonable worker, who would otherwise want an additional suitable job assignment with
23.30 the staffing service (1) to fail to contact the staffing service, or (2) to refuse an offered
23.31 assignment.

24.1 Sec. 15. Minnesota Statutes 2016, section 268.131, is amended to read:

24.2 **268.131 RECIPROCAL UNEMPLOYMENT BENEFIT COMBINED WAGE**
24.3 **ARRANGEMENTS FOR WORK IN MULTIPLE STATES.**

24.4 ~~Subdivision 1. Cooperation with other states on combining wages.~~ (a) In accordance
24.5 with the requirements of ~~United States Code, title 26, section 3304(a)(9)(B),~~ the Federal
24.6 Unemployment Tax Act, the commissioner must participate in reciprocal arrangements with
24.7 other states for the payment of unemployment benefits on the basis of combining an
24.8 applicant's wages from multiple states for the purposes of collecting unemployment benefits
24.9 from a single state. ~~The reciprocal agreement must include provisions for applying the base~~
24.10 ~~period of a single state law to a benefit account involving the combining of an applicant's~~
24.11 ~~wages and employment and avoiding the duplicate use of wages by reason of such combining.~~
24.12 The commissioner may ~~not enter into any reciprocal arrangement unless it contains provisions~~
24.13 for only pay unemployment benefits from the trust fund under this section if:

24.14 (1) there are reimbursements to the trust fund, by the other state, for unemployment
24.15 benefits paid from the trust fund to applicants based upon wages and employment covered
24.16 under the laws of the other state; and

24.17 ~~(b) The commissioner is authorized to pay unemployment benefits based upon an~~
24.18 ~~applicant's wages paid in covered employment in another state only if~~ (2) the applicant is
24.19 combining Minnesota wage credits with the wages paid in covered employment from another
24.20 state or states.

24.21 ~~(c) Section 268.23 does not apply to this subdivision.~~

24.22 ~~(d) On any reciprocal arrangement,~~ (b) Under this section, the wages paid an applicant
24.23 from employment covered under an unemployment insurance program of another state are
24.24 considered wages from covered employment for the purpose of determining the applicant's
24.25 rights to unemployment benefits under the Minnesota Unemployment Insurance Law.

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

25.1 Sec. 16. Minnesota Statutes 2016, section 268.18, subdivision 2, is amended to read:

25.2 Subd. 2. **Overpayment because of ~~fraud~~ misrepresentation.** (a) An applicant has
25.3 committed ~~fraud~~ misrepresentation if the applicant is overpaid unemployment benefits by:

25.4 ~~(1) knowingly misrepresenting, misstating, or failing to disclose any material fact; or~~

25.5 ~~(2) making a false statement or representation without a good faith belief as to the~~
25.6 correctness of the statement or representation.

25.7 After the discovery of facts indicating ~~fraud~~ misrepresentation, the commissioner must
25.8 issue a determination of overpayment penalty assessing a penalty equal to 40 percent of the
25.9 amount overpaid. This penalty is in addition to penalties under section 268.182.

25.10 (b) Unless the applicant files an appeal within 20 calendar days after the sending of a
25.11 determination of overpayment penalty to the applicant by mail or electronic transmission,
25.12 the determination is final. Proceedings on the appeal are conducted in accordance with
25.13 section 268.105.

25.14 (c) A determination of overpayment penalty must state the methods of collection the
25.15 commissioner may use to recover the overpayment, penalty, and interest assessed. Money
25.16 received in repayment of overpaid unemployment benefits, penalties, and interest is first
25.17 applied to the benefits overpaid, then to the penalty amount due, then to any interest due.
25.18 62.5 percent of the payments made toward the penalty are credited to the contingent account
25.19 and 37.5 percent credited to the trust fund.

25.20 (d) The department is authorized to issue a determination of overpayment penalty under
25.21 this subdivision ~~may be issued~~ within 48 months of the establishment of the benefit account
25.22 upon which the unemployment benefits were obtained through ~~fraud~~ misrepresentation.

