AN ACT

ENTITLED, An Act to revise the style and form of certain provisions and to delete certain obsolete provisions regarding unemployment compensation.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 61-1-2 be amended to read as follows:

61-1-2. The Department of Labor shall administer this title.

Section 2. That § 61-1-3 be amended to read as follows:

61-1-3. As used in this title, the term, employing unit, means an individual or type of organization, including any partnership, limited liability company, association, trust, estate, joint-stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has had in its employ one or more individuals performing services for it within this state. Each individual performing services within this state for any employing unit which maintains two or more separate establishments within this state is deemed to be employed by a single employing unit for all the purposes of this title. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit is deemed to be employed by the employing unit for all the purposes of this title, whether the individual was hired or paid directly by the employing unit or by the agent or employee, if the employing unit had actual or constructive knowledge of the work.

Section 3. That § 61-1-4 be amended to read as follows:

61-1-4. As used in this title, the term, employer, means:

(1) For each calendar year, any employing unit which:

(a) In any calendar quarter in either the current or preceding calendar year paid for service in employment wages of one thousand five hundred dollars or more; or

(b) For some portion of a day in each of twenty different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, had in employment at least one individual (irrespective of whether the same individual was in employment in each such day);

(2) Any employing unit for which service in employment, as defined in § 61-1-10.2, is performed, except as provided in subdivisions (6) and (7) of this section;

(3) Any employing unit for which service in employment, as defined in § 61-1-10.3, is performed, except as provided in subdivisions (6) and (7) of this section;

(4) Any employing unit for which agricultural labor as defined in § 61-1-25 is performed, subject to subdivision 61-1-24 (1);

(5) Any employing unit for which domestic service in employment as defined in § 61-1-27 is performed, subject to § 61-1-27.

In determining whether or not an employing unit for which service other than domestic service is also performed is an employer under subdivision (1), (2), (3), or (4) of this section the wages earned on the employment of an employee performing domestic service, may not be taken into account.

In determining whether or not an employing unit for which service other than agricultural labor is also performed is an employer under subdivision (1), (2), (3), or (5) of this section, the wages earned or the employment of an employee performing service in agricultural labor, may not be taken into account. If an employing unit is determined to be an employer of agricultural labor, the employing unit shall be determined an employer for the purposes of subdivision (1) of this section.

Section 4. That § 61-1-5 be amended to read as follows:

61-1-5. As used in this title, the term, employer, includes any individual, group of individuals, or employing unit which acquired the organization, trade, or business, or substantially all the assets

thereof, of another which at the time of the acquisition was an employer subject to this title.

Section 5. That § 61-1-6 be amended to read as follows:

61-1-6. As used in this title, the term, employer, includes any individual, group of individuals or employing unit which acquired the organization, trade, or business, or substantially all of the assets thereof, of another employing unit and which, if treated as a single unit with such other employing unit would be an employer under § 61-1-4.

Section 6. That § 61-1-8 be amended to read as follows:

61-1-8. As used in this title, the term, employer, includes any employing unit which, having become an employer under subdivision 61-1-4(2), or under any of §§ 61-1-5 to 61-1-7, inclusive, has not, under §§ 61-5-51 to 61-5-53, inclusive, ceased to be an employer subject to this title.

Section 7. That § 61-1-9 be amended to read as follows:

61-1-9. As used in this title, the term, employer, includes for the effective period of its election pursuant to §§ 61-5-3 to 61-5-5.1, inclusive, and § 61-5-11, any other employing unit which has elected to become fully subject to this title.

Section 8. That § 61-1-10 be amended to read as follows:

61-1-10.The term, employment, means any service performed, including service in interstate commerce, by:

(1) Any officer of a corporation; or

(2) Any individual who, under the usual common-law rules applicable in determining the employer-employee relationship has the status of an employee.

Section 9. That § 61-1-10.1 be amended to read as follows:

61-1-10.1.The term, employment, includes, subject to the provisions of §§ 61-1-10.2 to 61-1-10.9, inclusive, service performed, including service in interstate commerce, by any individual other than an individual who is an employee under subdivision 61-1-10(1) or (2) who performs services

for remuneration for any person:

(1) As an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages, or laundry or dry-cleaning services, for the driver's principal;

(2) As a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, the salesman's principal (except for sideline sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in the business operations.

For the purposes of this section, the term, employment, includes services described in subdivisions (1) and (2) if: the contract of service contemplates that substantially all of the services are to be performed personally by such individual; the individual does not have a substantial investment in facilities used in connection with the performance of the services (other than in facilities for transportation); and the services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed.

Section 10. That § 61-1-10.2 be amended to read as follows:

61-1-10.2. As used in this title, the term, employment, includes:

(1) Service performed by an individual in the employ of this state of any of its instrumentalities or in the employ of this state and one or more other states or their instrumentalities for a hospital or institution of higher education located in this state;

(2) Service performed by an individual in the employ of this state or of its instrumentalities or any instrumentality which is wholly owned by this state and one or more other states; and

(3) Service performed by an individual in the employ of any political subdivision of this state or any instrumentality of any one or more of the foregoing which is wholly owned by this state and one or more other states or political subdivisions, or any service performed in the employ of any instrumentality of this state or any political subdivision thereof, and one or more other states or political subdivisions.

However, such service is excluded from employment as defined in the Federal Unemployment Tax Act of 1939, as amended to January 1, 1977, solely by reason of section 3306(c)(7) of that act and is not excluded from employment under § 61-1-10.4.

Section 11. That § 61-1-10.3 be amended to read as follows:

61-1-10.3. The term, employment, includes services performed by an individual in the employ of a religious, charitable, educational, or other organization, but only if the following conditions are met and if such services are not excluded from employment under subdivision 61-1-10.4(1), (2), (3), (4), (5), or (6):

(1) The service is excluded from employment as defined in the Federal Unemployment Tax Act as amended, January 1, 1977, solely by reason of section 3306(c)(8) service performed in the employ of a religious, charitable, educational, or other organization described in section 501(c)(3) which is exempt from the income tax under 501(a) of the federal act; and

(2) The organization had four or more individuals in employment for some portion of a day in each of twenty different weeks, whether or not such weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time.

Section 12. That § 61-1-10.5 be amended to read as follows:

61-1-10.5. The term, employment, includes the service of an individual who is a citizen of the

United States, performed outside the United States except in Canada, in the employ of an American employer (other than service which is deemed employment under § 61-1-12 or 61-1-13 or the parallel provisions of another state's law), if the employer's principal place of business in the United States is located in this state.

Section 13. That § 61-1-10.6 be amended to read as follows:

61-1-10.6. The term, employment, includes the service of an individual who is a citizen of the United States, performed outside the United States except in Canada, in the employ of an American employer other than service which is deemed employment under § 61-1-12 or 61-1-13 or the parallel provisions of another state's law, if the employer has no place of business in the United States, but:

(1) The employer is an individual who is a resident of this state; or

(2) The employer is a corporation which is organized under the laws of this state; or

(3) The employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one other state.

Section 14. That § 61-1-10.7 be amended to read as follows:

61-1-10.7. The term, employment, includes the service of an individual who is a citizen of the United States, performed outside the United States except in Canada, or in the case of the Virgin Islands, after December thirty-first in the year the United States secretary of labor approves the Virgin Islands' unemployment compensation law, in the employ of an American employer other than service which is deemed employment under § 61-1-12 or 61-1-13 or the parallel provisions of another state's law, if none of the criteria of §§ 61-1-10.5 and 61-1-10.6 is met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this state.

Section 15. That § 61-1-10.8 be amended to read as follows:

61-1-10.8. The term, American employer, for the purposes of §§ 61-1-10.5 to 61-1-10.7,

inclusive, means a person who is:

(1) An individual who is a resident of the United States; or

(2) A partnership if two-thirds or more of the partners are residents of the United States; or

(3) A trust, if all of the trustees are residents of the United States; or

(4) A corporation organized under the laws of the United States or of any state.

Section 16. That § 61-1-10.9 be amended to read as follows:

61-1-10.9. Notwithstanding § 61-1-12, the term, employment, includes all service performed by an officer or member of the crew of an American vessel on or in the connection with such vessel, if the operating office, from which the operations of such vessel operating on navigable waters within, or within and without, the United States are ordinarily and regularly supervised, managed, directed, and controlled is within the state.

Section 17. That § 61-1-12 be amended to read as follows:

61-1-12. As used in this chapter, the term, employment, includes an individual's entire service, performed within or both within and without this state if:

(1) The service is localized in this state; or

(2) The service is not localized in any state but some of the service is performed in this state and first, the base of operations, or, if there is no base of operations, then the place from which the service is directed or controlled, is in this state; or second, the base of operations or place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

Section 18. That § 61-1-15 be amended to read as follows:

61-1-15. The term, employment, includes an individual's service, wherever performed within the United States, the Virgin Islands, or Canada, if:

(1) Such service is not covered under the unemployment compensation law of any other state,

the Virgin Islands, or Canada; and

(2) The place from which the service is directed or controlled is in this state.

