

## HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH SESSION

H. F. No. 2582

02/29/2012 Authored by Gunther, Murdock, Melin, Mahoney and Nelson  
The bill was read for the first time and referred to the Committee on Jobs and Economic Development Finance  
03/07/2012 Adoption of Report: Pass as Amended and re-referred to the Committee on Ways and Means  
03/20/2012 Adoption of Report: Pass as Amended and Read Second Time

1.1 A bill for an act  
1.2 relating to unemployment insurance; making federal conformity, policy, and  
1.3 other housekeeping changes; amending Minnesota Statutes 2010, sections  
1.4 268.035, subdivision 12d; 268.042, subdivision 1; 268.044, subdivision  
1.5 1; 268.046, subdivision 3; 268.047, subdivision 4; 268.051, subdivision 4;  
1.6 268.069, subdivision 2; 268.085, subdivisions 5, 11, 15; 268.095, subdivision 6;  
1.7 268.103, subdivision 1; 268.18, subdivisions 2, 2b, 4, 4a; 268.192, by adding  
1.8 a subdivision; 268.194, subdivision 1; Minnesota Statutes 2011 Supplement,  
1.9 sections 268.035, subdivision 20; 268.051, subdivision 5; 268.07, subdivision  
1.10 2; 268.115, subdivision 1; 268.184, subdivisions 1, 1a; repealing Minnesota  
1.11 Rules, part 3315.0555, subparts 2, 3, 4.

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

## 1.13 ARTICLE 1

## 1.14 FEDERAL CONFORMITY

1.15 Section 1. Minnesota Statutes 2010, section 268.047, subdivision 4, is amended to read:

1.16 Subd. 4. **Limitation on exceptions.** (a) Regardless of subdivisions 2 and 3, an  
1.17 exception under those subdivisions will be limited in accordance with according to section  
1.18 268.101, subdivision 2, paragraph (b).

1.19 (b) Regardless of subdivision 2, clause (8), an exception under that clause does  
1.20 not apply if the overpaid unemployment benefits resulted because the employer or any  
1.21 employee, officer, or agent of the employer:

1.22 (1) failed to respond timely or adequately to a request for information under section  
1.23 268.101, subdivision 1, paragraph (b); and

1.24 (2) has established a pattern of failing to respond timely or adequately to requests for  
1.25 information under section 268.101, subdivision 1, paragraph (b).

2.1 The employer must pay the trust fund the amount of the overpaid unemployment  
2.2 benefits that will be used in computing the future tax rate of taxpaying employers or  
2.3 charged to the reimbursable account of a nonprofit or government employer under  
2.4 subdivision 1. The procedure for required payment is under section 268.184, subdivision 1.

2.5 This paragraph is enacted to conform to the requirements of Public Law 112-40,  
2.6 section 252. A "pattern" for purposes of this paragraph is a prior failure to respond to the  
2.7 greater of two requests for information, or two percent of all requests for information in  
2.8 the most recent six months.

2.9 **EFFECTIVE DATE.** This section is effective for determinations issued on or  
2.10 after July 1, 2013.

2.11 Sec. 2. Minnesota Statutes 2010, section 268.18, subdivision 2, is amended to read:

2.12 Subd. 2. **Overpayment because of fraud.** (a) Any applicant who receives  
2.13 unemployment benefits by knowingly misrepresenting, misstating, or failing to disclose  
2.14 any material fact, or who makes a false statement or representation without a good faith  
2.15 belief as to the correctness of the statement or representation, has committed fraud. After  
2.16 the discovery of facts indicating fraud, the commissioner must make a determination  
2.17 that the applicant obtained unemployment benefits by fraud and that the applicant must  
2.18 promptly repay the unemployment benefits to the trust fund. In addition, the commissioner  
2.19 must assess a penalty equal to 40 percent of the amount fraudulently obtained. This  
2.20 penalty is in addition to penalties under section 268.182. The determination is effective  
2.21 the Sunday of the week that it was issued.

2.22 (b) Unless the applicant files an appeal within 20 calendar days after the sending  
2.23 of the determination of overpayment by fraud to the applicant by mail or electronic  
2.24 transmission, the determination is final. Proceedings on the appeal are conducted in  
2.25 accordance with section 268.105.

2.26 (c) If the applicant fails to repay the unemployment benefits, penalty, and interest  
2.27 assessed, the total due may be collected by the methods allowed under state and federal  
2.28 law. A determination of overpayment by fraud must state the methods of collection the  
2.29 commissioner may use to recover the overpayment. Money received in repayment of  
2.30 fraudulently obtained unemployment benefits, penalties, and interest is first applied to the  
2.31 unemployment benefits overpaid, then to the penalty amount due, then to any interest due.  
2.32 62.5 percent of the payments made toward the penalty are credited to the contingent  
2.33 account and 37.5 percent credited to the ~~administration account~~ trust fund.

2.34 (d) If an applicant has been overpaid unemployment benefits under the law of  
2.35 another state because of fraud and that state certifies that the applicant is liable to repay

3.1 the unemployment benefits and requests the commissioner to recover the overpayment,  
 3.2 the commissioner may offset from future unemployment benefits otherwise payable the  
 3.3 amount of overpayment.

3.4 (e) Regardless of the limitations in section 268.101, subdivision 2, paragraph  
 3.5 (e), unemployment benefits paid for weeks more than four years before the date of a  
 3.6 determination of overpayment by fraud issued under this subdivision are not considered  
 3.7 overpaid unemployment benefits.

3.8 **EFFECTIVE DATE.** The amendments to paragraph (c) are effective for any  
 3.9 money credited on or after July 1, 2013. The amendments to paragraph (e) are effective  
 3.10 July 1, 2012.

3.11 Sec. 3. Minnesota Statutes 2011 Supplement, section 268.184, subdivision 1, is  
 3.12 amended to read:

3.13 Subdivision 1. **Administrative penalties.** (a) The commissioner must penalize  
 3.14 an employer if that employer or any employee, officer, or agent of that employer, is  
 3.15 in collusion with any applicant for the purpose of assisting the applicant to receive  
 3.16 unemployment benefits fraudulently. The penalty is \$500 or the amount of unemployment  
 3.17 benefits determined to be overpaid, whichever is greater.

3.18 (b) The commissioner must penalize an employer if that employer or any employee,  
 3.19 officer, or agent of that employer (1) made a false statement or representation knowing it  
 3.20 to be false, (2) made a false statement or representation without a good faith belief as to  
 3.21 correctness of the statement or representation, (3) knowingly failed to disclose a material  
 3.22 fact, or (4) made an offer of employment to an applicant when, in fact, the employer had  
 3.23 no employment available, ~~but only if the employer's action:~~

3.24 ~~(i) was taken to prevent or reduce the payment of unemployment benefits to any~~  
 3.25 ~~applicant;~~

3.26 ~~(ii) was taken to reduce or avoid any payment required from an employer under~~  
 3.27 ~~this chapter or section 116L.20; or~~

3.28 ~~(iii) caused an overpayment of unemployment benefits to an applicant.~~

3.29 The penalty is the greater of \$500, or 50 percent of the overpaid or reduced unemployment  
 3.30 benefits or payment required, whichever is greater. following resulting from the  
 3.31 employer's action:

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

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

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

4.3 (c) The commissioner must penalize an employer if that employer failed or refused  
4.4 to honor a subpoena issued under section 268.105, subdivision 4, or section 268.188. The  
4.5 penalty is \$500 and any costs of enforcing the subpoena, including attorney fees.

