

This Document can be made available
in alternative formats upon request

State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH SESSION

H. F. No. 2093

- 02/08/2012 Authored by Sanders, Gunther, Scalze, McFarlane and Nelson
The bill was read for the first time and referred to the Committee on Jobs and Economic Development Finance
- 02/20/2012 Adoption of Report: Pass as Amended and re-referred to Commerce and Regulatory Reform
- 03/05/2012 Adoption of Report: Pass as Amended and re-referred to the Committee on Taxes
- 03/28/2012 Adoption of Report: Pass and re-referred to the Committee on Ways and Means

1.1 A bill for an act
1.2 relating to labor and industry; clarifying employee classification of independent
1.3 contractors; providing pilot project for contractor registration; providing for
1.4 penalties; amending Minnesota Statutes 2010, sections 181.723, subdivisions
1.5 1, 3, 4, 7, 15, 16, by adding subdivisions; 289A.31, subdivision 5; 326B.081,
1.6 subdivision 3; Minnesota Statutes 2011 Supplement, section 181.723, subdivision
1.7 5; repealing Minnesota Statutes 2010, sections 181.723, subdivisions 6, 8, 9,
1.8 10, 11, 12, 14, 17; 290.92, subdivision 31; Minnesota Rules, parts 5202.0100;
1.9 5202.0110; 5202.0120; 5202.0130; 5202.0140; 5202.0150; 5202.0160.

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

1.11 Section 1. Minnesota Statutes 2010, section 181.723, subdivision 1, is amended to read:

1.12 Subdivision 1. **Definitions.** The definitions in this subdivision apply to this section.

1.13 (a) "Person" means any individual, limited liability ~~corporation~~ company, limited
1.14 liability partnership, corporation, partnership, incorporated or unincorporated association,
1.15 sole proprietorship, joint stock company, or any other legal or commercial entity.

1.16 (b) "Department" means the Department of Labor and Industry.

1.17 (c) "Commissioner" means the commissioner of labor and industry or a duly
1.18 designated representative of the commissioner who is either an employee of the
1.19 Department of Labor and Industry or person working under contract with the Department
1.20 of Labor and Industry.

1.21 (d) "Individual" means a human being.

1.22 (e) "Day" means calendar day unless otherwise provided.

1.23 (f) "Knowingly" means knew or could have known with the exercise of reasonable
1.24 diligence.

1.25 (g) "Document" or "documents" includes papers; books; records; memoranda; data;
1.26 contracts; drawings; graphs; charts; photographs; digital, video, and audio recordings;

2.1 records; accounts; files; statements; letters; e-mails; invoices; bills; notes; and calendars
2.2 maintained in any form or manner.

2.3 (h) "Business entity" means a person other than an individual or a sole proprietor.

2.4 Sec. 2. Minnesota Statutes 2010, section 181.723, subdivision 3, is amended to read:

2.5 Subd. 3. **Employee-employer relationship.** Except as provided in subdivision 4,
2.6 for purposes of chapters 176, 177, 181A, 182, and 268, as of January 1, ~~2009~~ 2013, an
2.7 individual who performs services for a person that are in the course of the person's trade,
2.8 business, profession, or occupation is an employee of that person and that person is an
2.9 employer of the individual.

2.10 Sec. 3. Minnesota Statutes 2010, section 181.723, subdivision 4, is amended to read:

2.11 Subd. 4. **Independent contractor.** (a) An individual is an independent contractor
2.12 and not an employee of the person for whom the individual is performing services in the
2.13 course of the person's trade, business, profession, or occupation only if ~~(1) the individual~~
2.14 ~~holds a current independent contractor exemption certificate issued by the commissioner;~~
2.15 ~~and (2) the individual is performing services for the person under the independent~~
2.16 ~~contractor exemption certificate as provided in subdivision 6. The requirements in clauses~~
2.17 ~~(1) and (2) must be met in order to qualify as an independent contractor and not as an~~
2.18 ~~employee of the person for whom the individual is performing services in the course of~~
2.19 ~~the person's trade, business, profession, or occupation. the individual is registered with the~~
2.20 Department of Labor and Industry, if required under subdivision 4a, and the individual:

2.21 (1) maintains a separate business with the worker's own office, equipment, materials,
2.22 and other facilities;

2.23 (2)(i) holds or has applied for a federal employer identification number or (ii) has
2.24 filed business or self-employment income tax returns with the federal Internal Revenue
2.25 Service if the worker has performed services in the previous year;

2.26 (3) is operating under contract to perform the specific services for the person for
2.27 specific amounts of money and under which the worker controls the means of performing
2.28 the services;

2.29 (4) is incurring the main expenses related to the services that the worker is
2.30 performing for the person under the contract;

2.31 (5) is responsible for the satisfactory completion of the services that the worker has
2.32 contracted to perform for the person and is liable for a failure to complete the services;

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

3.1 (7) may realize a profit or suffer a loss under the contract to perform services for
3.2 the person;

3.3 (8) has continuing or recurring business liabilities or obligations; and

3.4 (9) the success or failure of the worker's business depends on the relationship of
3.5 business receipts to expenditures.

3.6 (b) If a worker is an owner or partial owner of a business entity, the worker is an
3.7 employee of the person for whom the worker is performing services in the course of the
3.8 person's trade, business, profession, or occupation, and is not an employee of the business
3.9 entity in which the worker has an ownership interest, unless:

3.10 (1) the business entity meets the nine factors in paragraph (a);

3.11 (2) invoices are submitted in the name of the business entity;

3.12 (3) the business entity is registered with the secretary of state, if required; and

3.13 (4) the business entity is registered with the Department of Labor and Industry,
3.14 if required under subdivision 4a.

3.15 Sec. 4. Minnesota Statutes 2010, section 181.723, is amended by adding a subdivision
3.16 to read:

3.17 Subd. 4a. **Registration pilot project.** (a) The commissioner shall implement a pilot
3.18 project, effective July 1, 2012, for the registration of persons who perform public or
3.19 private sector commercial or residential building construction or improvement services
3.20 as described in subdivision 2. The purpose of the pilot project is to evaluate whether the
3.21 information obtained through registration assists the Department of Labor and Industry,
3.22 the Department of Employment and Economic Development, and the Department of
3.23 Revenue to enforce laws related to misclassification of employees. The commissioner
3.24 shall issue a report to the legislature no later than January 1, 2014, on recommendations
3.25 for amendments to the registration program, including reasonable registration fees to be
3.26 used to aid in enforcing misclassification laws. The commissioner must not charge a fee
3.27 for registration under the pilot project, but may take the enforcement action specified in
3.28 subdivision 8a. The pilot project shall expire on June 30, 2014, unless extended by the
3.29 legislature.