Section 19. That § 61-1-17 be amended to read as follows:

61-1-17. As used in this title, the term, employment, does not include service performed in the employ of the United States government or an instrumentality of the United States immune under the Constitution of the United States from the contributions imposed by this title. However, to the extent that the Congress of the United States permits states to require any instrumentality of the United States to make payments into an unemployment fund under a state unemployment compensation act, the provisions of this title are applicable to such instrumentality and to services performed for such instrumentality in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals and services. If this state is not certified for any year by the United States secretary of labor under section 3304 of the Federal Internal Revenue Code, the payments required of such instrumentality, with respect to such years, shall be refunded by the South Dakota Department of Labor from the fund in the same manner and within the same period as is provided in § 61-5-37 with respect to contributions erroneously collected.

Section 20. That § 61-1-18.1 be amended to read as follows:

61-1-18.1. As used in this title, the term, employment, does not include employment specifically exempted from coverage under the Federal Unemployment Tax Act.

Section 21. That § 61-1-19 be amended to read as follows:

61-1-19. As used in this title, the term, employment, does not include service performed in the employ of a foreign government, including service as a consular or other officer or employee or nondiplomatic representative.

Section 22. That § 61-1-20 be amended to read as follows:

61-1-20. As used in this title, the term, employment, does not include service performed in the

employ of an instrumentality wholly owned by a foreign government:

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

(2) If the South Dakota Department of Labor finds that the United States Secretary of State has certified to the United States Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in foreign countries by employees of the United States government and of instrumentalities thereof.

Section 23. That § 61-1-22 be amended to read as follows:

61-1-22. As used in this title, the term, employment, does not include:

(1) Service performed during a calendar quarter in the employ of an organization exempt from income tax under section 501(a)(other than an organization described in 401(a)) or under section 521 of the Federal Internal Revenue Code, if the remuneration for such services does not exceed fifty dollars; or

(2) Service performed in the employ of a school, college or university:

(a) By a student who is enrolled and is regularly attending classes at the school, college, or university, or

(b) By the spouse of a student, if the spouse is advised, at the time the spouse commences to perform the service, that this employment is included under a program to provide financial assistance to the student by the school, college or university, and that employment is not covered by any program of unemployment insurance, or

(3) Service performed by an individual who is enrolled for credit at a nonprofit or public educational institution, which maintains a regular faculty and curriculum and has a

regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program, which combines academic instruction with work experience, if the service is an integral part of that program and if the institution has so certified to the employer. This subdivision does not apply to service performed in a program established for or on behalf of an employer or group of employers.

Section 24. That § 61-1-23 be amended to read as follows:

61-1-23. As used in this title, the term, employment, does not include:

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

(2) Service performed in the employ of a hospital, if such service is performed by a patient of the hospital, as defined in § 61-1-1.

Section 25. That § 61-1-24 be amended to read as follows:

61-1-24. As used in this title, the term, employment, includes service performed by an individual in agricultural labor as defined in § 61-1-25 when:

(1) The service is performed for a person who:

(a) During any calendar quarter in either the current or the preceding calendar year paid remuneration in cash of twenty thousand dollars or more to individuals employed in agricultural labor; or

(b) For some portion of a day in each of twenty different calendar weeks, whether or not the weeks were consecutive, in either the current or the preceding calendar

year, employed in agricultural labor ten or more individuals, regardless of whether they were employed at the same moment of time; or

(2) For the purpose of this section any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of the crew leader:

(a) If the crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963 as amended to January 1, 1977; or substantially all the members of the crew operate or maintain tractors, mechanized harvesting, or crop-dusting equipment, or any other mechanized equipment, which is provided by the crew leader; and

(b) If the individual is not an employee of the other person within the meaning of § 61-1-10.8; or

(3) For the purposes of this section, in the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of the crew leader under subdivision (2) of this section:

(a) Such other person and not the crew leader shall be treated as the employer of the individual; and

(b) Such other person shall be treated as having paid cash remuneration to the individual in an amount equal to the amount of cash remuneration paid to the individual by the crew leader either on the crew leader's own behalf or on behalf of such other person for the service in agricultural labor performed for such other person; or

(4) For the purposes of this section, the term, crew leader, means an individual who:

(a) Furnishes individuals to perform service in agricultural labor for any other person;

(b) Pays (either on the crew leader's own behalf or on behalf of such other person) the individuals so furnished by the crew leader for the service in agricultural labor performed by them; and

(c) Has not entered into a written agreement with such other person under which the individual is designated as an employee of such other person.

Section 26. That § 61-1-25 be amended to read as follows:

61-1-25. As used in this title, the term, agricultural labor, includes all services performed:

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

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

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

(4) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural

commodities; but only if the operator produced more than one-half of the commodity with respect to which the service is performed, or in the employ of a group of operators of farms (or a cooperative organization of which the operators are members) in the performance of service described in this section, but only if the operators produced more than one-half of the commodity with respect to which such service is performed. The provisions of this subdivision (4) may not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption;

(5) On a farm operated for profit if the service is not in the course of the employer's trade or business or is domestic service in a private home of the employer.

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

Section 27. That § 61-1-26 be amended to read as follows:

61-1-26. As used in this title, the term, employment, does not include service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution.

Section 28. That § 61-1-27 be amended to read as follows:

61-1-27. As used in this title, the term, employment, includes domestic service performed for a person who paid cash remuneration of one thousand dollars or more in the current calendar year or the preceding calendar year to individuals employed in such domestic service in any calendar quarter, in a private home, local college club, or local chapter of a college fraternity or sorority.

Section 29. That § 61-1-28 be amended to read as follows:

61-1-28. As used in this title, the term, employment, does not include service performed by an individual for a person as an insurance agent or as an insurance solicitor, if all the services performed by the individual for the person is performed for remuneration solely by way of commission.

Section 30. That § 61-1-30 be amended to read as follows:

61-1-30. As used in this title, the term, employment, does not include service performed by an individual in the employ of the individual's son, daughter, or spouse and service performed by a child under the age of twenty-one in the employ of the individual's father or mother.

Section 31. That § 61-1-31 be amended to read as follows:

61-1-31. If the services performed during one-half or more of any period by an individual for the person employing the individual constitute employment, all the services of the individual for the period are deemed to be employment; but if the services performed during more than one-half of any such pay period by an individual for the person employing the individual does not constitute employment, then none of the services of the individual for the period are deemed to be employment. As used in this section, the term, pay period, means the period of not more than thirty-one consecutive days for which a payment of remuneration is ordinarily made to the individual by the person employing the individual.

This section is not applicable with respect to services performed in a pay period by an individual for the person employing the individual where any of the service is excepted by § 61-1-18.

Section 32. That § 61-1-31.1 be amended to read as follows:

61-1-31.1. As used in this title, the term, wages, does not include payments received by members of the South Dakota National Guard for weekend training.

Section 33. That § 61-1-33 be amended to read as follows:

61-1-33. As used in this title, the term, wages, does not include the payment by an employing unit without deduction from the remuneration of the individual in its employ of the tax imposed upon

an individual in its employ under section 3101 of the federal Internal Revenue Code.

Section 34. That § 61-1-34 be amended to read as follows:

61-1-34. As used in this title, the term, wages, does not include dismissal payments which the employing unit is not legally required to make.

Section 35. That § 61-1-36 be amended to read as follows:

61-1-36. For the purposes of this title, an individual is considered unemployed in any calendar week during which the individual performs no service and with respect to which no wages or earnings are payable to the individual, or in any week of less than full-time work, if the wages or earnings payable to the individual, with respect to the week, are less than the individual's weekly benefit amount.

Section 36. That § 61-1-37 be amended to read as follows:

61-1-37. For the purposes of this title, an individual's week of unemployment is deemed commenced only after the individual's registration at an employment office, except as the Department of Labor may otherwise prescribe in rules promulgated pursuant to chapter 1-26.

Section 37. That § 61-1-40 be repealed.

Section 38. That § 61-1-41 be amended to read as follows:

61-1-41. If the tax imposed by title nine of the federal Social Security Act or any other federal tax against which contributions under this title may be credited, shall become inoperative, the provisions of this title shall become inoperative. Any unobligated fund in the state unemployment compensation fund or returned by the United States Treasurer, because the federal Social Security Act is inoperative, shall be refunded to the contributors pro rata to their unexpended contributions.

Section 39. That § 61-1-42 be repealed.

Section 40. That § 61-1-43 be repealed.

Section 41. That § 61-2-10 be repealed.

Section 42. That § 61-2-10.1 be repealed.

Section 43. That § 61-2-11 be repealed.

Section 44. That § 61-2-16 be amended to read as follows:

61-2-16. The secretary of labor shall administer this title. The secretary shall employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as may be necessary or suitable to that end. The secretary shall determine the department's organization and methods of procedure in accordance with the provisions of this title.

Section 45. That § 61-2-17 be repealed.

Section 46. That § 61-2-18 be amended to read as follows:

61-2-18. If the secretary of labor believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, the secretary shall promptly so inform the Governor and the Legislature, and make recommendations with respect thereto.