4.6 (d) Penalties under this subdivision and under section 268.047, subdivision 4,  
4.7 paragraph (b), are in addition to any other penalties and subject to the same collection  
4.8 procedures that apply to past due taxes. Penalties must be paid within 30 calendar days  
4.9 of ~~assessment~~ issuance of the determination of penalty and credited to the ~~contingent~~  
4.10 ~~account~~ trust fund.

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

4.15 **EFFECTIVE DATE.** This section is effective July 1, 2012, except the amendments  
4.16 to paragraph (d) are effective for penalties imposed on or after July 1, 2013.

## 4.17 **ARTICLE 2**

### 4.18 **POLICY**

4.19 Section 1. Minnesota Statutes 2010, section 268.046, subdivision 3, is amended to read:

4.20 Subd. 3. **Penalties; application.** (a) Any person that violates the requirements  
4.21 of this section and any taxpaying employer that violates subdivision 1, paragraph (b),  
4.22 or any nonprofit or government employer that violates subdivision 2, paragraph (b), is  
4.23 subject to the penalties under section 268.184, subdivision 1a. Penalties are credited to  
4.24 the ~~administration account to be used to ensure integrity in the unemployment insurance~~  
4.25 ~~program~~ trust fund.

4.26 (b) Section 268.051, subdivision 4, does not apply to contracts under this section.  
4.27 This section does not limit or prevent the application of section 268.051, subdivision 4, to  
4.28 any other transactions or acquisitions involving the taxpaying employer. This section does  
4.29 not limit or prevent the application of section 268.051, subdivision 4a.

4.30 (c) An assignment of an account upon the execution of a contract under this section  
4.31 and a termination of a contract with the corresponding assignment of the account is not  
4.32 considered a separation from employment of any worker covered by the contract. Nothing  
4.33 under this subdivision causes the person to be liable for any amounts past due under this  
4.34 chapter from the taxpaying employer or the nonprofit or government employer.

5.1 (d) This section applies to, but is not limited to, persons registered under section  
5.2 79.255, but does not apply to persons that obtain an exemption from registration under  
5.3 section 79.255, subdivision 9.

5.4 **EFFECTIVE DATE.** This section is effective July 1, 2013.

5.5 Sec. 2. Minnesota Statutes 2010, section 268.051, subdivision 4, is amended to read:

5.6 Subd. 4. **Experience rating history transfer.** (a) The experience rating history of  
5.7 the predecessor employer is transferred to the successor employer when:

5.8 (1) a taxpaying employer acquires all of the organization, trade or business, or  
5.9 workforce of another taxpaying employer; and

5.10 (2) there is 25 percent or more common ownership or there is substantially common  
5.11 management or control between the predecessor and successor, ~~the experience rating~~  
5.12 ~~history of the predecessor employer is transferred to the successor employer.~~

5.13 (b) A portion of the experience rating history of the predecessor employer is  
5.14 transferred to the successor employer when:

5.15 (1) a taxpaying employer acquires a portion, but less than all, of the organization,  
5.16 trade or business, or workforce of another taxpaying employer; and

5.17 (2) there is 25 percent or more common ownership or there is substantially common  
5.18 management or control between the predecessor and successor, the successor employer  
5.19 acquires, as of the date of acquisition, the experience rating history attributable to the  
5.20 portion it acquired, and the predecessor employer retains the experience rating history  
5.21 attributable to the portion that it has retained. If the commissioner determines that  
5.22 sufficient information is not available to substantiate that a distinct severable portion  
5.23 was acquired and to assign the appropriate distinct severable portion of the experience  
5.24 rating history, the commissioner must assign the successor employer that percentage  
5.25 of the predecessor employer's experience rating history equal to that percentage of  
5.26 the employment positions it has obtained, and the predecessor employer retains that  
5.27 percentage of the experience rating history equal to the percentage of the employment  
5.28 positions it has retained.

5.29 (c) The term "common ownership" for purposes of this subdivision includes  
5.30 ownership by a spouse, parent, grandparent, child, grandchild, brother, sister, aunt, uncle,  
5.31 niece, nephew, or first cousin, by birth or by marriage.

5.32 (d) Each successor employer that is subject to paragraph (a) or (b) must notify the  
5.33 commissioner of the acquisition by electronic transmission, in a format prescribed by the  
5.34 commissioner, within 30 calendar days of the date of acquisition. Any successor employer  
5.35 that fails to notify the commissioner is subject to the penalties under section 268.184,

6.1 subdivision 1a, if the successor's assigned tax rate under subdivision 2 or 5 was lower than  
6.2 the predecessor's assigned tax rate at the time of the acquisition. Payments made toward  
6.3 the penalties are credited to the ~~administration account to be used to ensure integrity in the~~  
6.4 ~~unemployment insurance program trust fund.~~

6.5 (e) If the successor employer under paragraphs (a) and (b) had an experience rating  
6.6 at the time of the acquisition, the transferred experience rating history of the predecessor  
6.7 is combined with the successor's experience rating history for purposes of recomputing  
6.8 a tax rate.

6.9 (f) If there has been a transfer of an experience rating history under paragraph (a) or  
6.10 (b), employment with a predecessor employer is not considered to have been terminated if  
6.11 similar employment is offered by the successor employer and accepted by the employee.

6.12 (g) The commissioner, upon notification of an employer, or upon the commissioner's  
6.13 own motion if the employer fails to provide the required notification, must determine if an  
6.14 employer is a successor within the meaning of this subdivision. The commissioner must,  
6.15 after determining the issue of succession or nonsuccession, recompute the tax rate under  
6.16 subdivision 6 of all employers affected. The commissioner must send the recomputed tax  
6.17 rate to all affected employers by mail or electronic transmission. Any affected employer  
6.18 may appeal the recomputed tax rate in accordance with the procedures in subdivision 6,  
6.19 paragraph (c).

6.20 (h) The "experience rating history" for purposes of this subdivision and subdivision  
6.21 4a means the amount of unemployment benefits paid and the taxable wages that are being  
6.22 used and would be used in computing the current and any future experience rating.

6.23 For purposes of this chapter, an "acquisition" means anything that results in the  
6.24 obtaining by the successor employer, in any way or manner, of the organization, trade or  
6.25 business, or workforce of the predecessor employer.

6.26 A "distinct severable portion" in paragraph (b) means a location or unit separately  
6.27 identifiable within the employer's wage detail report under section 268.044.

