

SENATE
STATE OF MINNESOTA
EIGHTY-SEVENTH LEGISLATURE

S.F. No. 1653

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DATE	D-PG	OFFICIAL STATUS
02/02/2012	3701	Introduction and first reading Referred to Jobs and Economic Growth
03/21/2012	4658a 4669	Comm report: To pass as amended Second reading
04/18/2012	5937a 5939	Special Order: Amended Third reading Passed
04/28/2012	6705 6705 6708	Returned from House with amendment Senate not concur, conference committee of 3 requested Senate conferees Pederson; Miller; Tomassoni
05/01/2012	6810	House conferees Sanders; Daudt; Nelson
05/09/2012	7388c 7407 7411	Conference committee report, delete everything Senate adopted CC report and repassed bill Third reading House adopted SCC report and repassed bill Presentment date 05/11/12
	7668 7668	Governor's action Approval 05/14/12 Secretary of State Chapter 295 05/14/12 Effective date Various Dates See also HF2337, Art. 2, Sec. 7, 11, 21 See also SF1717 (vetoed)

A bill for an act

relating to labor and industry; clarifying employee classification of independent contractors; providing a pilot project for contractor registration; providing for penalties; making labor and industry technical changes; amending Minnesota Statutes 2010, sections 178.01; 178.03, subdivisions 3, 4; 178.05, subdivisions 1, 2; 178.06; 178.07; 178.08; 178.09, subdivisions 1, 2; 181.723, subdivisions 1, 4, 7, 10, 15, 16, by adding subdivisions; 289A.31, subdivision 5; 326B.081, subdivision 3; 326B.092, subdivisions 2, 7; 326B.103, subdivision 3; Minnesota Statutes 2011 Supplement, sections 181.723, subdivision 5; 326B.0981, subdivision 4; 326B.46, subdivision 1a; 326B.49, subdivision 1; repealing Minnesota Statutes 2010, sections 181.723, subdivisions 6, 8, 9, 10, 11, 12, 14, 17; 290.92, subdivision 31; Minnesota Rules, parts 1300.0230, subpart 4; 1301.1201; 1302.0600; 3801.3640; 3801.3650; 3801.3660; 3801.3670; 3801.3680; 3801.3690; 3801.3700; 3801.3710; 3801.3720; 3801.3730; 3801.3740; 3801.3760; 3801.3790; 3801.3800; 5202.0100; 5202.0110; 5202.0120; 5202.0130; 5202.0140; 5202.0150; 5202.0160.

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

ARTICLE 1

LABOR AND INDUSTRY HOUSEKEEPING

Section 1. Minnesota Statutes 2010, section 178.01, is amended to read:

178.01 PURPOSES.

The purposes of this chapter are: to open to ~~young~~ all people regardless of race, sex, creed, color or national origin, the opportunity to obtain training and on-the-job learning that will equip them for profitable employment and citizenship; to establish as a means to this end, a program of voluntary apprenticeship under approved ~~apprentice~~ apprenticeship agreements providing facilities for their training and guidance in the arts, skills, and crafts of industry and trade or occupation, with concurrent, supplementary instruction in related subjects; to promote apprenticeship opportunities under conditions

2.1 providing adequate training and on-the-job learning and reasonable earnings; to relate the
2.2 supply of skilled workers to employment demands; to establish standards for apprentice
2.3 training; to establish an Apprenticeship Board and apprenticeship committees to assist in
2.4 effectuating the purposes of this chapter; to provide for a Division of Labor Standards
2.5 and Apprenticeship within the Department of Labor and Industry; to provide for reports
2.6 to the legislature regarding the status of apprentice training in the state; to establish a
2.7 procedure for the determination of ~~apprentice~~ apprenticeship agreement controversies;
2.8 and to accomplish related ends.

2.9 Sec. 2. Minnesota Statutes 2010, section 178.03, subdivision 3, is amended to read:

2.10 Subd. 3. **Duties and functions.** The director, under the supervision of the
2.11 commissioner, and with the advice and consultation of the Apprenticeship Board, is
2.12 authorized: to administer the provisions of this chapter; to promote apprenticeship and
2.13 other forms of on-the-job learning; to establish, in cooperation and consultation with the
2.14 Apprenticeship Board and with the apprenticeship committees, conditions, training, and
2.15 learning standards for the approval of apprenticeship programs and agreements, which
2.16 conditions and standards shall in no case be lower than those (1) prescribed by this chapter,
2.17 and (2) established under Code of Federal Regulations, title 29, part 29; to promote equal
2.18 employment opportunity in apprenticeship and other on-the-job learning and to establish
2.19 a Minnesota plan for equal employment opportunity in apprenticeship which shall be
2.20 consistent with standards established under Code of Federal Regulations, title 29, part 30,
2.21 as amended; to issue certificates of registration to sponsors of approved apprenticeship
2.22 programs; to act as secretary of the Apprenticeship Board; to approve, if of the opinion
2.23 that approval is for the best interest of the apprentice, any apprenticeship agreement which
2.24 meets the standards established hereunder; to terminate any apprenticeship agreement in
2.25 accordance with the provisions of such agreement; to keep a record of apprenticeship
2.26 agreements and their disposition; to issue certificates of completion of apprenticeship;
2.27 and to perform such other duties as the commissioner deems necessary to carry out the
2.28 intent of this chapter; provided, that the administration and supervision of supplementary
2.29 instruction in related subjects for apprentices; coordination of instruction on a concurrent
2.30 basis with job experiences, and the selection and training of teachers and coordinators
2.31 for such instruction shall be the function of state and local boards responsible for
2.32 vocational education. The director shall have the authority to make wage determinations
2.33 applicable to the graduated schedule of wages and ~~journeyman~~ journeyworker wage rate
2.34 for apprenticeship agreements, giving consideration to the existing wage rates prevailing
2.35 throughout the state, except that no wage determination by the director shall alter an

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3.1 existing wage provision for apprentices or ~~journeymen~~ journeyworkers that is contained in
3.2 a bargaining agreement in effect between an employer and an organization of employees,
3.3 nor shall the director make any determination for the beginning rate for an apprentice that
3.4 is below the wage minimum established by federal or state law.

