

## Sec. 12. FUNDS; TRAINING.

The commissioners of public safety, the pollution control agency, natural resources, agriculture, and transportation shall seek federal funding for activities undertaken under this act. A portion of any funds received under this section must be used by the agencies to train state agency and political subdivision personnel in proper recognition of and response to discharges and releases.

The commissioner of public safety may accept gifts for the purpose of ensuring adequate training of state agency and political subdivision personnel.

## Sec. 13. EFFECTIVE DATE.

Section 5, subdivision 3, is effective the day following final enactment and applies to discharges of hazardous substances or oil on or after March 1, 1991.

Presented to the governor May 30, 1991

Signed by the governor June 3, 1991, 4:18 p.m.

## CHAPTER 306—H.F.No. 218

*An act relating to occupations and professions; requiring residential building contractors, remodelers, and specialty contractors to be licensed by the state; establishing a builders state advisory council; providing penalties; appropriating money; amending Minnesota Statutes 1990, section 45.027, subdivisions 1, 2, 5, 6, 7, and 8; proposing coding for new law in Minnesota Statutes, chapter 326.*

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

Section 1. Minnesota Statutes 1990, section 45.027, subdivision 1, is amended to read:

Subdivision 1. **GENERAL POWERS.** In connection with the administration of chapters 45 to 83, 309, and 332, and sections 326.83 to 326.98, the commissioner of commerce may:

(1) make public or private investigations within or without this state as the commissioner considers necessary to determine whether any person has violated or is about to violate chapters 45 to 83, 309, and 332, sections 326.83 to 326.98, or any rule or order under those chapters, or to aid in the enforcement of chapters 45 to 83, 309, and 332, sections 326.83 to 326.98, or in the prescribing of rules or forms under those chapters;

(2) require or permit any person to file a statement in writing, under oath or otherwise as the commissioner determines, as to all the facts and circumstances concerning the matter being investigated;

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(3) hold hearings, upon reasonable notice, in respect to any matter arising out of the administration of chapters 45 to 83, 309, and 332, and sections 326.83 to 326.98;

(4) conduct investigations and hold hearings for the purpose of compiling information with a view to recommending changes in chapters 45 to 83, 309, and 332, and sections 326.83 to 326.98, to the legislature;

(5) examine the books, accounts, records, and files of every licensee under chapters 45 to 83, 309, and 332, and sections 326.83 to 326.98, and of every person who is engaged in any activity regulated under chapters 45 to 83, 309, and 332, and sections 326.83 to 326.98; the commissioner or a designated representative shall have free access during normal business hours to the offices and places of business of the person, and to all books, accounts, papers, records, files, safes, and vaults maintained in the place of business;

(6) publish information which is contained in any order issued by the commissioner; and

(7) require any person subject to chapters 45 to 83, 309, and 332, and sections 326.83 to 326.98, to report all sales or transactions that are regulated under chapters 45 to 83, 309, and 332, and sections 326.83 to 326.98. The reports must be made within ten days after the commissioner has ordered the report. The report is accessible only to the respondent and other governmental agencies unless otherwise ordered by a court of competent jurisdiction.

Sec. 2. Minnesota Statutes 1990, section 45.027, subdivision 2, is amended to read:

Subd. 2. **POWER TO COMPEL PRODUCTION OF EVIDENCE.** For the purpose of any investigation, hearing, or proceeding under chapters 45 to 83, 309, and 332, and sections 326.83 to 326.98, the commissioner or a designated representative may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of books, papers, correspondence, memoranda, agreements, or other documents or records that the commissioner considers relevant or material to the inquiry.