25.23 Sec. 17. Minnesota Statutes 2016, section 268.18, subdivision 2b, is amended to read:

25.24 Subd. 2b. **Interest.** On any unemployment benefits ~~fraudulently~~ obtained by
25.25 misrepresentation, and any penalty amounts assessed under subdivision 2, the commissioner
25.26 must assess interest at the rate of one percent per month on any amount that remains unpaid
25.27 beginning 30 calendar days after the date of a determination of overpayment penalty. A
25.28 determination of overpayment penalty must state that interest will be assessed. Interest is
25.29 assessed in the same manner as on employer debt under section 268.057, subdivision 5.
25.30 Interest payments collected under this subdivision are credited to the trust fund.

26.1 Sec. 18. Minnesota Statutes 2016, section 268.18, subdivision 5, is amended to read:

26.2 Subd. 5. **Remedies.** (a) Any method undertaken to recover an overpayment of
26.3 unemployment benefits, including any penalties and interest, is not ~~considered~~ an election
26.4 of a method of recovery.

26.5 (b) Intervention or lack thereof, in whole or in part, in a workers' compensation matter
26.6 under section 176.361 is not ~~considered~~ an election of a remedy and does not prevent the
26.7 commissioner from determining any an applicant ineligible for unemployment benefits
26.8 ~~overpaid under subdivision 1 or 2~~ or taking action under section 268.182.

26.9 Sec. 19. Minnesota Statutes 2016, section 268.182, is amended to read:

26.10 **~~268.182 APPLICANT'S FALSE REPRESENTATIONS; CONCEALMENT OF~~**
26.11 **~~FACTS FRAUD; CRIMINAL PENALTY.~~**

26.12 Subdivision 1. **Criminal penalties.** ~~Whoever~~ An individual has committed fraud and is
26.13 guilty of theft and must be sentenced under section 609.52 if the individual obtains, or
26.14 attempts to obtain, or aids or abets any other individual to obtain, by means of an intentional
26.15 false statement or representation, by intentional concealment of a material fact, or by
26.16 impersonation or other fraudulent means, unemployment benefits that the individual is not
26.17 entitled or unemployment benefits greater than the individual is entitled to under this chapter,
26.18 or under the federal law of any state or of the federal government, either personally or for
26.19 any other individual, is guilty of theft and must be sentenced under section 609.52.

26.20 Subd. 2. **Administrative penalties.** (a) Any applicant who ~~knowingly makes a false~~
26.21 ~~statement or representation, who knowingly fails to disclose a material fact, or who makes~~
26.22 ~~a false statement or representation without a good faith belief as to the correctness of the~~
26.23 ~~statement or representation, in order to obtain or in an attempt to obtain unemployment~~
26.24 ~~benefits may be assessed, in addition to any other penalties, an administrative penalty of~~
26.25 ~~being ineligible for unemployment benefits for 13 to 104 weeks.~~

26.26 (b) A determination of ineligibility setting out the weeks the applicant is ineligible must
26.27 be sent to the applicant by mail or electronic transmission. The department is authorized to
26.28 issue a determination of ineligibility under this subdivision ~~may be issued~~ within 48 months
26.29 of the establishment of the benefit account upon which the unemployment benefits were
26.30 obtained, or attempted to be obtained. Unless an appeal is filed within 20 calendar days of
26.31 sending, the determination is final. Proceedings on the appeal are conducted in accordance
26.32 with section 268.105.

27.1 Sec. 20. Minnesota Statutes 2016, section 268.184, is amended to read:

27.2 **268.184 EMPLOYER MISCONDUCT; PENALTY MISREPRESENTATION AND**
 27.3 **MISREPORTING; ADMINISTRATIVE PENALTIES.**

27.4 Subdivision 1. **Misrepresentation; administrative penalties.** (a) The commissioner
 27.5 must penalize an employer if that employer or any employee, officer, or agent of that
 27.6 employer, ~~is in collusion with any applicant for the purpose of assisting the applicant to~~
 27.7 ~~receive unemployment benefits fraudulently. The penalty is \$500 or the amount of~~
 27.8 ~~unemployment benefits determined to be overpaid, whichever is greater.~~