3.30 (b) Except as provided in paragraph (c), any person who performs construction
3.31 services in the state on or after September 15, 2012, must register with the commissioner
3.32 as provided in subdivision 5 before performing construction services for another person.
3.33 The requirements for registration under this subdivision are not a substitute for, and do
3.34 not relieve a person from complying with, any other law requiring that the person be
3.35 licensed, registered, or certified.

4.1 (c) The registration requirements in this subdivision do not apply to:

4.2 (1) a person who, at the time the person is performing the construction services,
4.3 holds a current license, certificate, or registration under chapter 299M or 326B;

4.4 (2) a person who holds a current independent contractor exemption certificate
4.5 issued under this section that is in effect on September 15, 2012, except that the person
4.6 must register under this section no later than the date the exemption certificate expires, is
4.7 revoked, or is canceled;

4.8 (3) a person who has given a bond to the state under section 326B.197 or 326B.46;

4.9 (4) an employee of the person performing the construction services, if the person
4.10 was in compliance with laws related to employment of the individual at the time the
4.11 construction services were performed;

4.12 (5) an architect or professional engineer engaging in professional practice as defined
4.13 in section 326.02, subdivisions 2 and 3;

4.14 (6) a school district or technical college governed under chapter 136F; or

4.15 (7) a person providing construction services on a volunteer basis, including but not
4.16 limited to Habitat for Humanity and Builders Outreach Foundation, and their individual
4.17 volunteers when engaged in activities on their behalf.

4.18 Sec. 5. Minnesota Statutes 2011 Supplement, section 181.723, subdivision 5, is
4.19 amended to read:

4.20 Subd. 5. **Registration application.** ~~To obtain an independent contractor exemption~~
4.21 ~~certificate, the individual must submit~~ (a) Persons required to register under subdivision 4a
4.22 must submit electronically, in the manner prescribed by the commissioner, a complete
4.23 application and the certificate fee required under subdivision 14 according to paragraphs
4.24 (b) to (d).

4.25 ~~(a)~~ (b) A complete application must include all of the following information about
4.26 any individual who is registering as an individual or a sole proprietor, or who owns 25
4.27 percent or more of a business entity being registered:

4.28 (1) the individual's full legal name and title at applicant's business;

4.29 (2) the individual's residence business address and telephone number;

4.30 (3) the individual's business name, address, and telephone number, percentage of the
4.31 applicant's business owned by the individual; and

4.32 ~~(4) the services for which the individual is seeking an independent contractor~~
4.33 ~~exemption certificate;~~

4.34 ~~(5)~~ (4) the individual's Social Security number;

5.1 ~~(6) the individual's or the individual's business federal employer identification~~
5.2 ~~number, if a number has been issued to the individual or the individual's business;~~
5.3 ~~(7) any information or documentation that the commissioner requires by rule that~~
5.4 ~~will assist the department in determining whether to grant or deny the individual's~~
5.5 ~~application; and~~
5.6 ~~(8) the individual's sworn statement that the individual meets all of the following~~
5.7 ~~conditions:~~
5.8 ~~(i) maintains a separate business with the individual's own office, equipment,~~
5.9 ~~materials, and other facilities;~~
5.10 ~~(ii) holds or has applied for a federal employer identification number or has filed~~
5.11 ~~business or self-employment income tax returns with the federal Internal Revenue Service~~
5.12 ~~if the person has performed services in the previous year for which the individual is~~
5.13 ~~seeking the independent contractor exemption certificate;~~
5.14 ~~(iii) operates under contracts to perform specific services for specific amounts of~~
5.15 ~~money and under which the individual controls the means of performing the services;~~
5.16 ~~(iv) incurs the main expenses related to the service that the individual performs~~
5.17 ~~under contract;~~
5.18 ~~(v) is responsible for the satisfactory completion of services that the individual~~
5.19 ~~contracts to perform and is liable for a failure to complete the service;~~
5.20 ~~(vi) receives compensation for service performed under a contract on a commission~~
5.21 ~~or per-job or competitive bid basis and not on any other basis;~~
5.22 ~~(vii) may realize a profit or suffer a loss under contracts to perform service;~~
5.23 ~~(viii) has continuing or recurring business liabilities or obligations; and~~
5.24 ~~(ix) the success or failure of the individual's business depends on the relationship of~~
5.25 ~~business receipts to expenditures.~~
5.26 ~~(b) Individuals who are applying for or renewing a residential building contractor or~~
5.27 ~~residential remodeler license under sections 326B.197, 326B.802, 326B.805, 326B.81,~~
5.28 ~~326B.815, 326B.821 to 326B.86, 326B.87 to 326B.885, and 327B.041, and any rules~~
5.29 ~~promulgated pursuant thereto, may simultaneously apply for or renew an independent~~
5.30 ~~contractor exemption certificate. The commissioner shall create an application form~~
5.31 ~~that allows for the simultaneous application for both a residential building contractor~~
5.32 ~~or residential remodeler license and an independent contractor exemption certificate.~~
5.33 ~~If individuals simultaneously apply for or renew a residential building contractor or~~
5.34 ~~residential remodeler license and an independent contractor exemption certificate using~~
5.35 ~~the form created by the commissioner, individuals shall only be required to provide, in~~
5.36 ~~addition to the information required by section 326B.83 and rules promulgated pursuant~~

6.1 ~~thereto, the sworn statement required by paragraph (a), clause (8), and any additional~~
6.2 ~~information required by this subdivision that is not also required by section 326B.83 and~~
6.3 ~~any rules promulgated thereto. An independent contractor exemption certificate that is in~~
6.4 ~~effect before March 1, 2009, shall remain in effect until March 1, 2013, unless revoked by~~
6.5 ~~the commissioner or canceled by the individual.~~

6.6 ~~(c) Within 30 days of receiving a complete application and the certificate fee, the~~
6.7 ~~commissioner must either grant or deny the application. The commissioner may deny~~
6.8 ~~an application for an independent contractor exemption certificate if the individual has~~
6.9 ~~not submitted a complete application and certificate fee or if the individual does not~~
6.10 ~~meet all of the conditions for holding the independent contractor exemption certificate.~~
6.11 ~~The commissioner may revoke an independent contractor exemption certificate if the~~
6.12 ~~commissioner determines that the individual no longer meets all of the conditions for~~
6.13 ~~holding the independent contractor exemption certificate, commits any of the actions~~
6.14 ~~set out in subdivision 7, or fails to cooperate with a department investigation into the~~
6.15 ~~continued validity of the individual's certificate. Once issued, an independent contractor~~
6.16 ~~exemption certificate remains in effect for four years unless:~~

