

SENATE

STATE OF MINNESOTA

EIGHTY-SEVENTH LEGISLATURE

S.F. No. 852

(SENATE AUTHORS: PEDERSON and Kelash)

DATE	D-PG	OFFICIAL STATUS
03/16/2011	524	Introduction and first reading Referred to Jobs and Economic Growth
04/14/2011	1330a 1345	Comm report: To pass as amended and re-refer to Judiciary and Public Safety Author added Kelash

A bill for an act
relating to employment; modifying worker classification regulation, penalties,
and fees; authorizing rulemaking; amending Minnesota Statutes 2010, sections
181.723; 326B.04, subdivision 1; 326B.081, subdivision 3; 326B.805,
subdivision 6; repealing Minnesota Statutes 2010, section 181.723, subdivision
17; Minnesota Rules, parts 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:

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

181.723 ~~INDEPENDENT~~ CONSTRUCTION CONTRACTORS.

Subdivision 1. ~~Definitions~~ **Scope.** This section governs registration and other responsibilities of persons performing construction services in Minnesota.

Subd. 1a. **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) (f) "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.

(g) "Construction services" means field installation of building construction materials into new or existing public or private sector commercial or residential buildings. Construction services include demolition or deconstruction of building components. Construction services include landscaping services and construction cleaning services when they are performed as part of a contract for other building construction or improvement services. Construction services do not include:

(1) the manufacture, supply, or sale of products, materials, merchandise, or construction equipment;

(2) installation or delivery of a product by the manufacturer of the product;

(3) rubbish or debris hauling; or

(4) cleaning or maintenance of a building.

(h) "Construction contractor" means a person that meets the requirements of subdivision 4.

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

(j) "In the course of a person's construction business" means in the course of a person's construction trade, business, profession, or occupation.

~~Subd. 2. **Limited application.** This section only applies to individuals performing public or private sector commercial or residential building construction or improvement services. Building construction and improvement services do not include (1) the manufacture, supply, or sale of products, materials, or merchandise; (2) landscaping services for the maintenance or removal of existing plants, shrubs, trees, and other vegetation, whether or not the services are provided as part of a contract for the building construction or improvement services; and (3) all other landscaping services, unless the other landscaping services are provided as part of a contract for the building construction or improvement services.~~

Subd. 3. **Employee-employer relationship.** ~~Except as provided in subdivision 4,~~ For purposes of chapters 176, 177, 181A, 182, and 268, as of January 1, ~~2009~~ 2012, an individual who performs construction services for ~~a~~ another person that are in the course of the other person's ~~trade, construction~~ business, profession, or occupation is an employee of that person and that person is an employer of the individual, except that if the individual satisfies all of the conditions in subdivision 4, clause (2), the individual is an independent contractor and not an employee for purposes of those chapters only.

Subd. 4. **Independent Construction contractor.** ~~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. A person is a construction contractor only if:~~

(1) the person has satisfied the registration requirements of subdivision 4a; and

(2) the person meets all of the following conditions:

(i) the person maintains a separate business with the person's own office, equipment, and materials;

(ii) the person holds 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;

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

(iv) the person incurs the main expenses related to the construction services that the person performs under contract;

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

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

(vii) the person may realize a profit or suffer a loss under contracts to perform construction services;

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

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

Subd. 4a. **Registration.** (a) Except as provided in paragraph (b), any person who performs construction services in the state on or after January 1, 2012, must register with the commissioner as provided in subdivision 5a before performing construction services for another person.

(b) The registration requirements in this section 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 expires on or after January 1, 2012;

(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, such as Habitat for Humanity and Builders Outreach Foundation, and their individual volunteers when engaged in activities on their behalf; and

(8) a person who provides construction services with gross annual receipts of less than \$600 during a calendar year.

(c) The requirements for registration under this section 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.