27.9 ~~(b) The commissioner must penalize an employer if that employer or any employee,~~
 27.10 ~~officer, or agent of that employer: (1) made a false statement or representation knowing it~~
 27.11 ~~to be false; (2) made a false statement or representation without a good faith belief as to~~
 27.12 ~~correctness of the statement or representation; (3) or knowingly failed to disclose a material~~
 27.13 ~~fact; or (4) made an offer of employment to an applicant when, in fact, the employer had~~
 27.14 ~~no employment available. in order to:~~

27.15 (1) assist an applicant to receive unemployment benefits to which the applicant is not
 27.16 entitled;

27.17 (2) prevent or reduce the payment of unemployment benefits to an applicant; or

27.18 (3) avoid or reduce any payment required from an employer under this chapter or section
 27.19 116L.20.

27.20 The penalty is the greater of \$500 or 50 percent of the following resulting from the employer's
 27.21 action:

27.22 (i) the amount of any overpaid unemployment benefits to an applicant;

27.23 (ii) the amount of unemployment benefits not paid to an applicant that would otherwise
 27.24 have been paid; or

27.25 (iii) the amount of any payment required from the employer under this chapter or section
 27.26 116L.20 that was not paid.

27.27 ~~(e)~~ (b) The commissioner must penalize an employer if that employer failed or refused
 27.28 to honor a subpoena issued under section 268.188. The penalty is \$500 and any costs of
 27.29 enforcing the subpoena, including attorney fees.

27.30 ~~(d)~~ (c) Penalties under this subdivision and under section 268.047, subdivision 4,
 27.31 paragraph (b), are in addition to any other penalties and subject to the same collection

procedures that apply to past due taxes. Penalties must be paid within 30 calendar days of issuance of the determination of penalty and credited to the trust fund.

~~(e)~~ (d) The determination of penalty is final unless the employer files an appeal within 20 calendar days after the sending of the determination of penalty to the employer by mail or electronic transmission. Proceedings on the appeal are conducted in accordance with section 268.105.

Subd. 1a. **Notification and misreporting penalties.** (a) If the commissioner finds that any employer or agent of an employer failed to meet the notification requirements of section 268.051, subdivision 4, the employer must be assessed a penalty of \$5,000 or two percent of the first full quarterly payroll acquired, whichever is higher. Payroll is wages paid as defined in section 268.035, subdivision 30. The penalty under this paragraph must be canceled if the commissioner determines that the failure occurred because of ignorance or inadvertence.

(b) If the commissioner finds that any individual advised an employer to violate the employer's notification requirements under section 268.051, subdivision 4, the individual, and that individual's employer, must each be assessed the penalty in paragraph (a).

(c) If the commissioner finds that any person or agent of a person violated the reporting requirements of section 268.046, the person must be assessed a penalty of \$5,000 or two percent of the quarterly payroll reported in violation of section 268.046, whichever is higher. Payroll is wages paid as defined in section 268.035, subdivision 30.

(d) Penalties under this subdivision are in addition to any other penalties and subject to the same collection procedures that apply to past due amounts from an employer. Penalties must be paid within 30 calendar days after sending of the determination of penalty and credited to the trust fund.

(e) The determination of penalty is final unless the person assessed files an appeal within 20 calendar days after sending of the determination of penalty by mail or electronic transmission. Proceedings on the appeal are conducted in accordance with section 268.105.

Subd. 2. **Criminal penalties.** Any employer or any officer or agent of an employer or any other individual ~~who~~ has committed fraud and is guilty of a crime, if in order to avoid or reduce any payment required from an employer under this chapter or section 116L.20, or to prevent or reduce the payment of unemployment benefits to an applicant:

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

29.1 (2) knowingly fails to disclose a material fact, including notification required under
 29.2 section 268.051, subdivision 4; or

29.3 (3) knowingly advises or assists an employer in violating clause (1) or (2), ~~to avoid or~~
 29.4 ~~reduce any payment required from an employer under this chapter or section 116L.20, or~~
 29.5 ~~to prevent or reduce the payment of unemployment benefits to any applicant.~~

29.6 The individual is guilty of a gross misdemeanor unless if the underpayment exceeds is \$500,
 29.7 in that case or less. The individual is guilty of a felony if the underpayment exceeds \$500.

