

CHAPTER 439—S.F.No. 1915

An act relating to commerce; changing the enforcement authority of the commissioner; providing continuing education and reporting requirements for certain licenses; regulating inspections of cosmetology salons and schools; regulating disclosures of information and data; regulating securities registrations and exemptions; regulating franchise registrations and definitions; regulating cancellations of membership camping contracts; modifying the bond or insurance requirements for abstractors; regulating residential building contractors; regulating certain real estate disclosures; regulating unclaimed properties and notaries public; removing a certain licensing exception; repealing an obsolete provision; amending Minnesota Statutes 1994, sections 45.011, subdivision 1; 45.027, subdivision 7, and by adding subdivisions; 47.206, subdivision 1; 53A.081, subdivision 1; 60K.19, subdivisions 7, 8, and 10; 80A.05, subdivision 1; 80A.06, subdivision 3; 80A.09, by adding a subdivision; 80A.10, subdivision 4; 80A.11, by adding a subdivision; 80A.14, by adding subdivisions; 80A.15, subdivisions 2 and 3; 80C.01, by adding a subdivision; 80C.05, by adding a subdivision; 82.19, subdivision 5; 82.195, subdivision 2; 82.196, subdivisions 1 and 2; 82.197, subdivisions 1, 2, 3, and 4; 82.22, subdivision 13; 82A.11, by adding a subdivision; 82B.19, by adding a subdivision; 155A.08, subdivision 3; 155A.09, subdivision 7; 155A.095; 326.37, by adding a subdivision; 326.87, by adding a subdivision; 326.91, by adding subdivisions; 326.991; 332.34; 345.41; 345.42; 345.43, by adding a subdivision; 345.515; 359.01, subdivisions 1 and 2; 359.02; and 359.061; Minnesota Statutes 1995 Supplement, sections 16A.6701, subdivision 1; 80A.15, subdivision 1; 82.20, subdivision 15; 82.34, subdivision 7; 83.26, subdivision 2; and 386.66; proposing coding for new law in Minnesota Statutes, chapters 45; and 332; repealing Minnesota Statutes 1994, sections 80A.14, subdivision 8; 326.95, subdivision 4; 326.97, subdivision 3; 326.99; and 345.43, subdivisions 1 and 2.

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

ARTICLE 1**GENERAL ENFORCEMENT**

Section 1. Minnesota Statutes 1995 Supplement, section 16A.6701, subdivision 1, is amended to read:

Subdivision 1. **STATE LICENSE AND SERVICE FEES.** For purposes of section 16A.665, subdivision 3, and this section, the term "state license and service fees" means, and refers to, all license fees, service fees, and charges imposed by law and collected by any state officer, agency, or employee, which are listed below or which are defined as departmental earnings under section 16A.1285, subdivision 1, and the use of which is not otherwise restricted by law, and which are not required to be credited or transferred to a fund other than the general fund:

Minnesota Statutes 1994, sections 3.9221; 5.12; 5.14; 5.16; 5A.04; 6.58; 13.03, subdivision 10; 16A.155; 16A.48; 16A.54; 16A.72; 16B.59; 16B.70; 17A.04; 18.51, subdivision 2; 18.53; 18.54; 18C.551; 19.58; 19.64; 27.041, subdivision 2, clauses (d) and (e); 27.07, subdivision 5; 28A.08; 32.071; 32.075; 32.392; 35.71; 35.824; 35.95; 41C.12;

New language is indicated by underline, deletions by ~~strikeout~~.

45.027, subdivisions 3 and 6; 46.041, subdivision 1; 46.131, subdivisions 2, 7, 8, 9, and 10; 47.101, subdivision 2; 47.54, subdivisions 1 and 4; 47.62, subdivision 4; 47.65; 48.475, subdivision 1; 48.61, subdivision 7; 48.93; 49.36, subdivision 1; 52.01; 52.203; 53.03, subdivisions 1, 5, and 6; 53.09, subdivision 1; 53A.03; 53A.05, subdivision 1; 53A.081, subdivision 3; 54.294, subdivision 1; 55.04, subdivision 2; 55.095; 56.02; 56.04; 56.10; 59A.03, subdivision 2; 59A.06, subdivision 3; 60A.14, subdivisions 1 and 2; 60A.23, subdivision 8; 60K.19, subdivision 5; 65B.48, subdivision 3; 70A.14, subdivision 4; 72B.04, subdivision 10; 79.251, subdivision 5; 80A.28, subdivisions 1, 2, 3, 4, 5, 6, 7, 7a, 8, and 9; 80C.04, subdivision 1; 80C.07; 80C.08, subdivision 1; 80C.16, subdivisions 2 and 3; 80C.18, subdivision 2; 82.20, subdivision 8 and 9; 82A.04, subdivision 1; 82A.08, subdivision 2; 82A.16, subdivisions 2 and 6; 82B.09, subdivision 1; 83.23, subdivisions 2, 3, and 4; 83.25, subdivisions 1 and 2; 83.26, subdivision 2; 83.30, subdivision 2; 83.31, subdivision 2; 83.38, subdivision 2; 85.052; 85.053; 85.055; 88.79, subdivision 2; 89.035; 89.21; 115.073; 115.77, subdivisions 1 and 2; 116.41, subdivision 2; 116C.69; 116C.712; 116J.9673; 125.08; 136C.04, subdivision 9; 155A.045; 155A.16; 168.27, subdivision 11; 168.33, subdivisions 3 and 7; 168.54; 168.67; 168.705; 168A.152; 168A.29; 169.345; 171.06, subdivision 2a; 171.29, subdivision 2; 176.102; 176.1351; 176.181, subdivision 2a; 177.30; 181A.12; 183.545; 183.57; 184.28; 184.29; 184A.09; 201.091, subdivision 5; 204B.11; 207A.02; 214.06; 216C.261; 221.0355; 239.101; 240.06; 240.07; 240.08; 240.09; 240.10; 246.51; 270.69, subdivision 2; 270A.07; 272.484; 296.06; 296.12; 296.17; 297.04; 297.33; 299C.46; 299C.62; 299K.09; 299K.095; 299L.07; 299M.04; 300.49; 318.02; 323.44, subdivision 3; 325D.415; 326.22; 326.3331; 326.47; 326.50; 326.92, subdivisions 1 and 3; 327.33; 331A.02; 332.15, subdivisions 2 and 3; 332.17; 332.22, subdivision 1; 332.33, subdivisions 3 and 4; 332.54, subdivision 7; 333.055; 333.20; 333.23; 336.9-413; 336A.04; 336A.05; 336A.09; 345.35; 345.43, subdivision 1 2a; 345.44; 345.55, subdivision 3; 347.33; 349.151; 349.161; 349.162; 349.163; 349.164; 349.165; 349.166; 349.167; 357.08; 359.01, subdivision 3; 360.018; 360.63; 386.68; and 414.01, subdivision 11; Minnesota Statutes 1994, chapters 154; 216B; 237; 302A; 303; 308A; 317A; 322A; and 322B; Laws 1990, chapter 593; Laws 1993, chapter 254, section 7; and Laws 1994, chapter 573, section 4; Minnesota Rules, parts 1800.0500; 1950.1070; 2100.9300; 7515.0210; and 9545.2000 to 9545.2040.

Sec. 2. Minnesota Statutes 1994, section 45.011, subdivision 1, is amended to read:

Subdivision 1. **SCOPE.** As used in chapters 45 to 83, 155A, 309, 332, 345, and 359, and sections 326.83 to 326.98, and 386.61 to 386.78, unless the context indicates otherwise, the terms defined in this section have the meanings given them.

Sec. 3. **[45.016] SERVICE OF ORDERS OR OTHER PAPERS.**

Service of orders or other papers required or permitted to be issued by the commissioner related to the duties and responsibilities entrusted to the commissioner may be by any of the following methods:

(1) personal service consistent with requirements for service of a summons or process under section 303.13 or 543.19, or under rule 4.03 of the Minnesota Rules of Civil Procedure;

(2) first class United States mail, including certified United States mail, or overnight express mail service, postage prepaid and addressed to the party at the party's last known

New language is indicated by underline, deletions by ~~strikeout~~.

address. Service by United States mail, including certified mail, is complete upon placing the order or other paper in the mail or otherwise delivering the order or other paper to the United States mail service. Service by overnight express mail service is complete upon delivering the order or other document to an authorized agent of the express mail service; or

(3) any other method of service provided under the laws relating to duties and responsibilities entrusted to the commissioner.

Sec. 4. Minnesota Statutes 1994, 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 the duties and responsibilities entrusted to the commissioner, as described under section 45.011, subdivision 4, or censure that person if the commissioner finds that:

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

(2) the person has violated any law, rule, or order related to the duties and responsibilities entrusted to the commissioner; or

(3) the person has provided false, misleading, or incomplete information to the commissioner or has refused to allow a reasonable inspection of records or premises; or

(4) the person has engaged in an act or practice, whether or not the act or practice directly involves the business for which the person is licensed or authorized, which demonstrates that the applicant or licensee is untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act under the authority or license granted by the commissioner.

Except for information classified as confidential under sections 60A.03, subdivision 9; 60A.031; 60A.93; and 60D.22, the commissioner may make any data otherwise classified as private or confidential pursuant to this section accessible to an appropriate person or agency if the commissioner determines that the access will aid the law enforcement process, promote public health or safety, or dispel widespread rumor or unrest. If the commissioner determines that private or confidential information should be disclosed, the commissioner shall notify the attorney general as to the information to be disclosed, the purpose of the disclosure, and the need for the disclosure. The attorney general shall review the commissioner's determination. If the attorney general believes that the commissioner's determination does not satisfy the purpose and intent of this provision, the attorney general shall advise the commissioner in writing that the information may not be disclosed. If the attorney general believes the commissioner's determination satisfies the purpose and intent of this provision, the attorney general shall advise the commissioner in writing, accordingly.

After disclosing information pursuant to this provision, the commissioner shall advise the chairs of the senate and house of representatives judiciary committees of the disclosure and the basis for it.

Sec. 5. Minnesota Statutes 1994, section 45.027, is amended by adding a subdivision to read:

New language is indicated by underline, deletions by ~~strikeout~~.

Subd. 12. CONDITIONS OF RELICENSURE. A revocation of a license prohibits the licensee from making a new application for a license for at least two years from the effective date of the revocation. The commissioner may, as a condition of reapplication, require the applicant to obtain a bond or comply with additional reasonable conditions of licensure the commissioner considers necessary to protect the public.

Sec. 6. Minnesota Statutes 1994, section 53A.081, subdivision 1, is amended to read:

Subdivision 1. **ANNUAL REPORT.** On or before ~~March 1~~ April 30, a licensee shall file an annual report with the commissioner for the previous calendar year. The report must contain information that the commissioner may reasonably require concerning, and for the purpose of examining, the business and operations of each licensed currency exchange.

Sec. 7. Minnesota Statutes 1994, section 60K.19, subdivision 7, is amended to read:

Subd. 7. **CRITERIA FOR COURSE ACCREDITATION.** (a) The commissioner may accredit a course only to the extent it is designed to impart substantive and procedural knowledge of the insurance field. The burden of demonstrating that the course satisfies this requirement is on the individual or organization seeking accreditation. The commissioner shall approve any educational program approved by Minnesota Continuing Legal Education relating to the insurance field. The commissioner is authorized to establish a procedure for renewal of course accreditation.

(b) The commissioner shall approve or disapprove professional designation examinations that are recommended for approval by the advisory task force. In order for an agent to receive full continuing education credit for a professional designation examination, the agent must pass the examination. An agent may not receive credit for classroom instruction preparing for the professional designation examination and also receive continuing education credit for passing the professional designation examination.