Sec. 3. Minnesota Statutes 1990, section 45.027, subdivision 5, is amended to read:

Subd. 5. **LEGAL ACTIONS; INJUNCTIONS; CEASE AND DESIST ORDERS.** Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of chapters 45 to 83, 309, and 332, sections 326.83 to 362.98, or any rule or order adopted under those chapters, the commissioner has the following powers: (1) the commissioner may bring an action in the name of the state in the district court of the appropriate county to enjoin the acts or practices and to enforce compliance with chapters 45 to 83, 309, and 332, sections 326.83 to 326.98, or any rule or order adopted or issued under those chapters, or the commissioner

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may refer the matter to the attorney general or the county attorney of the appropriate county. Upon a proper showing, a permanent or temporary injunction, restraining order, or other appropriate relief must be granted; (2) the commissioner may issue and cause to be served upon the person an order requiring the person to cease and desist from violations of chapters 45 to 83, 309, and 332, sections 326.83 to 326.98, or any rule or order adopted or issued under those chapters. The order must be calculated to give reasonable notice of the rights of the person to request a hearing and must state the reasons for the entry of the order. A hearing must be held not later than seven days after the request for the hearing is received by the commissioner, unless the person requesting the hearing and the department of commerce agree the hearing be scheduled after the seven-day period. After the hearing and within 20 days after receiving the administrative law judge's report, the commissioner shall issue a further order vacating the cease and desist order or making it permanent as the facts require. If no hearing is requested within 30 days of service of the order, the order will become final and will remain in effect until it is modified or vacated by the commissioner. Unless otherwise provided, all hearings must be conducted in accordance with chapter 14. If the person to whom a cease and desist order is issued fails to appear at the hearing after being duly notified, the person is in default, and the proceeding may be determined against that person upon consideration of the cease and desist order, the allegations of which may be considered to be true. The commissioner may adopt rules of procedure concerning all proceedings conducted under this subdivision.

Sec. 4. Minnesota Statutes 1990, section 45.027, subdivision 6, is amended to read:

Subd. 6. **VIOLATIONS AND PENALTIES.** The commissioner may impose a civil penalty not to exceed \$2,000 per violation upon a person who violates chapters 45 to 83, 309, and 332, and sections 326.83 to 326.98, unless a different penalty is specified.

Sec. 5. Minnesota Statutes 1990, section 45.027, subdivision 7, is amended to read:

Subd. 7. **ACTIONS AGAINST LICENSEES.** In addition to any other actions authorized by this section, the commissioner may, by order, deny, suspend, or revoke the authority or license of a person subject to chapters 45 to 83, 155A, 309, or 332, or sections 326.83 to 326.98, or censure that person if the commissioner finds that:

(1) the order is in the public interest; and

(2) the person has violated chapters 45 to 83, 155A, 309, or 332, or sections 326.83 to 326.98.

Sec. 6. Minnesota Statutes 1990, section 45.027, subdivision 8, is amended to read:

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Subd. 8. **STOP ORDER.** In addition to any other actions authorized by this section, the commissioner may issue a stop order denying effectiveness to or suspending or revoking any registration subject to chapters 45 to 83, 309, or 332, or sections 326.83 to 326.98.

## RESIDENTIAL CONTRACTORS .

### Sec. 7. [326.83] DEFINITIONS.

Subdivision 1. APPLICABILITY. The definitions in this section apply to sections 7 to 22.

Subd. 2. COMMISSIONER. "Commissioner" means the commissioner of commerce.

Subd. 3. COUNCIL. "Council" means the builders state advisory council.

Subd. 4. LICENSEE. "Licensee" means a residential building contractor, remodeler, or specialty contractor licensed under sections 7 to 22.

Subd. 5. MECHANICAL CONTRACTOR. "Mechanical contractor" means a person, sole proprietor, partnership, joint venture, corporation, or other organization which is in the business of erection, installation, alteration, repair, relocation, replacement, addition to, use, or maintenance of any heating, ventilating, cooling, process piping, plumbing, fire protection, or refrigeration systems, incinerators, or other miscellaneous heat-producing appliance, piping, or equipment or appliances associated with those systems.

Subd. 6. PUBLIC MEMBER. "Public member" means a person who is not, and never was, a residential builder, remodeler, or specialty contractor or the spouse of such person, or a person who has no, or never has had a, material financial interest in acting as a residential building contractor, remodeler, or specialty contractor or a directly related activity.

Subd. 7. REMODELER. "Remodeler" means a person in the business of contracting or offering to contract to improve existing residential real estate. A remodeler has two or more special skills.

