

SENATE

STATE OF MINNESOTA

EIGHTY-EIGHTH SESSION

S.F. No. 1734

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DATE	D-PG	OFFICIAL STATUS
02/25/2014	5817	Introduction and first reading Referred to Transportation and Public Safety
02/27/2014	5900	Authors added Goodwin; Marty

1.1

A bill for an act

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relating to transportation; contracts; enhancing the commissioner of

1.3

transportation's power to suspend or debar; establishing related processes;

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amending Minnesota Statutes 2012, section 161.315, subdivisions 1, 2, by adding

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subdivisions; repealing Minnesota Statutes 2012, section 161.315, subdivision

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5; Minnesota Rules, parts 1230.3000; 1230.3100; 1230.3200; 1230.3300;

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1230.3400; 1230.3500; 1230.3600; 1230.3700; 1230.3800; 1230.3900;

1.8

1230.4000; 1230.4100; 1230.4200; 1230.4300.

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

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Section 1. Minnesota Statutes 2012, section 161.315, subdivision 1, is amended to read:

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Subdivision 1. **Legislative intent.** Recognizing that the preservation of the integrity

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of the public contracting process of the Department of Transportation is vital to the

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development of a balanced and efficient transportation system and a matter of interest to

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the people of the state, the legislature hereby determines and declares that:

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(1) the procedures of the department for bidding and awarding department contracts

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exist to secure the public benefits of free and open competition and to secure the quality of

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public works;

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(2) the opportunity to be awarded department contracts or to supply goods or

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services to the department is a privilege, not a right; and

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(3) in order to preserve the integrity of the public contracting process, the privilege

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of transacting business with the department or local ~~road~~ authority should be ~~denied~~

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awarded only to responsible persons ~~convicted of a contract crime in order to preserve the~~

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~~integrity of the public contracting process.~~

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Sec. 2. Minnesota Statutes 2012, section 161.315, subdivision 2, is amended to read:

Subd. 2. **Definitions.** The terms used in this section have the meanings given them in this subdivision.

(a) "Affiliate" means a predecessor or successor of a person by merger, reorganization, or otherwise, who is, or that has as an officer or director an individual who is, a relative of the person or an individual over whose actions the person exercises substantial influence or control, or a group of entities so connected or associated that one entity controls or has the power to control each of the other entities. "Affiliate" includes the affiliate's principals. One person's ownership of a controlling interest in another entity or a pooling of equipment or income among entities is prima facie evidence that one entity is an affiliate of another.

~~(b) "Contract crime" means a violation of state or federal antitrust law, fraud, theft, embezzlement, bribery, forgery, misrepresentation, making false statements, falsification or destruction of records, or other criminal offense in connection with obtaining, attempting to obtain, or performing a public or private contract or subcontract.~~

~~(e) "Conviction" has the meaning given it in section 609.02, subdivision 5.~~

(b) "Business" means a sole proprietorship, partnership, association, corporation, or other entity formed for the purpose of doing business as a contractor, subcontractor, consultant, or supplier.

(c) "Commissioner" means the commissioner of transportation.

~~(d) "Debar" or "debarment" means to disqualify from receiving a contract or from serving as a subcontractor or material supplier as provided by Laws 1984, chapter 654, article 2, section 8.~~

(e) "MnDOT contract" means a written instrument:

(1) containing the elements of offer, acceptance, and consideration to which the Department of Transportation is a party, or acts as an agent for a party; and

(2) which is subject to the approval of the commissioner.

~~(e) (f) "Person" means a natural person or a business, corporation, association, partnership, sole proprietorship, or other entity formed to do business as a contractor, subcontractor, consultant, subconsultant, or material supplier and includes an affiliate, including affiliates of a person.~~

~~(f) (g) "Pooling" means a combination of persons engaged in the same business or combined for the purpose of engaging in a particular business or commercial venture and who all contribute to a common fund or place their holdings of a given stock or other security in the hand and control of a managing member or committee of the combination.~~

~~(g) "Suspend" means to temporarily disqualify from receiving a contract or from serving as a subcontractor or material supplier as provided by Laws 1984, chapter 654, article 2, section 8.~~

(h) "Principal" means an officer, director, or partner, or an employee or shareholder engaged in management of the business.