(c) The commissioner may not accredit a course:

- (1) that is designed to prepare students for a license examination;
- (2) in mechanical office or business skills, including typing, speedreading, use of calculators, or other machines or equipment;
- (3) in sales promotion, including meetings held in conjunction with the general business of the licensed agent;
- (4) in motivation, the art of selling, psychology, or time management; or
- (5) which can be completed by the student at home or outside the classroom without the supervision of an instructor approved by the department of commerce, except that home-study courses may be accredited by the commissioner if the student is a nonresident agent residing in a state which is not contiguous to Minnesota.

Sec. 8. Minnesota Statutes 1994, section 60K.19, subdivision 8, is amended to read:

Subd. 8. **MINIMUM EDUCATION REQUIREMENT.** Each person subject to this section shall complete a minimum of 30 credit hours of courses accredited by the commissioner during each 24-month licensing period after the expiration of his or her

New language is indicated by underline, deletions by ~~strikeout~~.

initial licensing period. At least 15 of the 30 credit hours must be completed during the first 12 months of the 24-month licensing period. Any person whose initial licensing period extends more than six months shall complete 15 hours of courses accredited by the commissioner during the initial license period. Any person teaching or lecturing at an accredited course qualifies for 1-1/2 times the number of credit hours that would be granted to a person completing the accredited course. No more than 15 credit hours per licensing period may be credited to a person for courses sponsored by, offered by, or affiliated with an insurance company or its agents. ~~Continuing education must be earned no later than September 30 of the renewal year.~~ Courses sponsored by, offered by, or affiliated with an insurance company or agent may restrict its students to agents of the company or agency.

Sec. 9. Minnesota Statutes 1994, section 60K.19, subdivision 10, is amended to read:

Subd. 10. **REPORTING.** (a) After completing the minimum education requirement, each person subject to this section shall file or cause to be filed a compliance report in accordance with the procedures adopted by the commissioner. The compliance report must not claim credit for continuing education not actually completed at the date of filing the report.

(b) An institution offering an accredited course shall comply with the procedure for reporting compliance adopted by the commissioner.

(c) If a person subject to this section completes a nonaccredited course, that person may submit a written report to the advisory committee accompanied by a fee of not more than \$10 payable to the state of Minnesota for deposit in the general fund. This report must be accompanied by proof satisfactory to the commissioner that the person has completed the minimum education requirement for the annual period during which the non-accredited course was completed. Upon the recommendation of the advisory committee that the course satisfies the criteria for course accreditation, the commissioner may approve the nonaccredited course and shall so inform the person. If the nonaccredited course is approved by the commissioner, it may be used to satisfy the minimum education requirement for the person's next annual compliance period.

Sec. 10. Minnesota Statutes 1995 Supplement, section 82.20, subdivision 15, is amended to read:

Subd. 15. **EXEMPTION.** The following persons, when acting as closing agents, are exempt from the requirements of sections 82.19 and 82.24 unless otherwise required in this section or chapter:

(1) a direct employee of a title insurance company authorized to do business in this state, or a direct employee of a title company, or a person who has an agency agreement with a title insurance company or a title company in which the agent agrees to perform closing services on the title insurance company's or title company's behalf and the title insurance company or title company assumes responsibility for the actions of the agent as if the agent were a direct employee of the title insurance company or title company;

(2) a licensed attorney or a direct employee of a licensed attorney;

(3) a licensed real estate broker or salesperson;

(4) a direct employee of a licensed real estate broker if the broker maintains all funds received in connection with the closing services in the broker's trust account; ~~and~~

New language is indicated by underline, deletions by ~~strikeout~~.

(5) any bank, trust company, savings association, credit union, industrial loan and thrift company, regulated lender under chapter 56, public utility, or land mortgage or farm loan association organized under the laws of this state or the United States, when engaged in the transaction of businesses within the scope of its corporate powers as provided by law; and

(6) a title insurance company authorized to do business in this state or a title company which is the appointed agent of a title insurance company authorized to do business in this state.

Sec. 11. Minnesota Statutes 1995 Supplement, section 82.34, subdivision 7, is amended to read:

Subd. 7. When any aggrieved person obtains a final judgment in any court of competent jurisdiction regardless of whether the judgment has been discharged by a bankruptcy court against an individual licensed under this chapter, on grounds of fraudulent, deceptive, or dishonest practices, or conversion of trust funds arising directly out of any transaction when the judgment debtor was licensed and performed acts for which a license is required under this chapter, or performed acts permitted by section 327B.04, subdivision 5, the aggrieved person may, upon the judgment becoming final, and upon termination of all proceedings, including reviews and appeals, file a verified application in the court in which the judgment was entered. The application shall state with specificity the grounds upon which the application seeks to recover from the fund, and request an order directing payment out of the fund of the amount of actual and direct out of pocket loss in the transaction, but excluding any attorney's fees, interest on the loss and on any judgment obtained as a result of the loss, up to the sum of \$150,000 of the amount unpaid upon the judgment, provided that nothing in this chapter shall be construed to obligate the fund for more than \$150,000 per claimant, per transaction, subject to the limitations set forth in subdivision 14, regardless of the number of persons aggrieved or parcels of real estate involved in the transaction, provided that regardless of the number of claims against a licensee, nothing in this chapter may obligate the fund for more than \$250,000 per licensee. An aggrieved person who has a cause of action under section 80A.23 shall first seek recovery as provided in section 80A.05, subdivision 5, before the commissioner may order payment from the recovery fund. For purposes of this section, persons who are joint tenants or tenants in common are deemed to be a single claimant. A copy of the verified application shall be served upon the commissioner and upon the judgment debtor, and a certificate or affidavit of service filed with the court. For the purpose of this section, "aggrieved person" shall does not include a government agency, financial institution, or other entity that purchases, guarantees, or insures a loan secured by real estate, and does not include a licensee unless (1) the licensee is acting in the capacity of principal in the sale of interests in real property owned by the licensee; or (2) the licensee is acting in the capacity of principal in the purchase of interests in real property to be owned by the licensee. Under no circumstances shall a licensee be entitled to payment under this section for the loss of a commission or similar fee.

For the purposes of this section, recovery is limited to transactions where the property involved is intended for the direct personal habitation or commercial use of the buyer.

Except for securities permitted to be sold by a licensee pursuant to section 82.19, subdivision 7, for any action commenced after July 1, 1993, recovery under this section is

New language is indicated by underline, deletions by ~~strikeout~~.

not available where the buyer's participation is for investment purposes only, and is limited to providing capital to fund the transaction.

Sec. 12. Minnesota Statutes 1995 Supplement, section 83.26, subdivision 2, is amended to read:

Subd. 2. **GENERALLY; TRANSACTIONS.** Unless the method of offer or sale is adopted for the purpose of evasion of sections 83.20 to 83.42, 83.43 and 83.44, the following transactions are exempt from sections 83.23, 83.24, 83.25, 83.28, 83.29, and 83.30:

(a) the offer or sale of an interest in subdivided land by an owner, other than the subdivider, acting as principal in a single or isolated transaction;

(b) the offer or sale of all of the subdivided lands within a subdivision in a single transaction to any person;

(c) the offer or sale of subdivided land pursuant to an order of competent jurisdiction, other than a court of bankruptcy;

(d) the offer or sale of subdivided land consisting of not more than ten separate lots, units, parcels, or interests in the aggregate, provided that no subdivider may make an offer or sale of subdivided land pursuant to this exemption more than once during any period of 12 consecutive months;

(e) the offer or sale of subdivided lands which have been registered under section 83.23, subdivision 2, if there are no more than ten separate lots, units, parcels, or interests remaining to be sold and no material change has occurred in the information on file with the commissioner;

(f) the offer and sale of subdivided land located within the corporate limits of a municipality as defined in section 462.352, subdivision 2, which municipality has adopted subdivision regulations as defined in section 462.352, except those lands described in section 83.20, subdivision 13;

(g) the offer and sale of apartments or condominium units as defined in chapters 515 and 515A, and units in common interest communities as defined in chapter 515B;

(h) the offer and sale of subdivided lands used primarily for agricultural purposes provided each parcel is at least ten acres in size;

(i) the offer or sale of improved lots if:

(1) the subdivider has filed with the commissioner, no later than ten business days prior to the date of the first sale, a written notice of its intention to offer or sell improved lots, which notice shall be accompanied by a fee of \$50, together with a copy of the public offering statement accepted by the situs state and the standard purchase agreement which documents are required to be supplied by the subdivider to the purchaser; and

(2) the subdivider deposits all downpayments in an escrow account until all obligations of the subdivider to the purchaser, which are pursuant to the terms of the purchase agreement to be performed prior to the closing, have been performed. The subdivider shall provide the purchaser with a purchase receipt for the downpayment paid, a copy of the escrow agreement and the name, address, and telephone number of the escrow agent.

New language is indicated by underline, deletions by ~~strikeout~~.

The escrow agent shall be a bank located in Minnesota. All downpayments shall be deposited in the escrow account within two business days after receipt; and

(j) the offer of sale of subdivided lands by a subdivider that has been granted an exemption from registration by the federal Department of Housing and Urban Development under the multiple site subdivision exemption, if the subdivider provides a written notice of the offer of sale to the commissioner before any offers or sale commence.

The written notice must include the name of the subdivision, the county and state in which the subdivision is located, and the number of lots in the subdivision, and a notarized affidavit that all proposed improvements have been completed and the costs of all the improvements have been fully paid, or that the cost of any uncompleted road construction or survey expenses are covered by a bond or escrow account payable to the entities responsible for providing or completing the roads or surveys. The escrow account must be with an independent escrow agent.

The subdivider must also provide to the commissioner a copy of the federal Housing and Urban Development exemption order and the most recent annual confirmation letter which indicates that the order is still in effect.

If the closing services are provided by the subdivider or an affiliate of the subdivider, purchasers must manually initial in the Housing and Urban Development Lot Information Statement both the disclosure on all the liens, reservations, taxes, assessments, easements, and restrictions applicable to the lot purchased and the disclosure on the risks of not obtaining clear title.

The commissioner may, by rule or order, suspend, revoke, or further condition the exemptions contained in clauses (f), (g), (h), (i), and (j), or may require such further information as may be necessary for the protection of purchasers.

The commissioner may by rule or order suspend, revoke, or further condition the exemptions contained in clauses (f), (g), (h), and (i) or may require such further information as may be necessary for the protection of purchasers.

The rulemaking authority in this subdivision does not include emergency rulemaking authority pursuant to chapter 14.

Sec. 13. Minnesota Statutes 1994, section 155A.08, subdivision 3, is amended to read:

Subd. 3. **HEALTH AND SANITARY STANDARDS.** Minimum health and sanitary standards for the operation of a salon shall be established by rule. A salon shall not be located in a room used for residential purposes. If a salon is in the residence of a person practicing cosmetology, the rooms used for the practice of cosmetology shall be completely partitioned off from the living quarters. ~~There shall be an inspection at least annually~~ The salon may be inspected as often as the commissioner considers necessary to affirm compliance.

Sec. 14. Minnesota Statutes 1994, section 155A.09, subdivision 7, is amended to read:

Subd. 7. **INSPECTIONS.** All schools ~~shall~~ may be inspected ~~at least once a year as often as the commissioner considers necessary to affirm compliance.~~ The commissioner shall have the authority to assess the cost of the inspection to the school.

New language is indicated by underline, deletions by ~~strikeout~~.

Sec. 15. Minnesota Statutes 1994, section 155A.095, is amended to read:

155A.095 INSPECTIONS.