Section 47. That § 61-2-19 be amended to read as follows:

61-2-19. If, in the judgment of the secretary of labor, the interests of the Department of Labor established by this title are involved in any proposed or pending change in federal law or administrative policy pertaining to the program, the secretary may represent these interests to the delegation of this state in the federal Congress. The secretary may co-operate with the other state labor agencies through any association of such state agencies which has been or may hereafter be organized, when the interests of the states generally in their unemployment compensation program are similarly involved.

Section 48. That § 61-3-2 be amended to read as follows:

61-3-2. Each employing unit shall keep true and accurate work records containing information needed to administer this title according to rules promulgated pursuant to chapter 1-26 by the secretary of labor. The records shall be kept for four years and shall be open to inspection and be

subject to being copied by the Department of Labor at any reasonable time and as often as may be necessary.

Section 49. That § 61-3-4 be amended to read as follows:

61-3-4. No information obtained under § 61-3-2 or 61-3-3 may be published or open to public inspection other than to public employees in the performance of their public duties in any manner revealing the employing unit's identity, but any claimant at a hearing before the Department of Labor shall be supplied with information from such records to the extent necessary for the proper presentation of the claimant's claim. Any employee or officer of the Department of Labor who violates any of the provisions of this section commits a Class 2 misdemeanor.

Section 50. That § 61-3-5 be amended to read as follows:

61-3-5. No letter, report, communication, or other matter, whether oral or written, from the employer, the employer's agents, representatives or employees, to each other or to the secretary of labor, the secretary's agents, representatives or employees, which have been written or made in connection with the requirements and administration of this title or any rules promulgated pursuant to this title, may be made subject matter or basis for any action, whether civil or criminal, for slander or libel.

Section 51. That § 61-3-6 be amended to read as follows:

61-3-6. The department shall maintain any record relating to benefit claims for a period of two years and any record relating to employer contributions for a period of five years. In order to conserve filing and storage space, the secretary may thereafter order such a record destroyed. The secretary may order other records destroyed after a period of one year.

Section 52. That § 61-3-7 be amended to read as follows:

61-3-7. In the discharge of the duties imposed by this title, the secretary of labor and any duly authorized representative of the secretary may administer oaths and affirmations, take depositions,

certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim or the administration of this title.

Section 53. That § 61-3-8 be amended to read as follows:

61-3-8. No person may be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the Department of Labor or in obedience to the subpoena of the secretary or any duly authorized representative of the secretary in any cause or proceeding before the department, on the ground that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture. However, no person may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the person is compelled, after having claimed privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the person so testifying is not exempt from prosecution and punishment for perjury committed in so testifying.

Section 54. That § 61-3-9 be amended to read as follows:

61-3-9. Any person who without just cause fails or refuses to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, or other records, if it is in the person's power to do so, in obedience to a subpoena issued pursuant to the provisions of § 61-3-7 is guilty of a Class 2 misdemeanor. Each day such violation continues shall be deemed to be a separate offense.

Section 55. That § 61-3-10 be amended to read as follows:

61-3-10. In case of contumacy by, or refusal to obey a subpoena issued to any person pursuant to § 61-3-7, any court of this state within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which the person guilty of contumacy or refusal to obey is found or resides or

transacts business, upon application by the secretary of labor or the secretary's duly authorized representative, may issue to the person an order requiring the person to appear before the secretary or the secretary's duly authorized representative, there to produce evidence if so ordered or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by the court as a contempt thereof.

Section 56. That § 61-3-16 be amended to read as follows:

61-3-16. Any criminal action for violation of any provision of this title or of any rule promulgated pursuant to this title shall be prosecuted by the attorney general of the state; or, at the attorney general's request and under the attorney general's direction, by the state's attorney of any county in which the employer has a place of business or the violator resides.

Section 57. That § 61-3-19 be amended to read as follows:

61-3-19. The department shall participate in any arrangements for the payment of compensation on the basis of combining an individual's wages and employment covered under this title with the individual's wages and employment covered under the unemployment compensation laws of other states which are approved by the United States secretary of labor in consultation with the state unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of compensation in such situations and which include provisions for applying the base period of a single state law to a claim involving the combining of an individual's wages and employment covered under two or more state unemployment compensation laws, and avoiding the duplicate use of wages and employment by reason of such combining.

Section 58. That § 61-3-20 be amended to read as follows:

61-3-20. The Department of Labor may enter into reciprocal agreements with the appropriate agencies of other states or of the federal government relating to the collection and payment of contributions by employers with respect to employment not localized within this state.

Section 59. That § 61-3-21 be amended to read as follows:

61-3-21. In the administration of this title, the South Dakota Department of Labor shall co-operate to the fullest extent consistent with the provisions of this title, with the secretary of labor of the United States; shall make such reports, in the form and containing the information as the secretary of labor may from time to time require. The department shall comply with such provisions as the secretary of labor may from time to time find necessary to assure the correctness and verification of such reports. The department shall comply with the regulations prescribed by the secretary of labor governing the expenditures of such sums as may be allotted and paid to this state under Title III of the Social Security Act for the purpose of assisting in the administration of this title.

Section 60. That § 61-3-24 be amended to read as follows:

61-3-24. There is created in the state treasury a special fund to be known as the employment security administration fund. Moneys which are deposited or paid into this fund are continuously available to the Department of Labor for expenditure in accordance with the provisions of this title, and may not lapse at any time or be transferred to any other fund. All moneys in this fund which are received from the federal government or any agency thereof shall be expended solely for the purposes and in the amounts found necessary by the United States secretary of labor for the proper and efficient administration of this title. The fund shall consist of all moneys received from the United States of America, or any agency thereof, including the United States secretary of labor, and all moneys received from any other source for such purpose and shall include also any moneys received from the railroad retirement board as compensation for services or facilities supplied to said board, any amounts paid pursuant to any surety bond or insurance policy or from other sources for losses sustained by the employment security administration fund or by reason of damage to equipment or supplies purchased from moneys in such fund, and any proceeds realized from the sale

or disposition of any such equipment or supplies which may no longer be necessary for the proper administration of this title.

Section 61. That § 61-3-25 be amended to read as follows:

61-3-25. Any money in the employment security administration fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other special funds in the state treasury. However, no money in this fund may be commingled with other state funds. The money shall be maintained in a separate account on the books of a depository bank. The money shall be secured by the depository in which it is held to the same extent and in the same manner as required by the general depository law of the state, and collateral pledged shall be maintained in a separate custody account.

Section 62. That § 61-3-26 be amended to read as follows:

61-3-26. The state treasurer is liable on the state treasurer's official bond for the faithful performance of the treasurer's duties in connection with the employment security administration fund provided for under this chapter. The liability exists in addition to any liability upon any separate bond which may be given. Any sum recovered on any surety bond for losses sustained by the employment security administration fund shall be deposited in the fund.

Section 63. That § 61-3-27 be amended to read as follows:

61-3-27. This state recognizes its obligation to replace, and hereby pledges the faith of this state that funds will be provided in the future, and applied to the replacement of, any moneys received from the United States secretary of the treasury under Title III of the Social Security Act, any unencumbered balances in the employment security administration fund as of that date, any moneys thereafter granted to this state pursuant to the provisions of the Wagner-Peyser Act, which the United States secretary of labor finds have, because of any action or contingency, been lost or have been expended for purposes other than, or in amounts in excess of, those found necessary by the United

States secretary of labor for the proper administration of this title. Such moneys shall be promptly replaced by moneys appropriated for such purpose from the general funds of this state to the employment security administration fund for expenditure as provided in § 61-3-24. The Department of Labor shall promptly report to the Governor, and the Governor to the Legislature, the amount required for such replacement. This section does not relieve this state of its obligation with respect to funds received prior to July 1, 1941, pursuant to the provisions of title III of the Social Security Act.

Section 64. That § 61-3-28 be amended to read as follows:

61-3-28. There is established a special fund to be known as the employment security contingency fund which shall be maintained by the state treasurer separate and apart from all public moneys or funds of the state of South Dakota. The fund shall consist of all interest, penalties and fines collected under this title together with any interest earned on moneys in this fund. Any provisions of this title to the contrary notwithstanding, all interest, penalty and fine payments collected shall be deposited in the clearing account of the unemployment compensation fund for clearance only and may not become a part of such fund. After clearance thereof, the moneys derived from such payments, less refunds made pursuant to § 61-3-29 and other provisions of this title, shall be deposited in the employment security contingency fund. The moneys may not be expended or available for expenditure in any manner which would permit their substitution for, or a corresponding reduction in, federal funds which would, in the absence of the moneys, be available to finance expenditures for the administration of this title, but nothing in §§ 61-3-28 to 61-3-31, inclusive, prevents the moneys from being used as a revolving fund, to cover expenditures for which federal funds have been requested but have not yet been received, subject to the charging of such expenditures against such funds when received. The moneys in this fund shall be used by the department, with prior approval of the Governor for each withdrawal, for the payment of costs of administration which the

Governor finds are not properly and validly chargeable against federal grants (or other funds) received for or in the employment security administration fund. The moneys in this fund are hereby specifically made available to the department, with prior approval by the Governor, for replacement within a reasonable period of time, of any moneys received by this state in the form of grants from the federal government for administrative expenses which because of any action or contingency have been lost or have been expended for purposes other than, or in excess of, those found by the United States secretary of labor to be necessary for the proper and efficient administration of this title. Such moneys shall be available either to satisfy the obligations incurred directly or by transferring the required amount from the employment security contingency fund to the employment security administration fund.