(i) "Relative" means an individual related by consanguinity within the second degree as determined by the common law, a spouse, or an individual related to a spouse within the second degree as determined by the common law, and includes an individual in an adoptive relationship within the second degree as determined by the common law.

(j) "Responsible person" means a person who:

(1) has the necessary production, construction, and technical equipment and facilities, or the ability to obtain them;

(2) if services are to be provided, has the necessary skills or is in the business of supplying those services;

(3) can demonstrate a satisfactory credit standing, lack of delinquent tax liability, and the financial capability to perform a contract as evidenced by the ability to obtain bonding when required;

(4) has no unresolved record of failure to perform or of unsatisfactory performance of contracts for the state or other customers;

(5) is not currently debarred by another government entity for any cause including defaults on contracts, late deliveries, products not meeting specifications, substandard installation, or service;

(6) is otherwise qualified under rules, laws, and regulations, including but not limited to having incorporated in or registered to do business in Minnesota;

(7) has not engaged in unlawful practices, associated with organized crime, or operated under false names or fronts as a small business or a socially or economically disadvantaged business;

(8) is in compliance with all tax laws of Minnesota, as evidenced by timely filing of all required returns, reports, payments, and possession of all applicable stamps, licenses, or other permits, and freedom from any judgment, lien, or seizure of assets or property to satisfy tax payments or duties; and

(9) furnishes all requested information necessary to determine responsibility as outlined in clauses (1) to (8) within 30 calendar days or within a reasonable amount of time determined by the commissioner.

(k) "Suspend" or "suspension" means to temporarily disqualify from receiving a contract or from serving as a subcontractor or material supplier.

Sec. 3. Minnesota Statutes 2012, section 161.315, is amended by adding a subdivision to read:

4.1 Subd. 7. Causes for suspension or debarment. (a) A person shall be debarred
4.2 upon conviction, or when conviction is imputed under subdivision 11:

4.3 (1) for commission of a criminal offense as an incident to obtaining or attempting to
4.4 obtain a public or private contract or subcontract, or in the performance of the contract
4.5 or subcontract;

4.6 (2) under state or federal statutes of embezzlement, theft, forgery, bribery, falsification
4.7 or destruction of records, receiving stolen property, or other offense indicating lack of
4.8 business integrity or business honesty that affects responsibility as a state contractor; or

4.9 (3) under state or federal antitrust statutes arising out of the submission of bids
4.10 or proposals.

4.11 (b) The commissioner may, but is not required to, suspend or debar a person without
4.12 a conviction when there is compelling evidence of conduct described in paragraph (a).

4.13 (c) The commissioner may, in the public interest, suspend or debar a person if one
4.14 or more of the following occurs:

4.15 (1) violation of contract provisions of a character so serious as to justify debarment
4.16 action:

4.17 (i) failure without good cause to perform according to specifications, time limits, or
4.18 any terms or conditions in the contract; or

4.19 (ii) a record of failure to perform or of unsatisfactory performance according to the
4.20 terms of one or more contracts or as measured by standard commercial practices, provided
4.21 the failure to perform or unsatisfactory performance was not caused by acts beyond the
4.22 control of the person; or

4.23 (2) any other cause the commissioner determines to be serious and compelling,
4.24 including but not limited to:

4.25 (i) threatening, abusive, or intimidating behavior;

4.26 (ii) collusion with other persons to restrain competition;

4.27 (iii) giving false information on a person's registration application or response to
4.28 a solicitation;

4.29 (iv) submitting to the commissioner false or fraudulent documents;

4.30 (v) violating terms of suspension;

4.31 (vi) all acts that would disqualify the person as a responsible person; and

4.32 (vii) debarment by another governmental entity.