6.17 ~~(1) revoked by the commissioner; or~~

6.18 ~~(2) canceled by the individual.~~

6.19 ~~(d) If the department denies an individual's original or renewal application for~~
6.20 ~~an independent contractor exemption certificate or revokes an independent contractor~~
6.21 ~~exemption certificate, the commissioner shall issue to the individual an order denying or~~
6.22 ~~revoking the certificate. The commissioner may issue an administrative penalty order to~~
6.23 ~~an individual or person who commits any of the actions set out in subdivision 7. The~~
6.24 ~~commissioner may file and enforce the unpaid portion of a penalty as a judgment in~~
6.25 ~~district court without further notice or additional proceedings.~~

6.26 ~~(e) An individual or person to whom the commissioner issues an order under~~
6.27 ~~paragraph (d) shall have 30 days after service of the order to request a hearing. The~~
6.28 ~~request for hearing must be in writing and must be served on or faxed to the commissioner~~
6.29 ~~at the address or facsimile number specified in the order by the 30th day after service of~~
6.30 ~~the order. If the individual does not request a hearing or if the individual's request for a~~
6.31 ~~hearing is not served on or faxed to the commissioner by the 30th day after service of the~~
6.32 ~~order, the order shall become a final order of the commissioner and will not be subject to~~
6.33 ~~review by any court or agency. The date on which a request for hearing is served by mail~~
6.34 ~~shall be the postmark date on the envelope in which the request for hearing is mailed. If~~
6.35 ~~the individual serves or faxes a timely request for hearing, the hearing shall be a contested~~
6.36 ~~case hearing and shall be held in accordance with chapter 14.~~

- 7.1 (c) A complete application must also include the following information:
- 7.2 (1) the applicant's legal name; assumed name filed with the secretary of state, if any;
- 7.3 designated business address; physical address; telephone number; and e-mail address;
- 7.4 (2) the applicant's Minnesota tax identification number, if one is required or has
- 7.5 been issued;
- 7.6 (3) the applicant's federal employer identification number, if one is required or
- 7.7 has been issued;
- 7.8 (4) evidence of the active status of the applicant's business filings with the secretary
- 7.9 of state, if one is required or has been issued;
- 7.10 (5) whether the applicant has any employees at the time the application is filed;
- 7.11 (6) the names of all other persons with an ownership interest in the business entity
- 7.12 who are not identified in paragraph (b), and the percentage of the interest owned by each
- 7.13 person, except that the names of shareholders with less than ten percent ownership in a
- 7.14 publicly traded corporation need not be provided;
- 7.15 (7) information documenting compliance with workers' compensation and
- 7.16 unemployment insurance laws;
- 7.17 (8) a certification that the person signing the application has: reviewed it; determined
- 7.18 that the information provided is true and accurate; and determined that the person signing
- 7.19 is authorized to sign and file the application as an agent of the applicant. The name of the
- 7.20 person signing, entered on an electronic application, shall constitute a valid signature of
- 7.21 the agent on behalf of the applicant; and
- 7.22 (9) a signed authorization for the Department of Labor and Industry to verify the
- 7.23 information provided on or with the application.
- 7.24 (d) A registered person must notify the commissioner within 15 days after there is a
- 7.25 change in any of the information on the application as approved. This notification must
- 7.26 be provided electronically in the manner prescribed by the commissioner. However, if
- 7.27 the business entity structure, legal form of the business entity, or business ownership has
- 7.28 changed, the person must submit a new registration application and registration fee, if
- 7.29 any, for the new business entity.
- 7.30 (e) The registered person must remain registered while providing construction
- 7.31 services for another person. The provisions of sections 326B.091 and 326B.094 to
- 7.32 326B.097 apply to this section.

7.33 Sec. 6. Minnesota Statutes 2010, section 181.723, is amended by adding a subdivision

7.34 to read:

8.1 Subd. 5a. **Web site.** (a) The commissioner shall develop and maintain a Web site
8.2 on which applicants for registration can submit a registration application. The Web site
8.3 shall be designed to receive and process registration applications and promptly issue
8.4 registration certificates electronically to successful applicants.

8.5 (b) The commissioner shall maintain the certificates of registration on the
8.6 department's official public Web site, which shall include the following information:

8.7 (1) the registered person's legal business name, including any assumed name, as
8.8 filed with the secretary of state;

8.9 (2) the person's business address designated on the application; and

8.10 (3) the effective date of the registration and the expiration date.

8.11 Sec. 7. Minnesota Statutes 2010, section 181.723, subdivision 7, is amended to read:

8.12 Subd. 7. **Prohibited activities.** (a) The prohibited activities in this subdivision are
8.13 in addition to those prohibited in sections 326B.081 to 326B.085.

8.14 ~~(a) (b) An individual shall not:~~

8.15 ~~(1) perform work as an independent contractor who meets the qualifications under~~
8.16 ~~subdivision 6 without first obtaining from the department an independent contractor~~
8.17 ~~exemption certificate;~~

8.18 ~~(2) perform work as an independent contractor when the department has denied or~~
8.19 ~~revoked the individual's independent contractor exemption certificate;~~

8.20 ~~(3) transfer to another individual or allow another individual to use the individual's~~
8.21 ~~independent contractor exemption certificate;~~

8.22 ~~(4) alter or falsify an independent contractor exemption certificate;~~

8.23 ~~(5) misrepresent the individual's status as an independent contractor; or~~

8.24 ~~(6) make a false material statement, representation, or certification; omit material~~
8.25 ~~information; or alter, conceal, or fail to file a document required by this section or any~~
8.26 ~~rule promulgated by the commissioner under rulemaking authority set out in this section.~~
8.27 hold himself or herself out as an independent contractor unless the individual meets the
8.28 requirements of subdivision 4.

8.29 ~~(b) (c) A person who provides construction services in the course of the person's~~
8.30 trade, business, occupation, or profession shall not:

8.31 (1) require an individual through coercion, misrepresentation, or fraudulent means to
8.32 adopt independent contractor status or form a business entity;

8.33 (2) knowingly misrepresent ~~that an individual who has not been issued~~ or misclassify
8.34 a worker as an independent contractor exemption certificate or is not performing services

9.1 ~~for the person under an independent contractor exemption certificate is an independent~~
 9.2 ~~contractor; or~~

9.3 (3) contract with or perform construction services for another person without first
 9.4 being registered if required by subdivision 4a;

9.5 ~~(4) make a false material statement, representation, or certification; omit material~~
 9.6 ~~information; or alter, conceal, or fail to file a document required by this section or any~~
 9.7 ~~rule promulgated by the commissioner under rulemaking authority set out in this section.~~

9.8 contract with or pay another person to perform construction services if the other person
 9.9 is not registered if required by subdivision 4a. All payments to an unregistered person
 9.10 for construction services on a single project site shall be considered a single violation. It
 9.11 is not a violation of this clause:

9.12 (i) for a person to contract with or pay an unregistered person if the unregistered
 9.13 person was registered at the time the contract for construction services was entered into; or

9.14 (ii) for a homeowner or business to contract with or pay an unregistered person if
 9.15 the homeowner or business is not in the trade, business, profession, or occupation of
 9.16 performing building construction or improvement services; or

9.17 (5) be penalized for violations of this subdivision that are committed by another
 9.18 person. This clause applies only to violations of this paragraph.

