

1.1 A bill for an act

1.2 relating to workforce development; clarifying duties and responsibilities;
1.3 modifying unemployment insurance; amending Minnesota Statutes 2008,
1.4 sections 116L.665, subdivision 3; 136F.06, by adding a subdivision; 268.095, as
1.5 amended; Minnesota Statutes 2009 Supplement, section 268.105, subdivision 1;
1.6 proposing coding for new law in Minnesota Statutes, chapters 116L; 268.

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

1.8 Section 1. Minnesota Statutes 2008, section 116L.665, subdivision 3, is amended to
1.9 read:

1.10 Subd. 3. **Purpose; duties.** The governor's Workforce Development Council shall
1.11 replace the governor's Job Training Council and assume all of its requirements, duties,
1.12 and responsibilities under the Workforce Investment Act. Additionally, the Workforce
1.13 Development Council shall assume the following duties and responsibilities:

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

1.19 (1) Workforce Investment Act, United States Code, title 29, section 2911, et seq.;

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

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

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

1.24 (5) Personal Responsibility and Work Opportunities Act of 1996 (TANF);

2.1 (6) Food Stamp Act of 1977, United States Code, title 7, section 6(d)(4), Food Stamp
2.2 Employment and Training Program, United States Code, title 7, section 2015(d)(4); and
2.3 (7) programs defined in section 116L.19, subdivision 5.

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

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

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

2.13 (d) Promote education and employment transitions programs and knowledge and
2.14 skills of entrepreneurship among employers, workers, youth, and educators, and encourage
2.15 employers to provide meaningful work-based learning opportunities;

2.16 (e) Evaluate and identify exemplary education and employment transitions programs
2.17 and provide technical assistance to local partnerships to replicate the programs throughout
2.18 the state.

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

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

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

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

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

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

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

3.1 (m) In consultation with local workforce councils and the Department of
 3.2 Employment and Economic Development, develop an ongoing process to identify and
 3.3 address local gaps in workforce services.

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

3.5 Sec. 2. **[116L.98] WORKFORCE PROGRAM OUTCOMES.**

3.6 The commissioner shall develop and implement a set of standard approaches for
 3.7 assessing the outcomes of workforce programs under chapter 116L. The outcomes
 3.8 assessed must include, but are not limited to, periodic comparisons of workforce program
 3.9 participants and nonparticipants.

3.10 The commissioner shall also monitor legislative appropriations to recipients and
 3.11 administered by the department on a pass-through basis by the department and develop
 3.12 a consistent and equitable method of assessing recipients for the costs of its monitoring
 3.13 activities.

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

3.15 Sec. 3. Minnesota Statutes 2008, section 136F.06, is amended by adding a subdivision
 3.16 to read:

3.17 Subd. 4. **Workforce focus.** The board must identify colleges offering flexible
 3.18 academic programs that accommodate the needs of laid-off workers and assist its other
 3.19 institutions in determining whether to offer similar programs.

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

3.21 Sec. 4. Minnesota Statutes 2008, section 268.095, as amended by Laws 2009, chapter
 3.22 15, sections 8 and 9, and Laws 2009, chapter 78, article 3, sections 11 and 12, and article
 3.23 4, sections 29 and 30, is amended to read:

3.24 **268.095 INELIGIBILITY BECAUSE OF QUIT OR DISCHARGE.**

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

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

3.29 (2) the applicant quit the employment to accept other covered employment that
 3.30 provided substantially better terms and conditions of employment, but the applicant did
 3.31 not work long enough at the second employment to have sufficient subsequent earnings to

4.1 satisfy the period of ineligibility that would otherwise be imposed under subdivision 10
4.2 for quitting the first employment;

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

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

4.7 (5) the employment was part time and the applicant also had full-time employment
4.8 in the base period, from which full-time employment the applicant separated because of
4.9 reasons for which the applicant was held not to be ineligible, and the wage credits from
4.10 the full-time employment are sufficient to meet the minimum requirements to establish a
4.11 benefit account under section 268.07;

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

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

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

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

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

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

5.1 (9) domestic abuse of the applicant or an immediate family member of the applicant,
 5.2 necessitated the applicant's quitting the employment. Domestic abuse must be shown
 5.3 by one or more of the following:

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

5.6 (ii) a police record documenting the domestic abuse;

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

5.9 (iv) medical documentation of domestic abuse; or

5.10 (v) written statement that the applicant or an immediate family member of the
 5.11 applicant is a victim of domestic abuse, provided by a social worker, member of the
 5.12 clergy, shelter worker, attorney at law, or other professional who has assisted the applicant
 5.13 in dealing with the domestic abuse.