Section 65. That § 61-3-29 be amended to read as follows:

61-3-29. Refunds of interest, penalties and fines erroneously collected pursuant to this title may be made from this fund, or from the interest, penalty and fine moneys which are temporarily in the clearing account in the unemployment compensation fund pending their transfer to the employment security contingency fund. No interest and penalty payments may be refunded from the unemployment compensation fund.

Section 66. That § 61-3-30 be amended to read as follows:

61-3-30. The moneys in this fund are continuously available to the department, with prior approval by the Governor, for expenditures and refunds in accordance with the provisions of §§ 61-3-28 and 61-3-29. No money may lapse at any time or be transferred to any other fund or account except as provided in § 61-3-31. All moneys in the employment security contingency fund shall be deposited, administered, and disbursed in the same manner as is provided by law for other special funds of the state treasurer.

Section 67. That § 61-3-31 be amended to read as follows:

61-3-31. If on September thirtieth of any calendar year the balance in the employment security contingency fund exceeds fifteen thousand dollars by one thousand dollars or more, the state treasurer shall transfer the excess to the unemployment compensation fund.

Section 68. That § 61-4-3 be amended to read as follows:

61-4-3. The secretary of labor is custodian of the fund and shall administer the fund and shall issue warrants or checks upon it. The secretary is liable on the secretary's official bond for the faithful performance of the secretary's duties as custodian of the unemployment compensation fund.

Section 69. That § 61-4-7 be amended to read as follows:

61-4-7. Upon receipt thereof, the secretary shall deposit the moneys requisitioned for the payment of benefits in the benefit account and shall issue warrants or checks for the payment of benefits solely from the benefit account. The secretary shall deposit the moneys requisitioned for the payment of refunds in the clearing account and shall issue checks for the payment of refunds solely from the clearing account.

Expenditures from the benefit account and refunds from the clearing account are not subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody.

Section 70. That § 61-4-10 be amended to read as follows:

61-4-10. Moneys in the clearing and benefit accounts may be deposited under the direction of the secretary of labor in any bank or public depository in which general funds of the state may be deposited. However, no public deposit insurance charge or premium may be paid out of the fund.

Section 71. That § 61-5-1 be amended to read as follows:

61-5-1. Any employing unit which is or becomes an employer subject to this title within any calendar year, is subject to this title during the whole of the calendar year.

Section 72. That § 61-5-5 be amended to read as follows:

61-5-5. The secretary of labor may terminate any election agreement under § 61-5-3 or 61-5-4 upon thirty days' written notice to the employer.

Section 73. That § 61-5-5.1 be amended to read as follows:

61-5-5.1. Any nonprofit organization or group of such organizations or political subdivisions which, pursuant to § 61-1-10.2 or 61-1-10.3 and 61-1-10.4, is, or becomes, subject to this title shall pay contributions under the provisions of chapter 61-5, unless it elects, as provided in chapter 61-5A, to pay to the department for the unemployment fund an amount equal to the amount of regular benefits and, in the case of nonprofit organizations of one-half of the extended benefits paid, or, in the case of political subdivisions, the extended benefits paid, that is attributable to service in the employ of the nonprofit organization or political subdivision, to individuals for weeks of unemployment which begin during the effective period of the election.

Section 74. That § 61-5-11 be amended to read as follows:

61-5-11. Both the claimant and the governing body may appeal as provided in § 61-7-5. Any decision reached pursuant to that section is binding.

Section 75. That § 61-5-16 be repealed.

Section 76. That § 61-5-17 be amended to read as follows:

61-5-17. The secretary of labor shall promulgate rules pursuant to chapter 1-26 to establish the method for determining the contribution rate applicable to each employer on the basis of the employer's actual experience in the payment of contributions and with respect to benefits charged against the employer's individual experience-rating account, in accordance with the requirements of §§ 61-5-18 to 61-5-23, inclusive.

Section 77. That § 61-5-18 be amended to read as follows:

61-5-18. If at the beginning of any calendar year an employer has met the requirements of § 61-5-20.2, then the employer's contribution rate shall be the rate appearing in Column "A" on the same

line on which the employer's reserve ratio appears in Column "B" of the rate schedule applicable to such year.

Section 78. That § 61-5-18.11 be repealed.

Section 79. That § 61-5-18.12 be repealed.

Section 80. That § 61-5-18.13 be repealed.

Section 81. That § 61-5-19.1 be repealed.

Section 82. That § 61-5-20.3 be amended to read as follows:

61-5-20.3. Notwithstanding any other provision of this chapter, an employer who transfers all or a segregable part of the employer's operations from another state to this state for the purposes of this chapter shall be deemed to be a qualified employer within the meaning of § 61-5-18, as of the computation date applicable to the calendar year within which the transfer occurs, if:

(1) The employer has paid wages subject to the federal unemployment tax act for eighteen consecutive completed calendar quarters immediately preceding the computation date specified above;

(2) Within ninety days of the transfer of operations, the employer notifies the department thereof and requests a contribution rate under the provisions of §§ 61-5-18.5 to 61-5-18.7, inclusive; and

(3) The employer certifies to the department all information with respect to wages, contributions, and benefit charges in connection with the transferred operations and any other information which the department determines to be necessary.

Section 83. That § 61-5-20.4 be amended to read as follows:

61-5-20.4. The employer has fifteen days after receipt of notice of determination of contribution rate computed under §§ 61-5-18.5 to 61-5-18.7, inclusive, within which to withdraw the employer's request for application of the provisions of § 61-5-20.3.

Section 84. That § 61-5-20.6 be amended to read as follows:

61-5-20.6. Wages, contributions, and benefits resulting in rating account charges in connection with the transferred operations, shall be deemed to have been paid in this state for the purpose of computing rates under §§ 61-5-18.1 to 61-5-18.4, inclusive. The employer's rating account balance applicable to the transferred operations prior to the transfer date shall be the balance used in determining the first year's rate. The balance for the second and third years shall be the amount transferred from the other state less benefits after the date of transfer and the contributions paid less benefits charged in this state during the period.

Section 85. That § 61-5-20.7 be amended to read as follows:

61-5-20.7. The contribution rate to be assigned to the employer in South Dakota shall be the rate obtained by the computation provided in §§ 61-5-18.5 to 61-5-18.7, inclusive, but in no event may the rate assigned be lower than one and one-half percent.

Section 86. That § 61-5-23.2 be repealed.

Section 87. That § 61-5-24 be amended to read as follows:

61-5-24. Any employer may at any time make voluntary contributions to the fund, additional to the contributions required under this chapter, to be credited to the employer's account.

Section 88. That § 61-5-26 be amended to read as follows:

61-5-26. No contributions may be deducted in whole or in part by any employer from the wages of any employee.

Section 89. That § 61-5-27 be amended to read as follows:

61-5-27. The Department of Labor shall credit to the experience-rating account of each employer all contributions paid by the employer or the employer's predecessor whose experience-rating the employer acquired. However, the increased contributions required pursuant to § 61-5-23 may not be credited to the employers' experience-rating account.

Section 90. That § 61-5-28 be amended to read as follows:

61-5-28. Unless otherwise provided in § 61-5-29, or in 61-7-10.1, a proportionate amount of the maximum benefits payable shall be charged against the accounts of employers in the base period under the provisions of this title in inverse chronological order in the same proportion that the wages earned under the employers bears to the total wages earned by the claimant during the claimant's base period for insured work under the employers.

Section 91. That § 61-5-29.1 be amended to read as follows:

61-5-29.1. The provisions of § 61-5-29 do not apply to any employer reimbursing the department for benefits in lieu of contributions.

Section 92. That § 61-5-31 be amended to read as follows:

61-5-31. Any employer who has had no employment in South Dakota subject to this title for five consecutive years shall establish a new experience-rating account for the determination of future contribution rates, and any balances or overdrafts in the experience-rating account established prior to the interruption of operations in South Dakota or the interruption of coverage under this title may not be used in the determination of such future rates. However, an entity that has never discontinued operations has the option of resuming its experience rating account balance if the entity again becomes an employer subject to this title within the immediately following second consecutive five-year period.

Section 93. That § 61-5-32 be amended to read as follows:

61-5-32. If the department finds that an employer's business is closed solely because of the entrance of one or more of the owners, officers, partners, or the majority stockholder into the armed forces of the United States, any of its allies, or of the United Nations, the employer's account may not be terminated. If the business is resumed within two years after the discharge or release from active duty in the armed forces of the person, the employer's experience shall be deemed to have

been continuous throughout the period. The experience ratio used for determining the rate of any employer shall be the total contribution paid by the employer minus all benefits, including benefits paid to any individual during the period the employer was in the armed forces, based upon wages paid by the employer prior to the employer's entrance into such forces, divided by the total payrolls for the three most recent calendar years during the whole of which, respectively, the employer has been in business.

