

Approved by
Revisor of Statutes

Sheree Speer

1.1 Mahoney from the Jobs and Economic Development Finance Division to which was
1.2 referred:

1.3 H. F. No. 5, A bill for an act relating to employment; providing for paid family,
1.4 pregnancy, bonding, and applicant's serious medical condition benefits; regulating and
1.5 requiring certain employment leaves; classifying certain data; authorizing rulemaking;
1.6 appropriating money; amending Minnesota Statutes 2018, sections 13.719, by adding a
1.7 subdivision; 177.27, subdivision 4; 181.032; 256J.561, by adding a subdivision; 256J.95,
1.8 subdivisions 3, 11; 256P.01, subdivision 3; 268.19, subdivision 1; 290.0132, by adding a
1.9 subdivision; proposing coding for new law as Minnesota Statutes, chapter 268B.

1.10 Reported the same back with the following amendments to the first division engrossment
1.11 (DIVH0005-1):

1.12 Page 8, line 14, delete "optometrist,"

1.13 Page 8, line 15, after the first comma, insert "or" and delete ", or podiatrist"

1.14 Page 8, delete subdivision 23 and insert:

1.15 "Subd. 23. Independent contractor. (a) If there is an existing specific test or definition
1.16 for independent contractor in Minnesota statute or rule applicable to an occupation or sector
1.17 as of the date of enactment of this chapter, that test or definition will apply to that occupation
1.18 or sector for purposes of this chapter. If there is not an existing test or definition as described,
1.19 the definition for independent contractor shall be as provided in this subdivision.

1.20 (b) An individual is an independent contractor and not an employee of the person for
1.21 whom the individual is performing services in the course of the person's trade, business,
1.22 profession, or occupation only if:

1.23 (1) the individual maintains a separate business with the individual's own office,
1.24 equipment, materials, and other facilities;

1.25 (2) the individual:

1.26 (i) holds or has applied for a federal employer identification number; or

2.1 (ii) has filed business or self-employment income tax returns with the federal Internal
2.2 Revenue Service if the individual has performed services in the previous year;

2.3 (3) the individual is operating under contract to perform the specific services for the
2.4 person for specific amounts of money and under which the individual controls the means
2.5 of performing the services;

2.6 (4) the individual is incurring the main expenses related to the services that the individual
2.7 is performing for the person under the contract;

2.8 (5) the individual is responsible for the satisfactory completion of the services that the
2.9 individual has contracted to perform for the person and is liable for a failure to complete
2.10 the services;

2.11 (6) the individual receives compensation from the person for the services performed
2.12 under the contract on a commission or per-job or competitive bid basis and not on any other
2.13 basis;

2.14 (7) the individual may realize a profit or suffer a loss under the contract to perform
2.15 services for the person;

2.16 (8) the individual has continuing or recurring business liabilities or obligations; and

2.17 (9) the success or failure of the individual's business depends on the relationship of
2.18 business receipts to expenditures.

2.19 (c) For the purposes of this chapter, an insurance producer, as defined in section 60K.31,
2.20 subdivision 6, is an independent contractor of an insurance company, as defined in section
2.21 60A.02, subdivision 4, unless the insurance producer and insurance company agree
2.22 otherwise."

2.23 Page 11, line 9, delete everything after the period

2.24 Page 11, delete lines 10 to 23

2.25 Page 12, line 9, before the period, insert "including outreach required under section
2.26 268B.15"

2.27 Page 13, line 9, after "individual" insert "or independent contractor"

2.28 Page 17, delete line 21

2.29 Page 17, line 23, delete "An" and insert "Ninety calendar days from the date of hire, an"

2.30 Page 27, lines 20 and 23, delete "of labor and industry"

2.31 Page 28, delete line 3

- 3.1 Page 28, line 4, after "SELF-EMPLOYED" insert "AND INDEPENDENT
3.2 CONTRACTOR"
- 3.3 Page 28, line 5, after "individual" insert "or independent contractor"
- 3.4 Page 28, line 7, delete "eligible for" and insert "entitled to"
- 3.5 Page 28, line 9, delete "covered as an employee" and insert "entitled to benefits"
- 3.6 Page 28, line 11, before the period, insert "or independent contractor" and delete
3.7 "covered" and insert "entitled to benefits"
- 3.8 Page 29, line 33, delete "..." and insert "0.65"
- 3.9 Page 30, line 2, delete "..." and insert "0.5265"
- 3.10 Page 30, line 4, delete "..." and insert "0.1235"
- 3.11 Page 30, line 6, delete "2024, except calendar year 2025" and insert "2023"
- 3.12 Page 30, delete lines 19 to 21
- 3.13 Page 30, line 22, delete "(d)" and insert "(c)"
- 3.14 Page 30, delete subdivision 6
- 3.15 Renumber the subdivisions in sequence
- 3.16 Page 32, line 31, delete everything before "and" and insert "From July 1, 2021, through
3.17 December 31, 2021, the commissioner may spend up to seven percent of premiums collected
3.18 under section 268B.13 for administration of this chapter. Beginning January 1, 2022,"
- 3.19 Page 33, line 5, delete "2021" and insert "2022"
- 3.20 Page 35, line 10, delete "2020" and insert "2021"
- 3.21 Page 35, line 15, after "individuals" insert "or independent contractors"
- 3.22 Page 35, line 27, delete "2021" and insert "2022"
- 3.23 Page 38, after line 21, insert:
- 3.24 "(h) The commissioner may award grants under this section only up to a maximum of
3.25 \$5,000,000 per calendar year."
- 3.26 Page 38, delete section 31 and insert:

4.1 "Sec. 31. EFFECTIVE DATES.

4.2 (a) Benefits under Minnesota Statutes, chapter 268B, shall not be applied for or paid
4.3 until January 1, 2022, and thereafter.

4.4 (b) Sections 1, 2, 4, 5, and 6 are effective July 1, 2019.

4.5 (c) Section 15 is effective July 1, 2020.

4.6 (d) Sections 3, 17, 18, 22, 23, 24, and 26 are effective January 1, 2021.

4.7 (e) Sections 19 and 20 are effective July 1, 2021.

4.8 (f) Sections 7, 8, 9, 10, 11, 12, 13, 14, 16, 21, 25, 27, 28, 29, and 30 are effective January
4.9 1, 2022."

4.10 Page 39, delete section 1 and insert:

4.11 "Section 1. FAMILY AND MEDICAL BENEFIT APPROPRIATIONS.

4.12 \$10,549,000 in fiscal year 2020 and \$21,442,000 in fiscal year 2021 are appropriated
4.13 from the general fund to the commissioner of employment and economic development for
4.14 the purposes of Minnesota Statutes, chapter 268B. Unexpended funds appropriated in fiscal
4.15 year 2020 are available in fiscal year 2021. The general fund base amount for fiscal year
4.16 2022 is \$16,096,000 and for fiscal year 2023 is \$15,181,000. The general fund base amount
4.17 in fiscal year 2024 and beyond is \$0.

4.18 \$533,000 in fiscal year 2021 is appropriated from the general fund to the commissioner
4.19 of employment and economic development for the purpose of outreach, education, and
4.20 technical assistance for employees and employers regarding Minnesota Statutes, chapter
4.21 268B. Of the amount appropriated at least half must be used for grants to community-based
4.22 groups providing outreach, education, and technical assistance for employees, employers,
4.23 and self-employed individuals regarding Minnesota Statutes, chapter 268B. This outreach
4.24 must include efforts to notify self-employed individuals of their ability to elect coverage
4.25 under Minnesota Statutes, section 268B.11, and provide them with technical assistance in
4.26 doing so. The general fund base amount for fiscal year 2022 and beyond is \$0.

4.27 \$214,000 in fiscal year 2020 and \$377,000 in fiscal year 2021 are appropriated from the
4.28 general fund to the commissioner of labor and industry for the purpose of outreach, education,
4.29 and technical assistance for employees, employers, and self-employed individuals regarding
4.30 Minnesota Statutes, chapter 268B. This outreach must include efforts to notify self-employed
4.31 individuals of their ability to elect coverage under Minnesota Statutes, section 268B.11,
4.32 and provide them with technical assistance in doing so. Unexpended amounts appropriated

5.1 in fiscal year 2020 may be spent in fiscal year 2021. The general fund base amount for fiscal
5.2 year 2022 and beyond is \$0.

5.3 \$382,000 in fiscal year 2020 and \$1,101,000 in fiscal year 2021 are appropriated from
5.4 the general fund to the commissioner of labor and industry for the department's enforcement
5.5 duties and related administration under chapter 268B. The general fund base amount in
5.6 fiscal year 2022 and beyond is \$0.

5.7 **EFFECTIVE DATE.** This section is effective July 1, 2019."

5.8 Page 42, after line 13, insert:

5.9 "Sec. 5. **EFFECTIVE DATES.**

5.10 Sections 1 to 4 are effective January 1, 2022."

5.11 With the recommendation that the bill as amended be returned to the Committee on
5.12 Ways and Means with a recommended re-referral to the State Government Finance Division.

5.13 This Division action taken March 26, 2019

5.14 
....., Chair

A bill for an act

relating to employment; providing for paid family, pregnancy, bonding, and applicant's serious medical condition benefits; regulating and requiring certain employment leaves; classifying certain data; authorizing rulemaking; appropriating money; amending Minnesota Statutes 2018, sections 13.719, by adding a subdivision; 177.27, subdivision 4; 181.032; 256J.561, by adding a subdivision; 256J.95, subdivisions 3, 11; 256P.01, subdivision 3; 268.19, subdivision 1; 290.0132, by adding a subdivision; proposing coding for new law as Minnesota Statutes, chapter 268B.

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

ARTICLE 1

FAMILY AND MEDICAL BENEFITS

Section 1. Minnesota Statutes 2018, section 13.719, is amended by adding a subdivision to read:

Subd. 7. Family and medical insurance data. (a) For the purposes of this subdivision, the terms used have the meanings given them in section 268B.01.

(b) Data on applicants, family members, or employers under chapter 268B are private or nonpublic data, provided that the department may share data collected from applicants with employers or health care providers to the extent necessary to meet the requirements of chapter 268B or other applicable law.

(c) The department and the Department of Labor and Industry may share data classified under paragraph (b) to the extent necessary to meet the requirements of chapter 268B or the Department of Labor and Industry's enforcement authority over chapter 268B, as provided in section 177.27.

2.1 Sec. 2. Minnesota Statutes 2018, section 177.27, subdivision 4, is amended to read:

2.2 Subd. 4. **Compliance orders.** The commissioner may issue an order requiring an
2.3 employer to comply with sections 177.21 to 177.435, 181.02, 181.03, 181.031, 181.032,
2.4 181.101, 181.11, 181.13, 181.14, 181.145, 181.15, 181.172, paragraph (a) or (d), 181.275,
2.5 subdivision 2a, 181.722, 181.79, ~~and~~ 181.939 to 181.943, 268B.09, subdivisions 1 to 6, and
2.6 268B.12, subdivision 2, or with any rule promulgated under section 177.28. The
2.7 commissioner shall issue an order requiring an employer to comply with sections 177.41
2.8 to 177.435 if the violation is repeated. For purposes of this subdivision only, a violation is
2.9 repeated if at any time during the two years that preceded the date of violation, the
2.10 commissioner issued an order to the employer for violation of sections 177.41 to 177.435
2.11 and the order is final or the commissioner and the employer have entered into a settlement
2.12 agreement that required the employer to pay back wages that were required by sections
2.13 177.41 to 177.435. The department shall serve the order upon the employer or the employer's
2.14 authorized representative in person or by certified mail at the employer's place of business.
2.15 An employer who wishes to contest the order must file written notice of objection to the
2.16 order with the commissioner within 15 calendar days after being served with the order. A
2.17 contested case proceeding must then be held in accordance with sections 14.57 to 14.69.
2.18 If, within 15 calendar days after being served with the order, the employer fails to file a
2.19 written notice of objection with the commissioner, the order becomes a final order of the
2.20 commissioner.