5.14 Domestic abuse for purposes of this clause is defined under section 518B.01; ~~or~~

5.15 (10) the applicant quit in order to relocate to accompany a spouse whose job location
 5.16 changed making it impractical for the applicant to commute; or

5.17 (11) the applicant quit employment at the conclusion of a temporary job assignment
 5.18 with the client of a staffing service employer. For the purposes of this section, a "staffing
 5.19 service employer" is an employer whose business involves employing individuals directly
 5.20 for the purpose of furnishing temporary job assignment workers to clients of the staffing
 5.21 service.

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

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

5.27 (c) An employee who seeks to withdraw a previously submitted notice of quitting is
 5.28 considered to have quit the employment if the employer does not agree that the notice
 5.29 may be withdrawn.

5.30 (d) An applicant who, ~~within five calendar days after completion of a suitable~~
 5.31 ~~temporary job assignment from a staffing service employer, (1) fails without good cause~~
 5.32 ~~to affirmatively request an additional job assignment, (2) refuses without good cause an~~
 5.33 ~~additional suitable job assignment offered, or (3) accepts employment with the client of~~
 5.34 ~~the~~ a staffing service employer, is considered to have quit employment with the staffing
 5.35 service employer. Accepting employment with the client of the staffing service employer
 5.36 meets the requirements of the exception to ineligibility under subdivision 1, clause (2).

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

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

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

6.12 Subd. 3. **Good reason caused by the employer defined.** (a) A good reason caused
6.13 by the employer for quitting is a reason:

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

6.16 (2) that is adverse to the worker; and

6.17 (3) that would compel an average, reasonable worker to quit and become
6.18 unemployed rather than remaining in the employment.

6.19 (b) The analysis required in paragraph (a) must be applied to the specific facts
6.20 of each case.

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

6.25 (d) A reason for quitting employment is not considered a good reason caused by
6.26 the employer for quitting if the reason for quitting occurred because of the applicant's
6.27 employment misconduct.

6.28 (e) Notification of discharge in the future, including a layoff because of lack of work,
6.29 is not considered a good reason caused by the employer for quitting.

6.30 (f) An applicant has a good reason caused by the employer for quitting if it results
6.31 from sexual harassment of which the employer was aware, or should have been aware,
6.32 and the employer failed to take timely and appropriate action. Sexual harassment means
6.33 unwelcome sexual advances, requests for sexual favors, sexually motivated physical
6.34 contact or other conduct or communication of a sexual nature when:

6.35 (1) the applicant's submission to the conduct or communication is made a term
6.36 or condition of the employment;

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

7.3 (3) the conduct or communication has the purpose or effect of substantially
7.4 interfering with an applicant's work performance or creating an intimidating, hostile, or
7.5 offensive working environment.

7.6 (g) The definition of a good reason caused by the employer for quitting employment
7.7 provided by this subdivision is exclusive and no other definition applies.

7.8 Subd. 4. **Discharge.** An applicant who was discharged from employment by an
7.9 employer is ineligible for all unemployment benefits according to subdivision 10 only if:

7.10 (1) the applicant was discharged because of employment misconduct as defined
7.11 in subdivision 6; or

7.12 (2) the applicant was discharged because of aggravated employment misconduct as
7.13 defined in subdivision 6a.

7.14 Subd. 5. **Discharge defined.** (a) A discharge from employment occurs when any
7.15 words or actions by an employer would lead a reasonable employee to believe that the
7.16 employer will no longer allow the employee to work for the employer in any capacity. A
7.17 layoff because of lack of work is considered a discharge. A suspension from employment
7.18 without pay of more than 30 calendar days is considered a discharge.

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

7.25 (c) An applicant who has completed a temporary job assignment with the client of a
7.26 staffing service employer is deemed to have been discharged by the employer.

7.27 Subd. 6. **Employment misconduct defined.** (a) Employment misconduct means
7.28 any ~~intentional, negligent, or indifferent~~ conduct, on the job or off the job that ~~displays~~
7.29 ~~clearly:~~

7.30 ~~(1) a serious is an egregious~~ violation of the standards of behavior the employer has
7.31 the right to reasonably expect of the employee; ~~or and displays clearly~~

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

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

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

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

7.36 (3) simple unsatisfactory conduct;

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

8.3 (5) ~~poor performance because of~~ conduct that was a consequence of the applicant's
8.4 inability or incapacity;

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

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

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

8.10 (9) conduct that was a ~~direct result~~ consequence of the applicant's chemical
8.11 dependency, unless the applicant was previously diagnosed chemically dependent or had
8.12 treatment for chemical dependency, and since that diagnosis or treatment has failed to
8.13 make consistent efforts to control the chemical dependency; or

8.14 (10) conduct that was a ~~result~~ consequence of the applicant, or an immediate family
8.15 member of the applicant, being a victim of domestic abuse as defined under section
8.16 518B.01. Domestic abuse must be shown as provided for in subdivision 1, clause (9).