9.19 ~~(c) A person for whom an individual is performing services must obtain a copy of the~~
 9.20 ~~individual's independent contractor exemption certificate before services may commence.~~
 9.21 ~~A copy of the independent contractor exemption certificate must be retained for five years~~
 9.22 ~~from the date of receipt by the person for whom an individual is performing services.~~

9.23 Sec. 8. Minnesota Statutes 2010, section 181.723, is amended by adding a subdivision
 9.24 to read:

9.25 Subd. 8a. **Enforcement; remedies; and penalties.** Notwithstanding the maximum
 9.26 penalty amount in section 326B.082, subdivisions 7 and 12, the maximum penalty for
 9.27 failure to register is \$2,000, but the commissioner shall forgive the penalty if the person
 9.28 registers within 30 days of the date of the penalty order.

9.29 Sec. 9. Minnesota Statutes 2010, section 181.723, subdivision 15, is amended to read:

9.30 Subd. 15. **Notice to commissioner; review by commissioner of revenue.** When
 9.31 the commissioner has reason to believe that ~~an individual who holds a certificate has~~
 9.32 ~~failed to maintain all the conditions required by subdivision 6 or is not performing~~
 9.33 ~~services for a person under the independent contractor exemption certificate a person has~~
 9.34 violated subdivision 7, paragraph (b); or (c), clause (1) or (2), the commissioner must

10.1 notify the commissioner of revenue and the commissioner of employment and economic
 10.2 development. Upon receipt of notification from the commissioner ~~that an individual who~~
 10.3 ~~holds a certificate has failed to maintain all the conditions required by subdivision 6~~
 10.4 ~~or is not performing services for a person under the independent contractor exemption~~
 10.5 ~~certificate~~, the commissioner of revenue must review the information returns required
 10.6 under section 6041A of the Internal Revenue Code. The commissioner of revenue shall
 10.7 also review the submitted certification that is applicable to returns audited or investigated
 10.8 under section 289A.35.

10.9 Sec. 10. Minnesota Statutes 2010, section 181.723, subdivision 16, is amended to read:

10.10 Subd. 16. **Data classified.** Data in applications ~~for an independent contractor~~
 10.11 ~~exemption certificate~~ and any required documentation submitted to the commissioner
 10.12 under this section are private data on individuals or nonpublic data as defined in section
 10.13 13.02. Data in ~~exemption~~ registration certificates issued by the commissioner are public
 10.14 data; except that registration information published on the department's Web site may be
 10.15 accessed for registration verification purposes only. Data that document a revocation
 10.16 or cancellation of ~~an exemption~~ a certificate are public data. Upon request of the
 10.17 Department of Revenue or the Department of Employment and Economic Development,
 10.18 the commissioner may release to the requesting department data classified as private or
 10.19 nonpublic under this subdivision or investigative data that are not public under section
 10.20 13.39 that relate to the issuance or denial of applications or revocations of certificates.

10.21 Sec. 11. Minnesota Statutes 2010, section 289A.31, subdivision 5, is amended to read:

10.22 Subd. 5. **Withholding tax, withholding from payments to out-of-state**
 10.23 **contractors, and withholding by partnerships and small business corporations.** (a)
 10.24 Except as provided in paragraph (b), an employer or person withholding tax under section
 10.25 290.92 or 290.923, subdivision 2, who fails to pay to or deposit with the commissioner a
 10.26 sum or sums required by those sections to be deducted, withheld, and paid, is personally
 10.27 and individually liable to the state for the sum or sums, and added penalties and interest,
 10.28 and is not liable to another person for that payment or payments. The sum or sums
 10.29 deducted and withheld under section 290.92, subdivision 2a or 3, or 290.923, subdivision
 10.30 2, must be held as a special fund in trust for the state of Minnesota.

10.31 (b) If the employer or person withholding tax under section 290.92 or 290.923,
 10.32 subdivision 2, fails to deduct and withhold the tax in violation of those sections, and later
 10.33 the taxes against which the tax may be credited are paid, the tax required to be deducted
 10.34 and withheld will not be collected from the employer. This does not, however, relieve the

11.1 employer from liability for any penalties and interest otherwise applicable for failure to
11.2 deduct and withhold. This paragraph does not apply to an employer subject to paragraph
11.3 (g), or to a contractor required to withhold under section 290.92, subdivision 31.

11.4 (c) Liability for payment of withholding taxes includes a responsible person or entity
11.5 described in the personal liability provisions of section 270C.56.

11.6 (d) Liability for payment of withholding taxes includes a third-party lender or surety
11.7 described in section 270C.59.

11.8 (e) A partnership or S corporation required to withhold and remit tax under section
11.9 290.92, subdivisions 4b and 4c, is liable for payment of the tax to the commissioner, and a
11.10 person having control of or responsibility for the withholding of the tax or the filing of
11.11 returns due in connection with the tax is personally liable for the tax due.

11.12 (f) A payor of sums required to be withheld under section 290.9705, subdivision
11.13 1, is liable to the state for the amount required to be deducted, and is not liable to an
11.14 out-of-state contractor for the amount of the payment.

11.15 (g) If an employer fails to withhold tax from the wages of an employee when
11.16 required to do so under section 290.92, subdivision 2a, by reason of treating such
11.17 employee as not being an employee, then the liability for tax is equal to three percent of
11.18 the wages paid to the employee. The liability for tax of an employee is not affected by
11.19 the assessment or collection of tax under this paragraph. The employer is not entitled to
11.20 recover from the employee any tax determined under this paragraph.

11.21 **EFFECTIVE DATE.** This section is effective for payments made after June 30,
11.22 2012.

11.23 Sec. 12. Minnesota Statutes 2010, section 326B.081, subdivision 3, is amended to read:

11.24 Subd. 3. **Applicable law.** "Applicable law" means the provisions of sections
11.25 181.723, 327.31 to 327.36, and this chapter, and all rules, orders, stipulation agreements,
11.26 settlements, compliance agreements, licenses, registrations, certificates, and permits
11.27 adopted, issued, or enforced by the department under sections 181.723, 327.31 to 327.36,
11.28 or this chapter.

11.29 Sec. 13. **REPEALER.**

11.30 (a) Minnesota Statutes 2010, section 181.723, subdivision 17, is repealed effective
11.31 May 15, 2011.