Subd. 8. RESIDENTIAL BUILDING CONTRACTOR. "Residential building contractor" means a person in the business of building residential real estate or of contracting or offering to contract to improve residential real estate.

Subd. 9. RESIDENTIAL REAL ESTATE. "Residential real estate" means a new or existing building constructed for habitation by one to four families, and includes detached garages.

Subd. 10. SPECIALTY CONTRACTOR. "Specialty contractor" means a person other than a residential building contractor, remodeler, or material supplier in the business of contracting or offering to contract to make part of an improvement to residential real estate, including roofing.

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**Sec. 8. [326.84] LICENSING REQUIREMENTS.**

Subdivision 1. PERSONS REQUIRED TO BE LICENSED. Except as provided in subdivision 3, no person may engage in the work of a residential building contractor, remodeler, or specialty contractor for compensation without a valid license issued by the commissioner. The commissioner shall recommend which types of one-skill competency or single special skill groups must be licensed as specialty contractors and report to the legislature by January 31, 1992, with the recommended types of specialty groups, the licensing procedures, and potential continuing education requirements.

Subd. 2. PERSONS CONSIDERED LICENSED. Residential building contractors, remodelers, and specialty contractors are considered licensed if the following requirements are met:

(1) for a sole proprietorship, the proprietor is licensed;

(2) for a partnership, a general partner is licensed; and

(3) for a corporation, a chief executive officer, responsible managing employee, or qualifying person in Minnesota designated by the corporation is licensed. "Responsible managing employee" or "qualifying person" means an employee who is regularly employed by the corporation and is actively engaged in the classification of work for which the responsible managing employee qualifies on behalf of the corporation. A person may act in the capacity of the qualifying party for one additional corporation if one of the following conditions exist:

(i) there is a common ownership of at least 25 percent of each licensed corporation for which the person acts in a qualifying capacity; or

(ii) one corporation is a subsidiary of another corporation for which the same person acts in a qualifying capacity. "Subsidiary," as used in this section, means a corporation of which at least 25 percent is owned by the parent corporation.

Subd. 3. EXCEPTIONS. The license requirement does not apply to:

(1) an employee of a licensee performing work for the licensee;

(2) a material person, manufacturer, or retailer furnishing finished products, materials, or articles of merchandise who does not install or attach the items;

(3) an owner or owners of residential real estate who improve the residential real estate or who build or improve a structure on the residential real estate and who do the work themselves or jointly with the owner's own employees or agents;

(4) an architect or engineer engaging in professional practice as defined in this chapter;

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(5) a person engaging in any project by one or more contracts, for which the aggregate contract price, including labor, materials, installation, and all other items, is less than \$2,500. The \$2,500 limit may be exceeded by the unlicensed person if the person's total gross annual receipts from projects regulated under this section do not exceed \$15,000;

(6) a mechanical contractor, plumber, or electrician;

(7) a person doing excavation for the installation of an on-site sewage treatment system;

(8) all specialty contractors that were required to be licensed by the state before the effective date of sections 7 to 22; and

(9) specialty contractors that are not required to be licensed, as determined by the legislature.

#### Sec. 9. [326.85] ADVISORY COUNCIL.

Subdivision 1. BUILDERS STATE ADVISORY COUNCIL. The commissioner shall appoint seven persons to the builders state advisory council. At least three members of the council must reside in greater Minnesota, as defined in section 116O.02, subdivision 5. At least one member of the council must be a residential building contractor, one a remodeler, one a specialty contractor, one a representative of the commissioner, one a local building official, and one a public member.

Subd. 2. MEMBERSHIP TERMS. The membership terms, compensation, removal, and filling of vacancies of the council are as provided in section 15.059.

Subd. 3. DUTIES. The council shall advise the commissioner on matters related to sections 7 to 22.

#### Sec. 10. [326.86] FEES.

Subdivision 1. LICENSING FEE. The licensing fee for residential building contractors and remodelers is \$60 for the license period ending March 31, 1993, and \$75 for each year thereafter. The commissioner may adjust the fees under section 16A.128 to recover the costs of administration and enforcement. The commissioner shall establish licensing fees for specialty contractors under section 16A.128. The fees must be limited to the cost of license administration and enforcement and must be deposited in the state treasury and credited to the general fund.