The commissioner is responsible for inspecting salons and schools licensed pursuant to this chapter to assure compliance with the requirements of this chapter. The commissioner shall direct department resources first to the inspection of those licensees who fail to meet the requirements of law, have indicated that they present a greater risk to the public, or have otherwise, in the opinion of the commissioner, demonstrated that they require a greater degree of regulatory attention. ~~In no event shall a salon or school be inspected less often than once each year.~~

Sec. 16. Minnesota Statutes 1994, section 332.34, is amended to read:

332.34 BOND.

The commissioner of commerce shall require each collection agency licensee to annually file and maintain in force a corporate surety bond, in a form to be prescribed by, and acceptable to, the commissioner, and in the sum of \$20,000. An applicant for a new or renewal license may request that the amount of the bond be reduced to an amount not less than \$5,000. This request may be granted upon a showing that the total dollar amount received from debtors by the collection agency in the preceding fiscal year did not exceed \$30,000. A collection agency may deposit cash in and with a depository acceptable to the commissioner in an amount and in the manner prescribed and approved by the commissioner in lieu of a bond.

Sec. 17. [332.395] COMMISSIONER'S POWER OVER INEFFECTIVE LICENSES.

If a license lapses, is surrendered, withdrawn, terminated, or otherwise becomes ineffective, the commissioner of commerce may do either or both of the following: (1) institute a proceeding under section 45.027 within two years after the license was last effective and enter a revocation or suspension order as of the last date on which the license was in effect; (2) impose a civil penalty as provided for in section 45.027, subdivision 6.

Sec. 18. Minnesota Statutes 1994, section 345.41, is amended to read:

345.41 REPORT OF ABANDONED PROPERTY.

(a) Every person holding funds or other property, tangible or intangible, presumed abandoned under sections 345.31 to 345.60 shall report annually to the commissioner with respect to the property as hereinafter provided.

(b) The report shall be verified and shall include:

(1) except with respect to traveler's checks and money orders, the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of the value of \$100 or more presumed abandoned under sections 345.31 to 345.60;

(2) in case of unclaimed funds of life insurance corporations, the full name of the policyholder, insured or annuitant and that person's last known address according to the life insurance corporation's records;

(3) the nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under \$100 each may be reported in aggregate;

New language is indicated by underline, deletions by ~~strikeout~~.

(4) the date when the property became payable, demandable or returnable, and the date of the last transaction with the owner with respect to the property; and

(5) other information which the commissioner prescribes by rule as necessary for the administration of sections 345.31 to 345.60.

(c) If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner, or if the holder has changed a name while holding the property, the holder shall file with the report all prior known names and addresses of each holder of the property.

(d) The report shall be filed before November 1 of each year as of June 30 next preceding, but the report of life insurance corporations shall be filed before October 1 of each year as of December 31 next preceding. The commissioner may postpone the reporting date upon written request by any person required to file a report.

(e) If the holder of property presumed abandoned under sections 345.31 to 345.60 knows the whereabouts of the owner and if the owner's claim has not been barred by the statute of limitations, the holder shall, before filing the annual report, inform the owner of the steps necessary to prevent abandonment from being presumed. Not more than 120 days before filing the report required by this section, the holder in possession of property abandoned and subject to custody as unclaimed property under this chapter shall send written notice to the presumed owner at that owner's last known address informing the owner that the holder is in possession of property subject to this chapter and advising the owner of the steps necessary to prevent abandonment if:

(1) the holder has in its records an address for the presumed owner that the holder's records do not disclose to be inaccurate;

(2) the claim of the apparent owner is not barred by the statute of limitations; and

(3) the property has a value of \$100 or more.

(f) Verification, if made by a partnership, shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer, and if made by a public corporation, by its chief fiscal officer.

(g) Holders of property described in section 345.32 shall not impose any charges against property which is described in section 345.32, clause (a), (b) or (c).

(h) Any person who has possession of property which the person has reason to believe will be reportable in the future as unclaimed property may, with the permission of the commissioner, report and deliver such property prior to the date required for reporting in accordance with this section.

Sec. 19. Minnesota Statutes 1994, section 345.42, is amended to read:

345.42 NOTICE AND PUBLICATION OF LISTS OF ABANDONED PROPERTY.

Subdivision 1. On or before April 1 of each year Within the calendar year next following the year in which abandoned property has been paid or delivered to the commissioner, the commissioner shall cause notice to be published at least once but not more than twice in an English language newspaper of general circulation in the county in this

New language is indicated by underline, deletions by ~~strikeout~~.

state in which is located the last known address of any person to be named in the notice. If no address is listed or if the address is outside this state, the notice shall be published in the county in which the holder of the abandoned property has a principal place of business within this state.

Subd. 2. The published notice shall be entitled "notice of names of persons appearing to be owners of abandoned property," and shall contain:

(a) the names in alphabetical order and last known addresses, if any, of persons listed in the report and entitled to notice within the county as hereinbefore specified;

(b) a statement that information concerning the amount or description of the property and the name and address of the holder may be obtained by any persons possessing an interest in the property by addressing an inquiry to the commissioner explaining that property of the owner has been presumed to be abandoned and has been taken into the protective custody of the commissioner; and

(c) a statement that if proof of claim is not presented by the owner to the holder and if the owner's right to receive the property is not established to the holder's satisfaction within 65 days from the date of the second published notice, the abandoned property will be placed not later than 85 days after such publication date in the custody of the commissioner to whom all further claims must thereafter be directed information about the abandoned property and its return to the apparent owner may be obtained at any time by a person having a legal or beneficial interest in that property by making an inquiry to the commissioner.

The commissioner is not required to publish in such notice any item of less than \$100 unless the commissioner deems such publication to be in the public interest.

Subd. 3. On or before April 1 of each year within the calendar year next following the year in which abandoned property has been paid or delivered to the commissioner, the commissioner may mail a notice to each person having an address listed therein who appears to be entitled to property of the value of \$100 or more presumed abandoned under sections 345.31 to 345.60. Said notice shall contain:

(a) a statement that, according to a report filed with the commissioner, property is being held to which the addressee appears entitled;

(b) the name and address of the person holding the property and any necessary information regarding changes of name and address of the holder a statement explaining that property of the owner has been presumed to be abandoned and has been taken into the protective custody of the commissioner; and

(c) a statement that, if satisfactory proof of claim is not presented by the owner to the holder by the date specified in the published notice, the property will be placed in the custody of the commissioner to whom all further claims must be directed information about the abandoned property and its return to the apparent owner may be obtained at any time by a person having a legal or beneficial interest in that property by making an inquiry to the commissioner.

Subd. 4. This section is not applicable to sums payable on traveler's checks or money orders presumed abandoned under section 345.32.

New language is indicated by underline, deletions by ~~strikeout~~.

Sec. 20. Minnesota Statutes 1994, section 345.43, is amended by adding a subdivision to read:

Subd. 2a. **HOLDER'S OBLIGATIONS.** At the time of the filing of the report required under section 345.41 and with that report, the holder reporting property presumed abandoned and subject to custody as unclaimed property shall pay or deliver to the commissioner all of the property shown on the report and remaining unclaimed by the apparent owner.

Upon written request showing good cause, the commissioner may postpone the payment or delivery upon the terms or conditions the commissioner considers necessary and appropriate.

The property paid or delivered to the commissioner shall include all interest, dividends, increments, and accretions due, payable, or distributable on the property on November 1, or October 1 for a life insurance company. If payment or delivery is postponed, the property paid or delivered to the commissioner shall include accretions due, payable, or distributable on the day that the property is paid or delivered to the commissioner.

Sec. 21. Minnesota Statutes 1994, section 345.515, is amended to read:

345.515 AGREEMENTS TO LOCATE REPORTED PROPERTY.

It is unlawful for a person to seek or receive from another person or contract with a person for a fee or compensation for locating property knowing it to have been reported or paid or delivered to the commissioner pursuant to chapter 345 prior to seven months after the date of delivery of the property by the holder to published notice by the commissioner as required by section 345.43 345.42.

No agreement entered into after seven months from the date of delivery of the property by the holder to published notice by the commissioner is valid if a person thereby undertakes to locate property included in a report for a fee or other compensation exceeding ten percent of the value of the recoverable property unless the agreement is in writing and signed by the owner and discloses the nature and value of the property and the name and address of the holder thereof as such facts have been reported. Nothing in this section shall be construed to prevent an owner from asserting at any time that an agreement to locate property is based upon an excessive or unjust consideration.

Sec. 22. Minnesota Statutes 1994, section 359.01, subdivision 1, is amended to read:

Subdivision 1. **RESIDENT NOTARIES.** The governor may appoint and commission as notaries public, by and with the advice and consent of the senate, as many citizens of this state or resident aliens, over the age of 18 years, as the governor considers necessary. The commissioner of commerce shall perform all duties necessary to appoint and commission notaries public under this section on the governor's behalf.

Sec. 23. Minnesota Statutes 1994, section 359.01, subdivision 2, is amended to read:

Subd. 2. **NONRESIDENT NOTARIES.** Notwithstanding the provisions of subdivision 1, The governor may appoint as notary public or the commissioner of commerce, acting on the governor's behalf, by and with the advice and consent of the senate, may appoint as notary public a person who is not a resident of this state if:

(1) the person is a resident of Wisconsin, Iowa, North Dakota, or South Dakota, and of a county that shares a boundary with this state;

New language is indicated by underline, deletions by ~~strikeout~~.

(2) the person designates the commissioner as agent for the service of process for all purposes relating to notarial acts and for receipt of all correspondence relating to notarial acts.

Sec. 24. Minnesota Statutes 1994, section 359.02, is amended to read:

359.02 TERM.

A notary commissioned under section 359.01 holds office for five years, unless sooner removed by the governor or the district court, or by action of the commissioner. Within 30 days before the expiration of the commission a notary may be reappointed for a new term to commence and to be designated in the new commission as beginning upon the day immediately following the date of the expiration. The reappointment takes effect and is valid although the appointing governor may not be in the office of governor on the effective day.

(a) All notary commissions issued before January 31, 1995, will expire on January 31, 1995.

(b) All notary commissions issued after January 31, 1995, will expire at the end of the licensing period, which will end every fifth year following January 31, 1995.

(c) All notary commissions issued during a licensing period expire at the end of that period as set forth in this section.

Sec. 25. Minnesota Statutes 1994, section 359.061, is amended to read:

359.061 RECORD OF COMMISSION; CERTIFICATE.

The commission of every notary shall be recorded in the office of the court administrator of the district court of the notary's county of appointment residence, in a record kept for that purpose. The court administrator, when requested, shall certify to official acts in the manner and for the fees prescribed by statute or court rule.

Sec. 26. UNCLAIMED PROPERTY STUDY.

The attorney general, in consultation with the department of commerce, shall study unclaimed property laws and make recommendations to the legislature by December 1, 1996, with respect to legal strategies and improved enforcement tools that the program could implement as a means to maximize the program's ability to collect and return unclaimed property to its proper owners in Minnesota.

Sec. 27. REPEALER.

Minnesota Statutes 1994, section 345.43, subdivisions 1 and 2, are repealed.

Sec. 28. EFFECTIVE DATES.

Sections 7, 10 to 12, and 26 are effective the day following final enactment.

New language is indicated by underline, deletions by ~~strikeout~~.

ARTICLE 2

SECURITIES

Section 1. Minnesota Statutes 1994, section 45.027, is amended by adding a subdivision to read:

Subd. 7a. **AUTHORIZED DISCLOSURES OF INFORMATION AND DATA.** The commissioner may release and disclose any active or inactive investigative information and data on licensees to any national securities exchange or national securities association registered under the Securities Exchange Act of 1934 when necessary for the requesting agency in initiating, furthering, or completing an investigation.