8.17 (c) Regardless of paragraph (b), clause (9), conduct in violation of sections 169A.20,
8.18 169A.31, or 169A.50 to 169A.53 that interferes with or adversely affects the employment
8.19 is employment misconduct.

8.20 (d) If the conduct for which the applicant was discharged involved only a single
8.21 incident, that is an important fact that must be considered in deciding whether the conduct
8.22 rises to the level of employment misconduct under paragraph (a).

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

8.25 Subd. 6a. **Aggravated employment misconduct defined.** (a) For the purpose of
8.26 this section, "aggravated employment misconduct" means:

8.27 (1) the commission of any act, on the job or off the job, that would amount to a gross
8.28 misdemeanor or felony if the act substantially interfered with the employment or had a
8.29 significant adverse effect on the employment; or

8.30 (2) for an employee of a facility as defined in section 626.5572, aggravated
8.31 employment misconduct includes an act of patient or resident abuse, financial exploitation,
8.32 or recurring or serious neglect, as defined in section 626.5572 and applicable rules.

8.33 (b) If an applicant is convicted of a gross misdemeanor or felony for the same act for
8.34 which the applicant was discharged, it is aggravated employment misconduct if the act
8.35 substantially interfered with the employment or had a significant adverse effect on the
8.36 employment.

9.1 (c) The definition of aggravated employment misconduct provided by this
9.2 subdivision is exclusive and no other definition applies.

9.3 Subd. 7. **Act or omissions after separation.** An applicant may not be held
9.4 ineligible for unemployment benefits under this section for any acts or omissions occurring
9.5 after the applicant's separation from employment with the employer. A layoff because of
9.6 lack of work is considered a separation from employment.

9.7 Subd. 10. **Ineligibility duration.** (a) Ineligibility from the payment of all
9.8 unemployment benefits under subdivisions 1 and 4 is for the duration of the applicant's
9.9 unemployment and until the end of the calendar week that the applicant had total earnings
9.10 in subsequent covered employment of eight times the applicant's weekly unemployment
9.11 benefit amount.

9.12 (b) Ineligibility imposed under subdivisions 1 and 4 begins on the Sunday of the
9.13 week that the applicant became separated from employment.

9.14 (c) In addition to paragraph (a), if the applicant was discharged from employment
9.15 because of aggravated employment misconduct, wage credits from that employment are
9.16 canceled and cannot be used for purposes of a benefit account under section 268.07,
9.17 subdivision 2.

9.18 Subd. 11. **Application.** (a) This section and section 268.085, subdivision 13c,
9.19 apply to all covered employment, full time or part time, temporary or of limited duration,
9.20 permanent or of indefinite duration, that occurred in Minnesota during the base period, the
9.21 period between the end of the base period and the effective date of the benefit account,
9.22 or the benefit year.

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

9.25 **EFFECTIVE DATE.** This section is effective for determinations and appeal
9.26 decisions under section 268.105, subdivision 1, issued on and after the Sunday following
9.27 final enactment.

9.28 Sec. 5. **[268.102] BENEFITS REVIEW SPECIALIST.**

9.29 **Subdivision 1. Benefits review specialist.** The commissioner shall allocate
9.30 unemployment insurance administrative or discretionary funds in an amount sufficient to
9.31 finance the selection of at least ten unemployment insurance staff persons knowledgeable
9.32 about eligibility, benefit determinations, and benefit calculations and designate them as
9.33 benefit review specialists to work with benefit applicants in order to correct errors in
9.34 applications, answer questions, and resolve issues before appeal.

10.1 Subd. 2. **Review option provided.** Notwithstanding any law or rule to the contrary,
10.2 an applicant may request that any issue of ineligibility, determination of ineligibility,
10.3 benefit amount or any other issue under this chapter be reviewed by a benefits review
10.4 specialist prior to an appeal under sections 268.103 to 268.105.