2.21 Sec. 3. Minnesota Statutes 2018, section 181.032, is amended to read:

2.22 **181.032 REQUIRED STATEMENT OF EARNINGS BY EMPLOYER.**

2.23 (a) At the end of each pay period, the employer shall provide each employee an earnings
2.24 statement, either in writing or by electronic means, covering that pay period. An employer
2.25 who chooses to provide an earnings statement by electronic means must provide employee
2.26 access to an employer-owned computer during an employee's regular working hours to
2.27 review and print earnings statements, and must make statements available for review or
2.28 printing for a period of at least 12 months.

2.29 (b) The earnings statement may be in any form determined by the employer but must
2.30 include:

2.31 (1) the name of the employee;

2.32 (2) the hourly rate of pay (if applicable);

2.33 (3) the total number of hours worked by the employee unless exempt from chapter 177;

- 3.1 (4) the total amount of gross pay earned by the employee during that period;
- 3.2 (5) a list of deductions made from the employee's pay;
- 3.3 (6) any amount deducted by the employer under section 268B.12, subdivision 2, and
- 3.4 the amount paid by the employer based on the employee's wages under section 268B.12,
- 3.5 subdivision 1;
- 3.6 ~~(6)~~ (7) the net amount of pay after all deductions are made;
- 3.7 ~~(7)~~ (8) the date on which the pay period ends; and
- 3.8 ~~(8)~~ (9) the legal name of the employer and the operating name of the employer if different
- 3.9 from the legal name.
- 3.10 (c) An employer must provide earnings statements to an employee in writing, rather
- 3.11 than by electronic means, if the employer has received at least 24 hours notice from an
- 3.12 employee that the employee would like to receive earnings statements in written form. Once
- 3.13 an employer has received notice from an employee that the employee would like to receive
- 3.14 earnings statements in written form, the employer must comply with that request on an
- 3.15 ongoing basis.
- 3.16 Sec. 4. Minnesota Statutes 2018, section 268.19, subdivision 1, is amended to read:
- 3.17 Subdivision 1. **Use of data.** (a) Except as provided by this section, data gathered from
- 3.18 any person under the administration of the Minnesota Unemployment Insurance Law are
- 3.19 private data on individuals or nonpublic data not on individuals as defined in section 13.02,
- 3.20 subdivisions 9 and 12, and may not be disclosed except according to a district court order
- 3.21 or section 13.05. A subpoena is not considered a district court order. These data may be
- 3.22 disseminated to and used by the following agencies without the consent of the subject of
- 3.23 the data:
- 3.24 (1) state and federal agencies specifically authorized access to the data by state or federal
- 3.25 law;
- 3.26 (2) any agency of any other state or any federal agency charged with the administration
- 3.27 of an unemployment insurance program;
- 3.28 (3) any agency responsible for the maintenance of a system of public employment offices
- 3.29 for the purpose of assisting individuals in obtaining employment;
- 3.30 (4) the public authority responsible for child support in Minnesota or any other state in
- 3.31 accordance with section 256.978;

- 4.1 (5) human rights agencies within Minnesota that have enforcement powers;
- 4.2 (6) the Department of Revenue to the extent necessary for its duties under Minnesota
- 4.3 laws;
- 4.4 (7) public and private agencies responsible for administering publicly financed assistance
- 4.5 programs for the purpose of monitoring the eligibility of the program's recipients;
- 4.6 (8) the Department of Labor and Industry and the Commerce Fraud Bureau in the
- 4.7 Department of Commerce for uses consistent with the administration of their duties under
- 4.8 Minnesota law;
- 4.9 (9) the Department of Human Services and the Office of Inspector General and its agents
- 4.10 within the Department of Human Services, including county fraud investigators, for
- 4.11 investigations related to recipient or provider fraud and employees of providers when the
- 4.12 provider is suspected of committing public assistance fraud;
- 4.13 (10) local and state welfare agencies for monitoring the eligibility of the data subject
- 4.14 for assistance programs, or for any employment or training program administered by those
- 4.15 agencies, whether alone, in combination with another welfare agency, or in conjunction
- 4.16 with the department or to monitor and evaluate the statewide Minnesota family investment
- 4.17 program by providing data on recipients and former recipients of food stamps or food
- 4.18 support, cash assistance under chapter 256, 256D, 256J, or 256K, child care assistance under
- 4.19 chapter 119B, or medical programs under chapter 256B or 256L or formerly codified under
- 4.20 chapter 256D;
- 4.21 (11) local and state welfare agencies for the purpose of identifying employment, wages,
- 4.22 and other information to assist in the collection of an overpayment debt in an assistance
- 4.23 program;
- 4.24 (12) local, state, and federal law enforcement agencies for the purpose of ascertaining
- 4.25 the last known address and employment location of an individual who is the subject of a
- 4.26 criminal investigation;
- 4.27 (13) the United States Immigration and Customs Enforcement has access to data on
- 4.28 specific individuals and specific employers provided the specific individual or specific
- 4.29 employer is the subject of an investigation by that agency;
- 4.30 (14) the Department of Health for the purposes of epidemiologic investigations;
- 4.31 (15) the Department of Corrections for the purposes of case planning and internal research
- 4.32 for preprobation, probation, and postprobation employment tracking of offenders sentenced

5.1 to probation and preconfinement and postconfinement employment tracking of committed
5.2 offenders;

5.3 (16) the state auditor to the extent necessary to conduct audits of job opportunity building
5.4 zones as required under section 469.3201; ~~and~~

5.5 (17) the Office of Higher Education for purposes of supporting program improvement,
5.6 system evaluation, and research initiatives including the Statewide Longitudinal Education
5.7 Data System; and

5.8 (18) the Family and Medical Benefits Division of the Department of Employment and
5.9 Economic Development to be used as necessary to administer chapter 268B.

5.10 (b) Data on individuals and employers that are collected, maintained, or used by the
5.11 department in an investigation under section 268.182 are confidential as to data on individuals
5.12 and protected nonpublic data not on individuals as defined in section 13.02, subdivisions 3
5.13 and 13, and must not be disclosed except under statute or district court order or to a party
5.14 named in a criminal proceeding, administrative or judicial, for preparation of a defense.

5.15 (c) Data gathered by the department in the administration of the Minnesota unemployment
5.16 insurance program must not be made the subject or the basis for any suit in any civil
5.17 proceedings, administrative or judicial, unless the action is initiated by the department.

5.18 Sec. 5. **[268B.01] DEFINITIONS.**

5.19 Subdivision 1. **Scope.** For the purposes of this chapter, the terms defined in this section
5.20 have the meanings given them.

5.21 Subd. 2. **Account.** "Account" means the family and medical benefit insurance account
5.22 in the special revenue fund in the state treasury under section 268B.02.

5.23 Subd. 3. **Applicant.** "Applicant" means an individual applying for leave with benefits
5.24 under this chapter.

5.25 Subd. 4. **Applicant's average weekly wage.** "Applicant's average weekly wage" means
5.26 an amount equal to the applicant's high quarter wage credits divided by 13.

5.27 Subd. 5. **Benefit.** "Benefit" or "benefits" mean monetary payments under this chapter
5.28 associated with qualifying bonding, family care, pregnancy, serious health condition,
5.29 qualifying exigency, or safety leave events, unless otherwise indicated by context.

5.30 Subd. 6. **Benefit year.** "Benefit year" means a period of 52 consecutive calendar weeks
5.31 beginning on the first day of a leave approved for benefits under this chapter.

6.1 Subd. 7. **Bonding.** "Bonding" means time spent by an applicant who is a biological,
6.2 adoptive, or foster parent with a biological, adopted, or foster child in conjunction with the
6.3 child's birth, adoption, or placement.

6.4 Subd. 8. **Calendar day.** "Calendar day" or "day" means a fixed 24-hour period
6.5 corresponding to a single calendar date.

6.6 Subd. 9. **Calendar week.** "Calendar week" means a period of seven consecutive calendar
6.7 days.

6.8 Subd. 10. **Commissioner.** "Commissioner" means the commissioner of employment
6.9 and economic development, unless otherwise indicated by context.

6.10 Subd. 11. **Continuing treatment.** A serious health condition involving continuing
6.11 treatment by a health care provider includes any one or more of the following:

6.12 (1) a period of incapacity of more than three consecutive, full calendar days, and any
6.13 subsequent treatment or period of incapacity relating to the same condition, that also involves:

6.14 (i) treatment two or more times within 30 calendar days of the first day of incapacity,
6.15 unless extenuating circumstances exist, by a health care provider; or

6.16 (ii) treatment by a health care provider on at least one occasion that results in a regimen
6.17 of continuing treatment under the supervision of the health care provider;

6.18 (2) any period of incapacity or treatment for such incapacity due to a chronic serious
6.19 health condition. A chronic serious health condition is one that:

6.20 (i) requires periodic visits, defined as at least twice per year, for treatment for the
6.21 incapacity by a health care provider;

6.22 (ii) continues over an extended period of time, including recurring episodes of a single
6.23 underlying condition; and

6.24 (iii) may cause episodic rather than a continuing period of incapacity;

6.25 (3) a period of incapacity that is long-term due to a condition for which treatment may
6.26 not be effective, with the employee or family member under the supervision of, but not
6.27 necessarily receiving active treatment by a health care provider; and

6.28 (4) any period of absence to receive multiple treatments by a health care provider,
6.29 including any period of recovery therefrom, for:

6.30 (i) restorative surgery after an accident or other injury; or

7.1 (ii) a condition that would likely result in a period of incapacity of more than seven
7.2 consecutive, calendar days in the absence of medical intervention or treatment, such as
7.3 cancer, severe arthritis, or kidney disease.

7.4 Subd. 12. **Covered employment.** "Covered employment" has the meaning given in
7.5 section 268.035, subdivision 12.

7.6 Subd. 13. **Day.** "Day" means an eight-hour period.

7.7 Subd. 14. **Department.** "Department" means the Department of Employment and
7.8 Economic Development, unless otherwise indicated by context.

7.9 Subd. 15. **Employee.** "Employee" means an individual for whom premiums are paid on
7.10 wages under this chapter.

7.11 Subd. 16. **Employer.** "Employer" means a person or entity, other than an employee,
7.12 required to pay premiums under this chapter, except that a self-employed individual who
7.13 has elected and been approved for coverage under section 268B.11 is not considered an
7.14 employer with regard to the self-employed individual's own coverage and benefits.

7.15 Subd. 17. **Estimated self-employment income.** "Estimated self-employment income"
7.16 means a self-employed individual's average net earnings from self-employment in the two
7.17 most recent taxable years. For a self-employed individual who had net earnings from
7.18 self-employment in only one of the years, the individual's estimated self-employment income
7.19 equals the individual's net earnings from self-employment in the year in which the individual
7.20 had net earnings from self-employment.

7.21 Subd. 18. **Family benefit program.** "Family benefit program" means the program
7.22 administered under this chapter for the collection of premiums and payment of benefits
7.23 related to family care, bonding, safety leave, and leave related to a qualifying exigency.

7.24 Subd. 19. **Family care.** "Family care" means an applicant caring for a family member
7.25 with a serious health condition or caring for a family member who is a covered service
7.26 member.

7.27 Subd. 20. **Family member.** (a) "Family member" means an employee's child, adult
7.28 child, spouse, sibling, parent, parent-in-law, grandchild, grandparent, stepparent, member
7.29 of the employee's household, or an individual described in paragraph (e).

7.30 (b) For the purposes of this chapter, a child includes a stepchild, biological, adopted, or
7.31 foster child of the employee.

8.1 (c) For the purposes of this chapter, a grandchild includes a step-grandchild, biological,
8.2 adopted, or foster grandchild of the employee.

8.3 (d) For the purposes of this chapter, an individual is a member of the employee's
8.4 household if the individual has resided at the same address as the employee for at least one
8.5 year as of the first day of a leave under this chapter.

8.6 (e) For the purposes of this chapter, an individual with a serious health condition is
8.7 deemed a family member of the employee if (1) a health care provider certifies in writing
8.8 that the individual requires care relating to the serious health condition, and (2) the employee
8.9 and the care recipient certify in writing that the employee will be providing the required
8.10 care.

8.11 Subd. 21. **Health care provider.** "Health care provider" means an individual who is
8.12 licensed, certified, or otherwise authorized under law to practice in the individual's scope
8.13 of practice as a physician, osteopath, physician assistant, chiropractor, advanced practice
8.14 registered nurse, licensed psychologist, licensed independent clinical social worker, or
8.15 dentist. "Chiropractor" means only a chiropractor who provides manual manipulation of
8.16 the spine to correct a subluxation demonstrated to exist by an x-ray.