~~Subd. 5. **Application.** To obtain an independent contractor exemption certificate, the individual must submit, in the manner prescribed by the commissioner, a complete application and the certificate fee required under subdivision 14.~~

~~(a) A complete application must include all of the following information:~~

~~(1) the individual's full name;~~

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

~~(3) the individual's business name, address, and telephone number;~~

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

~~(5) 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. When individuals submit a simultaneous application on the form created by the commissioner for both a residential building contractor or residential remodeler license and an independent contractor exemption certificate, the application fee shall be \$150. 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 not submitted a complete application and certificate fee or if the individual does not meet all of the conditions for holding the independent contractor exemption certificate. The commissioner may revoke an independent contractor exemption certificate if the commissioner determines that the individual no longer meets all of the conditions for holding the independent contractor exemption certificate, commits any of the actions set out in subdivision 7, or fails to cooperate with a department investigation into the continued validity of the individual's certificate. Once issued, an independent contractor exemption certificate remains in effect for four years unless:

(1) revoked by the commissioner; or

(2) canceled by the individual.

(d) If the department denies an individual's original or renewal application for an independent contractor exemption certificate or revokes an independent contractor exemption certificate, the commissioner shall issue to the individual an order denying or revoking the certificate. The commissioner may issue an administrative penalty order to an individual or person who commits any of the actions set out in subdivision 7.

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

Subd. 5a. Registration and renewal application. (a) A person required to register with the commissioner under subdivision 4a must file a registration application electronically in the manner prescribed by the commissioner. The application for initial or renewal registration must include the following information:

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

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

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

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

(5) for each of the applicant's directors; officers; governors; owners; partners; members, managers, and partners of a limited liability company or limited liability partnership; and shareholders, except for shareholders with less than a ten percent interest in a publicly traded corporation; the following information:

(i) the individual's full name, business telephone number, Social Security number, and title at applicant's business;

(ii) the percentage of the applicant's business owned by each individual; and

(iii) whether the individual personally performs construction services on behalf of the applicant;

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

(7) the name of the applicant's workers' compensation insurer, the policy number, and the effective dates of coverage, or a description of the basis for exemption from workers' compensation coverage laws;

(8) the unemployment insurance account number, if any;

(9) a certification that the person signing the application has reviewed it; that the information provided is true and accurate; and that the person signing is authorized to sign and file the application as an agent of the applicant. The name of the person signing, entered on an electronic application, shall constitute a valid signature of the agent on behalf of the applicant; and

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

(b) A person's registration shall expire at the end of the calendar year following the year of initial registration and every two years thereafter. The registered person must remain registered while providing construction services for another person. The provisions of sections 326B.091 to 326B.097 apply to this section, except that the initial registration and renewal fees under this section shall be \$80 for each initial or renewal application for registration.

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

(d) An application for registration is private data on individuals as defined in section 13.02, subdivision 12, and nonpublic data as defined under section 13.02, subdivision 9, except for the information on the registration certificate described in subdivision 6a, paragraph (b), which shall be public data as defined under section 13.02, subdivisions 14 and 15. However, the commissioner is authorized to share application data with the Departments of Revenue and Employment and Economic Development for purposes of enforcement of laws administered by those agencies. Information shared with the Departments of Revenue and Employment and Economic Development shall remain private and nonpublic data in the possession of the receiving agency unless otherwise provided by law.

~~Subd. 6. Performing services under exemption certificate. An individual is performing services for a person under an independent contractor exemption certificate if:~~

~~(a) the individual is performing services listed on the individual's independent contractor exemption certificate; and~~

~~(b) at the time the individual is performing services listed on the individual's independent contractor exemption certificate, the individual meets all of the following conditions:~~

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

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

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

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

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

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

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

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

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

Subd. 6a. **Web site.** (a) The commissioner shall develop and maintain a Web site on which applicants for registration can submit a registration application and payment. The Web site shall be designed to receive and process registration applications and payments and promptly issue registration certificates electronically to successful applicants.

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

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

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

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

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

(b) An individual shall not perform or offer to perform construction services on behalf of a business entity of which the individual is a director; officer; governor; owner; partner; member, manager, or partner of a limited liability company or limited liability partnership; or shareholder, except for a shareholder holding less than ten percent interest in a publicly traded company; unless:

~~(1) perform work as an independent contractor who meets the qualifications under subdivision 6 without first obtaining from the department an independent contractor exemption certificate~~ the business entity is a construction contractor under subdivision 4;

~~(2) perform work as an independent contractor when the department has denied or revoked the individual's independent contractor exemption certificate~~ the business entity is listed as active with the secretary of state, if required for the business entity;

~~(3) transfer to another individual or allow another individual to use the individual's independent contractor exemption certificate~~ there is a signed and dated written contract between the business entity and the person for whom the construction services are performed that describes the services to be performed and the payment for the services;

10.1 (4) ~~alter or falsify an independent contractor exemption certificate~~ invoices or
10.2 bills for the construction services performed are submitted in the name of the business
10.3 entity; and

10.4 (5) ~~misrepresent the individual's status as an independent contractor; or~~ payment is
10.5 made to the business entity.