10.5 Subd. 3. **Notice.** The commissioner must include with any notice to or
10.6 communication with an applicant, notification of an applicant's right to request a review as
10.7 provided in subdivision 2, by a benefits review specialist.

10.8 Sec. 6. Minnesota Statutes 2009 Supplement, section 268.105, subdivision 1, is
10.9 amended to read:

10.10 **Subdivision 1. Evidentiary hearing by unemployment law judge.** (a) Upon
10.11 a timely appeal having been filed, the department must send, by mail or electronic
10.12 transmission, a notice of appeal to all involved parties that an appeal has been filed, and
10.13 that a de novo due process evidentiary hearing will be scheduled. The notice must set out
10.14 the parties' rights and responsibilities regarding the hearing. The notice must explain that
10.15 the facts will be determined by the unemployment law judge based upon a preponderance
10.16 of the evidence. The notice must explain in clear and simple language the meaning of the
10.17 term "preponderance of the evidence." The department must set a time and place for a
10.18 de novo due process evidentiary hearing and send notice to any involved applicant and
10.19 any involved employer, by mail or electronic transmission, not less than ten calendar
10.20 days before the date of the hearing.

10.21 (b) The evidentiary hearing is conducted by an unemployment law judge as an
10.22 evidence gathering inquiry. At the beginning of the hearing the unemployment law judge
10.23 must fully explain how the hearing will be conducted, that the applicant has the right to
10.24 request that the hearing be rescheduled so that documents or witnesses can be subpoenaed,
10.25 that the facts will be determined based on a preponderance of the evidence, and, in
10.26 clear and simple language, the meaning of the term "preponderance of the evidence."
10.27 The unemployment law judge must ensure that all relevant facts are clearly and fully
10.28 developed. The department may adopt rules on evidentiary hearings. The rules need
10.29 not conform to common law or statutory rules of evidence and other technical rules of
10.30 procedure. The department has discretion regarding the method by which the evidentiary
10.31 hearing is conducted. A report of any employee of the department, except a determination,
10.32 made in the regular course of the employee's duties, is competent evidence of the facts
10.33 contained in it. An affidavit or written statement based on personal knowledge and signed
10.34 under penalty of perjury is competent evidence of the facts contained in it; however, the
10.35 veracity of statements contained within the document or the credibility of the witness

11.1 making the statement may be disputed with other documents or testimony and production
11.2 of such documents or testimony may be compelled by subpoena.

11.3 (c) After the conclusion of the hearing, upon the evidence obtained, the
11.4 unemployment law judge must make findings of fact and decision and send those, by mail
11.5 or electronic transmission, to all involved parties. When the credibility of an involved
11.6 party or witness testifying in an evidentiary hearing has a significant effect on the outcome
11.7 of a decision, the unemployment law judge must set out the reason for crediting or
11.8 discrediting that testimony. The unemployment law judge's decision is final unless a
11.9 request for reconsideration is filed under subdivision 2.

11.10 (d) Regardless of paragraph (c), if the appealing party fails to participate in the
11.11 evidentiary hearing, the unemployment law judge has the discretion to dismiss the appeal
11.12 by summary order. By failing to participate, the appealing party is considered to have
11.13 failed to exhaust available administrative remedies unless the appealing party files a
11.14 request for reconsideration under subdivision 2 and establishes good cause for failing to
11.15 participate in the evidentiary hearing under subdivision 2, paragraph (d). Submission
11.16 of a written statement does not constitute participation. The applicant must participate
11.17 personally and appearance solely by a representative does not constitute participation.

11.18 (e) Only employees of the department who are attorneys licensed to practice law
11.19 in Minnesota may serve as the chief unemployment law judge, senior unemployment
11.20 law judges who are supervisors, or unemployment law judges. The commissioner
11.21 must designate a chief unemployment law judge. The chief unemployment law judge
11.22 may transfer to another unemployment law judge any proceedings pending before an
11.23 unemployment law judge.

11.24 (f) A full-time unemployment law judge must be paid a salary of a minimum of 60
11.25 percent and a maximum of 80 percent of the salary set under section 15A.083, subdivision
11.26 7, for a workers' compensation judge; the salary paid within that range to any single
11.27 unemployment law judge is based on experience and performance.

11.28 **Sec. 7. CUSTOMER SERVICE.**

11.29 The commissioner must assign at least one full-time equivalent unemployment
11.30 insurance customer service staff person to each workforce center to assist applicants in
11.31 applying for benefits, accessing resource room resources, searching for jobs, accessing
11.32 training and other services available to unemployed workers and answer questions about
11.33 unemployment benefits and options.