8.17 Subd. 22. **High quarter.** "High quarter" has the meaning given in section 268.035,
8.18 subdivision 19.

8.19 Subd. 23. **Independent contractor.** (a) If there is an existing specific test or definition
8.20 for independent contractor in Minnesota statute or rule applicable to an occupation or sector
8.21 as of the date of enactment of this chapter, that test or definition will apply to that occupation
8.22 or sector for purposes of this chapter. If there is not an existing test or definition as described,
8.23 the definition for independent contractor shall be as provided in this subdivision.

8.24 (b) An individual is an independent contractor and not an employee of the person for
8.25 whom the individual is performing services in the course of the person's trade, business,
8.26 profession, or occupation only if:

8.27 (1) the individual maintains a separate business with the individual's own office,
8.28 equipment, materials, and other facilities;

8.29 (2) the individual:

8.30 (i) holds or has applied for a federal employer identification number; or

8.31 (ii) has filed business or self-employment income tax returns with the federal Internal
8.32 Revenue Service if the individual has performed services in the previous year;

9.1 (3) the individual is operating under contract to perform the specific services for the
9.2 person for specific amounts of money and under which the individual controls the means
9.3 of performing the services;

9.4 (4) the individual is incurring the main expenses related to the services that the individual
9.5 is performing for the person under the contract;

9.6 (5) the individual is responsible for the satisfactory completion of the services that the
9.7 individual has contracted to perform for the person and is liable for a failure to complete
9.8 the services;

9.9 (6) the individual receives compensation from the person for the services performed
9.10 under the contract on a commission or per-job or competitive bid basis and not on any other
9.11 basis;

9.12 (7) the individual may realize a profit or suffer a loss under the contract to perform
9.13 services for the person;

9.14 (8) the individual has continuing or recurring business liabilities or obligations; and

9.15 (9) the success or failure of the individual's business depends on the relationship of
9.16 business receipts to expenditures.

9.17 (c) For the purposes of this chapter, an insurance producer, as defined in section 60K.31,
9.18 subdivision 6, is an independent contractor of an insurance company, as defined in section
9.19 60A.02, subdivision 4, unless the insurance producer and insurance company agree otherwise.

9.20 Subd. 24. **Inpatient care.** "Inpatient care" means an overnight stay in a hospital, hospice,
9.21 or residential medical care facility, including any period of incapacity defined under
9.22 subdivision 33, paragraph (b), or any subsequent treatment in connection with such inpatient
9.23 care.

9.24 Subd. 25. **Maximum weekly benefit amount.** "Maximum weekly benefit amount"
9.25 means the state's average weekly wage as calculated under section 268.035, subdivision 23.

9.26 Subd. 26. **Medical benefit program.** "Medical benefit program" means the program
9.27 administered under this chapter for the collection of premiums and payment of benefits
9.28 related to an applicant's serious health condition or pregnancy.

9.29 Subd. 27. **Net earnings from self-employment.** "Net earnings from self-employment"
9.30 has the meaning given in section 1402 of the Internal Revenue Code, as defined in section
9.31 290.01, subdivision 31.

10.1 Subd. 28. **Noncovered employment.** "Noncovered employment" has the meaning given
10.2 in section 268.035, subdivision 20.

10.3 Subd. 29. **Pregnancy.** "Pregnancy" means prenatal care or incapacity due to pregnancy,
10.4 or recovery from childbirth, still birth, miscarriage, or related health conditions.

10.5 Subd. 30. **Qualifying exigency.** (a) "Qualifying exigency" means a need arising out of
10.6 a military member's active duty service or notice of an impending call or order to active
10.7 duty in the United States armed forces, including providing for the care or other needs of
10.8 the family member's child or other dependent, making financial or legal arrangements for
10.9 the family member, attending counseling, attending military events or ceremonies, spending
10.10 time with the family member during a rest and recuperation leave or following return from
10.11 deployment, or making arrangements following the death of the military member.

10.12 (b) For the purposes of this chapter, a "military member" means a current or former
10.13 member of the United States armed forces, including a member of the National Guard or
10.14 reserves, who, except for a deceased military member, is a resident of the state and is a
10.15 family member of the employee taking leave related to the qualifying exigency.

10.16 Subd. 31. **Safety leave.** "Safety leave" means leave from work because of domestic
10.17 abuse, sexual assault, or stalking of the employee or employee's family member, provided
10.18 the leave is to:

10.19 (1) seek medical attention related to the physical or psychological injury or disability
10.20 caused by domestic abuse, sexual assault, or stalking;

10.21 (2) obtain services from a victim services organization;

10.22 (3) obtain psychological or other counseling;

10.23 (4) seek relocation due to the domestic abuse, sexual assault, or stalking; or

10.24 (5) seek legal advice or take legal action, including preparing for or participating in any
10.25 civil or criminal legal proceeding related to, or resulting from, the domestic abuse, sexual
10.26 assault, or stalking.

10.27 Subd. 32. **Self-employed individual.** "Self-employed individual" means a resident of
10.28 the state who, in one of the two taxable years preceding the current calendar year, derived
10.29 at least \$10,000 in net earnings from self-employment from an entity other than an S
10.30 corporation for the performance of services in this state.

10.31 Subd. 33. **Self-employment premium base.** "Self-employment premium base" means
10.32 the lesser of:

11.1 (1) a self-employed individual's estimated self-employment income for the calendar year
11.2 plus the individual's self-employment wages in the calendar year; or

11.3 (2) the maximum earnings subject to the FICA Old-Age, Survivors, and Disability
11.4 Insurance tax in the taxable year.

11.5 Subd. 34. **Self-employment wages.** "Self-employment wages" means the amount of
11.6 wages that a self-employed individual earned in the calendar year from an entity from which
11.7 the individual also received net earnings from self-employment.

11.8 Subd. 35. **Serious health condition.** (a) "Serious health condition" means an illness,
11.9 injury, impairment, or physical or mental condition that involves inpatient care as defined
11.10 in subdivision 24 or continuing treatment by a health care provider as defined in subdivision
11.11 11.

11.12 (b) "Incapacity" means inability to work, attend school, or perform other regular daily
11.13 activities due to the serious health condition, treatment therefore, or recovery therefrom.

11.14 (c) Treatment includes but is not limited to examinations to determine if a serious health
11.15 condition exists and evaluations of the condition. Treatment does not include routine physical
11.16 examinations, eye examinations, or dental examinations. A regimen of continuing treatment
11.17 includes, for example, a course of prescription medication or therapy requiring special
11.18 equipment to resolve or alleviate the health condition.

11.19 Subd. 36. **State's average weekly wage.** "State's average weekly wage" means the
11.20 weekly wage calculated under section 268.035, subdivision 23.

11.21 Subd. 37. **Taxable year.** "Taxable year" has the meaning given in section 290.01,
11.22 subdivision 9.

11.23 Subd. 38. **Wage credits.** "Wage credits" has the meaning given in section 268.035,
11.24 subdivision 27.

11.25 Sec. 6. **[268B.02] FAMILY AND MEDICAL BENEFIT INSURANCE PROGRAM**
11.26 **CREATION.**

11.27 Subdivision 1. **Creation.** A family and medical benefit insurance program is created to
11.28 be administered by the commissioner according to the terms of this chapter.

11.29 Subd. 2. **Creation of division.** A Family and Medical Benefit Insurance Division is
11.30 created within the department under the authority of the commissioner. The commissioner
11.31 shall appoint a director of the division. The division shall administer and operate the benefit
11.32 program under this chapter.

12.1 Subd. 3. **Rulemaking.** The commissioner may adopt rules to implement the provisions
12.2 of this chapter.

12.3 Subd. 4. **Account creation; appropriation.** The family and medical benefit insurance
12.4 account is created in the special revenue fund in the state treasury. Money in this account
12.5 is appropriated to the commissioner to pay benefits under and to administer this chapter,
12.6 including outreach required under section 268B.15.

12.7 Subd. 5. **Information technology services and equipment.** The department is exempt
12.8 from the provisions of section 16E.016 for the purposes of this chapter.

12.9 Sec. 7. **[268B.03] ELIGIBILITY.**

12.10 Subdivision 1. **Applicant.** An applicant who has a serious health condition, has a
12.11 qualifying exigency, is taking safety leave, is providing family care, is bonding, or is pregnant
12.12 or recovering from pregnancy, and who satisfies the conditions of this section is eligible to
12.13 receive benefits subject to the provisions of this chapter.

12.14 Subd. 2. **Wage credits.** An applicant must have sufficient wage credits from an employer
12.15 or employers as defined in section 268B.01, subdivision 16, to establish a benefit account
12.16 under section 268.07, subdivision 2.

12.17 Subd. 3. **Seven-day qualifying event.** (a) The period for which an applicant is seeking
12.18 benefits must be or have been based on a single event of at least seven calendar days' duration
12.19 related to pregnancy, recovery from pregnancy, family care, a qualifying exigency, safety
12.20 leave, or the applicant's serious health condition. The days need not be consecutive.

12.21 (b) Benefits related to bonding need not meet the seven-day qualifying event requirement.

12.22 (c) The commissioner must use the rulemaking authority under section 268B.02,
12.23 subdivision 3, to adopt rules regarding what serious health conditions and other events are
12.24 prospectively presumed to constitute seven-day qualifying events under this chapter.

12.25 Subd. 4. **Ineligible.** (a) An applicant is not eligible for benefits for any portion of a day
12.26 for which the applicant worked for pay.

12.27 (b) An applicant is not eligible for benefits for any day for which the applicant received
12.28 benefits under chapter 176 or 268.

12.29 Subd. 5. **Certification.** An applicant for benefits under this chapter must fulfill the
12.30 certification requirements under section 268B.04, subdivision 2.

12.31 Subd. 6. **Records release.** An individual whose medical records are necessary to
12.32 determine eligibility for benefits under this chapter must sign and date a legally effective

13.1 waiver authorizing release of medical or other records, to the limited extent necessary to
13.2 administer or enforce this chapter, to the department and the Department of Labor and
13.3 Industry.

13.4 Subd. 7. **Self-employed individual applicant.** To fulfill the requirements of this section,
13.5 a self-employed individual or independent contractor who has elected and been approved
13.6 for coverage under section 268B.011 must fulfill only the requirements of subdivisions 3,
13.7 4, 5, and 6.

13.8 Sec. 8. **[268B.04] APPLICATIONS.**

13.9 Subdivision 1. **Process; deadline.** Applicants must file a benefit claim pursuant to rules
13.10 promulgated by the commissioner within 90 calendar days of the related qualifying event.
13.11 If a claim is filed more than 90 calendar days after the start of leave, the covered individual
13.12 may receive reduced benefits. All claims shall include a certification supporting a request
13.13 for leave under this chapter. The commissioner must establish good cause exemptions from
13.14 the certification requirement deadline in the event that a serious health condition of the
13.15 applicant prevents the applicant from providing the required certification within the 90
13.16 calendar days.

13.17 Subd. 2. **Certification.** (a) Certification for an applicant taking leave related to the
13.18 applicant's serious health condition shall be sufficient if the certification states the date on
13.19 which the serious health condition began, the probable duration of the condition, and the
13.20 appropriate medical facts within the knowledge of the health care provider as required by
13.21 the commissioner.

13.22 (b) Certification for an applicant taking leave to care for a family member with a serious
13.23 health condition shall be sufficient if the certification states the date on which the serious
13.24 health condition commenced, the probable duration of the condition, the appropriate medical
13.25 facts within the knowledge of the health care provider as required by the commissioner, a
13.26 statement that the family member requires care, and an estimate of the amount of time that
13.27 the family member will require care.

13.28 (c) Certification for an applicant taking leave related to pregnancy shall be sufficient if
13.29 the certification states the expected due date and recovery period based on appropriate
13.30 medical facts within the knowledge of the health care provider.

13.31 (d) Certification for an applicant taking bonding leave because of the birth of the
13.32 applicant's child shall be sufficient if the certification includes either the child's birth

14.1 certificate or a document issued by the health care provider of the child or the health care
14.2 provider of the person who gave birth, stating the child's birth date.