Subd. 2. LOCAL SURCHARGE. A local government unit may place a surcharge in an amount no greater than \$5 on each building permit that requires a licensed residential building contractor, remodeler, or specialty contractor for the purpose of license verification. The local government may verify a license by telephone or facsimile machine.

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Sec. 11. [326.87] CONTINUING EDUCATION.

Subdivision 1. STANDARDS. The commissioner, in consultation with the council, may adopt standards for continuing education requirements and course approval. Except for the course content, the standards must be consistent with the standards established for real estate agents and other professions licensed by the department of commerce.

Subd. 2. HOURS. A licensee of a general residential contractor or remodeler must provide proof of completion of 15 hours for each two-year license period. Continuing real estate hours and continuing general residential contractor or remodeler hours must be granted for the same course if it meets the guidelines for an approved course in each license program.

Subd. 3. ACCESSIBILITY. To the extent possible, the commissioner shall ensure that continuing education courses are offered throughout the state and are easily accessible to all licensees.

Sec. 12. [326.88] TEMPORARY LICENSES.

A temporary license must be issued to residential building contractors, remodelers, or specialty contractors if the person who obtained a license under section 8, subdivision 2, clause (2) or (3), leaves the partnership or corporation because of death, disability, retirement, or position change. A temporary license expires after one year and may not be renewed.

Sec. 13. [326.89] APPLICATION AND EXAMINATION.

Subdivision 1. FORM. An applicant for a license under sections 7 to 22 must submit an application to the commissioner, under oath, on a form prescribed by the commissioner. Within 30 business days of receiving all required information, the commissioner must act on the license request. If one of the categories in the application does not apply, the applicant must state the reason. The commissioner may refuse to issue a license if the application is not complete or contains unsatisfactory information.

Subd. 2. CONTENTS. The application must include the following information regarding the applicant:

- (1) Minnesota workers' compensation insurance account number;
- (2) employment insurance account number;
- (3) type of license requested;
- (4) name and address of the applicant if the applicant is a sole proprietor; name and address of each partner if the applicant is a partnership; or name and address of each of the corporate officers, directors, and all shareholders holding more than five percent of the outstanding stock in the corporation;

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(5) whether the applicant has ever been licensed in any other state and has had a professional or vocational license refused, suspended, or revoked;

(6) whether the applicant or any of its corporate or partnership directors, officers, limited or general partners, managers, or all shareholders holding more than five percent of the outstanding stock of the corporation has been convicted of a crime that either related directly to the business for which the license is sought or involved fraud, misrepresentation, or misuse of funds; has suffered a judgment in a civil action involving fraud, misrepresentation, negligence, or breach of contract, or conversion within the ten years prior to the submission of the application; or has had any government license or permit suspended or revoked as a result of an action brought by a federal, state, or local governmental unit or agency in this or any other state;

(7) the applicant's education and experience as they relate to the requested type of license; and

(8) the applicant's business history for the past five years and whether the applicant has ever filed for bankruptcy or protection from creditors or has any unsatisfied judgments against the applicant.

The commissioner may require further information as the commissioner deems appropriate to administer the provisions and further the purposes of this chapter.

Subd. 3. EXAMINATION. All individual applicants must satisfactorily complete a written examination for the type of license requested. The commissioner may establish the examination qualifications, including related education experience and education, the examination procedure, and the examination for each licensing group. The examination must include at a minimum the following areas:

(1) appropriate knowledge of technical terms commonly used and the knowledge of reference materials and code books to be used for technical information; and

(2) understanding of the general principles of business management and other pertinent state laws.

Each examination must be designed for the specified type of license requested. The council shall advise the commissioner on the grading, monitoring, and updating of examinations.

Subd. 4. COMPETENCY SKILLS. The commissioner shall, in consultation with the council, determine the competency skills and installation knowledge required for the licensing of specialty contractors.