4.33 Sec. 4. Minnesota Statutes 2012, section 161.315, is amended by adding a subdivision
4.34 to read:

5.1 Subd. 8. **Authority to suspend or debar.** (a) After written notice to the person
5.2 involved and providing for a reasonable opportunity for that person to be heard, the
5.3 commissioner shall have the authority to suspend or debar the person.

5.4 (b) The commissioner may, but is not required to, suspend a person and its affiliates
5.5 by order upon receiving compelling evidence of conduct described in subdivision 7,
5.6 paragraphs (b) and (c).

5.7 (c) The commissioner shall debar a person and its affiliates by order upon receiving
5.8 evidence of conviction described in subdivision 7, paragraph (a). The commissioner may,
5.9 but is not required to, debar a person and the person's affiliates by order upon receiving
5.10 compelling evidence of conduct described in subdivision 7, paragraph (b) or (c).

5.11 Sec. 5. Minnesota Statutes 2012, section 161.315, is amended by adding a subdivision
5.12 to read:

5.13 Subd. 9. **Notice of suspension or debarment.** The written notice of suspension or
5.14 debarment shall provide:

5.15 (1) that a suspension or debarment proceeding has been initiated;

5.16 (2) the reason for the proposed suspension or debarment in terms sufficient to
5.17 provide notice of the conduct or transactions upon which proposed suspension or
5.18 debarment is based;

5.19 (3) the effect of the suspension or debarment;

5.20 (4) the proposed term of the suspension or debarment; and

5.21 (5) that within 30 calendar days of receipt of the notice, the person may:

5.22 (i) submit written arguments, with relevant supporting evidence, in opposition of the
5.23 proposed suspension or debarment; and

5.24 (ii) request an opportunity to be heard after providing written detailed explanations
5.25 of the arguments and relevant supporting evidence in opposition of the proposed
5.26 suspension or debarment.

5.27 Sec. 6. Minnesota Statutes 2012, section 161.315, is amended by adding a subdivision
5.28 to read:

5.29 Subd. 10. **Suspension or debarment and appeal process.** (a) The commissioner's
5.30 designee shall review written arguments and supporting evidence submitted in opposition
5.31 to a proposed suspension or debarment and make a determination as to the appropriateness
5.32 of the proposed suspension or debarment. If requested, the commissioner's designee shall
5.33 meet with the person involved to hear argument in opposition to the proposed suspension
5.34 or debarment. The commissioner's designee shall issue a suspension or debarment order

6.1 within 45 days of receipt of any written arguments in opposition to the suspension or
6.2 debarment.

6.3 (b) A suspended or debarred person may file an appeal in writing with the
6.4 commissioner within 30 calendar days of receipt of the commissioner designee's
6.5 suspension or debarment order. The appeal shall be heard by the commissioner or a
6.6 department official designated by the commissioner who was not involved in the initial
6.7 suspension or debarment decision. A decision on the suspension or debarment appeal shall
6.8 be issued within 30 calendar days of receipt of the appeal.

6.9 Sec. 7. Minnesota Statutes 2012, section 161.315, is amended by adding a subdivision
6.10 to read:

6.11 Subd. 11. **Suspension or debarment based on affiliation.** (a) The actions of
6.12 a person are imputed to a business when the conduct which gave rise to the suspension
6.13 or debarment occurred in connection with the person's performance of duties for or on
6.14 behalf of that business and in the course of employment, with the knowledge, approval,
6.15 acquiescence, or subsequent ratification of the conduct by the business.

6.16 (b) The actions of a business are imputed to any principal or other person associated
6.17 with the business subject to debarment or suspension who participated in, knew of, or had
6.18 reason to know of the conduct.

