

CHAPTER 295—S.F.No. 1653

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

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

ARTICLE 1

LABOR AND INDUSTRY HOUSEKEEPING

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

178.01 PURPOSES.

The purposes of this chapter are: to open to ~~young~~ all people regardless of race, sex, creed, color or national origin, the opportunity to obtain training and on-the-job learning that will equip them for profitable employment and citizenship; to establish as a means to this end, a program of voluntary apprenticeship under approved ~~apprentice~~ apprenticeship agreements providing facilities for their training and guidance in the arts, skills, and crafts of industry and trade or occupation, with concurrent, supplementary instruction in related subjects; to promote apprenticeship opportunities under conditions providing adequate training and on-the-job learning and reasonable earnings; to relate the supply of skilled workers to employment demands; to establish standards for apprentice training; to establish an Apprenticeship Board and apprenticeship committees to assist in effectuating the purposes of this chapter; to provide for a Division of Labor Standards and Apprenticeship within the Department of Labor and Industry; to provide for reports to the legislature regarding the status of apprentice training in the state; to establish a procedure for the determination of ~~apprentice~~ apprenticeship agreement controversies; and to accomplish related ends.

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

Subd. 3. **Duties and functions.** The director, under the supervision of the commissioner, and with the advice and consultation of the Apprenticeship Board, is authorized: to administer the provisions of this chapter; to promote apprenticeship and other forms of on-the-job learning; to establish, in cooperation and consultation with the Apprenticeship Board and with the apprenticeship committees, conditions, training, and learning standards for the approval of apprenticeship programs and agreements, which conditions and standards shall in no case be lower than those (1) prescribed by this chapter, and (2) established under Code of Federal Regulations, title 29, part 29; to promote equal employment opportunity in apprenticeship and other on-the-job learning and to establish a Minnesota plan for equal employment opportunity in apprenticeship which shall be consistent with standards established under Code of Federal Regulations, title 29, part 30, as amended; to issue certificates of registration to sponsors of approved apprenticeship programs; to act as secretary of the Apprenticeship Board; to approve, if of the opinion that approval is for the best interest of the apprentice, any apprenticeship agreement which meets the standards established hereunder; to terminate any apprenticeship agreement in accordance with the provisions of such agreement; to keep a record of apprenticeship agreements and their disposition; to issue certificates of completion of apprenticeship; and to perform such other duties as the commissioner deems necessary to carry out the intent of this chapter; provided, that the administration and supervision of supplementary instruction in related subjects for apprentices; coordination of instruction on a concurrent basis with job experiences, and the selection and training of teachers and coordinators for such instruction shall be the function of state and local boards responsible for vocational education. The director shall have the authority to make wage determinations applicable to the graduated schedule of wages and ~~journeyman~~ journeyworker wage rate for apprenticeship agreements, giving consideration to the existing wage rates prevailing throughout the state, except that no wage determination by the director shall alter an existing wage provision for apprentices or ~~journeymen~~ journeyworkers that is contained in a bargaining agreement in effect between an employer and an organization of employees, nor shall the director make any determination for the beginning rate for an apprentice that is below the wage minimum established by federal or state law.

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

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

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

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

(a) When the employers and employees in a trade or occupation or trades or occupations are parties to a collective bargaining agreement requiring joint participation in program operation; or

(b) When five or more apprentices are enrolled under a program.

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

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

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

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

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

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

178.06 APPRENTICE.

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

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

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

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

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

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

178.07 ~~APPRENTICE~~ APPRENTICESHIP AGREEMENTS.

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

(1) the names of the contracting parties;

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

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

(4) a statement showing the number of hours to be spent by the apprentice in work and the number of hours to be spent in concurrent, supplementary instruction in related subjects, which instruction shall be not less than 144 hours during each year of the apprenticeship term. The maximum number of hours of work per week not including time spent in related and supplemental instruction for any apprentice shall not exceed either the number prescribed by law or the customary regular number of hours per week for the employees of the company by which the apprentice is employed. An apprentice may be allowed to work overtime provided that the overtime work does not conflict with supplementary instruction course attendance. All time in excess of the number of hours of work per week as specified in the apprenticeship agreement shall be considered overtime. For overtime, the apprentice's rate of pay shall be increased by the same percentage as the ~~journeyman's~~ journeyworker's rate of pay for overtime is increased in the same industry or establishment;

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

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

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

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

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

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

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

178.08 DIRECTOR TO APPROVE ~~APPRENTICE~~ APPRENTICESHIP AGREEMENTS.

Every ~~apprentice~~ apprenticeship agreement is subject to approval by the director and shall be signed by the committee, the employer, an association of employers, or an organization of employees, and by the apprentice, and if the apprentice is a minor, by a parent or legal guardian. When a minor enters into an ~~apprentice~~ apprenticeship agreement under this chapter for a period of learning extending into majority the

~~apprentice~~ apprenticeship agreement shall likewise be binding for such a period as may be covered during the apprentice's majority.