14.3 (e) Certification for an applicant taking bonding leave because of the placement of a
14.4 child with the applicant for adoption or foster care shall be sufficient if the applicant provides
14.5 a document issued by the health care provider of the child, an adoption or foster care agency
14.6 involved in the placement, or by other individuals as determined by the commissioner that
14.7 confirms the placement and the date of placement. To the extent that the status of an applicant
14.8 as an adoptive or foster parent changes while an application for benefits is pending, or while
14.9 the covered individual is receiving benefits, the applicant must notify the department of
14.10 such change in status in writing.

14.11 (f) Certification for an applicant taking leave because of a qualifying exigency shall be
14.12 sufficient if the certification includes:

- 14.13 (1) a copy of the family member's active-duty orders;
14.14 (2) other documentation issued by the United States armed forces; or
14.15 (3) other documentation permitted by the commissioner.

14.16 (g) Certification for an applicant taking safety leave is sufficient if the certification
14.17 includes a court record or documentation signed by a volunteer or employee of a victim's
14.18 services organization, an attorney, a police officer, or an antiviolence counselor. The
14.19 commissioner must not require disclosure of details relating to an applicant's or applicant's
14.20 family member's domestic abuse, sexual assault, or stalking.

14.21 (h) Certifications under paragraphs (a) to (e) must be reviewed and signed by a health
14.22 care provider with knowledge of the qualifying event associated with the leave.

14.23 (i) For a leave taken on an intermittent or reduced-schedule basis, based on a serious
14.24 health condition of an applicant or applicant's family member, the certification under this
14.25 subdivision must include an explanation of how such leave would be medically beneficial
14.26 to the individual with the serious health condition.

14.27 **Sec. 9. [268B.05] DETERMINATION OF APPLICATION.**

14.28 Upon the filing of a complete application for benefits, the commissioner shall examine
14.29 the application and on the basis of facts found by the commissioner and records maintained
14.30 by the department, the applicant shall be determined to be eligible or ineligible within two
14.31 weeks. If the application is determined to be valid, the commissioner shall promptly notify
14.32 the applicant and any other interested party as to the week when benefits commence, the

15.1 weekly benefit amount payable, and the maximum duration of those benefits. If the
15.2 application is determined to be invalid, the commissioner shall notify the applicant and any
15.3 other interested party of that determination and the reasons for it. If the processing of the
15.4 application is delayed for any reason, the commissioner shall notify the applicant, in writing,
15.5 within two weeks of the date the application for benefits is filed of the reason for the delay.
15.6 Unless the applicant or any other interested party, within 30 calendar days, requests a hearing
15.7 before a benefit judge, the determination is final. For good cause shown, the 30-day period
15.8 may be extended. At any time within one year from the date of a monetary determination,
15.9 the commissioner, upon request of the applicant or on the commissioner's own initiative,
15.10 may reconsider the determination if it is found that an error in computation or identity has
15.11 occurred in connection with the determination or that additional wages pertinent to the
15.12 applicant's status have become available, or if that determination has been made as a result
15.13 of a nondisclosure or misrepresentation of a material fact.

15.14 Sec. 10. **[268B.06] EMPLOYER NOTIFICATION.**

15.15 (a) Upon a determination under section 268B.05 that an applicant is entitled to benefits,
15.16 the commissioner must promptly send a notification to each current employer of the applicant,
15.17 if any, in accordance with paragraph (b).

15.18 (b) The notification under paragraph (a) must include, at a minimum:

15.19 (1) the name of the applicant;

15.20 (2) that the applicant has applied for and received benefits;

15.21 (3) the week the benefits commence;

15.22 (4) the weekly benefit amount payable;

15.23 (5) the maximum duration of benefits; and

15.24 (6) descriptions of the employer's right to participate in a hearing under section 268B.05,
15.25 and appeal process under section 268B.07.

15.26 Sec. 11. **[268B.07] APPEAL PROCESS.**

15.27 Subdivision 1. **Hearing.** (a) The commissioner shall designate a chief benefit judge.

15.28 (b) Upon a timely appeal to a determination having been filed or upon a referral for
15.29 direct hearing, the chief benefit judge must set a time and date for a de novo due-process
15.30 hearing and send notice to an applicant and an employer, by mail or electronic transmission,
15.31 not less than ten calendar days before the date of the hearing.

16.1 (c) The commissioner may adopt rules on procedures for hearings. The rules need not
16.2 conform to common law or statutory rules of evidence and other technical rules of procedure.

16.3 (d) The chief benefit judge has discretion regarding the method by which the hearing is
16.4 conducted.

16.5 Subd. 2. **Decision.** (a) After the conclusion of the hearing, upon the evidence obtained,
16.6 the benefit judge must serve by mail or electronic transmission to all parties, the decision,
16.7 reasons for the decision, and written findings of fact.

16.8 (b) Decisions of a benefit judge are not precedential.

16.9 Subd. 3. **Request for reconsideration.** Any party, or the commissioner, may, within
16.10 30 calendar days after service of the benefit judge's decision, file a request for reconsideration
16.11 asking the judge to reconsider that decision.

16.12 Subd. 4. **Appeal to court of appeals.** Any final determination on a request for
16.13 reconsideration may be appealed by any party directly to the Minnesota Court of Appeals.

16.14 Subd. 5. **Benefit judges.** (a) Only employees of the department who are attorneys licensed
16.15 to practice law in Minnesota may serve as a chief benefit judge, senior benefit judges who
16.16 are supervisors, or benefit judges.

16.17 (b) The chief benefit judge must assign a benefit judge to conduct a hearing and may
16.18 transfer to another benefit judge any proceedings pending before another benefit judge.

16.19 Sec. 12. **[268B.08] BENEFITS.**

16.20 Subdivision 1. **Weekly benefit amount.** (a) Subject to the maximum weekly benefit
16.21 amount, an applicant's weekly benefit is calculated by adding the amounts obtained by
16.22 applying the following percentage to an applicant's average weekly wage:

16.23 (1) 90 percent of wages that do not exceed 50 percent of the state's average weekly wage;
16.24 plus

16.25 (2) 66 percent of wages that exceed 50 percent of the state's average weekly wage but
16.26 not 100 percent; plus

16.27 (3) 55 percent of wages that exceed 100 percent of the state's average weekly wage.

16.28 (b) The state's average weekly wage is the average wage as calculated under section
16.29 268.035, subdivision 23, at the time a benefit amount is first determined.

16.30 (c) Notwithstanding any other provision in this section, weekly benefits must not exceed
16.31 the maximum weekly benefit amount applicable at the time benefit payments commence.

17.1 Subd. 2. **Timing of payment.** Except as otherwise provided for in this chapter, benefits
17.2 must be paid weekly.

17.3 Subd. 3. **Maximum length of benefits.** (a) Except as provided in paragraph (b), in a
17.4 single benefit year, an applicant may receive up to 12 weeks of benefits under this chapter
17.5 related to the applicant's serious health condition or pregnancy and up to 12 weeks of benefits
17.6 under this chapter for bonding, safety leave, or family care.

17.7 (b) An applicant may receive up to 12 weeks of benefits in a single benefit year for leave
17.8 related to one or more qualifying exigencies.

17.9 Subd. 4. **Minimum period for which benefits payable.** Except for a claim for benefits
17.10 for bonding leave, any claim for benefits must be based on a single-qualifying event of at
17.11 least seven calendar days. Benefits may be paid for a minimum increment of one day. The
17.12 minimum increment of one day may consist of multiple, nonconsecutive portions of a day
17.13 totaling eight hours.

17.14 Subd. 5. **Withholding of federal tax.** If the Internal Revenue Service determines that
17.15 benefits are subject to federal income tax, and an applicant elects to have federal income
17.16 tax deducted and withheld from the applicant's benefits, the commissioner must deduct and
17.17 withhold the amount specified in the Internal Revenue Code in a manner consistent with
17.18 state law.

17.19 Sec. 13. **[268B.085] LEAVE.**

17.20 Subdivision 1. **Right to leave.** Ninety calendar days from the date of hire, an employee
17.21 has a right to leave from employment for any day, or portion of a day, for which the employee
17.22 would be eligible for benefits under this chapter, regardless of whether the employee actually
17.23 applied for benefits and regardless of whether the employee is covered under a private plan
17.24 or the public program under this chapter.

17.25 Subd. 2. **Notice to employer.** (a) If the need for leave is foreseeable, an employee must
17.26 provide the employer at least 30 days' advance notice before leave under this chapter is to
17.27 begin. If 30 days' notice is not practicable because of a lack of knowledge of approximately
17.28 when leave will be required to begin, a change in circumstances, or a medical emergency,
17.29 notice must be given as soon as practicable. Whether leave is to be continuous or is to be
17.30 taken intermittently or on a reduced schedule basis, notice need only be given one time, but
17.31 the employee must advise the employer as soon as practicable if dates of scheduled leave
17.32 change or are extended, or were initially unknown. In those cases where the employee is
17.33 required to provide at least 30 days' notice of foreseeable leave and does not do so, the

18.1 employee must explain the reasons why such notice was not practicable upon a request from
18.2 the employer for such information.

18.3 (b) "As soon as practicable" means as soon as both possible and practical, taking into
18.4 account all of the facts and circumstances in the individual case. When an employee becomes
18.5 aware of a need for leave under this chapter less than 30 days in advance, it should be
18.6 practicable for the employee to provide notice of the need for leave either the same day or
18.7 the next day, unless the need for leave is based on a medical emergency. In all cases,
18.8 however, the determination of when an employee could practicably provide notice must
18.9 take into account the individual facts and circumstances.

18.10 (c) An employee shall provide at least verbal notice sufficient to make the employer
18.11 aware that the employee needs leave allowed under this chapter and the anticipated timing
18.12 and duration of the leave. An employer may require an employee giving notice of leave to
18.13 include a certification for the leave as described in section 268B.04, subdivision 2. Such
18.14 certification, if required by an employer, is timely when the employee delivers it as soon
18.15 as practicable given the circumstances requiring the need for leave, and the required contents
18.16 of the certification.

18.17 (d) An employer may require an employee to comply with the employer's usual and
18.18 customary notice and procedural requirements for requesting leave, absent unusual
18.19 circumstances or other circumstances caused by the reason for the employee's need for
18.20 leave. Leave under this chapter must not be delayed or denied where an employer's usual
18.21 and customary notice or procedural requirements require notice to be given sooner than set
18.22 forth in this subdivision.

18.23 (e) If an employer has failed to provide notice to the employee as required under section
18.24 268B.22, paragraph (a), (b), or (e), the employee is not required to comply with the notice
18.25 requirements of this subdivision.

18.26 Subd. 3. **Bonding leave.** Bonding leave taken under this chapter begins at a time requested
18.27 by the employee. Bonding leave must begin within 12 months of the birth, adoption, or
18.28 placement of a foster child, except that, in the case where the child must remain in the
18.29 hospital longer than the mother, the leave must begin within 12 months after the child leaves
18.30 the hospital.

18.31 Subd. 4. **Intermittent or reduced leave schedule.** (a) Leave under this chapter, based
18.32 on a serious health condition, may be taken intermittently or on a reduced leave schedule
18.33 if such leave would be medically beneficial to the individual with the serious health condition.
18.34 For all other leaves under this chapter, leave may be taken intermittently or on a reduced

19.1 leave schedule. Intermittent leave is leave taken in separate blocks of time due to a single,
19.2 seven-day qualifying event. A reduced leave schedule is a leave schedule that reduces an
19.3 employee's usual number of working hours per workweek or hours per workday.

19.4 (b) Leave taken intermittently or on a reduced schedule basis counts toward the
19.5 maximums described in section 268B.08, subdivision 3.

19.6 Sec. 14. **[268B.09] EMPLOYMENT PROTECTIONS.**

19.7 Subdivision 1. **Retaliation prohibited.** An employer must not retaliate against an
19.8 employee for requesting or obtaining benefits, or for exercising any other right under this
19.9 chapter.

19.10 Subd. 2. **Interference prohibited.** An employer must not obstruct or impede an
19.11 application for leave or benefits or the exercise of any other right under this chapter.

19.12 Subd. 3. **Waiver of rights void.** Any agreement to waive, release, or commute rights
19.13 to benefits or any other right under this chapter is void.