3.5 Sec. 3. Minnesota Statutes 2010, section 178.03, subdivision 4, is amended to read:

3.6 Subd. 4. **Reciprocity approval.** The director, if requested by a sponsoring entity,
3.7 shall grant reciprocity approval to apprenticeship programs of employers and unions
3.8 who jointly form a sponsoring entity on a multistate basis in other than the building
3.9 construction industry if such programs are in conformity with this chapter and have been
3.10 registered in compliance with Code of Federal Regulations, title 29, part 29, by a state
3.11 apprenticeship council recognized by or registered with the ~~Bureau of Apprenticeship~~
3.12 ~~and Training~~, United States Department of Labor, Office of Apprenticeship, when such
3.13 approval is necessary for federal purposes under Code of Federal Regulations, title 29,
3.14 section 29.13(a) or 29.13(b)(7).

3.15 Sec. 4. Minnesota Statutes 2010, section 178.05, subdivision 1, is amended to read:

3.16 Subdivision 1. **Establishment of committees.** Apprenticeship committees may
3.17 be established by the director to supervise the operation of apprenticeship programs.
3.18 Establishment of a committee may be considered justified if either of the following
3.19 conditions are met:

- 3.20 (a) When the employers and employees in a trade or occupation or trades or
3.21 occupations are parties to a collective bargaining agreement requiring joint participation
3.22 in program operation; or
3.23 (b) When five or more apprentices are enrolled under a program.

3.24 Sec. 5. Minnesota Statutes 2010, section 178.05, subdivision 2, is amended to read:

3.25 Subd. 2. **Members.** (a) The total number of members on a committee may range
3.26 from four to twelve.

3.27 (b) In joint participation there shall be equal representation of employers and
3.28 employees.

3.29 (c) Members shall be selected by the group or groups they represent subject to
3.30 approval by the director.

3.31 ~~(d) A committee may have as one of its employee representatives, an active~~
3.32 ~~apprentice of record, provided that the apprentice has completed a minimum of 6,000~~
3.33 ~~hours of an apprenticeship term or has entered the fourth year of the term.~~

4.1 Sec. 6. Minnesota Statutes 2010, section 178.06, is amended to read:

4.2 **178.06 APPRENTICE.**

4.3 The term "apprentice," as used herein, means a person at least 16 years of age who
4.4 has entered into a written agreement, hereinafter called an ~~apprentice~~ apprenticeship
4.5 agreement, with a committee, an employer, an association of employers, or an organization
4.6 of employees, which ~~apprentice agreement~~ provides for learning consistent with this
4.7 chapter and Code of Federal Regulations, title 29, section 29.5(b)(1) and (b)(2):

4.8 (1) a time-based approach involving not less than 2,000 hours or one year
4.9 of reasonably continuous employment for such person and for participation in an
4.10 approved program of on-the-job learning through employment and through concurrent,
4.11 supplementary education in related subjects;

4.12 (2) a competency-based approach involving successful demonstration of acquired
4.13 skills and knowledge by an apprentice plus on-the-job learning; or

4.14 (3) a hybrid approach involving the completion of a specified minimum number of
4.15 hours plus the successful demonstration of competency.

4.16 Whenever a minimum age exceeding 16 years is prescribed by federal or state law
4.17 to apply to workers in certain hazardous occupations, the minimum age so prescribed
4.18 shall be applicable to apprentices.

4.19 Sec. 7. Minnesota Statutes 2010, section 178.07, is amended to read:

4.20 **178.07 ~~APPRENTICE~~ APPRENTICESHIP AGREEMENTS.**

4.21 Every ~~apprentice~~ apprenticeship agreement entered into under this chapter shall
4.22 contain:

4.23 (1) the names of the contracting parties;

4.24 (2) the date of birth, and information as to the race and sex of the apprentice;

4.25 (3) a statement of the trade, craft, occupation, or business which the apprentice is to
4.26 be taught, and the time at which the apprenticeship will begin and end;

4.27 (4) a statement showing the number of hours to be spent by the apprentice in work
4.28 and the number of hours to be spent in concurrent, supplementary instruction in related
4.29 subjects, which instruction shall be not less than 144 hours during each year of the
4.30 apprenticeship term. The maximum number of hours of work per week not including time
4.31 spent in related and supplemental instruction for any apprentice shall not exceed either
4.32 the number prescribed by law or the customary regular number of hours per week for the
4.33 employees of the company by which the apprentice is employed. An apprentice may
4.34 be allowed to work overtime provided that the overtime work does not conflict with
4.35 supplementary instruction course attendance. All time in excess of the number of hours of

5.1 work per week as specified in the apprenticeship agreement shall be considered overtime.
5.2 For overtime, the apprentice's rate of pay shall be increased by the same percentage as the
5.3 ~~journeyman's~~ journeyworker's rate of pay for overtime is increased in the same industry or
5.4 establishment;

5.5 (5) a statement setting forth a schedule of the processes in the trade, occupation,
5.6 or industry divisions in which the apprentice is to be taught and the approximate time to
5.7 be spent at each process;

5.8 (6) a statement of the graduated scale of wages to be paid the apprentice and whether
5.9 the required school time shall be compensated;

5.10 (7) a statement providing for a period of probation of not more than 500 hours of
5.11 employment and instruction extending over not more than four months, during which time
5.12 the ~~apprentice~~ apprenticeship agreement shall be terminated by the director upon written
5.13 request of either party, and providing that after such probationary period the ~~apprentice~~
5.14 apprenticeship agreement may be terminated by the director by mutual agreement of all
5.15 parties thereto, or terminated by the director for good and sufficient reason;

5.16 (8) a provision that controversies or differences concerning the terms of the
5.17 ~~apprentice~~ apprenticeship agreement which cannot be resolved by the parties thereto, or
5.18 which are not covered by a collective bargaining agreement, may be submitted to the
5.19 director for determination as provided for in section 178.09;

5.20 (9) a provision that an employer who is unable to fulfill an obligation under the
5.21 ~~apprentice~~ apprenticeship agreement may, with the approval of the director, transfer such
5.22 contract to any other employer, provided that the apprentice consents and that such other
5.23 employer agrees to assume the obligations of the ~~apprentice~~ apprenticeship agreement; and

5.24 (10) such additional terms and conditions as may be prescribed or approved by the
5.25 director not inconsistent with the provisions of this chapter.

