

CHAPTER 380—H. F. No. 433

An act relating to employment security; amending Minnesota Statutes 1953, Section 268.04, Subdivision 12; Section 268.06, Subdivisions 1, 2, 6, 24; and repealing Section 268.06, Subdivision 23.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Minnesota Statutes 1953, Section 268.04, Subdivision 12, is amended to read:

Subd. 12. (1) Subject to the other provisions of this subdivision "employment" means service performed prior to January 1, 1945, which was employment as defined in this section prior to such date, and any service performed after December 31, 1944, including service in interstate commerce, by any individual who is a servant under the law of master and servant or who performs services for any employing unit, unless such services are performed by such individual in pursuit of his independently established business or is in fact an independent contractor. The services performed by officers of corporations are included as employment under sections 268.03 to 268.24.

(2) The term "employment" shall include an individual's entire service, performed within or both within and without this state if (a) the service is localized in this state; or (b) the service is not localized in any state but some of the service is performed in this state and (1) the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state; (2) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(3) Service shall be deemed to be localized within a state if (a) the service is performed entirely within such state; or (b) the service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

(4) (a) Service covered by an election pursuant to section 268.11, subdivision 3; and

(b) Service covered by an arrangement pursuant to section 268.13 between the commissioner and the agency charged with the administration of any other state or federal

employment security law, pursuant to which all service performed by an individual for an employing unit is deemed to be performed entirely within this state, shall be deemed to be employment if the commissioner has approved an election of the employing unit for which such service is performed, pursuant to which the entire service of such individual during the period covered by such election is deemed to be employment.

(5) Notwithstanding any inconsistent provisions of sections 268.03 to 268.24, the term "employment" shall include any services which are performed by an individual with respect to which an employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund.

(6) The term "employment" shall not include:

(a) Agricultural labor. The term "agricultural labor" includes all services performed subsequent to December 31, 1939:

(1) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising, harvesting or threshing any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock, bees, poultry, furbearing animals and wildlife.

(2) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane or fire, if the major part of such service is performed on a farm.

(3) In connection with the production or harvesting of maple syrup or maple sugar or any commodity defined as an agricultural commodity in section 15 (g) of the Agricultural Marketing Act, as amended, or in connection with the raising or harvesting of mushrooms, or in connection with the hatching of poultry, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying and storing water for farming purposes.

(4) In handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; but only if such service is performed as an incident to ordinary farming operations

or, in the case of fruits and vegetables, as an incident to the preparations of such fruits or vegetables for market. The provisions of this paragraph shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

As used in this subdivision, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animals, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(b) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority;

(c) Casual labor not in the course of the employing unit's trade or business;

(d) Service performed on the navigable waters of the United States as to which this state is prohibited by the Constitution and laws of the United States of America from requiring contributions of employers with respect to wages as provided in sections 268.03 to 268.24;

(e) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of 21 in the employ of his father or mother;

(f) Service performed in the employ of the United States government, or any instrumentality of the United States exempt under the Constitution of the United States from the contributions imposed by sections 268.03 to 268.24, except that with respect to such service performed subsequent to December 31, 1939, and to the extent that the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment compensation fund under a state unemployment compensation act; then, to the extent permitted by Congress, and from and after the date as of which such permission becomes effective, all of the provisions of these sections shall be applicable to such instrumentalities and to services performed for such instrumentalities in the same manner, to the same extent, and on the same terms as to all other employers, employing units, individuals, and services; provided, that if this state shall not be certified for any year by the Social Security Administration under section 3304 (c) of the Federal Internal Revenue Code, the payments required of such instrumentalities with respect

to such years shall be refunded by the commissioner from the fund in the same manner and within the same period as is provided in section 268.16, subdivision 6, with respect to contributions erroneously collected;

(g) Service performed in the employ of this state, or of any other state, or of any political subdivision thereof, or of any instrumentality of any one or more of the foregoing which is wholly owned by this state or by one or more states or political subdivisions, and any service performed in the employ of any instrumentality of this state or of one or more states or political subdivisions to the extent that the instrumentality is, with respect to such service immune under the Constitution of the United States from the tax imposed by section 3301 of the federal internal revenue code;

(h) Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of congress;

(i) Service performed in any calendar quarter subsequent to December 31, 1940, in the employ of any organization exempt under section 3306 (c) (10) of the federal internal revenue code from the tax imposed by section 3301 of the federal internal revenue code;