6.19 (c) A business must be debarred when it:

6.20 (1) employs a former principal, or a currently debarred or suspended business or
6.21 person, as a principal or in another significant decision-making capacity;

6.22 (2) is owned by or associated in a joint venture with a currently debarred or
6.23 suspended business, or is controlled by a principal or former principal of a currently
6.24 debarred or suspended business; or

6.25 (3) is a business in which a former principal of a currently debarred or suspended
6.26 business has a significant financial interest and the former principal controls or has the
6.27 authority to control, direct, manage, or influence any activities of the business with respect
6.28 to the relevant MnDOT contract.

6.29 (d) The period of debarment must be the same as that of the debarred former
6.30 principal of the business.

6.31 Sec. 8. Minnesota Statutes 2012, section 161.315, is amended by adding a subdivision
6.32 to read:

6.33 Subd. 12. **Term of suspension or debarment.** (a) A person convicted as provided
6.34 in subdivision 7, paragraph (a), shall be debarred for a period of not less than one year. A

person's suspension or debarment based on compelling evidence of conduct described in subdivision 7, paragraph (b) or (c), may be suspended or debarred for a period of less than one year. In no instance shall a person be:

(1) suspended for more than six months for conduct which gave rise to the grounds for suspension, unless the person is proposed for state or federal debarment. If the person is proposed for state or federal debarment, the suspension must not exceed the length of time necessary for the state or federal government to issue the final order; or

(2) debarred for more than three years for conduct which gave rise to the grounds for debarment. If new or different grounds arise, the commissioner must start a new suspension or debarment proceeding.

(b) The commissioner shall establish the term of suspension or debarment. In establishing the term of suspension or debarment, consideration shall be given to:

(1) the seriousness of the offense;

(2) whether restitution has been made;

(3) whether the suspended or debarred person cooperated in civil or criminal lawsuits;

(4) the state's need to preserve the competitive process;

(5) whether the business is suspended or debarred or has been suspended or debarred in another jurisdiction;

(6) any other relevant mitigating or extenuating circumstances; and

(7) the length of the suspension or debarment period in another jurisdiction.

The term of the suspension or debarment shall accrue upon issuance of the commissioner's final debarment order.

Sec. 9. Minnesota Statutes 2012, section 161.315, is amended by adding a subdivision to read:

Subd. 13. **Notice to public.** The commissioner shall provide the commissioner of administration a copy of each suspension or debarment order, or suspension or debarment termination concurrent with delivery to the affected person. The commissioner shall publish on the department's Web site a list of suspended and debarred persons and the effective dates of the suspension and debarment. The commissioner shall also publish notice of debarment terminations and the effective date of the termination.

Sec. 10. **REPEALER.**

(a) Minnesota Statutes 2012, section 161.315, subdivision 5, is repealed.

- 8.1 (b) Minnesota Rules, parts 1230.3000; 1230.3100; 1230.3200; 1230.3300;
8.2 1230.3400; 1230.3500; 1230.3600; 1230.3700; 1230.3800; 1230.3900; 1230.4000;
8.3 1230.4100; 1230.4200; and 1230.4300, are repealed.

APPENDIX
Repealed Minnesota Statutes: 14-4098

161.315 PROTECTION OF PUBLIC CONTRACTS.

Subd. 5. **Duration of debarment.** A person who has been convicted of a contract crime must be debarred for a period of not less than one year. This subdivision applies to contract crime violations which occur after June 30, 1985.

APPENDIX
Repealed Minnesota Rule: 14-4098

1230.3000 SCOPE.

Parts 1230.3000 to 1230.4300 apply to all Mn/DOT contracts.

1230.3100 DEFINITIONS.

Subpart 1. **Scope.** The terms used in parts 1230.3000 to 1230.4300 have the meanings given them in this part.

Subp. 2. **Administrative law judge.** "Administrative law judge" means a person appointed under Minnesota Statutes, section 14.48 or 14.49, and assigned under Minnesota Statutes, section 14.50, to hear contested cases.