5.26 Sec. 8. Minnesota Statutes 2010, section 178.08, is amended to read:

5.27 **178.08 DIRECTOR TO APPROVE ~~APPRENTICE~~ APPRENTICESHIP**
5.28 **AGREEMENTS.**

5.29 Every ~~apprentice~~ apprenticeship agreement is subject to approval by the director
5.30 and shall be signed by the committee, the employer, an association of employers, or
5.31 an organization of employees, and by the apprentice, and if the apprentice is a minor,
5.32 by a parent or legal guardian. When a minor enters into an ~~apprentice~~ apprenticeship
5.33 agreement under this chapter for a period of learning extending into majority the
5.34 ~~apprentice~~ apprenticeship agreement shall likewise be binding for such a period as may be
5.35 covered during the apprentice's majority.

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6.1 Sec. 9. Minnesota Statutes 2010, section 178.09, subdivision 1, is amended to read:

6.2 Subdivision 1. **Complaint.** Upon the complaint of any interested person or upon
6.3 the director's own initiative the director may investigate to determine if there has been a
6.4 violation of the terms of an ~~apprentice~~ apprenticeship agreement made under this chapter.
6.5 The director may conduct such proceedings as are necessary for that investigation and
6.6 determination. All such proceedings shall be on a fair and impartial basis and shall be
6.7 conducted according to rules promulgated under section 178.041.

6.8 Sec. 10. Minnesota Statutes 2010, section 178.09, subdivision 2, is amended to read:

6.9 Subd. 2. **Determination; appeal.** The determination of the director shall be filed
6.10 with the commissioner and written notice shall be served on all parties affected by it.
6.11 Any person aggrieved by any determination or action of the director may appeal to the
6.12 commissioner. If no appeal is filed with the commissioner within ten days of the date
6.13 of service, the director's determination shall become the order of the commissioner. If
6.14 an appeal is filed, the commissioner shall appoint and convene a hearing board to be
6.15 composed of three members of the ~~council~~ Apprenticeship Board appointed under
6.16 section 178.02, one member being a representative of an employer organization, one
6.17 representative being a member of an employee organization, and one member representing
6.18 the general public. The board shall hold a hearing on the appeal after due notice to the
6.19 interested parties and shall submit to the commissioner findings of fact and a recommended
6.20 decision accompanied by a memorandum of the reasons for it. Within 30 days after
6.21 submission, the commissioner may adopt the recommended decision of the board, or
6.22 disregard the recommended decision of the board and prepare a decision based on the
6.23 findings of fact and accompanied by a memorandum of reasons for that decision. Written
6.24 notice of the commissioner's determination and order shall be served on all parties affected
6.25 by it. Any person aggrieved or affected by any determination or order of the commissioner
6.26 may appeal from it to the district court having jurisdiction at any time within 30 days after
6.27 the date of the order by service of a written notice of appeal on the commissioner. Upon
6.28 service of the notice of appeal, the commissioner shall file with the court administrator
6.29 of the district court to which the appeal is taken a certified copy of the order appealed
6.30 from, together with findings of fact on which it is based. The person serving a notice of
6.31 appeal shall, within five days after its service, file it, with proof of service, with the court
6.32 administrator of the court to which the appeal is taken. The district court shall then have
6.33 jurisdiction over the appeal and it shall be entered in the records of the district court and
6.34 tried de novo according to the applicable rules. Any person aggrieved or affected by any
6.35 determination, order, or decision of the district court may appeal as in other civil cases.

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7.1 Sec. 11. Minnesota Statutes 2010, section 326B.092, subdivision 2, is amended to read:

7.2 Subd. 2. **Licenses not requiring examination administered by commissioner.** If
7.3 the applicant for a license is not required to pass an examination in order to obtain the
7.4 license, or is required to pass an examination that is not administered by the commissioner,
7.5 then the license fee must accompany the application for the license. If the application is
7.6 for a license issued under sections 326B.802 to 326B.885 and is not an application for
7.7 license renewal, then the contractor recovery fund fee required under section 326B.89,
7.8 subdivision 3, is due ~~after the department has determined that the applicant meets the~~
7.9 ~~qualifications for licensing and before the license is issued.~~

7.10 Sec. 12. Minnesota Statutes 2010, section 326B.092, subdivision 7, is amended to read:

7.11 Subd. 7. **License fees and license renewal fees.** (a) The license fee for each license
7.12 ~~except a renewed license shall be the base license fee plus any applicable board fee, as~~
7.13 ~~set forth in this subdivision. The license renewal fee for each renewed license is the~~
7.14 base license fee plus any applicable board fee, continuing education fee, and contractor
7.15 recovery fund fee and additional assessment, as set forth in this subdivision.

7.16 (b) For purposes of this section, "license duration" means the number of years for
7.17 which the license is issued except that:

7.18 (1) if the initial license is not issued for a whole number of years, the license duration
7.19 shall be rounded up to the next whole number; and

7.20 (2) if the department receives an application for license renewal after the renewal
7.21 deadline, license duration means the number of years for which the renewed license would
7.22 have been issued if the renewal application had been submitted on time and all other
7.23 requirements for renewal had been met.