Section 94. That § 61-5-34 be amended to read as follows:

61-5-34. The department shall maintain a pooled fund, all moneys in which shall be mingled and undivided, to which shall be credited:

(1) All realized earnings and gains on investments of the fund and interest paid on delinquent contributions;

(2) All contributions paid by employers;

(3) All fines and penalties collected pursuant to the provisions of this title.

Section 95. That § 61-5-36 be amended to read as follows:

61-5-36. Any agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contributions, required under this title from such employer, is void.

No employer may directly or indirectly make or require or accept any deduction from wages to finance the employer's contributions required from the employer. Any employer or officer or agent of an employer who shall directly or indirectly require any contribution from any such person in violation of this section or who shall directly or indirectly make or require or accept any deduction from wages to finance the employer's contributions required by this title commits a Class 2 misdemeanor.

Section 96. That § 61-5-37 be amended to read as follows:

61-5-37. If, not later than three years after the date on which any contributions or interest thereon

have been paid, an employer who has paid the contributions or interest thereon makes application for adjustment thereof in connection with subsequent contribution payments, or for a refund thereof because the adjustment cannot be made, and the department determines that the contributions or interest, or any portion thereof, was erroneously collected, the department shall allow the employer to make an adjustment thereof, without interest, in connection with subsequent contribution payments by the employer. However, if the adjustment cannot be made, the department shall refund the amount, less any benefits which have been paid from the amount, without interest from the fund. For like cause and within the same period, adjustment or refund may be so made on the department's own initiative.

Section 97. That § 61-5-39 be amended to read as follows:

61-5-39. A penalty of five dollars per month, or fractional part of a month shall be due and payable upon imposition of the penalty by the department, for failure to pay contributions, or for failure to submit required reports on or before the due date for such contributions or reports as fixed by the department. However, no penalty for any one delinquent contribution or report may exceed the sum of thirty dollars. Any penalty collected pursuant to this section shall be paid into the employment security contingency fund.

Section 98. That § 61-5-40 be amended to read as follows:

61-5-40. If any employer liable to pay contributions and interest, or either, refuses or neglects to pay the same, the amount, including any interest penalty or addition to the contribution, together with the costs that may accrue in addition thereto, shall be a lien in favor of the Department of Labor upon all property and rights to property whether real or personal belonging to the employer.

The lien attaches at the time the contribution becomes due and payable and continues until the liability for the contribution and interest, or either, is satisfied.

Section 99. That § 61-5-41 be amended to read as follows:

61-5-41. In order to preserve the lien provided by § 61-5-40 against subsequent mortgagees or purchasers for value without notice, or judgment creditors, the Department of Labor shall file with the register of deeds in the county in which the property is located a notice of the lien.

Section 100. That § 61-5-42 be amended to read as follows:

61-5-42. The register of deeds of each county shall prepare and keep in the register of deed's office a suitable book so ruled as to show in appropriate columns the following data under the name of the employers arranged alphabetically:

(1) The name of the employer;

(2) The name of the Department of Labor as lien claimant;

(3) Time notice of lien was received;

(4) Date of notice;

(5) Amount of lien then due;

(6) When satisfied.

The register of deeds shall endorse on each notice of lien filed pursuant to § 61-5-41 the date, hour and minute when received, index that notice in the index book, and record the lien in the manner for recording real estate mortgages. The lien is effective from the time of the filing.

The filing and recording of such liens and satisfactions shall be done without cost to the state. However, the register of deeds may destroy any record which the records destruction board, acting pursuant to § 1-27-19, declares to have no further administrative, legal, fiscal, research, or historical value.

Section 101. That § 61-5-43 be amended to read as follows:

61-5-43. After a notice of lien has been filed pursuant to § 61-5-41, the Department of Labor may at any time require the county treasurer to issue a distress warrant in the same form as provided for in § 10-22-9 and deliver the warrant to the sheriff of the county. Immediately upon receipt of the

warrant the sheriff shall proceed to collect the contributions and interest, or either, by seizure and sale of property in the manner provided in §§ 10-22-10 to 10-22-27, inclusive, and shall remit the contributions so collected to the department. For the service the sheriff shall be permitted to collect from the employer and retain as the sheriff's compensation the amount provided in § 10-22-28.

Section 102. That § 61-5-44 be amended to read as follows:

61-5-44. If the sheriff is unable to find property of the employer which may be seized and sold, the sheriff shall, within thirty days after receipt of the warrant, endorse upon the face of the warrant the word,uncollectible and return the warrant to the county treasurer.

Section 103. That § 61-5-45 be amended to read as follows:

61-5-45. Failure or refusal of the county treasurer to issue a distress warrant pursuant to § 61-5-43 if requested so to do or of the sheriff to attempt to execute the same, makes the officer failing to perform the officer's duty personally liable for the delinquent contributions and interest, or either, and the officer's contributions and interest, or either, may be recovered in an action by the department against the officer and the surety.

Section 104. That § 61-5-46 be amended to read as follows:

61-5-46. Upon the payment of contributions and interest, or either, for which the department has filed lien notice with a register of deeds, the department shall forthwith file with the register of deeds a satisfaction of the lien notice. The register of deeds shall enter the satisfaction on the notice on file in the register of deed's office, and indicate the fact on the index aforesaid.

Section 105. That § 61-5-50 be amended to read as follows:

61-5-50. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under federal bankruptcy law, contributions due are entitled to such priority as is provided in federal bankruptcy law.

Section 106. That § 61-5-52 be amended to read as follows:

61-5-52. The department shall terminate the coverage of any employing unit as of the date on which the employer ceases to have employment because of the sale of the employer's entire business and the employing unit's entire rating account is transferred to another employer under § 61-5-33.

Section 107. That § 61-5-53 be amended to read as follows:

61-5-53. The department shall terminate coverage for any employer as of January first of any year, if the employer ceases business for any purpose and one calendar year has elapsed since the employer has employed one or more persons for twenty days, each day being in a different week, or has paid wages of one thousand five hundred dollars or more in a calendar quarter.

Section 108. That § 61-6-1.2 be amended to read as follows:

61-6-1.2. Benefits based on service in employment defined in §§ 61-1-10.2 and 61-1-10.3 shall be payable in the same amount, on the same terms and subject to the same conditions as benefits payable on the basis of other service subject to this chapter. However, with respect to service performed in an instructional, research, or principal administrative capacity for an educational institution, no benefits may be paid based on the services for any week of unemployment commencing during the period between two successive academic years, or during a similar period between two regular but not successive terms or during a period of paid sabbatical leave provided for in the individual's contract, to any individual if the individual performs the services in the first of the academic years or terms and if there is a contract or a reasonable assurance that the individual will perform services in any such capacity for any educational institution in the second of the academic years or terms.

Section 109. That § 61-6-1.3 be amended to read as follows:

61-6-1.3. With respect to services performed in any other capacity for an educational institution, no benefits may be paid to an individual on the basis of the individual's services for any week that commences between two successive academic years or terms if the individual performs the services

in the first academic year or term and there is a reasonable assurance that the individual will perform the services in the second one. If an individual was denied compensation for any week, in accordance with this section, and is not offered an opportunity to perform services for the educational institution in the second academic year or term, that individual is entitled to a retroactive compensation payment for each week that the individual filed a timely claim and was denied compensation solely by reason of this section.

Section 110. That § 61-6-1.4 be amended to read as follows:

61-6-1.4. No benefits may be paid to any individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two successive sport seasons or similar periods if the individual performed the services in the first of the seasons or similar periods and there is a reasonable assurance that the individual will perform the services in the later of the seasons or similar periods.

Section 111. That § 61-6-1.5 be amended to read as follows:

61-6-1.5. No benefits may be paid on the basis of services performed by an alien unless the alien is an individual who was lawfully admitted for permanent residence at the time the services were performed, was lawfully present for purposes of performing the services, or was permanently residing in the United States under color of law at the time the service was performed, including an alien who is lawfully present in the United States as a result of the application of the provisions of section 203(a)(7) or section 212(d)(5) of the Immigration and Nationality Act as amended as of January 1, 1990. Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits. In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to the individual are not payable because of

the individual's alien status may be made except upon a preponderance of the evidence.

Section 112. That § 61-6-1.6 be amended to read as follows:

61-6-1.6. No benefits authorized by § 61-6-1.2 or 61-6-1.3 may be paid to an individual for any week which commences during an established and customary vacation period or a holiday recess if the individual performed insured work in the period immediately preceding the period or recess and there is reasonable assurance that the individual will perform insured work in the period immediately following the period or recess.

Section 113. That § 61-6-1.10 be amended to read as follows:

61-6-1.10. An unemployed individual who was last employed, the employment being at least thirty calendar days in duration, while incarcerated in a custodial or penal institution, and terminated from the employment because of transfer or release from the institution, is denied benefits until the individual has been reemployed at least six calendar weeks in insured employment during the individual's current benefit year and has earned wages of not less than the individual's weekly benefit amount in each of those six weeks.