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

10.9 ~~(b)~~ (c) A person shall not:

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

10.12 (2) ~~knowingly misrepresent that an individual who has not been issued an~~
10.13 ~~independent contractor exemption certificate or is not performing services for the person~~
10.14 ~~under an independent contractor exemption certificate is an independent contractor~~
10.15 represent that the person is a construction contractor unless the person is a construction
10.16 contractor under subdivision 4; or

10.17 (3) ~~make a false material statement, representation, or certification; omit material~~
10.18 ~~information; or alter, conceal, or fail to file a document required by this section or any~~
10.19 ~~rule promulgated by the commissioner under rulemaking authority set out in this section.~~
10.20 perform or provide construction services for another person if the person performing the
10.21 construction services is not registered as required by subdivision 4a; or

10.22 (4) perform or provide construction services for another person in the course of the
10.23 other person's business if the person performing or providing the construction services is
10.24 not a construction contractor under subdivision 4.

10.25 ~~(c)~~ (d) A person ~~for whom an individual is performing services must obtain a~~
10.26 ~~copy of the individual's independent contractor exemption certificate before services~~
10.27 ~~may commence. A copy of the independent contractor exemption certificate must be~~
10.28 ~~retained for five years from the date of receipt by the person for whom an individual is~~
10.29 ~~performing services.~~ who provides construction services in the course of that person's
10.30 business shall not:

10.31 (1) pay a person that is not named in a contract for construction services, or pay a
10.32 person without receiving an invoice from the person; or

10.33 (2) contract with or pay another person to perform construction services if the other
10.34 person is not registered under subdivision 4a.

(e) This subdivision does not apply to an employee of a 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.

Subd. 8. **Enforcement; remedies and penalties.** ~~An individual or person who violates any provision of subdivision 7 is subject to a penalty to be assessed by the department of up to \$5,000 for each violation. The department shall deposit penalties in the assigned risk safety account.~~ (a) The commissioner is authorized to use sections 326B.081 to 326B.085 to enforce this section. Notwithstanding the maximum penalty amount in section 326B.082, subdivisions 7 and 12, the monetary penalties for violation of this section shall be as provided in paragraphs (b), (c), and (d).

(b) The commissioner may assess a monetary penalty against an unregistered person who is required to be registered, in violation of subdivision 4a, as follows:

(1) for the first violation, the commissioner may assess a monetary penalty of \$2,000. If the person registers within 30 days of the date of the order, \$1,500 of the penalty shall be forgiven; and

(2) for the second and each subsequent violation, the commissioner may assess a penalty of up to \$2,000.

(c) The commissioner may assess a monetary penalty against a person who, in the course of that person's business, directly pays an unregistered person for construction services performed by the unregistered person, in violation of subdivision 7, paragraph (d), clause (2), as follows:

(1) for the first violation, the commissioner shall issue a notice of violation under section 326B.082, subdivision 6; and

(2) for the second and each subsequent violation, the commissioner may assess a penalty of up to \$2,000.

For purposes of this paragraph, all payments to an unregistered person for construction services on a single project site shall be considered a single violation. It shall not be a violation for a person to pay an unregistered person if the unregistered person was registered at the time the contract for construction services was entered into.

(d) For all other violations of this section, the monetary penalties shall be as provided in section 326B.082, subdivisions 7 and 12.

(e) Monetary penalties under this section shall be payable to the commissioner for deposit in the construction code fund under section 326B.04.