29.8 Sec. 21. Minnesota Statutes 2016, section 268.194, subdivision 1, is amended to read:

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

29.13 (1) all taxes collected;

29.14 (2) interest earned upon any money in the trust fund;

29.15 (3) reimbursements paid by nonprofit organizations, and the state and political
 29.16 subdivisions;

29.17 (4) tax rate buydown payments under section 268.051, subdivision 7;

29.18 (5) ~~any~~ money received as a loan from the federal unemployment trust fund in accordance
 29.19 with United States Code, title 42, section 1321, of the Social Security Act;

29.20 (6) ~~any other~~ money received under a reciprocal unemployment benefit combined wage
 29.21 arrangement with the federal government or any other state;

29.22 (7) money received from the federal government for unemployment benefits paid under
 29.23 a federal program;

29.24 ~~(7)~~ (8) money recovered on overpaid unemployment benefits;

29.25 ~~(8)~~ (9) all money credited to the account under this chapter;

29.26 ~~(9)~~ (10) all money credited to the account of Minnesota in the federal unemployment
 29.27 trust fund under United States Code, title 42, section 1103, of the Social Security Act, also
 29.28 known as the Reed Act; and

29.29 ~~(10)~~ (11) all money received for the trust fund from any other source.

30.1 Sec. 22. Minnesota Statutes 2016, section 268.194, subdivision 4, is amended to read:

30.2 Subd. 4. **Reimbursements.** The commissioner is authorized to make to other state or
30.3 federal agencies and to receive from other state or federal agencies, reimbursements from
30.4 or to the trust fund, in accordance with ~~reciprocal~~ combined wage arrangements entered
30.5 into under section 268.131.

30.6 Money received under a ~~reciprocal agreement~~ combined wage arrangement must be
30.7 placed directly in the unemployment benefit payment account of the trust fund.

30.8 Sec. 23. **REVISOR'S INSTRUCTION.**

30.9 In the following sections of Minnesota Statutes, the revisor of statutes shall delete the
30.10 term "considered": Minnesota Statutes, sections 268.035, subdivisions 21c and 26; 268.07,
30.11 subdivision 1; 268.085, subdivisions 4a, 13c, 15, and 16; 268.095, subdivision 3; 268.101,
30.12 subdivision 6; and 268.105, subdivisions 3a and 7.

30.13 Sec. 24. **REVISOR'S INSTRUCTION.**

30.14 (a) In Minnesota Statutes, section 268.18, the revisor of statutes shall change the term
30.15 "fraud" to "misrepresentation" and "nonfraud" to "nonmisrepresentation."

30.16 (b) The revisor of statutes shall renumber Minnesota Statutes, section 268.184,
30.17 subdivision 2, as Minnesota Statutes, section 268.182, paragraph (b).

30.18 (c) The revisor of statutes shall renumber Minnesota Statutes, section 268.182, subdivision
30.19 2, as Minnesota Statutes, section 268.183.

30.20 (d) The revisor of statutes shall make cross-reference changes needed arising out of the
30.21 renumbering in article 2, section 1.

30.22 Sec. 25. **REPEALER.**

30.23 Laws 2005, chapter 112, article 1, section 14, is repealed.

APPENDIX
Article locations in S1549-1

ARTICLE 1	UNEMPLOYMENT INSURANCE ADVISORY COUNCILPOLICY	Page.Ln 1.12
	UNEMPLOYMENT INSURANCE ADVISORY	
ARTICLE 2	COUNCILHOUSEKEEPING	Page.Ln 5.7
	UNEMPLOYMENT INSURANCE ADVISORY	
ARTICLE 3	COUNCILTECHNICAL	Page.Ln 13.13

APPENDIX
Repealed Minnesota Session Laws: S1549-1

Laws 2005, chapter 112, article 1, section 14

Sec. 14. **MANDATORY FEDERAL IMPLEMENTATION REQUIREMENT.**

The commissioner must implement systems and processes to detect, investigate, and enforce section 268.051, subdivisions 4 and 4a.