11.32 (b) Minnesota Statutes 2010, section 181.723, subdivisions 6, 8, 9, 10, 11, 12, and
11.33 14, and Minnesota Rules, parts 5202.0100; 5202.0110; 5202.0120; 5202.0130; 5202.0140;
11.34 5202.0150; and 5202.0160, are repealed July 1, 2012, except they shall remain in effect

12.1 for the regulation of an individual holding an independent contractor exemption certificate
12.2 issued before July 1, 2012, under Minnesota Statutes 2010, section 181.723, subdivision
12.3 5, until the exemption certificate expires, is revoked, or is canceled.

12.4 (c) Minnesota Statutes 2010, section 290.92, subdivision 31, is repealed effective
12.5 for payments made after June 30, 2012.

12.6 Sec. 14. **EFFECTIVE DATE.**

12.7 Sections 1 to 10 and 12 are effective July 1, 2012, except that those sections do not
12.8 apply to the regulation of an individual who holds an independent contractor exemption
12.9 certificate issued before July 1, 2012, under Minnesota Statutes 2010, section 181.723,
12.10 subdivision 5, until the exemption certificate expires, or is revoked or canceled.

181.723 INDEPENDENT CONTRACTORS.

Subd. 6. **Performing services under exemption certificate.** An individual is performing services for a person under an independent contractor exemption certificate if:

- (a) the individual is performing services listed on the individual's independent contractor exemption certificate; and
- (b) at the time the individual is performing services listed on the individual's independent contractor exemption certificate, the individual meets all of the following conditions:
 - (1) maintains a separate business with the individual's own office, equipment, materials, and other facilities;
 - (2) holds or has applied for a federal employer identification number or has filed business or self-employment income tax returns with the federal Internal Revenue Service if the individual performed services in the previous year for which the individual has the independent contractor exemption certificate;
 - (3) is operating under contract to perform the specific services for the person for specific amounts of money and under which the individual controls the means of performing the services;
 - (4) is incurring the main expenses related to the services that the individual is performing for the person under the contract;
 - (5) is responsible for the satisfactory completion of the services that the individual has contracted to perform for the person and is liable for a failure to complete the services;
 - (6) receives compensation from the person for the services performed under the contract on a commission or per-job or competitive bid basis and not on any other basis;
 - (7) may realize a profit or suffers a loss under the contract to perform services for the person;
 - (8) has continuing or recurring business liabilities or obligations; and
 - (9) the success or failure of the individual's business depends on the relationship of business receipts to expenditures.

Subd. 8. **Remedies.** An individual or person who violates any provision of subdivision 7 is subject to a penalty to be assessed by the department of up to \$5,000 for each violation. The department shall deposit penalties in the assigned risk safety account.

Subd. 9. **Commissioner's powers.** (a) In order to carry out the purposes of this section, the commissioner may:

- (1) administer oaths and affirmations, certify official acts, interview, question, take oral or written statements, and take depositions;
- (2) request, examine, take possession of, photograph, record, and copy any documents, equipment, or materials;
- (3) at a time and place indicated by the commissioner, request persons to appear before the commissioner to give testimony and produce documents, equipment, or materials;
- (4) issue subpoenas to compel persons to appear before the commissioner to give testimony and produce documents, equipment, or materials; and
- (5) subject to paragraph (c), with or without notice, enter without delay upon any property, public or private, for the purpose of taking any action authorized under this subdivision or the applicable law, including obtaining information or conducting inspections or investigations.

(b) Persons requested by the commissioner to give testimony or produce documents, equipment, or materials shall respond within the time and in the manner specified by the commissioner. If no time to respond is specified in the request, then a response shall be submitted within 30 days of the commissioner's service of the request.

(c) Upon the refusal or anticipated refusal of a property owner, lessee, property owner's representative, or lessee's representative to permit the commissioner's entry onto property as provided in paragraph (a), the commissioner may apply for an administrative inspection order in the Ramsey County District Court or, at the commissioner's discretion, in the district court in the county in which the property is located. The commissioner may anticipate that a property owner or lessee will refuse entry if the property owner, lessee, property owner's representative, or lessee's representative has refused to permit entry on a prior occasion or has informed the commissioner that entry will be refused. Upon showing of administrative probable cause by the commissioner, the district court shall issue an administrative inspection order that compels the property owner or lessee to permit the commissioner to enter the property for the purposes specified in paragraph (a).

(d) Upon the application of the commissioner, a district court shall treat the failure of any person to obey a subpoena lawfully issued by the commissioner under this subdivision as a contempt of court.

APPENDIX

Repealed Minnesota Statutes: H2093-2

Subd. 10. **Notice requirements.** Unless otherwise specified, service of a document on a person under this section may be by mail, by personal service, or in accordance with any consent to service filed with the commissioner. Service by mail shall be accomplished in the manner provided in Minnesota Rules, part 1400.5550, subpart 2. Personal service shall be accomplished in the manner provided in Minnesota Rules, part 1400.5550, subpart 3.

Subd. 11. **Facsimile; timely service.** When this section permits a request for hearing to be served by facsimile on the commissioner, the facsimile shall not exceed 15 pages in length. The request shall be considered timely served if the facsimile is received by the commissioner, at the facsimile number identified by the commissioner in the order, no later than 4:30 p.m. central time on the last day permitted for faxing the request. Where the quality or authenticity of the faxed request is at issue, the commissioner may require the original request to be filed. Where the commissioner has not identified quality or authenticity of the faxed request as an issue and the request has been faxed in accordance with this subdivision, the person faxing the request does not need to file the original request with the commissioner.

Subd. 12. **Time period computation.** In computing any period of time prescribed or allowed by this section, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the next day which is not a Saturday, Sunday, or legal holiday.

Subd. 14. **Fee.** The certificate fee for the original application and for the renewal of an independent contractor exemption certificate shall be \$150.

Subd. 17. **Advisory task force on employee misclassification.** (a) The commissioner of the Department of Labor and Industry shall appoint an advisory task force on employee misclassification and "off-the-books" payment of workers in the construction industry. The advisory task force shall consist of the following members:

- (1) the commissioner of the Department of Labor and Industry or designee;
- (2) the commissioner of the Department of Employment and Economic Development or designee;
- (3) the commissioner of the Department of Revenue or designee;
- (4) the attorney general or designee;
- (5) a representative appointed by the Minnesota County Attorneys Association;
- (6) two members who are members of a labor organization that represents members who perform public or private sector commercial or residential building construction or improvement services;
- (7) one member who is a general contractor or a representative of general contractors that performs public or private sector commercial building construction or improvement services;
- (8) one member who is a general contractor or a representative of general contractors that performs public or private sector residential building construction or improvement services;
- (9) one member who is a subcontractor or a representative of subcontractors that performs public or private sector commercial building construction or improvement services;
- (10) one member who is a subcontractor or a representative of subcontractors that performs public or private sector residential building construction or improvement services; and
- (11) up to three additional members who perform public or private sector commercial or residential building and construction or improvement services including one member who is an independent contractor with a current independent contractor certificate; one member who is a limited liability corporation; and one member who is an employee.