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

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

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

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

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

Subd. 2. **Licenses not requiring examination administered by commissioner.** If the applicant for a license is not required to pass an examination in order to obtain the license, or is required to pass an examination that is not administered by the commissioner, then the license fee must accompany the application for the license. If the application is for a license issued under sections 326B.802 to 326B.885 and is not an application for license renewal, then the contractor recovery fund fee required under section 326B.89,

subdivision 3, is due ~~after the department has determined that the applicant meets the qualifications for licensing and~~ before the license is issued.

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

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

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

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

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

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

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

(d) If there is a continuing education requirement for renewal of the license, then a continuing education fee must be included in the renewal license fee. The continuing education fee for all license classifications shall be: \$10 if the renewal license duration is one year; \$20 if the renewal license duration is two years; and \$30 if the renewal license duration is three years.

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

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

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

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

(b) An Internet continuing education course must:

- (1) specify the minimum computer system requirements;
- (2) provide encryption that ensures that all personal information, including the student's name, address, and credit card number, cannot be read as it passes across the Internet;
- (3) include technology to guarantee seat time;
- (4) include a high level of interactivity;
- (5) include graphics that reinforce the content;
- (6) include the ability for the student to contact an instructor or course sponsor within a reasonable amount of time;
- (7) include the ability for the student to get technical support within a reasonable amount of time;
- (8) include a statement that the student's information will not be sold or distributed to any third party without prior written consent of the student. Taking the course does not constitute consent;
- (9) be available 24 hours a day, seven days a week, excluding minimal downtime for updating and administration, except that this provision does not apply to live courses taught by an actual instructor and delivered over the Internet;
- (10) provide viewing access to the online course at all times to the commissioner, excluding minimal downtime for updating and administration;
- (11) include a process to authenticate the student's identity;
- (12) inform the student and the commissioner how long after its purchase a course will be accessible;
- (13) inform the student that license education credit will not be awarded for taking the course after it loses its status as an approved course;
- (14) provide clear instructions on how to navigate through the course;
- (15) provide automatic bookmarking at any point in the course;
- (16) provide questions after each unit or chapter that must be answered before the student can proceed to the next unit or chapter;
- (17) include a reinforcement response when a quiz question is answered correctly;
- (18) include a response when a quiz question is answered incorrectly;
- (19) include a final examination in which the student must correctly answer 70 percent of the questions;
- (20) allow the student to go back and review any unit at any time, except during the final examination;

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

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

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

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

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

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

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

(2) designed, constructed, and used to house farm implements, livestock, or agricultural ~~produce or~~ products under section 273.13, subdivision 23; and

(3) used by the owner, lessee, and sublessee of the building and members of their immediate families, their employees, and persons engaged in the pickup or delivery of agricultural ~~produce or~~ products.

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

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

(b) An individual who is an employee working on the maintenance and repair of plumbing equipment, apparatus, or facilities owned or leased by the individual's employer and which is within the limits of property owned or leased, and operated or maintained by the individual's employer, shall not be required to maintain a contractor license as long as the employer has on file with the commissioner a current certificate of responsible individual. The responsible individual must be a master plumber or, in an area of the state that is not a city or town with a population of more than 5,000 according to the last federal census, a restricted master plumber. The certificate must be signed by the responsible individual and must state that the person signing the certificate is responsible for ensuring that the maintenance and repair work performed by the employer's employees complies with sections 326B.41 to 326B.49, all rules adopted under those sections and sections 326B.50 to 326B.59, and all orders issued under section 326B.082. The employer must pay a filing fee to file a certificate of responsible individual with the commissioner. The certificate shall expire two years from the date of filing. In order to maintain a current certificate of responsible individual, the employer must resubmit a certificate of responsible individual, with a filing fee, no later than two years from the date of the

previous submittal. The filing of the certificate of responsible individual does not exempt any employee of the employer from the requirements of this chapter regarding individual licensing as a plumber or registration as ~~a plumber's apprentice~~ an unlicensed individual.

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 17. **REPEALER.**

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

ARTICLE 2**EMPLOYEE CLASSIFICATION OF INDEPENDENT CONTRACTORS**

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

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

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

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

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

(d) "Individual" means a human being.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(vi) receives compensation for service performed under a contract on a commission or per-job or competitive bid basis and not on any other basis;~~

~~(vii) may realize a profit or suffer a loss under contracts to perform service;~~

~~(viii) has continuing or recurring business liabilities or obligations; and~~

~~(ix) the success or failure of the individual's business depends on the relationship of business receipts to expenditures.~~

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

~~(c) Within 30 days of receiving a complete application and the certificate fee, the commissioner must either grant or deny the application. The commissioner may deny an application for an independent contractor exemption certificate if the individual has~~