Section 114. That § 61-6-2 be amended to read as follows:

61-6-2. An unemployed individual is eligible to receive benefits with respect to any week only if the department finds that:

(1) The individual has registered for work at and thereafter has continued to report at an employment office in accordance with rules promulgated by the department pursuant to chapter 1-26. However, that the department may, by rule, waive or alter either or both of the requirements of this subdivision as to individuals attached to regular jobs and as to such other types of cases or situations with respect to which the department finds that compliance with the requirements would be oppressive, or would be inconsistent with the purposes of this title. No such rule may conflict with this chapter;

(2) The individual has made a claim for benefits in accordance with the provisions of § 61-7-1;

(3) The individual is able to work and is available for work in accordance with rules promulgated by the department pursuant to chapter 1-26;

(4) Prior to any week for which the individual claims benefits the individual has been unemployed for a waiting period of one week; and

(5) The individual has, during the individual's base period, earned wages for insured work equal to not less than the minimum amount required for benefit entitlement in § 61-6-7.

Section 115. That § 61-6-5 be amended to read as follows:

61-6-5. For the purpose of subdivision 61-6-2 (5), wages shall be counted as wages for insured work for benefit purposes with respect to any benefit year only if the benefit year begins subsequent to the date on which the employer from whom the wages were earned has satisfied the conditions of §§ 61-1-4 to 61-1-9, inclusive or §§ 61-5-3 to 61-5-5.1, inclusive, and § 61-5-11, with respect to becoming an employer.

Section 116. That § 61-6-6 be amended to read as follows:

61-6-6. An individual's weekly benefit amount is computed as follows:

For each fiscal year, one twenty-sixth of the wages paid for insured work in the individual's quarter of highest earnings in the individual's base period, but not to exceed an amount equal to fifty percent of the average weekly wage in covered employment in South Dakota for the calendar year preceding that fiscal year. An amount so computed that is not a multiple of one dollar is lowered to the next lower multiple of one dollar.

The average weekly wage in covered employment in South Dakota is computed by dividing the sum of the total wages in covered employment, as reported to the department for the preceding calendar year, by the average number of workers in covered employment, and dividing the result thus

obtained by fifty-two.

Section 117. That § 61-6-7 be amended to read as follows:

61-6-7. No individual is entitled to benefits unless the individual's base period wages paid in other than the individual's highest quarter equal or exceed twenty times the individual's weekly benefit amount, and unless the wages paid for insured work in the individual's quarter of highest earnings in the individual's base period equal or exceed seven hundred twenty-eight dollars.

Section 118. That § 61-6-8 be amended to read as follows:

61-6-8. Unless the provisions of §§ 61-6-29 to 61-6-43, inclusive, apply, an individual's maximum benefit amount is an amount equal to one-third of the individual's total base period wages in covered employment not to exceed twenty-six times the individual's weekly benefit amount. If that amount is not a multiple of one dollar, it is lowered to the next lower multiple of one dollar.

Trade readjustment payments may allow an individual to receive benefits in excess of twenty-six weeks if the individual is in training approved by the secretary under the Trade Act of 1974, as amended by section 2501 of P.L. 97-35--August 13, 1981, and then only as long as necessary to complete the training.

If the benefit year of an individual ends within an extended benefit period, the number of weeks of extended benefits that the individual would, but for this section, be entitled to in that extended benefit period is reduced by the number of weeks for which the individual received any amounts as trade readjustment allowances within that benefit year, multiplied by the individual's weekly benefit amount for extended benefits.

Section 119. That § 61-6-9 be amended to read as follows:

61-6-9. The wage credits of an individual earned in employment with base period employers during the period commencing with the end of the base period and ending on the date on which the individual filed a valid claim are not available for benefit purposes in a subsequent benefit year

unless, in addition thereto, the individual has earned wages in insured employment, since the establishment of the individual's previous benefit year, in an amount equivalent to at least four times the individual's current weekly benefit amount. A claim filed sufficiently in advance of anticipated unemployment to make the limitations of this section ineffective is invalid. It is the purpose of this section to prevent any individual from receiving benefits in more than one benefit year as the result of one separation from work.

Section 120. That § 61-6-13 be amended to read as follows:

61-6-13. An unemployed individual who, voluntarily without good cause, left the most recent employment of an employer or employing unit, after employment lasting at least thirty calendar days is denied benefits until the individual has been reemployed at least six calendar weeks in insured employment during the individual's current benefit year and has earned wages of not less than the individual's weekly benefit amount in each of those six weeks.

If additional claims are filed by a claimant during a benefit year after employment, the thirty calendar day requirement does not apply in determining disqualifications.

No individual who is eligible for trade readjustment payments under the Trade Act of 1974, as amended by section 2501 of P.L. 97-35--August 13, 1981, may be denied benefits for leaving work to enter training approved by the secretary if the work the individual left is not suitable employment or because of the application of provisions of §§ 61-6-2 and 61-6-15. For purposes of this section, suitable employment, means work of a substantially equal or higher skill level than the individual's past adversely-affected employment, with wages for that work at not less than eighty percent of the individual's average weekly wage.

Section 121. That § 61-6-14 be amended to read as follows:

61-6-14. An unemployed individual who was discharged or suspended from the individual's most recent employment, the employment being at least thirty calendar days in duration for misconduct

connected with the individual's work shall be denied benefits until the individual has been reemployed at least six calendar weeks in insured employment during the individual's current benefit year and earned wages of not less than the individual's weekly benefit amount in each of those six weeks. If additional claims are filed by a claimant during a benefit year subsequent to employment, the thirty calendar day requirement may not be applied in determining disqualifications.

Section 122. That § 61-6-14.1 be amended to read as follows:

61-6-14.1. As used in this chapter, misconduct is:

(1) Failure to obey orders, rules, or instructions, or failure to discharge the duties for which an individual was employed; or

(2) Substantial disregard of the employer's interests or of the employee's duties and obligations to the employer; or

(3) Conduct evincing such willful or wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of an employee; or

(4) Carelessness or negligence of such degree or recurrence as to manifest equal culpability or wrongful intent.

However, mere inefficiency, unsatisfactory conduct, failure to perform as the result of inability or incapacity, a good faith error in judgment or discretion, or conduct mandated by a religious belief which belief cannot be reasonably accommodated by the employer is not misconduct.

Section 123. That § 61-6-15 be amended to read as follows:

61-6-15. If the Department of Labor finds that an unemployed individual has failed, without good cause, either to apply for available suitable work when so directed by the department or to accept suitable work when offered to the individual, the claimant shall be denied benefits, including extended benefits, until the individual has been reemployed at least six calendar weeks in insured

employment during the individual's current benefit year and earned wages of not less than the individual's weekly benefit amount in each of those six weeks. The department may promulgate rules pursuant to chapter 1-26 for determining suitable work.

Section 124. That § 61-6-15.1 be amended to read as follows:

61-6-15.1. Notwithstanding any other provisions in this chapter, no otherwise eligible individual may be denied benefits for any week because the individual is in training with the approval of the department, nor may any such individual be denied benefits with respect to any week in which the individual is in training with the approval of the department by reason of the application of provisions in § 61-6-2 relating to availability for work, or the provisions of § 61-6-15 relating to failure to apply for, or to accept, suitable work. The department shall promulgate rules pursuant to chapter 1-26 establishing the conditions for approval of training.

Section 125. That § 61-6-16 be amended to read as follows:

61-6-16. In determining whether or not any work is suitable for an individual, the department shall consider the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness and prior training, the individual's experience and prior earnings, the individual's length of unemployment and prospects for securing local work in the individual's customary occupation, and the distance of the available work from the individual's residence.

Section 126. That § 61-6-17 be amended to read as follows:

61-6-17. Notwithstanding any other provisions of this title, no work is deemed suitable and no benefits may be denied under this title to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(3) If, as a condition of being employed, the individual would be required to join or to resign from or refrain from joining any labor organization.

Section 127. That § 61-6-19 be amended to read as follows:

61-6-19. An individual is not entitled to any benefits for any week with respect to which the secretary finds that the individual's total or partial unemployment is due to a labor dispute at the factory, establishment, or other premises at which the individual is or was last employed. However, this section does not apply if it is shown to the satisfaction of the department that:

(1) The individual is not participating in or financing or directly interested in the labor dispute; and

(2) The individual does not belong to a grade or class of workers of which, immediately before the commencement of the dispute, there were members employed at the premises at which the dispute occurs, any of whom are participating in or financing or directly interested in the dispute;

(3) The individual is locked out by the individual's employer.

If in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each department shall, for the purpose of this section, be considered a separate factory, establishment, or other premises.

Section 128. That § 61-6-21 be amended to read as follows:

61-6-21. An individual is not entitled to any benefits for any week with respect to which or a part of which the individual has received or is seeking unemployment benefits under an unemployment compensation law of another state or of the United States. However, if the appropriate agency of such other state or of the United States finally determines that the individual is not entitled to the unemployment benefits, this disqualification does not apply.

Section 129. That § 61-6-23 be amended to read as follows:

61-6-23. An individual who was paid any amount as benefits under this title to which the individual is not entitled is liable for repayment of the amount overpaid, or for the amount received in the event of misrepresentation, unless recovery of the overpayment is waived as provided in § 61-6-23.1. The department may elect to recover the overpayment by requiring repayment by the individual or deducting the overpayment from any future benefits payable to the individual. The department may also recover the overpayment in the manner provided in §§ 61-5-40 to 61-5-47, inclusive, for the collection of delinquent contributions.