19.14 Subd. 4. **No assignment of benefits.** Any assignment, pledge, or encumbrance of benefits
19.15 is void. Benefits are exempt from levy, execution, attachment, or any other remedy provided
19.16 for the collection of debt. Any waiver of this subdivision is void.

19.17 Subd. 5. **Continued insurance.** During any leave for which an employee is entitled to
19.18 benefits under this chapter, the employer must maintain coverage under any group insurance
19.19 policy, group subscriber contract, or health care plan for the employee and any dependents
19.20 as if the employee was not on leave, provided, however, that the employee must continue
19.21 to pay any employee share of the cost of such benefits.

19.22 Subd. 6. **Employee right to reinstatement.** (a) On return from leave under this chapter,
19.23 an employee is entitled to be returned to the same position the employee held when leave
19.24 commenced or to an equivalent position with equivalent benefits, pay, and other terms and
19.25 conditions of employment. An employee is entitled to such reinstatement even if the
19.26 employee has been replaced or the employee's position has been restructured to accommodate
19.27 the employee's absence.

19.28 (b)(1) An equivalent position is one that is virtually identical to the employee's former
19.29 position in terms of pay, benefits, and working conditions, including privileges, prerequisites,
19.30 and status. It must involve the same or substantially similar duties and responsibilities,
19.31 which must entail substantially equivalent skill, effort, responsibility, and authority.

20.1 (2) If an employee is no longer qualified for the position because of the employee's
20.2 inability to attend a necessary course, renew a license, fly a minimum number of hours, or
20.3 the like, as a result of the leave, the employee must be given a reasonable opportunity to
20.4 fulfill those conditions upon return from leave.

20.5 (c)(1) An employee is entitled to any unconditional pay increases which may have
20.6 occurred during the leave period, such as cost of living increases. Pay increases conditioned
20.7 upon seniority, length of service, or work performed must be granted in accordance with
20.8 the employer's policy or practice with respect to other employees on an equivalent leave
20.9 status for a reason that does not qualify for leave under this chapter. An employee is entitled
20.10 to be restored to a position with the same or equivalent pay premiums, such as a shift
20.11 differential. If an employee departed from a position averaging ten hours of overtime, and
20.12 corresponding overtime pay, each week an employee is ordinarily entitled to such a position
20.13 on return from leave under this chapter.

20.14 (2) Equivalent pay includes any bonus or payment, whether it is discretionary or
20.15 nondiscretionary, made to employees consistent with the provisions of clause (1). However,
20.16 if a bonus or other payment is based on the achievement of a specified goal such as hours
20.17 worked, products sold, or perfect attendance, and the employee has not met the goal due to
20.18 leave under this chapter, the payment may be denied, unless otherwise paid to employees
20.19 on an equivalent leave status for a reason that does not qualify for leave under this chapter.

20.20 (d) Benefits under this section include all benefits provided or made available to
20.21 employees by an employer, including group life insurance, health insurance, disability
20.22 insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether
20.23 such benefits are provided by a practice or written policy of an employer through an employee
20.24 benefit plan as defined in section 3(3) of United States Code, title 29, section 1002(3).

20.25 (1) At the end of an employee's leave under this chapter, benefits must be resumed in
20.26 the same manner and at the same levels as provided when the leave began, and subject to
20.27 any changes in benefit levels that may have taken place during the period of leave affecting
20.28 the entire workforce, unless otherwise elected by the employee. Upon return from a leave
20.29 under this chapter, an employee cannot be required to requalify for any benefits the employee
20.30 enjoyed before leave began, including family or dependent coverages.

20.31 (2) An employee may, but is not entitled to, accrue any additional benefits or seniority
20.32 during a leave under this chapter. Benefits accrued at the time leave began, however, must
20.33 be available to an employee upon return from leave.

21.1 (3) With respect to pension and other retirement plans, leave under this chapter must
21.2 not be treated as or counted toward a break in service for purposes of vesting and eligibility
21.3 to participate. Also, if the plan requires an employee to be employed on a specific date in
21.4 order to be credited with a year of service for vesting, contributions, or participation purposes,
21.5 an employee on leave under this chapter must be treated as employed on that date. However,
21.6 periods of leave under this chapter need not be treated as credited service for purposes of
21.7 benefit accrual, vesting, and eligibility to participate.

21.8 (4) Employees on leave under this chapter must be treated as if they continued to work
21.9 for purposes of changes to benefit plans. Employees on leave under this chapter are entitled
21.10 to changes in benefit plans, except those which may be dependent upon seniority or accrual
21.11 during the leave period, immediately upon return from leave or to the same extent they
21.12 would have qualified if no leave had been taken.

21.13 (e) An equivalent position must have substantially similar duties, conditions,
21.14 responsibilities, privileges, and status as the employee's original position.

21.15 (1) The employee must be reinstated to the same or a geographically proximate worksite
21.16 from where the employee had previously been employed. If the employee's original worksite
21.17 has been closed, the employee is entitled to the same rights as if the employee had not been
21.18 on leave when the worksite closed.

21.19 (2) The employee is ordinarily entitled to return to the same shift or the same or an
21.20 equivalent work schedule.

21.21 (3) The employee must have the same or an equivalent opportunity for bonuses,
21.22 profit-sharing, and other similar discretionary and nondiscretionary payments.

21.23 (4) This chapter does not prohibit an employer from accommodating an employee's
21.24 request to be restored to a different shift, schedule, or position which better suits the
21.25 employee's personal needs on return from leave, or to offer a promotion to a better position.
21.26 However, an employee must not be induced by the employer to accept a different position
21.27 against the employee's wishes.

21.28 (f) The requirement that an employee be restored to the same or equivalent job with the
21.29 same or equivalent pay, benefits, and terms and conditions of employment does not extend
21.30 to de minimis, intangible, or unmeasurable aspects of the job.

21.31 Subd. 7. Limitations on an employee's right to reinstatement. An employee has no
21.32 greater right to reinstatement or to other benefits and conditions of employment than if the
21.33 employee had been continuously employed during the period of leave under this chapter.

22.1 An employer must be able to show that an employee would not otherwise have been
22.2 employed at the time reinstatement is requested in order to deny restoration to employment.

22.3 (1) If an employee is laid off during the course of taking a leave under this chapter and
22.4 employment is terminated, the employer's responsibility to continue the leave, maintain
22.5 group health plan benefits, and restore the employee cease at the time the employee is laid
22.6 off, provided the employer has no continuing obligations under a collective bargaining
22.7 agreement or otherwise. An employer would have the burden of proving that an employee
22.8 would have been laid off during the period of leave under this chapter and, therefore, would
22.9 not be entitled to restoration. Restoration to a job slated for layoff when the employee's
22.10 original position would not meet the requirements of an equivalent position.

22.11 (2) If a shift has been eliminated or overtime has been decreased, an employee would
22.12 not be entitled to return to work that shift or the original overtime hours upon restoration.
22.13 However, if a position on, for example, a night shift has been filled by another employee,
22.14 the employee is entitled to return to the same shift on which employed before taking leave
22.15 under this chapter.

22.16 (3) If an employee was hired for a specific term or only to perform work on a discrete
22.17 project, the employer has no obligation to restore the employee if the employment term or
22.18 project is over and the employer would not otherwise have continued to employ the employee.

22.19 Subd. 8. Remedies. (a) In addition to any other remedies available to an employee in
22.20 law or equity, an employer who violates the provisions of this section is liable to any
22.21 employee affected for:

22.22 (1) damages equal to the amount of:

22.23 (i) any wages, salary, employment benefits, or other compensation denied or lost to such
22.24 employee by reason of the violation, or, in a cases in which wages, salary, employment
22.25 benefits, or other compensation have not been denied or lost to the employee, any actual
22.26 monetary losses sustained by the employee as a direct result of the violation; and

22.27 (ii) reasonable interest on the amount described in item (i); and

22.28 (2) such equitable relief as may be appropriate, including employment, reinstatement,
22.29 and promotion.

22.30 (b) An action to recover damages or equitable relief prescribed in paragraph (a) may be
22.31 maintained against any employer in any federal or state court of competent jurisdiction by
22.32 any one or more employees for and on behalf of:

22.33 (1) the employees; or

23.1 (2) the employees and other employees similarly situated.

23.2 (c) The court in an action under this section must, in addition to any judgment awarded
23.3 to the plaintiff or plaintiffs, allow reasonable attorney fees, reasonable expert witness fees,
23.4 and other costs of the action to be paid by the defendant.

23.5 (d) Nothing in this section shall be construed to allow an employee to recover damages
23.6 from an employer for the denial of benefits under this chapter by the department, unless the
23.7 employer unlawfully interfered with the application for benefits under subdivision 2.

23.8 Sec. 15. **[268B.10] SUBSTITUTION OF A PRIVATE PLAN.**

23.9 Subdivision 1. **Application for substitution.** Employers may apply to the commissioner
23.10 for approval to meet their obligations under this chapter through the substitution of a private
23.11 plan that provides paid family, paid medical, or paid family and medical benefits. In order
23.12 to be approved as meeting an employer's obligations under this chapter, a private plan must
23.13 confer all of the same rights, protections, and benefits provided to employees under this
23.14 chapter, including but not limited to benefits under section 268B.08 and employment
23.15 protections under section 268B.09. An employee covered by a private plan under this section
23.16 retains all applicable rights and remedies under section 268B.09.

23.17 Subd. 2. **Private plan requirements; medical benefit program.** The commissioner
23.18 must approve an application for private provision of the medical benefit program if the
23.19 commissioner determines:

23.20 (1) all of the employees of the employer are to be covered under the provisions of the
23.21 employer plan;

23.22 (2) eligibility requirements for benefits and leave are no more restrictive than as provided
23.23 under this chapter;

23.24 (3) the weekly benefits payable under the private plan for any week are at least equal to
23.25 the weekly benefit amount payable under this chapter, taking into consideration any coverage
23.26 with respect to concurrent employment by another employer;

23.27 (4) the total number of weeks for which benefits are payable under the private plan is
23.28 at least equal to the total number of weeks for which benefits would have been payable
23.29 under this chapter;

23.30 (5) no greater amount is required to be paid by employees toward the cost of benefits
23.31 under the employer plan than by this chapter;

24.1 (6) wage replacement benefits are stated in the plan separately and distinctly from other
24.2 benefits;

24.3 (7) the private plan will provide benefits and leave for any serious health condition or
24.4 pregnancy for which benefits are payable, and leave provided, under this chapter;

24.5 (8) the private plan will impose no additional condition or restriction on the use of
24.6 medical benefits beyond those explicitly authorized by this chapter or regulations
24.7 promulgated pursuant to this chapter;

24.8 (9) the private plan will allow any employee covered under the private plan who is
24.9 eligible to receive medical benefits under this chapter to receive medical benefits under the
24.10 employer plan; and

24.11 (10) coverage will be continued under the private plan while an employee remains
24.12 employed by the employer.

24.13 Subd. 3. **Private plan requirements; family benefit program.** The commissioner must
24.14 approve an application for private provision of the family benefit program if the
24.15 commissioner determines:

24.16 (1) all of the employees of the employer are to be covered under the provisions of the
24.17 employer plan;

24.18 (2) eligibility requirements for benefits and leave are no more restrictive than as provided
24.19 under this chapter;

24.20 (3) the weekly benefits payable under the private plan for any week are at least equal to
24.21 the weekly benefit amount payable under this chapter, taking into consideration any coverage
24.22 with respect to concurrent employment by another employer;

24.23 (4) the total number of weeks for which benefits are payable under the private plan is
24.24 at least equal to the total number of weeks for which benefits would have been payable
24.25 under this chapter;

24.26 (5) no greater amount is required to be paid by employees toward the cost of benefits
24.27 under the employer plan than by this chapter;

24.28 (6) wage replacement benefits are stated in the plan separately and distinctly from other
24.29 benefits;

24.30 (7) the private plan will provide benefits and leave for any care for a family member
24.31 with a serious health condition, bonding with a child, qualifying exigency, or safety leave
24.32 event for which benefits are payable, and leave provided, under this chapter;

25.1 (8) the private plan will impose no additional condition or restriction on the use of family
25.2 benefits beyond those explicitly authorized by this chapter or regulations promulgated
25.3 pursuant to this chapter;

25.4 (9) the private plan will allow any employee covered under the private plan who is
25.5 eligible to receive medical benefits under this chapter to receive medical benefits under the
25.6 employer plan; and

25.7 (10) coverage will be continued under the private plan while an employee remains
25.8 employed by the employer.