6.28 (i) Regardless of the ownership, management, or control requirements of paragraph  
6.29 (a), if there is an acquisition or merger of a publicly held corporation by or with another  
6.30 publicly held corporation the experience rating histories of the corporations are combined  
6.31 as of the date of acquisition or merger for the purpose of recomputing a tax rate.

6.32 **EFFECTIVE DATE.** This section is effective July 1, 2012, except that the  
6.33 amendments to paragraph (d) are effective July 1, 2013.

6.34 Sec. 3. Minnesota Statutes 2011 Supplement, section 268.051, subdivision 5, is  
6.35 amended to read:

7.1 Subd. 5. **Tax rate for new employers.** (a) Each new taxpaying employer that does  
 7.2 not qualify for an experience rating under subdivision 3, except new employers in a high  
 7.3 experience rating industry, must be assigned, for a calendar year, a tax rate the higher of  
 7.4 (1) one percent, or (2) the tax rate computed, to the nearest 1/100 of a percent, by dividing  
 7.5 the total amount of unemployment benefits paid all applicants during the 48 calendar  
 7.6 months ending on June 30 of the prior calendar year by the total taxable wages of all  
 7.7 taxpaying employers during the same period, plus the applicable base tax rate and any  
 7.8 additional assessments under subdivision 2, paragraph (c).

7.9 (b) Each new taxpaying employer in a high experience rating industry that does not  
 7.10 qualify for an experience rating under subdivision 3, must be assigned, for a calendar year,  
 7.11 a tax rate the higher of (1) that assigned under paragraph (a), or (2) the tax rate, computed  
 7.12 to the nearest 1/100 of a percent, by dividing the total amount of unemployment benefits  
 7.13 paid to all applicants from high experience rating industry employers during the 48  
 7.14 calendar months ending on June 30 of the prior calendar year by the total taxable wages  
 7.15 of all high experience rating industry employers during the same period, to a maximum  
 7.16 provided for under subdivision 3, paragraph (b), plus the applicable base tax rate and any  
 7.17 additional assessments under subdivision 2, paragraph (c).

7.18 (c) An employer is considered to be in a high experience rating industry if:

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

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

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

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

7.26 (d) Regardless of any law to the contrary, a taxpaying employer must be assigned a  
 7.27 tax rate under this subdivision if:

7.28 (1) the employer registers for a tax account under section 268.042 and for each of  
 7.29 the five calendar quarters after registering files a "no wages paid" report on wage detail  
 7.30 under section 268.044; or

7.31 (2) the employer has filed 14 consecutive quarterly "no wages paid" reports on  
 7.32 wage detail under section 268.044.

7.33 ~~(d)~~ (e) The commissioner must send to the new employer, by mail or electronic  
 7.34 transmission, a determination of tax rate assigned. An employer may appeal the  
 7.35 determination of a tax rate in accordance with the procedures in subdivision 6, paragraph  
 7.36 (c).

8.1 **EFFECTIVE DATE.** This section is effective July 1, 2012.

8.2 Sec. 4. Minnesota Statutes 2010, section 268.085, subdivision 5, is amended to read:

8.3 Subd. 5. **Deductible earnings.** (a) If the applicant has earnings, including holiday  
8.4 pay, with respect to any week, from employment, covered employment, noncovered  
8.5 employment, self-employment, or volunteer work, equal to or in excess of the applicant's  
8.6 weekly unemployment benefit amount, the applicant is ineligible for unemployment  
8.7 benefits for that week.

8.8 (b) If the applicant has earnings, with respect to any week, that is less than  
8.9 the applicant's weekly unemployment benefit amount, from employment, covered  
8.10 employment, noncovered employment, self-employment, or volunteer work, ~~55~~50 percent  
8.11 of the earnings are deducted from the weekly unemployment benefit amount.

8.12 (c) No deduction is made from an applicant's weekly unemployment benefit amount  
8.13 for earnings from service in the National Guard or a United States military reserve unit or  
8.14 from direct service as a volunteer firefighter or volunteer ambulance service personnel.  
8.15 This exception to paragraphs (a) and (b) does not apply to on-call or standby pay provided  
8.16 to a volunteer firefighter or volunteer ambulance service personnel. No deduction is made  
8.17 for jury duty pay or for pay as an election judge.

8.18 (d) The applicant may report deductible earnings on continued requests for  
8.19 unemployment benefits at the next lower whole dollar amount.

8.20 (e) Deductible earnings does not include any money considered a deductible  
8.21 payment under subdivision 3, but includes all compensation considered wages under  
8.22 section 268.035, subdivision 29, and any other compensation considered earned income  
8.23 under state and federal law for income tax purposes.

8.24 **EFFECTIVE DATE.** This section is effective for deductions occurring on or after  
8.25 July 1, 2013.

8.26 Sec. 5. Minnesota Statutes 2010, section 268.18, subdivision 2b, is amended to read:

8.27 Subd. 2b. **Interest.** (a) On any unemployment benefits fraudulently obtained, and  
8.28 any penalty amounts assessed under subdivision 2, the commissioner must assess interest  
8.29 at the rate of 1-1/2 percent per month on any amount that remains unpaid beginning  
8.30 30 calendar days after the date of the determination of overpayment by fraud. A  
8.31 determination of overpayment by fraud must state that interest will be assessed.

8.32 (b) If the determination did not state that interest will be assessed, interest is assessed  
8.33 beginning 30 calendar days after notification, by mail or electronic transmission, to the  
8.34 applicant that interest is now assessed.

9.1 (c) Interest payments under this section are credited to the ~~administration account~~  
9.2 trust fund.

9.3 **EFFECTIVE DATE.** This section is effective for payments received on or after  
9.4 July 1, 2013.

9.5 Sec. 6. Minnesota Statutes 2010, section 268.18, subdivision 4, is amended to read:

9.6 Subd. 4. **Cancellation of overpayments.** (a) If unemployment benefits overpaid  
9.7 under subdivision 1 are not repaid or offset from subsequent unemployment benefits  
9.8 as provided for in subdivision 1 within six years after the date of the determination or  
9.9 decision holding the applicant overpaid, the commissioner must cancel the overpayment  
9.10 balance, and no administrative or legal proceedings may be used to enforce collection  
9.11 of those amounts.

9.12 (b) If unemployment benefits determined overpaid under subdivision 2 including  
9.13 penalties and interest are not repaid within ~~15~~ ten years after the date of the determination  
9.14 of overpayment by fraud, the commissioner must cancel the overpayment balance and  
9.15 any penalties and interest due, and no administrative or legal proceeding may be used to  
9.16 enforce collection of those amounts.

9.17 (c) The commissioner may cancel at any time any overpayment, including penalties  
9.18 and interest, that the commissioner determines is uncollectible because of death or  
9.19 bankruptcy.

9.20 **EFFECTIVE DATE.** This section is effective July 1, 2012, and applies retroactively  
9.21 to all existing overpayments.