Subd. 5. EXEMPTION. A general retailer whose primary business is not being a residential building contractor, remodeler, or specialty contractor and who has completed a comparable license examination in another state is exempt from subdivisions 3 and 4 and sections 11 and 12.

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## Sec. 14. [326.90] LOCAL LICENSE PROHIBITED.

Except as provided in section 24, a political subdivision may not require a residential building contractor, remodeler, or specialty contractor to also be licensed under any ordinance, law, rule, or regulation of the political subdivision. This section does not prohibit charges for building permits or other charges not directly related to licensure.

## Sec. 15. [326.91] DENIAL, SUSPENSION, OR REVOCATION OF LICENSES.

Subdivision 1. CAUSE. The commissioner may by order deny, suspend, or revoke any license or may censure a licensee if the commissioner finds that the order is in the public interest, and that the applicant or licensee:

(1) has filed an application for a license which is incomplete in any material respect or contains any statement which, in light of the circumstances under which it is made, is false or misleading with respect to any material fact;

(2) has engaged in a fraudulent, deceptive, or dishonest practice;

(3) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the business;

(4) has failed to reasonably supervise employees, agents, subcontractors, or salespersons, or has performed negligently or in breach of contract, so as to cause injury or harm to the public;

(5) has violated or failed to comply with any provision of sections 7 to 22 or any rule or order under sections 7 to 22;

(6) has been shown to be incompetent, untrustworthy, or financially irresponsible;

(7) has been convicted of a violation of the state building code;

(8) has failed to use the proceeds of any payment made to the licensee for the construction of, or any improvement to, residential real estate, as defined in section 326.83, subdivision 9, for the payment of labor, skill, material, and machinery contributed to the construction or improvement, knowing that the cost of any labor performed, or skill, material, or machinery furnished for the improvement remains unpaid; or

(9) has not furnished to the person making payment either a valid lien waiver as to any unpaid labor performed, or skill, material, or machinery furnished for an improvement, or a payment bond in the basic amount of the contract price for the improvement conditioned for the prompt payment to any person or persons entitled to payment.

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Subd. 2. ADMINISTRATIVE ACTION. Section 45.027 applies to any action taken by the commissioner in connection with the administration of sections 7 to 22.

**Sec. 16. [326.92] PENALTIES.**

Subdivision 1. MISDEMEANOR. A person required to be licensed under sections 7 to 22 who performs unlicensed work as a residential building contractor, remodeler, or specialty contractor is guilty of a misdemeanor.

Subd. 2. LIEN RIGHTS. An unlicensed person who knowingly violates sections 7 to 22 has no right to claim a lien under section 514.01 and the lien is void. Nothing in this section affects the lien rights of material suppliers and licensed contractors to the extent provided by law.

Subd. 3. COMMISSIONER ACTION. The commissioner may bring actions, including cease and desist actions, against an unlicensed or licensed residential building contractor, remodeler, or specialty contractor to protect the public health, safety, and welfare.

**Sec. 17. [326.93] SERVICE OF PROCESS; NONRESIDENT LICENSING.**

Subdivision 1. LICENSE. A nonresident of Minnesota may be licensed as a residential building contractor, remodeler, or specialty contractor upon compliance with all the provisions of sections 7 to 22.

Subd. 2. SERVICE OF PROCESS. Service of process upon a person performing work in the state of a type that would require a license under sections 7 to 22 may be made as provided in section 45.028.

**Sec. 18. [326.94] BOND; INSURANCE.**

Subdivision 1. BOND. (a) Residential building contractors, remodelers, and specialty contractors licensed under section 8 must post a license bond with the commissioner, conditioned that the applicant shall faithfully perform the duties and in all things comply with all laws, ordinances, and rules pertaining to the license or permit applied for and all contracts entered into. The annual bond must be continuous and maintained for so long as the licensee remains licensed. The aggregate liability of the surety on the bond to any and all persons, regardless of the number of claims made against the bond, may not exceed the amount of the bond. The bond may be canceled as to future liability by the surety upon 30 days written notice mailed to the commissioner by regular mail.