(j) Service performed in the employ of a foreign government (including service as a consular or other officer or employee or a non-diplomatic representative);

(k) Service performed in the employ of an instrumentality wholly owned by a foreign government, if

(1) The service is of a character similar to that performed in foreign countries by employees of the United States government or of an instrumentality thereof; and

(2) The commissioner finds that the United States secretary of state has certified to the United States secretary of the treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States government and of instrumentalities thereof;

(1) Service covered by an arrangement between the commissioner and the agency charged with the administration of any other state or federal employment security law pursuant to which all services performed by an individual for an employing unit during the period covered by such employing

unit's duly approved election, are deemed to be performed entirely within such agency's state;

(m) Services performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation;

(n) Service performed subsequent to December 31, 1940, as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to state law; and service performed as an interne in the employ of a hospital by an individual who has completed a four years' course in a medical school chartered and approved pursuant to state law;

(o) Service performed subsequent to December 31, 1940, by an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission (the word "insurance" as used in this subdivision shall include an annuity and an optional annuity);

(p) Service performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(q) Service performed in the employ of any farmers' cooperative association dealing primarily with agricultural or dairy products or farmers' mutual insurance company, not subject to the tax imposed by section 3301 of the federal internal revenue code;

(r) Service performed subsequent to December 31, 1939, without wages by an officer of a corporation which is not subject to the tax imposed by section 3301 of the federal internal revenue code;

(s) Service performed subsequent to December 31, 1939, outside the corporate limits of a city, village, or borough of 10,000 population or more, as determined by the most recent United States census, for an employer who is not subject to the tax imposed by section 3301 of the Federal Internal Reve-

nue Code with respect to employment during either the current or preceding calendar year; provided the services of all of such employer's employees are performed outside such corporate limits. For the purposes of this provision, service shall be deemed to be performed outside such corporate limits if

(1) Performed entirely outside such corporate limits;
or

(2) Performed both outside and within such corporate limits, if the service performed within such corporate limits is incidental to the individual's service outside such corporate limits and is temporary or transitory in nature or consists of isolated transactions;

(t) If the service performed subsequent to December 31, 1940, during one-half or more of any pay period by an individual for the person employing him constitutes employment, all the service of such individual for such period shall be deemed to be employment; but if the service performed during more than one-half of any such pay period by an individual for the person employing him does not constitute employment, then none of the service of such individual for such period shall be deemed to be employment. As used in this subdivision, the term "pay period" means a period (of not more than 31 consecutive days) for which a payment of remuneration is ordinarily made to the individual by the person employing him. This subdivision shall not be applicable with respect to service performed in a pay period by an individual for the person employing him, where any of such service is excluded by section 268.04, subdivision 12, clause (6) (h).

(u) Service performed as an agent or solicitor engaged or employed in the sale or purchase of real estate solely and exclusively upon a commission basis, to the extent only that such service is hereafter excluded under section 3306 of the Federal Internal Revenue Code.

The specific exclusions mentioned in subdivision 12, clause (6) of this section shall not be exclusive.

Sec. 2. Minnesota Statutes 1953, Section 268.06, Subdivision 1, is amended to read:

268.06 Employers, contributions. Subdivision 1. **Payments.** (1) Contributions shall accrue and become payable by each employer for each calendar year in which he is subject to sections 268.03 to 268.24 with respect to wages (as defined in section 268.04, subdivision 25) for employment. Such contributions shall become due and be paid by each employer to the department of employment security for the fund

in accordance with such regulations as the commissioner may prescribe, and shall not be deducted, in whole or in part, from the wages of individuals in such employer's employ. No rule of the commissioner shall be put in force which will permit the payment of such contributions at a time or under conditions which will not allow the employer to take credit for such contribution against the tax imposed by section 3301 of the Internal Revenue Code.

(2) In the payment of any contribution, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more in which case it shall be increased to one cent.

(3) *When the contribution rate applied to an employer's taxable payroll for any given calendar quarter results in a computed contribution of less than \$1, the sum of \$1 shall be such employer's contribution for such quarter.*

Sec. 3. Minnesota Statutes 1953, Section 268.06, Subdivision 2, is amended to read:

Subd. 2. **Rates** (1) Each employer shall pay contributions equal to the following percentages of wages payable by him with respect to employment;

(a) Nine-tenths of one percent with respect to employment occurring during the calendar year 1936;

(b) One and eight-tenths percent with respect to employment occurring during the calendar year 1937;

(c) Two and seven-tenths percent with respect to employment occurring during the calendar years 1938, 1939, 1940; and

(2) Each employer shall pay contributions equal to two and seven-tenths percent of wages paid and wages overdue and delayed beyond the usual time of payment from him with respect to employment occurring during each calendar year subsequent to December 31, 1940, except as may be otherwise prescribed in subdivision 3 and 4.