~~Subd. 9. Commissioner's powers. (a) In order to carry out the purposes of this section, the commissioner may:~~

~~(1) administer oaths and affirmations, certify official acts, interview, question, take oral or written statements, and take depositions;~~

~~(2) request, examine, take possession of, photograph, record, and copy any documents, equipment, or materials;~~

~~(3) at a time and place indicated by the commissioner, request persons to appear before the commissioner to give testimony and produce documents, equipment, or materials;~~

~~(4) issue subpoenas to compel persons to appear before the commissioner to give testimony and produce documents, equipment, or materials; and~~

~~(5) subject to paragraph (c), with or without notice, enter without delay upon any property, public or private, for the purpose of taking any action authorized under this subdivision or the applicable law, including obtaining information or conducting inspections or investigations.~~

~~(b) Persons requested by the commissioner to give testimony or produce documents, equipment, or materials shall respond within the time and in the manner specified by the commissioner. If no time to respond is specified in the request, then a response shall be submitted within 30 days of the commissioner's service of the request.~~

~~(c) Upon the refusal or anticipated refusal of a property owner, lessee, property owner's representative, or lessee's representative to permit the commissioner's entry onto property as provided in paragraph (a), the commissioner may apply for an administrative inspection order in the Ramsey County District Court or, at the commissioner's discretion, in the district court in the county in which the property is located. The commissioner may anticipate that a property owner or lessee will refuse entry if the property owner, lessee, property owner's representative, or lessee's representative has refused to permit entry on a prior occasion or has informed the commissioner that entry will be refused. Upon showing of administrative probable cause by the commissioner, the district court shall issue an administrative inspection order that compels the property owner or lessee to permit the commissioner to enter the property for the purposes specified in paragraph (a).~~

~~(d) Upon the application of the commissioner, a district court shall treat the failure of any person to obey a subpoena lawfully issued by the commissioner under this subdivision as a contempt of court.~~

~~Subd. 10. **Notice requirements.** Unless otherwise specified, service of a document on a person under this section may be by mail, by personal service, or in accordance with any consent to service filed with the commissioner. Service by mail shall be accomplished in the manner provided in Minnesota Rules, part 1400.5550, subpart 2. Personal service~~

shall be accomplished in the manner provided in Minnesota Rules, part 1400.5550, subpart 3.

~~Subd. 11. **Facsimile; timely service.** When this section permits a request for hearing to be served by facsimile on the commissioner, the facsimile shall not exceed 15 pages in length. The request shall be considered timely served if the facsimile is received by the commissioner, at the facsimile number identified by the commissioner in the order, no later than 4:30 p.m. central time on the last day permitted for faxing the request. Where the quality or authenticity of the faxed request is at issue, the commissioner may require the original request to be filed. Where the commissioner has not identified quality or authenticity of the faxed request as an issue and the request has been faxed in accordance with this subdivision, the person faxing the request does not need to file the original request with the commissioner.~~

~~Subd. 12. **Time period computation.** In computing any period of time prescribed or allowed by this section, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the next day which is not a Saturday, Sunday, or legal holiday.~~

Subd. 13. **Rulemaking.** The commissioner may, in consultation with the commissioner of revenue and the commissioner of employment and economic development, adopt, amend, suspend, and repeal rules under the rulemaking provisions of chapter 14 that relate to the commissioner's responsibilities under this section as amended by this act. ~~This subdivision is effective May 26, 2007.~~

~~Subd. 14. **Fee.** The certificate fee for the original application and for the renewal of an independent contractor exemption certificate shall be \$150.~~

~~Subd. 15. **Notice to commissioner; review by commissioner of revenue.** When the commissioner has reason to believe that an individual who holds a certificate has failed to maintain all the conditions required by subdivision 6 or is not performing services for a person under the independent contractor exemption certificate, the commissioner must notify the commissioner of revenue and the commissioner of employment and economic development. Upon receipt of notification from the commissioner that an individual who holds a certificate has failed to maintain all the conditions required by subdivision 6 or is not performing services for a person under the independent contractor exemption certificate, the commissioner of revenue must review the information returns required under section 6041A of the Internal Revenue Code. The commissioner of revenue shall also review the submitted certification that is applicable to returns audited or investigated under section 289A.35.~~

Subd. 16. **Data classified.** Data in applications for an independent contractor exemption certificate and any required documentation submitted to the commissioner are private data on individuals as defined in section 13.02. Data in exemption certificates issued by the commissioner are public data. Data that document a revocation or cancellation of an exemption certificate are public data. Upon request of the Department of Revenue or Department of Employment and Economic Development, the commissioner may release to the requesting department data classified as private under this subdivision or investigative data that are not public under section 13.39 that relate to the issuance or denial of applications or revocations of certificates.