Subp. 3. **Business.** "Business" means a sole proprietor doing business as a contractor, subcontractor, or supplier, or a partnership, association, corporation, or other entity formed for the purpose of doing business as a contractor, subcontractor, or supplier.

Subp. 4. **Commissioner.** "Commissioner" means the commissioner of the Department of Administration.

Subp. 5. **Contract crime.** "Contract crime" means a violation of state or federal antitrust law, fraud, theft, embezzlement, bribery, forgery, misrepresentation, making false statements, falsification or destruction of records, or other criminal offense in connection with obtaining, attempting to obtain, or performing a public or private contract or subcontract.

Subp. 6. **Contractor.** "Contractor" means a person to whom the Minnesota commissioner of transportation has awarded a Mn/DOT contract for which competitive bids are required or taken.

Subp. 7. **Conviction.** "Conviction" has the meaning given to it in Minnesota Statutes, section 609.02, subdivision 5.

Subp. 8. **Debar.** "Debar" means to disqualify under parts 1230.3100 to 1230.4300 from entering into or receiving a Mn/DOT contract or from serving as a subcontractor or material supplier under a Mn/DOT contract.

Subp. 9. **Mn/DOT contract.** "Mn/DOT contract" means a written instrument:

A. containing the elements of offer, acceptance, and consideration to which the Minnesota Department of Transportation is a party, or acts as an agent for a party under Minnesota Statutes, section 161.36, subdivisions 2 and 3, 360.016, subdivisions 2 and 3, or 360.039, subdivisions 2 and 3;

B. for which competitive bids are required or taken; and

C. which is subject to the approval of the commissioner.

Subp. 10. **Person.** "Person" means a natural person or a business.

Subp. 11. **Principal.** "Principal" means an officer, director, or partner, or an employee or shareholder engaged in management of the business.

Subp. 12. **Suspend.** "Suspend" means to temporarily disqualify from entering into or receiving a Mn/DOT contract or from serving as a subcontractor or material supplier under a Mn/DOT contract.

1230.3200 GROUNDS FOR DEBARMENT.

Subpart 1. **Contract crime.** A business must be debarred upon conviction in any jurisdiction, of the business or a principal of the business, for commission of a contract crime or when a conviction is imputed to the business under part 1230.3300.

Subp. 2. **Violation of antitrust laws.** A business must be debarred upon conviction in any jurisdiction, of the business or a principal of the business, for violating Minnesota Statutes, sections 325D.49 to 325D.66, or federal antitrust laws, or when a conviction is imputed to the business under part 1230.3300.

1230.3300 CONVICTION OF PERSON IMPUTED TO BUSINESS.

The conviction of a person for offenses listed in part 1230.3200 is imputed to a business when the conduct which gave rise to the conviction occurred in connection with the person's performance of duties for or on behalf of that business and in the course of employment or with the knowledge, approval, acquiescence, or subsequent ratification of the conduct by the business.

1230.3400 DEBARMENT PROCEDURE.

APPENDIX
Repealed Minnesota Rule: 14-4098

Subpart 1. **Requirement.** A business must be debarred by the Minnesota Department of Transportation when one or more of the grounds set forth in part 1230.3200 are established at a hearing or opportunity for hearing conducted under Minnesota Statutes, chapter 14.

Subp. 2. **Three-year limitation.** A debarment or a suspension must be initiated within three years from the date of the conviction of a business for an offense described in part 1230.3200.

1230.3500 TERM OF DEBARMENT.

The administrative law judge shall recommend and the commissioner of transportation shall establish the term of debarment. The term of debarment depends upon: the seriousness of the offense; whether restitution has been made; whether the debarred person cooperated in civil or criminal lawsuits; the state's need to preserve the competitive bidding process; and whether the business is debarred or has been debarred in another jurisdiction. The length of the debarment period in another jurisdiction must be taken into account in determining the term of debarment in Minnesota.