Sec. 2. Minnesota Statutes 1994, section 80A.05, subdivision 1, is amended to read:

Subdivision 1. A broker-dealer, agent or investment adviser may obtain an initial or renewal license by filing with the commissioner or a designee an application together with a consent to service of process pursuant to section 80A.27, subdivision 7. The application shall be on a form prescribed by the commissioner and shall contain whatever information the commissioner requires concerning such matters as the applicant's form and place of organization, proposed method of doing business and financial condition, the qualifications and experience of the applicant, including, in the case of a broker-dealer or investment adviser, the qualifications and experience of any partner, officer, director or controlling person, any injunction or administrative order or conviction of a misdemeanor involving securities and any conviction of a felony. The commissioner may by order, with respect to any particular application, require the submission of information concerning any other matters which the commissioner determines are relevant to the application. The commissioner may by rule or order require an applicant for an initial license to publish an announcement of the application in one or more specified newspapers published in this state.

If no denial order is in effect, no proceeding is pending under section 80A.07, and all of the requirements of this subdivision and subdivision 3 have been complied with, the licensing becomes effective 30 days after an application is filed. The commissioner may by rule or order specify an earlier effective date, and may by order defer the effective date until 30 days after the filing of any amendment.

An application that is incomplete will be considered withdrawn if no activity occurs with respect to the application for a period of 120 days. Notwithstanding section 80A.28, subdivision 1, paragraph (c), no part of the filing fee shall be returned if a registration statement is withdrawn according to this subdivision.

Sec. 3. Minnesota Statutes 1994, section 80A.06, subdivision 3, is amended to read:

Subd. 3. If the information contained in any document filed with the commissioner is or becomes inaccurate or incomplete in any material respect, the licensee shall promptly within 30 days file a correcting amendment unless notification of the correction has been given under section 80A.04, subdivision 2.

Sec. 4. Minnesota Statutes 1994, section 80A.09, is amended by adding a subdivision to read:

New language is indicated by underline, deletions by ~~strikeout~~.

Subd. 5. WITHDRAWAL. A registration statement that is incomplete will be considered withdrawn if no activity occurs with respect to the application for a period of 120 days. Notwithstanding section 80A.28, subdivision 1, paragraph (c), no part of the filing fee shall be returned if a registration statement is withdrawn according to this subdivision.

Sec. 5. Minnesota Statutes 1994, section 80A.10, subdivision 4, is amended to read:

Subd. 4. WITHDRAWAL. A registration statement that has been on file with the commissioner for a period of nine months and has not become effective is considered to have been withdrawn. If the registration statement has been amended, the nine-month period must be computed from the date of the latest amendment. is pending effectiveness will be considered withdrawn if no activity occurs with respect to the application for a period of 120 days. Notwithstanding the provisions of section 80A.28, subdivision 1, paragraph (c), no part of the filing fee shall be returned if a registration statement is withdrawn pursuant according to this subdivision.

Sec. 6. Minnesota Statutes 1994, section 80A.11, is amended by adding a subdivision to read:

Subd. 5. WITHDRAWAL. A registration statement that is pending effectiveness will be considered withdrawn if no activity occurs with respect to the application for a period of 120 days. Notwithstanding section 80A.28, subdivision 1, paragraph (c), no part of the filing fee shall be returned if a registration statement is withdrawn according to this subdivision.

Sec. 7. Minnesota Statutes 1994, section 80A.14, is amended by adding a subdivision to read:

Subd. 20. QUALIFIED CHARITY. "Qualified charity" means an organization that is described in section 501(c)(3) of the Internal Revenue Code and that is not a private foundation as described in section 509 of the Internal Revenue Code.

Sec. 8. Minnesota Statutes 1994, section 80A.14, is amended by adding a subdivision to read:

Subd. 21. INTERNAL REVENUE CODE. "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, United States Code, title 26, section 1 et seq.

Sec. 9. Minnesota Statutes 1994, section 80A.14, is amended by adding a subdivision to read:

Subd. 22. POOLED INCOME FUND. "Pooled income fund" means a trust that meets the requirements of a pooled income fund as defined in section 642(C)(5) of the Internal Revenue Code, provided that the remainder beneficiary is a qualified charity.

Sec. 10. Minnesota Statutes 1994, section 80A.14, is amended by adding a subdivision to read:

Subd. 23. CHARITABLE REMAINDER TRUST. "Charitable remainder trust" means a trust that meets the requirements of either a charitable remainder annuity trust or a charitable remainder unitrust as defined in section 664 of the Internal Revenue Code, provided that the remainder beneficiary is a qualified charity.

New language is indicated by underline, deletions by ~~strikeout~~.

Sec. 11. Minnesota Statutes 1994, section 80A.14, is amended by adding a subdivision to read:

Subd. 24. CHARITABLE LEAD TRUST. "Charitable lead trust" means a trust that meets the requirements of a charitable lead trust as described in section 170(F)(2) of the Internal Revenue Code, provided that the lead beneficiary is a qualified charity.

Sec. 12. Minnesota Statutes 1994, section 80A.14, is amended by adding a subdivision to read:

Subd. 25. CHARITABLE GIFT ANNUITY. "Charitable gift annuity" means an annuity that meets the requirements of a charitable gift annuity as defined in section 501(m)(5) of the Internal Revenue Code.

Sec. 13. Minnesota Statutes 1995 Supplement, section 80A.15, subdivision 1, is amended to read:

Subdivision 1. The following securities are exempted from sections 80A.08 and 80A.16:

(a) Any security, including a revenue obligation, guaranteed by the United States, any state, any political subdivision of a state or any corporate or other instrumentality of one or more of the foregoing; ~~but this exemption shall not include any industrial revenue bond.~~ Pursuant to section 106(c) of the Secondary Mortgage Market Enhancement Act of 1984, Public Law Number 98-440, this exemption does not apply to a security that is offered or sold pursuant to section 106(a)(1) or (2) of that act.

(b) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any province, any agency or corporate or other instrumentality of one or more of the foregoing, if the security is recognized as a valid obligation by the issuer or guarantor; but this exemption shall not include any revenue obligation payable solely from payments to be made in respect of property or money used under a lease, sale or loan arrangement by or for a nongovernmental industrial or commercial enterprise.

(c) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank, savings institution or trust company organized under the laws of any state and subject to regulation in respect of the issuance or guarantee of its securities by a governmental authority of that state.

(d) Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings association, or any savings association or similar association organized under the laws of any state and authorized to do business in this state.

(e) Any security issued or guaranteed by any federal credit union or any credit union, or similar association organized and supervised under the laws of this state.

(f) Any security listed or approved for listing upon notice of issuance on the New York Stock Exchange, the American Stock Exchange, the Midwest Stock Exchange, the Pacific Stock Exchange, or the Chicago Board Options Exchange; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing. This exemption does not apply to second tier listings on any of the exchanges in this paragraph.

New language is indicated by underline, deletions by ~~strikeout~~.

(g) Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of the paper which is likewise limited, or any guarantee of the paper or of any renewal which are not advertised for sale to the general public in newspapers or other publications of general circulation or otherwise, or by radio, television or direct mailing.

(h) Any interest in any employee's savings, stock purchase, pension, profit sharing or similar benefit plan, or a self-employed person's retirement plan.

(i) Any security issued or guaranteed by any railroad, other common carrier or public utility which is subject to regulation in respect to the issuance or guarantee of its securities by a governmental authority of the United States.

(j) Any interest in a common trust fund or similar fund maintained by a state bank or trust company organized and operating under the laws of Minnesota, or a national bank wherever located, for the collective investment and reinvestment of funds contributed thereto by the bank or trust company in its capacity as trustee, executor, administrator, or guardian; and any interest in a collective investment fund or similar fund maintained by the bank or trust company, or in a separate account maintained by an insurance company, for the collective investment and reinvestment of funds contributed thereto by the bank, trust company or insurance company in its capacity as trustee or agent, which interest is issued in connection with an employee's savings, pension, profit sharing or similar benefit plan, or a self-employed person's retirement plan.

(k) Any security which meets all of the following conditions:

(1) If the issuer is not organized under the laws of the United States or a state, it has appointed a duly authorized agent in the United States for service of process and has set forth the name and address of the agent in its prospectus;

(2) A class of the issuer's securities is required to be and is registered under section 12 of the Securities Exchange Act of 1934, and has been so registered for the three years immediately preceding the offering date;

(3) Neither the issuer nor a significant subsidiary has had a material default during the last seven years, or for the period of the issuer's existence if less than seven years, in the payment of (i) principal, interest, dividend, or sinking fund installment on preferred stock or indebtedness for borrowed money, or (ii) rentals under leases with terms of three years or more;

(4) The issuer has had consolidated net income, before extraordinary items and the cumulative effect of accounting changes, of at least \$1,000,000 in four of its last five fiscal years including its last fiscal year; and if the offering is of interest bearing securities, has had for its last fiscal year, net income, before deduction for income taxes and depreciation, of at least 1-1/2 times the issuer's annual interest expense, giving effect to the proposed offering and the intended use of the proceeds. For the purposes of this clause "last fiscal year" means the most recent year for which audited financial statements are available, provided that such statements cover a fiscal period ended not more than 15 months from the commencement of the offering;

(5) If the offering is of stock or shares other than preferred stock or shares, the securities have voting rights and the rights include (i) the right to have at least as many votes per

New language is indicated by underline, deletions by ~~strikeout~~.

share, and (ii) the right to vote on at least as many general corporate decisions, as each of the issuer's outstanding classes of stock or shares, except as otherwise required by law; and

(6) If the offering is of stock or shares, other than preferred stock or shares, the securities are owned beneficially or of record, on any date within six months prior to the commencement of the offering, by at least 1,200 persons, and on that date there are at least 750,000 such shares outstanding with an aggregate market value, based on the average bid price for that day, of at least \$3,750,000. In connection with the determination of the number of persons who are beneficial owners of the stock or shares of an issuer, the issuer or broker-dealer may rely in good faith for the purposes of this clause upon written information furnished by the record owners.

(l) Any certificate of indebtedness sold or issued for investment, other than a certificate of indebtedness pledged as a security for a loan made contemporaneously therewith, and any savings account or savings deposit issued, by an industrial loan and thrift company.

(m) Any security designated or approved for designation upon notice of issuance on the NASDAQ/National Market System; any other security of the same issuer that is of senior or substantially equal rank; any security called for by subscription rights or warrants so designated or approved; or any warrant or right to purchase or subscribe to any of the securities referred to in this paragraph; provided that the National Market System provides the commissioner with notice of any material change in its designation requirements. The commissioner may revoke this exemption if the commissioner determines that the designation requirements are not enforced or are amended in a manner that lessens protection to investors.

Sec. 14. Minnesota Statutes 1994, section 80A.15, subdivision 2, is amended to read:

Subd. 2. The following transactions are exempted from sections 80A.08 and 80A.16:

(a) Any sales, whether or not effected through a broker-dealer, provided that:

(1) no person shall make more than ten sales of securities of the same issuer pursuant to this exemption, exclusive of sales according to clause (2), during any period of 12 consecutive months; provided further, that in the case of sales by an issuer, except sales of securities registered under the Securities Act of 1933 or exempted by section 3(b) of that act, (1) (i) the seller reasonably believes that all buyers are purchasing for investment, and (2) (ii) the securities are not advertised for sale to the general public in newspapers or other publications of general circulation or otherwise, or by radio, television, electronic means or similar communications media, or through a program of general solicitation by means of mail or telephone.; and

(2) no issuer shall make more than 25 sales of its securities according to this exemption, exclusive of sales pursuant to clause (1), during any period of 12 consecutive months; provided further, that the issuer meets the conditions in clause (1) and, in addition meets the following additional conditions: (i) files with the commissioner, ten days before a sale according to this clause, a statement of issuer on a form prescribed by the commissioner; and (ii) no commission or other remuneration is paid or given directly or

New language is indicated by underline, deletions by ~~strikeout~~.

indirectly for soliciting any prospective buyers in this state in connection with a sale according to this clause except reasonable and customary commissions paid by the issuer to a broker-dealer licensed under this chapter.