9.22 Sec. 7. Minnesota Statutes 2010, section 268.192, is amended by adding a subdivision  
9.23 to read:

9.24 Subd. 1a. **Agreements not allowed.** An employer may not make an agreement that  
9.25 in exchange for the employer agreeing not to contest the payment of unemployment  
9.26 benefits, including agreeing not to provide information to the department, an employee  
9.27 will:

9.28 (1) quit the employment;

9.29 (2) take a leave of absence;

9.30 (3) leave the employment temporarily or permanently; or

9.31 (4) withdraw a grievance or appeal of a termination.

9.32 An agreement that violates this subdivision has no effect under this chapter.

9.33 **EFFECTIVE DATE.** This section is effective July 1, 2012.

10.1 **ARTICLE 3**10.2 **HOUSEKEEPING**

10.3 Section 1. Minnesota Statutes 2010, section 268.035, subdivision 12d, is amended to  
10.4 read:

10.5 Subd. 12d. **Electronic transmission.** "Electronic transmission" means  
10.6 a communication that is sent by electronic, digital, magnetic, wireless, optical,  
10.7 ~~electromagnetic or similar capabilities, and, when permitted by the commissioner, a~~  
10.8 ~~telephone communication~~ online, by telephone, or by facsimile transmission.

10.9 Sec. 2. Minnesota Statutes 2011 Supplement, section 268.035, subdivision 20, is  
10.10 amended to read:

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

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

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

10.16 (3) employment for a foreign government;

10.17 (4) employment for an instrumentality wholly owned by a foreign government,  
10.18 if the employment is of a character similar to that performed in foreign countries by  
10.19 employees of the United States government or an instrumentality thereof and the United  
10.20 States Secretary of State has certified that the foreign government grants an equivalent  
10.21 exemption to similar employment performed in the foreign country by employees of the  
10.22 United States government and instrumentalities thereof;

10.23 (5) employment covered under United States Code, title 45, section 351, the  
10.24 Railroad Unemployment Insurance Act;

10.25 (6) employment covered by a reciprocal arrangement between the commissioner and  
10.26 another state or the federal government that provides that all employment performed by an  
10.27 individual for an employer during the period covered by the reciprocal arrangement is  
10.28 considered performed entirely within another state;

10.29 (7) employment for a church or convention or association of churches, or an  
10.30 organization operated primarily for religious purposes that is operated, supervised,  
10.31 controlled, or principally supported by a church or convention or association of churches  
10.32 described in United States Code, title 26, section 501(c)(3) of the federal Internal Revenue  
10.33 Code and exempt from income tax under section 501(a);

11.1 (8) employment of a duly ordained or licensed minister of a church in the exercise of  
11.2 a ministry or by a member of a religious order in the exercise of duties required by the  
11.3 order, for Minnesota or a political subdivision or an organization described in United  
11.4 States Code, title 26, section 501(c)(3) of the federal Internal Revenue Code and exempt  
11.5 from income tax under section 501(a);

11.6 (9) employment of an individual receiving rehabilitation of "sheltered" work in  
11.7 a facility conducted for the purpose of carrying out a program of rehabilitation for  
11.8 individuals whose earning capacity is impaired by age or physical or mental deficiency  
11.9 or injury or a program providing "sheltered" work for individuals who because of an  
11.10 impaired physical or mental capacity cannot be readily absorbed in the competitive labor  
11.11 market. This clause applies only to services performed for Minnesota or a political  
11.12 subdivision or an organization described in United States Code, title 26, section 501(c)(3)  
11.13 of the federal Internal Revenue Code and exempt from income tax under section 501(a)  
11.14 in a facility certified by the Rehabilitation Services Branch of the department or in a day  
11.15 training or habilitation program licensed by the Department of Human Services;

11.16 (10) employment of an individual receiving work relief or work training as part of  
11.17 an unemployment work relief or work training program assisted or financed in whole or  
11.18 in part by any federal agency or an agency of a state or political subdivision thereof.  
11.19 This clause applies only to employment for Minnesota or a political subdivision or an  
11.20 organization described in United States Code, title 26, section 501(c)(3) of the federal  
11.21 Internal Revenue Code and exempt from income tax under section 501(a). This clause does  
11.22 not apply to programs that require unemployment benefit coverage for the participants;

11.23 (11) employment for Minnesota or a political subdivision as an elected official, a  
11.24 member of a legislative body, or a member of the judiciary;

11.25 (12) employment as a member of the Minnesota National Guard or Air National  
11.26 Guard;

11.27 (13) employment for Minnesota, a political subdivision, or instrumentality thereof,  
11.28 as an employee serving only on a temporary basis in case of fire, flood, tornado, or  
11.29 similar emergency;

11.30 (14) employment as an election official or election worker for Minnesota or a  
11.31 political subdivision, but only if the compensation for that employment was less than  
11.32 \$1,000 in a calendar year;

11.33 (15) employment for Minnesota that is a major policy-making or advisory position  
11.34 in the unclassified service, ~~including those positions established under section 43A.08,~~  
11.35 ~~subdivision 1a;~~

12.1 (16) employment for Minnesota in an unclassified position established under section  
 12.2 43A.08, subdivision 1a;

12.3 ~~(16)~~ (17) employment for a political subdivision of Minnesota that is a nontenured  
 12.4 major policy making or advisory position;

12.5 ~~(17)~~ (18) domestic employment in a private household, local college club, or local  
 12.6 chapter of a college fraternity or sorority performed for a person, only if the wages paid  
 12.7 in any calendar quarter in either the current or prior calendar year to all individuals in  
 12.8 domestic employment totaled less than \$1,000.

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

12.13 ~~(18)~~ (19) employment of an individual by a son, daughter, or spouse, and  
 12.14 employment of a child under the age of 18 by the child's father or mother;

12.15 ~~(19)~~ (20) employment ~~for a personal care assistance provider agency by~~ of an  
 12.16 individual who provides direct care to an immediate family member ~~of a recipient who~~  
 12.17 ~~provides the direct care to the recipient~~ funded through the personal care assistance  
 12.18 program under section 256B.0659;

12.19 ~~(20)~~ (21) employment of an inmate of a custodial or penal institution;

12.20 ~~(21)~~ (22) employment for a school, college, or university by a student who is  
 12.21 enrolled and whose primary relation to the school, college, or university is as a student.  
 12.22 This does not include an individual whose primary relation to the school, college, or  
 12.23 university is as an employee who also takes courses;

12.24 ~~(22)~~ (23) employment of an individual who is enrolled as a student in a full-time  
 12.25 program at a nonprofit or public educational institution that maintains a regular faculty  
 12.26 and curriculum and has a regularly organized body of students in attendance at the place  
 12.27 where its educational activities are carried on, taken for credit at the institution, that  
 12.28 combines academic instruction with work experience, if the employment is an integral  
 12.29 part of the program, and the institution has so certified to the employer, except that this  
 12.30 clause does not apply to employment in a program established for or on behalf of an  
 12.31 employer or group of employers;