The commissioner of the Department of Labor and Industry or designee shall serve as the advisory task force chair. The advisory task force shall meet on a regular basis.

(b) The advisory task force shall have the following duties:

- (1) advise the commissioner on the development, implementation, and coordination of enforcement activities, including information sharing and joint investigation and prosecution of persons who violate laws under the jurisdiction of the Department of Labor and Industry, Department of Employment and Economic Development, and the Department of Revenue; and
- (2) advise the commissioner on the development and adoption of necessary legislation, regulations, policies, and procedures.

(c) The advisory task force shall expire and the terms, compensation, and removal of members shall be as provided in section 15.059, subdivision 6.

(d) The advisory task force shall, prior to its expiration, report to the legislature a summary of the advice it provided to the commissioner.

290.92 TAX WITHHELD AT SOURCE UPON WAGES; OTHER PAYMENTS.

APPENDIX

Repealed Minnesota Statutes: H2093-2

Subd. 31. **Payments to persons who are not employees.** (a) For purposes of this subdivision, "contractor" means a person carrying on a trade or business described in industry code numbers 23 through 238990 of the North American Industry Classification System.

(b) A contractor who makes payments to an individual carrying on a trade or business described in paragraph (a) as a sole proprietorship must deduct and withhold two percent of the payment as Minnesota withholding tax when the amount the contractor paid to that individual during the calendar year exceeds \$600.

(c) A payment subject to withholding under this subdivision must be treated as if the payment were a wage paid by an employer to an employee. The requirements in the definitions of "employee" and "employer" in subdivision 1 relating to geographic location apply in determining whether withholding tax applies under this subdivision, but without regard to whether the contractor or the individual otherwise satisfy the definition of an employer or an employee. Each recipient of a payment subject to withholding under this subdivision must furnish the contractor with a statement of the recipient's name, address, and Social Security account number.

5202.0100 SCOPE.

Parts 5202.0100 to 5202.0160 implement Minnesota Statutes, section 181.723.

5202.0110 DEFINITIONS.

Subpart 1. **Scope.** The terms used in parts 5202.0100 to 5202.0160 have the meanings given them in this part.

Subp. 2. **Applicant.** "Applicant" means an individual who applies for an independent contractor certificate under parts 5202.0100 to 5202.0160, and Minnesota Statutes, section 181.723.

Subp. 3. **Certificate holder.** "Certificate holder" means an individual who has been issued a current independent contractor exemption certificate under Minnesota Statutes, section 181.723.

Subp. 4. **Commissioner.** "Commissioner" has the meaning given in Minnesota Statutes, section 181.723, subdivision 1.

Subp. 5. **Department.** "Department" has the meaning given in Minnesota Statutes, section 181.723, subdivision 1.

Subp. 6. **Document or documents.** "Document" or "documents" has the meaning given in Minnesota Statutes, section 181.723, subdivision 1.

Subp. 7. **Exemption certificate.** "Exemption certificate" means an independent contractor exemption certificate issued under Minnesota Statutes, section 181.723.

Subp. 8. **Main expenses.** "Main expenses" for purposes of Minnesota Statutes, section 181.723, means:

A. the expense of purchasing, renting, and maintaining tools, equipment, facility or office space, and vehicles used in providing the service;

B. labor expenses related to the service;

C. business expenses that are related to the service such as advertising, insurance, taxes, licenses, and permits; and

D. the expense of materials used in providing the service, except for building construction or improvement materials that under a contract are provided by the building owner or another contractor.

Subp. 9. **Individual.** "Individual" has the meaning given in Minnesota Statutes, section 181.723, subdivision 1.

Subp. 10. **Person.** "Person" has the meaning given in Minnesota Statutes, section 181.723, subdivision 1.

Subp. 11. **Sworn statement.** "Sworn statement" means a statement that is signed and sworn to before a notarial officer under Minnesota Statutes, chapter 358.

5202.0120 WHO SHALL BE ISSUED AN INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATE.

Subpart 1. **Individuals.** The department shall issue an exemption certificate only to an individual as described in Minnesota Statutes, section 181.723, subdivision 2. Domestic or foreign business corporations, public service corporations, development corporations, nonprofit corporations, cooperatives, cooperative associations, limited liability companies, limited partnerships, or partnerships created by statute are not individuals.

Subp. 2. **Manufacture, supply, and sale of products, materials, or merchandise excluded.** Individuals who manufacture, supply, or sell products, materials, or merchandise for the construction of public or private commercial or residential buildings, but do not install, connect, attach, or adjust for use the products, materials, or merchandise, are not performing public or private sector commercial or residential building construction or improvement services.

Subp. 3. **Landscaping services.** For purposes of Minnesota Statutes, section 181.723, subdivision 2, clause (3), landscaping services means placing soil, sod, and mulch; planting seeds, plants, shrubs, trees, and other vegetation; and installing erosion control measures, retaining walls, boundary walls, fences, brick and stone pavers, and aesthetic surface treatments.

5202.0130 APPLICATION; REQUIRED INFORMATION AND DOCUMENTATION; APPROVAL OR DENIAL.

Subpart 1. **Complete application; submission of documents.**

APPENDIX
Repealed Minnesota Rule: H2093-2

A. An application for an exemption certificate is complete upon the commissioner's receipt of all of the following:

- (1) a signed and dated application on a form approved by the commissioner;
- (2) the information and documentation required in subpart 2; and
- (3) the fee required by Minnesota Statutes, section 181.723, subdivision 14.

B. The applicant must submit complete and legible copies of the information and documentation required in subpart 2 and must retain the original information and documentation for at least two years after submitting the application. The commissioner may store by imaging or other electronic format any information and documentation submitted as part of the application if the image or electronic format produces an accurate and readable image. The commissioner must retain the copies of the submitted information and documentation until the information and documentation is stored by imaging or other electronic format. Thereafter, the commissioner may destroy the copies.

C. The commissioner may request the original of any information and documentation required in subpart 2 if the copies submitted under item B are not legible or complete, or as needed to verify the authenticity or accuracy of the information and documentation submitted. The applicant must submit the original information or documentation within five working days after receipt of the commissioner's request for the original. The commissioner must return the originals to the applicant within 30 days after the information or documentation is either copied or stored by imaging or other electronic format.

Subp. 2. Required information and documentation. All applicants for an exemption certificate must provide the information and documentation required in items A to N on a form and in the manner required by the commissioner.

A. The information in Minnesota Statutes, section 181.723, subdivision 5, paragraph (a), clauses (1) to (6) and (8).

B. A designation of whether the applicant's business or residential address and business or residential telephone number will be used for purposes of contacting the applicant in connection with the application or exemption certificate and for personal service under Minnesota Statutes, section 181.723, subdivision 10.