(b) Any nonissuer distribution of an outstanding security if (1) either Moody's, Fitch's, or Standard & Poor's Securities Manuals, or other recognized manuals approved by the commissioner contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date not more than 18 months prior to the date of the sale, and a profit and loss statement for the fiscal year preceding the date of the balance sheet, and (2) the issuer or its predecessor has been in active, continuous business operation for the five-year period next preceding the date of sale, and (3) if the security has a fixed maturity or fixed interest or dividend provision, the issuer has not, within the three preceding fiscal years, defaulted in payment of principal, interest, or dividends on the securities.

(c) The execution of any orders by a licensed broker-dealer for the purchase or sale of any security, pursuant to an unsolicited offer to purchase or sell; provided that the broker-dealer acts as agent for the purchaser or seller, and has no direct material interest in the sale or distribution of the security, receives no commission, profit, or other compensation from any source other than the purchaser and seller and delivers to the purchaser and seller written confirmation of the transaction which clearly itemizes the commission, or other compensation.

(d) Any nonissuer sale of notes or bonds secured by a mortgage lien if the entire mortgage, together with all notes or bonds secured thereby, is sold to a single purchaser at a single sale.

(e) Any judicial sale, exchange, or issuance of securities made pursuant to an order of a court of competent jurisdiction.

(f) The sale, by a pledge holder, of a security pledged in good faith as collateral for a bona fide debt.

(g) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity.

(h) Any sales by an issuer to the number of persons that shall not exceed 25 persons in this state, or 35 persons if the sales are made in compliance with Regulation D promulgated by the Securities and Exchange Commission, Code of Federal Regulations, title 17, sections 230.501 to 230.506, (other than those designated in paragraph (a) or (g)), whether or not any of the purchasers is then present in this state, if (1) the issuer reasonably believes that all of the buyers in this state (other than those designated in clause (g)) are purchasing for investment, and (2) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer in this state (other than those designated in clause (g)), except reasonable and customary commissions paid by the issuer to a broker-dealer licensed under this chapter, and (3) the issuer has, ten days prior to any sale pursuant to this paragraph, supplied the commissioner with a statement of issuer on forms prescribed by the commissioner, containing the following information: (i) the name and address of the issuer, and the date and state of its organization; (ii) the number of units, price per unit, and a description of the securities to be sold; (iii) the amount of commissions to be paid and the persons to whom they will be paid; (iv) the names of all

New language is indicated by underline, deletions by ~~strikeout~~.

officers, directors and persons owning five percent or more of the equity of the issuer; (v) a brief description of the intended use of proceeds; (vi) a description of all sales of securities made by the issuer within the six-month period next preceding the date of filing; and (vii) a copy of the investment letter, if any, intended to be used in connection with any sale. Sales that are made more than six months before the start of an offering made pursuant to this exemption or are made more than six months after completion of an offering made pursuant to this exemption will not be considered part of the offering, so long as during those six-month periods there are no sales of unregistered securities (other than those made pursuant to paragraph (a) or (g)) by or for the issuer that are of the same or similar class as those sold under this exemption. The commissioner may by rule or order as to any security or transaction or any type of security or transaction, withdraw or further condition this exemption, or increase the number of offers and sales permitted, or waive the conditions in clause (1), (2), or (3) with or without the substitution of a limitation or remuneration. An offer or sale of securities by an issuer made in reliance on the exemptions provided by Rule 505 or 506 of Regulation D promulgated by the Securities and Exchange Commission, Code of Federal Regulations, title 17, sections 230.501 to 230.508, subject to the conditions and definitions provided by Rules 501 to 503 of Regulation D, if the offer and sale also satisfies the conditions and limitations in clauses (1) to (10).

(1) The exemption under this paragraph is not available for the securities of an issuer if any of the persons described in Rule 252(c) to (f) of Regulation A promulgated by the Securities and Exchange Commission, Code of Federal Regulations, title 17, sections 230.251 to 230.263:

(i) has filed a registration statement that is the subject of a currently effective order entered against the issuer, its officers, directors, general partners, controlling persons, or affiliates, according to any state's law within five years before the filing of the notice required under clause (5), denying effectiveness to, or suspending or revoking the effectiveness of, the registration statement;

(ii) has been convicted, within five years before the filing of the notice required under clause (5), of a felony or misdemeanor in connection with the offer, sale, or purchase of a security or franchise, or a felony involving fraud or deceit, including but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud;

(iii) is subject to an effective administrative order or judgment entered by a state securities administrator within five years before the filing of the notice required under clause (5), that prohibits, denies, or revokes the use of an exemption from securities registration, that prohibits the transaction of business by the person as a broker-dealer or agent, or that is based on fraud, deceit, an untrue statement of a material fact, or an omission to state a material fact; or

(iv) is subject to an order, judgment, or decree of a court entered within five years before the filing of the notice required under clause (5), temporarily, preliminarily, or permanently restraining or enjoining the person from engaging in or continuing any conduct or practice in connection with the offer, sale, or purchase of a security, or the making of a false filing with a state.

A disqualification under paragraph (h) involving a broker-dealer or agent is waived if the broker-dealer or agent is or continues to be licensed in the state in which the admin-

* New language is indicated by underline, deletions by ~~strikeout~~.

istrative order or judgment was entered against the person or if the broker-dealer or agent is or continues to be licensed in this state as a broker-dealer or agent after notifying the commissioner of the act or event causing disqualification.

The commissioner may waive a disqualification under paragraph (h) upon a showing of good cause that it is not necessary under the circumstances that use of the exemption be denied.

A disqualification under paragraph (h) may be waived if the state securities administrator or agency of the state that created the basis for disqualification has determined, upon a showing of good cause, that it is not necessary under the circumstances that an exemption from registration of securities under the state's laws be denied.

It is a defense to a violation of paragraph (h) based upon a disqualification if the issuer sustains the burden of proof to establish that the issuer did not know, and in the exercise of reasonable care could not have known, that a disqualification under paragraph (h) existed.

(2) This exemption must not be available to an issuer with respect to a transaction that, although in technical compliance with this exemption, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in paragraph (h).

(3) No commission, finder's fee, or other remuneration shall be paid or given, directly or indirectly, for soliciting a prospective purchaser, unless the recipient is appropriately registered, or exempt from registration, in this state as a broker-dealer.

(4) Nothing in this exemption is intended to or should be in any way construed as relieving issuers or persons acting on behalf of issuers from providing disclosure to prospective investors adequate to satisfy the antifraud provisions of the securities law of Minnesota.

(5) The issuer shall file with commissioner a notice on form D as adopted by the Securities and Exchange Commission according to Regulation D, Code of Federal Regulations, title 17, section 230.502. The notice must be filed not later than 15 days after the first sale in this state of securities in an offering under this exemption. Every notice on form D must be manually signed by a person duly authorized by the issuer and must be accompanied by a consent to service of process on a form prescribed by the commissioner.

(6) A failure to comply with a term, condition, or requirement of paragraph (h) will not result in loss of the exemption for an offer or sale to a particular individual or entity if the person relying on the exemption shows that: (i) the failure to comply did not pertain to a term, condition, or requirement directly intended to protect that particular individual or entity, and the failure to comply was insignificant with respect to the offering as a whole; and (ii) a good faith and reasonable attempt was made to comply with all applicable terms, conditions, and requirements of paragraph (h), except that, where an exemption is established only through reliance upon this provision, the failure to comply shall nonetheless constitute a violation of section 80A.08 and be actionable by the commissioner.

(7) The issuer, upon request by the commissioner, shall, within ten days of the request, furnish to the commissioner a copy of any and all information, documents, or materials furnished to investors or offerees in connection with the offer and sale according to paragraph (h).

New language is indicated by underline, deletions by strikeout.*

(8) Neither compliance nor attempted compliance with the exemption provided by paragraph (h), nor the absence of an objection or order by the commissioner with respect to an offer or sale of securities undertaken according to this exemption, shall be considered to be a waiver of a condition of the exemption or considered to be a confirmation by the commissioner of the availability of this exemption.

(9) The commissioner may, by rule or order, increase the number of purchasers or waive any other condition of this exemption.

(10) The determination whether offers and sales made in reliance on the exemption set forth in paragraph (h) shall be integrated with offers and sales according to other paragraphs of this subdivision shall be made according to the integration standard set forth in Rule 502 of Regulation D promulgated by the Securities and Exchange Commission, Code of Federal Regulations, title 17, section 230.502. If not subject to integration according to that rule, offers and sales according to paragraph (h) shall not otherwise be integrated with offers and sales according to other exemptions set forth in this subdivision.

(i) Any offer (but not a sale) of a security for which a registration statement has been filed under sections 80A.01 to 80A.31, if no stop order or refusal order is in effect and no public proceeding or examination looking toward an order is pending; and any offer of a security if the sale of the security is or would be exempt under this section. The commissioner may by rule exempt offers (but not sales) of securities for which a registration statement has been filed as the commissioner deems appropriate, consistent with the purposes of sections 80A.01 to 80A.31.

(j) The offer and sale by a cooperative organized under chapter 308A or under the laws of another state, of its securities when the securities are offered and sold only to its members, or when the purchase of the securities is necessary or incidental to establishing membership in the cooperative, or when such securities are issued as patronage dividends. This paragraph applies to a cooperative organized under the laws of another state only if the cooperative has filed with the commissioner a consent to service of process under section 80A.27, subdivision 7, and has, not less than ten days prior to the issuance or delivery, furnished the commissioner with a written general description of the transaction and any other information that the commissioner requires by rule or otherwise.

(l) The issuance and delivery of any securities of one corporation to another corporation or its security holders in connection with a merger, exchange of shares, or transfer of assets whereby the approval of stockholders of the other corporation is required to be obtained, provided, that the commissioner has been furnished with a general description of the transaction and with other information as the commissioner by rule prescribes not less than ten days prior to the issuance and delivery.

(m) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter or among underwriters.

(n) The distribution by a corporation of its or other securities to its own security holders as a stock dividend or as a dividend from earnings or surplus or as a liquidating distribution; or upon conversion of an outstanding convertible security; or pursuant to a stock split or reverse stock split.

(o) Any offer or sale of securities by an affiliate of the issuer thereof if: (1) a registration statement is in effect with respect to securities of the same class of the issuer and (2)

New language is indicated by underline, deletions by ~~strikeout~~.

the offer or sale has been exempted from registration by rule or order of the commissioner.

(p) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if: (1) no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state; and (2) the commissioner has been furnished with a general description of the transaction and with other information as the commissioner may by rule prescribe no less than ten days prior to the transaction.

(q) Any nonissuer sales of any security, including a revenue obligation, issued by the state of Minnesota or any of its political or governmental subdivisions, municipalities, governmental agencies, or instrumentalities.

(r) Any transaction as to which the commissioner by rule or order finds that registration is not necessary in the public interest and for the protection of investors.

(s) An offer or sale of a security issued in connection with an employee's stock purchase, savings, option, profit sharing, pension, or similar employee benefit plan, if the following conditions are met:

(1) the issuer, its parent corporation or any of its majority-owned subsidiaries offers or sells the security according to a written benefit plan or written contract relating to the compensation of the purchaser; and

(2) the class of securities offered according to the plan or contract, or if an option or right to purchase a security, the class of securities to be issued upon the exercise of the option or right, is registered under section 12 of the Securities Exchange Act of 1934, or is a class of securities with respect to which the issuer files reports according to section 15(d) of the Securities Exchange Act of 1934; or

(3) the issuer fully complies with the provisions of Rule 701 as adopted by the Securities and Exchange Commission, Code of Federal Regulations, title 12, section 230.701.