(b) The commissioner shall establish by rule a bond scale based on the gross annual receipts of the licensee. The residential building contractor and remodeler licensees must post a bond of at least \$5,000. A specialty contractor licensee must post a bond of at least \$2,500. The bond amounts for specialty contractor licensees must be based upon the same classifications as a residential building contractor and remodeler licensee.

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Subd. 2. INSURANCE. Residential building contractors, remodelers, and specialty contractors must have public liability insurance with limits of at least \$100,000 per occurrence and \$10,000 property damage insurance. The commissioner may increase the minimum amount of insurance required based on the type of license and the annual gross receipts of the licensee.

Sec. 19. [326.95] LICENSE NUMBER; ADVERTISING.

Subdivision 1. LICENSE NUMBER MUST BE DISPLAYED. The license number of a licensee must be placed on all building permits and building permit applications made to or issued by the state or a political subdivision. In jurisdictions that have not adopted the state building code, the license number must be placed on the site plan review or zoning permit. License numbers must be on all business cards and all contracts to perform work for which a license is required.

Subd. 2. ADVERTISING. The license number of a licensee must appear in any display advertising by that licensee.

Subd. 3. CONTRACTS. Contracts entered into by a licensee must state that the person is licensed and must state the license number.

Subd. 4. NOTICES. License numbers must appear on each notice under section 514.011, and each statement under section 514.08.

Sec. 20. [326.96] PUBLIC EDUCATION.

The commissioner may develop materials and programs to educate the public concerning licensing requirements and methods for reporting unlicensed contracting activity.

Sec. 21. [326.97] LICENSE RENEWAL.

Subdivision 1. APPROVAL. Licensees whose applications have been properly and timely filed and who have not received notice of denial of renewal are considered to have been approved for renewal and may continue to transact business whether or not the renewed license has been received. Application for renewal of a license is required every two years after the initial issuance. Applications are timely if received or postmarked by December 15 of the year prior to the renewal year. Applications must be made on a form approved by the commissioner.

Subd. 2. FAILURE TO APPLY. A person who has failed to make a timely application for renewal of a license by March 31 of the renewal year is unlicensed until the license has been issued by the commissioner and is received by the applicant.

Subd. 3. REEXAMINATION NOT REQUIRED. An examination is not required for the renewal of a license, except that a licensee who has failed to renew a license for two years must retake the examination. The commissioner may stagger the dates of license renewal.

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Sec. 22. **[326.98] RULES.**

The commissioner may adopt rules to administer and enforce sections 7 to 22.

Sec. 23. **INITIAL TEMPORARY LICENSES.**

Residential building contractors and remodelers must obtain a temporary license, which is effective as of January 1, 1992. The commissioner may stagger the temporary licenses so that approximately one-half of the licenses will expire on March 31, 1993, and the other one-half on March 31, 1994.

Sec. 24. **EXEMPTION.**

The license requirement under section 8 does not apply to a residential building contractor, remodeler, or specialty contractor licensed by the city of St. Paul or the city of Minneapolis and who is performing work within the legal boundaries of one of those municipalities. The two cities shall adopt and administer the tests for the residential building contractors and remodelers established in section 13 within six months of the effective date of the rules establishing the examinations. The commissioner may by rule establish a procedure for the city of Minneapolis and the city of St. Paul to administer this licensing program on a contract basis.

Sec. 25. **APPROPRIATION.**

\$912,000 is appropriated from the general fund to the commissioner of commerce to administer sections 7 to 22. \$436,000 is for fiscal year 1992 and \$476,000 is for fiscal year 1993.

\$216,000 is appropriated from the general fund to the attorney general to administer sections 7 to 22. \$88,000 is for fiscal year 1992 and \$128,000 is for fiscal year 1993.

Sec. 26. **REPEALER.**

Section 24 is repealed March 31, 1993.

Sec. 27. **EFFECTIVE DATE.**

Sections 9 and 22 are effective the day following final enactment. Section 8 is effective January 1, 1992.

Presented to the governor May 30, 1991

Signed by the governor June 3, 1991, 4:17 p.m.

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