7.24 (c) The base license fee shall depend on whether the license is classified as an entry
7.25 level, master, journeyman, or business license, and on the license duration. The base
7.26 license fee shall be:

License Classification	License Duration		
	1 Year	2 Years	3 Years
Entry level	\$10	\$20	\$30
Journeyman	\$20	\$40	\$60
Master	\$40	\$80	\$120
Business	\$90	\$180	\$270

7.33 (d) If there is a continuing education requirement for renewal of the license, then
7.34 a continuing education fee must be included in the renewal license fee. The continuing
7.35 education fee for all license classifications shall be: \$10 if the renewal license duration is

8.1 one year; \$20 if the renewal license duration is two years; and \$30 if the renewal license
8.2 duration is three years.

8.3 (e) If the license is issued under sections 326B.31 to 326B.59 or 326B.90 to
8.4 326B.93, then a board fee must be included in the license fee and the renewal license fee.
8.5 The board fee for all license classifications shall be: \$4 if the license duration is one year;
8.6 \$8 if the license duration is two years; and \$12 if the license duration is three years.

8.7 (f) If the application is for the renewal of a license issued under sections 326B.802
8.8 to 326B.885, then the contractor recovery fund fee required under section 326B.89,
8.9 subdivision 3, and any additional assessment required under section 326B.89, subdivision
8.10 16, must be included in the license renewal fee.

8.11 Sec. 13. Minnesota Statutes 2011 Supplement, section 326B.0981, subdivision 4,
8.12 is amended to read:

8.13 Subd. 4. **Internet continuing education.** (a) The design and delivery of an Internet
8.14 continuing education course must be approved by the International Distance Education
8.15 Certification Center (IDECC) or the International Association for Continuing Education
8.16 and Training (IACET) before the course is submitted for the commissioner's approval.
8.17 The ~~IDECC~~ approval must accompany the course submitted.

8.18 (b) An Internet continuing education course must:

8.19 (1) specify the minimum computer system requirements;

8.20 (2) provide encryption that ensures that all personal information, including the
8.21 student's name, address, and credit card number, cannot be read as it passes across the
8.22 Internet;

8.23 (3) include technology to guarantee seat time;

8.24 (4) include a high level of interactivity;

8.25 (5) include graphics that reinforce the content;

8.26 (6) include the ability for the student to contact an instructor or course sponsor
8.27 within a reasonable amount of time;

8.28 (7) include the ability for the student to get technical support within a reasonable
8.29 amount of time;

8.30 (8) include a statement that the student's information will not be sold or distributed
8.31 to any third party without prior written consent of the student. Taking the course does not
8.32 constitute consent;

8.33 (9) be available 24 hours a day, seven days a week, excluding minimal downtime
8.34 for updating and administration, except that this provision does not apply to live courses
8.35 taught by an actual instructor and delivered over the Internet;

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9.1 (10) provide viewing access to the online course at all times to the commissioner,
9.2 excluding minimal downtime for updating and administration;

9.3 (11) include a process to authenticate the student's identity;

9.4 (12) inform the student and the commissioner how long after its purchase a course
9.5 will be accessible;

9.6 (13) inform the student that license education credit will not be awarded for taking
9.7 the course after it loses its status as an approved course;

9.8 (14) provide clear instructions on how to navigate through the course;

9.9 (15) provide automatic bookmarking at any point in the course;

9.10 (16) provide questions after each unit or chapter that must be answered before the
9.11 student can proceed to the next unit or chapter;

9.12 (17) include a reinforcement response when a quiz question is answered correctly;

9.13 (18) include a response when a quiz question is answered incorrectly;

9.14 (19) include a final examination in which the student must correctly answer 70
9.15 percent of the questions;

9.16 (20) allow the student to go back and review any unit at any time, except during the
9.17 final examination;

9.18 (21) provide a course evaluation at the end of the course. At a minimum, the
9.19 evaluation must ask the student to report any difficulties caused by the online education
9.20 delivery method;

9.21 (22) provide a completion certificate when the course and exam have been completed
9.22 and the provider has verified the completion. Electronic certificates are sufficient and shall
9.23 include the name of the provider, date and location of the course, educational program
9.24 identification that was provided by the department, hours of instruction or continuing
9.25 education hours, and licensee's or attendee's name and license, certification, or registration
9.26 number or the last four digits of the licensee's or attendee's Social Security number; and

9.27 (23) allow the commissioner the ability to electronically review the class to
9.28 determine if credit can be approved.

9.29 (c) The final examination must be either an encrypted online examination or a
9.30 paper examination that is monitored by a proctor who certifies that the student took the
9.31 examination.

9.32 Sec. 14. Minnesota Statutes 2010, section 326B.103, subdivision 3, is amended to read:

9.33 Subd. 3. **Agricultural building.** "Agricultural building" means a structure that is:

9.34 (1) on agricultural land as defined in determined by the governing assessor for the
9.35 municipality or county under section 273.13, subdivision 23;

10.1 (2) designed, constructed, and used to house farm implements, livestock, or
10.2 agricultural ~~produce or~~ products under section 273.13, subdivision 23; and
10.3 (3) used by the owner, lessee, and sublessee of the building and members of their
10.4 immediate families, their employees, and persons engaged in the pickup or delivery of
10.5 agricultural ~~produce or~~ products.

10.6 Sec. 15. Minnesota Statutes 2011 Supplement, section 326B.46, subdivision 1a,
10.7 is amended to read:

10.8 Subd. 1a. **Exemptions from licensing.** (a) An individual without a contractor
10.9 license may do plumbing work on the individual's residence in accordance with
10.10 subdivision 1, paragraph (a).