Sec. 4. Minnesota Statutes 1953, Section 268.06, Subdivision 6, is amended to read:

Subd 6. **Employer's separate account.** The commissioner shall, for the calendar year 1943, and for each calendar year thereafter, compute an experience ratio for each employer. Such experience ratio shall be the quotient obtained by dividing the total benefits chargeable to his account which were paid during the 36-month period ending on June 30 of the

preceding calendar year, *during which 36-month period his account at all times was subject to being charged for benefits*, by his total taxable payroll for the same three years on which all contributions due have been paid to the department of employment security on or before July 31 of the preceding calendar year. *For the calendar year 1956 and for each calendar year thereafter the commissioner shall compute an experience ratio for any employer who has had employment subject to the Minnesota employment security law during a period, less than 36 months but not less than 12 months, ending June 30 of the preceding calendar year, during all of which period unemployment benefits were chargeable to his account. Such experience ratio shall be the quotient obtained by dividing the total benefits chargeable to such employer's account during any such period of employment by his total taxable payroll for the same period.* Such experience ratios shall be computed to the fifth decimal point. Provided, that any employer who has not submitted contribution and wage reports or has not paid the contributions due and payable on or before such date with respect to previous taxable periods within the experience period, shall be entitled to have such taxable payroll included as a factor in the computation of his experience ratio and contribution rate, upon filing with the commissioner written application therefor supported by affidavits showing to the satisfaction of the commissioner that good cause for such delinquency exists and the submission of said reports and payment of contributions on or before September 30 of said preceding year.

Sec. 5. **Repealer.** Minnesota Statutes 1953, Section 268.06, Subdivision 23, is hereby repealed.

Sec. 6. Minnesota Statutes 1953, Section 268.06, Subdivision 24, is amended to read:

Subd. 24. **Reassignment.** Notwithstanding any inconsistent provisions of law any employer who has been assigned a contribution rate pursuant to subdivisions 4, 6 and 8 may, for the calendar year 1949, or any calendar year thereafter, upon the voluntary payment of an amount equivalent to any portion or all of the benefits charged to his account during the period ending June 30 of the preceding year *used for the purpose of computing an employer's experience ratio as authorized by said subdivisions 4, 6 and 8*, obtain a cancellation of benefits charged to his account during such period equal to such payment so voluntarily made. Upon the payment of such voluntary contribution within 30 days from the date of the mailing to the employer of the notice of his contribution rate as prescribed in this section, the commissioner shall cancel the benefits equal to such payment so voluntarily made and com-

pute a new experience ratio for such employer. The employer then shall be assigned the contribution rate applicable to the category within which his recomputed experience ratio is included. In the event that the employer fails to make the voluntary contribution within the 30 day period above specified and it is shown by proper evidence that such failure was, in the opinion of the commissioner, for good cause, the commissioner may extend the time for payment but in no event shall the commissioner extend such time for payment beyond the expiration of a period of 120 days from the beginning of the year for which such rates are effective. Any adjustments under this subdivision shall be used only in the form of credits against accrued or future contributions.

Sec. 7. The amendment repealing Minnesota Statutes 1953 Section 268.04, Subdivision 12, clause (6) (a), contained in Section 1, becomes effective January 1, 1956. All other amendments contained in this bill become effective on the date they become law, unless otherwise provided therein.

Approved April 7, 1955.

CHAPTER 381—H. F. No. 511

An act relating to protection of children on a school safety patrol; amending Minnesota Statutes 1953, Section 125.33.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Minnesota Statutes 1953, Section 125.33, is amended to read:

125.33 School districts; insurance, protection against injuries. A school district may provide *and pay the premiums* for the protection for school children, instructors and automobile owners, and any other agency cooperating in providing cars for school districts where driver training courses are being offered, against public liability, property damage, collision, fire and theft, arising out of the operation of any vehicle used in the courses. *Nothing herein shall make the school district liable for injuries resulting from the actions of such persons.*

A school district may provide and pay the premiums for insurance against injuries resulting to its pupils while assigned to and acting on a school safety patrol under authority of section 131.24, which insurance may provide for the payment of either cash benefits to such injured pupil or for the payment