1230.3600 DEBARMENT BASED ON AFFILIATION.

Subpart 1. **Conviction of business imputed to person.** The conviction of a business in any jurisdiction, for offenses listed in part 1230.3200 is imputed to any principal or other person associated with the business subject to debarment or suspension, who participated in, knew of, or had reason to know of the conduct.

Subp. 2. **Debarment.** A business must be debarred when it:

A. employs a former principal of a debarred or suspended business or person described in subpart 1 as an officer, director, manager, or in another significant decision-making capacity;

B. is owned by or associated in a joint venture with a debarred or suspended business or is controlled by a principal or former principal of a debarred or suspended business; or

C. is a business in which a former principal of a debarred or suspended business has a significant financial interest and the former principal has the authority to or will control, direct, manage, or influence any activities of the business with respect to the Mn/DOT contract in question.

Subp. 3. **Procedure.** A business described in subpart 2 must be debarred after a hearing or opportunity for hearing conducted under Minnesota Statutes, chapter 14.

Subp. 4. **Duration.** The period of debarment must be the same as that of the debarred former principal or business.

1230.3700 DEBARMENT LIMITATION.

A person may not be debarred for more than three years for conduct which gave rise to the grounds for debarment. If new or different grounds arise, a new debarment hearing must be held.

1230.3800 EFFECTIVE DATE OF DEBARMENT.

A debarment takes effect on the date of the mailing of the order for debarment by the Minnesota Department of Transportation. The order for debarment must be sent by certified mail.

1230.3900 TERMINATION OF DEBARMENT OR AWARD DURING DEBARMENT.

The commissioner of transportation may terminate a debarment by order or may award a Mn/DOT contract to a debarred or suspended business when:

A. that business is the sole supplier of a material or service required by the Minnesota Department of Transportation;

B. the commissioner of transportation determines that an emergency exists as defined in Minnesota Statutes, section 161.32, subdivision 3;

C. the commissioner of administration determines that an emergency exists as defined in Minnesota Statutes, section 16B.08, subdivision 6; or

D. the contract is for purchasing materials or renting equipment for routine road maintenance.

1230.4000 CONTINUATION OF CONTRACTS.

Mn/DOT contracts in existence at the time of debarment or suspension are not terminated by the debarment or suspension except as provided in part 1230.1200.

1230.4100 PROHIBITIONS.

Subpart 1. **Mn/DOT contracts.** Except as provided in part 1230.3900, the Department of Transportation may not award a Mn/DOT contract to a debarred or suspended person and may not approve a contract under which a debarred or suspended person will serve as a subcontractor or material supplier.

Subp. 2. **Subcontracts and purchase of materials.** Except as provided in part 1230.3900, a contractor to whom a Mn/DOT contract has been awarded by the Minnesota Department of Transportation may not subcontract with or purchase materials or services from a debarred or suspended person for performance of that contract.

1230.4200 SUSPENSION.

Subpart 1. **Order of suspension.** The commissioner of transportation shall suspend a person or business by order upon receiving notice or learning of a conviction for conduct described in part 1230.3200 or upon receiving evidence of an affiliation described in part 1230.3600, subpart 2.

Subp. 2. **Commencement of proceedings.** The commissioner of transportation shall start debarment proceedings within ten days of the mailing of the suspension order.

Subp. 3. **Notice and content.** The order for suspension must describe the reason for suspension and must be sent by certified mail to the person suspended.

Subp. 4. **Effective date of suspension; term.** The order for suspension takes effect on the date the order is mailed. No suspension may exceed 60 days.

1230.4300 NOTICE TO PUBLIC.

Subpart 1. **Notice to commissioner.** The Minnesota Department of Transportation shall provide to the commissioner a copy of each suspension, debarment, or termination order on the same day that the order is mailed to the debarred or suspended person.

Subp. 2. **Publication.** The commissioner shall publish weekly, in the State Register, a list of debarred and suspended persons, the effective date of each suspension and debarment, and the term of each debarment. The commissioner shall also publish notice of debarment terminations under part 1230.3900 and the effective date of the termination.