The issuer shall file not less than ten days before the transaction, a general description of the transaction and any other information that the commissioner requires by rule or otherwise or, if applicable, a Securities and Exchange Form S-8. Annually, within 90 days after the end of the issuer's fiscal year, the issuer shall file a notice as provided with the commissioner.

(t) Any sale of a security of an issuer that is a pooled income fund, a charitable remainder trust, or a charitable lead trust that has a qualified charity as the only charitable beneficiary.

(u) Any sale by a qualified charity of a security that is a charitable gift annuity if the issuer has a net worth, otherwise defined as unrestricted fund balance, of not less than \$300,000 and either: (1) has been in continuous operation for not less than three years; or (2) is a successor or affiliate of a qualified charity that has been in continuous operation for not less than three years.

Sec. 15. Minnesota Statutes 1994, section 80A.15, subdivision 3, is amended to read:

New language is indicated by underline, deletions by strikeout.

Subd. 3. The commissioner may issue an order requiring any person who claims the benefit of an exemption with respect to a specific security or transaction, to show cause why the exemption should not be revoked. The order shall be calculated to give reasonable notice of the time and place for hearing thereon, and shall state the reasons for the entry of the order. The commissioner may by order summarily suspend an exemption pending final determination of any order to show cause. If an exemption is suspended pending final determination of an order to show cause, a hearing on the merits shall be held within 30 days of the issuance of the order of suspension. All hearings shall be conducted in accordance with the provisions of chapter 14. After the hearing, the commissioner shall enter an order making such disposition of the matter as the facts require. If the person claiming the benefit of the exemption fails to appear at a hearing of which the person has been duly notified, such person shall be deemed in default, and the proceeding may be determined against the person upon consideration of the order to show cause, the allegations of which may be deemed to be true. The commissioner may adopt rules of procedure concerning all proceedings conducted pursuant to this subdivision.

A notice filing that is incomplete is considered withdrawn if no activity occurs with respect to the notice filing for a period of 120 days.

Sec. 16. Minnesota Statutes 1994, section 80C.01, is amended by adding a subdivision to read:

Subd. 19. **ASSIST THE PURCHASER IN FINDING LOCATIONS.** "Assist the purchaser in finding locations" means to directly assist the purchaser in finding locations, or to refer the purchaser to any resource which assists in finding locations and is affiliated with the seller through common ownership, common control, a referral fee arrangement, or any other business relationship. "Assist the purchaser in finding locations" does not include providing to the purchaser a written list of resources which assist in finding locations, provided that none of the resources on the list are affiliated with the seller in any way.

Sec. 17. Minnesota Statutes 1994, section 80C.05, is amended by adding a subdivision to read:

Subd. 4. An application for registration that has not become effective will be considered withdrawn if no activity occurs with respect to the application for a period of 120 days.

Sec. 18. **REPEALER.**

Minnesota Statutes 1994, section 80A.14, subdivision 8, is repealed.

ARTICLE 3

REAL ESTATE

Section 1. Minnesota Statutes 1994, section 82.19, subdivision 5, is amended to read:

Subd. 5. **DISCLOSURE REGARDING REPRESENTATION OF PARTIES.**
(a) No person licensed pursuant to this chapter or who otherwise acts as a real estate bro-

New language is indicated by underline, deletions by ~~strikeout~~.

ker or salesperson shall represent any party to a real estate transaction or otherwise act as a real estate broker or salesperson unless that person makes an affirmative written disclosure as to which party that person represents in the transaction. In a residential real property transaction, the disclosure must be made at the first substantive contact between the licensee and the party or potential party to the transaction. The disclosure shall be printed as a separate document, and acknowledged by the signature of the buyer, seller, or customer.

(b) The disclosure required by this subdivision must be made by the licensee with respect to any residential property transaction:

- (1) when representing the seller, at the signing of a listing agreement;
- (2) when representing the buyer, at the signing of a buyer's broker agreement;

(3) as to all other parties (potential buyers or sellers) who are not represented by the licensee, before discussion of financial information or the commencement of negotiations, which could affect that party's bargaining position in the transaction.

A change in the licensee's representation, including dual agency, that makes the initial disclosure required by this paragraph incomplete, misleading, or inaccurate requires that a new disclosure be made at once fail to provide at the first substantive contact with a consumer in a residential real property transaction an agency disclosure form as set forth in section 82.197.

(e) (b) The seller may, in the listing agreement, authorize the seller's broker to disburse part of the broker's compensation to other brokers, including the buyer's brokers solely representing the buyer. A broker representing a buyer shall make known to the seller or the seller's agent the fact of the agency relationship before any showing or negotiations are initiated.

Sec. 2. Minnesota Statutes 1994, section 82.195, subdivision 2, is amended to read:

Subd. 2. **CONTENTS.** All listing agreements must be in writing and must include:

- (1) a definite expiration date;
- (2) a description of the real property involved;
- (3) the list price and any terms required by the seller;
- (4) the amount of any compensation or commission or the basis for computing the commission;
- (5) a clear statement explaining the events or conditions that will entitle a broker to a commission;
- (6) information regarding an override clause, if applicable, including a statement to the effect that the override clause will not be effective unless the licensee supplies the seller with a protective list within 72 hours after the expiration of the listing agreement;
- (7) the following notice in not less than ten point boldface type immediately preceding any provision of the listing agreement relating to compensation of the licensee:

"NOTICE: THE COMMISSION RATE FOR THE SALE, LEASE, RENTAL, OR MANAGEMENT OF REAL PROPERTY SHALL BE DETERMINED BETWEEN EACH INDIVIDUAL BROKER AND ITS CLIENT.";

New language is indicated by underline, deletions by ~~strikeout~~.

(8) if the broker chooses to represent both buyers and sellers in connection with residential property transactions, a for residential property listings, the following "dual agency" disclosure statement:

If a buyer represented by broker wishes to buy your property, a dual agency will be created. This means that broker will represent both you and the buyer(s), and owe the same duties to the buyer(s) that broker owes to you. This conflict of interest will prohibit broker from advocating exclusively on your behalf. Dual agency will limit the level of representation broker can provide. If a dual agency should arise, you will need to agree that confidential information about price, terms, and motivation will still be kept confidential unless you instruct broker in writing to disclose specific information about you. All other information will be shared. Broker cannot act as a dual agent unless both you and the buyer(s) agree to it. By agreeing to a possible dual agency, you will be giving up the right to exclusive representation in an in-house transaction. However, if you should decide not to agree to a possible dual agency, and you want broker to represent you, you may give up the opportunity to sell your property to buyers represented by broker.

Seller's Instructions to Broker

Having read and understood this information about dual agency, seller(s) now instructs broker as follows:

..... Seller(s) will agree to a dual agency representation and will consider offers made by buyers represented by broker.

..... Seller will not agree to a dual agency representation and will not consider offers made by buyers represented by broker.

.....
Seller

.....
Broker

.....
Seller

By:
Salesperson

Date:

(9) a notice requiring the seller to indicate in writing whether it is acceptable to the seller to have the licensee arrange for closing services or whether the seller wishes to arrange for others to conduct the closing. The notice must also include the disclosure of any controlled business arrangement, as the term is defined in United States Code, title 12, section 2602, between the licensee and the real estate closing agent through which the licensee proposes to arrange closing services; and

New language is indicated by underline, deletions by ~~strikeout~~.

(10) for residential listings, a notice stating that after the expiration of the listing agreement, the seller will not be obligated to pay the licensee a fee or commission if the seller has executed another valid listing agreement pursuant to which the seller is obligated to pay a fee or commission to another licensee for the sale, lease, or exchange of the real property in question. This notice may be used in the listing agreement for any other type of real estate.

Sec. 3. Minnesota Statutes 1994, section 82.196, subdivision 1, is amended to read:

Subdivision 1. **REQUIREMENTS.** Licensees shall obtain a signed buyer's broker agreement from a buyer before performing any acts as a buyer's representative and before a purchase agreement is signed.

Sec. 4. Minnesota Statutes 1994, section 82.196, subdivision 2, is amended to read:

Subd. 2. **CONTENTS.** All buyer's broker agreements must be in writing and must include:

- (1) a definite expiration date;
- (2) the amount of any compensation or commission, or the basis for computing the commission;
- (3) a clear statement explaining the services to be provided to the buyer by the broker, and the events or conditions that will entitle a broker to a commission or other compensation;
- (4) a provision for cancellation of the agreement by either party upon terms agreed upon by the parties;
- (5) information regarding an override clause, if applicable, including a statement to the effect that the override clause will not be effective unless the licensee supplies the buyer with a protective list within 72 hours after the expiration of the buyer's broker agreement;
- (6) the following notice in not less than ten point bold face type immediately preceding any provision of the buyer's broker agreement relating to compensation of the licensee:

"NOTICE: THE COMMISSION RATE FOR THE PURCHASE, LEASE, RENTAL, OR MANAGEMENT OF REAL PROPERTY IS NEGOTIABLE AND SHALL BE DETERMINED BETWEEN EACH INDIVIDUAL BROKER AND ITS CLIENT.";

(7) if the broker chooses to represent both buyers and sellers, a the following "dual agency" disclosure statement:

If you choose to purchase a property listed by broker, a dual agency will be created. This means that broker will represent both you and the seller(s), and owe the same duties to the seller(s) that broker owes to you. This conflict of interest will prohibit broker from advocating exclusively on your behalf. Dual agency will limit the level of representation broker can provide. If a dual agency should arise, you will need to agree that confidential information about price, terms, and motivation will still be kept confidential unless you instruct broker in writing to disclose specific information about you. All other informa-

New language is indicated by underline, deletions by ~~strikeout~~.

tion will be shared. Broker cannot act as a dual agent unless both you and the seller(s) agree to it. By agreeing to a possible dual agency, you will be giving up the right to exclusive representation in an in-house transaction. However, if you should decide not to agree to a possible dual agency, and you want broker to represent you, you may give up the opportunity to purchase the properties listed by broker.

Buyer's Instructions to Broker

.....
Buyer(s) will agree to a dual agency representation and will consider properties listed by broker.

.....
Buyer will not agree to a dual agency representation and will not consider properties listed by broker.

.....
Buyer

.....
Broker

.....
Buyer

By:
Salesperson

Date: ; and

(8) for buyer's broker agreements which involve residential real property, a notice stating that after the expiration of the buyer's broker agreement, the buyer will not be obligated to pay the licensee a fee or commission if the buyer has executed another valid buyer's broker agreement pursuant to which the buyer is obligated to pay a fee or commission to another licensee for the purchase, lease, or exchange of real property.

Sec. 5. Minnesota Statutes 1994, section 82.197, subdivision 1, is amended to read:

Subdivision 1. AGENCY DISCLOSURE. The listing agreement or a buyer's broker agreement must include a clear and complete explanation of how the broker will represent the interests of the seller or buyer, and, if the broker represents both sellers and buyers, state how that representation would be altered in a dual agency situation, and require the seller or buyer to choose whether to authorize the broker to initiate any transaction which would give rise to dual agency. Disclosure to a customer of a licensee's agency relationship with other parties must be made at a time and in a manner sufficient to protect the customer's bargaining position. A real estate broker or salesperson shall provide to a consumer in a residential real property transaction at the first substantive contact with the consumer an agency disclosure form in substantially the form set forth in subdivision 4. The agency disclosure form shall be intended to provide a description of available op-

New language is indicated by underline, deletions by ~~strikeout~~.

tions for agency and nonagency relationships, and a description of the role of a licensee under each option. The agency disclosure form shall provide a signature line for acknowledgment of receipt by the consumer.