Subd. 17. **Advisory task force on employee misclassification.** (a) The commissioner of the Department of Labor and Industry shall appoint an advisory task force on employee misclassification and "off-the-books" payment of workers in the construction industry. The advisory task force shall consist of the following members:

- (1) the commissioner of the Department of Labor and Industry or designee;
- (2) the commissioner of the Department of Employment and Economic Development or designee;
- (3) the commissioner of the Department of Revenue or designee;
- (4) the attorney general or designee;
- (5) a representative appointed by the Minnesota County Attorneys Association;
- (6) two members who are members of a labor organization that represents members who perform public or private sector commercial or residential building construction or improvement services;
- (7) one member who is a general contractor or a representative of general contractors that performs public or private sector commercial building construction or improvement services;
- (8) one member who is a general contractor or a representative of general contractors that performs public or private sector residential building construction or improvement services;
- (9) one member who is a subcontractor or a representative of subcontractors that performs public or private sector commercial building construction or improvement services;
- (10) one member who is a subcontractor or a representative of subcontractors that performs public or private sector residential building construction or improvement services; and
- (11) up to three additional members who perform public or private sector commercial or residential building and construction or improvement services including one member

who is an independent contractor with a current independent contractor certificate; one member who is a limited liability corporation; and one member who is an employee.

The commissioner of the Department of Labor and Industry or designee shall serve as the advisory task force chair. The advisory task force shall meet on a regular basis.

(b) The advisory task force shall have the following duties:

(1) advise the commissioner on the development, implementation, and coordination of enforcement activities, including information sharing and joint investigation and prosecution of persons who violate laws under the jurisdiction of the Department of Labor and Industry, Department of Employment and Economic Development, and the Department of Revenue; and

(2) advise the commissioner on the development and adoption of necessary legislation, regulations, policies, and procedures.

(c) The advisory task force shall expire and the terms, compensation, and removal of members shall be as provided in section 15.059, subdivision 6.

(d) The advisory task force shall, prior to its expiration, report to the legislature a summary of the advice it provided to the commissioner.

EFFECTIVE DATE. This section is effective January 1, 2012, except (1) the new rulemaking authority in subdivision 13 is effective March 1, 2012, and (2) the amendments in this section do not apply to the regulation of an independent contractor exemption certificate issued before January 1, 2012, under Minnesota Statutes 2010, section 181.723, subdivision 5, and shall not be effective for a person holding that exemption certificate until the exemption certificate expires, is revoked, or is canceled.

Sec. 2. Minnesota Statutes 2010, section 326B.04, subdivision 1, is amended to read:

Subdivision 1. **Construction code fund.** There is created in the state treasury a construction code fund as a special revenue fund for the purpose of administering this chapter, sections 327.31 to 327.36, and chapter 327B. All money collected under those sections, except penalties, is credited to the construction code fund unless otherwise specifically designated by law. Any interest or profit accruing from investment of these sums is credited to the construction code fund. All money collected in the construction code fund is appropriated to the commissioner of labor and industry to administer and enforce the provisions of the laws identified in this section.

Unless otherwise provided by law, all penalties assessed under ~~this chapter~~, section 327.35, and chapter 327B are credited to the assigned risk safety account established by section 79.253. Unless otherwise provided by law, all penalties assessed under this chapter are credited to the construction code fund.

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

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

EFFECTIVE DATE. This section is effective January 1, 2012, except the amendments in this section do not apply to the regulation of an independent contractor exemption certificate issued before January 1, 2012, under Minnesota Statutes 2010, section 181.723, subdivision 5, and shall not be effective for a person holding that exemption certificate until the exemption certificate expires, is revoked, or is canceled.

Sec. 4. Minnesota Statutes 2010, section 326B.805, subdivision 6, is amended to read:

Subd. 6. **Exemptions.** The license requirement does not apply to:

- (1) an employee of a licensee performing work for the licensee;
- (2) a material person, manufacturer, or retailer furnishing finished products, materials, or articles of merchandise who does not install or attach the items;
- (3) an owner of residential real estate who builds or improves any structure on residential real estate, if the building or improving is performed by the owner's bona fide employees or by individual owners personally. This exemption does not apply to an owner who constructs or improves property for purposes of speculation if the building or improving is performed by the owner's bona fide employees or by individual owners personally. A residential building contractor or residential remodeler will be presumed to be building or improving for purposes of speculation if the contractor or remodeler constructs or improves more than one property within any 24-month period;
- (4) an architect or professional engineer engaging in professional practice as defined by section 326.02, subdivisions 2 and 3;
- ~~(5) a person whose total gross annual receipts for performing specialty skills for which licensure would be required under this section do not exceed \$15,000;~~
- ~~(6)~~ (5) a mechanical contractor;
- ~~(7)~~ (6) a plumber, electrician, or other person whose profession is otherwise subject to statewide licensing, when engaged in the activity which is the subject of that licensure;
- ~~(8)~~ (7) specialty contractors who provide only one special skill as defined in section 326B.802;
- ~~(9)~~ (8) a school district, or a technical college governed under chapter 136F; and

~~(10)~~ (9) Habitat for Humanity and Builders Outreach Foundation, and their individual volunteers when engaged in activities on their behalf.

~~To qualify for the exemption in clause (5), a person must obtain a certificate of exemption from licensure from the commissioner. A certificate of exemption will be issued upon the applicant's filing with the commissioner, an affidavit stating that the applicant does not expect to exceed \$15,000 in gross annual receipts derived from performing services which require licensure under this section during the calendar year in which the affidavit is received. For the purposes of calculating fees under section 326B.092, a certificate of exemption is an entry level license. To renew the exemption in clause (5), the applicant must file an affidavit stating that the applicant did not exceed \$15,000 in gross annual receipts during the past calendar year. If a person, operating under the exemption in clause (5), exceeds \$15,000 in gross receipts during any calendar year, the person must immediately surrender the certificate of exemption and apply for the appropriate license. The person must remain licensed until such time as the person's gross annual receipts during a calendar year fall below \$15,000. The person may then apply for an exemption for the next calendar year.~~

Sec. 5. **REPEALER.**

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

(b) Minnesota Rules, parts 5202.0100; 5202.0110; 5202.0120; 5202.0130; 5202.0140; 5202.0150; and 5202.0160, are repealed on January 1, 2012, except that they shall remain in effect for the regulation of an independent contractor exemption certificate issued before January 1, 2012, under Minnesota Statutes 2010, section 181.723, subdivision 5, and shall remain in effect for a person holding that exemption certificate until the exemption certificate expires, is revoked, or is canceled.

181.723 INDEPENDENT CONTRACTORS.

Subd. 17. **Advisory task force on employee misclassification.** (a) The commissioner of the Department of Labor and Industry shall appoint an advisory task force on employee misclassification and "off-the-books" payment of workers in the construction industry. The advisory task force shall consist of the following members:

- (1) the commissioner of the Department of Labor and Industry or designee;
- (2) the commissioner of the Department of Employment and Economic Development or designee;
- (3) the commissioner of the Department of Revenue or designee;
- (4) the attorney general or designee;
- (5) a representative appointed by the Minnesota County Attorneys Association;
- (6) two members who are members of a labor organization that represents members who perform public or private sector commercial or residential building construction or improvement services;
- (7) one member who is a general contractor or a representative of general contractors that performs public or private sector commercial building construction or improvement services;
- (8) one member who is a general contractor or a representative of general contractors that performs public or private sector residential building construction or improvement services;
- (9) one member who is a subcontractor or a representative of subcontractors that performs public or private sector commercial building construction or improvement services;
- (10) one member who is a subcontractor or a representative of subcontractors that performs public or private sector residential building construction or improvement services; and
- (11) up to three additional members who perform public or private sector commercial or residential building and construction or improvement services including one member who is an independent contractor with a current independent contractor certificate; one member who is a limited liability corporation; and one member who is an employee.

The commissioner of the Department of Labor and Industry or designee shall serve as the advisory task force chair. The advisory task force shall meet on a regular basis.

(b) The advisory task force shall have the following duties:

- (1) advise the commissioner on the development, implementation, and coordination of enforcement activities, including information sharing and joint investigation and prosecution of persons who violate laws under the jurisdiction of the Department of Labor and Industry, Department of Employment and Economic Development, and the Department of Revenue; and
- (2) advise the commissioner on the development and adoption of necessary legislation, regulations, policies, and procedures.

(c) The advisory task force shall expire and the terms, compensation, and removal of members shall be as provided in section 15.059, subdivision 6.

(d) The advisory task force shall, prior to its expiration, report to the legislature a summary of the advice it provided to the commissioner.