12.32 ~~(23)~~ (24) employment of university, college, or professional school students in an  
 12.33 internship or other training program with the city of St. Paul or the city of Minneapolis  
 12.34 under Laws 1990, chapter 570, article 6, section 3;

12.35 ~~(24)~~ (25) employment for a hospital by a patient of the hospital. "Hospital" means  
 12.36 an institution that has been licensed by the Department of Health as a hospital;

13.1 ~~(25)~~ (26) employment as a student nurse for a hospital or a nurses' training school by  
13.2 an individual who is enrolled and is regularly attending classes in an accredited nurses'  
13.3 training school;

13.4 ~~(26)~~ (27) employment as an intern for a hospital by an individual who has completed  
13.5 a four-year course in an accredited medical school;

13.6 ~~(27)~~ (28) employment as an insurance salesperson, by other than a corporate  
13.7 officer, if all the wages from the employment is solely by way of commission. The word  
13.8 "insurance" includes an annuity and an optional annuity;

13.9 ~~(28)~~ (29) employment as an officer of a township mutual insurance company or  
13.10 farmer's mutual insurance company operating under chapter 67A;

13.11 ~~(29)~~ (30) employment of a corporate officer, if the officer directly or indirectly,  
13.12 including through a subsidiary or holding company, owns 25 percent or more of the  
13.13 employer corporation, and employment of a member of a limited liability company, if the  
13.14 member directly or indirectly, including through a subsidiary or holding company, owns  
13.15 25 percent or more of the employer limited liability company;

13.16 ~~(30)~~ (31) employment as a real estate salesperson, by other than a corporate officer,  
13.17 if all the wages from the employment is solely by way of commission;

13.18 ~~(31)~~ (32) employment as a direct seller as defined in United States Code, title 26,  
13.19 section 3508;

13.20 ~~(32)~~ (33) employment of an individual under the age of 18 in the delivery or  
13.21 distribution of newspapers or shopping news, not including delivery or distribution to any  
13.22 point for subsequent delivery or distribution;

13.23 ~~(33)~~ (34) casual employment performed for an individual, other than domestic  
13.24 employment under clause ~~(17)~~ (18), that does not promote or advance that employer's  
13.25 trade or business;

13.26 ~~(34)~~ (35) employment in "agricultural employment" unless considered "covered  
13.27 agricultural employment" under subdivision 11; or

13.28 ~~(35)~~ (36) if employment during one-half or more of any pay period was covered  
13.29 employment, all the employment for the pay period is considered covered employment;  
13.30 but if during more than one-half of any pay period the employment was noncovered  
13.31 employment, then all of the employment for the pay period is considered noncovered  
13.32 employment. "Pay period" means a period of not more than a calendar month for which a  
13.33 payment or compensation is ordinarily made to the employee by the employer.

13.34 Sec. 3. Minnesota Statutes 2010, section 268.042, subdivision 1, is amended to read:

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

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

14.13 (c) Except as provided in subdivision 3, any person that is or becomes an employer  
 14.14 subject to the Minnesota Unemployment Insurance Law ~~because of the application of~~  
 14.15 ~~section 268.035, subdivision 20, clause (14), (17), or (34),~~ within any calendar year is  
 14.16 considered to be subject to this chapter the entire calendar year.

14.17 (d) Within 30 calendar days of the termination of business, an employer that has  
 14.18 been assigned a tax account or reimbursable account must notify the commissioner by  
 14.19 electronic transmission, in a format prescribed by the commissioner, if that the employer  
 14.20 no longer has employees and does not intend or expect to pay wages to any employees in  
 14.21 covered employment during the current or the next calendar year and into the foreseeable  
 14.22 future. Upon notification, the employer is no longer required to file wage detail reports  
 14.23 under section 268.044, subdivision 1, paragraph (d), and the employer's account must  
 14.24 be terminated.

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

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

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

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

14.33 Sec. 4. Minnesota Statutes 2010, section 268.044, subdivision 1, is amended to read:

14.34 Subdivision 1. **Wage detail report.** (a) Each employer must submit, under the  
 14.35 account provided for in section 268.045 or 268.046, a quarterly wage detail report

15.1 by electronic transmission, in a format prescribed by the commissioner. The report  
15.2 must include for each employee in covered employment during the calendar quarter,  
15.3 the employee's name, Social Security number, the total wages paid to the employee,  
15.4 and total number of paid hours worked. For employees exempt from the definition of  
15.5 employee in section 177.23, subdivision 7, clause (6), the employer must report 40 hours  
15.6 worked for each week any duties were performed by a full-time employee and must  
15.7 report a reasonable estimate of the hours worked for each week duties were performed  
15.8 by a part-time employee. In addition, the wage detail report must include the number of  
15.9 employees employed during the payroll period that includes the 12th day of each calendar  
15.10 month and, if required by the commissioner, the report must be broken down by business  
15.11 location and, if section 268.046, subdivision 1, paragraph (b), or subdivision 2, paragraph  
15.12 (b), applies, by separate unit. The report is due and must be received by the commissioner  
15.13 on or before the last day of the month following the end of the calendar quarter. The  
15.14 commissioner may delay the due date on a specific calendar quarter in the event the  
15.15 department is unable to accept wage detail reports electronically.

15.16 (b) The employer may report the wages paid to the next lower whole dollar amount.

15.17 (c) An employer need not include the name of the employee or other required  
15.18 information on the wage detail report if disclosure is specifically exempted from being  
15.19 reported by federal law.

15.20 (d) A wage detail report must be submitted for each calendar quarter even though  
15.21 no wages were paid, unless the employer has notified the commissioner, under section  
15.22 268.042, subdivision 1, ~~paragraph (c)~~, of termination of business.

15.23 Sec. 5. Minnesota Statutes 2010, section 268.069, subdivision 2, is amended to read:

15.24 Subd. 2. **Unemployment benefits paid from state funds.** Unemployment benefits  
15.25 are paid from state funds and are not considered paid from any special insurance plan,  
15.26 nor as paid by an employer. An application for unemployment benefits is not considered  
15.27 a claim against an employer but is considered a request for unemployment benefits  
15.28 from the trust fund. The commissioner has the responsibility for the proper payment of  
15.29 unemployment benefits regardless of the level of interest or participation by an applicant or  
15.30 an employer in any determination or appeal. An applicant's entitlement to unemployment  
15.31 benefits must be determined based upon that information available ~~and~~ without regard to a  
15.32 burden of proof. Any agreement between an applicant and an employer is not binding on  
15.33 the commissioner in determining an applicant's entitlement. There is no presumption of  
15.34 entitlement or nonentitlement to unemployment benefits.

16.1 Sec. 6. Minnesota Statutes 2011 Supplement, section 268.07, subdivision 2, is  
 16.2 amended to read:

16.3 Subd. 2. **Benefit account requirements.** (a) Unless paragraph (b) applies, to  
 16.4 establish a benefit account an applicant must have total wage credits in the applicant's four  
 16.5 quarter base period of at least: (1) \$2,400; or (2) 5.3 percent of the state's average annual  
 16.6 wage rounded down to the next lower \$100, whichever is higher.