Sec. 6. Minnesota Statutes 1994, section 82.197, subdivision 2, is amended to read:

Subd. 2. CREATION OF DUAL AGENCY. If circumstances create a dual agency situation, the broker must make full disclosure to all parties to the transaction as to the change in relationship of the parties to the broker due to dual agency. A broker, having made full disclosure, must obtain the consent of all parties to these circumstances before accepting the dual agency, in residential real property transactions in the purchase agreement in the form set forth below which shall be set off in a boxed format to draw attention to it:

Broker represents both the seller(s) and the buyer(s) of the property involved in this transaction, which creates a dual agency. This means that broker and its salespersons owe fiduciary duties to both seller(s) and buyer(s). Because the parties may have conflicting interests, broker and its salespersons are prohibited from advocating exclusively for either party. Broker cannot act as a dual agent in this transaction without the consent of both seller(s) and buyer(s). Seller(s) and buyer(s) acknowledge that:

(1) confidential information communicated to broker which regards price, terms, or motivation to buy or sell will remain confidential unless seller(s) or buyer(s) instructs broker in writing to disclose this information. Other information will be shared;

(2) broker and its salespersons will not represent the interests of either party to the detriment of the other; and

(3) within the limits of dual agency, broker and its salespersons will work diligently to facilitate the mechanics of the sale.

With the knowledge and understanding of the explanation above, seller(s) and buyer(s) authorize and instruct broker and its salespersons to act as dual agents in this transaction.

.....
Seller

.....
Buyer

.....
Seller

.....
Buyer

.....
Date

.....
Date

New language is indicated by underline, deletions by strikeout.

Sec. 7. Minnesota Statutes 1994, section 82.197, subdivision 3, is amended to read:

Subd. 3. **SCOPE AND EFFECT.** Disclosures made in accordance with the requirements for disclosure of agency relationships set forth in this chapter are sufficient to satisfy common law disclosure requirements. In addition, when a principal in the transaction is a licensee or a relative or business associate of the licensee, that fact must be disclosed in writing in addition to any other required disclosures. ~~The commissioner, in consultation with representatives of the real estate industry, consumer groups, the attorney general's office, and any other group deemed appropriate by the commissioner, shall study current required disclosure forms and recommend any additions that may be necessary to ensure that consumers are informed of the various agency relations and how they affect the consumer. The commissioner shall prepare legislation for the 1995 session which incorporates those recommendations.~~

Sec. 8. Minnesota Statutes 1994, section 82.197, subdivision 4, is amended to read:

Subd. 4. **AGENCY DISCLOSURE FORMS FORM.** (a) ~~Disclosures of agency relationships~~ The agency disclosure form shall be made in substantially the form set forth in paragraphs (b) to (e) below:

(b) **ADDENDUM TO LISTING AGREEMENT**

~~....(Broker).... will be representing you as your broker in the sale of your property located at This relationship is called an agency. As your agent,(Broker).... owes you the duties of loyalty, obedience, disclosure, confidentiality, reasonable care and diligence, and full accounting. However,(Broker).... also represents buyers looking for properties. If a buyer represented by(Broker).... becomes interested in your property, a dual agency will be created. This means that(Broker).... will owe the same duties to the buyer that we owe to you. This conflict of interest will prohibit(Broker).... from advocating exclusively on your behalf when attempting to effect the sale of your property. Dual agency will limit the level of representation which(Broker).... can provide.~~

~~If a dual agency should arise, you will need to agree that confidential information about price, terms, and motivation will still be kept confidential unless you instruct(Broker).... in writing to disclose specific information about you or your property. All other information will be shared. Regardless of whether a dual agency occurs,(Broker).... must disclose to the buyer any material facts of which(Broker).... is aware that may adversely and significantly affect the buyer's use or enjoyment of the property. In addition,(Broker).... must disclose to both parties any information of which(Broker).... is aware that a party will not perform in accordance with the terms of the purchase agreement or similar written agreement to convey real estate.~~

~~....(Broker).... cannot act as a dual agent unless both you and the buyer agree to the dual agency after it is disclosed to you. By agreeing to a possible dual agency, you will be giving up the right to exclusive representation in an in-house transaction. However, if you should decide not to agree to a possible dual agency, and you want(Broker).... to represent you, you may give up the opportunity to sell your property to buyers represented by(Broker)....~~

New language is indicated by underline, deletions by ~~strikeout~~.

SELLER'S INSTRUCTIONS TO BROKER

Having read and understood this information about dual agency, you now instruct _____(Broker)_____ as follows:

_____ Seller agrees to dual agency representation and will consider offers made by buyers represented by _____(Broker)_____.

_____ Seller does not agree to dual agency representation and will not consider offers made by buyers represented by _____(Broker)_____.

_____	_____
Seller	(Broker)
_____	BY: _____
Seller	Salesperson
Dated: _____	

(c) ADDENDUM TO BUYER REPRESENTATION AGREEMENT

_____ (Broker)_____ will be representing you as your broker to assist you in finding and purchasing a property. This relationship is called an agency. As your agent, _____ (Broker)_____ owes you the duties of loyalty, obedience, disclosure, confidentiality, reasonable care and diligence, and full accounting. However, _____ (Broker)_____ also represents sellers by listing their property for sale. If you become interested in a property listed by _____ (Broker)_____, a dual agency will be created. This means that _____ (Broker)_____ will owe the same duties to the seller that _____ (Broker)_____ owes to you. This conflict of interest will prohibit _____ (Broker)_____ from advocating exclusively on your behalf when attempting to effect the purchase of the property. Dual agency will limit the level of representation _____ (Broker)_____ can provide.

If a dual agency should arise, you will need to agree that confidential information about price, terms, and motivation will still be kept confidential unless you instruct _____ (Broker)_____ in writing to disclose specific information about you. All other information will be shared. Regardless of whether a dual agency occurs, _____ (Broker)_____ must disclose to the buyer any material facts of which _____ (Broker)_____ is aware that may adversely and significantly affect the buyer's use or enjoyment of the property. In addition, _____ (Broker)_____ must disclose to both parties any information of which _____ (Broker)_____ is aware that a party will not perform in accordance with the terms of the purchase agreement or similar written agreement to convey real estate.

_____ (Broker)_____ cannot act as a dual agent unless both you and the seller agree to the dual agency after it is disclosed to you. By agreeing to a possible dual agency, you will be giving up the right to exclusive representation in an in-house transaction. However, if you should decide not to agree to a possible dual agency, and you want _____ (Broker)_____ to represent you, you may give up the opportunity to purchase the properties listed by _____ (Broker)_____.

BUYER'S INSTRUCTIONS TO BROKER

Having read and understood this information about dual agency, you now instruct _____(Broker)_____ as follows:

New language is indicated by underline, deletions by ~~strikeout~~.

.... Buyer will agree to a dual agency representation and will consider properties listed by(Broker).....

.... Buyer will not agree to a dual agency representation and will not consider properties listed by(Broker).....

..... Buyer	 (Broker)
.....	BY:
Buyer		Salesperson
Dated:		

(d) DISCLOSURE TO CUSTOMER

Before(Broker).... begins to assist you in finding and purchasing a property, we must disclose to you that(Broker).... will be representing the seller in the transaction.

....(Broker).... will disclose to you all material facts about the property of which(Broker).... is aware, that could adversely and significantly affect your use or enjoyment of the property.(Broker).... will also assist you with the mechanics of the transaction.

When it comes to the price and terms of an offer,(Broker).... will ask you to make the decision as to how much to offer for any property and upon what terms and conditions.(Broker).... can explain your options to you, but the ultimate decision is yours.(Broker).... will attempt to show you properties in the price range and category you desire so that you will have information on which to base your decision.

....(Broker).... will present to the seller any written offer that you ask(Broker).... to present.(Broker).... asks you to keep to yourself any information about the price or terms of your offer, or your motivation for making an offer, that you do not want the seller to know.(Broker).... would be required, as the seller's agent, to disclose this information to the seller. You should carefully consider sharing any information with(Broker).... that you do not want disclosed to the seller.

..... Customer	 (Broker)
.....	BY:
Customer		Salesperson
Dated:		

(e) DISCLOSURE TO BUYER AND SELLER AT TIME OF OFFER TO PURCHASE

....(Broker).... represents the seller at the property located at

....(Broker).... also represents a buyer who offered to purchase the seller's property.

When(Broker).... represents both the buyer and the seller in a transaction, a dual agency is created. This means that(Broker).... and its agents owe a fiduciary duty to both buyer and seller. Because buyer and seller may have conflicting interests,(Broker).... and its agents are prohibited from advocating exclusively for either party.

New language is indicated by underline, deletions by ~~strikeout~~.

....(Broker).... cannot represent both the buyer and seller in this transaction unless both the buyer and seller agree to this dual agency.

Buyer and seller acknowledge and agree that:

1. Confidential information communicated to(Broker).... which regards price, terms, or motivation to buy or sell will remain confidential unless buyer or seller instructs(Broker).... in writing to disclose this information about the buyer or seller. Other information will be shared.

2.(Broker).... and its salespersons will disclose to buyer all material facts of which they are aware which could adversely and significantly affect the buyer's use or enjoyment of the property or any intended use of the property of which(Broker).... or its salespersons are aware (this disclosure is required by law whether or not a dual agency is involved).

3.(Broker).... and its salespersons will disclose to both parties all information of which they are aware that either party will not perform in accordance with the terms of the purchase agreement or other written agreement to convey real estate (this disclosure is required by law whether or not a dual agency is involved).

4.(Broker).... and its salespersons will not represent the interests of either party to the detriment of the other.

5. Within the limits of dual agency,(Broker).... and its salespersons will work diligently to facilitate the mechanics of the sale.

With the knowledge and understanding of the explanation above, buyer and seller authorize and instruct(Broker).... and its salespersons to act as dual agents in this transaction.

.....
Buyer Seller

.....
Buyer Seller

Date: Date:

AGENCY RELATIONSHIPS IN REAL ESTATE TRANSACTIONS

Minnesota law requires that early in any relationship, real estate brokers or salespersons discuss with consumers what type of agency representation or relationship they desire. (1) The available options are listed below. This is not a contract. This is an agency disclosure form only. If you desire representation, you must enter into a written contract according to state law (a listing contract or a buyer representation contract). Until such time as you choose to enter into a written contract for representation or assistance, you will be treated as a customer of the broker or salesperson and not represented by the brokerage. The broker or salesperson would then be acting as a Seller's broker (see paragraph I below), or as a nonagent (see paragraph IV below).

I.

Seller's Broker: A broker who lists a property, or a salesperson who is licensed to the listing broker, represents the Seller and acts on behalf of the Sell-

New language is indicated by underline, deletions by strikeout.

er. A broker or salesperson working with a Buyer may also act as a subagent of the Seller, in which case the Buyer is the broker's customer and is not represented by that broker. A Seller's broker owes to the Seller the fiduciary duties described below.(2) The broker must also disclose to the Buyer any material facts of which the broker is aware that could adversely and significantly affect the Buyer's use or enjoyment of the property. If a broker or salesperson working with a Buyer as a customer is representing the Seller, he or she must act in the Seller(s)' interests and must tell the Seller(s) any information disclosed to him/her. In that case, the Buyer will not be represented and will not receive advice and counsel from the broker or salesperson.

II.

Buyer's Broker: A Buyer may enter into an agreement for the broker or salesperson to represent and act on behalf of the Buyer. The broker may represent the Buyer only, and not the Seller, even if s/he is being paid in whole or in part by the Seller. A Buyer's broker owes to the Buyer the fiduciary duties described below.(2) The broker must disclose to the Buyer any material facts of which the broker is aware that could adversely and significantly affect the Buyer's use or enjoyment of the property.

III.