25.9 Subd. 4. **Use of private insurance products.** Nothing in this section prohibits an
25.10 employer from meeting the requirements of a private plan through a private insurance
25.11 product. If the employer plan involves a private insurance product, that insurance product
25.12 must conform to any applicable law or rule.

25.13 Subd. 5. **Private plan approval and oversight fee.** An employer with an approved
25.14 private plan will not be required to pay premiums established under section 268B.12. An
25.15 employer with an approved private plan will be responsible for a private plan approval and
25.16 oversight fee equal to \$250 for employers with fewer than 50 employees, \$500 for employers
25.17 with 50 to 499 employees, and \$1,000 for employers with 500 or more employees. The
25.18 employer must pay this fee (1) upon initial application for private plan approval and (2) any
25.19 time the employer applies to amend the private plan. The commissioner will review and
25.20 report on the adequacy of this fee to cover private plan administrative costs annually
25.21 beginning in 2020 as part of the annual report established in section 268B.21.

25.22 Subd. 6. **Plan duration.** A private plan under this section must be in effect for a period
25.23 of at least one year and, thereafter, continuously unless the commissioner finds that the
25.24 employer has given notice of withdrawal from the plan in a manner specified by the
25.25 commissioner in this section or rule. The plan may be withdrawn by the employer within
25.26 30 days of the effective date of any law increasing the benefit amounts or within 30 days
25.27 of the date of any change in the rate of premiums. If the plan is not withdrawn, it must be
25.28 amended to conform to provide the increased benefit amount or change in the rate of the
25.29 employee's premium on the date of the increase or change.

25.30 Subd. 7. **Appeals.** An employer may appeal any adverse action regarding that employer's
25.31 private plan to the commissioner, in a manner specified by the commissioner.

25.32 Subd. 8. **Employees no longer covered.** (a) An employee is no longer covered by an
25.33 approved private plan if a leave under this chapter occurs after the employment relationship

26.1 with the private plan employer ends, or if the commissioner revokes the approval of the
26.2 private plan.

26.3 (b) An employee no longer covered by an approved private plan is, if otherwise eligible,
26.4 immediately entitled to benefits under this chapter to the same extent as though there had
26.5 been no approval of the private plan.

26.6 Subd. 9. **Posting of notice regarding private plan.** An employer with a private plan
26.7 must provide a notice prepared by or approved by the commissioner regarding the private
26.8 plan consistent with the provisions of section 268B.22.

26.9 Subd. 10. **Amendment.** (a) The commissioner must approve any amendment to a private
26.10 plan adjusting the provisions thereof, if the commissioner determines:

26.11 (1) that the plan, as amended, will conform to the standards set forth in this chapter; and

26.12 (2) that notice of the amendment has been delivered to all affected employees at least
26.13 ten days before the submission of the amendment.

26.14 (b) Any amendments approved under this subdivision are effective on the date of the
26.15 commissioner's approval, unless the commissioner and the employer agree on a later date.

26.16 Subd. 11. **Successor employer.** A private plan in effect at the time a successor acquires
26.17 the employer organization, trade, or business, or substantially all the assets thereof, or a
26.18 distinct and severable portion of the organization, trade, or business, and continues its
26.19 operation without substantial reduction of personnel resulting from the acquisition, must
26.20 continue the approved private plan and must not withdraw the plan without a specific request
26.21 for withdrawal in a manner and at a time specified by the commissioner. A successor may
26.22 terminate a private plan with notice to the commissioner and within 90 days from the date
26.23 of the acquisition.

26.24 Subd. 12. **Revocation of approval by commissioner.** (a) The commissioner may
26.25 terminate any private plan if the commissioner determines the employer:

26.26 (1) failed to pay benefits;

26.27 (2) failed to pay benefits in a timely manner, consistent with the requirements of this
26.28 chapter;

26.29 (3) failed to submit reports as required by this chapter or rule adopted under this chapter;
26.30 or

26.31 (4) otherwise failed to comply with this chapter or rule adopted under this chapter.

27.1 (b) The commissioner must give notice of the intention to terminate a plan to the employer
27.2 at least ten days before taking any final action. The notice must state the effective date and
27.3 the reason for the termination.

27.4 (c) The employer may, within ten days from mailing or personal service of the notice,
27.5 file an appeal to the commissioner in the time, manner, method, and procedure provided by
27.6 the commissioner under subdivision 7.

27.7 (d) The payment of benefits must not be delayed during an employer's appeal of the
27.8 revocation of approval of a private plan.

27.9 (e) If the commissioner revokes approval of an employer's private plan, that employer
27.10 is ineligible to apply for approval of another private plan for a period of three years, beginning
27.11 on the date of revocation.

27.12 Subd. 13. **Employer penalties.** (a) The commissioner may assess the following monetary
27.13 penalties against an employer with an approved private plan found to have violated this
27.14 chapter:

27.15 (1) \$1,000 for the first violation; and

27.16 (2) \$2,000 for the second, and each successive violation.

27.17 (b) The commissioner must waive collection of any penalty if the employer corrects the
27.18 violation within 30 days of receiving a notice of the violation and the notice is for a first
27.19 violation.

27.20 (c) The commissioner may waive collection of any penalty if the commissioner determines
27.21 the violation to be an inadvertent error by the employer.

27.22 (d) Monetary penalties collected under this section shall be deposited in the account.

27.23 (e) Assessment of penalties under this subdivision may be appealed as provided by the
27.24 commissioner under subdivision 7.

27.25 Subd. 14. **Reports, information, and records.** Employers with an approved private
27.26 plan must maintain all reports, information, and records as relating to the private plan and
27.27 claims for a period of six years from creation and provide to the commissioner upon request.

27.28 Subd. 15. **Audit and investigation.** The commissioner may investigate and audit plans
27.29 approved under this section both before and after the plans are approved.

28.1 Sec. 16. **[268B.11] SELF-EMPLOYED AND INDEPENDENT CONTRACTOR**
28.2 **ELECTION OF COVERAGE.**

28.3 Subdivision 1. **Election of coverage.** (a) A self-employed individual or independent
28.4 contractor may file with the commissioner by electronic transmission in a format prescribed
28.5 by the commissioner an application to be entitled to benefits under this chapter for a period
28.6 not less than 104 consecutive calendar weeks. Upon the approval of the commissioner, sent
28.7 by United States mail or electronic transmission, the individual is entitled to benefits under
28.8 this chapter beginning the calendar quarter after the date of approval or beginning in a later
28.9 calendar quarter if requested by the self-employed individual or independent contractor.
28.10 The individual ceases to be entitled to benefits as of the first day of January of any calendar
28.11 year only if, at least 30 calendar days before the first day of January, the individual has filed
28.12 with the commissioner by electronic transmission in a format prescribed by the commissioner
28.13 a notice to that effect.

28.14 (b) The commissioner may terminate any application approved under this section with
28.15 30 calendar days' notice sent by United States mail or electronic transmission if the
28.16 self-employed individual is delinquent on any premiums due under this chapter an election
28.17 agreement. If an approved application is terminated in this manner during the first 104
28.18 consecutive calendar weeks of election, the self-employed individual remains obligated to
28.19 pay the premium under subdivision 3 for the remainder of that 104-week period.

28.20 Subd. 2. **Application** A self-employed individual who applies for coverage under this
28.21 section must provide the commissioner with (1) the amount of the individual's net earnings
28.22 from self-employment, if any, from the two most recent taxable years and all tax documents
28.23 necessary to prove the accuracy of the amounts reported and (2) any other documentation
28.24 the commissioner requires. A self-employed individual who is covered under this chapter
28.25 must annually provide the commissioner with the amount of the individual's net earnings
28.26 from self-employment within 30 days of filing a federal income tax return.

28.27 Subd. 3. **Premium.** A self-employed individual who elects to receive coverage under
28.28 this chapter must annually pay a premium equal to one-half the percentage in section
28.29 268B.12, subdivision 4, clause (1), times the lesser of:

- 28.30 (1) the individual's self-employment premium base; or
28.31 (2) the maximum earnings subject to the FICA Old-Age, Survivors, and Disability
28.32 Insurance tax.

28.33 Subd. 4. **Benefits.** Notwithstanding anything to the contrary, a self-employed individual
28.34 who has applied to and been approved for coverage by the commissioner under this section

29.1 is entitled to benefits on the same basis as an employee under this chapter, except that a
29.2 self-employed individual's weekly benefit amount under section 268B.08, subdivision 1,
29.3 must calculated as a percentage of the self-employed individual's self-employment premium
29.4 base, rather than wages.

29.5 Sec. 17. **[268B.12] PREMIUMS.**

29.6 Subdivision 1. **Employer.** (a) Each person or entity required, or who elected, to register
29.7 for a tax account under sections 268.042, 268.045, and 268.046 must pay a premium on the
29.8 wages paid to employees in covered employment for each calendar year. The premium must
29.9 be paid on all wages up to the maximum specified by this section.

29.10 (b) Each person or entity required, or who elected, to register for a reimbursable account
29.11 under sections 268.042, 268.045, and 268.046 must pay a premium on the wages paid to
29.12 employees in covered employment in the same amount and manner as provided by paragraph
29.13 (a).

29.14 Subd. 2. **Employee charge back.** Notwithstanding section 177.24, subdivision 4, or
29.15 181.06, subdivision 1, employers and covered business entities may deduct up to 50 percent
29.16 of annual premiums paid under this section from employee wages. Such deductions for any
29.17 given employee must be in equal proportion to the premiums paid based on the wages of
29.18 that employee, and all employees of an employer must be subject to the same percentage
29.19 deduction. Deductions under this section must not cause an employee's wage, after the
29.20 deduction, to fall below the rate required to be paid to the worker by law, including any
29.21 applicable statute, regulation, rule, ordinance, government resolution or policy, contract, or
29.22 other legal authority, whichever rate of pay is greater.

29.23 Subd. 3. **Wages and payments subject to premium.** (a) The maximum wages subject
29.24 to premium in a calendar year is equal to the maximum earnings in that year subject to the
29.25 FICA Old-Age, Survivors, and Disability Insurance tax.

29.26 (b) The maximum payment amount subject to premium in a calendar year, under
29.27 subdivision 1, paragraph (c), is equal to the maximum earnings in that year subject to the
29.28 FICA Old-Age, Survivors, and Disability Insurance tax.

29.29 Subd. 4. **Annual premium rates.** The employer premium rates for the calendar year
29.30 beginning January 1, 2021, shall be as follows:

29.31 (1) for employers participating in both family and medical benefit programs, 0.65 percent;

29.32 (2) for an employer participating in only the medical benefit program and with an
29.33 approved private plan for the family benefit program, 0.5265 percent; and

30.1 (3) for an employer participating in only the family benefit program and with an approved
30.2 private plan for the medical benefit program, 0.1235 percent.

30.3 Subd. 5. **Premium rate adjustments.** (a) Each calendar year following the calendar
30.4 year beginning January 1, 2023, the commissioner must adjust the annual premium rates
30.5 using the formula in paragraph (b).

30.6 (b) To calculate the employer rates for a calendar year, the commissioner must:

30.7 (1) multiply 1.45 times the amount disbursed from the account for the 52-week period
30.8 ending September 30 of the prior year;

30.9 (2) subtract the amount in the account on that September 30 from the resulting figure;

30.10 (3) divide the resulting figure by twice the total wages in covered employment of
30.11 employees of employers without approved private plans under section 268B.10 for either
30.12 the family or medical benefit program. For employers with an approved private plan for
30.13 either the medical benefit program or the family benefit program, but not both, count only
30.14 the proportion of wages in covered employment associated with the program for which the
30.15 employer does not have an approved private plan; and

30.16 (4) round the resulting figure down to the nearest one-hundredth of one percent.

30.17 (c) The commissioner must apportion the premium rate between the family and medical
30.18 benefit programs based on the relative proportion of expenditures for each program during
30.19 the preceding year.

30.20 Subd. 6. **Deposit of premiums.** All premiums collected under this section must be
30.21 deposited into the account.

30.22 Subd. 7. **Nonpayment of premiums by employer.** The failure of an employer to pay
30.23 premiums does not impact the right of an employee to benefits, or any other right, under
30.24 this chapter.