16.7 (b) To establish a new benefit account within 52 calendar weeks following the  
 16.8 expiration of the benefit year on a prior benefit account, an applicant must have performed  
 16.9 services in covered employment and have been paid wages in a one or more completed  
 16.10 calendar quarter quarters that started after the effective date of the prior benefit account.  
 16.11 The wages paid for those services must be at least enough to meet the requirements of  
 16.12 paragraph (a), ~~and have been reported on wage detail under section 268.044.~~ A benefit  
 16.13 account under this paragraph may not be established effective earlier than the Sunday  
 16.14 following the end of the most recent completed calendar quarter in which the requirements  
 16.15 of paragraph (a) were met. One of the reasons for this paragraph is to prevent an applicant  
 16.16 from establishing a second benefit account as a result of one loss of employment.

16.17 **EFFECTIVE DATE.** This section is effective the day following final enactment.

16.18 Sec. 7. Minnesota Statutes 2010, section 268.085, subdivision 11, is amended to read:

16.19 Subd. 11. **Athletes and coaches.** (a) Unemployment benefits must not be paid to  
 16.20 an applicant on the basis of any wage credits from employment that consists of coaching  
 16.21 or participating in sports or athletic events or training or preparing to participate for any  
 16.22 week during the period between two successive sport seasons, or similar periods, if:

16.23 (1) the applicant was so employed in the prior season or similar period, and

16.24 (2) there is a reasonable assurance that the applicant will be so employed in the  
 16.25 following season or similar period.

16.26 (b) This subdivision applies to a coach employed by an educational institution whose  
 16.27 only employment with the educational institution is as a coach. Subdivision 7 applies to a  
 16.28 coach who has other employment with an educational institution in addition to coaching  
 16.29 at the educational institution. Employment with multiple educational institutions, or  
 16.30 employment coaching multiple sports, must be aggregated for purposes of application  
 16.31 of this subdivision.

16.32 Sec. 8. Minnesota Statutes 2010, section 268.085, subdivision 15, is amended to read:

16.33 Subd. 15. **Available for suitable employment defined.** (a) "Available for suitable  
 16.34 employment" means an applicant is ready ~~and~~, willing, and able to accept suitable

17.1 employment. The attachment to the work force must be genuine. An applicant may  
17.2 restrict availability to suitable employment, but there must be no other restrictions,  
17.3 either self-imposed or created by circumstances, temporary or permanent, that prevent  
17.4 accepting suitable employment.

17.5 (b) Unless the applicant is in reemployment assistance training, to be considered  
17.6 "available for suitable employment," a student who has regularly scheduled classes must  
17.7 be willing to discontinue classes to accept suitable employment when:

17.8 (1) class attendance restricts the applicant from accepting suitable employment; and

17.9 (2) the applicant is unable to change the scheduled class or make other arrangements  
17.10 that excuse the applicant from attending class.

17.11 (c) An applicant who is absent from the labor market area for personal reasons, other  
17.12 than to search for work, is not "available for suitable employment."

17.13 (d) An applicant who has restrictions on the hours of the day or days of the week  
17.14 that the applicant can or will work, that are not normal for the applicant's usual occupation  
17.15 or other suitable employment, is not "available for suitable employment." An applicant  
17.16 must be available for daytime employment, if suitable employment is performed during  
17.17 the daytime, even though the applicant previously worked the night shift.

17.18 Sec. 9. Minnesota Statutes 2010, section 268.095, subdivision 6, is amended to read:

17.19 Subd. 6. **Employment misconduct defined.** (a) Employment misconduct means  
17.20 any intentional, negligent, or indifferent conduct, on the job or off the job that displays  
17.21 clearly:

17.22 (1) a serious violation of the standards of behavior the employer has the right to  
17.23 reasonably expect of the employee; or

17.24 (2) a substantial lack of concern for the employment.

17.25 (b) Regardless of paragraph (a), the following is not employment misconduct:

17.26 (1) conduct that was a consequence of the applicant's mental illness or impairment;

17.27 (2) conduct that was a consequence of the applicant's inefficiency or inadvertence;

17.28 (3) simple unsatisfactory conduct;

17.29 (4) conduct an average reasonable employee would have engaged in under the  
17.30 circumstances;

17.31 (5) conduct that was a consequence of the applicant's inability or incapacity;

17.32 (6) good faith errors in judgment if judgment was required;

17.33 (7) absence because of illness or injury of the applicant, with proper notice to the  
17.34 employer;

18.1 (8) absence, with proper notice to the employer, in order to provide necessary care  
18.2 because of the illness, injury, or disability of an immediate family member of the applicant;

18.3 (9) conduct that was a consequence of the applicant's chemical dependency, unless  
18.4 the applicant was previously diagnosed chemically dependent or had treatment for  
18.5 chemical dependency, and since that diagnosis or treatment has failed to make consistent  
18.6 efforts to control the chemical dependency; or

18.7 (10) conduct that was a consequence of the applicant, or an immediate family  
18.8 member of the applicant, being a victim of domestic abuse as defined under section  
18.9 518B.01. Domestic abuse must be shown as provided for in subdivision 1, clause (9).

18.10 (c) Regardless of paragraph (b), clause (9), conduct in violation of sections 169A.20,  
18.11 169A.31, or 169A.50 to 169A.53 that interferes with or adversely affects the employment  
18.12 is employment misconduct.

18.13 (d) If the conduct for which the applicant was discharged involved only a single  
18.14 incident, that is an important fact that must be considered in deciding whether the conduct  
18.15 rises to the level of employment misconduct under paragraph (a). This paragraph does  
18.16 not require that a determination under section 268.101 or decision under section 268.105  
18.17 contain a specific acknowledgment or explanation that this paragraph was considered.

18.18 (e) The definition of employment misconduct provided by this subdivision is  
18.19 exclusive and no other definition applies.

18.20 Sec. 10. Minnesota Statutes 2010, section 268.103, subdivision 1, is amended to read:

18.21 Subdivision 1. **In commissioner's discretion.** (a) The commissioner may allow  
18.22 an appeal to be filed by electronic transmission. If the commissioner allows an appeal to  
18.23 be filed by electronic transmission, that must be clearly set out on the determination or  
18.24 decision subject to appeal.

18.25 (b) The commissioner may restrict the manner and format under which an appeal  
18.26 by electronic transmission may be filed. Restrictions to a specific ~~telephone~~ facsimile  
18.27 transmission number or electronic address must be clearly set out on the determination or  
18.28 decision subject to appeal.

18.29 (c) All information requested by the commissioner when an appeal is filed by  
18.30 electronic transmission must be supplied or the communication does not constitute an  
18.31 appeal.

18.32 (d) Subject to subdivision 2, this section applies to requests for reconsideration  
18.33 under section 268.105, subdivision 2.