Dual Agency—Broker Representing both Seller and Buyer: Dual agency occurs when one broker or salesperson represents both parties to a transaction, or when two salespersons licensed to the same broker each represent a party to the transaction. Dual agency requires the informed consent of all parties, and means that the broker and salesperson owe the same duties to the Seller and the Buyer. This role limits the level of representation the broker and salespersons can provide, and prohibits them from acting exclusively for either party. In a dual agency, confidential information about price, terms, and motivation for pursuing a transaction will be kept confidential unless one party instructs the broker or salesperson in writing to disclose specific information about him or her. Other information will be shared. Dual agents may not advocate for one party to the detriment of the other.(3)

Within the limitations described above, dual agents owe to both Seller and Buyer the fiduciary duties described below.(2) Dual agents must disclose to Buyers any material facts of which the broker is aware that could adversely and significantly affect the Buyer's use or enjoyment of the property.

IV.

Nonagent: A broker or salesperson may perform services for either party as a nonagent, if that party signs a nonagency services agreement. As a nonagent the broker or salesperson facilitates the transaction, but does not act on behalf of either party. **THE NONAGENT BROKER OR SALESPERSON DOES NOT OWE ANY PARTY ANY OF THE FIDUCIARY DUTIES LISTED BELOW, UNLESS THOSE DUTIES ARE INCLUDED IN THE WRITTEN NONAGENCY SERVICES AGREEMENT.** The nonagent broker or

New language is indicated by underline, deletions by ~~strikeout~~.

salesperson owes only those duties required by law or contained in the written nonagency services agreement.

ACKNOWLEDGMENT: I/We acknowledge that I/We have been presented with the above-described options. I/We understand that Buyers who have not signed a Buyer representation contract or nonagency services agreement are not represented by the broker/salesperson and information given to the broker/salesperson will be disclosed to the Seller. I/We understand that written consent is required for a dual agency relationship. This is a disclosure only, NOT a contract for representation.

.....
Seller Date Buyer Date

.....
Seller Date Buyer Date

(1) This disclosure is required by law in any transaction involving property occupied or intended to be occupied by one to four families as their residence.

(2) The fiduciary duties mentioned above are listed below and have the following meanings:

Loyalty—broker/salesperson will act only in client(s)' best interest.

Obedience—broker/salesperson will carry out all client(s)' lawful instructions.

Disclosure—broker/salesperson will disclose to client(s) all material facts of which broker/salesperson has knowledge which might reasonably affect the client's rights and interests.

Confidentiality—broker/salesperson will keep client(s)' confidences unless required by law to disclose specific information (such as disclosure of material facts to Buyers).

Reasonable Care—broker/salesperson will use reasonable care in performing duties as an agent.

Accounting—broker/salesperson will account to client(s) for all client(s)' money and property received as agent.

(3) If Seller(s) decides not to agree to a dual agency relationship, Seller(s) may give up the opportunity to sell the property to Buyers represented by the broker/salesperson. If Buyer(s) decides not to agree to a dual agency relationship, Buyer(s) may give up the opportunity to purchase properties listed by the broker.

Sec. 9. Minnesota Statutes 1994, section 82.22, subdivision 13, is amended to read:

Subd. 13. **CONTINUING EDUCATION.** (a) After their first renewal date, all real estate salespersons and all real estate brokers shall be required to successfully complete

New language is indicated by underline, deletions by strikeout.

30 hours of real estate continuing education, either as a student or a lecturer, in courses of study approved by the commissioner, during each 24-month license period. At least 15 of the 30 credit hours must be completed during the first 12 months of the 24-month licensing period. Salespersons and brokers whose initial license period extends more than 12 months are required to complete 15 hours of real estate continuing education during the initial license period. All continuing education must be earned no later than May 31 of the renewal year. Those licensees who will receive a 12-month license on July 1, 1995, because of the staggered implementation schedule must complete 15 hours of real estate continuing education as a requirement for renewal on July 1, 1996. Licensees may not claim credit for continuing education not actually completed as of the date their report of continuing education compliance is filed.

(b) The commissioner shall adopt rules defining the standards for course and instructor approval, and may adopt rules for the proper administration of this subdivision.

(c) Any program approved by Minnesota continuing legal education shall be approved by the commissioner of commerce for continuing education for real estate brokers and salespeople if the program or any part thereof relates to real estate.

(d) As part of the continuing education requirements of this section, the commissioner shall require that all real estate brokers and salespersons receive:

(1) at least two hours of training during each license period in courses in laws or regulations on agency representation and disclosure; and

(2) at least two hours of training during each license period in courses in state and federal fair housing laws, regulations, and rules, or other antidiscrimination laws.

Clause (1) does not apply to real estate salespersons and real estate brokers engaged solely in the commercial real estate business who file with the commissioner a verification of this status along with the continuing education report required under paragraph (a).

(e) The commissioner is authorized to establish a procedure for renewal of course accreditation.

Sec. 10. Minnesota Statutes 1994, section 82A.11, is amended by adding a subdivision to read:

Subd. 8. CANCELLATION BY HEIR. A membership camping contract that may be transferred by descent or devise must provide that the heir or devisee may cancel the contract. Cancellation of the contract relieves the heir or devisee of any further obligations under the contract.

Sec. 11. Minnesota Statutes 1994, section 82B.19, is amended by adding a subdivision to read:

Subd. 4. RENEWAL OF ACCREDITATION. The commissioner is authorized to establish a procedure for renewal of course accreditation.

Sec. 12. Minnesota Statutes 1995 Supplement, section 386.66, is amended to read:

386.66 BOND OR ABSTRACTER'S LIABILITY INSURANCE POLICY.

Before a license shall be issued, the applicant shall file with the commissioner a an annual bond or abstracter's liability insurance policy for each license year, to be approved

New language is indicated by underline, deletions by ~~strikeout~~.

by the commissioner, running to the state of Minnesota in the penal sum of at least \$100,000 conditioned for the payment by such abstractor of any damages that may be sustained by or accrue to any person by reason of or on account of any error, deficiency or mistake arising wrongfully or negligently in any abstract, or continuation thereof, or in any certificate showing ownership of, or interest in, or liens upon any lands in the state of Minnesota, whether registered or not, made by and issued by such abstractor, provided however, that the aggregate liability of the surety to all persons under such bond shall in no event exceed the amount of such bond. If the applicant intends to engage in the business of abstracting in any county having more than 200,000 inhabitants, the bond or insurance policy required herein shall be in the penal sum of at least \$250,000. Applicants that are title insurance companies regulated by chapter 68A and licensed pursuant to sections 60A.02 and 60A.06, subdivision 1, clause (7), and their employees or those having cash or securities on deposit with the state of Minnesota in an amount equal to the said bond or insurance policy shall be exempt from furnishing the bond or an insurance policy herein required but shall be liable to the same extent as if a bond or insurance policy has been given and filed. The bond or insurance policy required hereunder shall be written by some surety or other company authorized to do business in this state issuing bonds or abstractor's liability insurance policies and shall be issued for a period of one or more years, and renewed for one or more years year at the date of expiration as principal continues in business. ~~The aggregate liability of such surety on such bond or insurance policy for all damages shall, in no event, exceed the sum of said bond or insurance policy.~~

Sec. 13. **EFFECTIVE DATES.**

Sections 1 to 8 are effective October 1, 1996. Sections 9 and 11 are effective the day following final enactment.

ARTICLE 4

BUILDING CONTRACTORS

Section 1. Minnesota Statutes 1994, section 326.37, is amended by adding a subdivision to read:

Subd. 3. **EXEMPTION.** No license authorized by this section shall be required of any contractor or employee engaged in the work or business of pipe laying outside of buildings if such person is engaged in a business or trade which has traditionally performed such work within the state prior to January 1, 1994.

Sec. 2. Minnesota Statutes 1994, section 326.87, is amended by adding a subdivision to read:

Subd. 4. **RENEWAL OF ACCREDITATION.** The commissioner is authorized to establish a procedure for renewal of course accreditation.

Sec. 3. Minnesota Statutes 1994, section 326.91, is amended by adding a subdivision to read:

New language is indicated by underline, deletions by ~~strikeout~~.

Subd. 3. **CERTIFICATE OF EXEMPTION HOLDERS.** For cause shown under subdivision 1 or 2, the commissioner may deny, suspend, or revoke a certificate of exemption issued under section 326.84, subdivision 3, clause (5), in the same manner as a license.

Sec. 4. Minnesota Statutes 1994, section 326.91, is amended by adding a subdivision to read:

Subd. 4. **ACTION AGAINST UNLICENSED PERSONS.** Nothing in this section prevents the commissioner from taking actions, including cease and desist actions, against persons required to be licensed under sections 326.83 to 326.991, based on conduct that would provide grounds for administrative action against a licensee under this section.

Sec. 5. Minnesota Statutes 1994, section 326.991, is amended to read:

326.991 **EXCEPTION.**

Subdivision 1. The license requirement under section 326.84 does not apply to a residential building contractor, residential 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 that municipality.

This subdivision expires March 31, 2000.

Subd. 2. The commissioner may contract with the city of Minneapolis and the city of St. Paul to administer this licensing program.

Sec. 6. **REPEALER.**

Minnesota Statutes 1994, sections 326.95, subdivision 4; 326.97, subdivision 3; and 326.99, are repealed.

Sec. 7. **EFFECTIVE DATES.**

Sections 1 to 4 and 6 are effective the day following final enactment.

Section 5 is effective April 1, 1996.

ARTICLE 5

MISCELLANEOUS

Section 1. Minnesota Statutes 1994, section 47.206, subdivision 1, is amended to read:

47.206 **INTEREST RATE OR DISCOUNT POINT AGREEMENTS.**

Subdivision 1. **DEFINITIONS.** For the purposes of this section, the terms defined in this subdivision have the meanings given them.

New language is indicated by underline, deletions by ~~strikeout~~.

(a) "Lender" means a person or entity referred to in section 47.20, subdivision 1, a credit union, or a person making a conventional loan as defined under section 47.20, subdivision 2, clause (3), or cooperative apartment loan as defined under section 47.20, subdivision 2, clause (4), except that conventional loans or cooperative apartment loans include any loan or advance of credit in an original principal balance of less than \$200,000. "Lender" also means a mortgage broker as defined in paragraph (e).

(b) "Loan" means loans and advances of credit authorized under section 47.20, subdivision 1, clauses (1) to (4), and conventional loans as defined under section 47.20, subdivision 2, clause (3), or cooperative apartment loans as defined under section 47.20, subdivision 2, clause (4), except that conventional loans or cooperative apartment loans also include all loans and advances of credit in an original principal balance of less than \$200,000. "Loan" does not include a loan or advance of credit secured by a mortgage upon real property containing more than one residential unit or secured by a security interest in shares of more than one residential unit in a building owned or leased by a cooperative apartment corporation.

(c) "Borrower" means a natural person who has submitted an application for a loan to a lender.

(d) "Interest rate or discount point agreement" or "agreement" means a contract between a lender and a borrower under which the lender agrees, subject to the lender's underwriting and approval requirements, to make a loan at a specified interest rate or number of discount points, or both, and the borrower agrees to make a loan on those terms. The term also includes an offer by a lender that is accepted by a borrower under which the lender promises to guarantee or lock in an interest rate or number of discount points, or both, for a specific period of time.

(e) "Mortgage broker" includes:

(1) a person who negotiates mortgage loans as described in section 82.17, subdivision 4, clause (b), if the person does not qualify for the exception set forth in section 82.18, clause (o);

(2) the employees of the person; or

(3) any person or firm which holds itself out to the public as a mortgage broker, regardless of whether the person or firm holds a limited broker's license pursuant to section 82.20, subdivision 13.

Sec. 2. **EFFECTIVE DATE.**

Section 1 is effective on the day following final enactment.

Presented to the governor April 4, 1996

Signed by the governor April 11, 1996, 11:50 a.m.

CHAPTER 440—S.F.No. 2410

An act relating to privacy; providing for the classification of and access to government data; indexing statutes that restrict data access and are located outside chapter 13; defining criminal jus-

New language is indicated by underline, deletions by strikeout.