10.11 (b) An individual who is an employee working on the maintenance and repair of
10.12 plumbing equipment, apparatus, or facilities owned or leased by the individual's employer
10.13 and which is within the limits of property owned or leased, and operated or maintained by
10.14 the individual's employer, shall not be required to maintain a contractor license as long
10.15 as the employer has on file with the commissioner a current certificate of responsible
10.16 individual. The responsible individual must be a master plumber or, in an area of the
10.17 state that is not a city or town with a population of more than 5,000 according to the
10.18 last federal census, a restricted master plumber. The certificate must be signed by the
10.19 responsible individual and must state that the person signing the certificate is responsible
10.20 for ensuring that the maintenance and repair work performed by the employer's employees
10.21 complies with sections 326B.41 to 326B.49, all rules adopted under those sections and
10.22 sections 326B.50 to 326B.59, and all orders issued under section 326B.082. The employer
10.23 must pay a filing fee to file a certificate of responsible individual with the commissioner.
10.24 The certificate shall expire two years from the date of filing. In order to maintain a
10.25 current certificate of responsible individual, the employer must resubmit a certificate of
10.26 responsible individual, with a filing fee, no later than two years from the date of the
10.27 previous submittal. The filing of the certificate of responsible individual does not exempt
10.28 any employee of the employer from the requirements of this chapter regarding individual
10.29 licensing as a plumber or registration as ~~a plumber's apprentice~~ an unlicensed individual.

10.30 (c) If a contractor employs a licensed plumber, the licensed plumber does not need a
10.31 separate contractor license to perform plumbing work on behalf of the employer within
10.32 the scope of the licensed plumber's license.

10.33 (d) A person may perform and offer to perform building sewer or water service
10.34 installation without a contractor's license if the person is in compliance with the bond and
10.35 insurance requirements of subdivision 2.

11.1 Sec. 16. Minnesota Statutes 2011 Supplement, section 326B.49, subdivision 1, is
11.2 amended to read:

11.3 Subdivision 1. **Application, examination, and license fees.** (a) Applications for
11.4 master and journeyman plumber's licenses shall be made to the commissioner, with
11.5 all fees required by section 326B.092. Unless the applicant is entitled to a renewal,
11.6 the applicant shall be licensed by the commissioner only after passing a satisfactory
11.7 examination developed and administered by the commissioner, based upon rules adopted
11.8 by the Plumbing Board, showing fitness.

11.9 (b) All initial journeyman plumber's licenses shall be effective for more than one
11.10 calendar year and shall expire on December 31 of the year after the year in which the
11.11 application is made. All master plumber's licenses shall expire on December 31 of each
11.12 even-numbered year after issuance or renewal. The commissioner shall in a manner
11.13 determined by the commissioner, without the need for any rulemaking under chapter 14,
11.14 phase in the renewal of master and journeyman plumber's licenses from one year to two
11.15 years. By June 30, 2011, all renewed master and journeyman plumber's licenses shall be
11.16 two-year licenses.

11.17 (c) Applications for contractor licenses shall be made to the commissioner, with all
11.18 fees required by section 326B.092. All contractor licenses shall expire on December 31 of
11.19 each odd-numbered year after issuance or renewal.

11.20 (d) For purposes of calculating license fees and renewal license fees required under
11.21 section 326B.092:

11.22 (1) the following licenses shall be considered business licenses: plumbing contractor
11.23 and restricted plumbing contractor;

11.24 (2) the following licenses shall be considered master licenses: master plumber and
11.25 restricted master plumber;

11.26 (3) the following licenses shall be considered journeyman licenses: journeyman
11.27 plumber and restricted journeyman plumber; and

11.28 (4) the registration of ~~a plumber's apprentice~~ an unlicensed individual under section
11.29 326B.47, subdivision 3, shall be considered an entry level license.

11.30 (e) For each filing of a certificate of responsible individual by an employer, the
11.31 fee is \$100.

11.32 (f) The commissioner shall charge each person giving bond under section 326B.46,
11.33 subdivision 2, paragraph (b), a biennial bond filing fee of \$100, unless the person is a
11.34 licensed contractor.

11.35 Sec. 17. **REPEALER.**

12.1 Minnesota Rules, parts 1300.0230, subpart 4; 1301.1201; 1302.0600; 3801.3640;
12.2 3801.3650; 3801.3660; 3801.3670; 3801.3680; 3801.3690; 3801.3700; 3801.3710;
12.3 3801.3720; 3801.3730; 3801.3740; 3801.3760; 3801.3790; and 3801.3800, are repealed.

12.4 **ARTICLE 2**

12.5 **EMPLOYEE CLASSIFICATION OF INDEPENDENT CONTRACTORS**

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

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

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

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

12.12 (c) "Commissioner" means the commissioner of labor and industry or a duly
12.13 designated representative of the commissioner who is either an employee of the
12.14 Department of Labor and Industry or person working under contract with the Department
12.15 of Labor and Industry.

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

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

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

12.20 (g) "Document" or "documents" includes papers; books; records; memoranda; data;
12.21 contracts; drawings; graphs; charts; photographs; digital, video, and audio recordings;
12.22 records; accounts; files; statements; letters; e-mails; invoices; bills; notes; and calendars
12.23 maintained in any form or manner.

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

12.25 Sec. 2. Minnesota Statutes 2010, section 181.723, subdivision 4, is amended to read:

12.26 Subd. 4. **Independent contractor.** (a) An individual is an independent contractor
12.27 and not an employee of the person for whom the individual is performing services in the
12.28 course of the person's trade, business, profession, or occupation only if ~~(1) the individual~~
12.29 ~~holds a current independent contractor exemption certificate issued by the commissioner;~~
12.30 ~~and (2) the individual is performing services for the person under the independent~~
12.31 ~~contractor exemption certificate as provided in subdivision 6. The requirements in clauses~~
12.32 ~~(1) and (2) must be met in order to qualify as an independent contractor and not as an~~
12.33 ~~employee of the person for whom the individual is performing services in the course of~~

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13.1 ~~the person's trade, business, profession, or occupation.~~ the individual is registered with the
13.2 Department of Labor and Industry, if required under subdivision 4a, and the individual:

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

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

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

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

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

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

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

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

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

13.22 (b) If an individual is an owner or partial owner of a business entity, the individual is
13.23 an employee of the person for whom the individual is performing services in the course
13.24 of the person's trade, business, profession, or occupation, and is not an employee of the
13.25 business entity in which the individual has an ownership interest, unless:

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

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

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

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

13.31 Sec. 3. Minnesota Statutes 2010, section 181.723, is amended by adding a subdivision
13.32 to read:

13.33 Subd. 4a. **Registration pilot project.** (a) The commissioner shall implement a pilot
13.34 project, effective July 1, 2012, for the registration of persons who perform public or
13.35 private sector commercial or residential building construction or improvement services

14.1 as described in subdivision 2. The purpose of the pilot project is to evaluate whether the
14.2 information obtained through registration assists the Department of Labor and Industry,
14.3 the Department of Employment and Economic Development, and the Department of
14.4 Revenue to enforce laws related to misclassification of employees. The commissioner
14.5 shall issue a report to the legislature no later than January 1, 2014, on recommendations
14.6 for amendments to the registration program, including reasonable registration fees to be
14.7 used to aid in enforcing misclassification laws. The commissioner must not charge a fee
14.8 for registration under the pilot project, but may take the enforcement action specified in
14.9 subdivision 8a. The pilot project shall expire on June 30, 2014, unless extended by the
14.10 legislature.

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

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

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

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

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

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

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

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

14.31 (7) a person providing construction services on a volunteer basis, including but not
14.32 limited to Habitat for Humanity and Builders Outreach Foundation, and their individual
14.33 volunteers when engaged in activities on their behalf; or

14.34 (8) a person exempt from licensing under section 326B.805, subdivision 6, clause (5).

15.1 Sec. 4. Minnesota Statutes 2011 Supplement, section 181.723, subdivision 5, is
15.2 amended to read:

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

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

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

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

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

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

15.17 ~~(5)~~ (4) the individual's Social Security number;

15.18 ~~(6) the individual's or the individual's business federal employer identification~~
15.19 ~~number, if a number has been issued to the individual or the individual's business;~~

15.20 ~~(7) any information or documentation that the commissioner requires by rule that~~
15.21 ~~will assist the department in determining whether to grant or deny the individual's~~
15.22 ~~application; and~~

15.23 ~~(8) the individual's sworn statement that the individual meets all of the following~~
15.24 ~~conditions:~~

15.25 ~~(i) maintains a separate business with the individual's own office, equipment,~~
15.26 ~~materials, and other facilities;~~

15.27 ~~(ii) holds or has applied for a federal employer identification number or has filed~~
15.28 ~~business or self-employment income tax returns with the federal Internal Revenue Service~~
15.29 ~~if the person has performed services in the previous year for which the individual is~~
15.30 ~~seeking the independent contractor exemption certificate;~~

15.31 ~~(iii) operates under contracts to perform specific services for specific amounts of~~
15.32 ~~money and under which the individual controls the means of performing the services;~~

15.33 ~~(iv) incurs the main expenses related to the service that the individual performs~~
15.34 ~~under contract;~~

15.35 ~~(v) is responsible for the satisfactory completion of services that the individual~~
15.36 ~~contracts to perform and is liable for a failure to complete the service;~~

16.1 ~~(vi) receives compensation for service performed under a contract on a commission~~
16.2 ~~or per-job or competitive bid basis and not on any other basis;~~
16.3 ~~(vii) may realize a profit or suffer a loss under contracts to perform service;~~
16.4 ~~(viii) has continuing or recurring business liabilities or obligations; and~~
16.5 ~~(ix) the success or failure of the individual's business depends on the relationship of~~
16.6 ~~business receipts to expenditures.~~

16.7 ~~(b) Individuals who are applying for or renewing a residential building contractor or~~
16.8 ~~residential remodeler license under sections 326B.197, 326B.802, 326B.805, 326B.81,~~
16.9 ~~326B.815, 326B.821 to 326B.86, 326B.87 to 326B.885, and 327B.041, and any rules~~
16.10 ~~promulgated pursuant thereto, may simultaneously apply for or renew an independent~~
16.11 ~~contractor exemption certificate. The commissioner shall create an application form~~
16.12 ~~that allows for the simultaneous application for both a residential building contractor~~
16.13 ~~or residential remodeler license and an independent contractor exemption certificate.~~
16.14 ~~If individuals simultaneously apply for or renew a residential building contractor or~~
16.15 ~~residential remodeler license and an independent contractor exemption certificate using~~
16.16 ~~the form created by the commissioner, individuals shall only be required to provide, in~~
16.17 ~~addition to the information required by section 326B.83 and rules promulgated pursuant~~
16.18 ~~thereto, the sworn statement required by paragraph (a), clause (8), and any additional~~
16.19 ~~information required by this subdivision that is not also required by section 326B.83 and~~
16.20 ~~any rules promulgated thereto. An independent contractor exemption certificate that is in~~
16.21 ~~effect before March 1, 2009, shall remain in effect until March 1, 2013, unless revoked by~~
16.22 ~~the commissioner or canceled by the individual.~~

16.23 ~~(c) Within 30 days of receiving a complete application and the certificate fee, the~~
16.24 ~~commissioner must either grant or deny the application. The commissioner may deny~~
16.25 ~~an application for an independent contractor exemption certificate if the individual has~~
16.26 ~~not submitted a complete application and certificate fee or if the individual does not~~
16.27 ~~meet all of the conditions for holding the independent contractor exemption certificate.~~
16.28 ~~The commissioner may revoke an independent contractor exemption certificate if the~~
16.29 ~~commissioner determines that the individual no longer meets all of the conditions for~~
16.30 ~~holding the independent contractor exemption certificate, commits any of the actions~~
16.31 ~~set out in subdivision 7, or fails to cooperate with a department investigation into the~~
16.32 ~~continued validity of the individual's certificate. Once issued, an independent contractor~~
16.33 ~~exemption certificate remains in effect for four years unless:~~