19.1 Sec. 11. Minnesota Statutes 2011 Supplement, section 268.115, subdivision 1, is  
19.2 amended to read:

19.3 Subdivision 1. **Definitions.** The terms ~~used~~ in this ~~section~~ subdivision have, for  
19.4 purposes of the Minnesota Unemployment Insurance Law, the following meaning:

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

19.7 (i) begins with the third week after there is a state "on" indicator; and

19.8 (ii) ends with the third week after there is a state "off" indicator.

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

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

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

19.13 (a) equaled or exceeded 120 percent of the average of the rates for the corresponding  
19.14 13-week period ending in each of the prior two calendar years, and was five percent or  
19.15 more; or

19.16 (b) equaled or exceeded six percent; or

19.17 (ii) The United States Secretary of Labor determines that the average rate of  
19.18 seasonally adjusted total unemployment in Minnesota for the most recent three months  
19.19 for which data is published equals or exceeds 6.5 percent and this rate equals or exceeds  
19.20 110 percent of the rate of the corresponding three-month period in either of the prior  
19.21 two calendar years.

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

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

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

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

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

19.34 (6) "Eligibility period" for an applicant means the period consisting of the weeks  
19.35 remaining in the applicant's benefit year within the extended unemployment benefit period

20.1 and, if the benefit year ends within the extended unemployment benefit period, any weeks  
20.2 in the extended unemployment benefit period.

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

20.4 (i) the benefit year having not expired has received the maximum amount of regular  
20.5 unemployment benefits that were available under section 268.07; ~~or~~

20.6 (ii) the benefit year having expired, has insufficient wage credits to establish a new  
20.7 benefit account; ~~and~~ or

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

20.10 Sec. 12. Minnesota Statutes 2010, section 268.18, subdivision 4a, is amended to read:

20.11 Subd. 4a. **Court fees; collection fees.** (a) If the commissioner is required to pay any  
20.12 court fees in an attempt to enforce collection of overpaid unemployment benefits, penalties,  
20.13 or interest, the commissioner may add the amount of the court fees to the total amount due.

20.14 (b) If an applicant who has been determined overpaid unemployment benefits  
20.15 because of fraud seeks to have any portion of the debt discharged under the federal  
20.16 bankruptcy code, and the commissioner files an objection in bankruptcy court to the  
20.17 discharge, the commissioner may add the commissioner's cost of any court fees to the debt  
20.18 if the bankruptcy court does not discharge the debt.

20.19 (c) If the Internal Revenue Service assesses the commissioner a fee for offsetting  
20.20 from a federal tax refund the amount of any ~~fraud~~ overpayment, including penalties and  
20.21 interest, the amount of the fee may be added to the total amount due. The offset amount  
20.22 must be put in the trust fund and that amount credited to the total amount due from the  
20.23 applicant.

20.24 Sec. 13. Minnesota Statutes 2011 Supplement, section 268.184, subdivision 1a,  
20.25 is amended to read:

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

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

21.4 (c) If the commissioner finds that any person or agent of a person violated the  
 21.5 reporting requirements of section ~~268.0435~~ or 268.046, the person must be assessed a  
 21.6 penalty of \$5,000 or two percent of the quarterly payroll reported in violation of section  
 21.7 ~~268.0435~~ or 268.046, whichever is higher. Payroll is wages paid as defined in section  
 21.8 268.035, subdivision 30.

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

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

21.17 Sec. 14. Minnesota Statutes 2010, section 268.194, subdivision 1, is amended to read:

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

21.22 (1) all taxes collected;

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

21.24 (3) reimbursements paid by nonprofit organizations and the state and political  
 21.25 subdivisions;

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

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

21.29 (6) any other money received under a reciprocal unemployment benefit arrangement  
 21.30 with the federal government or any other state;

21.31 (7) money recovered on overpaid unemployment benefits except, if allowed by  
 21.32 federal law, five percent of any recovered amount is credited to the administration account;

21.33 (8) all money ~~recovered on losses sustained by the trust fund~~ credited to the account  
 21.34 under this chapter;

21.35 ~~(9) all money received from the contingent account under section 268.199;~~

22.1 ~~(10)~~ (9) all money credited to the account of Minnesota in the federal unemployment  
22.2 trust fund under United States Code, title 42, section 1103, of the Social Security Act,  
22.3 also known as the Reed Act; and  
22.4 ~~(11)~~ (10) all money received for the trust fund from any other source.

22.5 Sec. 15. **REVISOR'S INSTRUCTION.**

22.6 The revisor of statutes shall:

22.7 (1) change "determination of a penalty" and "determination of the penalty" to  
22.8 "determination of penalty" wherever it appears in Minnesota Statutes, chapter 268;

22.9 (2) change "the United States Citizenship and Immigration Services" to "the United  
22.10 States Immigration and Customs Enforcement" wherever it appears in Minnesota Statutes,  
22.11 chapter 268;

22.12 (3) make any cross-reference changes needed resulting from the renumbering in  
22.13 section 2.

22.14 Sec. 16. **REPEALER.**

22.15 Minnesota Rules, part 3315.0555, subparts 2, 3, and 4, are repealed.

22.16 **EFFECTIVE DATE.** This section is effective the day following final enactment  
22.17 and applies retroactively to all pending cases.

22.18 Sec. 17. **EFFECTIVE DATE.**

22.19 Unless otherwise specified, this article is effective July 1, 2012.

APPENDIX  
Article locations in H2582-2

ARTICLE 1	FEDERAL CONFORMITY .....	Page.Ln 1.13
ARTICLE 2	POLICY .....	Page.Ln 4.17
ARTICLE 3	HOUSEKEEPING .....	Page.Ln 10.1

APPENDIX  
Repealed Minnesota Rule: H2582-2

Subp. 2. **Additional factors considered.** Additional factors to be considered are those listed in items A to H.

A. **Availability to public.** That an individual makes services available to the general public on a continuing basis is usually indicative of independent status. An individual may offer services to the public in a number of ways including having an office and assistants, displaying a sign in front of the home or office, holding a business license, having a listing in a business directory or a business listing in a telephone directory, or advertising in a newspaper, trade journal, or magazine.

B. **Compensation on job basis.** A person working in employment is usually paid by the hour, week, or month. Payment on a job basis is customary where the worker is independent. Payment by the job may include a predetermined lump sum which is computed by the number of hours required to do the job at a fixed rate per hour or periodic partial payments based upon a percent of the total job price or the amount of the total job completed. The guarantee of a minimum salary or the granting of a drawing account at stated intervals with no requirement for repayment of the excess over earnings indicates the existence of employment.

C. **Realization of profit or loss.** An individual who is in a position to realize a profit or suffer a loss as a result of the individual's services is generally independent, while the individual who is working in employment is not in that position.

D. **Obligation.** An individual working in employment usually has the right to end the relationship with an employer at any time the individual wishes without incurring liability, although the individual may be required to provide notice of termination for some period in advance of the termination. An independent worker usually agrees to complete a specific job. An independent worker is responsible for its satisfactory completion and is liable for failure to complete the job.