C. The business name under which the applicant intends to operate as an independent contractor. If the business name is not the applicant's full legal name, the applicant must submit a copy of the certificate of assumed name that has been filed with the secretary of state according to Minnesota Statutes, sections 333.001 to 333.065.

D. A copy of any audit, letter, report, order, decision, determination, certificate, opinion, or ruling issued by any state or federal court or agency, to the applicant or about which the applicant has knowledge, that is related to the status of the applicant or the applicant's business as an independent contractor, sole proprietor, employer, or employee. The applicant must explain how the audit, letter, report, order, decision, determination, certification, opinion, or ruling supports one or more of the factors in Minnesota Statutes, section 181.723, subdivision 5, paragraph (a), clause (8), or why the applicant should be granted the exemption certificate despite the document's findings.

E. A copy of any credential held or training completed by the applicant that is related to, or required for, the performance of services for which the applicant is seeking an exemption certificate. Examples of these credentials include a business, professional, or personal license issued by a government entity; a certificate of completion of an apprenticeship or other training program; and a degree issued by an accredited educational institution. If the credential is a license issued by a Minnesota state agency, the applicant may provide the license number and type of license held instead of providing a copy of the license.

F. Information about whether the applicant employs individuals while acting as independent contractors under the exemption certificate. If the applicant employs individuals, the applicant must also submit documentation of the applicant's unemployment insurance tax account number under Minnesota Statutes, section 268.045, and workers' compensation coverage for the employees under Minnesota Statutes, chapter 176. If the applicant believes that unemployment or workers' compensation insurance is not required, the applicant must explain the legal basis for why unemployment or workers' compensation coverage is not required.

G. Information about whether, at any time during the two years before the date of the application, the applicant has been employed. If the applicant has been employed at any time during the two years before the date of the application, the applicant must explain why the employment does not preclude issuance of an exemption certificate.

APPENDIX
Repealed Minnesota Rule: H2093-2

H. All state and federal tax documents that are related to the services the applicant will provide as an independent contractor under the exemption certificate and that have been filed within the two years before the date of the application, including state and federal tax returns, forms, schedules, and other attachments. If the applicant has not filed any tax returns, forms, schedules, or other attachments required by this item for one or both years, the applicant must explain why not. Examples of tax documents that must be submitted under this item, if they have been filed with the Internal Revenue Service, the Minnesota Department of Revenue, or a taxing agency in another jurisdiction, include returns, forms, schedules, and attachments documenting:

- (1) income earned and tax paid and owed, such as Internal Revenue Service tax returns on forms 1040 and 1040 SS, and Minnesota Department of Revenue tax returns on form M1;
- (2) itemized deductions, such as Internal Revenue Service Schedule A;
- (3) income, profit, or loss from a business, such as Internal Revenue Service Schedule C or C-EZ;
- (4) self-employment tax paid or owed, such as Internal Revenue Service Schedule SE;
- (5) federal unemployment tax paid or owed, such as Internal Revenue Service form 940;
- (6) withholdings from wages, such as Internal Revenue Service employer's annual or quarterly tax returns on forms 941 and 944 and the Minnesota Department of Revenue annual withholding return/reconciliation and information returns that show Minnesota withholding tax;
- (7) deduction schedules for depreciation and amortization, such as Internal Revenue Service form 4562;
- (8) the sale of business property, such as Internal Revenue Service form 4797;
- (9) reporting cash payments received in a trade or business, such as Internal Revenue Service form 8300;
- (10) expenses for business use of a home, such as Internal Revenue Service form 8829;
- (11) certificates of exemption of payment of sales tax, such as Minnesota Department of Revenue form ST3; and
- (12) wages or payments made by or received by the applicant as shown on Internal Revenue Service 1099, 1096, W-2, and W-3 forms. The applicant must describe the services performed by or for the applicant for each 1099 or W-2 form issued or received.

I. The applicant's Minnesota tax identification number or an explanation of why the applicant does not need one.

J. Copies of up to five executed contracts for services the applicant contracted to provide before the date of the application, if any, and template contracts that the applicant intends to use in contracting to provide services as an independent contractor under the exemption certificate. The template contracts must satisfy factors in Minnesota Statutes, section 181.723, subdivision 5, paragraph (a), clause (8), items (iii), (iv), (v), (vi), and (vii), for the services the applicant will provide as an independent contractor under the exemption certificate.

K. Applicants must submit the documentation described in subitems (1) and (2). In addition, applicants must submit the documentation described in at least five of subitems (3) to (13) related to the services the applicant will perform under the exemption certificate.

- (1) rental agreements or lease agreements, other than a post office box, for facility space used by the applicant in performing the services for which the applicant is seeking the exemption certificate. Instead of the rental or lease agreements, the applicant may provide the tax documentation described in item H, subitem (10);
- (2) documentation that establishes the applicant's ownership or control of equipment, tools, materials, or vehicles necessary for the applicant to perform the services for which the applicant is seeking the exemption certificate. Examples of such documentation include contracts, rental or lease agreements, deeds, and receipts, or the tax documentation described in item H, subitem (2) or (7), showing such ownership or control;
- (3) if submitted by the applicant in response to item H, the state or federal tax documentation described in item H, subitems (1), (3), (4), (8), (9), and (11), and IRS 1099 forms issued to the applicant;
- (4) a commercial liability insurance policy or bond covering the applicant or the applicant's business, office equipment, and materials;
- (5) a workers' compensation policy covering the applicant;
- (6) business or building permits held or applied for;

APPENDIX
Repealed Minnesota Rule: H2093-2

- (7) bills or invoices from and payments made to vendors, suppliers, subcontractors, or other persons;
- (8) contracts with vendors, suppliers, subcontractors, or other persons;
- (9) bank statements and accounting statements showing receipts, expenditures, and profit or loss for the applicant's business;
- (10) trade or professional memberships or affiliations;
- (11) marketing or advertising materials;
- (12) documentation of payment to other independent contractors as shown on IRS forms 1099 and 1096; and
- (13) documentation of compliance with laws related to:
 - (a) workers' compensation or unemployment insurance as described in item F and item H, subitem (5); and
 - (b) payment or withholding of wages as shown on IRS W-2 and W-3 forms or item H, subitem (6).

L. Authorization for or completion of forms authorizing the department to verify that the application and all information and documents submitted with the application are true and correct.

M. A color photocopy of a current photo identification document issued to the applicant by the United States or a state or territory of the United States, along with documentation required by any federal electronic verification program, such as the Systematic Alien Verification for Entitlements Program adopted under United States Code, title 8, section 1642, that assists the department in verifying the applicant's authorization to work in the United States.

N. In addition to the sworn statement required by Minnesota Statutes, section 181.723, subdivision 5, paragraph (a), clause (8), a sworn statement that:

- (1) the application and all information and documents submitted with the application are true and correct;
- (2) the applicant is a United States citizen, or, if not a citizen, is authorized to work in the United States under federal immigration law; and
- (3) the applicant has complied with and will continue to comply with federal immigration law in hiring any employees.