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

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

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

17.8 ~~(e) An individual or person to whom the commissioner issues an order under~~
17.9 ~~paragraph (d) shall have 30 days after service of the order to request a hearing. The~~
17.10 ~~request for hearing must be in writing and must be served on or faxed to the commissioner~~
17.11 ~~at the address or facsimile number specified in the order by the 30th day after service of~~
17.12 ~~the order. If the individual does not request a hearing or if the individual's request for a~~
17.13 ~~hearing is not served on or faxed to the commissioner by the 30th day after service of the~~
17.14 ~~order, the order shall become a final order of the commissioner and will not be subject to~~
17.15 ~~review by any court or agency. The date on which a request for hearing is served by mail~~
17.16 ~~shall be the postmark date on the envelope in which the request for hearing is mailed. If~~
17.17 ~~the individual serves or faxes a timely request for hearing, the hearing shall be a contested~~
17.18 ~~case hearing and shall be held in accordance with chapter 14.~~

17.19 (c) A complete application must also include the following information:

17.20 (1) the applicant's legal name; assumed name filed with the secretary of state, if any;
17.21 designated business address; physical address; telephone number; and e-mail address;

17.22 (2) the applicant's Minnesota tax identification number, if one is required or has
17.23 been issued;

17.24 (3) the applicant's federal employer identification number, if one is required or
17.25 has been issued;

17.26 (4) evidence of the active status of the applicant's business filings with the secretary
17.27 of state, if one is required or has been issued;

17.28 (5) whether the applicant has any employees at the time the application is filed;

17.29 (6) the names of all other persons with an ownership interest in the business entity
17.30 who are not identified in paragraph (b), and the percentage of the interest owned by each
17.31 person, except that the names of shareholders with less than ten percent ownership in a
17.32 publicly traded corporation need not be provided;

17.33 (7) information documenting compliance with workers' compensation and
17.34 unemployment insurance laws;

17.35 (8) a certification that the person signing the application has: reviewed it; determined
17.36 that the information provided is true and accurate; and determined that the person signing

18.1 is authorized to sign and file the application as an agent of the applicant. The name of the
18.2 person signing, entered on an electronic application, shall constitute a valid signature of
18.3 the agent on behalf of the applicant; and

18.4 (9) a signed authorization for the Department of Labor and Industry to verify the
18.5 information provided on or with the application.

18.6 (d) A registered person must notify the commissioner within 15 days after there is a
18.7 change in any of the information on the application as approved. This notification must
18.8 be provided electronically in the manner prescribed by the commissioner. However, if
18.9 the business entity structure, legal form of the business entity, or business ownership has
18.10 changed, the person must submit a new registration application and registration fee, if
18.11 any, for the new business entity.

18.12 (e) The registered person must remain registered while providing construction
18.13 services for another person. The provisions of sections 326B.091 and 326B.094 to
18.14 326B.097 apply to this section.

18.15 Sec. 5. Minnesota Statutes 2010, section 181.723, is amended by adding a subdivision
18.16 to read:

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

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

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

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

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

18.27 Sec. 6. Minnesota Statutes 2010, section 181.723, subdivision 7, is amended to read:

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

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

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

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

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

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

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

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

19.10 hold himself or herself out as an independent contractor unless the individual meets the
19.11 requirements of subdivision 4.

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

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

19.16 (2) knowingly misrepresent ~~that an individual who has not been issued~~ or misclassify
19.17 an individual as an independent contractor exemption certificate or is not performing
19.18 services for the person under an independent contractor exemption certificate is an
19.19 independent contractor; or

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

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

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

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

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

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

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

20.5 Sec. 7. Minnesota Statutes 2010, section 181.723, is amended by adding a subdivision
20.6 to read:

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

20.11 Sec. 8. Minnesota Statutes 2010, section 181.723, subdivision 10, is amended to read:

20.12 Subd. 10. **Notice requirements.** Unless otherwise specified, service of a document
20.13 on a person under this section may be by mail, by personal service, or in accordance with
20.14 any consent to service filed with the commissioner. Service by mail shall be accomplished
20.15 in the manner provided in Minnesota Rules, part 1400.5550, subpart 2. Personal service
20.16 shall be accomplished in the manner provided in Minnesota Rules, part 1400.5550, subpart
20.17 3. Notice of a penalty order for failure to register must include a statement that the penalty
20.18 shall be forgiven if the person registers within 30 days of the date of the penalty order.

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

20.20 Subd. 15. **Notice to commissioner; review by commissioner of revenue.** When
20.21 the commissioner has reason to believe that ~~an individual who holds a certificate has~~
20.22 ~~failed to maintain all the conditions required by subdivision 6 or is not performing~~
20.23 ~~services for a person under the independent contractor exemption certificate~~ a person has
20.24 violated subdivision 7, paragraph (b); or (c), clause (1) or (2), the commissioner must
20.25 notify the commissioner of revenue and the commissioner of employment and economic
20.26 development. Upon receipt of notification from the commissioner ~~that an individual who~~
20.27 ~~holds a certificate has failed to maintain all the conditions required by subdivision 6~~
20.28 ~~or is not performing services for a person under the independent contractor exemption~~
20.29 ~~certificate,~~ the commissioner of revenue must review the information returns required
20.30 under section 6041A of the Internal Revenue Code. The commissioner of revenue shall
20.31 also review the submitted certification that is applicable to returns audited or investigated
20.32 under section 289A.35.

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

21.2 Subd. 16. **Data classified.** Data in applications ~~for an independent contractor~~
21.3 ~~exemption certificate~~ and any required documentation submitted to the commissioner
21.4 under this section are private data on individuals or nonpublic data as defined in section
21.5 13.02. Data in ~~exemption~~ registration certificates issued by the commissioner are public
21.6 data; except that registration information published on the department's Web site may be
21.7 accessed for registration verification purposes only. Data that document a revocation
21.8 or cancellation of ~~an exemption~~ a certificate are public data. Upon request of the
21.9 Department of Revenue or the Department of Employment and Economic Development,
21.10 the commissioner may release to the requesting department data classified as private or
21.11 nonpublic under this subdivision or investigative data that are not public under section
21.12 13.39 that relate to the issuance or denial of applications or revocations of certificates.