E. **Substantial investment.** A substantial investment by a person in facilities used by the person in performing services for another tends to show an independent status. The furnishing of all necessary facilities by the employer tends to indicate the absence of an independent status. Facilities include equipment or premises necessary for the work, but not tools, instruments, clothing, and similar items that are provided by individuals working in employment as a common practice in their particular trade. A substantial expenditure of time or money for an individual's education is not necessarily indicative of an independent relationship. Substantial investment means a monetary investment representing something of considerable worth, in relation to the overall requirements of the person's chosen profession, trade, occupation, or vocation.

APPENDIX  
Repealed Minnesota Rule: H2582-2

F. **Simultaneous contracts.** If an individual works for a number of persons or firms at the same time, it indicates an independent status because the worker is usually free from control by any of the firms. It is possible that a person may work for a number of people or firms and still be an employee of one or all of them.

G. **Responsibility.** An employer is usually responsible for the negligence, personal behavior, and work actions of a person working in employment in contacts with customers and the general public during times that the person is performing services for the employer. An independent worker is usually accountable for his or her own actions.

H. **Services in the course of the employer's organization, trade, or business.** Services that are in the course of the employer's organization, trade, or business consist of services which are a part or process of the employer's organization, trade, or business and ancillary or incidental services. Services which are a part or process of the employer's trade or business are generally performed by individuals in employment. Therefore, it is a consideration in determining the status of an individual. This consideration, as with all other considerations, is not a sole determinative factor. "Part" and "process" are not synonymous. Process refers to those services which directly carry out the fundamental purposes for which the organization, trade, or business exists, for example, painting and repairing automobile bodies in an automobile body paint and repair shop. Part refers to any other services which are essential to the operation or maintenance of the organization, trade, or business, for example, routine cleaning of premises and maintenance of tools, equipment, and buildings. Ancillary or incidental services include landscaping the areas around an automobile body paint and repair shop. Other services that meet the part, process, or ancillary classification are those services in connection with purchasing, receiving, storing, pricing, displaying, selling, and delivery of merchandise and housekeeping services required for the safety and comfort of customers and the general public or to maintain the premises in a manner as to promote business.

Subp. 3. **Determination of control.** Items A to M describe criteria for determining if the employer has control over the method of performing or executing services. The total circumstances must be considered to determine if control is present.

A. **Authority over assistants.** Control over the individual is indicated when the employer hires and pays the individual's assistants and supervises the details of the assistant's work.

B. **Compliance with instructions.** Control is indicated when an individual is required to comply with detailed instructions about when, where, and how to work including the order or sequence in which the service is to be performed. Mere suggestions as to detail or necessary and usual cooperation where the work furnished is part of a larger undertaking, does not normally

APPENDIX  
Repealed Minnesota Rule: H2582-2

evinced control. Some individuals may work without receiving instructions because they are highly proficient in their line of work; nevertheless, the control factor is present if the employer has the right to instruct or direct the methods for doing the work and the results achieved. Instructions may be oral or may be in the form of manuals or written procedures which show how the desired result is to be accomplished. However, instructions required by state or federal law or regulation or general instructions passed on by the employer from a client or customer, generally does not evince control.

C. **Oral or written reports.** Control is indicated if regular oral or written reports relating to the method in which the services are performed must be submitted to the employer. Periodic reports relating to the accomplishment of a specific result may not be indicative of control if, for example, the reports are used to establish entitlement to partial payment based upon percentage of completion of a job, or the reports are needed to determine compliance with the terms of a contract. Completion of receipts, invoices, and other forms customarily used in the particular type of business activity or required by law does not constitute written reports.

D. **Place of work.** Doing the work on the employer's premises is not control in itself; however, it does imply that the employer has control, especially when the work could be done elsewhere. When work is done off the premises it does indicate some freedom from control; however, in some occupations, the services are necessarily performed away from the premises of the employer and are still considered to be in employment.

E. **Personal performance.** Control is indicated if the services must be personally rendered to the employer. Personal performance of a very specialized work, when the worker is hired on the basis of professional reputation, as in the case of a consultant known in the academic and professional circles to be an authority in the field, is a less reliable indicator of control. Lack of control may be indicated when an individual has the right to hire a substitute without the employer's knowledge or consent.

F. **Existence of a continuing relationship.** The existence of a continuing relationship between an individual and the person for whom an individual performs services is a factor tending to indicate the existence of an employer-employee relationship. Continuing services may include work performed at frequently recurring, though somewhat irregular intervals, either on call of the employer or whenever work is available.

G. **Right to discharge.** The right to discharge is a very important factor indicating that the right to control exists particularly if the individual may be terminated with little notice, without cause, or for failure to follow specified rules or methods. An independent worker generally cannot be terminated without the firm being liable for damages if he or she is producing

APPENDIX  
Repealed Minnesota Rule: H2582-2

according to his or her contract specifications. Contracts which provide for termination upon notice or for specified acts of nonperformance or default are not solely determinative of the right to control. That a right to discharge is restricted because of a contract with a labor union or with other entities does not mean there is no control.

H. **Set hours of work.** The establishment of set hours of work by the employer indicates control. Where fixed hours are not practical because of the nature of the occupation, a requirement that the worker work at certain times is an element of control.

I. **Training.** Training of an individual by an experienced employee working with the individual, by required attendance at meetings, and by other methods, is a factor of control especially if the training is given periodically or at frequent intervals.

J. **Amount of time.** If the worker must devote full time to the activity, control is indicated. Full time does not necessarily mean an eight-hour day or a five- or six-day week. Its meaning may vary with the intent of the parties, the nature of the occupation and customs in the locality. Full-time services may be required even though not specified in writing or orally. For example, a person may be required to produce a minimum volume of business which compels the person to devote all working time to that business, or the person may not be permitted to work for anyone else.

K. **Tools and materials.** The furnishing of tools, materials, and supplies by the employer is indicative of control over the worker. When the worker furnishes these items it indicates a lack of control, but lack of control is not indicated if the individual provides tools or supplies customarily furnished by workers in the trade.

L. **Expense reimbursement.** Payment by the employer of either the worker's approved business or traveling expenses, or both, is a factor indicating control over the worker. A lack of control is indicated when the worker is paid on a job basis and has to take care of all incidental expenses.

M. **Satisfying requirements of regulatory and licensing agencies.** If an employer is required to enforce standards or restrictions imposed by regulatory or licensing agencies, such action does not evince control.

Subp. 4. **Procedures for determining control.** The department must determine if control exists by:

- A. reviewing written contracts between the individual and the employer;
- B. interviewing the individual or employer;
- C. obtaining statements of third parties;

APPENDIX

Repealed Minnesota Rule: H2582-2

- D. examining regulatory statutes governing the organization, trade, or business;
- E. examining the books and records of the employer; and
- F. making any other investigation necessary to determine if the elements of control specified in subpart 3 exist.