Section 130. That § 61-6-23.2 be amended to read as follows:

61-6-23.2. If benefit sums paid remain unpaid by the recipient or have not been deducted from benefits payable to the recipient within ten years following the date the overpayment was established, the secretary of labor may declare the sums uncollectible and cancel the overpayment. The secretary may cancel and waive recovery of such overpayment for which the claimant's liability was established under § 61-6-23 upon receipt of proper certification by a Department of Labor representative that:

(1) The claimant has been duly discharged of such liability by a federal bankruptcy court;

(2) The claimant has died and reasonable efforts have been made to recover the overpayment from the claimant's estate; or

(3) The overpayment has been outstanding ten years or more after the liability was established and reasonable efforts have been made to recover it.

Section 131. That § 61-6-24 be amended to read as follows:

61-6-24. It is unlawful for any person to make a false statement or representation knowing it to be false or knowingly fail to disclose a material fact to obtain or increase any benefits or other payments under this title, or under an unemployment insurance law of another state, of the federal

government, or of a foreign government, either for himself, herself, or any other person, or knowingly fail to report any change in circumstances which would affect the person's eligibility for unemployment benefits or payments.

Section 132. That § 61-6-25 be amended to read as follows:

61-6-25. Benefits are due and payable under this title only to the extent provided in this title and to the extent that moneys are available therefor to the credit of the unemployment compensation fund. Neither the state nor the department nor the secretary is liable for any amount in excess of such sums.

Section 133. That § 61-6-26 be amended to read as follows:

61-6-26. No employer may directly or indirectly require or accept any waiver of any right under this title by any employee. Any agreement by an employee to waive, release, or commute the employee's rights to benefits or any other rights under this title is void. Any employer or officer or agent of an employer who shall violate any of the provisions of this section against waivers, releases, or commutation of rights to benefits by a person entitled to benefits from the unemployment compensation fund commits a Class 2 misdemeanor.

Section 134. That § 61-6-27 be repealed.

Section 135. That § 61-6-28 be amended to read as follows:

61-6-28. Any assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under this title is void except as provided in this section. The rights to benefits are exempt from levy, execution, attachment, or any other remedy provided for the collection of debt. Any benefits received by any individual, so long as the benefits are not mingled with other funds of the recipient, are exempt from any remedy for the collection of all debts, except debts incurred for necessaries furnished to the individual, the individual's spouse, or dependents during the time when the individual was unemployed. Any waiver not provided for in this section

is void.

The secretary of the Department of Labor shall furnish information on individuals receiving unemployment insurance benefits to the Department of Social Services in accordance with section 303(e) of the Social Security Act as amended by section 2333(b) of P.L. 97-35--August 13, 1981. The secretary may also furnish this information in accordance with section 13 of the Food Stamp Act of 1977 as amended by section 1535 of P.L. 99-198. The Department of Social Services determines periodically whether any of these individuals receiving unemployment insurance owe child support obligations or an uncollected overissuance of food stamp coupons.

Each new applicant filing for unemployment insurance benefits shall disclose any obligation for child support payments in accordance with § 28-7-2, and may be required to disclose any obligation for uncollected overissuances (as defined in section 13(c)(1) of the Food Stamp Act of 1977) of food stamp coupons, to the Department of Labor at the time of filing. If an individual disclosing child support obligations is eligible for unemployment insurance benefits, the secretary shall notify the Department of Social Services.

The secretary shall deduct from an eligible individual's unemployment insurance benefit payment and pay to the secretary of the Department of Social Services:

(1) The amount determined by agreement between the individual and the Department of Labor; or

(2) The amount determined by agreement between the individual and the Department of Social Services; or

(3) The amount determined by the Department of Social Services through legal processes.

If an individual disclosing an uncollected overissuance of food stamp coupons is eligible for unemployment insurance benefits, the secretary may notify the Department of Social Services. The secretary may also deduct from an eligible individual's unemployment insurance benefit payment,

and pay to the secretary of the Department of Social Services, the amount determined by subdivisions (1) to (3), inclusive, of this section.

The secretary of the Department of Social Services shall reimburse the Department of Labor for administrative costs incurred by the Department of Labor attributable to child support payment obligations and food stamp overissuance obligations being enforced by the Department of Social Services.

Section 136. That § 61-6-29 be amended to read as follows:

61-6-29. Terms used in §§ 61-6-30 to 61-6-42, inclusive, mean:

(1) "Additional benefits," benefits totally financed by a state and payable under a state law to exhaustees by reason of conditions of high unemployment or by reason of other special factors, such as an exhaustee's being in training with the approval of the state agency;

(2) "Eligibility period," the period consisting of the weeks in the individual's benefit year which begin in an extended benefit period and, if the individual's benefit year ends within such extended benefit period, any weeks thereafter which begin in such period;

(3) "Extended benefits," benefits (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) payable to an individual under the provisions of this section for weeks of unemployment in the individual's eligibility period;

(4) "Extended benefits period," a period which begins with the third week after whichever of the following weeks occurs first: a week for which there is a national "on" indicator, or a week for which there is a state "on" indicator, and ends with either of the following weeks, whichever occurs later: the third week after the first week for which there is both a national "off" indicator and a state "off" indicator, or the thirteenth consecutive week of such period;

(5) "Rate of insured unemployment," the percentage derived by dividing the average weekly

number of individuals filing claims for regular benefits in this state for weeks of unemployment with respect to the most recent thirteen-consecutive-week period, as determined by the Department of Labor on the basis of its reports to the United States secretary of labor, by the average monthly employment covered under this title for the first four of the most recent six completed calendar quarters ending before the end of such thirteen-week period;

(6) "Regular benefits," benefits payable to an individual under this title or under any other state law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) other than extended benefits or additional benefits;

(7) "State law," the unemployment insurance law of any state, approved by the United States secretary of labor under section 3304 of the Internal Revenue Code of 1954.

Section 137. That § 61-6-33 be amended to read as follows:

61-6-33. With respect to compensation for weeks of unemployment, there is a state "on" indicator for this state for a week if the director determines, in accordance with the regulations of the United States secretary of labor, that for the period consisting of that week and the immediately preceding twelve weeks, the rate of insured unemployment (not seasonally adjusted) under this title equaled or exceeded one hundred twenty percent of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years, and equaled or exceeded five percent.

Section 138. That § 61-6-34 be amended to read as follows:

61-6-34. With respect to compensation for weeks of unemployment, there is a state "off" indicator for this state for a week if the director determines, in accordance with the regulations of the United States secretary of labor, that for the period consisting of that week and the immediately preceding twelve weeks, the rate of insured unemployment (not seasonally adjusted) under this title

was less than one hundred twenty percent of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years, or was less than five percent.

Section 139. That § 61-6-37 be amended to read as follows:

61-6-37. An individual is eligible to receive extended benefits with respect to any week of unemployment in the individual's eligibility period only if the department finds that with respect to such week the individual is an exhaustee, as defined in § 61-6-38, and the individual has satisfied the requirements of this title for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits.

Section 140. That § 61-6-38 be amended to read as follows:

61-6-38.The term, exhaustee, under the provisions of §§ 61-6-29 to 61-6-42, inclusive, means an individual who, with respect to any week of unemployment in the individual's eligibility period:

(1) Has received, prior to the week, all of the regular benefits that were payable to the individual under this title or any other state law (including dependents' allowances and regular benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. chapter 85) for the individual's benefit year that includes the week; or

(2) Has received, prior to the week, all of the regular benefits that were available to the individual under this title or any other state law (including dependents' allowances and regular benefits available to federal civilian employees and ex-servicemen under 5 U.S.C. chapter 85) in the individual's benefit year that includes the week, after the cancellation of some or all of the individual's wage credits or the total or partial reduction of the individual's right to regular benefits.

Section 141. That § 61-6-38.1 be amended to read as follows:

61-6-38.1. For the purposes of § 61-6-38, an individual is considered to have received, in the individual's applicable benefit year, all of the regular benefits that were payable or available to the individual, even though:

(1) As a result of a pending appeal with respect to wages or employment, or both, that were not included in the original monetary determination with respect to the benefit year, the individual may subsequently be determined to be entitled to more regular benefits; or

(2) By reason of the seasonal provisions promulgated pursuant to § 61-1-39 or the seasonal provisions of another state law, the individual is not entitled to regular benefits with respect to the week of unemployment (although the individual may be entitled to regular benefits with respect to future weeks of unemployment in the next season or off season, in such benefit year), and the individual is otherwise an exhaustee within the meaning of § 61-6-38 with respect to the individual's right to regular benefits under the state law seasonal provisions during the season or off season in which that week of unemployment occurs; or

(3) Having established a benefit year, no regular benefits are payable to the individual during that year because the individual's wage credits were canceled or the individual's right to regular benefits was totally reduced as the result of the application of a disqualification.

An individual is not entitled to extended benefits unless, during the individual's base period, the individual has earned wages for insured work equal to one and one-half times the individual's earnings in the highest quarter of the individual's base period.