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

21.14 Subd. 5. **Withholding tax, withholding from payments to out-of-state**
21.15 **contractors, and withholding by partnerships and small business corporations.** (a)
21.16 Except as provided in paragraph (b), an employer or person withholding tax under section
21.17 290.92 or 290.923, subdivision 2, who fails to pay to or deposit with the commissioner a
21.18 sum or sums required by those sections to be deducted, withheld, and paid, is personally
21.19 and individually liable to the state for the sum or sums, and added penalties and interest,
21.20 and is not liable to another person for that payment or payments. The sum or sums
21.21 deducted and withheld under section 290.92, subdivision 2a or 3, or 290.923, subdivision
21.22 2, must be held as a special fund in trust for the state of Minnesota.

21.23 (b) If the employer or person withholding tax under section 290.92 or 290.923,
21.24 subdivision 2, fails to deduct and withhold the tax in violation of those sections, and later
21.25 the taxes against which the tax may be credited are paid, the tax required to be deducted
21.26 and withheld will not be collected from the employer. This does not, however, relieve the
21.27 employer from liability for any penalties and interest otherwise applicable for failure to
21.28 deduct and withhold. This paragraph does not apply to an employer subject to paragraph
21.29 (g), ~~or to a contractor required to withhold under section 290.92, subdivision 31.~~

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

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

21.34 (e) A partnership or S corporation required to withhold and remit tax under section
21.35 290.92, subdivisions 4b and 4c, is liable for payment of the tax to the commissioner, and a

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22.1 person having control of or responsibility for the withholding of the tax or the filing of
22.2 returns due in connection with the tax is personally liable for the tax due.

22.3 (f) A payor of sums required to be withheld under section 290.9705, subdivision
22.4 1, is liable to the state for the amount required to be deducted, and is not liable to an
22.5 out-of-state contractor for the amount of the payment.

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

22.12 **EFFECTIVE DATE.** This section is effective for payments made after June 30,
22.13 2012.

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

22.15 Subd. 3. **Applicable law.** "Applicable law" means the provisions of sections
22.16 181.723, 327.31 to 327.36₂ and this chapter, and all rules, orders, stipulation agreements,
22.17 settlements, compliance agreements, licenses, registrations, certificates, and permits
22.18 adopted, issued, or enforced by the department under sections 181.723, 327.31 to 327.36₂,
22.19 or this chapter.

22.20 Sec. 13. **REPEALER.**

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

22.23 (b) Minnesota Statutes 2010, section 181.723, subdivisions 6, 8, 9, 10, 11, 12, and
22.24 14, and Minnesota Rules, parts 5202.0100; 5202.0110; 5202.0120; 5202.0130; 5202.0140;
22.25 5202.0150; and 5202.0160, are repealed July 1, 2012, except they shall remain in effect
22.26 for the regulation of an individual holding an independent contractor exemption certificate
22.27 issued before July 1, 2012, under Minnesota Statutes 2010, section 181.723, subdivision
22.28 5, until the exemption certificate expires, is revoked, or is canceled.

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

22.31 Sec. 14. **EFFECTIVE DATE.**

22.32 Sections 1 to 10 and 12 are effective July 1, 2012, except that those sections do not
22.33 apply to the regulation of an individual who holds an independent contractor exemption

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- 23.1 certificate issued before July 1, 2012, under Minnesota Statutes 2010, section 181.723,
- 23.2 subdivision 5, until the exemption certificate expires, or is revoked or canceled.

APPENDIX
Article locations in S1653-3

ARTICLE 1	LABOR AND INDUSTRY HOUSEKEEPING	Page.Ln 1.18
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ARTICLE 2	CONTRACTORS	Page.Ln 12.4

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: S1653-3

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: S1653-3

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.

APPENDIX
Repealed Minnesota Rule: S1653-3

1300.0230 BOARD OF APPEALS.

Subp. 4. [Repealed, L 2012 c 295 art 1 s 17]

1301.1201 [Repealed, L 2012 c 295 art 1 s 17]

1302.0600 [Repealed, L 2012 c 295 art 1 s 17]

3801.3640 [Repealed, L 2012 c 295 art 1 s 17]

3801.3650 [Repealed, L 2012 c 295 art 1 s 17]

3801.3660 [Repealed, L 2012 c 295 art 1 s 17]

3801.3670 [Repealed, L 2012 c 295 art 1 s 17]

3801.3680 [Repealed, L 2012 c 295 art 1 s 17]

3801.3690 [Repealed, L 2012 c 295 art 1 s 17]

3801.3700 [Repealed, L 2012 c 295 art 1 s 17]

3801.3710 [Repealed, L 2012 c 295 art 1 s 17]

3801.3720 [Repealed, L 2012 c 295 art 1 s 17]

3801.3730 [Repealed, L 2012 c 295 art 1 s 17]

3801.3740 [Repealed, L 2012 c 295 art 1 s 17]

3801.3760 [Repealed, L 2012 c 295 art 1 s 17]

3801.3790 [Repealed, L 2012 c 295 art 1 s 17]

3801.3800 [Repealed, L 2012 c 295 art 1 s 17]

5202.0100 [Repealed, L 2012 c 295 art 2 s 13]

5202.0110 [Repealed, L 2012 c 295 art 2 s 13]

5202.0120 [Repealed, L 2012 c 295 art 2 s 13]

5202.0130 [Repealed, L 2012 c 295 art 2 s 13]

5202.0140 [Repealed, L 2012 c 295 art 2 s 13]

5202.0150 [Repealed, L 2012 c 295 art 2 s 13]

5202.0160 [Repealed, L 2012 c 295 art 2 s 13]