30.25 Sec. 18. **[268B.13] COLLECTION OF PREMIUMS.**

30.26 Subdivision 1. **Amount computed presumed correct.** Any amount due from an
30.27 employer, as computed by the commissioner, is presumed to be correctly determined and
30.28 assessed, and the burden is upon the employer to show any error. A statement by the
30.29 commissioner of the amount due is admissible in evidence in any court or administrative
30.30 proceeding and is prima facie evidence of the facts in the statement.

30.31 Subd. 2. **Priority of payments.** (a) Any payment received from an employer must be
30.32 applied in the following order:

31.1 (1) premiums due under this chapter; then

31.2 (2) interest on past due premiums; then

31.3 (3) penalties, late fees, administrative service fees, and costs.

31.4 (b) Paragraph (a) is the priority used for all payments received from an employer,
31.5 regardless of how the employer may designate the payment to be applied, except when:

31.6 (1) there is an outstanding lien and the employer designates that the payment made
31.7 should be applied to satisfy the lien;

31.8 (2) a court or administrative order directs that the payment be applied to a specific
31.9 obligation;

31.10 (3) a preexisting payment plan provides for the application of payment; or

31.11 (4) the commissioner agrees to apply the payment to a different priority.

31.12 Subd. 3. **Costs.** (a) Any employer that fails to pay any amount when due under this
31.13 chapter is liable for any filing fees, recording fees, sheriff fees, costs incurred by referral
31.14 to any public or private collection agency, or litigation costs, including attorney fees, incurred
31.15 in the collection of the amounts due.

31.16 (b) If any tendered payment of any amount due is not honored when presented to a
31.17 financial institution for payment, any costs assessed to the department by the financial
31.18 institution and a fee of \$25 must be assessed to the person.

31.19 (c) Costs and fees collected under this subdivision are credited to the account.

31.20 Subd. 4. **Interest on amounts past due.** If any amounts due from an employer under
31.21 this chapter, except late fees, are not received on the date due, the unpaid balance bears
31.22 interest at the rate of one percent per month or any part of a month. Interest collected under
31.23 this subdivision is payable to the account.

31.24 Subd. 5. **Interest on judgments.** Regardless of section 549.09, if judgment is entered
31.25 upon any past due amounts from an employer under this chapter, the unpaid judgment bears
31.26 interest at the rate specified in subdivision 4 until the date of payment.

31.27 Subd. 6. **Credit adjustments; refunds.** (a) If an employer makes an application for a
31.28 credit adjustment of any amount paid under this chapter within four years of the date that
31.29 the payment was due, in a manner and format prescribed by the commissioner, and the
31.30 commissioner determines that the payment or any portion thereof was erroneous, the
31.31 commissioner must make an adjustment and issue a credit without interest. If a credit cannot
31.32 be used, the commissioner must refund, without interest, the amount erroneously paid. The

32.1 commissioner, on the commissioner's own motion, may make a credit adjustment or refund
32.2 under this subdivision.

32.3 (b) Any refund returned to the commissioner is considered unclaimed property under
32.4 chapter 345.

32.5 (c) If a credit adjustment or refund is denied in whole or in part, a determination of denial
32.6 must be sent to the employer by United States mail or electronic transmission. The
32.7 determination of denial is final unless an employer files an appeal within 20 calendar days
32.8 after receipt of the determination.

32.9 (d) If an employer receives a credit adjustment or refund under this section, the employer
32.10 must determine the amount of any overpayment attributable to a deduction from employee
32.11 wages under section 268B.12, subdivision 2, and return any amount erroneously deducted
32.12 to each affected employee.

32.13 Subd. 7. **Priorities under legal dissolutions or distributions.** In the event of any
32.14 distribution of an employer's assets according to an order of any court, including any
32.15 receivership, assignment for benefit of creditors, adjudicated insolvency, or similar
32.16 proceeding, premiums then or thereafter due must be paid in full before all other claims
32.17 except claims for wages of not more than \$1,000 per former employee that are earned within
32.18 six months of the commencement of the proceedings. In the event of an employer's
32.19 adjudication in bankruptcy under federal law, premiums then or thereafter due are entitled
32.20 to the priority provided in that law for taxes due.

32.21 Sec. 19. **[268B.14] ADMINISTRATIVE COSTS.**

32.22 From July 1, 2021, through December 31, 2021, the commissioner may spend up to
32.23 seven percent of premiums collected under section 268B.13 for administration of this chapter.
32.24 Beginning January 1, 2022, and each calendar year thereafter, the commissioner may spend
32.25 up to seven percent of projected benefit payments for that calendar year for the administration
32.26 of this chapter. The department may enter into interagency agreements with the Department
32.27 of Labor and Industry, including agreements to transfer funds, subject to the limit in this
32.28 section, for the Department of Labor and Industry to fulfill its enforcement authority of this
32.29 chapter.

32.30 Sec. 20. **[268B.15] PUBLIC OUTREACH.**

32.31 Beginning in fiscal year 2022, the commissioner must use at least 0.5 percent of revenue
32.32 collected under this chapter for the purpose of outreach, education, and technical assistance

33.1 for employees, employers, and self-employed individuals eligible to elect coverage under
33.2 section 268B.11. The department may enter into interagency agreements with the Department
33.3 of Labor and Industry, including agreements to transfer funds, subject to the limit in section
33.4 268B.14, to accomplish the requirements of this section. At least one-half of the amount
33.5 spent under this section must be used for grants to community-based groups.

33.6 Sec. 21. **[268B.16] APPLICANT'S FALSE REPRESENTATIONS; CONCEALMENT**
33.7 **OF FACTS; PENALTY.**

33.8 (a) Any applicant who knowingly makes a false statement or representation, knowingly
33.9 fails to disclose a material fact, or makes a false statement or representation without a
33.10 good-faith belief as to the correctness of the statement or representation in order to obtain
33.11 or in an attempt to obtain benefits may be assessed, in addition to any other penalties, an
33.12 administrative penalty of ineligibility of benefits for 13 to 104 weeks.

33.13 (b) A determination of ineligibility setting out the weeks the applicant is ineligible must
33.14 be sent to the applicant by United States mail or electronic transmission. The determination
33.15 is final unless an appeal is filed within 30 calendar days after receipt of the determination.

33.16 Sec. 22. **[268B.17] EMPLOYER MISCONDUCT; PENALTY.**

33.17 (a) The commissioner must penalize an employer if that employer or any employee,
33.18 officer, or agent of that employer is in collusion with any applicant for the purpose of
33.19 assisting the applicant in receiving benefits fraudulently. The penalty is \$500 or the amount
33.20 of benefits determined to be overpaid, whichever is greater.

33.21 (b) The commissioner must penalize an employer if that employer or any employee,
33.22 officer, or agent of that employer:

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

33.24 (2) made a false statement or representation without a good-faith belief as to the
33.25 correctness of the statement or representation; or

33.26 (3) knowingly failed to disclose a material fact.

33.27 (c) The penalty is the greater of \$500 or 50 percent of the following resulting from the
33.28 employer's action:

33.29 (1) the amount of any overpaid benefits to an applicant;

33.30 (2) the amount of benefits not paid to an applicant that would otherwise have been paid;

33.31 or

34.1 (3) the amount of any payment required from the employer under this chapter that was
34.2 not paid.

34.3 (d) Penalties must be paid within 30 calendar days of issuance of the determination of
34.4 penalty and credited to the account.

34.5 (e) The determination of penalty is final unless the employer files an appeal within 30
34.6 calendar days after the sending of the determination of penalty to the employer by United
34.7 States mail or electronic transmission.

34.8 Sec. 23. **[268B.18] RECORDS; AUDITS.**

34.9 (a) Each employer must keep true and accurate records on individuals performing services
34.10 for the employer, containing the information the commissioner may require under this
34.11 chapter. The records must be kept for a period of not less than four years in addition to the
34.12 current calendar year.

34.13 (b) For the purpose of administering this chapter, the commissioner has the power to
34.14 investigate, audit, examine, or cause to be supplied or copied, any books, correspondence,
34.15 papers, records, or memoranda that are the property of, or in the possession of, an employer
34.16 or any other person at any reasonable time and as often as may be necessary.

34.17 (c) An employer or other person that refuses to allow an audit of its records by the
34.18 department or that fails to make all necessary records available for audit in the state upon
34.19 request of the commissioner may be assessed an administrative penalty of \$500. The penalty
34.20 collected is credited to the account.

34.21 Sec. 24. **[268B.19] SUBPOENAS; OATHS.**

34.22 (a) The commissioner or benefit judge has authority to administer oaths and affirmations,
34.23 take depositions, certify to official acts, and issue subpoenas to compel the attendance of
34.24 individuals and the production of documents and other personal property necessary in
34.25 connection with the administration of this chapter.

34.26 (b) Individuals subpoenaed, other than applicants or officers and employees of an
34.27 employer that is the subject of the inquiry, must be paid witness fees the same as witness
34.28 fees in civil actions in district court. The fees need not be paid in advance.

34.29 (c) The subpoena is enforceable through the district court in Ramsey County.

35.1 **Sec. 25. [268B.20] CONCILIATION SERVICES.**

35.2 The Department of Labor and Industry may offer conciliation services to employers and
35.3 employees to resolve disputes concerning alleged violations of employment protections
35.4 identified in section 268B.09.

35.5 **Sec. 26. [268B.21] ANNUAL REPORTS.**

35.6 (a) Annually, beginning on or before December 1, 2021, the commissioner must report
35.7 to the Department of Management and Budget and the house of representatives and senate
35.8 committee chairs with jurisdiction over this chapter on program administrative expenditures
35.9 and revenue collection for the prior fiscal year, including but not limited to:

35.10 (1) total revenue raised through premium collection;

35.11 (2) the number of self-employed individuals or independent contractors electing coverage
35.12 under section 268B.11 and amount of associated revenue;

35.13 (3) the number of covered business entities paying premiums under this chapter and
35.14 associated revenue;

35.15 (4) administrative expenditures including transfers to other state agencies expended in
35.16 the administration of the chapter;

35.17 (5) summary of contracted services expended in the administration of this chapter;

35.18 (6) grant amounts and recipients under section 268B.15;

35.19 (7) an accounting of required outreach expenditures;

35.20 (8) summary of private plan approvals including the number of employers and employees
35.21 covered under private plans; and

35.22 (9) adequacy and use of the private plan approval and oversight fee.

35.23 (b) Annually, beginning on or before December 1, 2022, the commissioner must publish
35.24 a publicly available report providing the following information for the previous fiscal year:

35.25 (1) total eligible claims;

35.26 (2) the number and percentage of claims attributable to each category of benefit;

35.27 (3) claimant demographics by age, gender, average weekly wage, occupation, and the
35.28 type of leave taken;

35.29 (4) the percentage of claims denied and the reasons therefor, including, but not limited
35.30 to insufficient information and ineligibility and the reason therefor;

36.1 (5) average weekly benefit amount paid for all claims and by category of benefit;

36.2 (6) changes in the benefits paid compared to previous fiscal years;

36.3 (7) processing times for initial claims processing, initial determinations, and final
36.4 decisions;

36.5 (8) average duration for cases completed; and

36.6 (9) the number of cases remaining open at the close of such year.

36.7 **Sec. 27. [268B.22] NOTICE REQUIREMENTS.**

36.8 (a) Each employer must post in a conspicuous place on each of its premises a workplace
36.9 notice prepared or approved by the commissioner providing notice of benefits available
36.10 under this chapter. The required workplace notice must be in English and each language
36.11 other than English which is the primary language of five or more employees or independent
36.12 contractors of that workplace, if such notice is available from the department.

36.13 (b) Each employer must issue to each employee not more than 30 days from the beginning
36.14 date of the employee's employment, or 30 days before premium collection begins, which
36.15 ever is later, the following written information provided or approved by the department in
36.16 the primary language of the employee:

36.17 (1) an explanation of the availability of family and medical leave benefits provided under
36.18 this chapter, including rights to reinstatement and continuation of health insurance;

36.19 (2) the amount of premium deductions made by the employer under this chapter;

36.20 (3) the employer's premium amount and obligations under this chapter;

36.21 (4) the name and mailing address of the employer;

36.22 (5) the identification number assigned to the employer by the department;

36.23 (6) instructions on how to file a claim for family and medical leave benefits;

36.24 (7) the mailing address, e-mail address, and telephone number of the department; and

36.25 (8) any other information required by the department.