Section 142. That § 61-6-38.2 be amended to read as follows:

61-6-38.2. The term, exhaustee, under the provisions of §§ 61-6-29 to 61-6-42, inclusive, includes an individual who, with respect to any week of unemployment in the individual's eligibility period:

(1) The individual's benefit year having ended prior to such week, has insufficient wages or employment, or both, on the basis of which the individual could establish in any state a new benefit year that would include the week, or having established a new benefit year that includes the week, the individual is precluded from receiving regular benefits by reason of the provision in § 61-6-9, which meets the requirement of section 3304 (a)(7) of the Federal Unemployment Tax Act, or the similar provision in any other state law; and

(2) Has no right for the week to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, and such other federal laws as are specified in regulations issued by the United States secretary of labor; and

(3) Has not received and is not seeking for the week unemployment benefits under the unemployment compensation law of the Virgin Islands or Canada, unless the appropriate agency finally determines that the individual is not entitled to unemployment benefits under the law for the week.

Section 143. That § 61-6-38.3 be amended to read as follows:

61-6-38.3. The term, applicable benefit year, means, with respect to an individual, the individual's current benefit year if at the time the individual files a claim for extended benefits the individual has an unexpired benefit year only in the state in which the individual files the claim or, in any other case, the individual's most recent benefit year. For this purpose the individual's most recent benefit year, if the individual has unexpired benefit years in more than one state when the individual files a claim for extended benefits, is the benefit year with the latest ending date, or, if the benefit years have the same ending date, the benefit year in which the individual's latest continued claim for regular benefits was filed.

Section 144. That § 61-6-39 be amended to read as follows:

61-6-39. The weekly extended benefit amount payable to an individual for a week of total unemployment in the individual's eligibility period shall be an amount equal to the weekly benefit amount payable to the individual during the individual's applicable benefit year. However, for any week during a period in which federal payments to states under section 204 of the Federal-State Extended Unemployment Compensation Act of 1970 are reduced under an order issued under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985, the weekly extended benefit amount payable to an individual for a week of total unemployment in the individual's eligibility period shall be reduced by a percentage equivalent to the percentage of the reduction in the federal payment. The reduced weekly extended benefit amount, if not a full dollar amount, shall be rounded to the nearest lower full dollar amount.

Section 145. That § 61-6-40 be amended to read as follows:

61-6-40. The total extended benefit amount payable to any eligible individual with respect to the individual's applicable benefit year shall be the least of the following amounts:

(1) Fifty percent of the total amount of regular benefits which were payable to the individual under this title in the individual's applicable benefit year;

(2) Thirteen times the individual's weekly benefit amount which was payable to the individual under this title for a week of total unemployment in the applicable benefit year.

However, during any fiscal year in which federal payments to states under section 204 of the Federal-State Extended Unemployment Compensation Act of 1970 are reduced under an order issued under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985, the total extended benefit amount payable to an individual with respect to the individual's applicable benefit year shall be reduced by an amount equal to the aggregate of the reductions under § 61-6-39 in the weekly amounts paid to the individual.

Section 146. That § 61-6-41 be amended to read as follows:

61-6-41. No benefits payable under § 61-6-40 are chargeable to an employer's experience-rating account.

Section 147. That § 61-6-44 be amended to read as follows:

61-6-44. No extended benefits are payable for any week of unemployment to any individual for any week pursuant to an interstate claim filed in any state under the interstate benefit plan if an extended benefit period is not in effect for the state. However, this section does not apply with respect to the first two weeks for which extended benefits are payable pursuant to an interstate claim filed under the interstate payment plan.

Section 148. That § 61-6-45 be amended to read as follows:

61-6-45. No individual may receive extended benefits for any week of unemployment in the individual's eligibility period if the secretary finds that during the period the individual failed to accept an offer of suitable work, failed to apply for suitable work to which the individual was referred by the secretary, or failed to actively engage in seeking work.

An individual who has been found to be ineligible for extended benefits shall be denied benefits for the week in which the failure occurred and until the individual has been subsequently employed for at least six calendar weeks in insured employment and has earned wages of not less than the individual's weekly benefit amount in each of those six weeks.

The term, suitable work, in this section means any work within an individual's capabilities which has a gross weekly wage that exceeds the individual's weekly benefit amount plus any supplemental unemployment benefits and which pays not less than the higher of the federal minimum wage as provided by the Fair Labor Standards Act or the state minimum wage.

No individual may be denied extended benefits for failure to accept an offer of, or apply for, a job which would otherwise be suitable work if:

(1) The position was not offered to the individual in writing or was not listed with job

service;

(2) The position does not constitute suitable work under § 61-6-16; or

(3) The individual furnishes satisfactory evidence to the secretary that the individual's prospects for obtaining work in the individual's customary occupation within three weeks are good. If such evidence is satisfactory, suitable work shall be determined in accordance with § 61-6-16.

An individual is actively seeking work during a week if the individual engages in a sustained and systematic effort to obtain work during that week and the individual furnishes tangible evidence that the individual has engaged in such an effort during that week.

Job service shall refer an individual who is entitled to extended benefits to any suitable work which meets the criteria described in this section.

Section 149. That § 61-7-1 be amended to read as follows:

61-7-1. Claims for benefits shall be made in accordance with rules promulgated by the department pursuant to chapter 1-26. Each employer shall post and maintain printed statements of the regulations in places readily accessible to individuals in the employer's service and shall make available to each such individual at the time the individual becomes unemployed, a printed statement of the regulations. The printed statements shall be supplied by the department to each employer without cost to the employer.

Section 150. That § 61-7-2 be amended to read as follows:

61-7-2. The benefit section of the department shall promptly examine the claim and, on the basis of the facts found, shall either determine whether or not such claim is valid, and if valid the week with respect to which benefits shall commence, the weekly benefit amount payable, and the maximum benefits payable, or shall refer the claim or any question involved therein to an appeal referee, or to the secretary who shall make a determination with respect thereto in accordance with

§ 61-7-10.

Section 151. That § 61-7-3 be amended to read as follows:

61-7-3. The benefit section shall promptly notify the claimant and any other interested party, including former employers whose reserve accounts may be charged, of the decision and the reasons therefor, which notification shall contain a statement showing the claimant's name, the claimant's social security account number, the date of registration, separation date, the reason for separation, names of all employers in the base period, week with respect to which benefits shall commence, the weekly benefit amount, the maximum benefits payable, and the maximum amount of benefits chargeable to each employer's account.

Section 152. That § 61-7-5 be amended to read as follows:

61-7-5. Unless the claimant, or any other interested party, within fifteen days after notice has been mailed to the claimant's or the interested party's last known address, applies for reopening of the initial determination or files an appeal from the adjusted determination, the determination shall be final insofar as an appeal by interested parties is concerned and benefits shall be paid or denied in accordance therewith. Benefits shall be paid promptly in accordance with a determination, redetermination, or appeal which allows benefits, and the allowance of benefits shall continue regardless of the pendency of the period to apply for reconsideration, file an appeal, or petition for judicial review and regardless of the pendency of the adjudication process.

Section 153. That § 61-7-6 be amended to read as follows:

61-7-6. The department shall appoint one or more impartial appeals referees to hear and decide disputed claims. No referee may preside at a hearing in which the referee has an interest in the outcome thereof.

Section 154. That § 61-7-7 be amended to read as follows:

61-7-7. The secretary may remove to himself or herself or transfer to another appeal referee the

proceedings on any claim pending before an appeal referee.

Section 155. That § 61-7-12 be amended to read as follows:

61-7-12. The secretary of labor may on the secretary's own motion affirm, modify, or set aside any decision of an appeal referee on the basis of the evidence previously submitted in the case, or direct the taking of additional evidence, or may permit any of the parties to the decision to initiate further appeals before the secretary. The secretary may permit such further appeal by any of the parties interested in a decision of an appeal referee and by the benefit section whose decision has been overruled or modified by an appeal referee. The secretary shall promptly notify the interested parties of the secretary's findings and decision. Any decision of the secretary is the final decision of the Department of Labor.

Section 156. That § 61-7-21 be amended to read as follows:

61-7-21. No individual claiming benefits may be charged fees of any kind in any proceeding under this title by the department or by any court. Violation of this section is a Class 2 misdemeanor.

Section 157. That § 61-7-24 be amended to read as follows:

61-7-24. No finding of fact, conclusion of law, decision or final order made by an appeals referee or the secretary of labor in any action under this chapter may be used as evidence in any separate or subsequent action or proceeding between an individual and the individual's present or former employer brought before an arbitrator, court or judge of this state or the United States, regardless of whether the prior action was between the same or related parties or involved the same facts.

An Act to revise the style and form of certain provisions and to delete certain obsolete provisions regarding unemployment compensation.

I certify that the attached Act originated in the

HOUSE as Bill No. 1003

_____
Chief Clerk

_____
Speaker of the House

Attest:

_____
Chief Clerk

_____
President of the Senate

Attest:

_____
Secretary of the Senate

House Bill No. 1003
File No. ____
Chapter No. _____

Received at this Executive Office this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

The attached Act is hereby approved this _____ day of _____ , A.D., 20___

_____
Governor

STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____ , 20___
at _____ o'clock __ M.

_____
Secretary of State

By _____
Asst. Secretary of State