Subp. 3. **Approval or denial.** Applications must be approved or denied according to items A and B, and Minnesota Statutes, section 181.723, subdivision 5, paragraph (c).

A. The commissioner must issue an exemption certificate if both subitems (1) and (2) are met:

- (1) the application is complete according to subpart 1; and
- (2) the commissioner determines that all of the information and documentation submitted establishes that the applicant meets or could meet the factors in Minnesota Statutes, section 181.723, subdivision 5, paragraph (a), clause (8), for the services for which the applicant has requested an exemption certificate.

B. The commissioner must deny an exemption certificate if:

- (1) the application is not complete according to subpart 1; or
- (2) the commissioner determines that all of the information and documentation submitted does not establish that the applicant meets or could meet the factors in Minnesota Statutes, section 181.723, subdivision 5, paragraph (a), clause (8), for the services for which the applicant has requested an exemption certificate.

5202.0140 APPLICATION FOR A CORRECTED, RENEWAL, OR AMENDED CERTIFICATE; TIME FRAMES FOR SUBMISSION OF INITIAL AND RENEWAL APPLICATIONS.

Subpart 1. **Obligation to update identifying information.** Within 15 days of the change, each certificate holder or applicant for an exemption certificate must notify the commissioner in writing of any change in the certificate holder's:

- A. legal name;
- B. business name;
- C. business address;
- D. business telephone number;
- E. residential address;

APPENDIX
Repealed Minnesota Rule: H2093-2

- F. residential telephone number; or
- G. business organization.

Subp. 2. **No additional fee or documentation.** If the only change submitted under subpart 1 is to the certificate holder's business address, business telephone number, residential address, or residential telephone number, the commissioner must issue an updated exemption certificate within ten business days without requiring an additional fee or documentation.

Subp. 3. **Legal name change.** If the change is to the certificate holder's legal name or business name, the certificate holder must submit additional information and documentation if the commissioner determines it is needed to verify the change and to determine whether the name change affects the validity of the exemption certificate.

Subp. 4. **Application to add new category of service.** A certificate holder must submit a new complete application and fee according to part 5202.0130 to add a new category of service.

Subp. 5. **Time frames for submission of initial and renewal applications.** An initial application for an exemption certificate must not be submitted before September 2, 2008. To renew an exemption certificate without a lapse in the certificate, the certificate holder must submit a new complete application and fee according to part 5202.0130 at least 30 days, but no more than 60 days, before the expiration date specified on the applicant's current certificate. An individual who does not file a complete application for renewal at least 30 days before the certificate's expiration date is uncertified as of 11:59:59 p.m. Central Time on the certificate's expiration date and remains uncertified unless and until a renewed certificate is issued by the department.

5202.0150 CONTENTS OF APPROVED CERTIFICATE; NOTICE OF CERTIFICATE; EFFECTIVE DATE.

Subpart 1. **Content of certificate.** If an application is approved, the department shall issue to the applicant an exemption certificate, which shall include at least the following information:

- A. the name of the independent contractor to whom the certificate was issued;
- B. the assumed name of the business if there is one;
- C. the address and telephone number provided in part 5202.0130, subpart 2, item B;
- D. the date the certificate was issued and the expiration date;
- E. the service or services that the independent contractor is permitted to perform under the certificate;
- F. the effect of the certificate under Minnesota Statutes, section 181.723, subdivisions 2 to 4; and
- G. how a person may contact the department with questions or to verify that a specific certificate remains current.

Subp. 2. **Department list of certificate holders.** The department shall maintain a list of current certificate holders on its official Web site. The Web site shall include the information in subpart 1 and, if applicable, whether the department has received a request to cancel an exemption certificate or has revoked an exemption certificate and the date the exemption certificate is canceled or revoked.

Subp. 3. **Effective date.** An exemption certificate issued before March 1, 2009, is effective on the date stated on the exemption certificate and shall remain in effect until March 1, 2011, unless revoked by the commissioner or canceled by the certificate holder. An exemption certificate issued on or after March 1, 2009, is effective on the date stated on the exemption certificate and remains in effect for two years unless revoked by the commissioner or canceled by the individual. A certificate holder must submit a new complete application and fee under part 5202.0130 in order to obtain a new exemption certificate if the previous exemption certificate has expired, been canceled by the certificate holder, or revoked by the commissioner.

Subp. 4. **Verification of certificate and identity of certificate holder.** The individual who holds an independent contractor exemption certificate must present current photo identification issued to the individual by the United States or a state or territory of the United States to any person for whom the certificate holder performs services under the exemption certificate. Before permitting the certificate holder to provide services as an independent contractor under a contract, the person for whom a certificate holder is performing services must:

- A. obtain from the department and retain for five years a copy of the department's current exemption certificate for the certificate holder; and
- B. review the photo identification presented by the certificate holder to verify the certificate holder's identity.

**5202.0160 EXPIRATION, REVOCATION, OR CANCELLATION OF CERTIFICATE;
NOTICE TO PUBLIC AND CONTRACTORS.**

Subpart 1. **Notice.** When an exemption certificate expires, is canceled, or is revoked, the department shall indicate that certificate's status on the list of certificate holders on the department's official Web site. After a certificate has expired, is canceled, or is revoked, the department shall maintain the former certificate holder's information on its Web site for at least six months. After six months, the department may remove the expired, canceled, or revoked certificate holder's information from its list of certificate holders. A former certificate holder shall not hold out as an independent contractor for the services listed on the expired, canceled, or revoked exemption certificate. An exemption certificate expires or is canceled or revoked as of 11:59:59 p.m. Central Time on the date of expiration, cancellation, or revocation.

Subp. 2. **Cancellation.** A certificate holder may request that an exemption certificate be canceled by filing a written request, in the form and manner prescribed by the commissioner. The written request must include the current name, address, and telephone number for each person for whom the certificate holder is performing services or intends to perform services under the exemption certificate before its cancellation. In addition, the cancellation request shall include a sworn statement that the certificate holder has provided written notification of the cancellation request to each person named. Within 21 days of receipt of the request, the department must serve on the certificate holder and each person the certificate holder has named in the cancellation request an order cancelling the exemption certificate. The effective date of cancellation is seven days after the order is served on the certificate holder and the persons named in the certificate holder's cancellation request.

Subp. 3. **Revocation notice.** During an action to revoke an exemption certificate, the certificate holder must inform the commissioner of any person for whom the certificate holder is providing services or intends to provide services under the exemption certificate. The department must serve a final order revoking the certificate upon the certificate holder and any person identified by the certificate holder. The effective date of the revocation is seven days after the order is served on the certificate holder and the persons identified by the certificate holder.