36.26 Delivery is made when an employee provides written acknowledgment of receipt of the
36.27 information, or signs a statement indicating the employee's refusal to sign such
36.28 acknowledgment.

36.29 (c) Each employer shall provide to each independent contractor with whom it contracts,
36.30 at the time such contract is made or, for existing contracts, within 30 days of the effective

37.1 date of this section, the following written information provided or approved by the department
37.2 in the self-employed individual's primary language:

37.3 (1) the address and telephone number of the department; and

37.4 (2) any other information required by the department.

37.5 (d) An employer that fails to comply with this subsection may be issued, for a first
37.6 violation, a civil penalty of \$50 per employee and per independent contractor with whom
37.7 it has contracted, and for each subsequent violation, a civil penalty of \$300 per employee
37.8 or self-employed individual with whom it has contracted. The employer shall have the
37.9 burden of demonstrating compliance with this section.

37.10 (e) Employer notice to an employee under this section may be provided in paper or
37.11 electronic format. For notice provided in electronic format only, the employer must provide
37.12 employee access to an employer-owner computer during an employee's regular working
37.13 hours to review and print required notices.

37.14 Sec. 28. [268B.23] RELATIONSHIP TO OTHER LEAVE; CONSTRUCTION.

37.15 Subdivision 1. **Concurrent leave.** An employer may require leave taken under this
37.16 chapter to run concurrently with leave taken for the same purpose under section 181.941
37.17 or the Family and Medical Leave Act, United States Code, title 29, sections 2601 to 2654,
37.18 as amended.

37.19 Subd. 2. **Construction.** Nothing in this chapter shall be construed to:

37.20 (1) allow an employer to compel an employee to exhaust accumulated sick, vacation,
37.21 or personal time before or while taking leave under this chapter;

37.22 (2) prohibit an employer from providing additional benefits, including, but not limited
37.23 to, covering the portion of earnings not provided under this chapter during periods of leave
37.24 covered under this chapter; or

37.25 (3) limit the parties to a collective bargaining agreement from bargaining and agreeing
37.26 with respect to leave benefits and related procedures and employee protections that meet
37.27 or exceed, and do not otherwise conflict with, the minimum standards and requirements in
37.28 this chapter.

37.29 Sec. 29. [268B.24] SMALL BUSINESS ASSISTANCE GRANTS.

37.30 (a) Employers with 50 or fewer employees may apply to the department for grants under
37.31 this section.

38.1 (b) The commissioner may approve a grant of up to \$3,000 if the employer hires a
38.2 temporary worker to replace an employee on family or medical leave for a period of seven
38.3 days or more.

38.4 (c) For an employee's family or medical leave, the commissioner may approve a grant
38.5 of up to \$1,000 as reimbursement for significant additional wage-related costs due to the
38.6 employee's leave.

38.7 (d) To be eligible for consideration for a grant under this section, the employer must
38.8 provide the department written documentation showing the temporary worker hired or
38.9 significant wage-related costs incurred are due to an employee's use of leave under this
38.10 chapter.

38.11 (e) The grants under this section may be funded from the account.

38.12 (f) For the purposes of this section, the commissioner shall average the number of
38.13 employees reported by an employer over the last four completed calendar quarters to
38.14 determine the size of the employer.

38.15 (g) An employer who has an approved private plan is not eligible to receive a grant under
38.16 this section.

38.17 (h) The commissioner may award grants under this section only up to a maximum of
38.18 \$5,000,000 per calendar year.

38.19 Sec. 30. Minnesota Statutes 2018, section 290.0132, is amended by adding a subdivision
38.20 to read:

38.21 Subd. 23. **Benefits under chapter 268B.** The amount received in benefits under chapter
38.22 268B is a subtraction.

38.23 Sec. 31. **EFFECTIVE DATES.**

38.24 (a) Benefits under Minnesota Statutes, chapter 268B, shall not be applied for or paid
38.25 until January 1, 2022, and thereafter.

38.26 (b) Sections 1, 2, 4, 5, and 6 are effective July 1, 2019.

38.27 (c) Section 15 is effective July 1, 2020.

38.28 (d) Sections 3, 17, 18, 22, 23, 24, and 26 are effective January 1, 2021.

38.29 (e) Sections 19 and 20 are effective July 1, 2021.

(f) Sections 7, 8, 9, 10, 11, 12, 13, 14, 16, 21, 25, 27, 28, 29, and 30 are effective January 1, 2022.

ARTICLE 2

APPROPRIATIONS

Section 1. FAMILY AND MEDICAL BENEFIT APPROPRIATIONS.

\$10,549,000 in fiscal year 2020 and \$21,442,000 in fiscal year 2021 are appropriated from the general fund to the commissioner of employment and economic development for the purposes of Minnesota Statutes, chapter 268B. Unexpended funds appropriated in fiscal year 2020 are available in fiscal year 2021. The general fund base amount for fiscal year 2022 is \$16,096,000 and for fiscal year 2023 is \$15,181,000. The general fund base amount in fiscal year 2024 and beyond is \$0.

\$533,000 in fiscal year 2021 is appropriated from the general fund to the commissioner of employment and economic development for the purpose of outreach, education, and technical assistance for employees and employers regarding Minnesota Statutes, chapter 268B. Of the amount appropriated at least half must be used for grants to community-based groups providing outreach, education, and technical assistance for employees, employers, and self-employed individuals regarding Minnesota Statutes, chapter 268B. This outreach must include efforts to notify self-employed individuals of their ability to elect coverage under Minnesota Statutes, section 268B.11, and provide them with technical assistance in doing so. The general fund base amount for fiscal year 2022 and beyond is \$0.

\$214,000 in fiscal year 2020 and \$377,000 in fiscal year 2021 are appropriated from the general fund to the commissioner of labor and industry for the purpose of outreach, education, and technical assistance for employees, employers, and self-employed individuals regarding Minnesota Statutes, chapter 268B. This outreach must include efforts to notify self-employed individuals of their ability to elect coverage under Minnesota Statutes, section 268B.11, and provide them with technical assistance in doing so. Unexpended amounts appropriated in fiscal year 2020 may be spent in fiscal year 2021. The general fund base amount for fiscal year 2022 and beyond is \$0.

\$382,000 in fiscal year 2020 and \$1,101,000 in fiscal year 2021 are appropriated from the general fund to the commissioner of labor and industry for the department's enforcement duties and related administration under chapter 268B. The general fund base amount in fiscal year 2022 and beyond is \$0.

EFFECTIVE DATE. This section is effective July 1, 2019.

ARTICLE 3

FAMILY AND MEDICAL LEAVE BENEFIT AS EARNINGS

Section 1. Minnesota Statutes 2018, section 256J.561, is amended by adding a subdivision to read:

Subd. 4. Parents receiving family and medical leave benefits. A parent who meets the criteria under subdivision 2 and who receives benefits under chapter 268B is not required to participate in employment services.

Sec. 2. Minnesota Statutes 2018, section 256J.95, subdivision 3, is amended to read:

Subd. 3. **Eligibility for diversionary work program.** (a) Except for the categories of family units listed in clauses (1) to (8), all family units who apply for cash benefits and who meet MFIP eligibility as required in sections 256J.11 to 256J.15 are eligible and must participate in the diversionary work program. Family units or individuals that are not eligible for the diversionary work program include:

- (1) child only cases;
- (2) single-parent family units that include a child under 12 months of age. A parent is eligible for this exception once in a parent's lifetime;
- (3) family units with a minor parent without a high school diploma or its equivalent;
- (4) family units with an 18- or 19-year-old caregiver without a high school diploma or its equivalent who chooses to have an employment plan with an education option;
- (5) family units with a caregiver who received DWP benefits within the 12 months prior to the month the family applied for DWP, except as provided in paragraph (c);
- (6) family units with a caregiver who received MFIP within the 12 months prior to the month the family applied for DWP;
- (7) family units with a caregiver who received 60 or more months of TANF assistance;
- and
- (8) family units with a caregiver who is disqualified from the work participation cash benefit program, DWP, or MFIP due to fraud; and
- (9) single-parent family units where a parent is receiving family and medical leave benefits under chapter 268B.

41.1 (b) A two-parent family must participate in DWP unless both caregivers meet the criteria
41.2 for an exception under paragraph (a), clauses (1) through (5), or the family unit includes a
41.3 parent who meets the criteria in paragraph (a), clause (6), (7), or (8).

41.4 (c) Once DWP eligibility is determined, the four months run consecutively. If a participant
41.5 leaves the program for any reason and reapplies during the four-month period, the county
41.6 must redetermine eligibility for DWP.

41.7 Sec. 3. Minnesota Statutes 2018, section 256J.95, subdivision 11, is amended to read:

41.8 Subd. 11. **Universal participation required.** (a) All DWP caregivers, except caregivers
41.9 who meet the criteria in paragraph (d), are required to participate in DWP employment
41.10 services. Except as specified in paragraphs (b) and (c), employment plans under DWP must,
41.11 at a minimum, meet the requirements in section 256J.55, subdivision 1.

41.12 (b) A caregiver who is a member of a two-parent family that is required to participate
41.13 in DWP who would otherwise be ineligible for DWP under subdivision 3 may be allowed
41.14 to develop an employment plan under section 256J.521, subdivision 2, that may contain
41.15 alternate activities and reduced hours.

41.16 (c) A participant who is a victim of family violence shall be allowed to develop an
41.17 employment plan under section 256J.521, subdivision 3. A claim of family violence must
41.18 be documented by the applicant or participant by providing a sworn statement which is
41.19 supported by collateral documentation in section 256J.545, paragraph (b).

41.20 (d) One parent in a two-parent family unit ~~that has a natural born child under 12 months~~
41.21 ~~of age~~ is not required to have an employment plan ~~until the child reaches 12 months of age~~
41.22 ~~unless the family unit has already used the exclusion under section 256J.561, subdivision~~
41.23 ~~3, or the previously allowed child under age one exemption under section 256J.56, paragraph~~
41.24 ~~(a), clause (5). if that parent:~~

41.25 (1) receives family and medical leave benefits under chapter 268B; or

41.26 (2) has a natural born child under 12 months of age until the child reaches 12 months
41.27 of age unless the family unit has already used the exclusion under section 256J.561,
41.28 subdivision 3, or the previously allowed child under age one exemption under section
41.29 256J.56, paragraph (a), clause (5).

41.30 (e) The provision in paragraph (d) ends the first full month after the child reaches 12
41.31 months of age. This provision is allowable only once in a caregiver's lifetime. In a two-parent
41.32 household, only one parent shall be allowed to use this category.

42.1 (f) The participant and job counselor must meet in the month after the month the child
42.2 reaches 12 months of age to revise the participant's employment plan. The employment plan
42.3 for a family unit that has a child under 12 months of age that has already used the exclusion
42.4 in section 256J.561 must be tailored to recognize the caregiving needs of the parent.

42.5 Sec. 4. Minnesota Statutes 2018, section 256P.01, subdivision 3, is amended to read:

42.6 Subd. 3. **Earned income.** "Earned income" means cash or in-kind income earned through
42.7 the receipt of wages, salary, commissions, bonuses, tips, gratuities, profit from employment
42.8 activities, net profit from self-employment activities, payments made by an employer for
42.9 regularly accrued vacation or sick leave, severance pay based on accrued leave time, benefits
42.10 paid under chapter 268B, payments from training programs at a rate at or greater than the
42.11 state's minimum wage, royalties, honoraria, or other profit from activity that results from
42.12 the client's work, service, effort, or labor. The income must be in return for, or as a result
42.13 of, legal activity.

42.14 Sec. 5. **EFFECTIVE DATES.**

42.15 Sections 1 to 4 are effective January 1, 2022.

APPENDIX
Article locations for DIVH0005-2

ARTICLE 1 FAMILY AND MEDICAL BENEFITS..... Page.Ln 1.11

ARTICLE 2 APPROPRIATIONS..... Page.Ln 39.3

ARTICLE 3 FAMILY AND MEDICAL LEAVE BENEFIT AS EARNINGS..... Page.Ln 40.1